

## **Superintendent of Financial Services**

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

**AND REGARDING** Retio Brown, life insurance agent

### **DECISION and ORDER**

#### **Introduction:**

A Notice of Opportunity for Hearing dated October 26, 2010 (the Notice) informed Mr. Brown of allegations against him and the opportunity for a hearing before an Advisory Board. The Notice advised Mr. Brown 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. Brown 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 counsel at the Commission that the Notice was sent to Mr. Brown and was returned as unclaimed by Canada Post. The affidavit further states that Commission staff had previously conducted a search of records at the Ministry of Transportation and had sent a registered letter to the address in their records, but that letter also was returned by Canada Post. The affidavit documents attempts by Commission staff to contact Mr. Brown by telephone and email. While the Commission undertook these additional steps to contact Mr. Brown, the Insurance Act provides that service can be made by registered mail at the last known address of a person on file at the Commission. I am satisfied that the Notice was properly served in accordance with the provisions of the Insurance Act. The affidavit states that no request for a hearing has been received.

A copy of the allegations is attached to this Decision.

#### **The Evidence:**

Since Mr. Brown 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

notification from Mr. Brown's insurance company that Mr. Brown's errors and omissions insurance policy was cancelled. The Commission made several attempts to contact him by email, registered mail and by telephone without success.

### Findings of Fact

I find the allegation that Mr. Brown has failed to maintain the required errors and omissions insurance to be established. The reasons for this finding are the notification of cancellation of the policy by Mr. Brown's insurance company and Mr. Brown's failure to respond to the several attempts by the Commission to contact him.

I find the allegation that Mr. Brown is not amenable to regulation as a life insurance agent to be established. The reasons for this finding are the notification of cancellation of the policy by Mr. Brown's insurance company and Mr. Brown's failure to respond to the several attempts by the Commission to contact him. Section 4(1) (l) of Regulation 347/04 requires insurance agents to maintain a mailing address in Ontario that is known to the Superintendent and is suitable for service by registered mail. Agents who cannot be contacted cannot be regulated.

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

### Decision:

I have found that Mr. Brown has failed to maintain errors and omissions insurance and is not amenable to regulation as a life 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. Brown did 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.

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

### **ORDER**

Accordingly, the life insurance agent licence of Retio Brown is hereby revoked by this order.

Dated at Toronto, this twenty first day of March, 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:

- a. Brown has failed to maintain appropriate errors and omissions insurance (“E&O”), as is required by Section 13 of Regulation 347/04.
- b. Brown 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.