

FST File No. I110-2000
Decision No. I0110-2000-1

FINANCIAL SERVICES TRIBUNAL

IN THE MATTER OF the *Insurance Act*, R.S.O. 1990, c. I.8, as amended (the "Act"):

AND IN THE MATTER OF an Interim Cease and Desist Order issued by the Superintendent of Financial Services on April 10, 2000 against Crump Barter Services Inc. and Joseph G. Crump (collectively "Crump"), pursuant to section 441 of the Act, which order was extended by order of the Superintendent dated May 4, 2000:

AND IN THE MATTER OF a hearing requested by Crump in accordance with section 441 of the Act:

BETWEEN:

CRUMP BARTER SERVICES INC. and JOSEPH G. CRUMP

Applicants

-and-

SUPERINTENDENT OF FINANCIAL SERVICES

Respondent

BEFORE: Mr. Colin H.H. McNair, Vice Chair
of the Tribunal and Chair of the Panel

Ms. Kathryn M. Bush, Vice Chair of
the Tribunal and Member of the Panel

Mr. Joseph P. Martin, Member of the Panel

APPEARANCES: For the Applicants:
Mr. Wayne Lessard

For the Superintendent of Financial Services:
Mr. John Petrosniak

HEARING DATE: October 20, 2000

REASONS FOR ORDER

THE FACTS

Crump Barter Services Inc. is a barter company, incorporated under the laws of Ontario, that provides services to other barter companies in Ontario and elsewhere. Joseph G. Crump is the principal operator of Crump Barter Services Inc. In these reasons, we refer to Crump Barter Services Inc. and Joseph G. Crump collectively as Crump.

An advertisement was posted on the Crump website to the effect that insurance was available through John Madsen ("Madsen") who was said to be a facilitator for Tri-Continental Exchange Ltd. ("Tri-Continental"). Madsen operates a barter company called Interchange Ad Group ("Interchange"). At the time of the posting of the advertisement, Crump used a software program that permitted other barter company operators to place ads on its website. Crump says that ads placed in this fashion were not monitored. The ad in question indicated that it was possible to download an application form to purchase the advertised insurance.

By interim order of the Acting Superintendent of Insurance dated May 17, 1996, which was subsequently extended and then made permanent, Madsen, Tri-Continental and others were directed to cease selling, advertising, promoting, or otherwise engaging in the business of, insurance in Ontario.

Neither Tri-Continental nor any of the other entities participating in Tri-Continental's insurance program is licensed to conduct the business of insurance in Ontario.

On April 10, 2000, following an investigation, the Superintendent of Financial Services (the "Superintendent") made an interim cease and desist order against Crump directing it to cease advertising the insurance products of insurers not licensed to do business in Ontario including, among others, Tri-Continental, Madsen and Interchange. By the terms of that order, Crump was directed to place a notice in a specified form on its website, to run for 12 months, warning that the insurance available through Madsen as facilitator for Tri-Continental, previously advertised on the website, was not valid insurance in Ontario. Crump requested a hearing before this Tribunal with respect to the interim order and the Superintendent made a further order, dated May 4, 2000, extending the interim order until the hearing before this Tribunal was concluded and the interim order confirmed, varied or revoked.

Crump has complied with the terms of the interim order except with respect to the form of notice to be placed on its website. While it has placed a notice warning about illegal insurance, the wording of that notice differs, in some particulars, from that required by the Superintendent's interim order. The most significant difference is the omission of the names of Madsen and Tri-Continental, as those who offered insurance through the earlier ad on the website, and the failure to state that they are not licensed to conduct any type of insurance business in Ontario.

THE ISSUE

The issue in this case is whether Madsen and Tri-Continental should be required to be named in the notice on the Crump website.

THE ARGUMENTS

Counsel for Crump submitted that,

- the placing of the insurance advertisement on the Crump website was inadvertent; it took place without Crump's knowledge and was not willful,
- Crump has taken reasonable steps to comply substantially with the interim order of the Superintendent,
- the public interest is adequately served by the form of notice that was placed by Crump, the additional name-specific particulars insisted on by the Superintendent being unnecessary given the wholesale nature of Crump's business - the visitors to the Crump website are generally other barter company operators rather than barter company members who might have purchased insurance through Madsen or Tri-Continental,
- publishing the name-specific particulars that the Superintendent had insisted on would unfairly damage Crump's reputation and could also lead to damage claims against Crump, which had already been threatened by Madsen, and
- Crump has been unfairly directed to take on the role of the regulator by publishing a warning of illegal insurance when the Superintendent has not published a similar notice, and
- in general terms, the Superintendent has exercised her discretion in this matter in bad faith or in an arbitrary, unfair or unreasonable manner.

