

An order that is made regarding a licence holder reflects a situation at a particular point in time. The status of a licence holder can change. Readers should check the current status of a person's or entity's licence on the [Licensing Link](#) section of FSCO's website. Readers may also wish to contact the person or entity directly to get additional information or clarification about the events that resulted in the order.

Superintendent of Financial Services

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

AND Andrew Nicolas McNaught

DECISION

Introduction:

A Notice of Opportunity for Hearing dated December 9, 2010 (the Notice) informed Mr. McNaught of allegations against him and the opportunity for a hearing before an Advisory Board. The Notice advised Mr. McNaught 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. McNaught was also advised that such decision could include suspension or revocation of his licence as a life insurance agent.

I have received an affidavit from [REDACTED], Legal Secretary at the Commission that the Notice was sent by registered mail and that Canada Post confirmed successful delivery. I have received an affidavit from [REDACTED], Head of the Investigations Unit at the Commission that he has been advised by [REDACTED], Registrar at the Commission 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 and that no request for a hearing was received.

A copy of the allegations is attached to this Decision.

The Evidence:

Since Mr. McNaught 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. Mr. McNaught is licensed as a life insurance agent and was licensed to sell mutual funds. Mr. McNaught recommended to four of his clients that they borrow money to be invested in mutual funds. He advised the mutual funds would be frequently traded over a 30 to 60 day period, after which the mutual funds

would be redeemed, the loan repaid and the clients would receive the balance. Mr. McNaught advised his clients that the investment strategy had a high probability of success. Each of these clients borrowed \$100,000.

To facilitate the investment strategy, Mr. McNaught completed his employer's "know your client" requirements by stating that the clients had a high tolerance of risk. In addition he did not consult his clients on 65 trade transactions and forged his client's signatures on the trade authorizations. His clients lost approximately \$ 255,000 as a result of Mr. McNaught's trading in mutual funds.

Mr. McNaught also signed as a witness to signatures of clients of other advisors when he did not in fact witness those signatures.

Mr. McNaught provided false responses to four questions in his application dated August 6, 2009 to renew his life insurance agent licence. He also provided false information in an application for an agent contract from an insurance company.

Findings of Fact

Much of the evidence relates to an investment strategy and mutual fund transactions between Mr. McNaught and four of his clients. This is a disciplinary proceeding with respect to Mr. McNaught's licence as an insurance agent. Accordingly there must be a sufficient connection between Mr. McNaught's actions and his insurance licence to make findings under the Insurance Act.

The evidence supports the following findings of fact:

- Mr. McNaught misrepresented the risk of investments to his clients, engaged in discretionary trading in mutual funds without his clients' authorization, and forged his clients' signatures on numerous occasions.
- Mr. McNaught's actions resulted in significant losses to his clients.
- Mr. McNaught falsely signed indicating that he had witnessed the signatures of clients of other advisors, when he had not seen the clients sign the documents.

Section 4 of Regulation 347/04 requires the Superintendent to be satisfied that an applicant for a licence has a satisfactory record in business currently or previously undertaken. In this case Mr. McNaught was engaged in another financial service, mutual fund sales, and as such his

actions have a nexus to the business of an insurance agent. I find that Mr. McNaught's actions as described above do not represent a satisfactory record in business.

Mr. McNaught furnished false information to the Superintendent in his application to renew his life insurance agent's licence and that he furnished false information in an application for an agent contract with an insurance company. Section 8 of Regulation 347/04 requires agents to be truthful in their dealings with the Superintendent. I find that Mr McNaught furnished false information to the Superintendent.

Since Mr. McNaught has not requested a hearing I am not aware of any explanations for his actions or mitigating circumstances.

Decision:

I have found that Mr. McNaught has an unsatisfactory record in business and has furnished false information to the Superintendent.

Mr. McNaught's actions with respect to both his clients and the Superintendent reflect deceit and lack of integrity, and as such are reflective of his character and lack of suitability as an insurance agent.

Suitability is a fundamental attribute of an insurance agent. The nature of the business of insurance agents places them in situations where they have access to sensitive personal and financial information about their clients. The business often results in agents meeting clients in their homes or in other situations where no one is overseeing the interaction between the agent and client.

I have considered whether there is any practical way to mitigate the risk that Mr. McNaught represents to his clients. Since the findings relate to Mr. McNaught's character, and considering the nature of the business of an insurance agent, there is no practical way to mitigate risk.

Since Mr. McNaught has not requested a hearing, there is no basis to assess whether there are mitigating circumstances, nor is there any demonstrated interest in maintaining his licence as an insurance agent.

Accordingly considering the lack of suitability and his failure to request and attend a hearing to answer questions about his actions I believe that the appropriate penalty is revocation of Mr. McNaught's licence as an insurance agent.

ORDER

Accordingly, the life insurance agent licence of Andrew Nicolas McNaught is hereby revoked by this order.

