

Disciplinary Hearing Decision

Donald Ralph Sly

Hearing Date: Tuesday, March 20, 2012

Place: Saskatchewan Life Insurance Council Office
310 – 2631 – 28th Avenue
Regina, Saskatchewan, S4S 6X3

Hearing Committee: Sheila F. Hart, Chair
Gil Ennis, CFP, CLU, CH.FC
Ron Pugsley, BA, CLU, CFP, CH.FC, CHS, EPC
Rod Tyler, CFP, CLU, RFP

Appearances: John Waugh, Life Insurance Council Complaints
and Investigation Committee Representative

Witnesses: April Stadnek, Life Insurance Council Complaints
and Investigation Committee Representative

Origins of the Case

The Complaints and Investigation Committee of the Saskatchewan Life Insurance Council reviewed a complaint from Kenneth Moore (hereinafter referred to as "Mr. Moore") against Donald Ralph Sly. As a result of the review, the Complaints and Investigation Committee determined that Donald Ralph Sly (hereinafter referred to as "Mr. Sly") be required to appear before a Disciplinary Hearing Committee (hereinafter referred to as "DHC") of the Life Insurance Council to answer the Committee's allegations of misconduct that rise from Mr. Sly's insurance dealings with Moore stated as:

1. Sly violated Bylaw 8(1)(a) when he:
 - a) provided information to the Complainant that was false or misleading;
 - b) did not invest \$139,650.00 per the Complainant's instructions or at all;
 - c) misled Council staff with respect to the investment of the Complainant's monies.
2. Sly violated Bylaw 8(1)(b) when he:
 - a) did not respond to a demand for information from the LIC;
 - b) sent false and/or misleading information to the Complainant; and
 - c) did not make the investments per the wishes of the Complainant.
3. Sly violated Bylaw 8(2)(b) when he:
 - a) did not invest the \$139,650.00 the Complainant allowed Sly access to for investment purposes;
 - b) misled the LIC compliance staff by advising staff that approximately \$30,000.00 of the investment monies remained in an investment account for the Complainant and that \$10,000.00 of the investment monies remained in an account for the Complainant's grandchild;
 - c) misled the LIC compliance staff by advising staff that he used a third party to invest the Complainant's money on his behalf; and
 - d) did not respond to a July 18, 2011 demand for information from the LIC.

4. Sly violated Bylaw 8(2)(c) when he:
 - a) misrepresented where the Complainant's investment monies were placed. The misrepresentation was made on October 31, 2006 when Sly sent an email to the Complainant advising the Complainant that his investment dollars have been invested in two types of investments:
 - i) one a segregated fund of about \$80,0000.00; and
 - ii) the second investment of \$50,000.00 in an "in-house investment trust".
 - b) sent via email on November 14, 2007 a two page account statement from Risk Management Plus which misrepresented investments purportedly made:
 - i) The 1st page of the account statement indicates that the Complainant holds five Ideal Segregated Funds with a closing value at October 31, 2007 of \$82,354.85.
 - ii) The 2nd page of the account statement indicates that Risk Management PLUS holds in trust for the Complainant a total current accrual of \$57,229.61 in what is termed "Profit Sharing MGA/Advisor Funds."
5. Sly violated Bylaw 8(2)(h) when between November 20, 2006 and July 22, 2008 he used the Complainant's investment dollars to pay:
 - a) his outstanding HSBC Canada (HSBC) account debit balance of \$17,372.55;
 - b) \$17,000.00 to MBNA Canada as payment on this credit card;
 - c) \$17,000.00 to AMEX Bank of Canada as payment on this credit card; and
 - d) \$86,000.00 through 17 separate cheques to his wife.

Bylaws

Bylaw 8(1) For the purpose of the Act, regulations and bylaws, misconduct is a question of fact but includes any matter, conduct or thing, whether or not disgraceful or dishonorable, that is:

- (a) contrary to the best interests of the consumer or licensees or insurance companies; or
- (b) may harm the standing of licensees in the insurance industry.

Bylaw 8(2) Without restricting the generality of subsection (1), a licensee may be guilty of misconduct if the licensee:

- (b) demonstrates an unsuitability or an untrustworthiness to act as a licensee;
- (c) in the course of promoting, selling or servicing insurance business, provides in any advertising or other communications information that is false or misleading;
- (h) fails to place the interests of the consumer before those of the licensee or others;

Introduction and Preliminary Matters

The DHC convened the hearing at 9:00 a.m. on Tuesday, March 20, 2012. At that time and throughout the hearing Mr. Sly did not appear and no one appeared on his behalf.

Before any evidence was called, the DHC was presented with the "Investigative Report" of the Complaints and Investigation Committee of the Life Insurance Council of Saskatchewan and a Binder of Exhibits (Exhibits 1 to 28). The DHC was advised that Mr. Sly had been provided with a copy of these two pieces of material prior to the date of the hearing.

The initial preliminary matter was to amend the Notice of Hearing on page 2. In paragraphs 1 and 3 under the heading "By reason of the following Allegations", the Notice of Hearing incorrectly referred to the monetary amount of "\$139,650,000.00". The Notice was amended to properly read "\$139,650.00".

The DHC then addressed the issue as to whether or not Mr. Sly had received proper notice of the hearing. The DHC was advised that the Notice of Hearing was sent by registered mail with covering letter dated January 30, 2012. The letter was mailed to 442 A.E. Adams Way, Saskatoon, SK, S7K 5N6 being the address Mr. Sly provided to the Life Insurance Council on his annual license renewal application. The registered letter was signed for by "Kaitlyn Sly" on January 31, 2012 at 12:15 according to Canada Post records in the Binder of Exhibits. Mr. Waugh and Ms. Stadnek submitted that the Notice of Hearing was deemed served, relying upon section 421 of *The Saskatchewan Insurance Act* which reads:

421. Every applicant for a licence shall state in the application an address for service in Saskatchewan, and any notice given by the superintendent pursuant to this Act or the regulations shall for all purposes be deemed to be sufficiently served if delivered or sent by registered mail to the applicant at the latest address for service so stated.

