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Bulletin

No. G-06/07
General

Monitoring and Enforcement report - including prosecution and hearing decisions - January 1 to March 31, 2007

The Monitoring and Enforcement Bulletin reports on prosecution activities of the Financial Services Commission of Ontario (FSCO), decisions arising out of hearings under FSCO legislation and other regulatory activities that help ensure consumer confidence in the financial services sectors regulated by FSCO.

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 of the Automobile Insurance Division 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, health care providers, insurance companies, and other financial services sectors. 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 1,891 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, 2006	**Plus complaints received during the period**	**Less complaints in progress at end of March 31, 2007**	**Total number of complaint reviews completed during the period**
Agent	65	43	16	92
Paralegal	20	0	5	15
Health Care Provider	3	3	5	1

DISPOSITIONS				
	Total Cases Concluded	**Cases resolved**	**Cases closed**	**Cases forwarded for (potential) enforcement**
Agent	92	3	38	51

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 670 audits of life agents during the first quarter to ensure they met 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 administrative action may be contemplated.

Investigations initiated	
Agents	
Suitability	3
Complaints about agent conduct	23
Doing business without a licence	2
Credit Unions	
Doing business while unregistered	1
Insurance Companies	
Doing business without a licence	1
Loan and Trust	
Doing business while unregistered	1
Mortgage Brokers	
Doing business while unregistered	1
Complaints about conduct	1
Paralegals	
Complaints about conduct	1
Grand Total	**34**

Outcome of investigations	
A total of 45 cases were completed:	
○ Charges laid in Provincial Offences court	1
○ Minutes of Settlement and Superintendent's Orders issued	5
○ Cease & Desist Orders issued	1
○ Letters of Censure issued	7
○ Closed files (no enforcement action warranted)	31
Total	**45**

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 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 128 Letters of Warning were issued to life agents, all of whom were late in applying for licence renewal.

Letters of Censure

There were 118 Letters of Censure in addition to seven Letters of Censure that resulted from formal investigations.

Minutes of Settlement and Superintendent's Orders

Perron, Renee L.	By an order dated December 22, 2006, this agent's Life Insurance license was revoked. This agent has been deemed unsuitable to hold a license as she used one client's money to fund another client's policy.
Fair, Gregory D.	By an order dated January 5, 2007, this agent's Accident and Sickness Licence was revoked. The agent obtained a client's funds and used them for his own purposes and benefit without authorization.
Giles, Drew E.	By an order dated February 2, 2007, this agent's Accident and Sickness licence was revoked. The agent admitted that he submitted false applications in the name of non-existent clients.
Carpenter, William H.	By an order dated February 23, 2007, this agent's Accident and Sickness licence was revoked. This agent has been deemed unsuitable to hold a licence as he placed business without client's knowledge to receive commissions.
Whittier-Haswell, Jennifer	By an order dated March 15, 2007, this agent's life insurance licence was suspended for 3 months effective May 1, 2007. The agent had falsified a client's mutual fund statement by inserting her own name and address in place of her client's.

Prosecutions

Statute: Credit Unions and Caisses Populaires Act

Charge: Causing credit union to commit the offence of failing to comply with the requirements for adequate capital and liquidity

Against: André Filion, Lynda Semczyszyn, Claude Ouellette, Martin Buller, Angele Ratté, Gerry Touchette Norman Seguin and Kenneth Campbell

Verdict: Guilty

The above individuals were convicted on March 7, 2007, in Kapuskasing, of causing the Northland Savings and Credit Union to commit the offence of failing to comply with the requirements for adequate capital and liquidity. The conviction was based on a plea of guilty. The court imposed a fine of $405 and a victim fine surcharge of $95 per individual, based on 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, as well as that put forward by counsel for FSCO, and then makes a recommendation to the Superintendent.

There were no Advisory Board hearings for life agents and adjusters for the first quarter.

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 which shall 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: Stuart Kistruck

Date: January 31, 2007

On January 31, 2007, the Superintendent issued a Cease and Desist Order against Stuart Kistruck for committing an unfair or deceptive act or practice by furnishing misleading or incomplete information to the Financial Services Commission of Ontario.

