

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 a decision dated November 20, 2000 of the Director, Licensing and Enforcement Division of the Financial Services Commission, by delegated authority from the Superintendent of Financial Services, revoking the level II life insurance agent's licence of Jatinder S. Suri;

AND IN THE MATTER OF an appeal by Jatinder S. Suri from such decision pursuant to subsections 17(1) and 393(10.2) of the Act.

BETWEEN:

JATINDER S. SURI

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: Jatinder S. Suri, in person
Stephen Scharbach, for the Respondent

HEARING DATE: May 8, 2001

REASONS FOR DECISION

Background and Facts

This is an appeal from a decision dated November 20, 2000 (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 Superintendent. It ordered the revocation of the Appellant's level II life insurance licence, as proposed in the recommendation of an Advisory Board. That recommendation was made after a hearing by the Board at which the Appellant and the Respondent appeared and made submissions. Although advised of his right to be represented by legal counsel, the Appellant chose to represent himself at that hearing as he did at the hearing before this Panel of the Tribunal.

The Advisory Board found that the Appellant had engaged in a practice of borrowing money from his clients over a nine year period in which he was in increasing financial difficulty and, in that connection,

- had misappropriated or misdirected client funds for his own personal use,
- forged clients' signatures,
- used confidential financial information to target clients for personal loans,
- failed to advise his clients to seek independent legal advice in respect of their personal loans to him, and
- generally, placed his own personal interests above those of his clients,

thereby demonstrating his untrustworthiness to transact business in the insurance industry.

The Director accepted those findings and noted that clients had suffered financial loss as a result of the Appellant's conduct and that the Appellant had sought and obtained bankruptcy protection. The Director, nonetheless, considered whether there were any mitigating factors that would indicate that the recommendation of the Advisory Board was too harsh in the circumstances. While recognizing that the Appellant had worked in the industry for twenty-three years and that the recommended penalty would have a significant impact on the Appellant, the Director concluded that revocation of the Appellant's life agent's licence was the appropriate penalty.

On this appeal from the Decision, the Appellant asked the Tribunal to substitute a one-year suspension in place of the revocation of his licence. The main grounds that the Appellant advanced for the appeal were that:

- those who loaned him money were friends, who also happened to be his clients, and that proper account was not taken of this circumstance,
- the repayment of those who had loaned him money would be facilitated if he could resume earning a respectable income by returning to the insurance business after a one-year interval,
- his assignment in bankruptcy had been misconstrued as an attempt to avoid such repayment, and
- the Advisory Board, whose report provided the basis for the Decision, had a number of wrong perceptions about the Appellant, his conduct, the motives for that conduct and the truth of his testimony.

The Appellant requested a stay of the Decision pending the disposal of the appeal. At the conclusion of a telephone hearing to consider this request, the Chair of this Panel refused the request on the basis that the Appellant would not be prejudiced if a stay were denied even if his appeal were to be successful, given the nature of the relief the Appellant was seeking on the appeal. The Appellant was asking for a one-year suspension of his life agent's licence, in lieu of revocation of that licence, and the appeal would be disposed of well within one year of the Decision.

Analysis and Conclusions

On an appeal such as this, the Tribunal should not treat the matter before it as one of first impression and, therefore, decide it afresh, as it were. The Tribunal made that clear in its Reasons in *Transamerica Life Insurance Company of Canada v. Superintendent of Financial Services* (FST File No. I0028/98), the first case to be decided by this Tribunal. However, when the appeal is from a decision accepting the recommendations of an Advisory Board that were arrived at following a hearing, as in this case, we would be justified in interfering with the decision if we thought that the hearing was unfair or that there was no reasonable basis for the decision. We would also be justified in interfering with that decision if there were new evidence that caused us to take a different view of the matter than was taken by the original decision-maker.

The Appellant had the opportunity to present evidence and make submissions at the initial hearing. There was no evidence before this Tribunal of any unfairness in that hearing apart from the assertion by the Appellant that he found the whole experience of appearing before the Board without counsel to be "over-powering." While we would be justified in interfering with the Decision for lack of a fair hearing if we thought that the hearing was carried out in a manner that was objectively unfair, the Appellant simply argues that the hearing was intimidating for him and contributed to the wrong perceptions that, he says, the Advisory Board gained.

We are not persuaded that the Decision made following the hearing lacked a reasonable

basis. The conduct of the Appellant could fairly be treated by the Director as being serious and sufficiently relevant to the suitability of the Appellant to continue to hold his life agent's licence as to justify the revocation of that licence. The seriousness of that conduct is not significantly diminished if the clients from whom the Appellant borrowed money were also friends, as he alleges. We note that, in making his Decision, the Director considered the question of whether there were any mitigating circumstances that should influence his disposition of the matter. All this considered, we do not think there was any error in the Decision of a kind that would justify our disturbing that Decision on appeal.

The Appellant tendered certain documentary evidence that was not before the Advisory Board, including letters of reference and personal financial statements. Counsel for the Respondent objected to the admission of this new evidence. We did not rule on that objection, but indicated that we would keep the objection in mind in making our decision, at which time we would decide what, if any, weight to attach to the challenged documents. Even if we were to take those documents into account, it would not change our conclusion that this is not a proper case for varying the Decision of the Director.

The appeal is, therefore, dismissed.

DATED the 28th day of May, 2001 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”
Joyce A. Stephenson

Member of the Panel