The DHC was also advised that many attempts were made over the past 8 months by Mr. Waugh and Ms. Stadnek to contact Mr. Sly by telephone using the four numbers known. The most recent attempt was made March 19, 2012. Despite leaving telephone messages Mr. Sly never returned calls. The DHC was further advised that no mail directed to the above noted address was ever returned to the Insurance Council.

The DHC concluded that proper notice of hearing had been served on Mr. Sly and allowed the hearing to proceed. The DHC relied upon Bylaw 10, "Discipline Process", section 1(9) which reads:

Where the licensee fails to attend the hearing, the discipline committee may, on proof of service of the notice mentioned in subsection (1), proceed with the hearing in the absence of the licensee.

A court reporter was present at the hearing.

Evidence from the Hearing

During the hearing the following additional documents were received into evidence and marked as follows:

Exhibit 29 – ISC Corporate Registry Search for an Entity (1 page)

Exhibit 30 – Letter May 29, 2011 Standard Life Assurance Company of Canada to Ms. Stadnek, Insurance Council of Saskatchewan with attachments (8 pages)

Exhibit 31 – HSBC Bank Canada, Saskatoon Branch, statements on account of Don Sly, July 23, 2006 to July, 2011 (66 pages)

Exhibit 32 – Advisor.ca bulletin (1 page), Investment executive bulletin (1 page), IIROC decision Re Ahn (4 pages), and IIROC decision Re Lalonde (4 pages)

Mr. Waugh, representing the Complaints and Investigation Committee (hereinafter referred to as "CIC") called one witness, April Stadnek, who provided sworn testimony.

Uncontested Facts

Mr. Sly had been licensed with the Saskatchewan Life Insurance Council as a Life including Accident and Sickness insurance agent since 1986. Prior to that date he had been licensed through the Saskatchewan Superintendent of Insurance in the same capacities. Mr. Sly's license was suspended May 20, 2011 at his request (Exhibit 1). Prior to the date of suspension Mr. Sly's license had been sponsored by Canada Life Assurance Company and he held agent contracts with Standard Life Assurance Company of Canada and Transamerica Life Canada. He holds the following designations relating to the industry: CFP (Certified Financial Planner); CLU (Canadian Life Underwriter); and, CH.F.C. (Chartered Financial Consultant).

Mr. Sly operates his insurance business under the name "Risk Management Plus", which is not a registered corporation or business name (Exhibit 29). Risk Management Plus is not a licensed entity with the Saskatchewan Life Insurance Council.

The Life Insurance Council received a complaint from the Securities Division of the Saskatchewan Financial Services Commission April 7, 2011. Mr. Moore had initiated a complaint with that regulatory body. It was determined that Mr. Sly was licensed with the Life Insurance Council and the complaint was properly directed to that regulatory body.

The following is a brief statement of the facts. Mr. Sly's wife is Mr. Moore's first wife's sister. Mr. Moore presently lives in the Philippines. Mr. Moore provided to the Financial Services Commission many emails that were exchanged between Mr. Moore and Mr. Sly from 2006 forward (Exhibit 3). These emails were then provided to the Life Insurance Council Complaints and Investigation Committee (CIC). During this time frame Mr. Moore had lived in Germany, travelled extensively in Asia and moved to the Philippines. In 2006 Mr. Moore inherited money from his father's estate. He had requested Mr. Sly to invest his inheritance. The amount for investing was \$139,650.00. At one time Mr. Moore was in Canada when he left three signed blank Bank of Montreal cheques with Mr. Sly to facilitate investing. Mr. Sly deposited Mr. Moore's \$139,650.00 into his own account on November 20, 2006. Mr. Sly advised Mr. Moore that his money was invested. Mr. Moore has attempted to get his money back but Mr. Sly has never returned it. There is no banking record to establish that the \$139,650.00 was moved out of Mr. Sly's account into any investment. The following is a more detailed review.

There are many emails in Exhibit 3 and Exhibit 4 whereby Mr. Moore and Mr. Sly correspond about the investing of the funds. Only very pertinent ones are referred to below.

August 13, 2006 Mr. Moore wrote to Mr. Sly: (Exhibit 4(a))

"OK here is the deal. The lawyer has deposited that cheque for 90K. It should have cleared by now. So you can fill in that cheque for $49,650.00 + 90,000.00 = 139,650$ and clean out the account. That leaves them with 6.61 to pay the last months fees with then I'm out of that nasty mess! I need to have this money in something that makes me money but also gives me access if necessary. It can't be locked in too tight. I understand this means I will make less but what can I do? Or split it and put in 50K into a more long term deal but something I can get to if necessary...."

September 6, 2006 Mr. Moore wrote:

"Just wanted to check on the status of that money. Is it invested now?"

October 12, 2006 Mr. Moore wrote:

"Just thought I had better check on that money. Did it finally get deposited? Hope so because it is just losing value if it sits. Let me know if there is anyway I can push this through if it hasn't happened yet."

