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No. G-12/00

- General

Monitoring and Enforcement Report - Including Prosecution and Hearing Decisions - for Third Quarter, 2000

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 2000, the FSCO undertook the following:

- **Police Checks**

  A total of 1,227 police checks on the background of prospective agents were made with the Canadian Police Information Centre.

- **Complaints and Reviews**

  FSCO received 47 complaints about the conduct of agents for the third quarter
  July 1, 2000, to September 30, 2000. The subjects of the complaints included fraud, forgeries, misrepresentation and agent misconduct.

  Overview of Complaints

Complaints in progress, from end of second quarter 2000	25
Plus: *Complaints received* during third quarter, 2000	47
Less: *Complaints in progress* at end of third quarter, 2000	43
Total number of Complaint reviews completed during third quarter, 2000	29

  Disposition of Complaint Reviews

Cases forwarded for potential enforcement	16
Cases resolved	7
Licences surrendered	0
Cases closed	6
Total	29

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 substantiate a complaint; or the complaint is unfounded.

- **Audits**

FSCO initiated 371 audits of life agents during the third quarter to ensure they met their CE requirements. As a result of the audits, three 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 2000, FSCO undertook the following:

- **Investigations initiated**

A total of 40 cases were forwarded to Investigations. Of that total, 35 cases related to agents and adjusters, three related to mortgage brokers, and two related to insurance companies.

Source of investigations

- Agents:

Complaints about agent conduct	15
Allegations of unsuitability of agents	5

Doing business without a licence in force	12
Continuing education audits	3
Total	35

- Mortgage Brokers:

Doing business without a licence in force	3
Total	3

- Insurance Companies:

Doing business without a licence in force	1
Complaints about insurance company conduct	1
Total	2
Grand Total	40

Outcome of investigations

A total of 69 cases were completed:

Charges laid in Provincial Offences court	10
Advisory Board Hearings held	3
Sponsorship of agent withdrawn	5
Superintendent's Orders issued	11
Letters of Censure issued	19
Licence Surrendered	0
Closed files (no enforcement action warranted)	21
Total	69

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

The results of the individual court cases and the Advisory Board hearings are reported in the quarter when the decisions are rendered. The names of individuals subject to Superintendent's Orders or who have surrendered their licences are listed when they occur. This form of reporting differs from previous quarters and improves the clarity of reporting of Superintendent's Orders with respect to continuing education offences.

- **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 Warning do not require formal investigations and are not included in the preceding statistics.

- **Letters of Censure**

  In addition to the 19 Letters of Censure issued as a result of formal investigations, two Letters of Censure were issued to life agents who did not provide full disclosure of information on their licence applications.

Minutes of Settlement and Superintendent's Orders

During the third quarter, seven agents entered into Minutes of Settlement for non- compliance with legislated continuing education requirements, and two of these agents consented to orders revoking their licences. Four agents consented to orders revoking their licences for offences not relating to continuing education.

George M. Bardwell	By an order, dated July 26, 2000, this Level I agent's licence was revoked. The agent admitted to 17 instances of placing the signatures of clients to electronic insurance applications, without the clients' knowledge or consent. The agent has undertaken not to reapply for any type of insurance licence issued by FSCO or its successor for a period of five years.
Livia Di Giovanni	By an order, dated September 25, 2000, this Level II agent's licence was suspended for a period of 30 days. Ms. Di Giovanni had failed to complete the required continuing education hours and also made a material misstatement in her renewal application. Ms. Di Giovanni has now completed the required continuing education hours.

