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Bulletin

No. G-09/99

- General

Monitoring and enforcement report - including prosecution and hearing decisions - for third quarter 1999

The Financial Services Commission of Ontario's (FSCO) Monitoring and Enforcement bulletins report on its prosecution activities, the decisions arising out of the hearings it conducts, and other regulatory activities that help ensure consumer confidence in the financial services sectors that FSCO regulates -- insurance, credit unions/caisses populaires, loan and trusts, co-operatives and mortgage brokers. FSCO also regulates pensions; its monitoring and enforcement reports on this sector appear separately in FSCO's Pension Bulletins.

The Financial Services Tribunal (FST), an independent adjudicative body, hears all appeals or reviews of proposed or intended decisions of the Superintendent of Financial Services, who makes the majority of first line regulatory decisions. The Director of the Licensing and Enforcement Division (the Director) has been delegated the authority by the Superintendent of Financial Services (Superintendent) to render licensing decisions. These appeals or reviews are conducted at the request of one of the affected parties. In hearing appeals or reviews of these decisions, the FST determines all questions of fact or law. As well, the FST has authority to make rules for the practice and procedure to be observed in a proceeding before it, and to order a party to a proceeding before it to pay the costs of another party or the FST's costs of the proceeding.

ACTIONS OF THE FINANCIAL SERVICES COMMISSION OF ONTARIO AND THE FINANCIAL SERVICES TRIBUNAL

RESULTS OF monitoring activities -- first step in the enforcement process

Re: Agents and Adjusters

FSCO undertakes a number of monitoring activities as part of its regulatory functions. It conducts police background checks on prospective agents, and also reviews complaints against agents made by other agents, insurers and policyholders. In addition, FSCO audits approximately 10 per cent of all life agent renewal applications to ensure they meet continuing education (CE) requirements. These checks, reviews and audits are the first step in the enforcement process. Most matters are resolved at this first step.

During the third quarter of 1999, the FSCO undertook the following:

- **Police Checks**

  A total of 1,373 police checks on the background of prospective agents were made with the Canadian Police Information Centre.

- **Complaints and Reviews**

  FSCO received 38 complaints about the conduct of agents for the third quarter July 1, 1999 to September 30, 1999. The subjects of the complaints included fraud, forgeries, misrepresentation, and agent misconduct.

Overview of Complaints

Complaints in progress, from end of second quarter 1999	82
Plus: *Complaints received* during third quarter, 1999	38
Less: *Complaints in progress* at end of third quarter, 1999	41
***Complaint reviews* completed during third quarter, 1999**	**79**

Disposition of Complaint Reviews

Cases forwarded for potential enforcement	43

Cases resolved	10
Licences surrendered	0
Cases closed	26
Total	**79**

Cases may be closed for a variety of reasons. The most common are: the issue raised is outside FSCO's jurisdiction; there is insufficient evidence to ubstantiate a complaint; or the complaint is unfounded. complaint; or the complaint is unfounded.

- **Audits**

FSCO initiated 68 audits of life agents during the third quarter to ensure they met their CE requirements. Approximately 32 additional audits will be initiated to complete the sample for the third quarter. As a result of the audits, seven cases required enforcement action to be initiated.

INVESTIGATIONS -- second step in the enforcement process

As a follow up to its regular monitoring activities -- police background checks on prospective agents, the reviews of complaints received against agents, and audits of agents' compliance with CE requirements -- FSCO may decide that some matters need to be investigated. An investigation is the second step in the enforcement process. It is used where prosecution or Advisory Board hearings may be contemplated.

During the third quarter of 1999, FSCO undertook the following:

- **Investigations initiated**

A total of 62 cases were forwarded to Investigations. Of that total, 51 cases related to agents and adjusters, nine related to mortgage brokers, and two related to insurance companies.

Source of investigations

Agents

Complaints about agent conduct	19

Allegations of unsuitability of agents	5
Doing business without a licence in force	20
Continuing education audits	7
	51

Mortgage Brokers

Doing business without a licence in force	4
Failure to file return	7
	5

Insurance Companies

Complaints about insurance company conduct	2
	2
	62

Outcome of investigations

A total of 42 cases were completed:

Charges laid in Provincial Offences court	2
Advisory Board Hearings held	
	2
Sponsorship of agent withdrawn	6
Superintendent's Orders issued	3
Letters of Censure issued	
	5
Licence Surrendered	
	1
Closed files (no enforcement action warranted)	23
	42

Cases may be closed if there is insufficient evidence to support the allegations, or if the allegations are unfounded.