October 31, 2006 Mr. Sly wrote: (Exhibit 4(b))

"I am depositing $(6.61 * 4)$ so \$30.00 into your account to make up for the monthly fees or else the check may bounce. I didn't see a reply to an email I sent two weeks ago with a spreadsheet attachment and based on your query I doubt you got it. The funds are invested in 2 types of investments. One a segregated fund of about ~ \$80,000 that is invested in a combination of stocks and bonds with reasonable expectation to earn 7 to 9 percent. The fund value will fluctuate but does have a guarantee of principal less withdrawals. There are no fees or charges to get the funds invested but there is a depleting back end charge depending how long the funds are invested. If you pulled all the money out tomorrow there would be a 6% fee. In 6 years there is no charge. All in all it is still cheaper than most brokerage charges. Up to 12 percent of the funds can be withdrawn annually (about 10,000) without any charges. The funds are not locked in but if left in, the long term earnings are above the average for competitors funds. ... the second type that I sent the spread sheet for is more locked in but has a guaranteed 12 percent earnings for 5 years on \$50,000. It is into an in-house investment trust through the MGA I am part of. The limit per broker is 200K and cannot be RSP funds. Seeing as I don't have that amount to put in I have you and 5 others invested. Interest is paid out in the 5th year. \$10K can be withdrawn in year 3, \$15K in year 4 and \$25 plus interest in the 5th year. Currently the projection is 16% earnings for this year. Because it is an in-house deal the net tax rate is about 21% and payouts are net of taxes and you don't need to file taxes...."

November 19, 2006 Mr. Sly wrote to Mr. Moore: (Exhibit 4(c))

"I just wanted to confirm the cheque for \$139,650.00 was sent to be deposited on Thursday 16th but I have not yet seen it clear your account. I went to BoM and deposited 26.44 (Sept, Oct, Nov, Dec for 6.61) on Friday to make sure the account would have sufficient funds. Any way to make sure there is enough in your account? I am wanting to make sure I didn't miscalculate the amount needed to be deposited into your account to make up for the monthly fees...."

Also on November 19, 2006 Mr. Moore wrote to Mr. Sly (see Exhibit 4(a)):

"Just an after thought or question. Both of these are totally flexible investments right:? I mean, I don't want anything that gets locked down or with high penalties. Just a good return with total flexibility...."

August 23, 2007 Mr. Moore wrote to Mr. Sly:

"Can you please give me an updated status of those investments as I may want to move them if they are at a reasonable status....By the way, is there any sort of online status report that I could access and view?"

October 3, 2007 Mr. Moore to Mr. Sly:

"I've been trying for weeks to get in touch with you. Please read my mails and reply as soon as possible. I need the full information on my investments and the current balances asap.....I really need to see some paperwork soon since I haven't seen anything since depositing the funds. ..."

October 10, 2007 Mr. Moore to Mr. Sly:

"I'm still waiting for reply to my many emails. Please attend to this asap. I shouldn't have to keep hounding you for my investment information. This is really getting uncool. This needs to be done immediately."

November 14, 2007 Mr. Sly wrote to Mr. Moore: (Exhibit 4(d))

"Here is the copy of the cheque I put into your account to make sure fees were paid
Deposit2644_to_Ken_Nov_2006.pdf
...The money laundering and international terrorist rules are creating problems for international investors.

MGA cheque August NSF.pdf
Cheque that bounced due to BMO
Deposit confirmedNov20_2006.pdf
Making sure it went into ITF (In Trust For) account
Nov 20_2006 cheques front.pdf
Nov 20_2006_cheques front.pdf
Cheques to investments
SegFunds.xls
Segfund unit value history
Client Summary Statement.doc
Current statement of investments"

With this November 14, 2007 email, copies of the documents found at Exhibit 4(d), 4(d)(i) and 4(d)(ii) were forwarded by Mr. Sly to Mr. Moore. The documents are:

- Cheque drawn on Mr. Sly's HSBC account #446504-150 dated August 31, 2006 payable to "Carenest Group of Co" (or Carevest) for \$200,000.00 with memo:"MGA/Dealer Profit Sharing Ken-50/Brent-50/Donna-40/Mike-25/Don-15/Alf-20"

- Three cheques drawn on Mr. Sly's HSBC account #446504-150 dated November 20, 2006:
 - (i) \$10,000.00 payable to "Performance Financial" re: "Benjamin Bruckard",
 - (ii) \$79,650.00 payable to "Performance Financial" re" Kenneth J. Moore".
 - (iii) \$200,000.00 payable to "Carevest Group of Co" (or Carenest) re "Ken-50/Brent-50/Donna-40/Mike-25/Don-15/Alf-20"
- Cheque for \$26.44 dated November 16, 2006 payable to Ken Moore drawn on Donald and Teresa Sly's joint account #7409-579 with Bank of Montreal (BMO).
- Risk Management PLUS Account Statement September 30, 2007 to October 31, 2007 for Account number: ITF284804, with Kenneth James Moore as Annuitant in the name of Risk Management PLUS/Don Sly ITF Kenneth James Moore. This statement shows \$82,354.85 as the closing balance, with the funds invested in:
 - Ideal Money Market,
 - Ideal Corp High Yield Bonds,
 - Ideal Balanced Fund,
 - Ideal US Equity,
 - Ideal INT Equity,
 - Ideal Canadian Dividend Growth
- HSBC deposit confirmation November 20, 2006 for \$139,650.00 for credit in Mr. Sly's account #446504-150
- The Wealth Creator Plan #3245094 statement dated October 31, 2007 showing Risk Management PLUS/Don Sly ITF Kenneth James Moore for \$50,000 with deposit made August 31, 2006 showing current value of \$57,002.74. The statement shows Mr. Sly's date of birth and the SIN is not the same as Mr. Moore's.

