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**Financial Services
Commission
of Ontario**
5160 Yonge Street,
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Toronto ON M2N 6L9

REGARDING the *Insurance Act*, R.S.O. 1990, c.1.8, as amended (the "Act"), in particular, sections 393(9) – 393(11)

AND REGARDING a hearing concerning the suspension or revocation of the life insurance agent licence of Yousef Afshar

DECISION and ORDER

Introduction:

Pursuant to a Notice of Hearing dated July 26, 2012, an Advisory Board was duly appointed under section 393(9) of the Act. The hearing was conducted on December 11, 2012.

The allegations were set out in Schedule "1" as attached.

The report of the Advisory Board is attached.

Findings of Fact:

The Advisory Board accepted the findings from the regulatory proceedings in Quebec. It would have been an abuse of process to permit the re-opening issues that have already been conclusively determined by a court or administrative tribunal.

The Advisory Board found all the allegations set out in Schedule "1" to be established.

I hereby adopt the findings of fact of the Advisory Board, except the finding related to the failure to complete continuing education (the fifth allegation). The Advisory Board report does not specifically refer to completion of continuing education and therefore it is not possible for me to accept the findings of the Advisory Board in this regard.

Recommendation of the Advisory Board:

The Advisory Board recommended that the licence of Mr Afshar be revoked and that he not be permitted to reapply for a licence.

The Advisory Board noted the factors it considered in making its recommendation. It stated that "there was nothing in his evidence that would mitigate, in any way, the present allegations against him." The Advisory Board stated that "... Mr Afshar made a number of material misstatements and omissions on his renewal application with full knowledge that the statements were untrue. In his dealings with both the Quebec and Ontario insurance regulatory authorities, he demonstrated incompetence and untrustworthiness to transact the insurance agency business." The Advisory Board stated that he "is not of good character and that his behaviour falls below any acceptable standards of the insurance industry." The Advisory Board stated that "He did not cooperate with the FSCO investigation and has continued to deny responsibility for his actions and declare his innocence, even when he pleaded guilty to the charges against him" in the Quebec proceedings. The Advisory Board also noted that "Neither did the authorities in Quebec believe the Agent." The preceding comments from the Advisory Board indicate that it does not consider Mr Afshar to be suitable to be an insurance agent and accordingly recommended that his licence be revoked.

Decision:

The Advisory Board has found Mr Afshar to be unsuitable to hold a licence as an insurance agent. The Advisory Board recommended that his licence be revoked. The Advisory Board concluded that Mr Afshar could not be rehabilitated through its recommendation that he not be allowed to reapply for a licence.

This case involves established allegations about events in both Ontario and Quebec. The events in Quebec include disciplinary actions before Quebec insurance regulatory authorities that resulted in the revocation of his licence as an insurance agent. The events in Ontario included false statements, largely about the events in Quebec, in his application for a licence.

The proceedings before the Quebec insurance regulatory authorities are the fundamental cause of these proceedings under the Insurance Act. The misstatements to the Superintendent are contraventions of the Insurance Act that could not have existed independently of those proceedings; they are related acts.

Each case must be considered on its own merits. Accordingly the disciplinary action imposed by another regulator is not determinative of any discipline that might be imposed under the Insurance Act.

A finding by another regulator may relate to the honesty and integrity of an individual in such a way that an Advisory Board could find that the individual has the proclivity toward such behaviour and represents an unacceptable risk to the public or that a single action by the individual is so serious that the individual would not meet the suitability standard for an insurance agent. In such a case, the individual would be unsuitable to be licensed as an insurance agent. This is the conclusion of the Advisory Board in this case.

The Insurance Act requires that insurance agents be suitable to hold a licence. Accordingly in the absence of suitability, the licence of the insurance agent would typically be revoked.

I have considered whether there are other orders such as a period of suspension or licence conditions which might both serve as a penalty for the established contraventions of the Insurance Act and serve to rehabilitate Mr Afshar as an insurance agent. Considering that the established allegations involve Mr Afshar's character and that the insurance business involves utmost good faith, there are no practical means to ensure that Mr Afshar's behaviour will not recur in Ontario.

