

IN THE MATTER OF A DISCIPLINE HEARING
PURSUANT TO
THE Life INSURANCE COUNCIL OF SASKATCHEWAN
BYLAW 7 SECTION 5 AND BYLAW 10

AND

Yevgeniy Viktorovich Kashkin

Hearing Date:

Tuesday, October 5, 2010

Place:

Saskatchewan Life Insurance Council Office
310-2631-28th Avenue
Regina, Saskatchewan, S4S 6X3

Hearing Committee:

Sheila F. Hart, Chair
Doug Pennington, CFP, CLU, EPC, B. Geol-Eng.
Dwight G. Blomander, CFP, CLU, CHFC, RHU
Bill Odishaw, CFP, CLU, CHFC, RHU

Appearances:

April Stadnek
Life Insurance Council Complaints Committee
Representative

Yevgeniy V. Kashkin

Witnesses:

John Waugh, Life Insurance Council Compliance Officer
Yevgeniy V. Kashkin

Origins of the Case

The Complaints and Investigation Committee (hereinafter referred to as "Committee") of the Saskatchewan Life Insurance Council required that Yevgeniy Viktorovich Kashkin (hereinafter referred to as "Mr. Kashkin") be required to appear before a Discipline Hearing Committee (hereinafter referred to as "DHC") of the Life Insurance Council to answer the Committee's allegations stated:

1. Mr. Kashkin has violated Bylaw 8 section (1)(a);
2. Mr. Kashkin has violated Bylaw 8 section (1)(b) ;
3. Mr. Kashkin has violated Bylaw 8 section (2)(b); and
4. Mr. Kashkin has violated Section 439(d) of *The Saskatchewan Insurance Act* (the Act).

Preliminary Issues

The DHC confirmed with Mr. Kashkin that he requested this hearing be rescheduled to commence Tuesday, October 5, 2010, 10:00 a.m. The hearing had originally been scheduled for Monday, November 1, 2010. Mr. Kashkin was prepared to proceed and he waived the 30 day notice of hearing requirement.

The hearing was recorded.

Evidence from the Hearing

At the outset of the hearing the DHC was presented with a binder of documents titled "Complaints and Investigation Committee of The Life Insurance Council of Saskatchewan Re: Y.V. Kashkin, Exhibit Book", containing Exhibits 1 to 8. It was confirmed that the accused, Mr. Kashkin, received an identical binder of documents prior to the hearing date.

During the hearing the following additional documents were received into evidence and marked as follows:

Filed by the Complaints and Investigation Committee:

- Exhibit 9 – Mr. Waugh's investigation notes (2 pages typed)

Filed by Mr. Kashkin

- Exhibit 10A - American Income Life Insurance Company Agent Contract (3 pages typed)
- Exhibit 10B – Alberta Insurance Council Life & Accident and Sickness Examinations (1 page typed)(from Alberta Council website)
- Exhibit 10C – Saskatchewan Insurance Council “Important Notice Re: Bylaw Examination” (1 page typed)(from Saskatchewan Council website)
- Exhibit 10D- AIL Production Minimums/Standards (1 page typed)

The Committee called one witness, Mr. Waugh.

Mr. Kashkin called himself as his only witness.

After all the evidence was presented Ms. Stadnek, representing the Committee, made an oral submission. Mr. Kashkin concluded with his oral submission.

Findings of Facts

The focus of the hearing was on the allegations of: whether or not Mr. Kashkin counselled a person (A.M.) to circumvent the rules for writing the Life License Qualification Program (hereinafter referred to as “LLQP”) examination; whether or not Mr. Kashkin falsified documents; and whether or not Mr. Kashkin’s dealings with the Insurance Councils for British Columbia, Alberta and Saskatchewan establish untrustworthiness. It is necessary to set out the various rules for writing the LLQP examination as it relates to these three provinces to set the stage for the factual timeline.

The Saskatchewan Life Insurance Council Bylaw 4 (3) sets out that “A person shall be allowed to write each council approved examination the number of times and in the manner as set out in Schedule A”. Schedule A Part II Section 3 reads: “A person is allowed to attempt each examination identified in the bylaws a maximum of three times in any six month period. Examination attempts made in any jurisdiction during the same six month period shall be counted in the three attempts.” The Insurance Councils of Saskatchewan “Licensing Examination Application Form” question 1 asks: “Have you within the past twelve months attempted any licence exam(s) in another province?” This is to be answered Yes or No (Exhibit 8 page 2). This information applies to writing the LLQP examination and is confirmed on a Life Council website information sheet (Exhibit 8 page 1).