The above documentation is the only documentation that Mr. Moore ever received from Mr. Sly in regards to the \$139,650.00 he had directed Mr. Sly to invest. Mr. Moore has demanded Mr. Sly release his monies to him but that has never occurred.

Note that the two cheques payable to Performance Financial were never deposited with Performance Financial but were deposited into a HSBC account as evidenced by the backs of the cheques (Exhibit 4(e)).

The investigation completed by the CIC found that the investments in "Ideal" funds in the amount of \$82,354.85 are fictitious. No money was ever received by Performance Financial from Mr. Sly on behalf of Mr. Moore. It did not receive the two cheques made payable to it by Mr. Sly. See Exhibit 5. Performance Financial is a MGA sponsored by Standard Life Assurance Company of Canada. Mr. Sly did have an agent contract with Performance Financial. Performance Financial advised that Performance Financial would never accept a cheque payable to itself. There is no account #ITF284804 with Performance Financial or Ideal. Performance has no record of Mr. Moore being a policy holder, annuitant or a beneficiary of any Standard Life policies. The statement forwarded to Mr. Moore by Mr. Sly referencing these investments with Performance Financial/Ideal segregated funds is fictitious. Performance does not maintain "In Trust For" accounts. Note that the values assigned to the Ideal fund units used on the fictitious statement are in fact accurate.

The alleged investment of \$57,002.74 with The Wealth Creator is also fictitious. The fictitious statement indicates the deposit was made August 31, 2006 however, by Mr. Sly's own emails he has indicated that his August 31, 2006 cheque for the MGA in-house investment (Carevest/Carenest) was NSF.

After a thorough reading of the many emails between Mr. Sly and Mr. Moore it is evident that Mr. Moore kept asking for documentation for his investments. Mr. Sly never provided anything. When he did provide documentation one year later, he provided false and created statements.

Exhibit 4(d) contains copies of the two cheques written on Mr. Sly's HSBC account to "Carenest (or Carevest) Group of Co", one being cheque #303 dated August 31, 2006 and the other being cheque #342 dated November 20, 2006. Both are for \$200,000.00. The name of "Carenest" or (Carvest) were not generally recognizable by either the DHC or the CIC.

In examining the various cheques, the fact is that on November 20, 2006 Mr. Sly deposited \$139,650.00 into his HSBC account #446504-150. The cheque deposited was a Bank of Montreal instrument. Mr. Moore's funds were held in his account with Bank of Montreal. As mentioned above Mr. Sly held blank signed cheques for Mr. Moore's Bank of Montreal account. Mr. Sly never invested Mr. Moore's money in August as he alleged. "The Wealth Creator" statement indicates the deposit date was August 31, 2006.

Once Mr. Sly deposited Mr. Moore's money into his own personal account what happened to this money? The investigation by the CIC has established that from 2006 forward there were no monies taken out of HSBC account #446504-150 that related to an investment on behalf of Mr. Moore. In reviewing the bank statements for this HSBC account (Exhibit 31) and the copies of cheques of in the amount of \$5,000 or more written on that account, Mr. Sly used Mr. Moore's money for personal matters.

Exhibits 9 through 28 show cheques drawn on HSBC account #446502-150 in name of Don Sly written between December 1, 2006 and July 29, 2008 payable to:

- (i) \$17,000.00 to MBNA Canada (credit card)
- (ii) \$17,000.00 to ANEX Bank of Canada (credit card)
- (iii) 17 cheques payable to Mr. Sly's wife Teresa Sly totalling of \$86,000.00. These cheques were deposited into Bank of Montreal account #7409 579 which is an account in the joint names of Don and Teresa Sly.

When Mr. Sly made the initial deposit of \$139,650.00 November 20, 2006 to his HSBC account he was in an overdraft position of \$17,372.55 (Exhibit 31). His account had a credit limit of \$17,500.00. As of July 29, 2008 he was again in an overdraft position. Note that he had also written a cheque for \$5,000.00 on February 28, 2007 payable to Lutheran Collegiate Bible Institute and one for \$10,500.00 on July 22, 2008 payable to Shirley Sperling. The DHC has no knowledge of what these cheques were for. As of the summer of 2011 this HSBC account remained in an overdraft position.

In effecting its investigation the CIC met with Mr. Sly at the Council office June 14, 2011. At that time Mr. Sly indicated he still held \$30,000 for Mr. Moore as well as \$10,000 for Benjamin Bruckard, Mr. Moore's grandson. This is not reflected in his bank account. This is not reflected in any documentation (see Exhibit 30). Mr. Sly was evasive and would never explain where Mr. Moore's money had been invested. His explanation was that he had invested with a third party and it turned out to be a bad investment. He had tried to recover the losses but he had mismanaged the investments. Mr. Sly admitted to Mr. Waugh and Ms. Stadnek that he had lied to Mr. Moore about the investment of his inheritance. He did comment that he was going through a divorce and he had alcohol use issues. He claimed that he managed Mr. Moore's money as he did as he did not want it included in the separation of assets relating to his divorce proceedings. Mr. Sly undertook to provide certain information to the Council (Exhibit 6). A Delegation Order from the Superintendent of Insurance was issued against Mr. Sly and personally accepted by him via registered mail on August 4, 2011. He has never complied. He has not communicated with the Council or the CIC since.

Issues and Decisions with Reasons

Issue 1

The issue is whether or not Mr. Sly's conduct was misconduct by violating Bylaw 8(1)(a) when he:

- a. provided information to the Complainant that was false or misleading;
- b. did not invest \$139,650.00 per the Complainant's instructions or at all;
- c. misled Council staff with respect to the investment of the Complainant's monies.

