

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 Walter George Fernandes

DECISION and ORDER

Introduction:

A Notice of Opportunity for Hearing dated October 13, 2010 (the Notice) informed Mr. Fernandes of allegations against him and the opportunity for a hearing before an Advisory Board. The Notice advised Mr. Fernandes 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. Fernandes was also advised that such decision could include suspension or revocation of his licence as a life insurance agent.

A copy of the allegations is attached to this Decision and Order.

A hearing was requested and an Advisory Board was convened and conducted a hearing on October 13, 2010.

The report of the Advisory Board is attached to this Decision and Order.

Findings of Fact

The Advisory Board found both allegations to be established. I hereby adopt the findings of fact of the Advisory Board.

Recommendation of the Advisory Board

The Advisory Board recommended that the insurance agent licence of Mr. Fernandes be "suspended immediately and for a period of not less than 12 months. If Mr. Fernandes chooses at the end of the 12 month period to reapply he comply with all the provisions of S4 (1) as if he were a

new applicant.”

The Advisory Board set out the factors it considered in making its recommendation. These related to the absence of the required insurance, Mr. Fernandes’ failure to respond to the Commission and his conduct during the hearing, including leaving the hearing while it was still in progress. The Advisory Board noted that Mr. Fernandes gave “no reasonable explanation as to why he failed to obtain and renew his errors and omissions insurance”

Decision:

The Advisory Board found that that Mr. Fernandes failed to maintain the required insurance and that he is not amenable to regulation.

Persons who are not amenable to regulation are not suitable to hold a licence as an insurance agent. 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, Mr. Fernandes 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.

The Advisory Board stated that Mr. Fernandes provided no reasonable explanations for his behaviour.

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 Mr. Fernandes’ licence as an insurance agent. The terms of the suspension recommended by the Advisory Board are equivalent to a revocation since the Advisory Board recommended that Mr. Fernandes’ would have to reapply for a licence and be treated as a new applicant for a licence should he chose to do so. This is also consistent with penalties ordered in similar cases.

ORDER

Accordingly, the life insurance agent licence of Walter George Fernandes is hereby revoked by this order.

Dated at Toronto, this fifth day of January, 2011

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:

1. Walter George Fernandes has failed to maintain appropriate errors and omissions ("E&O) insurance, as is required by Section 13 of Regulation 347/04.
2. Fernandes 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 information regarding E&O insurance coverage.