In British Columbia there is no waiting period between a first and second attempt at the LLQP examination. Once an individual has been unsuccessful twice, there is a one month waiting period before a re-write. There is a six month waiting period after a third unsuccessful attempt at the examination (Exhibit 4-1). On the British Columbia examination result notice it states: "There is a one month waiting period after two unsuccessful exam attempts, and then a six month waiting period will apply for each subsequent attempt" (Exhibit 4-2). The British Columbia "Licence Examination Registration Application" in Step 7 asks: "Have you ever written a licence or registration examination for insurance anywhere in Canada within the last 24 months?" This is to be answered No or Yes with space to provide details on examination types, locations and dates written.

In Alberta the LLQP "examination attempts are restricted to three. After the third unsuccessful attempt a six month waiting period is imposed. This waiting period is then imposed after each additional attempt" (Exhibit 7, page 2, Alberta Insurance Council website document). The Alberta Examination Result form (Exhibit 3-A) states: "Applicants are allowed three attempts at an examination after which there is a mandatory six month waiting period between further attempts." The examination application form asks: "Have you written this exam previously in Alberta or any other jurisdiction?" The response is either No or Yes with space to detail "where" and "when".

Now the facts.

Mr. Kashkin worked in Mississippi, USA, as an agent for American Income Life Insurance Company from 2004 to October 2008. Knowing that he was moving to Canada he commenced studying for the LLQP examination. Mr. Kashkin entered Canada (British Columbia) October 8, 2008 with the purpose of working for American Income Life. He was very concerned about getting licensed as quickly as possible. He was afraid that if he failed the LLQP exam three times he could be dismissed by American Income Life in which case there could be a loss of his residual income from his sales in Mississippi.

On November 19, 2008 Mr. Kashkin wrote the LLQP examination for the first time in British Columbia. He failed. The exam results notice dated November 20, 2008 (Exhibit 4-2) states that "there is a one month waiting period after two unsuccessful exam attempts, and then a six month waiting period will apply for each subsequent attempt." Mr. Kashkin testified that he immediately applied to re-write the exam. He was told he had to wait two weeks to write a second time.

In the hope of improving his chances Mr. Kashkin registered to write the exam in Alberta. He faxed in (date unknown) to the Alberta Insurance Council his application to write the exam on

November 25, 2008 in Calgary (Exhibit 3-A). On this application form he answered "No" to the question "Have you written this exam previously in Alberta or any other jurisdiction?" Mr. Kashkin testified that this was a mistake and that he should have answered "Yes". He wrote the exam in Alberta on November 25, 2008. He passed. He testified that he decided to license in Alberta and transfer his license to British Columbia. He spoke to the Alberta Insurance Council about his application for licensing and was told he required an Alberta address. He met with John McGrath, General Manager of American Income Life in Calgary, who assisted in the completion of the licensing application on November 25, 2008 (Exhibit 3-B). On this application Mr. Kashkin declared the American Income Life Calgary business address as his personal residence address and his business address. He also declared that he had been unemployed from November 8, 2008 to present. Mr. Kashkin testified that he considered himself unemployed at this time because he was not yet licensed to sell insurance even though he was still under a contract with American Income Life. This application was received by the Alberta Insurance Council November 28, 2008.

On December 2, 2008 Mr. Kashkin made his second attempt in British Columbia to pass the LLQP exam. He testified he knew he did not have to re-write the exam, as he had passed in Alberta but because he had already paid the fee he wanted to. He passed this exam. He then decided to apply to be licensed in British Columbia (Exhibit 4-4) and abandon his efforts to license in Alberta. His British Columbia license was issued December 23, 2008 (Exhibit 1-B).

On October 28, 2009 Mr. Kashkin applied to be licensed in Saskatchewan, as a resident of British Columbia (Exhibit 5). His original application was returned as being incomplete. The Insurance Councils by letter December 10, 2009 set out the five deficiencies in his application (Exhibit 5). He applied to change from non-resident to resident status January 25, 2010. He wrote and passed the Saskatchewan Life Insurance Council Bylaw exam. Mr. Kashkin was licensed in Saskatchewan.

Mr. Kashkin began working and living in Saskatoon as a manager for American Income Life. He was trying to hire agents.

