

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 licence of Catherine Gualtieri

DECISION AND ORDER

Introduction:

A Notice of Opportunity for Hearing dated September 29, 2010 (the Notice) informed Ms. Gualtieri of allegations against her and the opportunity for a hearing before an Advisory Board. The Notice advised Ms. Gualtieri 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. Gualtieri was also advised that such decision could include suspension or revocation of her licence as a life insurance agent. A hearing was requested and an Advisory Board hearing was convened and conducted on November 9, 2010.

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

Findings of Fact

With respect to the first allegation, the Advisory Board found that Ms. Gualtieri “did not keep her errors and omissions insurance in force even though her licence was still valid, and she did not respond to inquiries from the Financial Services Commission when those inquiries were made in early [in] 2010.”

With respect to the second allegation, the Advisory Board found Ms. Gualtieri failed in her obligation to subject herself to regulatory governance. “She did not keep the regulator up to date with respect to her contact information, and she did not respond to inquiries from the Financial Services Commission when those inquiries were made in early [in] 2010.” The Advisory Board further stated “... the Tribunal does not find that there is evidence of the agent “snubbing” the regulatory authority. Indeed she responded to the Notice of hearing and participated fully notwithstanding her lack of interest in an ongoing licence.” While not

explicitly stated, I interpreted these comments to mean that the Advisory Board did not find the second allegation that Ms. Gualtieri is not amenable to regulation to be established. For greater clarity, I also note that there was no indication in the report of the Advisory Board of additional allegations being made at the hearing related to the requirements of Regulation 347/04 to maintain a mailing address in Ontario that is known to the Superintendent, that is not a post office box and that is suitable to permit service by registered mail.

I hereby adopt these findings of fact of the Advisory Board.

Recommendation of the Advisory Board

The Advisory Board recommended:

1. A suspension for a period of nine months
2. Reinstatement of the agent's licence be conditional on satisfactory completion of a course approved by the Superintendent addressing the ethical or business obligations of a regulated professional.

The Advisory Board set out the factors it considered in making its recommendation. The Advisory Board commented that "the agent has been sensitive to her obligations as she moved through different business positions." The Advisory Board also considered that she did not conduct any agent activities after cancelling her errors and omissions insurance. "Evidently, Ms Gualtieri felt that her abandonment of life agent activities absolved her from any need to maintain errors and omissions insurance coverage.

Decision:

Advisory Board has found that Ms. Gualtieri did not maintain the required errors and omissions insurance.

Previous cases have some similarities - a failure to maintain errors and omissions insurance as well as a failure to facilitate an examination. Penalties ordered have ranged from licence revocation to licence suspension. Generally where there was a finding of lack of suitability as a result of the failure to maintain errors and omissions insurance and the failure to facilitate an examination, revocation of the agent's licence has been ordered. In other circumstances, a period of suspension has been ordered.

The Advisory Board has not concluded that Ms. Gualtieri is unsuitable to

be a life insurance agent, and accordingly it recommended a period of suspension rather than revocation of her licence.

I note that a period of suspension of nine months has been recommended by the Advisory Board. I have made reference to the [REDACTED] case and the [REDACTED] case. This recommendation is consistent with that imposed in the [REDACTED] case

The purpose of penalties is to correct behaviour of the agent and to set an example for the industry. Considering that Ms. Gualtieri did not maintain errors and omissions insurance as she attested to in her licence application, her failure to obtain errors and omission insurance in spite of the follow up by Commission staff, and her failure to respond to Commission staff, I believe that the period of suspension should be a period of nine months. This is neither the least nor the harshest penalty that has been imposed.

The Advisory Board noted that “Ms. Gualtieri’s lack of insight as to her own responsibility as a regulated professional is concerning.” I agree. 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 Ms. Gualtieri be required to complete a course dealing with professional ethics, responsibilities and compliance acceptable to the Superintendent as a deferred condition of this order.

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 Ms. Gualtieri’s behaviour as a means to mitigate risk and accordingly and am prepared to order completion of a course dealing with professional ethics, responsibilities and compliance acceptable to the Superintendent as a deferred condition of this order.

ORDER

I hereby order the following suspension and conditions on Ms. Gualtieri’s licence as an insurance agent:

1. Ms. Gualtieri’s licence as an insurance agent be suspended for a period of nine months commencing January 1, 2011.
2. Ms. Gualtieri select a course dealing with professional ethics, responsibilities and compliance and seek approval from the Superintendent of Financial Services of the course chosen
3. Ms. Gualtieri pay for the course.

4. Ms. Gualtieri provide evidence of satisfactory completion of the course to the Superintendent of Financial Services. Such course shall be in addition to the continuing education required by Regulation 347/04.
5. Conditions 2, 3, and 4 will only apply and be required to be completed prior to Ms. Gualtieri submitting an application for a licence as an insurance agent.

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. Gualtieri has failed to maintain appropriate errors and omissions insurance, as is required by Section 13 of Regulation 347/04.
- b. Gualtieri 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.