

Superintendent of Financial Services

REGARDING the *Insurance Act*, R.S.O. 1990, c. I.8, as amended (the "Act"), in particular, sections 393(9) – 393(11)

AND REGARDING Jovita Feria Bautista, life insurance and accident and sickness insurance agent

DECISION AND ORDER

Introduction:

A Notice of Opportunity for Hearing dated September 1, 2010 (the Notice) informed Ms. Bautista of allegations against her and the opportunity for a hearing before an Advisory Board. The Notice advised Ms. Bautista that if a hearing was not requested, the Superintendent would make a decision based on information in the possession of the Financial Services Commission of Ontario (the Commission). Ms. Bautista was also advised that such decision could include suspension or revocation of her licence as a life insurance agent.

I have received an affidavit from Shaifa Chandani, Licensing and Registration Specialist at the Commission that the Notice was successfully served by registered mail. Ms. Chandani's memo further indicated that no request for a hearing was received. I am satisfied that the Notice was properly served in accordance with the provisions of the Insurance Act.

A copy of the allegation is attached to this Decision.

The Evidence:

Since Ms. Bautista has not requested a hearing, the evidence of Commission staff in the particulars attached to the Notice is uncontroverted.

The evidence can be summarized as follows. The Commission received notification from Ms. Bautista's insurance company that Ms. Bautista's errors and omissions insurance policy was cancelled. The Commission made several attempts to contact her by mail, registered mail, email and by telephone without success.

Findings of Fact

I find the allegation that Ms. Bautista has failed to maintain the required errors and omissions insurance to be established. The reasons for this finding are the notification of cancellation of the policy by Ms. Bautista's insurance company and Ms. Bautista's failure to respond to the several attempts by the Commission to contact her.

While the absence of errors and omissions insurance is a contravention of Regulation 347/04, that fact combined with Ms. Bautista's lack of response to the Commission is the basis for a finding of unsuitability to hold a licence as an insurance agent. This additional allegation is stated in the particulars included with the Notice.

In the absence of testimony by Ms. Bautista, I am not aware of any explanations for her behaviour or mitigating circumstances.

Decision:

I have found that Ms. Bautista has failed to maintain the required errors and omissions insurance and is unsuitable to hold a licence as a life insurance agent.

Findings of unsuitability frequently result in revocation of the licence of an insurance agent.

Errors and omissions insurance is necessary to protect consumers from negligence by insurance agents. Insurance agents without errors and omissions insurance may not have sufficient assets to indemnify policy holders or applicants for insurance from such losses. Accordingly insurance agents that do not have errors and omissions insurance cannot be allowed to be engaged in the business of insurance.

In this case, Ms. Bautista would not respond to the Commission on this matter. Insurance agents must be governable and amenable to being regulated. The Insurance Act imposes a duty on licensed persons to facilitate an examination. Responding to information requests is an attribute of a person suitable to be an insurance agent.

Since Ms. Bautista has not requested a hearing, there are no explanations for her behaviour, nor is there any demonstrated interest in maintaining her licence as an insurance agent.

Accordingly considering the lack of suitability as demonstrated by the failure to facilitate an examination, the absence of the necessary

insurance to protect the public and lack of any explanation for such behaviour, I believe that the appropriate penalty is revocation of Ms. Bautista's licence as an insurance agent.

ORDER

Accordingly, the life and accident and sickness insurance agent licence of Jovita Feria Bautista is hereby revoked by this order.

Dated at Toronto, this second day of December, 2010

Grant Swanson
Executive Director, Licensing and Market Conduct
by delegated Authority from
Superintendent of Financial Services

Schedule 1

The following allegation was set out in the Notice:

1. Bautista has failed to maintain appropriate errors and omissions insurance ("E&O"), as is required by section 13 of Regulation 347/04.