- **Letters of Warning**

  During the third quarter, 193 Letters of Warning were issued to life agents who were late in applying for licence renewal.

- **Letters of Censure**

  Two Letters of Censure were issued to life agents who did not provide full disclosure of information on their licence applications.

- **Surrendered Licences**

  The details surrounding the surrender of licences, indicated in the investigation statistics, are as follow:

  William Descoteaux agreed to surrender his Level II life insurance agent=s licence following a complaint alleging sexual harassment.

- **Minutes of Settlement and Consent Orders**

  During the third quarter, 10 agents entered into Minutes of Settlement for non-compliance with legislated continuing education requirements, and two agents consented to orders revoking their licenses. One agent received a disciplinary caution via an order.

Non-Continuing Education Offences

Parshotam Bhasin	By Minutes of Settlement and Undertaking, dated September 1, 1999, this Level II life insurance agent received a disciplinary caution. The agent arranged financing of a policy, through his son, for one of his clients. As security, Mr. Bhasin had the insurance policies changed to show his son as 50 per cent beneficiary. The situation has since been rectified.

Patrick J. Kinlin

By an order, dated July 22, 1999, this Level II agent's licence was revoked. The agent has been charged with various offences under the Criminal Code of Canada relating to his activities in the sale of certain investments. The agent consented to having his licence revoked.

Shannon Pountney

By an order, dated September 13, 1999, this Level I agent's licence was revoked. The agent failed to place the interests of her clients first and admitted to having several clients purchase life insurance policies they did not want or require. The agent consented to having her licence revoked.

Continuing Education Offences

Daniel J. Beechey

By an order, dated July 30, 1999, this Level II agent's licence was suspended for a period of 30 days, commencing September 1, 1999. Mr. Beechey had failed to comply with the continuing education requirements at the time of his licence renewal and made a material misstatement in his renewal application by stating that he had completed the required continuing education hours. Mr. Beechey subsequently completed the outstanding continuing education requirements.

Andre L. Bourget	By an order, dated July 30, 1999, this Level II agent's licence was suspended for a period of 15 days, commencing September 1, 1999. Mr. Bourget had failed to comply with the continuing education requirements at the time of his licence renewal and made a material misstatement in his renewal application by stating that he had completed the required continuing education hours. Mr. Bourget subsequently completed the outstanding continuing education requirements.
Garth Gisel	By an order, dated September 3, 1999, this Level II agent's licence will expire on January 15, 2000, unless conditions specified in Minutes of Settlement related to continuing education are met. The agent disclosed that continuing education had not been completed and there are no allegations of a material misstatement on a licence application.
Anthony Ibba	By an order, dated August 30, 1999, this Level II agent's licence will expire on November 14, 1999, unless conditions specified in Minutes of Settlement related to continuing education are met. The agent disclosed that continuing education had not been completed and there are no allegations of a material misstatement on a licence application.

Velma McLellan	By an order, dated August 30, 1999, this Level I agent's licence will expire November 12, 1999, unless conditions specified in Minutes of Settlement related to continuing education are met. The agent disclosed that continuing education had not been completed and there are no allegations of a material misstatement on a licence application.
R. Stephen Mitchell	By an order, dated August 9, 1999, this Level II agent's licence was suspended for a period of 30 days. Mr. Mitchell had failed to comply with the continuing education requirements at the time of his licence renewal and made a material misstatement in his renewal application by stating that he had completed the required continuing education hours. Mr. Mitchell subsequently completed the outstanding continuing education requirements.
Ashvin Morjaria	By an order, dated August 11, 1999, this Level II agent's licence will expire on May 19, 2000, unless conditions specified in Minutes of Settlement related to continuing education are met. The agent disclosed that continuing education had not been completed and there are no allegations of a material misstatement on a licence application.

