

Date: 2015-10-21

IN THE MATTER OF
THE *INSURANCE ACT*,
R.S.N.B. Chap. I-12

-and-

IN THE MATTER OF
DEAN J.E. FLETCHER (of Harvey Insurance Limited)

REASONS FOR SUPERINTENDENT'S DECISION AND ORDER*

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DECISION MAKER: Rick Hancox, Acting Superintendent of Insurance

DATE OF HEARING: 11 August 2015

DATE OF REASONS: 21 October 2015

APPEARANCES: Gregory MacDonald – Counsel for Mr. Dean J.E. Fletcher
Mark McElman – Counsel for Staff of the Financial and Consumer Services
Commission

REASONS FOR SUPERINTENDENT'S DECISION AND ORDER

I. BACKGROUND

- [1] In March 2015, Staff of the Financial and Consumer Services Commission (Staff) responded to a complaint from a client of Dean Fletcher, the owner of Harvey Insurance Limited (Harvey's). Mr. Fletcher is a licenced insurance broker. He has been licensed since 1988, holding a class IV Brokers Licence since 1995.
- [2] As a result of the complaint, Staff launched an on-site compliance review of Mr. Fletcher and Harvey's. In the course of this review, Staff obtained documents and evidence from Mr. Fletcher, various insurers and several clients.
- [3] After examining the documents and evidence, Staff determined that Mr. Fletcher's actions and conduct raised into question his competency and trustworthiness to transact business as an insurance broker. Specifically, Staff concluded that Mr. Fletcher had:
- a. Failed to obtain insurance policies for clients who were led to believe, or who reasonably assumed that policies were in place;
 - b. Accepted payment of premiums for non-existent policies;
 - c. Directed payment of premiums other than to Harvey's proper trust account contrary to section 364(2) of the *Insurance Act*;
 - d. Failed to pay over insurance premiums to the insurer, contrary to section 364(4) of the *Insurance Act*;
 - e. Failed to maintain proper records in accordance with the obligation created by section 14 of the *Insurance Act*;
 - f. Failed to deal with Staff in a *bona fide* manner during certain aspects of the review conducted.

In addition, Staff determined that Mr. Fletcher conducted his insurance business at an address other than that registered for Harvey's.

- [4] As a result of the complaint and subsequent review, Staff prepared a *Report to the Acting Superintendent of Insurance in Respect of Dean Fletcher of Harvey Insurance Limited* dated 4 June 2015 (the Report). The Report describes the details of Staff's findings.
- [5] The Report contains the following recommendation from Staff to the Superintendent:
- "Staff recommend that the Acting Superintendent revoke Fletcher's licence to carry on the business of an insurance broker pursuant to subsection 352(8)(a) and 352(8)(d) of the Insurance Act. In the alternative, Staff requests that the acting Superintendent of Insurance suspend Fletcher's licence for a significant period of time."*
- [6] Mr. Hancox, CEO of the Financial and Consumer Services Commission, was appointed as Acting Superintendent of Insurance by the Commission (Superintendent) on 25 May 2015 to hear this matter.

- [7] Mr. Fletcher was provided with a copy of the Report by Staff on 4 June 2015 and advised that a hearing would be scheduled to hear this matter. In addition, Mr. Fletcher was advised of his ability to request the nomination of an advisory board pursuant to subsection 352(9.1) of the *Insurance Act*.
- [8] Attempts to contact Mr. Fletcher by phone and email were made by the Superintendent on 29 June 2015 to advise him of the intention to hold a hearing into this matter, with suggested dates, and to confirm that Mr. Fletcher did not wish to exercise the option of an advisory board. Messages were left requesting return contact. No response was received to either of these contacts or to follow-up contacts by phone and email on 6 July 2015.
- [9] As no response had been received from Mr. Fletcher, a Notice of Hearing was issued by the Superintendent on 9 July 2015 setting a hearing date for 22 July 2015. This notice advised Mr. Fletcher of his right to counsel and language of choice, as well as the intention to proceed in his absence should he fail to appear. In addition, the covering correspondence stressed that a possible consequence of the hearing was the revocation of his licence and a prohibition of his operating in the insurance industry. It emphasised the gravity of the situation and the consequences. Acknowledgement and return contact were requested. This notice was delivered by email on 9 July 2015 and served in person by Staff to Mr. Fletcher on 10 July 2015.
- [10] No response was received from Mr. Fletcher. However, on 14 July 2015, correspondence was received by Mr. Gregory MacDonald that he had been requested to act on Mr. Fletcher's behalf in this matter. He also advised of his availability.
- [11] Staff corresponded with Mr. MacDonald to ensure he had the Report and the Notice of Hearing.
- [12] A series of correspondence was sent to Mr. MacDonald to determine a suitable date. In the absence of a response, a revised Notice of Hearing was issued setting the hearing date for 11 August 2015. Mr. Fletcher and Mr. MacDonald were advised by email on 22 July 2015. The hearing proceeded as scheduled on that date.

