

FINANCIAL SERVICES TRIBUNAL

IN THE MATTER of the *Insurance Act*, R.S.O. 1990, c. 48, as amended (the "Act");

AND IN THE MATTER OF a decision dated January 17, 2002 of the Director, Licensing and Enforcement, of the Financial Services Commission of Ontario, by delegated authority from the Superintendent of Financial Services (the "Superintendent"), revoking the level II life insurance agent's licence of Patrick Lee;

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

BETWEEN:

PATRICK LEE

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

Louis Erlichman,
Member of the Tribunal

APPEARANCES: Patrick Lee, the Appellant, in person (by conference telephone)

Stephen Scharbach, for the Superintendent, the Respondent
(by conference telephone)

HEARING DATE: April 12, 2002

REASONS FOR DECISION

Background

This is an appeal by Patrick Lee from the revocation of his Level II life agent's licence. The revocation was imposed by order of the Director, Licensing and Enforcement, of the Financial Services Commission of Ontario, acting as delegate of the Superintendent, in a decision dated January 17, 2002. That decision followed a hearing by an Advisory Board, on October 31, 2001, at which Mr. Lee declined to appear. The hearing led to a recommendation, which was accepted by the Superintendent's delegate, that Mr. Lee's licence be revoked.

Facts

The facts of the case are not in dispute. An agreed statement of facts was filed with the Advisory Board and that statement was not challenged on this appeal. The pertinent facts are as set out below.

Mr. Lee developed a friendship with one Leslie Yip. In December of 1999, Mr. Lee approached Ms. Yip to borrow \$5,000, saying he needed the money because his investments were doing poorly. Mr. Lee agreed to pay the monthly interest charges on Ms. Yip's personal line of credit, which was drawn on to provide the funds for the loan. The loan was not re-paid as promised and, following an extension, Mr. Lee stopped paying the interest on the line of credit. When confronted with the non-payment of interest, Mr. Lee claimed that this was the result of bank errors, which was untrue. In April of 2000, Mr. Lee agreed with Ms. Yip that the remaining balance due on the loan - the sum of \$4800 - would be invested in a policy, evidencing an investment in a segregated fund, with Transamerica Life Insurance Company ("Transamerica"), a company for which Mr. Lee wrote insurance business. Mr. Lee did not, in fact, submit an application for such a policy to Transamerica, but he delivered fraudulent statements to Ms. Yip relating to the supposed policy. When a policy application was finally submitted to Transamerica, Mr. Lee's cheque in payment for it was returned NSF. The policy was never issued. Transamerica ultimately terminated its relationship with Mr. Lee. Mr. Lee subsequently borrowed money from a personal friend and re-paid Ms. Yip in full.

The Nature of the Appeal

Mr. Lee's appeal to this Tribunal is against the penalty imposed by the Superintendent's delegate. He would have the Tribunal substitute a licence suspension, of six months to one year, in place of the order revoking his licence. He relied on his record as a life insurance agent and, particularly, his activities in the mentoring of new agents and in the life agents' industry association.

Discussion

Counsel for the Superintendent outlined a number of factors that have been considered by the Superintendent, or the predecessor official, to be relevant in deciding the appropriate penalty to be imposed in a case of agent dishonesty or the commission of an offence by an agent. He suggested that these criteria should be applied in the present case. The criteria include;

- the seriousness of the conduct in question,
- whether that conduct was isolated or formed part of a pattern of conduct,
- the amount of time that has expired since the conduct in question,
- the presence or absence of sincere expressions of remorse,
- the presence or absence of contributing factors that have since been addressed, such as financial difficulties, drug abuse, alcohol abuse, psychiatric or social difficulties.

These appear to us to be reasonable criteria.

In an earlier appeal by a life agent against a penalty of licence revocation, *Jatinder Suri v. Superintendent of Financial Services* (FST File No. 10138-2000), this Tribunal indicated that, in the absence of new evidence, it would only be justified in interfering with a decision of the Superintendent, or his or her delegate, taken in accordance with a recommendation of an Advisory Board, if it thought that the hearing before the Board was unfair or that there was no reasonable basis for the decision. The threshold for disturbing the original decision has not been met in this case.

While we would, therefore, dismiss this appeal, we note that there is nothing in the Act, or the regulations under it, that would prevent Mr. Lee from applying for a new life agent's licence after an appropriate interval. The lapse of time since the occurrence of conduct that would otherwise disqualify an individual from holding a life agent's licence is a factor to be taken into account in any licensing decision, as the Superintendent has recognized. In the event of a new licence application by Mr. Lee, it would be for the Superintendent, or his or her delegate, to determine, in the first instance, whether a sufficient period of time had passed since the dishonest conduct that gave rise to the licence revocation to justify a re-consideration of Mr. Lee's suitability to hold a life agent's licence. Of course, even if the time elapsed were deemed sufficient, Mr. Lee would still have to satisfy the qualifications for a licence, in effect at the time of any new licence application, to the satisfaction of the Superintendent. Nothing that we have said in these Reasons should be taken to limit the exercise of the licensing discretion of the Superintendent, or his or her delegate, should Mr. Lee apply for a new life agent's licence at some time in the future.

Disposition

The appeal in this matter is dismissed.

DATED the 19th day of April, 2002 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

“Louis Erlichman”
Louis Erlichman
Member of the Panel