Ricardo Dixon	By an order, dated September 1, 2000, this Level II agent's licence was revoked. The agent had misappropriated a client's investment funds, converting the monies for his own use.
Michael E. Fortier	By an order, dated September 8, 2000, this Level II agent's licence was suspended for a period of 30 days. Mr. Fortier had failed to complete the required continuing education hours and also made a material misstatement in his renewal application. Mr. Fortier has now completed the required continuing education hours.
Graham W. Page	By an order, dated July 18, 2000, this Level II agent's licence was revoked. The agent had misappropriated funds from eight clients, converting the monies for his own use. In some instances, investment monies were diverted, and in others, loans were taken against existing polices without authorization or approval.
Hannu Palovuori	By an order, dated July 18, 2000, this Level II agent's licence was revoked. The agent was alleged to have submitted applications for insurance without the clients' knowledge.
Tito Roses	By Minutes of Settlement, dated September 8, 2000, this Level II agent agreed to complete his outstanding continuing education credits. Mr. Roses failed to comply with the continuing education requirements. As FSCO received compelling evidence that the agent was misled by his sponsor, no suspension of his licence was ordered, as it would be unfair in these circumstances. Mr. Roses has since

	completed the required continuing education hours.
James A. Smith	By an order, dated August 11, 2000, this Level II agent's licence was revoked. During the course of an audit, Mr. Smith failed to produce documentation to confirm that he had complied with the continuing education requirements.
Howard B. Taleski	By an order, dated September 26, 2000, this Level II agent's licence was revoked. During the course of an audit, Mr. Taleski failed to produce documentation to confirm he had complied with the continuing education requirements, and also made a material misstatement in his renewal application.
Savtaner Wadera	By an order, dated September 8, 2000, this Level II agent's licence will expire on November 1, 2000, unless conditions specified in Minutes of Settlement related to continuing education are met.

Accommodation for Disability

M. D. As an accommodation for a serious illness, this Level II agent's licence was renewed. By an order, dated July 5, 2000, the agent was given until July 4, 2002, to complete the continuing education requirement, failing which the licence will expire.

Prosecutions

Insurance

Charge: Working as an agent while unlicensed

Against: John F. Doherty (Kitchener), general agent, sponsored by Allstate Insurance Company

Verdict: Guilty

On August 23, 2000, in Kitchener provincial court, John Doherty pleaded guilty and was convicted of practising as a general insurance agent after his licence had expired. He was fined $300.

Charge: Working as an agent while unlicensed

Against: Chad Martin (Kingston) Level I agent, sponsored by the Great-West Life Assurance Company

Verdict: Guilty

On July 24, 2000, in Kingston provincial court, Chad Martin pleaded guilty and was convicted of practising as an insurance agent after his licence had expired. He was fined $500.

Charge: Working as an agent while unlicensed

Against: Joseph Iwaniw (Windsor) Level II agent

Verdict: Guilty

On July 21, 2000, in Windsor provincial court, Joseph Iwaniw pleaded guilty and was convicted of practising as an insurance agent after his licence had expired. He was fined $500.

Charge: Working as an agent while unlicensed

Against: James K. Whittaker (Port McNicoll) Level II agent

Verdict: Guilty

On August 17, 2000, in Penetanguishene provincial court, James Whittaker pleaded guilty and was convicted of practising as an insurance agent after his licence had expired. He was fined $500.

Mortgage Brokers

Charge: Failing to facilitate an inspection

Against: Dan MacDonald and Daniel MacDonald Investments Ltd.

Verdict: Guilty

Dan MacDonald and Daniel MacDonald Investments Ltd. had pleaded guilty on April 20, 2000, to failing to facilitate an inspection to determine whether they were operating as unregistered mortgage brokers. FSCO had demanded production of all his records.

On September 19, 2000, in Walkerton provincial court, the court fined the corporation $5,000 and MacDonald was fined $2,000, and placed on probation for two years; and his four months of incarceration was suspended.

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.

