

## **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** Diplal Brendon Nandalal. life insurance agent

### **DECISION and ORDER**

#### **Introduction:**

A Notice of Opportunity for Hearing dated November 8, 2010 (the Notice) informed Mr. Nandalal of allegations against him and the opportunity for a hearing before an Advisory Board. The Notice advised Mr. Nandalal 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. Nandalal 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 Ms. Easson, legal counsel at the Commission that the Notice was sent by registered mail and that Canada Post returned the letter as unclaimed. Ms. Easson's memo further indicated that previous registered mail had been sent to that address on file at the Commission and had been acknowledged by Mr. Nandalal. 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. No request for a hearing was received.

A copy of the allegations is attached to this Decision.

#### **The Evidence:**

Since Mr. Nandalal 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. Nandalal's insurance company that Mr. Nandalal's errors and omissions insurance policy was cancelled. The Commission

made several attempts to contact him by email, mail, registered mail and by telephone. After three attempts the agent replied to the Commission that he had not renewed his errors and omissions insurance, but would do so once he could afford it. Commission staff advised Mr. Nandalal that if he could not maintain insurance he must surrender his licence, and the process to do so. No further response was received from Mr. Nandalal.

### Findings of Fact

I find the allegation that Mr. Nandalal 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. Nandalal 's insurance company and Mr. Nandalal 's admission that he did not renew his insurance.

I find the allegation that Mr. Nandalal 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. Nandalal 's insurance company and Mr. Nandalal 's failure to either purchase the required insurance or to surrender his licence when Commission staff advised him of the need to be in compliance with Regulation 347/04.

While Mr. Nandalal did not request a hearing, he had indicated to Commission staff that he could not afford the required insurance. This is not a mitigating circumstance.

### Decision:

I have found that Mr. Nandalal 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. Nandalal responded to the Commission on this matter after Commission staff made three attempts to contact him. Mr. Nandalal failed to take steps to come into compliance with the law even when advised by Commission staff that he needed to do so. Insurance agents must be governable and amenable to being regulated.

Since Mr. Nandalal has not requested a hearing, there is no demonstrated interest in maintaining his licence as an insurance agent.

Accordingly considering the lack of suitability as demonstrated by the failure to comply with law even when so advised by Commission staff, and the absence of the necessary insurance to protect the public, I believe that the appropriate penalty is revocation of Mr. Nandalal's licence as an insurance agent.

### **ORDER**

Accordingly, the life insurance agent licence of Diplal Brendon Nandalal 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. Nandalal has failed to maintain appropriate errors and omissions insurance (“E&O”), as is required by Section 13 of Regulation 347/04.
- b. Nandalal 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.