Bylaw 8(1)(a) defines misconduct as a question of fact but includes any matter, conduct or thing, whether or not disgraceful or dishonorable, that is contrary to the best interest of the consumer or licensees or insurance companies.

Decision Issue 1

The DHC finds Mr. Sly guilty of misconduct in that he did breach Bylaw 8(1)(a). We find that he did provide information to the Complainant Mr. Moore that was false or misleading. We find that he did not invest Mr. Moore's \$139,650.00 per Mr. Moore's instructions or at all. We find that he did mislead Council staff with respect to the investment of Mr. Moore's monies. We make our findings on a balance of probabilities.

As stated in Bylaw 8(1)(a) it is a question of fact but where there is any matter, conduct or thing, whether or not is graceful or dishonorable, that is contrary to the best interests of the consumer or licensees or insurance companies, the DHC may make a finding of misconduct.

The DHC has reviewed the above facts. The facts establish that Mr. Sly on October 31, 2006 told Mr. Moore (Exhibit 4(c)) that he had invested the money in two different investments. That was false and/or misleading. Mr. Sly had explained that the earlier August 30, 2006 cheque had bounced due to insufficient funds. There was no investment made on behalf of Mr. Moore as of that date. Mr. Sly deposited the \$139,650.00 into his own HSBC account on November 20, 2006 (Exhibit 4(d)). The two investment statements provided by Mr. Sly to Mr. Moore in 2007 were both fictitious. There is no proof that investments were ever made into legitimate funds.

The facts establish that Mr. Sly did not invest the \$139,650.00 as per Mr. Moore's instructions or at all. Mr. Moore's instructions are quite clear as evidenced by his emails. He wanted an investment relatively safe with some return but he needed to be able to have full access to his funds. He was willing to sacrifice return for having easy access to his money. If what Mr. Sly told Mr. Waugh and Ms. Stadnek during the June 14, 2011 interview was truthful, he did not invest the money in something safe. Further, Mr. Sly's email of October 31, 2006 to Mr. Moore indicated he had invested ~ \$80,000 that had "principal guaranteed" (emphasis added). By same correspondence he stated that with the other \$50,000 portions thereof could be accessed annually, with guaranteed returns. It turns out the money was never invested at all. The \$139,650.00 went into Mr. Sly's HSBC account and there were never any cheques written to show an investment or any legitimate statements provided.

During Mr. Sly's interview with Mr. Waugh and Ms. Stadnek he explained that he had invested Mr. Moore's money with a third party. That is an untruth. The documentation shows otherwise and Mr. Sly has not provided any evidence to establish otherwise.

All of Mr. Sly's conduct with respect to Mr. Moore was disgraceful AND dishonorable. His conduct was contrary to the best interests of the consumer, Mr. Moore. In coming to this conclusion the DHC researched and relied upon the definitions of:

- Disgraceful – "shameful; scandalous"
- Dishonorable – "characterized by or causing dishonor or discredit; having little or no integrity; unprincipled"

Mr. Sly had a duty to adhere to Mr. Moore's directions, which were to safely invest \$139,650.00. Mr. Sly had a duty to report regularly with Mr. Moore to provide up to date status reports on his investment. Mr. Sly failed to do either of these. The DHC is concerned that it took Mr. Moore over one year to get a response from Mr. Sly about his investments, and matters were made worse when the response was falsehoods.

Does the insurance profession want it known that it is acceptable for licensees to provide false and misleading information to their clients and to their regulatory body? Does the insurance profession want it known that it is acceptable for licensees to take a client's money and use it for purposes otherwise than directed? We think not. Licensees have a duty to be truthful to their clients and licensing body, to carry out lawful instructions and to not use their clients' money for their own use. By Mr. Sly breaching this fundamental rule he has acted contrary to the best interest of the consumer, Mr. Moore.

Issue 2

The issue is whether or not Mr. Sly's conduct was misconduct by violating Bylaw 8(1)(b) when he:

- a. did not respond to a demand for information from the LIC;
- b. sent false and/or misleading information to the Complainant; and
- c. did not make the investments per the wishes of the Complainant.

Bylaw 8(1)(b) defines misconduct as a question of fact but includes any matter, conduct or thing, whether or not disgraceful or dishonorable that may harm the standing of licensees in the insurance industry.

Decision Issue 2

The DHC finds Mr. Sly guilty of misconduct in that he did breach Bylaw 8(1)(b). We find that he did not respond to a request for information made to him July 18, 2011, which was accompanied by a Delegation Order of the Superintendent of Insurance for Saskatchewan. We find that Mr. Sly did send false and/or misleading information to the complainant, Mr. Moore. We find that Mr. Sly did not make the investments per Mr. Moore's directions. We make our findings on a balance of probabilities.

The uncontested facts establish that Mr. Sly at the June 14, 2011 meeting with Mr. Waugh and Ms. Stadnek of the CIC did undertake to provide specific information (Exhibit 6). When he failed to do so, the Complaints and Investigation Committee had to write Mr. Sly demanding compliance. The Committee also had a Delegation Order issued and served. Mr. Sly has never responded. This conduct is not only disgraceful but also dishonourable and it does harm the standing of licensees in the insurance industry in Saskatchewan. The insurance profession would not want it known that it is acceptable for licensees to not comply with requests of its licensing regulatory body. The self-regulating body of the Life Insurance Council was established to not only protect consumers but also to give assurance to the licensed agents that consistent and appropriate regulating and conduct is in effect. Licensed agents are expected to co-operate with the Council and its committees. By Mr. Sly not co-operating, he has cast a shadow on the insurance industry.