Dated at Toronto, this twenty seventh day of June, 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. Andrew Nicholas McNaught (“McNaught”) has held a life insurance and accident and sickness insurance agent licence in Ontario since August 15, 2007. His licence number is 07098274.
2. From September 2007 to around March 2008 McNaught managed the investments of 4 clients who had been misled about the degree of risk of the investments. Some of the clients were misled by McNaught and some were misled by his associate.
3. At the time McNaught was employed as a financial security advisor and investment representative by London Life Insurance Company at its office in North York, Ontario

Misrepresentation of Investment Risk

4. The investment that McNaught and his associate recommended to the clients is known as a leveraged investment. The concept is that the client borrows money to invest in mutual funds. The financial advisor frequently trades the invested funds among four or five mutual funds over a 30– to 60– day period, until the investment has grown by more than \$2,000 to \$3,000. The investment is then surrendered and the loan plus interest is paid off, and the balance is paid to the client.
5. McNaught and his associate told the 4 clients that the investment had a high prospect of success. In reality, the investment simply offered the clients high reward for high risk, based on frequent trades by McNaught and his associate among the four or five mutual funds.

Prohibited Discretionary Trading

6. McNaught told the clients that he would manage their investments completely. The clients would not have to make any investment decisions. McNaught would use his expertise to determine when trades would be beneficial, and then exercise his discretion to make those trades.
7. At all material times McNaught knew or ought to have known that the terms of his licence as a life insurance agent and the terms of his

licence as a mutual fund salesperson required that he obtain the express written approval of the client before each trade.

8. Based on the advice of McNaught and his associate, each of the 4 clients borrowed \$100,000 and entrusted it to McNaught for investment.
9. In order to give the appearance of compliance with his employer's "Know Your Client" requirements, McNaught falsified the investor profile for each client by stating that the client had a high risk tolerance and was very knowledgeable about investments.

65 Forged Clients' Signatures

10. Further, in order to give the appearance of compliance with the requirement to obtain each client's express written approval for each trade, McNaught prepared a trade transaction authorization form for each trade, and forged the client's signature on it. He also signed the form as witness to the client's signature.
11. McNaught forged clients' signatures on trade transaction authorization forms an estimated 65 times between October 7, 2007 and January 11, 2008. The breakdown is as follows [names represented by initials to protect privacy]:

Client	# of Times Signature Forged
J D	19
L P	16
D S	23
E& CM	<u>7</u>
Total:	<u>65</u>

12. McNaught did not consult the client prior to making any of the 65 trades. He did not have the express approval of a client for any of the 65 trades.

Aggregate losses for 4 Clients = \$ 225,000 (amounts rounded)

13. The high risk of the investments chosen by McNaught prevailed over the prospect of high reward.
14. For example, when J D terminated her investment contract in March 2008, she recouped \$ 89,050.10 of the \$ 100,000 that she had borrowed. Consequently, she incurred a loss of \$ 10, 949.90.
15. When LP terminated his investment contract in March 2009, he recouped only \$ 14,761.85 of the \$ 100,000 that he had borrowed. Consequently, he incurred a loss of \$ 85,238.15
16. E & C M and D S have not yet terminated their policies. The current value of their investments is approximately 56% of the \$ 100,000 that each one borrowed.

False Witness to Other Client Signatures

17. On some occasions McNaught signed as a witness to the signatures of clients of other financial advisors on trade transaction authorization forms, even though he did not see the clients sign the documents. For example, he admitted that he signed as a witness to the signatures of J J, A R, D F and G F on trade transaction authorization forms, even though he did not see any of those individuals write the signatures to which he signed as a witness.

False Information in Renewal Application

18. McNaught furnished false information to the Superintendent in his responses to 4 questions in his life insurance agent renewal application dated August 6, 2009.
19. Question 14 of the renewal application asked if the applicant has another occupation / employment other than as a life insurance agent. McNaught answered "No". His answer was false because he was also employed by Goodlife Fitness as a part-time fitness instructor.
20. Question 15 of the renewal application asked if the applicant has ever been successfully sued, or if a complaint has ever been made against him to a regulatory body in any province, territory, state, or country that was or is, based in whole or in part, on fraud, theft, deceit, misrepresentation, forgery, or similar conduct; or based in whole or in

part on professional negligence or misconduct (including claims paid by your errors and omissions insurance carrier.

21. McNaught answered “No” to Question 15. His answer was false because on January 25, 2008 his employer, London Life, informed him that it would be notifying FSCO and the Ontario Securities Commission that it had terminated his employment because of acts of forgery and because of breaches of the employer’s Code of Business Conduct and Business Ethics. Also, his answer was false because he knew that a former client, J D, had complained to his employer about his professional conduct on December 27, 2007.
22. Question 23 of the renewal application asked if the applicant has ever had an employment or business relationship or association with a volunteer organization terminated for breach of confidentiality, breach of trust, fraud, misrepresentation of funds, theft, forgery, sexual harassment, or physical assault.
23. McNaught answered “No” to Question 23. His answer was false because on January 25, 2008 his employer, London Life, informed him that it would be notifying FSCO and the Ontario Securities Commission that it had terminated his employment because of acts of forgery and breaches of the employer’s Code of Business Conduct and Business Ethics.

False Information in Employment Application

24. On March 10, 2008, McNaught furnished false information to Industrial Alliance in an application for a contract as a life insurance agent.
25. Question 12 of the application asked if the applicant has ever been terminated or resigned, or had any contracts cancelled that the applicant held with any financial services company because the applicant was accused of violating insurance or investment related statutes, regulations, rules or industry standards of business conduct.
26. McNaught answered “No” to Question 12. His answer was false because London Life terminated his employment as a financial security advisor and investment representative on January 25, 2008 because of acts of forgery and breaches of London Life’s Code of Business Conduct and Business Ethics.