Mr. Kashkin hoped to hire on a Saskatoon woman, who we will call A.M. A.M. wrote the LLQP exam in Saskatchewan on May 7, 14 and 28, 2010, each time failing. Mr. Kashkin recommended to A.M. that she take her LLQP course completion certificate and re-write the exam in Alberta. He told her that if she passed she could license in Alberta and then transfer her license to Saskatchewan. A.M. called the Saskatchewan Life Insurance Council office on June 4, 2010 (Exhibit 2-E) to request return of her LLQP course completion certificate, so she could apply to write the exam in Alberta. This request was refused. Mr. Kashkin, on behalf of A.M., also phoned the Life Council Office to request return of the certificate. Refusal maintained.

Mr. Waugh and Mr. Kashkin confirmed they spoke on the telephone June 4, 2010. Mr. Waugh informed Mr. Kashkin that A.M. could not re-write the LLQP exam for another 6 months anywhere. Mr. Kashkin spoke of his belief that you could move between the provinces to take advantage of the 3 attempts to write and pass the exam in each province. The investigation commenced (Exhibit 9).

Mr. Kashkin testified that he was not aware that an attempt in another jurisdiction counted as an attempt. He relied upon the British Columbia and Alberta documents (Exhibits 3-A, 4-2, 10-B) that make no reference to out of jurisdiction attempts counting as an attempt for their three time attempt rule. If he had not passed the LLQP exam, when he did, it was his intention to move to whatever province necessary to keep writing the exam until he passed.

Mr. Kashkin testified that in studying for the Saskatchewan Bylaw exam he relied upon the Saskatchewan Insurance Councils website. The website notice (Exhibit 10-C) sets forth the specific bylaws that will be tested (Bylaws 2, 3, 5, 8 and 9). Testing is not done on the bylaw with respect to examinations (Bylaw 4). He said he did not bother to read anything other than what he was required. He stated that at no time did he believe it improper to ask for A.M.'s LLQP course completion certificate from the Life Council office. Mr. Kashkin explained that he was always in possession of his own original certificate, when he was in the process of writing the LLQP in British Columbia and Alberta.

Issues

1. The issue is whether or not Mr. Kashkin violated Bylaw 8(1)(a) when:
 - (a) On or about June 4, 2010 he counselled A.M. who had 3 times unsuccessfully attempted the LLQP exam in Saskatchewan, to obtain her LLQP completion certificate from the Life Insurance Council and then go to Alberta to write the LLQP there.
 - (b) He further counselled A.M. if she was successful in Alberta to get her license in Alberta and then transfer back to Saskatchewan.
2. The issue is whether or not Mr. Kashkin violated Bylaw 8(1)(b) when:
 - (a) In his dealings with A.M. he advised a person new to the insurance industry how she could circumvent the LLQP qualifying standards that he knew or ought to have known would require A.M. to not disclose to Alberta that she had written the LLQP in Saskatchewan.

3. The issue is whether or not Mr. Kashkin violated Bylaw 8(2)(b) when:
 - (a) He counselled A.M. to circumvent Council Bylaws in respect to the LLQP exam limitations that he knew or ought to have known existed.
 - (b) He completed applications to write the LLQP in Alberta and British Columbia that he knew or ought to have known contained false statements.
 - (c) He completed an application for a license in Alberta that he knew or ought to have known contained false statements as to his true resident address and his true employment status at the time of the application.

4. The issue is whether or not Mr. Kashkin violated Section 439(d) of the Act by his demonstrated untrustworthiness in his dealings with:
 - (a) The Saskatchewan Life Insurance Council
 - (b) A.M.
 - (c) The British Columbia Insurance Council; and
 - (d) The Alberta Insurance Council.

The Decisions

Issue 1

The DHC finds Mr. Kashkin guilty of misconduct in that he did breach Bylaw 8(1)(a).

Issue 2

The DHC finds Mr. Kashkin not guilty of misconduct in that he did not breach Bylaw 8(1)(b).

Issue 3

The DHC finds that Mr. Kashkin guilty of misconduct in that he did breach Bylaw 8(2)(b).

Issue 4

The DHC finds that Mr. Kashkin is not guilty of a violation of subsection 439(d) of The Saskatchewan Insurance Act.

