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Bulletin

No. G- 04/06
– General

Monitoring and enforcement report - including prosecution and hearing decisions - January 1 to March 31, 2006

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

The Financial Services Tribunal (FST), an independent adjudicative body, hears appeals or reviews proposed or intended decisions of the Superintendent of Financial Services (Superintendent), who makes the majority of first line regulatory decisions. These appeals or reviews are conducted at the request of an affected party. In its hearings, 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.

The Superintendent administers and enforces the *Financial Services Commission of Ontario Act, 1997* (*FSCO Act*), and other Acts that confer powers or assign duties to the Superintendent. Under the *FSCO Act*, the Superintendent may delegate the exercise of any power or the performance of any duty conferred on or assigned to the Superintendent.

The Executive Director of the Licensing and Market Conduct Division (the Director) has been delegated the authority by the Superintendent to render licensing decisions. The Dispute Resolution Services Branch provides mediation, neutral evaluation, arbitration and appeal services as fair, cost-effective and timely alternatives to the court system. 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*.

The *Insurance Act* authorizes arbitrators and appeal adjudicators to make two types of enforcement orders that are reported in this Bulletin. First, under section 282(10), a special award may be made against an insurer that has unreasonably withheld or delayed the payment of benefits. Second, under section 282(11.2) a representative may be ordered to pay expenses personally in certain situations.

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

Monitoring Activities

FSCO undertakes a number of monitoring activities as part of its regulatory functions. It conducts police background checks on prospective agents and paralegals and reviews complaints against agents, paralegals and health care providers. In addition, FSCO audits life agent renewal applications to ensure they meet Continuing Education (CE) and Errors & Omissions insurance (E&O) requirements. Paralegals are also subject to E&O audits.

These checks, reviews and audits are the first step in the enforcement process. A significant number of matters are resolved at this first step.

Police Checks

During the period, a total of 5,722 police checks on the background of existing and prospective agents and paralegals were made with the Canadian Police Information Centre.

Complaints and Reviews

COMPLAINTS				
	Complaints in progress from December 31, 2005	**Plus complaints received during the period**	**Less complaints in progress at end of March 31, 2006**	**Total number of complaint reviews completed during the period**
Agent	68	72	61	79
Paralegal	30	3	31	2
Health Care Provider	6	0	5	1

DISPOSITIONS				
	Total Cases Received	**Cases resolved**	**Cases closed**	**Cases forwarded for (potential) enforcement**
Agent	79	15	22	42

Audits

FSCO initiated 680 audits of life agents during the 1st quarter to ensure they met their Errors and Omissions (E&O) insurance requirements.

Investigation Activities

As a follow up to its regular monitoring activities – police background checks, the reviews of complaints received and audits of compliance with CE requirements and E&O compliance – 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.

Investigations Initiated	
Agents	
Suitability	13
Complaints about agent conduct	7
Doing business without a licence	3
Insurance Companies	
Doing business without a licence	1
Complaints about insurance company conduct	1
Mortgage Brokers	
Doing business unregistered	1
Paralegals	
Complaints about paralegal conduct	2
Grand Total	**28**

Outcome of investigations	
A total of 44 cases were completed:	
○ Charges laid in Provincial Offences court	4
○ Minutes of Settlement and Superintendent's Orders issued	7
○ Cease & Desist Orders issued	3
○ Letters of Censure issued	6
○ Closed files (no enforcement action warranted)	24
Total	**44**

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 period when the decisions are rendered. The names of individuals subject to Superintendent's Orders or who have surrendered their licences are recorded on the date they occur.

Administrative Sanctions

Letters of Warning

During the period, 122 Letters of Warning were issued to life agents, all of whom were late in applying for licence renewal. In addition, one Letter of Warning was issued to a health care provider and no Letters of Warning were issued to SABS representatives. Letters of Warning do not require formal investigations and are not included in the preceding statistics.

Letters of Censure

There were 16 Letters of Censure in addition to 6 Letters of Censure that resulted from formal investigations.

Minutes of Settlement and Superintendent's Orders

Kenneth E. Betrand

By an Order dated March 9, 2006, the insurance agent's licence of Kenneth E. Bertrand was suspended for 30 days effective April 1, 2006. Mr. Bertrand had made a false statement on his renewal application. He stated that he had completed the required 30 hours of continuing education but was unable to provide documentation to confirm this.

Mukesh Chopra

By an Order dated February 23, 2006, the insurance agent's licence of Mukesh Chopra was suspended for 30 days effective June 1, 2006. The agent had forged a signature and made a misstatement on his renewal application.

Philip Allan Craig

By an Order dated January 12, 2006, the life insurance agent's licence of Philip Allan Craig was suspended for four months effective January 12, 2006. Mr. Craig was also ordered to repay $115,000 plus interest to a client by April 30, 2006 and has not done so. The suspension of his licence will continue until the funds are repaid. A client had loaned money to Mr. Craig and interest payments had stopped and only resumed after the client complained.

