

**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 October 27, 1999 of the Director, Licensing and Enforcement Division of the Financial Services Commission, by delegated authority from the Superintendent of Financial Services, suspending the level II life insurance licence of Keith Rendall and requiring the submission by him of evidence of satisfaction of continuing education requirements in respect of such licence, failing which the licence would be revoked;

**AND IN THE MATTER OF** an appeal by Keith Rendall from such decision, pursuant to section 393(10.2) of the Act.

**BETWEEN:**

**KEITH RENDALL**

Appellant

-and-

**SUPERINTENDENT OF FINANCIAL SERVICES**

Respondent

**BEFORE:**

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

Joseph P. Martin,  
Member of the Tribunal

Joyce A. Stephenson  
Member of the Tribunal

**APPEARANCES:** David M. Morneau, for the Appellant  
Joe Nemet, for the Respondent

**HEARING DATE:** December 20, 1999

## **REASONS FOR DECISION**

### **The Background**

This is an appeal from a decision dated October 27, 1999 (the "Decision") of the Director of Licensing and Enforcement of the Financial Services Commission of Ontario (the "Director"). The Decision was made under delegated authority from the Respondent, the Superintendent of Financial Services. It ordered the suspension of the Appellant's level II life insurance licence for 60 days, commencing December 1, 1999, on the basis of the following conduct by the Appellant;

- failing to satisfy the continuing education requirements for licensees - in this case, completion of 57.5 hours of acceptable credits during the period from February 1, 1995 to December 28, 1998,
- furnishing false information as to the completion of those requirements on his licence renewal application made at the end of that period, and
- failing to facilitate an examination of his licensed business by the Respondent

The Decision also ordered the Appellant to make up the deficiency in his continuing education credits by March 31, 2000, failing which his licence would be revoked.

The terms of the Decision essentially followed the recommendations of an Advisory Board, which were made after a hearing at which the Appellant and the Respondent appeared and made representations in the matter. Although advised of his right to be represented by legal counsel at that hearing, the Appellant chose to represent himself.

The grounds of appeal are that, in making the Decision, the Director did not take into account certain relevant factors, such as the Appellant's life situation and temporary disability, the effect of the decision on the Appellant's ability to earn a living and the Appellant's exemplary record.

On a preliminary motion that was heard on December 10, 1999, the Appellant was granted a stay of the Decision until the disposition of the appeal by the Tribunal.

## Analysis and Conclusions

At the commencement of the hearing, the Appellant sought the permission of the Tribunal to introduce new evidence on the appeal that was not before the Director in making the Decision. The new evidence was professional evidence about the mental stress from which the Appellant was suffering and about the counseling sessions that he attended, all during the period when the continuing education credits were to have been accumulated.

After hearing argument on this request, the Tribunal refused the permission sought on the basis of the principle that new evidence will not generally be entertained on an appeal. This principle and the reasons for it in proceedings before the Tribunal were enunciated by the Tribunal in its decision in *Transamerica Life Insurance Company of Canada v. Superintendent of Financial Services* (FST File No. 10028/98). The case for refusing to entertain new evidence is particularly strong where, as in this appeal, there has been a hearing at which the Appellant had the opportunity to present evidence before the decision under appeal was made.

The principle is also expressed in Rule 45 of the Interim Rules of Practice and Procedure for Proceedings before the Financial Services Tribunal. The exceptional circumstances in which new evidence may be admitted are set out in Rule 45.03, which allows the Tribunal to admit such evidence tendered by a party on an appeal "provided that the evidence was not reasonably available to the party" at the time of the original decision and the evidence is "significant to the issues raised in the appeal." In this case, the Appellant failed to establish that these conditions were met.

After hearing the submissions of the parties, the Tribunal concluded that there were no grounds for substantially altering the Decision. The Tribunal, therefore, confirmed the Decision, subject to the following variations to the term of the Appellant's licence suspension;

- the term to begin on March 10, 2000, and
- credit to be given for 10 days of suspension served between December 1, 1999, being the date of commencement of the suspension imposed by the Decision, and December 10, 1999, being the date on which the Decision was stayed pending the outcome of this appeal,

with the result that the balance of the suspension will begin on March 10 and continue for 50 days. It was so ordered by the Tribunal.

Given the proximity of the "RRSP season" the March 10 date (by which that season would be over) was chosen on the basis that it would avoid undue prejudice to the Appellant's clientele and an undue penalty on the Appellant.

The Tribunal's decision confirms and leaves standing the balance of the Decision, namely that part ordering the Appellant to make up the continuing education deficiency by March 31, 2000, on pain of revocation of his licence. While the Appellant initially indicated to the Tribunal that it would be difficult, if not impossible, to make up that deficiency before that date, he subsequently advised the Tribunal that the necessary credits had, in fact, already been accumulated. Therefore, the request he had made to the Tribunal for an extension of the March 31 completion date was withdrawn. It therefore remains for the Appellant to submit evidence to the Respondent by March 31 of completion of continuing education credits, representing at least 32.5 hours beyond the 22 hours substantiated at the Advisory Board hearing, in accordance with the terms of the Decision.

The Appellant made a request for an award of costs on the appeal which was denied having regard to the Tribunal's Practice Direction on Cost Awards. The Respondent withdrew her request for an award of costs.

**DATED** the 8th day of January, 2000 at the City of Toronto, Province of Ontario.

"Colin H.H. McNairn"

Colin H. H. McNairn,  
Chair of the Panel

"Joseph P. Martin"

Joseph P. Martin  
Member of the Panel

"Joyce A. Stephenson"

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