

Superintendent of Financial Services

Regarding the Insurance Act, R.S.O. 1990, c.1.8, as amended, particularly subsections 393(9) – 393(11)

AND Chun Yip Chan, life insurance agent

DECISION AND ORDER

Introduction:

A Notice of Opportunity for Hearing dated October 26, 2010 (the Notice) informed Mr. Chan of allegations against him and the opportunity for a hearing before an Advisory Board. The Notice advised Mr. Chan 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. Chan 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 _____, legal counsel at the Commission that the Notice was sent by registered mail. Canada Post reported that it was not claimed by Mr. Chan. _____'s affidavit further stated that she spoke to Mr. Chan on February 15, 2011 to confirm that he was aware of the Notice and its implications. I am satisfied that the Notice was properly served in accordance with the provisions of the Insurance Act and that no hearing has been requested.

A copy of the allegations is attached to this Decision and Order.

The Evidence:

Since Mr. Chan 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. The Commission received notification from Mr. Chan's insurance company that Mr. Chan's errors and omissions insurance policy was cancelled. The Commission made several attempts to contact him by mail, registered mail, email and by telephone. Mr. Chan did not provide the required information.

Findings of Fact

I find the allegation that Mr. Chan has failed to maintain the required errors and omissions insurance to be established. The reasons for this finding are the notification of cancellation of the policy by Mr. Chan's insurance company and Mr. Chan's failure to respond to the several attempts by the Commission to contact him.

I find the allegation that Mr. Chan is not amenable to regulation as a life insurance agent to be established. The reasons for this finding are the notification of cancellation of the policy by Mr. Chan's insurance company and Mr. Chan's failure to respond to the several attempts by the Commission to contact him.

Mr. Chan did not request a hearing. However, the affidavit from _____ refers to a letter dated November 9, 2010 in which Mr. Chan states he "would like to give up the insurance licence, if you or any party want to suspend or revoke my licence. Please do so as I do not want to be an insurance agent anymore". While the letter from Mr. Chan does not explain why he did not maintain insurance or why he did not respond to the Commission, it is apparent that he no longer wants the licence and his actions can be interpreted from that perspective.

Decision:

I have found that Mr. Chan has failed to maintain errors and omissions insurance and is not amenable to regulation as a life insurance agent.

Errors and omissions insurance is necessary to protect consumers from negligence by insurance agents. Insurance agents without errors and omissions insurance may not have sufficient assets to indemnify policy holders or applicants for insurance from such losses. Accordingly insurance agents that do not have errors and omissions insurance cannot be allowed to be engaged in the business of insurance.

In this case, Mr. Chan 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. Chan has not requested a hearing, there are no explanations for his behaviour. Mr. Chan has stated that he no longer wants his licence as an insurance agent and consents to its revocation or suspension.

Accordingly considering the lack of suitability as demonstrated by the failure to facilitate an examination, the absence of the necessary insurance to protect the public and lack of any explanation for such behaviour, I believe that the appropriate penalty is revocation of Mr. Chan's licence as an insurance agent.

ORDER

Accordingly, the life insurance agent licence of Chun Yip Chan is hereby revoked by this order.

Dated at Toronto, this thirty first day of May, 2011

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. Chan has failed to maintain appropriate errors and omissions insurance ("E&O"), as is required by Section 13 of Regulation 347/04.
2. Chan is not amenable to regulation, pursuant to sections 4(1) (i) and 8(d) of Regulation 347/04. Repeated efforts that have been made to contact the agent were unsuccessful in obtaining information regarding E&O insurance coverage.