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**Financial Services
Commission
of Ontario**
5160 Yonge Street,
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REGARDING the *Insurance Act*, R.S.O. 1990, c.1.8, as amended the “Act), particularly Part XIV, sections 393(9) – 393(11), and Ontario Regulation 347/04, in particular Section 2

AND REGARDING a hearing concerning the suspension or revocation of the life insurance agent licence of Gregory Hilderman

DECISION and ORDER

Introduction:

Pursuant to a Notice of Hearing dated September 13, 2012, an Advisory Board was duly appointed under section 393(9) of the Act. The hearing for this case and a related one involving Ms Anna Khan were combined and conducted on April 12, 2013.

The allegations were set out in Schedule “1” as attached.

The report of the Advisory Board is attached.

Findings of Fact:

The Advisory Board found that the first allegation that Gregory Hilderman paid compensation to Anna Khan for acting as a life insurance agent when she was not licensed was established. The Advisory Board did not find that the second allegation was established, but found that Mr Hilderman provided information to insurance companies as part of insurance applications that was not accurate.

Recommendation of the Advisory Board:

The Advisory Board recommended that consideration be given to the twelve month period of time that two insurers refused to accept any new business from Mr Hilderman and the resultant significant reduction in his income. The Advisory Board recommended that if that was not a sufficient penalty, the Superintendent impose a period of suspension of one month. In addition the Advisory Board recommended that Mr Hilderman complete a course in ethics and present evidence of completion by December 31, 2013.

The Advisory Board stated the reasons for its recommendation. It noted there was no evidence of harm to the public nor was there negligence in the professional advice provided to the clients.

The Advisory board noted that Mr Hilderman was co-operative and remorseful. It noted that he had instituted controls in his business to ensure there would not be a recurrence.

The Advisory Board concluded its reasons by saying that there is no need for specific deterrence for Mr Hilderman noting that he is an outstanding citizen with an impressive and (otherwise) unblemished career and that there is no likelihood that he would repeat this behaviour. "With respect to general deterrence, the Board does not believe that it would be served by a period of suspension in light of the consequences for [Mr Hilderman] which form part of the public record and in and of themselves constitute general deterrence."

Decision:

The Advisory Board has found that Mr Hilderman contravened Subsection 403(1) of the Insurance Act.

Because this case and the case involving Ms Anna Khan are related, the Advisory Board combined them into one hearing. The actions of Ms Khan and Mr Hilderman are different and accordingly this decision considers them differently. Accordingly, this is a case about compliance with Subsection 403(1). Ms Khan's case involved acting as an insurance agent without a licence.

The Advisory Board notes that Mr Hilderman controlled an insurance agency that entered an agreement with Ms Khan. Among other things the agreement provided that Ms Khan was not to engage in insurance sales until she had obtained a licence, but was able to refer sales to the insurance agency or Mr Hilderman and receive a referral fee. However, Mr Hilderman did not enforce the terms of this agreement, and Ms Khan solicited insurance or applications for insurance.

Telling someone that he or she needs a licence is not sufficient. Otherwise insurance companies, agents, and agencies could avoid their responsibilities by simply providing a notice to an unlicensed person to get a licence.

The Advisory Board noted that "The reason for insisting on licenses for life insurance agents is obvious. It allows for a review by governmental authorities of a licensee's qualification and character to protect the public." It also noted that "Public confidence in the life insurance industry is anchored on the qualifications and character of those licensed to sell it."

While this is certainly true, the regulatory system depends on licences since it is not only a gatekeeper role but also a means to identify who is working in the business and to ensure there is a means to oversee their conduct. Regulation 347/04 imposes an obligation on insurance companies to screen agents, monitor their conduct, and to report unsuitability to the Superintendent. This obligation can only be met if the persons actually engaged in the sale of insurance are licensed.

Subsection 403 (1) establishes one of the key methods of controlling activities by unlicensed persons by preventing them from being paid for such activities. Accordingly the essence of this case is actions that undermine the integrity of the licensing system.

While I agree that the risk to clients may be less if the unlicensed person is competent and of good character, the implication to the system of regulation is not different. In such a case the regulator does not know who is selling insurance and the system of supervision by insurance companies required by Regulation 347/04 cannot be applied. So there may be good fortune and no problems, or there may be problems. If problems arise, there will be a question whether errors and omissions insurance coverage would apply during a period of unlicensed sales of insurance.

