

**FINANCIAL SERVICES TRIBUNAL**

**IN THE MATTER OF** the *Insurance Act*, R.S.O. 1990, c. I-8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "Act");

**AND IN THE MATTER OF** a decision dated April 29, 1999 of the Director, Licensing and Enforcement Division of the Financial Services Commission, by delegated authority from the Superintendent of Financial Services, ordering the suspension of the level II life insurance agent licence of George Fraser and requiring the submission by George Fraser of evidence of satisfaction of continuing education requirements in respect of such licence;

**AND IN THE MATTER OF** an appeal by George Fraser against such decision, pursuant to section 393(10.2) of the Act.

BETWEEN:

**GEORGE FRASER**

Appellant

-and-

**SUPERINTENDENT OF FINANCIAL SERVICES**

Respondent

**BEFORE:**

Colin H.H. McNairn, Vice Chair of the Tribunal and  
Chair of the Panel

Martha Milczynski, Acting Chair of the Tribunal and  
Member of the Panel

Joseph P. Martin, Member of the Tribunal and of the

Panel

## **APPEARANCES:**

For the Appellant:  
The Appellant appeared in person

For the Respondent:  
Mr. John T. Petrosoniak

**HEARING:** June 21 and June 29, 1999  
By conference telephone

**DECISION RELEASED:** July 7, 1999  
Toronto, Ontario

## **REASONS FOR DECISION**

### **Background**

This is an appeal from a decision dated April 29, 1999 of the Director, Licensing and Enforcement Division (the "Director") of the Financial Services Commission of Ontario acting by way of delegated authority from the Superintendent of Financial Services (the "Superintendent"). That decision culminated in an order,

- suspending the Appellant's level II life insurance agent licence for a period of 30 days commencing May 17, 1999, and
- requiring the Appellant to submit to the Superintendent, by July 31, 1999, evidence satisfactory to the Superintendent of completion by the Appellant of 47.5 hours of continuing education after February 1, 1995.

The decision of the Director was made following a hearing, held on February 18, 1999, before an Advisory Board appointed pursuant to subsection 393(9) of the *Insurance Act*, at which the Appellant appeared and made representations. In his decision, the Director accepted the finding of the Advisory Board that the Appellant had failed to complete 47.5 hours of continuing education during the period from February 1, 1995 until the end of his licence term on April 14, 1998. Section 18 of the Agents Regulation (Ontario Regulation 663), made under the *Insurance Act*, requires completion of that amount of continuing education acceptable to the Superintendent in respect of life insurance during such a period. There was no dispute about this on the appeal but only about whether the Appellant had, or should be taken to have, satisfied the requirement. The Director also accepted the finding

of the Advisory Board that the Appellant had misrepresented the amount of his continuing education for the relevant period by stating, in the application for renewal of his agent's licence for the period beginning April 14, 1998, that he had completed 48 hours of continuing education.

At the pre-hearing on this appeal from the decision of the Director, held on May 20, 1999, the Appellant asked for and was granted a stay of the order of the Director until the Tribunal disposed of the appeal. Section 18(6) of the *Insurance Act* contemplates the possibility of such a stay.

## **Analysis**

On an appeal, this Tribunal would normally review the decision of the Superintendent or her delegate on the basis of the material that was before the original decision maker (see *Transamerica Life Insurance Company of Canada v. Superintendent of Financial Services*, January 28, 1999, unreported FST File #I0028/98). However, the Tribunal does have the authority to admit new evidence on an appeal, in special circumstances, under Rule 45.03 of its Interim Rules of Practice and Procedure. We were prepared in this case to admit evidence presented by the Appellant of his completion of various programs, claimed to be eligible for continuing education credit, that was not before the Director or the Advisory Board, in the absence of any objection by counsel for the Superintendent to the admission of that evidence.

We are not satisfied, on consideration of that new evidence and the submissions put forward by the Appellant, that there is any basis for interfering with the finding of the Director that the Appellant had not completed the required 47.5 hours of continuing education during the period from February 1, 1995 to April 14, 1998. Some of the additional credits for continuing education programs claimed by the Appellant were in fact accepted by the Director during the course of this proceeding, reducing the shortfall from 18.5 hours to 2.75 or 3.25 hours. This had the effect of putting the Appellant in compliance with the second part of the Director's order since the continuing education hours completed during the period ending April 14, 1998 together with 4 hours completed after that date, which the Director had already accepted, exceeds 47.5 hours.

The Appellant's failure to satisfy the Director of completion of 47.5 hours of continuing education during the period ending April 14, 1998 may have been the result, as suggested by the Appellant, of some lack of clarity in the early part of the period as to what courses would be acceptable for continuing education credit and how satisfaction of any such credit should be documented.

Considering all of the circumstances we think that the penalty imposed on the

Appellant by the first part of the Director's order should be reduced to a one week licence suspension.

Counsel for the Superintendent asked for an order of costs against the Appellant. We do not think this is an appropriate case for such an order, especially as we have concluded that the Appellant is entitled to some relief on the appeal, namely a reduction in the penalty imposed on him by the Director.

**Order**

At the conclusion of the hearing, we ordered that the decision of the Director relating to the Appellant dated April 29, 1999 be varied so that the level II life insurance agent licence of the Appellant be suspended for a period of one week commencing July 12, 1999.

Dated this 7th day of July, 1999 at the City of Toronto in the Province of Ontario.

"Colin H.H. McNair"  
Colin H.H.McNair, Chair of the Panel

"Martha Milczynski"  
Martha Milczynski , Member of the Panel

"Joseph P. Martin"  
Joseph P. Martin, Member of the Panel