Phuc Nguyen	By an order, dated August 24, 1999, this Level I agent's licence was revoked. The agent declared on his life insurance agent renewal application that he had completed the necessary continuing education hours for the specified licensing period, but did not provide specific details to support this declaration when asked to do so.
John Oegema	By an order, dated September 20, 1999, this Level II agent's licence was suspended for a period of 30 days commencing October 15, 1999. Mr. Oegema had failed to comply with the continuing education requirements at the time of his licence renewal and made a material misstatement in his renewal application by stating that he had completed the required continuing education hours. Mr. Oegema subsequently completed the outstanding continuing education requirements.
Robert L. Wagstaff	By an order, dated July 30, 1999, this Level II agent's licence was suspended for a period of 30 days commencing September 1, 1999. Mr. Wagstaff had failed to comply with the continuing education requirements at the time of his licence renewal and made a material misstatement in his renewal application by stating that he had completed the required continuing education hours. Mr. Wagstaff subsequently completed the outstanding continuing education requirements.

PROSECUTIONS

MORTGAGE BROKERS

Charge:	**Late Filing of Financial Statements**
Against:	**R/E Active Mortgages**
Verdict:	**Guilty**

On August 24, 1999, in Toronto provincial court, R/E Active Mortgages pleaded guilty and convicted of late filing of audited financial statements as required under the *Mortgage Brokers Act*. The company was fined $600.

HEARINGS

An Advisory Board assists in determining the granting or refusal of a new licence or the possible revocation or suspension of an existing licence for insurance agents and adjusters. The Board considers evidence presented by the applicant or agent as well as that put forward by counsel for FSCO. The Superintendent of Financial Services (Superintendent) has delegated to the Director of the Licensing and Enforcement Division the authority to render licensing decisions.

Life agent:	**Andre S. Bara (London) Level II agent**
Advisory Board Hearing:	**July 27, 1999**
Decision:	**Licence Suspended**

An Advisory Board hearing was conducted in London to consider allegations that Mr. Bara failed to comply with the continuing education requirements and made a material misstatement in his renewal application that he had completed the required continuing education hours. In its report, the Board recommended that Mr. Bara's licence be suspended for a period of 30 days; and that he complete the required continuing education hours prior to the end of the suspension period, failing which his licence be revoked. By decision dated August 26, 1999, the Superintendent accepted the findings of fact of the Board, and accepted the recommended penalty, ordering a suspension of the life agent's licence for a period of 30 days, commencing November 1, 1999. Additionally, the Superintendent ordered that Mr. Bara submit by December 1, 1999, evidence acceptable to the Superintendent, of completion of 50 hours of continuing education. If such evidence is not submitted by December 1, 1999, Mr. Bara's licence will be revoked.

Life agent:	**Bruce A. Beard (Toronto) Level II agent**
Advisory Board Hearing:	**July 7, 1999**
Decision:	

An Advisory Board hearing was conducted in Toronto to consider allegations that Mr. Beard failed to comply with the continuing education requirements, made a material misstatement in his renewal application that he had completed the required continuing education hours, and failed to facilitate an examination. In its report, the Board recommended that Mr. Beard's licence be suspended for a period of 30 days; and that he complete the required continuing education hours within the same time period, failing which his licence be revoked.

By decision dated July 29, 1999, the Superintendent accepted the findings of fact of the Board as well as the recommended penalty of a period of suspension of the life agent's licence. The Superintendent indicated, however, that a more severe penalty was warranted in this case since not only did Mr. Beard fail to complete the required continuing education hours, but he also failed to facilitate an examination. There are some mitigating factors and Mr. Beard has been unable to work for a period of time as a result of an automobile accident. Accordingly, the Superintendent ordered a period of suspension of 60 days for Mr. Beard, indicating that 30 days of that suspension was considered served already due to the period of work-related disability caused by his accident, with the remaining 30-day period commencing August 1, 1999.

Life agent:	**H. Bruce Erskine (Goderich) Level II agent**
Advisory Board Hearing:	**June 18, 1999**
Decision:	**Licence Suspended**

An Advisory Board hearing was conducted in London to consider allegations that Mr. Erskine failed to comply with the continuing education requirements, and made a material misstatement in his renewal application that he had completed the required continuing education hours. In its report, the Board recommended that Mr. Erskine be allowed credit for mutual fund courses previously taken by him; that he submit evidence of completing the remaining continuing education hours on or before December 1, 1999; and that he not be subject to a period of suspension since he failed to fully understand the continuing education requirements, has a good reputation in his community, and co-operated fully in the audit process.