Life agent applicant:	**Michael A. Krupa (London) Level II agent**
Advisory Board Hearing:	**August 9, 2000**
Decision:	**Conditional licence**

An Advisory Board hearing was conducted in Toronto to consider Mr. Krupa's re-application for a life insurance agent's licence. Mr. Krupa had been previously licensed as an agent. Mr. Krupa had been convicted of a fraud against an insurer; had replaced policies in questionable circumstances; and had been found guilty of lesser offences under the Criminal Code before his original application for a licence. Mr. Krupa had been the subject of a previous Advisory Board hearing and Superintendent’s decision dated July 28, 1999. The agent's sponsoring insurer terminated him and consequently, wanting to be re-licensed, Mr. Krupa requested another hearing.

In its report, the Board found that Mr. Krupa was not suitable to receive an unrestricted licence, but recommended that Mr. Krupa be granted a Level II licence subject to conditions. By decision dated September 20, 2000, the Superintendent accepted the findings of fact of the Board and stressed that the established allegations against Mr. Krupa were very serious. The Superintendent ordered that Mr. Krupa be granted a Level II life insurance agent's licence subject to six conditions for a two-year period.

First, Mr. Krupa is to identify to the Superintendent of Financial Services (Superintendent) an insurance company or corporate agency – acceptable to the Superintendent – that will sign an undertaking to supervise Mr. Krupa;

supervise his work on every file; document the review of his work; immediately report to the Superintendent any situations of his non-compliance with regulatory requirements; send a detailed written report to the Superintendent at the completion of the two-year period; and agree that failure to adequately supervise him shall be a breach of its undertaking to the Superintendent. Secondly, Mr. Krupa must undertake to place all insurance policies exclusively with or through the insurance company or corporate agency.

Third, Mr. Krupa's licence shall be immediately revoked if the supervising company or agency withdraws its undertaking to supervise Mr. Krupa. Fourth, Mr. Krupa must provide the Superintendent with a copy of his errors and omissions insurance policy. Fifth, Mr. Krupa must provide the Superintendent with confirmation from the E & O insurance company that it will notify the Superintendent immediately if that policy lapses, is cancelled, or modified in any way. Sixth, Mr. Krupa shall advise the Superintendent and his supervisor about any licences and advise the Superintendent and his supervisor immediately if he subsequently acquires any further licences in the financial services industry.

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**
Re:	**(FSCO A98-000030, August 4, 2000); Bill 59; no appeal filed**
Applicants:	**Fadumo Hassan and Shukri Omar**
Insurer:	**CIBC Insurance**
Award:	**Assessment Award**

The Applicants claimed they were injured in a car accident on July 3, 1997. Neither applicant appeared at the arbitration hearing. In the absence of any evidence to prove their claims, the Arbitrator dismissed the matter in her decision of August 4, 2000. The Arbitrator found that the applicant had prolonged the process:

- by failing to produce documents for the hearing, although properly notified;
- by failing to keep in contact with their own counsel (who was subsequently allowed off the record at the hearing); and
- wasting the Commission's and Insurer's time and resources, and the time of the insurer's medical experts.

The Arbitrator found that the Applicants had demonstrated an obvious disregard and disrespect for the process, amounting to an abuse, and accordingly, awarded the Insurer its expenses of the arbitration to be assessed, as well as an award of $3,000, payable by the applicants either jointly or separately,

pursuant to subsection 282(11.2) of the Insurance Act, R.S.O. 1990, c.I.8, as amended.

Type of Decision:	**Arbitration**
Re:	**(FSCO A99-000439, August 17, 2000); Bill 68; no appeal filed**
Applicants:	**Ann D. Hall**
Insurer:	**Jevco Insurance Company**
Award:	**Special Award**

In her August 17, 2000 decision, the Arbitrator found that the applicant was entitled to a special award on the basis that the Insurer had unreasonably suspended benefits without making an attempt to update or verify the medical information pertaining to the Applicant. According to the arbitrator:

- the Insurer did not give the Applicant notice of its intention to rely on certain medical reports to terminate benefits;
- the medical reports of two medical practitioners did not justify the termination of the Applicant's weekly income benefits; and
- the Insurer did not give notice that a suspension of benefits was contemplated or intended.