Jean Pierre Groulx

By an Order dated February 28, 2006, the insurance agent's licence of Jean Pierre Groulx was revoked. Mr. Groulx admitted that he had misappropriated approximately $1,123,000 of his clients' money.

Antonio Oliveira

By an Order dated February 6, 2006, the insurance agent's licence of Antonio Oliveira was revoked. It was found that Mr. Oliveira is not a suitable person to hold a licence as a life insurance agent as he refused to attend a meeting and provide requested material relating to an investigation concerning allegations of forgery, misappropriation of client funds and untrustworthiness.

Andrew Stokman

By an Order dated March 13, 2006, the insurance agent's licence of Andrew Stokman was suspended for 90 days effective April 1, 2006. Mr. Stokman admitted referring clients to an investment company that was engaging in fraudulent practices.

Kristen Thomas

By an Order dated February 7, 2006, the application for an insurance licence by Kristen Thomas was denied. It was found that Ms. Thomas is not a suitable person to hold a licence as an insurance agent as she failed to provide FSCO with complete information regarding the criminal charges against her and by giving contradictory information regarding these charges and their disposition.

Prosecutions

Mortgage Brokers
Charge: **Carrying on business as a mortgage broker while unregistered** **Against:** **Tom Pires / Mega Corp** **Verdict:** **Guilty** On January 11, 2006, Tom Pires pleaded guilty to carrying on business as a mortgage broker while unregistered, contrary to the *Mortgage Brokers Act*. He was fined $1,000 with a $250 victim surcharge fee.

Insurance
Charge: **Paying or allowing to be paid compensation in respect of placing or negotiating or renewing insurance on lives, and property or interests in Ontario, to a person not licensed as an agent under the *Insurance Act*.** **Against:** **Eduardo Tenorlas** **Verdict:** **Guilty** On January 25, 2006, Eduardo Tenorlas pleaded guilty to paying compensation to an unlicensed person in respect of placing insurance policies contrary to the *Insurance Act*. He was fined $1,200 in total.

Insurance
Charge: **Furnishing false information to the Superintendent under the Mortgage Brokers Act.** **Against:** **Beverly Dwyer-Wilson** **Verdict:** **Guilty** On February 8, 2006, Beverly Dwyer-Wilson pleaded guilty to furnishing false information to the Superintendent under the *Mortgage Broker's Act*. She was fined $1,500 based on a joint submission.

Hearings

An Advisory Board, established under the *Insurance Act*, 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/adjuster, as well as that put forward by counsel for FSCO, and then makes a recommendation to the Superintendent.

Life agent:	**Seong-Hee (Jessica) Min**
Advisory Board Hearing:	**January 30, 2006**
Decision:	**Licence suspended for three months commencing May 1, 2006**

An Advisory Board hearing was conducted in Toronto to consider whether Seong-Hee (Jessica) Min sought to mislead FSCO when she filled out her application for the renewal of her life insurance agent application. The Advisory Board found that Ms. Min had deliberately and consciously tried to mislead FSCO by trying to conceal that her employer, a registered investment dealer, had disciplined her for misconduct and that the Investment Dealers Association had issued a caution letter to her. The Advisory Board recommended a three-month suspension of her licence.

An Advisory Board hearing was conducted in Toronto to consider whether Seong-Hee (Jessica) Min sought to mislead FSCO when she filled out her application for the renewal of her life insurance agent application. The Advisory Board found that Ms. Min had deliberately and consciously tried to mislead FSCO by trying to conceal that her employer, a registered investment dealer, had disciplined her for misconduct and that the Investment Dealers Association had issued a caution letter to her. The Advisory Board recommended a three-month suspension of her licence.

By decision dated March 17, 2006, the Superintendent agreed with the recommendation of the Advisory Board and ordered that Ms. Min's life insurance agent licence be suspended for three months commencing May 1, 2006.

Regulatory Actions and Related Hearings

Under the *Insurance Act*, if the Superintendent intends to make an Order, a notice must first be given to those who may be affected and an opportunity for a hearing must be provided. Where there is a request for a hearing, the FST will hear the matter and decide whether or not the proposed Order should be made. Where there is no request for a hearing, the Superintendent may make the Order set out in the notice.

Where the Superintendent is of the opinion that the interests of the public may be prejudiced or adversely affected by any delay in the issuance of a permanent order, the Superintendent, without prior notice, may make an interim or temporary order that will take effect immediately on its making, and which shall become permanent on the 15th day after its making unless within that time the person requests a hearing before the FST.

Action:	**Cease and Desist Order**
Against:	**Sovereign General Insurance Company**
Date:	**March 8, 2006**

Following the issuance of a Notice of Proposed Order, the Superintendent issued a Cease and Desist Order on March 30, 2006 as he was of the opinion that Sovereign General Insurance Company ("Sovereign") had committed an unfair or deceptive act or practice by charging rates for coverages and categories of automobile insurance that were not approved or authorized by the Superintendent.