II. FACTS & SUBMISSIONS

- [13] The facts of this case are as presented in the *Report to the Acting Superintendent of Insurance in Respect of Dean Fletcher of Harvey Insurance Limited* dated 4 June 2015, which was entered (with consent of all parties) as an exhibit in the hearing before the Superintendent. The following documents were also entered (with consent of all parties) as exhibits:
1. *Report to the Acting Superintendent of Insurance in Respect of Dean Fletcher of Harvey Insurance Limited* dated 4 June 2015¹ (the Report)
 2. Correspondence to Mr. Fletcher from Staff of the Commission dated 4 June 2015, re "Application before the Acting Superintendent of Insurance"
 3. Notice of Hearing dated 9 July 2015 scheduling the hearing of this matter for 22 July 2015

¹ Note: Staff provided one correction to the Report: paragraph 105 on page 26 makes an incorrect reference to the insurance documents attached in Tab 56. The correct reference is to CR Storage.

4. Correspondence from Mr. MacDonald to Staff of the Commission dated 14 July 2015 advising that he is acting on Mr. Fletcher's behalf in this matter
5. Correspondence to Mr. MacDonald from Staff of the Commission dated 15 July 2015 providing copies of the Notice of Hearing and Report
6. Notice of Hearing dated 21 July 2015 rescheduling the hearing of this matter for 11 August 2015
7. Correspondence to Mr. Macdonald from the Superintendent dated 16 July 2015; 17 July 2015; 20 July 2015 and 22 July 2015 requesting availability and attaching the Notice of Hearing which rescheduled the hearing to 11 August 2015

- [14] On behalf of his client, Mr. MacDonald acknowledged receipt of the Report and the documents listed above, and indicated he had no issues or questions with respect to them.
- [15] Mr. MacDonald further confirmed that his client did not dispute the Report, and they considered it fair and accepted it as filed.
- [16] In the uncontested Report, Staff identified and provided details on several situations involving 11 different clients stretching over a three-year period where Mr. Fletcher had:
- a. Failed to obtain insurance policies for clients who were led to believe, or who reasonably assumed that policies were in place;
 - b. Accepted payment of premiums for non-existent policies;
 - c. Directed payment of premiums other than to Harvey's proper trust account contrary to section 364(2) of the *Insurance Act*;
 - d. Failed to pay over insurance premiums to the insurer, contrary to section 364(4) of the *Insurance Act*;
 - e. Failed to maintain proper records in accordance with the obligation created by section 14 of the *Insurance Act*;
 - f. Failed to deal with Staff in a *bona fide* manner during certain aspects of the review conducted.

In addition, Staff determined (and noted in the Report) that Mr. Fletcher conducted his insurance business at an address other than that registered for Harvey's.

