

Superintendent of Financial Services

Regarding the Insurance Act, R.S.O. 1990, c.1.8, as amended, in particular, sections 393(9) - 393 (11)

AND REGARDING Youssef Hamzi, life insurance agent

DECISION AND ORDER

Introduction:

A Notice of Opportunity for Hearing dated March 30, 2011 (the Notice) informed Youssef Hamzi of allegations against him and the opportunity for a hearing before an Advisory Board. The Notice advised Mr. Hamzi if a hearing was not requested the Superintendent would make a decision based on information in possession of the Financial Services Commission of Ontario (the Commission). Mr. Hamzi 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 _____, Investigator at the Commission that the Notice was sent by registered and regular mail to the address on file at the Commission. Canada Post returned the registered letter. The affidavit states that the address was confirmed with records maintained by the Ministry of Transportation. This additional verification is not required by the Insurance Act. 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 and that Mr. Hamzi did not request a hearing.

A copy of the allegations is attached to this Decision.

The Evidence:

Since Mr. Hamzi 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. Hamzi contacted his client, ASG [name represented by initials in this Decision and Order to protect privacy], to solicit funds for an investment. ASG provided a

cheque payable to Mr. Hamzi. Mr. Hamzi approached ASG five additional times. In three of those solicitations, ASG provided cheques for investments; in one solicitation ASG provided a cheque to be used for another client, subject to a guarantee from Mr. Hamzi; and in the final solicitation, ASG refused to provide a cheque. Mr. Hamzi was paid a fee by those offering the investments for referring ASG. Mr. Hamzi did not provide ASG an accounting for his money or documentation supporting the investments. ASG has not been repaid.

Mr. Hamzi also breached the terms of the agency agreement with his insurance company by engaging in unapproved business activities and accepting cash.

Findings of Fact

The evidence relates to investment transactions between Mr. Hamzi and ASG, an insurance client. The allegations relate to Mr. Hamzi's licence as an insurance agent. Accordingly there must be a sufficient connection between Mr. Hamzi's actions and his insurance licence to make findings under the Insurance Act.

It is alleged that Mr. Hamzi has engaged in a fraudulent act or practice. Regulation 347/04 does not limit fraudulent acts or practice to the business of an insurance agent, and accordingly any fraudulent act or practice could be a basis for suspension or revocation of a licence as an insurance agent. This is a disciplinary proceeding, and not a criminal one, and the standard to be applied reflects that distinction.

Accepting cheques payable personally to a person engaged in financial services is not commercial practice in the business of financial services. It is also not commercial practice to fail to provide an accounting for such money received. There is no reasonable explanation why Mr. Hamzi conducted business in this fashion. Clearly Mr. Hamzi has a responsibility to his client, ASG, and his dealings with his client leads to a reasonable conclusion that fraud has occurred, directly or indirectly as a result of the actions of Mr. Hamzi. Accordingly, I find that the allegation that Mr. Hamzi engaged in a fraudulent act to be established.

It is alleged that Mr. Hamzi "demonstrated incompetence or untrustworthiness to transact the insurance agency business for which the licence has been granted." (Section 8(d) of Regulation 347/04) This Regulation requires a close nexus to the business of an insurance agent. Incompetence in other financial services is generally not sufficient to make an adverse finding under Regulation 347/04. However, untrustworthiness touches on character and is relevant. Insurance agents must be

trustworthy.

As previously noted, accepting cheques payable personally to a person engaged in financial services is not commercial practice in the business of financial services. It is also not commercial practice to fail to provide an accounting for such money received. I find that the allegation that Mr. Hamzi demonstrated untrustworthiness such as to make him unsuitable to transact the insurance agency business for which the licence has been granted to be established.

Finally it is alleged that Mr. Hamzi is not otherwise suitable to be licensed as required in section 4(1)(i) of Regulation 347/04. I find this allegation to be established. Mr. Hamzi was not acting in the interest of his client, ASG. Accepting money outside of ordinary commercial practice, the absence of an accounting for the money to ASG and failure to comply with his agency contract places his client at risk and have potentially exposed his client to loss of the funds that have not been repaid. Insurance agents must be of high integrity. Integrity is an attribute of character that can be demonstrated in any kind of financial services.

Since Mr. Hamzi did not request a hearing, I am not aware of any mitigating circumstances.

Decision:

I have found that Mr. Hamzi is not trustworthy, is not suitable to hold a licence as an insurance agent and has directly or indirectly engaged in a fraudulent act or practice.

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. Hamzi represents to his clients. Since the findings of lack of integrity and not acting in the interests of clients touch on Mr. Hamzi's character, and considering the nature of the business of an insurance agent, there is no practical way to mitigate risk.

Since Mr. Hamzi 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. Hamzi's licence as an insurance agent.

ORDER

Accordingly, the life insurance agent licence of Youssef Hamzi is hereby revoked by this order.

Dated at Toronto, this twentieth day of June, 2011

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

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