Under the consent order, Stuart Kistruck will immediately cease and desist from, directly or indirectly, engaging in the business of insurance or carrying on the business of insurance, or otherwise undertaking insurance on behalf of another person or as an insurer, an agent or an adjuster or an employee or representative of an insurer or an agent or an adjuster, for a period of two years from the date of the order.

Twelve month enforcement action and monitoring activities summary

Over the past 12 months, FSCO took 259 enforcement actions. The chart below details the activity by type.

Type of Enforcement Action	Number of Cases
Letters of censure	166
Licence conditions via Minutes of Settlement	1
Paralegals via Minutes of Settlement	4
Provincial Offences Court convictions and fines	9
Revocation of sponsorship	1
Licence suspensions	3

Licence surrenders	53
Licence revocations	18
Cease & Desist orders	3
Paralegal terminations	0
Application denied	1
Total	**259**

In addition to enforcement actions, FSCO conducts ongoing enforcement monitoring throughout the year. Over the past 12 months, there have been 9,655 instances of enforcement monitoring. The chart below details the activity by type.

Type of Monitoring Activity	Number of Instances
Continuing education audits	70
Police criminal record checks life agents/applicants/paralegals	7,242
Complaint reviews	278
Errors & Omissions insurance audits - insurance agents	2,045
Errors & Omissions insurance audits - paralegals	20
Total	**9,655**

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	Appeal
Date of Decision	March 15, 2007
File Number	P06-00013
Legislation	SABS-1996
Judicial Review Status	No application for JR
Applicant	Denise and Diane Peters
Insurer	Aviva Canada Inc.
Type of Award	Special Award
Amount of Award	39,173.50 award revoked on appeal

Issue	Entitlement to Death Benefits
Findings	This was a death benefits claim. The applicants were the deceased's daughters who claimed they were entitled to the additional benefits that are payable to certain relatives where there is no spouse. The insurer determined that the deceased's separated husband was however a spouse and so the benefit was payable to him. The arbitrator disagreed, awarded the benefits to the daughters, and ordered Aviva to pay the maximum possible special award. The order was reported in Superintendent's Bulletin No. G-08/06. The Director's Delegate upheld the decision with respect to who gets the benefits, but revoked the special award on the grounds that: there was a novel question of law and a legitimate coverage issue; the Insurer had reason to conclude the husband was entitled to the benefits so it was not "officiously intermeddling" nor was it legally required to pay into court (these were additional criticisms leveled by the arbitrator); this was not a case where the insurer had paid nothing, and instead the payment should have been treated as a mitigating factor; finally, the Insurer is not held to a standard of perfection.
Order	Death benefits decision upheld but the special award revoked.

Type of Decision	Arbitration
Date of Decision	February 20, 2007
File Number	A05-002794 and A05-002795
Legislation	Bill 59
Appeal Status	No Appeal
Applicant	Premalatha Satputhiran and Thangarajah Satputhiran
Insurer	State Farm
Type of Award	Special Award
Amount of Award	$500 for each applicant
Issue	Breach of DAC process
Findings	Although the DAC rejected similar treatment plan, the insurer was required to comply with the DAC process in section 38(12)(8). Breach means benefits unreasonably withheld. Award on high end of percentage scale justified by the small amount payable.
Order	State Farm ordered to pay each applicant special award of $500.

Financial Services Tribunal decisions

Name	Ellen MacDougall
Sector	Insurance
Date of decision	January 10, 2007
Disposition	The Tribunal approved the Minutes of Settlement dated January 8, 2007, and suspended the life agent licence of Ellen MacDougall for a period of three months commencing October 13, 2006.

For the full text of previous decision and orders, please visit FSCO's website at www.fsco.gov.on.ca, or visit the FST's website at www.fstontario.ca.

FSCO's monitoring and enforcement reports on the pensions sector appear separately in FSCO's Pension Bulletins.

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