- [17] Staff also indicated in the Report that Mr. Fletcher has a prior history of regulatory infractions for similar conduct in 2006. This conduct resulted in Mr. Fletcher being placed under supervision with terms and conditions on his licence.
- [18] In response to the Report, Mr. MacDonald presented an explanation on behalf of his client for why the situation at Harvey's had degenerated to the state presented in the Report. He stressed that there was no intent to defraud on Mr. Fletcher's part. Rather he indicated that Mr. Fletcher was overwhelmed as a single practitioner and a variety of factors contributed to his failure to act. He described stresses caused by constructing and financing a new building; family issues; not having proper procedures in place to run his business; being overwhelmed; and to having a mental breakdown.

- [19] Mr. MacDonald then advised that Mr. Fletcher had dealt with these issues; he submitted that Mr. Fletcher's family and personal issues were resolved and a number of corrective actions had been put in place in the office. These included hiring extra help with accounting or business expertise; setting up direct pay to insurance companies; and instituting checks and balances in place to address red flags.
- [20] Mr. MacDonald raised the potential supervision of Mr. Fletcher by his parents as an option for the Superintendent to consider. Mr. Fletcher's parents attended the hearing. They advised that they are both currently licenced as class IV insurance brokers and were the former owners of Harvey's. They advised the Superintendent they understood the implications of a supervision order and indicated their willingness to supervise Mr. Fletcher, should that be the decision.
- [21] Mr. Fletcher was also given the opportunity to address the Superintendent, and apologized for the situations noted in the Report.
- [22] While the Superintendent took these mitigating factors into consideration, it is noted that other than Mr. MacDonald's explanation of Mr. Fletcher's situation and description of its resolution and corrective action taken, no supporting evidence was presented to confirm the presence, magnitude or extent of the issues. There has also been no supporting evidence of the described corrective action taken by Mr. Fletcher to enable the Superintendent to verify its existence or determine its adequacy or sufficiency.
- [23] During the hearing, it was also noted that a request by Staff to Mr. Fletcher on 5 May 2015 to provide proof of errors and omissions insurance (E&O Insurance) was outstanding. Mr. MacDonald indicated that this would be forthcoming and in fact this was then provided to the Superintendent on 12 August 2015. The certificate provided indicated \$2 million liability coverage effective 1 June 2015. However, a subsequent request to confirm this insurance coverage was in place prior to 1 June 2015 remains outstanding. As such, the Superintendent has no verification that Mr. Fletcher had E&O Insurance in place during the time covered by the review.
- [24] Along with the Report, following the hearing Staff provided four cases² for consideration by the Superintendent. While not bound by these decisions, the Superintendent did review them and they provided some guidance and context to assist with the Superintendent's analysis. The Superintendent considered the case law only, and not Staff's commentary that accompanied the cases.

III. ISSUE

- [25] The issue presented to the Superintendent through the Report and hearing is whether Mr. Fletcher's conduct as described in the Report warrants the revocation of his licence, or failing that, a suspension of his licence for a significant period of time.

² Fenelon v. Insurance Council of British Columbia, 2009 CarswellBC 1177, [2009] B.C.W.L.D. 4645; Ryan v. Law Society (New Brunswick), 2003 SCC 20, 2003 CSC 20; Lee v. Ontario (Superintendent of Financial Services), 2002 CarswellOnt 8030, 2002 CarswellOnt 8031; Re: Todd Armstrong (Registered Insurance Brokers of Ontario)

IV. ANALYSIS

- [26] Staff contend that Mr. Fletcher's conduct and actions as set out in the Report violate paragraphs (a) and (d) of subsection 352(8) of the *Insurance Act*, and as a result require either the revocation or suspension of Mr. Fletcher's license. These paragraphs read:

352(8) A licence issued under this section may be revoked or suspended by the Superintendent if, after due investigation and a hearing, he or she determines that the holder of the licence,

(a) has violated any provision of this Act by any act or thing done in respect of insurance for which such licence is required,

[. . .]

(d) has demonstrated his incompetency or untrustworthiness to transact the insurance business for which such licence has been granted, by reason of anything done or omitted in or about such business under the authority of such licence,

[. . .]