It is clear from the report of the Advisory Board that it concluded, correctly, that a finding of unsuitability would reasonably lead to an order for a revocation of Mr Afshar's licence. Section 393 of the Insurance Act makes suitability a condition to be granted a licence as an insurance agent and places a duty on the Superintendent to assess suitability. It is a question of fact whether an agent that is found to be unsuitable can rehabilitate him or herself over time and subsequently be found to be suitable.

Mr Afshar has failed to show contrition for his conduct and accept responsibility for such. While there may be different reasons for that, the reality remains that in the absence of such expression, nothing has been demonstrated by Mr Afshar nor by any witnesses that he might have called on his behalf to demonstrate that he is sorry for his actions and has been rehabilitated as a result of the disciplinary action by the Quebec insurance regulators. Some of Mr Afshar's clients suffered loss and it is a concern that he appears not to care and rationalizes the losses by clients as not being his responsibility.

The Advisory Board made findings that Mr Afshar made a material misstatement to the Superintendent in his application for a licence. Providing false or misleading information

to the Superintendent is a serious matter. Regulation would not be possible if licensees did not bear serious consequences for providing false or misleading information to the regulator.

The principles that have been applied in this case where a disciplinary action by another regulator leads to a proceeding under the Insurance Act are as follows:

1. If the proceeding under the Insurance Act finds that the agent is not suitable, the agent does not meet the requirements under Section 393 of the Insurance Act to hold a licence.
2. If the proceeding under the Insurance Act finds that the agent is suitable to hold a licence under the Insurance Act, it is necessary to ensure that misbehaviour does not emerge for insurance business. To achieve this objective, licence conditions and a licence suspension can be considered.
3. If the proceeding under the Insurance Act finds that the agent is suitable to hold a licence under the Insurance Act, any penalties should reflect only the Superintendent's responsibilities under the Insurance Act. This does not detract from the seriousness of discipline imposed by the other regulators.

The recommendations of the Advisory Board did not refer to continuing education and accordingly my decision not to accept the Advisory Board's finding in that regard is not relevant to their recommendation. My decision and order also is not dependent on the allegations of non-compliance with continuing education requirements.

Accordingly, I believe that the appropriate penalty is revocation of the insurance agent licence of Mr Afshar. A revocation of a licence means that there is no licence which can be renewed or revived and accordingly every licence revocation is "for life". Should an agent whose licence has been revoked subsequently apply for another licence, all requirements for a new licence must be met and Regulation 347/04 requires that his or her record in the business be considered. This would include any disciplinary action.

ORDER

Accordingly, the life insurance agent licence of Mr Yousef Afshar is hereby revoked by this order.

Dated at Toronto, this third day of January 2013

Original Signed By

Grant Swanson
Executive Director, Licensing and Market Conduct

by delegated Authority from
Superintendent of Financial Services

Schedule 1

Allegations

1. Mr. Afshar made a material misstatement or omission in his application to renew his life insurance agent licence (the "Application") pursuant to section 8(b) of Regulation 347/04 (the "Regulation") made under the *Insurance Act*, R.S.O. 1990, c.I.18, as amended (the "Act"), when he answered "no" to the question whether a successful complaint was made against him to a regulatory body.
2. Mr. Afshar made a material misstatement or omission in the Application pursuant to section 8(b) of the Regulation, when he answered "no" to the question whether he had been subject to discipline or was currently the subject of an investigation by a regulatory body.
3. Mr. Afshar made a material misstatement or omission in the Application pursuant to section 8(b) of the Regulation, when he failed to correct his answer "no" to the question whether he was currently a defendant in any civil proceeding.
4. Mr. Afshar has demonstrated untrustworthiness to transact the business of insurance for which the licence has been granted, pursuant to section 8(d) of the Regulation, by conduct that resulted in the suspension and permanent removal of his licence to conduct business by the Autorité des Marchés Financiers in Québec.
5. Mr. Afshar has not complied with the requirement to complete continuing education as required by section 14 of the Regulation.
6. For all of the above reasons, Mr. Afshar is not suitable to be licensed as a life insurance agent in Ontario.