The same comments can be made for the fact that Mr. Sly sent false information to Mr. Moore (see issue #1) and that he did not make the investment as instructed by Mr. Moore (see issue #1). This conduct does harm the standing of licensees in the industry. The life insurance profession would not want it known that it is acceptable for licensees to provide false

information to clients and to not invest as per a client's instructions. This conduct of Mr. Sly also casts a shadow on the insurance industry.

Issue 3

The issue is whether or not Mr. Sly's conduct was misconduct by violating Bylaw 8(2)(b) when he:

- a. did not invest the \$139,650.00 the Complainant allowed Sly access to for investment purposes;
- b. misled the LIC compliance staff by advising staff that approximately \$30,000.00 of the investment monies remained in an investment account for the Complainant and that \$10,000.00 of the investment monies remained in an account for the Complainant's grandchild;
- c. misled the LIC compliance staff by advising staff that he used a third party to invest the Complainant's money on his behalf; and
- d. did not respond to a July 18, 2011 demand for information from the LIC.

Bylaw 8(2)(b) states that a licensee may be guilty of misconduct if the licensee demonstrates an unsuitability or an untrustworthiness to act as a licensee.

Decision Issue 3

The DHC finds Mr. Sly guilty of misconduct in that he did breach Bylaw 8(2)(b). The facts establish that Mr. Moore gave access to Mr. Sly of his inherited money in the amount of \$139,650.00. Mr. Sly deposited this money into his own HSBC account. He never invested this money into any investment. Mr. Sly, when questioned by Mr. Waugh and Ms. Stadnek of the CIC, advised that \$40,000.00 was still invested, \$30,000 for Mr. Moore and \$10,000 for his grandson. There is no proof of this. In fact, after the money was deposited into Mr. Sly's account, it was slowly paid out to cover Mr. Sly's debts (overdraft and credit cards) and payments were made to his wife Teresa. The cheques made out to Teresa Sly were then deposited into a Bank of Montreal joint account held by Don and Teresa Sly. There is no proof that \$40,000 is invested anywhere for Mr. Moore. Mr. Sly has not provided any evidence to substantiate the statements he made at the June 14, 2011 meeting. As of July 2011, Don Sly's HSBC account was in an overdraft position. There is no Standards Life Assurance Company of Canada policy in the name of Mr. Moore (Exhibit 5). Further there is no evidence that Mr. Sly used a third party to invest Mr. Moore's money. Mr. Sly misled Mr. Waugh and Ms. Stadnek.

As stated above regarding issue #2, Mr. Sly did not respond to the July 18, 2011 demand for information from the CIC.

The DHC finds that Mr. Sly's actions demonstrate that he is unsuitable and is untrustworthy to act as a licensee. In reaching this conclusion the DHC again used the dictionary to define these words:

- "unsuitable"- not suitable; not fitting; inappropriate
- "untrustworthy"- we relied upon the definition of "trustworthy" – warranting trust; dependable; reliable

Mr. Sly's conduct does not demonstrate trustworthy conduct. Mr. Moore trusted Mr. Sly with his inheritance but Mr. Sly did not act in a trustworthy manner. Mr. Sly used the money for his own purposes, he falsified financial statements, and he has not reimbursed Mr. Moore. He was not dependable or reliable, either to Mr. Moore or to the CIC, as represented by Mr. Waugh and Ms. Stadnek. When a licensee conducts themselves inappropriately in their business by using a client's money as their own, by misleading their regulatory body, by not responding to official orders, they are not suitable to be working in the insurance industry as set by standards created by the industry itself. When a licensee is neither dependable or reliable and does not act in a trustworthy manner, they should not be acting as a licensee.

Issue 4

The issue is whether or not Mr. Sly's conduct was misconduct by violating Bylaw 8(2)(c) when he:

- a. misrepresented where the Complainant's investment monies were placed. The misrepresentation was made on October 31, 2006 when Sly sent an email to the Complainant advising the Complainant that his investment dollars have been invested in two types of investments:
 - i. one a segregated fund of about \$80,000.00; and
 - ii. the second investment of \$50,000.00 in an "in-house investment trust".
- b. sent via email on November 14, 2007 a two page account statement from Risk Management Plus which misrepresented investments purported made:
 - i. The 1st page of the account statement indicates that the Complainant holds five Ideal Segregated Funds with a closing value at October 31, 2007 of \$82,354.85.

- ii. The 2nd page of the account statement indicates that Risk Management PLUS holds in trust for the Complainant a total current accrual of \$57,229.61 in what is termed "Profit Sharing MGA/Advisor Funds."

Bylaw 8(2)(c) states that a licensee may be guilty of misconduct if the licensee in the course of promoting, selling or servicing insurance business, provides in any advertising or other communication information that is false or misleading.

Decision Issue 4

The DHC finds Mr. Sly guilty of misconduct in that he did breach Bylaw 8(2)(c). We find that Mr. Sly did in the course of selling or servicing insurance business with Mr. Moore provide in communications, specifically emails and documents sent with emails, information that was false or misleading. We make our finding on a balance of probabilities.

The DHC finds that Mr. Sly, while alleging investing Mr. Moore's money in a segregated fund, did make many false or misleading statements. On October 31, 2006 Mr. Sly emailed Mr. Moore advising him that the monies were invested in two types of investments. On November 14, 2007 Mr. Sly emailed further information to show that the transfer of Mr. Moore's money out of his account into Mr. Sly's account occurred November 20, 2006. This deposit is established with a HSBC deposit statement. The October 31, 2006 statement is untruthful. As of October 31, 2006 Mr. Moore's money remained in his own account and had not been invested.

The November 14, 2007 email, Mr. Sly to Mr. Moore, with attachments contain false and misleading financial statements. Both the financial statements provided are fictitious.