- [27] One of the initial considerations in this matter was whether Mr. Fletcher was acting with intent to defraud, or if his actions were instead a result of incompetency or untrustworthiness. The uncontested Report sets out how Mr. Fletcher took money from some of his clients; placed it in his personal account; and advised clients that he had purchased insurance coverage for them when in fact he had not. Mr. MacDonald represented at the hearing that there was no intent to defraud, and Mr. Fletcher's behaviour was the result of ongoing personal issues and feeling overwhelmed. Staff indicated that they agreed with the assertion that there was no intent to defraud.

- [28] With respect to *Insurance Act* violations (paragraph 352(8)(a)), the uncontested Report shows that Mr. Fletcher has violated subsections 364(2) and (4) in that he took payment for premiums from clients and directed them to his personal account and in some cases did not pay them to the insurer. These subsections read:

364(2) An agent or broker shall, immediately upon receipt, pay into the trust account referred to in subsection (1) any money or other consideration held or received on account of an insurer or an insured.

[. . .]

364(4) An agent or broker who acts in negotiating, renewing or continuing a contract of insurance, other than life insurance, with a licensed insurer and who receives from an insured any money or other consideration as a premium for such contract shall pay such premium over to the insurer within fifteen days after written demand made upon him therefor, less his commission and any deductions to which, by the written consent of the insurer, he is entitled.

- [29] Staff noted Mr. Fletcher's reluctance to provide access to his files as required under paragraph 14 of the *Insurance Act*. Staff's on-site review of Mr. Fletcher's files revealed incomplete or missing files contrary to good business conduct. In addition, the Report makes reference to some files showing blank documents, such as payment authorization forms complete with client signature.

- [30] These violations of the *Insurance Act* clearly meet the conditions of 352(8)(a).

- [31] With respect to paragraph 352(8)(d), there is the question of whether Mr. Fletcher has demonstrated incompetency or untrustworthiness in his ability to transact insurance business. Mr. Fletcher has been in the insurance business since 1988, holding a Class IV license since 1995. He knows what has to be done in routine insurance transactions in order to provide his clients proper insurance coverage; however, he failed to complete these transactions. In fact, in the situations described in the Report, he went a step further and purposely misled some of his clients into believing that he had completed the transactions and secured them proper insurance coverage. And not only did Mr. Fletcher mislead these clients into believing they had insurance coverage, in some instances he fabricated documentation to support that notion.
- [32] In one example from the Report, in December 2014, Mr. Fletcher's mother (a former owner of Harvey's until October 2014) highlighted the most urgent cases needing his attention. Despite this extra step, these files were still not addressed.
- [33] In other instances, he took money from clients for coverage that they did not have and in at least one case led the client to believe she had coverage with a particular company even though that insurer that did not even provide that type of coverage in the province.
- [34] Some of Mr. Fletcher's actions are so egregious that they could be considered breaches of 352(8)(c) '*guilty of a fraudulent practice*'. In any event, Mr. Fletcher's conduct and actions demonstrated a level of incompetence and untrustworthiness not expected by clients of their insurance broker, clearly meeting the test set out in paragraph 352(8)(d).
- [35] When questioned at the hearing about what would have happened to his uninsured clients if they had suffered a loss, Mr. Fletcher's submission, made through his counsel, was that his plan was to cover any claims, should they arise, through his E&O Insurance. As noted above, proof of current E&O Insurance was requested by the Superintendent and provided. However, confirmation that this coverage was in existence prior to 1 June 2015 remains outstanding. As such, it is unknown whether or not Mr. Fletcher would have been in a position to have covered any losses should they have occurred.
- [36] It is also worth noting that Mr. Fletcher was placed under supervision and was required to undergo retraining as a result of conduct in 2006 which also demonstrated incompetence and untrustworthiness. At that time, he paid from his own pocket the insurance expense claims of a client who had suffered a loss and thought she had coverage when she in fact did not.