By decision dated July 29, 1999, the Superintendent accepted the findings of fact of the Board. The Superintendent did not agree that credit should be awarded to Mr. Erskine for mutual fund courses for which he did not take the examinations. Mr. Erskine made a false statement to FSCO and failed to meet the continuing education requirement. These are serious matters, warranting a period of suspension. Accordingly, the Superintendent ordered that Mr. Erskine's licence be suspended for one month, commencing September 1, 1999 and that he submit by March 31, 2000, satisfactory evidence of completion of 48.75 hours of continuing education, failing which, his licence will be revoked on March 31, 2000

Life agent:	**Michael Krupa (London) Level I agent sponsored by London Life Insurance Company**
Advisory Board Hearing:	**June 28, 1999**
Decision:	**Licence Suspended**

An Advisory Board hearing was conducted in London to consider allegations that Mr. Krupa had been convicted of fraud and had replaced policies in questionable circumstances. At the hearing, Mr. Krupa maintained his innocence and advised that his sponsoring insurer was prepared to support him.

The Board recommended that Mr. Krupa's licence be suspended subject to a number of conditions.

The Board found there was deceit involved in Mr. Krupa's actions, that he did not fully understand replacement procedures, and that Mr. Krupa needed to demonstrate that he had learned from his mistakes in the areas of competence and ethics. It also noted that it was important that there be continued support from his current sponsoring insurance company, London Life Insurance Company.

By decision dated July 28, 1999, the Superintendent accepted the findings of fact of the Board and ordered that Mr. Krupa's licence be suspended for one month commencing August 15, 1999, or until a number of conditions were met: First, Mr. Krupa provide to the Superintendent an agreement signed by his sponsor, London Life, in which the sponsor commits to supervising Mr. Krupa's work on every file; document the review of Mr. Krupa's work; be financially responsible for any consumer loss resulting from the agent's actions, regardless of what insurer the business was placed with; report immediately to the Superintendent any situations of non-compliance with regulatory requirements; and prepare a written report to the Superintendent at the completion of three years. Second, Mr. Krupa make a valid application for Level II status. Third, Mr. Krupa provide acceptable evidence of completion of 30 hours of continuing education. London Life has withdrawn their sponsorship of Mr. Krupa and his licence is suspended.

Life agent:	**George Parubchak (Toronto) Level II agent**
Advisory Board Hearing:	**June 22, 1999**
Decision:	**Licence Suspended**

An Advisory Board hearing was conducted in Toronto to consider allegations that Mr. Parubchak had accepted applications for life insurance from an employee of his company who he knew was not licensed to sell life insurance products, and signed the applications as agent or witness, without meeting the applicants. The Board recommended a nine-month licence suspension, noting that Mr. Parubchak expressed remorse, had made restitution, and did not appear to be a risk to the public.

By decision dated July 26, 1999, the Superintendent accepted the findings of fact of the Board and ordered that Mr. Parubchak's life agent's licence be suspended for nine months, commencing August 15, 1999. The Superintendent indicated that a suspension of this magnitude was at the low end of the range of possible penalties, but was satisfied that it was appropriate in this case because of the actions taken by Mr. Parubchak to be accountable and assume responsibility.

DISPUTE RESOLUTION DECISIONS

An arbitrator may decide at the conclusion of an arbitration hearing involving insurers and statutory accident benefits claimants, to impose penalties under the *Insurance Act.* Under section 282(10), a special award may be made against an insurer where it has acted unreasonably. Under section 282(11.2), an assessment award may be made against an insured person if the arbitration is frivolous or vexatious, or an abuse of process.

Type of Decision	**Arbitration**
Applicant	**Jane Chaffe-Motte**
Insurer	**Prudential of America General Insurance Company (Canada)**
Penalty	**Special Award**

An arbitration decision was released on August 6, 1999, regarding the application to Prudential of America General Insurance Company by Mrs. Jane Chaffe-Motte for statutory accident benefits.

Following her injuries in a motor vehicle accident on January 16, 1994, Prudential paid Mrs. Chaffe-Motte caregiver and housekeeping benefits. Following the accident, the applicant underwent a large number of insurer examinations related to her injuries.

Four years post-accident, Prudential asked Mrs. Chaffe-Motte to attend a multi-disciplinary insurer examination. She refused to attend this examination. Six months later, Prudential again requested that the applicant attend another series of examinations. Again, Mrs. Chaffe-Motte refused to attend these examinations. As a result, the insurer terminated payments of both benefits. In her decision, the arbitrator felt that the length and number of assessments/examinations requested by the Prudential were excessive and that Prudential made little effort to balance the applicant's right to privacy with its right to require medical examinations, and unreasonably withheld and delayed benefits. The applicant was given a special award of 50 per cent of the amount to which she was entitled, together with interest.