The "Risk Management PLUS" account statement for September 30, 2007 to October 31, 2007 shows Mr. Moore holding five Ideal segregated funds with a closing balance of \$82,354.85. This is false. Mr. Moore has never had any funds invested in "Ideal" segregated funds. As noted above in the "Facts", Mr. Sly did assign accurate and real unit values for the various Ideal segregated funds referred to on this statement.

The Risk Management Plus statement dated October 31, 2007 showing investment in a "Profit Sharing MGA/Advisor Funds" is also fictitious. There is no evidence of a registered investment on the statement. This statement states that the deposit date was August 31, 2006, which is false. It shows present value of \$57,229.61 and there is no evidence of an investment of this kind.

Issue 5

The issue is whether or not Mr. Sly's conduct was misconduct by violating Bylaw 8(2)(h) when he between November 20, 2006 and July 22, 2008 used the Complainant's investment dollars to pay:

- a. his outstanding HSBC Canada (HSBC) account debit balance of \$17,372.55;
- b. \$17,000.00 to MBNA Canada as payment on this credit card;
- c. \$17,000.00 to AMEX Bank of Canada as payment on this credit card; and
- d. \$86,000.00 through 17 separate cheques to his wife.

Bylaw 8(2)(h) states that a licensee may be guilty of misconduct if the licensee failed to place the interests of the consumer before his own interests.

Decision Issue 5

The DHC finds Mr. Sly guilty of misconduct in that he did breach Bylaw 8(2)(h). We find that Mr. Sly's conduct demonstrates he failed to place the interests of the consumer, Mr. Moore, before his own interests. We make this finding on a balance of probabilities.

As stated in the "Facts", after Mr. Sly deposited Mr. Moore's \$139,650.00 into Mr. Sly's personal account with HSBC Bank Canada account #446504-150 on November 20, 2006 there were no withdrawals from that account to show an investment made. There is no proof from Mr. Sly that he used \$139,650.00 from any other account that he held to invest the same amount into any investment. The only proof provided by Mr. Sly that investments were made are the two fictitious investment statements referred to above.

HSBC Bank Canada was compelled to provide copies of the banking statements and cheques \$5,000.00 or more for Mr. Sly's account. See Exhibit 31. The records show that Mr. Sly's account prior to the November 20, 2006 deposit was in overdraft in the amount of \$17,372.55. He paid two credit card companies, MBNA Canada and AMEX Bank of Canada, each \$17,000.00, out of his HSBC account. He wrote 17 cheques to Teresa Sly, totalling \$86,000, all of which were deposited into their Bank of Montreal joint account.

Mr. Sly's explanation as provided to Mr. Waugh and Ms. Stadnek that he "needed to move the Moore money out of his account as he did not want Moore's money included in the separation of assets" is unsubstantiated (see Investigative Report). The facts establish that Mr. Sly in fact wrote cheques to his wife Teresa Sly out of his HSBC account, which were then deposited into

their joint account. The facts establish that Mr. Sly personally benefited from Mr. Moore's money. Mr. Sly put his own interests ahead of Mr. Moore.

Mr. Sly did not appear at the hearing to provide any evidence to establish facts to the contrary. Mr. Sly's statements to Mr. Waugh and Ms. Stadnek indicated that he admitted to lying to Mr. Moore. Mr. Sly was not putting his client's interests before his own. He may have been going through marital problems and had alcohol problems, but Mr. Sly has chosen not to speak to these issues or any other issues with the DHC. There is no evidence before the DHC to demonstrate that the monies paid out to Teresa Sly were in Mr. Moore's interest. There is no evidence to establish that Teresa Sly was licensed with the Life Insurance Council in order to have the legal capability of investing in segregated funds. Teresa Sly is not licensed with the Securities Commission or the Life Insurance Council. There is no evidence to establish that Mr. Sly established an investment for Mr. Moore by withdrawing money out his joint account with Teresa Sly.

Decision – Penalty

Issue 1 – Penalty Decision

The DHC in finding Mr. Sly guilty misconduct on Issue 1 orders that pursuant to Life Insurance Council Bylaw 10(2):

- (a) Mr. Sly's license be cancelled for life (Bylaw 10(2)(1)(a));
- (b) Mr. Sly pay to the Life Insurance Council a fine in the amount of \$5,000.00 (Bylaw 20(2)(1)(c));
- (c) Mr. Sly pay to the Life Insurance Council costs for all charges in the amount of \$2,350.00 representing the costs of the hearing (Bylaw 10(2)(1)(d)); and
- (d) Mr. Sly pay to the Life Insurance Council costs for all charges in the amount of \$8,800.00 representing the costs of the investigation by the Complaints and Investigation Committee (Bylaw 10(2)(1)(d)).

Issue 2 – Penalty Decision

The DHC in finding Mr. Sly guilty misconduct on Issue 2 orders that pursuant to Life Insurance Council Bylaw 10(2):

- (a) Mr. Sly's license be cancelled for life (Bylaw 10(2)(1)(a));
- (b) Mr. Sly pay to the Life Insurance Council a fine in the amount of \$5,000.00 (Bylaw 20(2)(1)(c));

- (c) Mr. Sly pay to the Life Insurance Council costs for all charges in the amount of \$2,350.00 representing the costs of the hearing (Bylaw 10(2)(1)(d)); and
- (d) Mr. Sly pay to the Life Insurance Council costs for all charges in the amount of \$8,800.00 representing the costs of the investigation by the Complaints and Investigation Committee (Bylaw 10(2)(1)(d)).