IV. SHOULD AN ORDER BE ISSUED?

- [37] The *Financial and Consumer Services Commission Act* provides, at section 2, that the purpose of that Act is to "*enable the Commission to provide regulatory services that protect the public interest and enhance public confidence in the regulated sectors ...*".
- [38] It is the Superintendent's responsibility to regulate the industry and those individuals who operate in the industry within the parameters of the *Insurance Act* and its regulations. Subsection 3(1) of the *Insurance Act* states that "*Subject to the direction of the Financial and Consumer Services Commission, the Superintendent shall have general supervision of the business of insurance within the Province, see that the laws relating to the business of insurance are enforced and obeyed...*".

- [39] Subsection 352(8) of the *Insurance Act* provides the Superintendent with the discretion to either revoke or suspend a licence, if after due investigation it is determined that a provision of this section is met. Staff have recommended that the Superintendent revoke Mr. Fletcher's licence to carry on the business of an insurance broker pursuant to paragraphs 352(8)(a) and 352(8)(d) of the *Insurance Act*.
- [40] The Report outlines the situation that Staff found during their review of Mr. Fletcher and Harvey's. The review was initiated as the result of a complaint. The Report was accepted in its entirety by Mr. Fletcher. The documentation and evidence contained in the Report meet the conditions of paragraphs 352(8) (a) and (d). Therefore the Superintendent has the ability to revoke or suspend Mr. Fletcher's licence, or to not take any action based on the magnitude of the infraction and any mitigating factors.
- [41] It is clear based on the information in the Report that some action is warranted. Mr. Fletcher's violations of the *Insurance Act* are not minor; the nature of his conduct is not inconsequential; and this is the second occasion that this kind of conduct has been detected. The first instance resulted in Mr. Fletcher being placed under supervision.
- [42] Therefore the only appropriate course of action is to either revoke or suspend Mr. Fletcher's licence.
- [43] The Superintendent of Insurance, as the regulator, performs a gatekeeper function in the granting of licences to those individuals who meet the qualifications needed to operate in the insurance industry. Maintaining the standards and operating in compliance with the *Insurance Act* and regulations are the conditions of retaining that licence. The *Insurance Act* provides the Superintendent with the ability to place a licence-holder under supervision to help ensure compliance or to revoke the licence if it is determined that the individual is no longer suited to operate within the industry. These actions by the regulator are a key component of protecting the public interest and enhancing public confidence in the regulated sectors.
- [44] Mr. Fletcher's clients placed their trust in him to provide them proper insurance coverage to protect them from loss. Mr. Fletcher abused this trust with a number of his clients over a period of years. He left them vulnerable to potentially significant financial loss which could have had a devastating financial and emotional impact on them and their families.
- [45] Mr. Fletcher's reluctant cooperation in Staff's review, his lack of response to the Superintendent's communication with respect to a pending hearing and his unsubstantiated explanation of the circumstances (personal and professional) that led to the current situation at Harvey's are significant factors. They leave one to believe that he does not fully appreciate the gravity of the situation and the potential impact on his ability to continue operating in the insurance business. Nor is it clear that Mr. Fletcher fully appreciates the potential consequences that his actions could have had on his clients.
- [46] This is not the first occasion where Mr. Fletcher has undertaken actions that require regulatory intervention. His licence has been subject to supervision before; obviously, supervision did not have the desired effect. And suspension, though a severe sanction, leaves the opportunity for this to occur in the future. Mr. Fletcher's actions, as detailed in the Report, leave one to question his suitability to operate in the industry at all.

[47] The Superintendent has a responsibility to see that the public interest is protected and that consumers have confidence that the industry operates properly, fairly and with integrity. Those working in the industry need to have the confidence that the industry is properly regulated and that those operating in the industry are competent to do so.

V. DECISION AND ORDER

[48] Based on the facts and analysis as outlined above, it is clear to me that Mr. Fletcher has violated provisions of the *Insurance Act*. He has demonstrated his incompetency and untrustworthiness to transact the insurance business. As such, he should not have the right to operate in the industry. Therefore, I hereby order that Mr. Fletcher's licence to operate in the insurance industry be revoked pursuant to paragraphs 352(8)(a) and 352(8)(d) of the *Insurance Act*.

Dated this 21th day of October 2015.



Rick Hancox

Acting Superintendent of Insurance