Counsel for the Superintendent submitted that,

- the alleged inadvertence of Crump in connection with the placement of the insurance advertisement on its website is irrelevant and, in any event, as the owner of the website, Crump must bear ultimate responsibility for the contents of its website,
- Crump's corrective action in response to the interim order does not eliminate the need for full compliance with that order,
- Crump is in the best position to get the message about illegal insurance, in all the required particulars, out through the vehicle of barter companies, who are likely to visit the Crump website, to their members and, since the original advertisement appeared on the Crump website, it is logical for the warning about illegal insurance to appear on the same site,
- any lawsuit against Crump for including the name-specific particulars in the required notice of illegal insurance is speculative,
- the Superintendent is in the best position to determine how the public interest can be effectively realized through the terms of any cease and desist order and the

Superintendent has taken other steps, within her own office, to publicize the dangers of insurance issued through Madsen and Tri-Continental, and

- there is no evidence that the Superintendent exercised her discretion in this matter in bad faith, arbitrarily or unfairly.

Counsel for the Superintendent advised the Tribunal that the Superintendent would be prepared to agree to a modification of the terms of the notice of illegal insurance, to be placed on the Crump website, that would indicate that the conclusion that any insurance obtained through Madsen or Tri-Continental was not valid insurance in Ontario, and that an Ontario resident could be exposed to liability to fines for driving with invalid insurance, was the result of advice given by the Financial Services Commission of Ontario. Such a modification was agreed to by the parties in another proceeding before this Tribunal concerning a contested cease and order involving Executive Barter Exchange Inc. and is reflected in the consent order of the Tribunal in that case (FST File No. I109-2000).

THE DISPOSITION

We are persuaded by the arguments of counsel for the Superintendent. In general, we do not think a case has been made out for interfering with the exercise of discretion by the Superintendent in formulating the terms of the interim cease and desist order against Crump and, in particular, in requiring reference in the website notice of illegal insurance to Madsen and Tri-Continental by name. However, in light of the concession of counsel for the Superintendent that the Superintendent would be agreeable to a modification of the terms of that notice, to reflect the modification introduced by the Tribunal, on the consent of the parties, in the Exchange Barter Inc. case, we make the order against Crump, incorporating such a modification but otherwise replicating the interim order, in the form of Appendix "A" to these reasons.

Since the notice that Crump placed on its website in response to the interim order is not in accordance with the terms of that order or the order that we are making, the twelve month period for maintaining the notice will run from the date Crump first complies with

our order in this respect, without any credit for the time during which the non-compliant notice has been maintained on the Crump website.

DATED at Toronto, Ontario this 30th day of October, 2000.

“Colin McNairn”
Colin McNairn - Chair

“Kathryn Bush”
Kathryn Bush - Member

“Joseph Martin”
Joseph Martin - Member

Appendix "A"

CEASE AND DESIST ORDER

Crump Barter Services Inc., any of its agents or representatives including but not limited to Joseph G. Crump are hereby ordered to:

- A. Immediately cease and desist advertising, publishing or soliciting the sale, promotion or availability of insurance products of insurers not licensed to do business in Ontario, including but not limited to Tri-Continental Exchange Limited (also referred to variously as Tri-Continental, Tri-Continental Exchange and Tri-Continental Exchange Ltd.), John Madsen (also known as John O. Madsen), Interchange Ad Corp. and any entity associated with Robert L. Brown (also known as Robert Brown and Bob Brown) or John Madsen.
- B. Immediately place a notice on its website at <http://www.crumppbarter.com> and any other website that it may be operating in the course of its barter business in the form attached herein as Attachment "A" which shall remain continuously on those websites for 12 months from the date it is first placed.
- C. Immediately provide all information related to the placement of the advertisement on the Crump website, including but not limited to the date it was first placed, who gave instructions to place the advertisement, who wrote the advertisement, and what contact Crump has had with John Madsen, Robert L. Brown and Tri-Continental Exchange Ltd., or any other name by which any of them may be known.
- D. Immediately repay any insurance monies collected from any barter member or other member of the public.

Attachment "A"

WARNING - ILLEGAL INSURANCE

You may have seen an advertisement on this website which stated that John Madsen was an "international facilitator for Tri-Continental's 60/40 cash/barter blend Direct Purchase Insurance Program." The Financial Services Commission of Ontario advises that this is not valid insurance in Ontario. Neither John Madsen nor Tri-Continental Exchange are licensed to conduct any type of insurance business in Ontario. This includes any facilitation for their so-called Direct Purchase Insurance Program.

The Financial Services Commission of Ontario also advises us that this means if you drive your car with purported coverage from an unlicensed insurer, you do not have valid insurance as is required by the *Compulsory Automobile Insurance Act*. If you are charged and convicted of driving without valid insurance, you are subject to a minimum fine of \$5,000.00 and could be fined as much as \$25,000.00 for a first offence. The fines double for subsequent offences.

Furthermore, if you are involved in a motor vehicle accident, or have difficulties in settling claims of any kind with an unlicensed insurer, the Financial Services Commission of Ontario cannot help you.

In order to properly protect yourself and your family, and comply with the law please ensure that you are insured with a licensed Ontario insurer.

If you have any questions concerning this warning, please call the Financial Services Commission of Ontario's Licensing and Enforcement Division at (416) 250-9209 or toll free at 1-800-263-0541. You can also visit their website at www.fsco.gov.on.ca.