

Superintendent of Financial Services

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

AND REGARDING Richard Sabourin, life insurance agent

DECISION AND ORDER

Introduction:

A Notice of Opportunity for Hearing dated March 11, 2014 (the Notice) informed Richard Sabourin of allegations against him and the opportunity for a hearing before an Advisory Board. The Notice advised Mr. Sabourin 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. Sabourin 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 John Allin, Regulatory Discipline Officer at the Commission that the Notice was sent by registered mail and regular mail. Canada Post advised that the registered letter was unclaimed, but the letter sent by ordinary mail was not returned. The affidavit further states that no request for a hearing was received. The Insurance Act provides that service can be made to the last known address on file with the Commission. I am satisfied that the Notice was properly served in accordance with the provisions of the Insurance Act and that Mr. Sabourin did not request a hearing.

A copy of the allegations is attached to this Decision.

The Evidence:

Since Mr. Sabourin 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. Sabourin holds a life insurance agent licence which will expire on October 6, 2015. Mr. Sabourin's previous licence expired on February 14, 2013. He did not apply to renew his licence until September 27, 2013 and a new licence was issued on October 7, 2013. Mr. Sabourin was thus unlicensed for a period of approximately eight months. The Commission attempted to

reach Mr. Sabourin to find out whether he engaged in business as an insurance agent during the unlicensed period. Several attempts were made to reach Mr. Sabourin using the contact information provided by him in his most recent renewal application. However, both his email address and his telephone number were no longer current. The Commission then located Mr Sabourin at another address and sent a registered letter that Canada Post confirmed was delivered on December 9, 2013. Mr Sabourin did not respond to that registered letter.

Findings of Fact

I find that Mr. Sabourin failed to comply with his obligation to facilitate an examination as a result of his repeated failure to respond to inquiries from the Commission.

I find that Mr. Sabourin has also failed to provide the Superintendent with his current mailing address, email address, and telephone number or provide the Superintendent with his new contact information within 5 days of any change. This finding is based on the telephone, email and mailing addresses being invalid when the Commission attempted to contact him. He has thereby failed to comply with s. 5.1 of Regulation 347/04 made under the Insurance Act.

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

Decision:

I have found that Mr. Sabourin has failed to respond to the Commission's request for information and has failed to notify the Commission of changes in his telephone, email and mailing address.

In this case, Mr Sabourin would not respond to the Commission on this matter. Insurance agents must be governable and amenable to being regulated. The Insurance Act imposes a duty on licensed persons to facilitate an examination. Responding to information requests is an attribute of a person suitable to be an insurance agent.

Since Mr Sabourin 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.

In this case, there were no allegations of unsuitability of Mr. Sabourin to hold a licence as an insurance agent. The allegations were limited to

specific contraventions of the Insurance Act or one of its Regulations. I would note that contraventions of the Insurance Act are often the basis for allegations of unsuitability, but no such allegation of unsuitability was made in this case. Accordingly, I distinguish this case from other similar cases where allegations of unsuitability were made and in which revocation of a licence was ordered. Accordingly in this case, I believe that a period of suspension, rather than a revocation, is appropriate.

Clearly Mr. Sabourin needs to reply to the Commission's questions about his activities while unlicensed and needs to provide current contact information. The period of suspension needs to continue until both those actions occur.

In addition, the suspension needs to be of sufficient length to impress on Mr. Sabourin his responsibilities to facilitate an examination and to acknowledge the authority of the Commission. Accordingly, I believe that a minimum period of suspension of three months is appropriate to reflect that this is not a minor matter. This is at the shorter end of the range of suspensions that have been imposed and is appropriate for an important matter where no specific consumer harm has been identified.

I also believe that a course on ethics is appropriate to impress on Mr. Sabourin expected behaviour of an insurance agent.

ORDER

Accordingly, by this order:

1. The life insurance agent licence of Mr. Richard Sabourin is hereby suspended commencing August 1, 2014 until all the following three conditions have been met:
 1. Mr. Sabourin provides the Superintendent a complete answer to the questions posed in the unanswered correspondence that was the basis of this disciplinary action.
 2. Mr. Sabourin provides the Superintendent his current telephone, email and mailing address.
 3. Three months have elapsed from August 1, 2014.
2. Mr. Richard Sabourin is required to complete a course in ethics acceptable to the Superintendent by December 31, 2014. Mr. Sabourin 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 twentieth day of June, 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:

1. Mr. Sabourin, the holder of a life insurance agent's licence, has failed to give to the Superintendent or his designate information that was requested about his activities related to the business of insurance and thereby failed to comply with s. 442.1(5) of the *Insurance Act*.
2. Mr. Sabourin has failed to provide the Superintendent with his current mailing address, email address, and telephone number, or provide the Superintendent with his new contact information within five days of any change, and thereby failed to comply with s. 5.1 of *Ontario Regulation 347/04* made under the *Insurance Act*.
3. Such further allegations as counsel for the Commission may advise.