Reasons for Decisions

Issue 1

Misconduct is defined in Bylaw 8 (1)(a) as being a question of fact. It includes any matter, conduct or thing, whether or not disgraceful or dishonourable, that is contrary to the best interests of the consumer or licensees or insurance companies. The DHC has reviewed the above facts and duly considered the arguments presented by the Committee and Mr. Kashkin.

The facts establish that Mr. Kashkin did counsel A.M. to obtain her LLQP completion certificate from the Saskatchewan Life Insurance Council office in order for her to attend in Alberta to write the LLQP exam there. If she passed the LLQP exam he advised A.M. to obtain her license in Alberta and then transfer her license to Saskatchewan. He did not dispute this. Mr. Kashkin indicated that until June 4, 2010 he thought there was nothing improper in his guidance. We find this is misconduct.

Mr. Kashkin at all times indicated he was of the belief that you had three attempts to pass the LLQP exam in each province. He stated he was not familiar with the Saskatchewan rules which clearly state that an out-of-province examination attempt is counted and there is a maximum for three attempts in six months. In Alberta after three attempts a six month waiting period is imposed. A.M. had already maximized her attempts. Mr. Kashkin is a registered licensee in Saskatchewan. As such he is responsible to know the Saskatchewan rules. Acting as a manager advising new people to the industry he is also required to know the rules, especially as to how they relate to new or potential agents. In argument Mr. Kashkin stated that he had never broken any rules when he was in the process of passing his LLQP. That does not excuse him from advising another person to violate the rules. The evidence establishes that Mr. Kashkin was aware that there were different time limitations in each province for the exam attempts. That is why he personally went to Alberta to write the LLQP after failing his first attempt in British Columbia. As a registered licensee in Saskatchewan, Mr. Kashkin should have known that advising A.M. to write a fourth examination in Alberta would be in breach of the Saskatchewan rules. Mr. Kashkin never made any efforts to find out what the rules were in Saskatchewan. He was reckless as to the advice he was giving.

The DHC finds Mr. Kashkin's lack of knowledge of the Saskatchewan rules and counselling A.M. to not follow the rules is contrary to the best interest of licensees and insurance companies. Insurance companies operating in Saskatchewan and other Saskatchewan licensees have the right to assume that Saskatchewan licensees are familiar with the Saskatchewan Insurance Council rules.

Misconduct found.

Issue 2

Misconduct is defined in Bylaw 8(1)(b) as being a question of fact. It includes any matter, conduct or thing, whether or not disgraceful or dishonourable that may harm the standing of the licensees in the insurance industry. The DHC has reviewed the above facts and considered the arguments presented by the Committee and Mr. Kashkin.

The facts do not establish that in his dealings with A.M. Mr. Kashkin advised her, as a person new to the insurance industry, as to how she could circumvent the LLQP qualifying standards that he knew or ought to have known would require A.M. to not disclose to the Alberta Life Council that she had written the LLQP in Saskatchewan. The facts only establish that Mr. Kashkin advised A.M. that she should attempt the exam in Alberta and if successful she should apply for her license there. There was no evidence to establish that Mr. Kashkin advised A.M. to lie on her application to write the exam or if successful the application to be licensed or that he advised her to not disclose to the Alberta Council that she had written the LLQP exam in Saskatchewan three times.

Charge dismissed.

Issue 3

Bylaw 8(2)(b) states that where a licensee demonstrates an unsuitability or an untrustworthiness to act as a licensee they may be guilty of misconduct. The DHC has reviewed the above facts and considered the arguments presented by the Committee and Mr. Kashkin.

We find that Mr. Kashkin's conduct of counselling A.M. to circumvent Saskatchewan Council Bylaws with respect to the LLQP examination limitations that he ought to have known existed is misconduct. We rely upon the same reasons set out in Issue 1.

We find that Mr. Kashkin's conduct of providing a false statement on the Alberta examination application form (Exhibit 3-A) is misconduct. He answered "No" to the question "Have you written this exam previously in Alberta or any other jurisdiction?" when he knew or should have known that the correct answer was "Yes". Mr. Kashkin's explanation was that this was a mistake and he should have answered "Yes". No further explanation was provided. On a balance of probabilities the DHC finds that Mr. Kashkin knew he was answering the question on the form stated above incorrectly. He would have known that he had just written the LLQP exam on November 19, 2008 in British Columbia just a few days prior to completion of this form for writing the LLQP exam in Alberta November 25, 2008. This is unacceptable conduct.