Pursuant to section 441(2) of the Act, the Superintendent orders Sovereign to reimburse all affected policyholders (both current and former policyholders) in a manner acceptable to the Superintendent.

Action:	**Permanent Cease and Desist Order**
Against:	**Carlos Castro**
Date:	**March 23, 2006**

On December 2, 2004, the Superintendent issued an Interim Cease and Desist Order under section 441 (4) of the Act against Carlos Castro and Manuel Castro. A request for hearing before the FST was made separately by both Carlos Castro and Manuel Castro.

By letter dated March 17, 2006, filed with the Tribunal, Carlos Castro withdrew his request for a hearing. On March 23, 2006, the Superintendent confirmed that the Interim Cease and Desist Order dated December 2, 2004, is a Permanent Order as of December 17, 2004.

The Order requires, among other conditions, that Carlos Castro and any agents or representatives thereof: immediately cease carrying on business as statutory accident benefits representatives; and, immediately cease advertising or holding themselves out, in any form, as statutory accident benefits representatives within Ontario.

12-Month Enforcement Action and Monitoring Activities Summary

Over the past 12 months (April 1, 2005 - March 31, 2006), FSCO took 201 enforcement actions. This represents a significant amount of enforcement activity. The chart below details the types of activities taken.

Type of Enforcement Action	Number of Cases
Letters of censure	89
Provincial Offences Court convictions and fines	10
Licence suspensions	12
Licence surrenders	40
Licence revocations	13
Cease & Desist orders	14
Undertakings	3
Paralegal terminations	17
Application denied	3
Total	**201**

In addition to enforcement actions, FSCO conducts ongoing enforcement monitoring through-out the year. Over the past 12 months, there have been 26,472 instances of enforcement monitoring. The chart below details the types of monitoring that were undertaken.

Monitoring Activities	Number of Occurrences
Police criminal record checks life agents/applicants/paralegals	23,944
Complaint reviews	315
Errors & Omissions insurance audits - insurance agents	1,998
Errors & Omissions insurance audits - paralegals	215
Total	**26,472**

Dispute Resolution Decisions

The Dispute Resolution Services Branch provides mediation, neutral evaluation, arbitration and appeal services as fair, cost-effective and timely alternatives to the court system. 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 that has unreasonably withheld or delayed the payment of benefits. Under section 282(11.2), a representative can be ordered to pay expenses personally in certain situations. Appeals are to the Director of Arbitrations, and can be heard by the Director or his Delegate.

Type of Decision	Arbitration
Date of Decision	January 25, 2006

File Number	A03–000433
Legislation	Bill 59
Appeal Status	No appeal
Applicant	Nuru HAIDER
Insurer:	Royal & SunAlliance Insurance Company of Canada
Type of Award	Expenses against representative; Rep excluded
Amount of Award	$300
Issue	Insurer obtained undertakings for productions from paralegal who then made no attempt to obtain the documents.
Findings	The Arbitrator found that, at the motion, the representative should have provided an admission, explanation, apology and commitment to fulfill his obligations. The representative had made spurious claims, and the Code requires that a representative not put forward any information he or she knows is untrue. The representative caused delay and incurred expenses without reasonable cause.
Order	1. Mr. Franko or his firm shall pay the costs of motion, fixed at $300. 2. Mr. Franko is excluded from the hearing.

Type of Decision	Arbitration
Date of Decision	February 28, 2006
File Number	A04–001771
Legislation	Bill 59
Appeal Status	No appeal
Applicant	Evelyn SILVA
Insurer:	York Fire & Casualty Insurance Company
Type of Award	Expenses against representative and applicant.
Amount of Award	$300
Issue	Whether applicant was in an accident.
Findings	Given the representative’s non-participation, disappearance part way through this proceeding, and unknown whereabouts, it was impossible to provide him with notice of a potential award of expenses against him. Further, based on his own actions in this case, the Arbitrator found that he caused expenses to be incurred without reasonable cause or to be wasted by unreasonable delay or other default, as set out in section 282(11.2) of the Act. The representative is liable for Insurers's expenses in the same manner and to the same extent as the applicant.
Order	Ms. Silva and Mr. Muslim are jointly and severally liable to pay York Fire's expenses in respect of the arbitration, in the amount of $1,943.52.

Financial Services Tribunal (FST) Decisions

There were no FST decisions in the first quarter of the year.

For the full text of previous Decisions/Orders, please visit FSCO's website at www.fsco.gov.on.ca or visit the FST's website at www.fstontario.ca.

Colin McNairn Chair Financial Services Commission of Ontario Chair Financial Services Tribunal	Bob Christie Chief Executive Officer Financial Services Commission of Ontario Superintendent of Financial Services

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