

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 Moshe Benyair

DECISION AND ORDER

Introduction:

A Notice of Opportunity for Hearing dated January 18, 2011 (the Notice) informed Moshe Benyair of allegations against him and the opportunity for a hearing before an Advisory Board. The Notice advised Mr. Benyair 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. Benyair 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 Mr. Sean Mitchell, Manager, Licensing Compliance at the Commission that the Notice was sent by registered mail and that Canada Post confirmed successful delivery. 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. Benyair did not request a hearing.

A copy of the allegations is attached to this Decision.

The Evidence:

Since Mr. Benyair 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. The Commission received an application from Mr. Benyair for renewal of his licence that expired on May 1, 2010. In that application Mr. Benyair noted that he did not have the required continuing education. Mr. Benyair's licence was renewed on the basis that he would rectify the non-compliance with the continuing education requirement. Commission staff contacted Mr. Benyair to

ascertain his plans to comply. On six occasions, Mr. Benyair said that he would provide a compliance plan, but ultimately failed to do so.

I have received an affidavit from Robert Conway, Legal Counsel at the Commission who stated that Mr. Benyair left a voice message on March 29, 2011 advising that he no longer intends to obtain the continuing education credits.

Findings of Fact

I find that Mr. Benyair has failed to comply with the continuing education requirements. Mr. Benyair admitted that he had not done so in his licence application and failed to provide evidence of compliance thereafter.

I find that Mr. Benyair failed to make a meaningful effort to complete the continuing education after renewal of his licence. Mr. Benyair did not provide a compliance plan that met the continuing education requirements, in spite of six assertions that he would do so, and ultimately Mr. Benyair stated that he would not comply. Mr. Benyair's licence was renewed on the basis that he would rectify his non-compliance.

I find that Mr. Benyair is unsuitable to hold a licence as an insurance agent to be established by virtue of his failure to complete the continuing education requirement and his failure to rectify the non-compliance in spite of repeated assertions to Commission staff that he would do so.

In the absence of testimony by Mr. Benyair, I am not aware of any explanations for his behaviour or mitigating circumstances.

Decision:

I have found that Mr. Benyair has failed to comply with the continuing education requirement, has failed to rectify the non compliance, and is not suitable to hold a licence as a life insurance agent.

Regulation 347/04 requires the completion of thirty hours of continuing education in each two year licence period. This Mr. Benyair failed to do, and a penalty is warranted. The penalties imposed in other cases have typically been suspensions in the range of 30 to 90 days. However more serious penalties, including revocation of licence, have also been imposed. These serious penalties have been ordered in circumstances such as agents that did not demonstrate an intention to complete the continuing education requirement or through their refusal to co-operate with the Commission demonstrated that they were not prepared to be

regulated.

In this case, Mr. Benyair repeatedly failed to comply with the continuing education requirement despite providing repeated assurances to the Commission that he would do so. Ultimately Mr. Benyair stated that he would not comply. Insurance agents must be governable and amenable to being regulated.

Since Mr. Benyair has not requested a hearing, there are no explanations for his behaviour, nor is there any demonstrated interest in maintaining his licence as an insurance agent.

Accordingly considering the lack of suitability as demonstrated by the failure to comply despite repeated assurances to the Commission, the failure to meet the continuing education requirement or demonstrate any intention to complete this requirement, and lack of any explanation for such behaviour, I believe that the appropriate penalty is revocation of Mr. Benyair's licence as an insurance agent.

ORDER

Accordingly, the life insurance agent licence of Moshe Benyair is hereby revoked by this order.

Dated at Toronto, this thirty first day of May, 2011

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