

Superintendent of Financial Services

Regarding the Insurance Act, R.S.O. 1990, c.1.8, as amended, particularly Part XIV

AND REGARDING a hearing concerning the suspension or revocation of the life insurance agent licence of James Conklin

DECISION AND ORDER

Introduction:

A Notice of Opportunity for Hearing dated September 29, 2010 (the Notice) informed Mr. Conklin of allegations against him and the opportunity for a hearing before an Advisory Board. The Notice advised Mr. Conklin 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). Mr. Conklin was also advised that such decision could include suspension or revocation of his licence as a life insurance agent. A hearing was requested and an Advisory Board hearing was convened and conducted on November 3, 2010.

The report of the Advisory Board is attached to this decision.

Findings of Fact

The Advisory Board stated that "The allegations were proved since Mr. Conklin admitted all the facts alleged against him." I hereby adopt the findings of the Advisory Board.

Recommendation of the Advisory Board

The Advisory Board recommended:

1. M. Conklin "be allowed to renew his licence, if he wishes, without taking further exams and upon completion of the necessary application."
2. Mr. Conklin "immediately obtain errors and omissions insurance and provide details to the Commission within ten days of receipt of

the Superintendent's decision in this matter".

3. "Once the errors and omissions insurance has been confirmed, that his licence be reinstated and immediately suspended for a period of 12 months from the date of the Superintendent's decision: this time to reflect the period of time for which Mr. Conklin was uninsured."
4. Mr. Conklin complete a course dealing with professional ethics, responsibilities and compliance acceptable to the Superintendent within the next 12 months and provide evidence of same to the Commission before being allowed to reinstate his licence."

The Advisory Board set out the factors it considered in making its recommendation. These included that Mr. Conklin's work does not involve dealing with clients and has not for many years, he admitted his irresponsible behaviour and he did not dispute the penalty proposed by the Commission's lawyer. The Advisory Board noted that Mr. Conklin's concern about the health of his daughter was considered when recommending a penalty.

The Advisory Board stated "Although Mr. Conklin did not comply with his obligations, the situation was not so egregious as to warrant the severe penalty of revoking his licence. The regulations allow the superintendent to take into account the facts of the situation and to determine if the agent is ungovernable and therefore unsuitable to have an agent's licence."

Decision:

The Advisory Board has found that Mr. Conklin failed to maintain the required errors and omissions insurance which is a requirement of a licence as an insurance agent. The Advisory Board's finding that Mr. Conklin is not amenable to regulation is tempered as noted above. The Advisory Board's recommendations implicitly suggest that Mr. Conklin can be rehabilitated as an agent by a course related to his professional responsibilities and period of suspension to reflect on his actions.

The Advisory Board further noted that Mr. Conklin has a management role at an insurance company that does not require him to engage in the activities of an agent and accordingly a licence as an insurance agent is not required. However, holding a licence confers a right to engage in business at any time and also imposes obligations on its holder.

The purpose of penalties is to correct behaviour of the agent and to set an example for the industry. Considering that Mr. Conklin did not maintain errors and omissions insurance as he attested to in his licence application, his failure to obtain errors and omission insurance in spite of the follow up by Commission staff, and his failure to respond to Commission staff, I

believe that the minimum period of suspension should be a period of nine months. This is neither the least nor the harshest penalty that has been imposed.

I note that a period of suspension of twelve months has been recommended by the Advisory Board and I understand that the Advisory Board made reference to the [REDACTED] case and the [REDACTED] case when making its recommendation. I do not see any argument to suggest why the penalty should be greater than in the [REDACTED] case, which has been used in reference at this hearing.

In this case, Mr. Conklin would not respond to the Commission on a timely basis. 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. The Advisory Board has recommended that Mr. Conklin be required to complete a course dealing with professional ethics, responsibilities and compliance acceptable to the Superintendent

Professional education is not a penalty since continuing education is required by law for life insurance agents. I understand that the Advisory Board has identified a need for correction of Mr. Conklin behaviour as a means to mitigate risk and accordingly and prepared to order completion of a course dealing with professional ethics, responsibilities and compliance acceptable to the Superintendent.

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. Insurance agents that do not have errors and omissions insurance cannot be allowed to be engaged in the business of insurance, which they can do at any time if they hold a licence. Accordingly I agree with the recommendation of the Advisory Board that Mr. Conklin be required to produce evidence of insurance.

I understand that Mr. Conklin's life insurance agent's licence was renewed on October 31, 2010 and will expire on October 30, 2012. It appears that this information was not known to the Advisory Board at its hearing on November 3, 2010 and accordingly its recommendations about licence renewal would not appear to be required.

ORDER

I hereby order the following suspension and conditions on Mr. Conklin's licence as an insurance agent:

1. Mr. Conklin's licence as an insurance agent be suspended for a period of nine months commencing January 1, 2011.
2. Mr. Conklin select a course dealing with professional ethics, responsibilities and compliance and seek approval from the Superintendent of Financial Services of the course chosen by February 1, 2011.
3. Mr. Conklin pay for the course.
4. Mr. Conklin provide evidence of satisfactory completion of the course to the Superintendent of Financial Services by January 1, 2012. Such course shall be in addition to the continuing education required by Regulation 347/04.
5. Mr. Conklin provide by January 1, 2011, evidence of errors and omissions insurance acceptable to the Superintendent.

Dated at Toronto, this fifth 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. Conklin has failed to maintain appropriate errors and omissions insurance, as is required by Section 13 of Regulation 347/04.
- b. Conklin 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.