

Superintendent of Financial Services

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

AND REGARDING a hearing concerning the suspension or revocation of the life insurance agent licence of Paul J. Vorstadt

DECISION and ORDER

Introduction:

Pursuant to a Notice of Hearing dated August 7, 2013, an Advisory Board was duly appointed under Subsection 393(9) of the Act. The hearing was conducted on December 4, 2013.

The allegation was set out in Schedule "1" as attached.

The report of the Advisory Board is attached.

Findings of Fact:

The Advisory Board found that "Paul Vorstadt was guilty of a fraudulent act and demonstrated untrustworthiness in the transaction that was the subject matter of this proceeding". The Advisory Board did not find the allegation that Mr Vorstadt was unsuitable to transact business as a life insurance agent to be established. I hereby adopt the findings of fact of the Advisory Board.

Recommendation of the Advisory Board:

The Advisory Board recommended that Mr Vorstadt's licence as an insurance agent be suspended for a period of four months and that he successfully complete an ethics course acceptable to the Superintendent.

The Advisory Board stated the reasons for its recommendation. It noted that "there was no question that Mr Vorstadt's conduct was calculated to deceive". The Advisory Board expressed the view that a period of suspension of nine months would be appropriate to reflect the conduct,

but noted that there were some mitigating circumstances that resulted in its recommendation for a reduced period of suspension. The Advisory Board noted that the conduct was serious, but was also an isolated event. It noted the agent's remorse. Significantly it noted that another regulator, the Investment Industry Regulatory Organization of Canada (IIROC) had imposed a significant monetary penalty and period of suspension based on facts that are largely the subject of this proceeding. The Advisory Board noted that:

"If timing of the proceedings had been different, these proceedings launched by the Commission would have been concurrent and the effect of a licence suspension with respect to his insurance licence would have overlapped with his suspension from the workforce. However, things did not work out that way and we are in the position of discussing a suspension which will be in addition to the other absence from employment. It is the Advisory Board's view that there should be recognition of the fact that the same facts have already lead to an absence from employment of up to one year. Therefore the 9 months suspension otherwise appropriate should be reduced. Nonetheless, the Board feels that it would be inappropriate to recommend a suspension of anything less than 4 months."

Decision:

The Advisory Board has found that Mr Vorstadt engaged in an act of deceit and recommended a period of suspension and completion of a course in ethics.

The Advisory Board noted that Mr Vorstadt was unable to explain the reasons for his actions. However, it also noted that he took full responsibility for his actions and was remorseful.

I agree with the Advisory Board that a deliberate act of deception warrants a serious penalty and that a period of suspension of nine months is appropriate. A suspension of nine months is neither the longest nor the shortest that has been ordered. The insurance business is premised on the principle of utmost good faith and deliberate deception is a serious matter. Clients who purchase insurance products pay for and have the benefit of guarantees; accordingly, deception about a guarantee is fundamental to the nature of the product being purchased. It is also clear that Mr. Vorstadt was aware that the information he was communicating to his client was false, and accordingly there is no question of competence for which additional training and supervision may be appropriate. Since the Advisory Board did not find Mr. Vorstadt to be unsuitable, a licence revocation is not appropriate.

I accept the observation of the Advisory Board that consideration should be given to the penalty already imposed by IIROC. Accordingly I believe that a period of suspension of nine months should be imposed and that credit should be given on a day for day basis for each day of suspension served in the penalty imposed by IIROC.

For clarity, I do emphasize that it is common for a person to have licences for more than one financial service. Accordingly discipline by one regulator may be considered in imposing discipline by another regulator. However, this will not generally result in credit being allowed for a penalty imposed by another regulator. What makes this case unique is that the facts involve the sale of an insurance product. It may be possible for two regulators to have jurisdiction in the same fact situation. It is not possible for me to make a conclusion about jurisdiction of another regulator involving the sale of an insurance product other than to observe that a serious penalty was imposed for actions of Mr Vorstadt in selling an insurance product.

I would also note that a person with more than one financial service licence could direct his or her business activity to the financial service that is not subject to discipline, and accordingly the effectiveness of discipline can be impaired.

For further clarity, I also emphasize that a decision by one regulator regarding the suitability of a person to hold a licence can be relevant to disciplinary actions by other regulators regarding other financial services licences. Accordingly a revocation of a financial services licence by one regulator is not an alternative to a decision to revoke another financial services licence by another regulator.

While IIROC did not impose a condition that Mr Vorstadt complete a course in ethics, considering the remorse expressed by Mr Vorstadt and his co-operation, I believe that he already understands what is acceptable behaviour. Accordingly I will not be ordering that Mr Vorstadt complete such a course.

ORDER

Accordingly, by this order:

1. The life insurance agent licence of Mr Paul J Vorstadt is hereby suspended for a period of nine months, commencing on March 1, 2014.

2. Credit toward this period of suspension shall be given to Mr Vorstadt on a day for day basis for the suspension imposed by IIROC.

Dated at Toronto, this twelfth day of February 2014

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

Schedule 1

The following allegation was set out in the Notice:

1. Vorstadt has demonstrated that he is unsuitable to transact business as a life insurance and accident and sickness insurance agent under Regulation 347/04 in the following ways:
 - a. contrary to section 8(c), he has been found guilty of a fraudulent act or practice by the Investment Industry Regulatory Organization of Canada (“IIROC”); and
 - b. contrary to section 8(d), he has demonstrated incompetence or untrustworthiness to transact the insurance agency business for which the licence has been granted by:
 - i. materially misrepresenting an insurance product to his clients;
 - ii. attempting to conceal the misrepresentation by knowingly misinforming his client that the insurer’s statements were incorrect;
 - iii. forging the signature of a regional manager in a letter to the client; and
 - c. such further allegations as counsel for FSCO may advise.