Type of Decision	**Arbitration**
Applicant	**Syed Obaidulla Hussaini**
Insurer	**Halifax Insurance Company**
Penalty	**Assessment award**

An arbitration decision was released on August 13, 1999, regarding the application to Halifax Insurance Company by Syed Obaidulla Hussaini for statutory accident benefits. The applicant sustained personal injuries in a motor vehicle accident on January 5, 1995. Halifax Insurance paid the applicant weekly income replacement benefits but reduced the amount of these benefits on May 6, 1996, and then terminated payments altogether on November 4, 1996. The insurer's reason was that Mr. Hussaini failed to participate in rehabilitation and that a disability assessment showed that the applicant's injuries were not as serious as was claimed. The arbitrator dismissed the arbitration and ordered Mr. Hussaini to pay the insurer $3,000 for its assessment, as the commencement of his arbitration proceeding was determined to be frivolous and an abuse of process. Mr. Hussaini was also ordered to repay the $31,722 he received from Halifax Insurance in income replacement benefits.

Type of Decision	**Arbitration**
Applicant	**Frima Olszynko**
Insurer	**Dominion of Canada General Insurance**
Penalty	**Special Award**

An arbitration decision was released on August 27, 1999, to deal with further issues between Mrs. Frima Olszynko and Dominion of Canada General Insurance Company, following an earlier arbitration decision involving the two parties. The applicant had sustained personal injuries in a motor vehicle accident on January 12, 1994, and the arbitrator, on February 22, 1999, determined then that the insurer had failed to comply with the mandatory prcedural provisions of the Schedule and that this amounted to an unwarranted withholding of benefits. The arbitrator made a special award to the applicant of $5,000 *plus* interest *(*see *FSCO Bulletin - General No. G-5/99).* In the August 27, 1999 decision, the arbitrator ordered the insurer to pay the arbitration expenses of the applicant, and amended the February 22, 1999 arbitration decision ordering that the special award of $5,000 *including* interest.

Type of Decision	**Arbitration**
Applicant	**A. B.**
Insurer	**Royal Insurance Company of Canada**

Penalty	**Special Award**

An arbitration decision was released on August 31, 1999, regarding the application to Royal Insurance Company of Canada by Ms. A. B. for statutory accident benefits. The applicant claimed she sustained personal injuries while operating a motor vehicle in a car wash on June 18, 1996. Royal Insurance declined to pay weekly benefits on grounds that the incident was not an accident and that the applicant was unemployed at the time of the incident. The arbitrator determined in the decision that the applicant was entitled to income replacement benefits ongoing from June 25, 1996, and allowed the payment of some expenses, including housekeeping, travelling and medical expenses. Ms. A. B. received a special award of $2,500 as the insurer was unable to give a satisfactory explanation for withholding the payment of supplementary medical expenses, pending resolution of a dispute concerning their entitlement.

Type of Decision	**Arbitration**
Applicant	**Yousuf H. Omar**
Insurer	**Pafco Insurance Company of Canada**
Penalty	**Assessment Award**

An arbitration decision was released on September 30, 1999, regarding the application to Pafco Insurance Company by Yousuf H. Omar for statutory accident benefits. The applicant sustained personal injuries in a motor vehicle accident on May 16, 1997. Pafco paid for some but not all of the expenses incurred for chiropractic and physiotherapy treatment. The arbitrator dismissed the Mr. Omar's arbitration application as the applicant had essentially abandoned the proceeding. She found that an abuse of process had occurred, that the applicant had failed to to follow through on his arbitration application, and failed to provide notice that he was no longer proceeding with his claims. The arbitrator ordered the applicant to pay the insurer $3,000.

FINANCIAL SERVICES TRIBUNAL DECISIONS

The Financial Services Tribunal did not hear any appeals or reviews of the insurance decisions of the Superintendent of Financial Services during the third quarter of 1999.

Martha Milczynski	Dina Palozzi
Chair	Chief Executive Officer
Financial Services Commission	Financial Services Commission
of Ontario	of Ontario
Chair Financial Services Tribunal	Superintendent of Financial Services

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