The Arbitrator found that the Insurer conducted itself unreasonably in this case, and as the termination of benefits was a serious one, granted a special award of $10,000, inclusive of interest.

Type of Decision:	**Arbitration**
Re:	**(FSCO A00-000358, August 31, 2000); Bill 59; no appeal filed**
Applicants:	**Patricia Slater**
Insurer:	**Loyalist Insurance Company**
Award:	**Special Award**

In her decision, the Arbitrator found that the Insurer had unreasonably withheld benefits and showed disregard for the Applicant, and ordered a special award of $6,500, inclusive of interest, against the Insurer immediately without waiting for the results of a later hearing that was scheduled to determine the amount of income replacement benefits for which the Applicant may be eligible.

The Arbitrator noted that the documentation filed by the Applicant was replete of examples on unreasonable behaviour by the Insurer. According to the Arbitrator, the Insurer:

- failed to respond to inquiries made by the Applicant's Counsel, and then took a series of steps that delayed the process; and
- did not pay benefits even after the Applicant's medical condition was assessed by a Designated Assessment Centre arranged by the Insurer. (This refusal contravened the requirements of section 27 of the Schedule, and constituted an unreasonable withholding of benefits of its own.)

Type of Decision:	**Arbitration**
Re:	**(FSCO A98-001414, September 26, 2000); Bill 164; no appeal filed**
Applicants:	**Suhul Michael Tedla**
Insurer:	**Royal & Sun Alliance Insurance Company of Canada**
Award:	**Assessment Award**

After filing his Application for Arbitration regarding two car accidents, the Applicant moved from his last known address without informing his lawyer or the Commission of his new address or providing a means by which he could be contacted. Noting in his decision that the Applicant did not attend the pre-hearing or the hearing, the Arbitrator concluded that the Applicant had abandoned the arbitration proceeding and that an abuse of the arbitration process had occurred. The Insurer was granted an Assessment Award of $3,000.

Should the Applicant fail to pay the Assessment, the Commission will not allow another arbitration process to commence on the issues in dispute in his original application.

Financial Services Tribunal Decision

Applicants Executive Barter Exchange Inc., Katherine Anne Cooper and Jonathan Lapid

Type of Matter Hearing regarding Interim Cease and Desist Order, dated May 4, 2000 of the Superintendent of Financial Services, and extended on June 13, 2000 Outcome Decision of the Superintendent of Financial Services upheld by the Financial Services Tribunal on September 29, 2000

On September 29, 2000, upon the consent of the parties, the Financial Services Tribunal (FST) issued an Order requiring the Applicants to immediately cease and desist advertising, publishing or soliciting the sale, promotion or availability of insurance products of insurance companies that are not licensed to conduct business in Ontario. The parties' concerns were resolved at the pre-hearing conference and without the need for a hearing. Except for a few minor changes to the form of notice of warning of illegal insurance, referred below, that the applicants are required to post on their website, the FST's Order confirmed the Interim Cease and Desist Order issued by the Superintendent on May 4, 2000.

The unlicensed insurance companies named in the FST Order include Tri-Continental Exchange Limited, Citadel General Surety Limited, Combined Services, and entities associated with Robert L. Brown (also known as Robert Brown and Bob Brown), Jack Shannon or John Madsen.

The Applicants were also ordered to post a notice of warning, for a period of 12 months, on their website to advise the public and barter members about illegal insurance; immediately provide the Superintendent with information of any sale of insurance products in Ontario that they transacted on behalf of barter members; immediately provide the Superintendent with information on advertisements relating to Tri-Continental Exchange Limited that they had sent to barter members (the information is to also include the total revenue that the barter had received from Tri-Continental Exchange Limited and a description of the interaction that barter personnel have had with Robert L. Brown, John Madsen or Tri-Continental Exchange); and immediately repay any insurance monies collected from any barter member or a member of the public.

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

November 17, 2000

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