The system of insurance regulation must be both fair and practical to administer. Fairness has two aspects. First, similar contraventions of the Insurance Act should result in similar consequences. That certainty promotes compliance and facilitates the administration of the Insurance Act. Second, fairness also needs to consider what is

necessary to cause the individual to alter his or her behaviour and what is necessary to provide a penalty for the wrong doing, both for specific and general deterrence. Accordingly a penalty must be imposed for the contravention of Subsection 403(1) so that it is clear to the industry that the system of licensing must not be undermined by such payments for unlicensed activity.

The range of penalties available under the Insurance Act at the time these contraventions occurred is limited to licence revocation, a period of suspension, or licence conditions. As a point of clarification, on January 1, 2013, the power to impose administrative monetary penalties was granted for contraventions occurring after that date; however, that penalty is not available in this case, and hearings in the future to consider such a penalty will be conducted by the Financial Services Tribunal. I note this for the benefit of any other future cases which may refer to this case.

Since licensing is fundamental to the system of regulation, and paying compensation to an unlicensed person undermines the requirement for a licence, making such payments is a serious matter, and is not less serious if the individual acting as an agent can subsequently demonstrate competence and good character. I am also mindful that the penalty needs to be meaningful for general deterrence and accordingly in that regard, I believe that the Advisory Board's recommendation of a period of suspension of one month is not sufficient.

In consideration of the circumstances, I believe that a period of suspension of three months is appropriate. This is neither the least nor most severe period of suspension that has been ordered, but is on the shorter end of the range of penalties imposed and is appropriate for an important matter where no specific consumer harm has been identified. The period of suspension recommended by the Advisory Board would convey to the industry that facilitating a person to work as an agent without a licence by paying them compensation is not serious.

I have considered the Advisory Board's comments that Mr Hilderman co-operated, had expressed remorse, and had initiated remedial action. Had he not done so, the penalty would have been more serious.

In some cases, the Advisory Board has recommended that some or all of the period of suspension should be considered satisfied by the period of time at an agent has been unable to work in the industry. Clearly such an argument needs to be compelling since agents may not be active in the industry for many reasons, and it would be inappropriate to allow reductions of days, weeks, or months in a period of suspension simply because the agent was not active in the industry. In this case, the Advisory Board made the case that Mr Hilderman lost his insurance markets in April 2012 and has not been able to work in the industry. It was not stated that there was a nexus to the investigation, but by the nature of the comments made, I am willing to accept that the Advisory Board considered there to be a relevant connection.

I also recognize that this period of inability to work is considerably greater than the period of suspension that I am ordering. Accordingly, I am prepared to consider that the suspension which I am ordering will be satisfied by the period of time that Mr Hilderman has been unable to work in the industry.

I agree with the Advisory Board that a course on ethics is appropriate.

ORDER

Accordingly, by this order:

1. The life insurance agent licence of Mr Gregory Hilderman is hereby suspended for a period of three months, which suspension will be considered completed effective the date of this order.
2. Mr Gregory Hilderman is required to complete a course in ethics acceptable to the Superintendent by December 31, 2013. Mr Hilderman will pay for this course. This course will not be considered as part of the continuing education obligation imposed by Regulation 347/04.

Dated at Toronto, this twenty fourth day of July 2013

Original Signed By

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:

1. Mr. Hilderman contravened s. 403(1) of the *Insurance Act* by paying compensation to Ms Anna Khan for negotiating life insurance while Ms Khan was not licenced as an insurance agent or as an insurance broker.
2. On ten separate occasions, Mr. Hilde man signed "Representative's Reports" which were included in applications for life insurance that were submitted to an

insurer. In those reports, Mr. Hildeman falsely indicated (among other things), that he was present at the time application was completed, he explained the provisions and limitations of the policy to the applicant, all of the questions were clearly asked of, or read by the applicant, the answers were fully and accurately recorded, and that his duties and obligations in regard to advisor disclosure were met. By doing so, he demonstrated his untrustworthiness to transact the business of insurance pursuant to s. 8(d) of Ontario Regulation 347/04, made under the *Insurance Act*.

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