Does the insurance profession want it known that it is acceptable for licensees to provide inaccurate or false information on documents? We think not. When it is your livelihood to fill

out forms and convey accurate information a higher standard of care is required. The industry is founded on trustworthy conduct. Insurance companies and Saskatchewan licensees have the right to assume that other licensees have been trustworthy in their licensing action in other jurisdictions.

We cannot find any evidence that Mr. Kashkin made a false statement on a British Columbia application to write the LLQP exam. There were no applications put into evidence.

We find that Mr. Kashkin did provide a false statement on the Alberta application to be licensed form (Exhibit 3-B). This is misconduct. He declared his personal residence address to be the address of the Calgary office of Altig-Orlovic Agency, 136-1935-32 Ave NE, Calgary, when at the time he was residing in Surrey, British Columbia. Mr. Kashkin's explanation that the Alberta Insurance Council office required an Alberta address is not acceptable. There may have been miscommunication or misunderstanding between Mr. Kashkin and the Alberta Council office. Mr. Kashkin did not offer any information to clarify his conversation with the Alberta Council. Mr. Kashkin further advised that John McGrath, regional manager for American Income Life in Calgary assisted with completion of the form. These explanations do not deter from the fact that the information provided was false. We find that on a balance of probabilities he knew the information was false. There is no evidence to allow us to find otherwise. The Insurance Council's duty is to regulate insurance licensees and maintain the status of the profession. Insurance companies and Saskatchewan licensees have the right to assume that other licensees have been trustworthy in their licensing action in other jurisdictions.

We find Mr. Kashkin's explanation as to why he indicated he was unemployed "November 8, 2008 to present" on the Alberta license application (Exhibit 3-B) acceptable. In his mind, Mr. Kashkin was unemployed because he was not licensed in either BC or Alberta. He had a contract with American Income Life but he could not actively sell insurance.

Misconduct found on several of the allegations.

Issue 4

Section 439(d) of *The Saskatchewan Insurance Act* states that a license may be suspended or cancelled by the superintendent if, after due investigation, he determines that the holder of the licence has demonstrated his incompetency or untrustworthiness to act as an insurance agent. Case law establishes that a regulatory body, like the Life Insurance Council, must complete an independent investigation into incompetence and untrustworthiness and must have cogent evidence for establishing these types of accusations. Bylaw 9 defines incompetence as a question of fact. It includes the display by a licensee of a lack of knowledge, skill or judgment of a nature or to an extent that the licensee is unfit to continue in the business of insurance or to provide one or more services ordinarily provided as part of the business of insurance.

The Committee alleges that Mr. Kashkin has demonstrated untrustworthiness in his dealings with the Saskatchewan, Alberta and British Columbia Life Insurance Councils, and A.M. In summation the Committee stated that the evidence was not so compelling on this charge.

The DHC made a finding in Issues 1 and 2 concerning Mr. Kashkin's dealings with A.M.. We choose not to deal with that allegation again. We also dealt with Mr. Kashkin's conduct in completion of council forms in Issue 3. We choose not to deal with those issues again. With respect to Mr. Kashkin's dealings with the Saskatchewan Life Insurance Council we cannot find any evidence to demonstrate untrustworthy conduct. No evidence was led to establish that Mr. Kashkin made false representations to the Council.

Charge Dismissed.

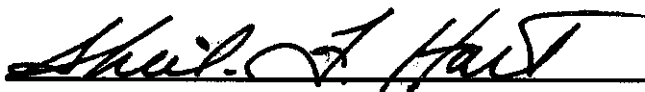
The Law

Bylaw 8 Misconduct

- (1) For the purpose of the Act, regulations and bylaws, misconduct is a question of fact but includes any matter, conduct or thing, whether or not disgraceful or dishonourable, that is:
 - (a) Contrary to the best interests of the consumer or licensees or insurance companies;
or
 - (b) May harm the standing of licensees in the insurance industry.
- (2) Without restricting the generality of subsection (1), a licensee may be guilty of misconduct if the licensee:
 - (c) Demonstrates an unsuitability or an untrustworthiness to act as a licensee;

Section 439 (d) *The Saskatchewan Insurance Act*

A license may be suspended or cancelled by the superintendent if, after due investigation, he determines that the holder of the licence: (d) has demonstrated his incompetency or untrustworthiness to act as an insurance agent.



Chairman

Dated this 5th day of November, 2010.