

## **Superintendent of Financial Services**

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

**AND REGARDING** Nigel Scott, life insurance and accident and sickness agent

### **DECISION AND ORDER**

#### Introduction:

A Notice of Opportunity for Hearing dated October 24, 2013 (the Notice) informed Mr Scott of allegations against him and the opportunity for a hearing before an Advisory Board. The Notice advised Mr Scott 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 Scott 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 Robert Greig, Investigator at the Commission that the Notice was sent by registered mail and regular mail to the address on file at the Commission. The affidavit further states that no request for a hearing was received. I am satisfied that the Notice was properly served in accordance with the provisions of the Insurance Act and that Mr Scott did not request a hearing.

A copy of the allegations is attached to this Decision.

#### The Evidence:

Since Mr Scott 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. Mr Scott worked as an insurance agent for [name withheld] insurance company. The insurance company undertook a review of Mr Scott's premium fund account and found irregularities in the handling of money. The review also found that Mr Scott had comingled company and personal business funds. Mr Scott admitted to the insurance company that he had transferred funds from the

premium account to cover business expenses. The review also found that customers were negatively affected and the insurance company issued refunds to those customers.

### Findings of Fact

I find that Mr Scott does not have a satisfactory record in business, is not trustworthy and of good character, and accordingly is not suitable to continue to be licensed as an insurance agent for the following reasons.

- Mr Scott used policyholder funds to fund his own business expenses.
- Mr Scott had numerous irregularities in the handling of money related to the business of insurance.
- Mr Scott failed to respond to the results of the first review by the insurance company, and further irregularities were found during the second review.

In the absence of testimony by Mr Scott, I am unable to consider any explanations for his behaviour or mitigating circumstances.

### Decision:

I have found that Mr Scott is unsuitable to hold a licence as a life and accident and sickness insurance agent.

Findings of unsuitability frequently result in revocation of the licence of an insurance agent.

The business of insurance is based on utmost good faith. Insurance agents must be trustworthy. I have considered whether licence conditions individually or combined with a period of suspension would result in remediation of Mr Scott's behaviour. Since Mr Scott did not request a hearing, there is no means to assess whether his behaviour would be susceptible to remediation through licence conditions and a period of suspension. I note that Mr Scott did not alter his behaviour following the first review by the insurance company, and accordingly there can be no reasonable expectation of remediation.

I appreciate that in the life insurance business, payments are typically made directly to the insurance company, and do not pass through accounts controlled by agents. I have found that Mr Scott did not have a

satisfactory record in business, is not trustworthy and is not of good character. How Mr Scott acted, rather than the access to funds themselves, was the basis for the findings.

Since Mr Scott 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 his record in business and lack of any explanation for such behaviour, I believe that the appropriate penalty is revocation of Mr Scott's licence as an insurance agent.

### **ORDER**

Accordingly, the life and accident and sickness insurance agent licence of Nigel Scott is hereby revoked by this order.

Dated at Toronto, this fifteenth day of May, 2014

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:

### **Allegations**

1. Scott has demonstrated that he is unsuitable to transact business as a Life Insurance and Accident and Sickness Agent, contrary to Regulation 347/04, in the following ways:
  - a. Contrary to s.4(1)(a), Scott is not of good character and reputation, in that he used policyholder premiums to cover the costs of his own business, and failed to report his financial difficulties to State Farm promptly.
  - b. Contrary to s.4(1)(c), Scott has an unsatisfactory record in business, having caused numerous financial problems with the State Farm premium account, including overdrafts and failed withdrawals due to insufficient funds.
  - c. Contrary to s.4(1)(i), Scott is unsuitable, having failed to deal with State Farm in an honest and forthright manner. Scott failed to report his financial difficulties to State Farm until a late stage, after he had misused funds in the premium account.
  - d. Contrary to s.8(d), Scott has demonstrated untrustworthiness to transact insurance agency business as he has misused policyholder premiums for his own business rather than making sure they are available to State Farm.