

## **Superintendent of Financial Services**

**Regarding** the Insurance Act, R.S.O. 1990, c.1.8, as amended, particularly subsections 393(9) – 393(11)

**AND REGARDING** Anita Marie Bergauer, life insurance agent

### **DECISION AND ORDER**

#### **Introduction:**

A Notice of Opportunity for Hearing dated August 27, 2010 (the Notice) informed Ms. Bergauer of allegations against her and the opportunity for a hearing before an Advisory Board. The Notice advised Ms. Bergauer 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. Bergauer 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 Ms. Easson, legal counsel at the Commission that the Notice was successfully served by registered mail. The affidavit further states 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 allegations is attached to this Decision.

#### **The Evidence:**

Since Ms. Bergauer 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. Bergauer's insurance company that Ms. Bergauer'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 allegations that Ms. Bergauer has failed to maintain the required errors and omissions insurance and is unsuitable to hold a licence as a life insurance agent to be established. The reasons for these findings are the notification of cancellation of the policy by Ms. Bergauer's insurance company and Ms. Bergauer's failure to respond to the several attempts by the Commission to contact her.

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

## Decision:

I have found that Ms. Bergauer 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. Bergauer 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. Bergauer 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. Bergauer's licence as an insurance agent.

**ORDER**

Accordingly, the life insurance agent licence of Anita Marie Bergauer is hereby revoked by this order.

Dated at Toronto, this first day of December, 2010

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

## **Schedule 1**

The following allegations were set out in the Notice:

- a. Bergauer has failed to maintain appropriate errors and omissions insurance, as is required by Section 13 of Regulation 347/04.
- b. Bergauer is not amenable to regulation, pursuant to sections 4(1)(i) and 8(d) of Regulation 347/04. Repeated efforts made to contact the agent were unsuccessful in obtaining required information regarding E&O insurance coverage.