Issue 3 – Penalty Decision

The DHC in finding Mr. Sly guilty misconduct on Issue 3 orders that pursuant to Life Insurance Council Bylaw 10(2):

- (a) Mr. Sly's license be cancelled for life (Bylaw 10(2)(1)(a));
- (b) Mr. Sly pay to the Life Insurance Council a fine in the amount of \$5,000.00 (Bylaw 20(2)(1)(c));
- (c) Mr. Sly pay to the Life Insurance Council costs for all charges in the amount of \$2,350.00 representing the costs of the hearing (Bylaw 10(2)(1)(d)); and
- (d) Mr. Sly pay to the Life Insurance Council costs for all charges in the amount of \$8,800.00 representing the costs of the investigation by the Complaints and Investigation Committee (Bylaw 10(2)(1)(d)).

Issue 4 – Penalty Decision

The DHC in finding Mr. Sly guilty misconduct on Issue 4 orders that pursuant to Life Insurance Council Bylaw 10(2):

- (a) Mr. Sly's license be cancelled for life (Bylaw 10(2)(1)(a));
- (b) Mr. Sly pay to the Life Insurance Council a fine in the amount of \$5,000.00 (Bylaw 20(2)(1)(c));
- (c) Mr. Sly pay to the Life Insurance Council costs for all charges in the amount of \$2,350.00 representing the costs of the hearing (Bylaw 10(2)(1)(d)); and
- (d) Mr. Sly pay to the Life Insurance Council costs for all charges in the amount of \$8,800.00 representing the costs of the investigation by the Complaints and Investigation Committee (Bylaw 10(2)(1)(d)).

Issue 5 – Penalty Decision

The DHC in finding Mr. Sly guilty misconduct on Issue 4 orders that pursuant to Life Insurance Council Bylaw 10(2):

- (a) Mr. Sly's license be cancelled for life (Bylaw 10(2)(1)(a));
- (b) Mr. Sly pay to the Life Insurance Council a fine in the amount of \$5,000.00 (Bylaw 20(2)(1)(c));
- (c) Mr. Sly pay to the Life Insurance Council costs in the amount of \$2,350.00 representing the costs of the hearing (Bylaw 10(2)(1)(d)); and
- (d) Mr. Sly pay to the Life Insurance Council costs in the amount of \$8,800.00 representing the costs of the investigation by the Complaints and Investigation Committee (Bylaw 10(2)(1)(d)).

Overall Penalty Decision

In light of Bylaw 10(2)(1)(c) which states that the discipline committee may "order that the licensee pay to the council....a specified amount not exceeding \$5,000 for each finding and \$15,000 in the aggregate for all findings", the DHC orders that in totality Mr. Sly's penalty is:

- (a) lifetime cancellation of license;
- (b) Mr. Sly is ordered to pay total fine of \$15,000.00, as aggregate for all findings;
- (c) Mr. Sly is ordered to pay total hearing costs of \$2,350.00; and
- (d) Mr. Sly is ordered to pay total investigation costs of \$8,800.00.

Reasons for Penalty

Bylaw 10(2)(1) sets out the powers of the Discipline Committee. It reads (relevant sections only):

Where the discipline committee finds a licensee guilty of misconduct or incompetence, it may:

- (a) order that the licensee's licence be cancelled;
- (c) order that the licensee pay to the council within a fixed period a fine in a specified amount not exceeding \$5,000 for each finding and \$15,000 in the aggregate for all findings;

- (d) order that the licensee pay to the council within a fixed period the costs of the investigation and hearing into the licensee's conduct and related costs, including the expenses of the complaints and investigation committee and the discipline committee and the costs of legal services and witness;
- (f) order that the licensee make restitution of premiums or deposits;
- (i) make any other decision or order that seems just.

As Mr. Sly did not personally appear nor have defence counsel at the hearing the DHC allowed the Complaints and Investigation Committee to present its position on penalty at the conclusion of its presentation of evidence and argument. Had Mr. Sly or a representative appeared, the DHC would not have heard penalty submissions until after our decision on the issues had been rendered.

At the hearing the CIC recommended that should we find guilt on any of the issues we should:

- Impose a \$5,000 fine on each count for a maximum fine of \$15,000.00
- Order hearing costs in the amount of \$2,350.00
- Order investigation costs in the amount of \$8,800.00 representing 80 hours @\$110/hour

Said Committee explained that it had spent in excess of 80 hours investigating this matter. The Committee also presented to the DHC two cases, Exhibit 32, for our consideration.

The DHC has reviewed the *Re Ahn* decision of IIROC (Investment Industry Regulatory Organization of Canada) dated May 24, 2011. That decision dealt with misappropriation of money by the accused, creation of false documents by the accused and non-cooperation by the accused with IIROC. The accused, Mr. Ahn, did not attend, nor did his counsel, attend the hearing. Mr. Ahn did not reply to the charges. In that case, Mr. Ahn's former employer reimbursed the victim for her losses, including liability for income taxes. Mr. Ahn has not reimbursed the victim or his employer firm for the money paid in restitution. The hearing panel ordered a fine of \$1,000,000 on one charge, a fine of \$50,000 on a second charge, costs of \$7,000, and that Mr. Ahn be permanently banned from approval in any registered capacity with any IIROC member. In its reasons for sanctions the panel wrote:

"The respondent took advantage of an elderly, unsophisticated client who put her complete trust and faith in him, and he advised her to collapse her registered retirement income fund to provide moneys which he falsely misappropriated for his own purposes.....Although the respondent has no history of previous disciplinary problems, there are no persuasive mitigating factors in this case. His actions were fraudulent, deliberate and without regard for the consequences to a vulnerable client...Such conduct was egregious and convinces us that the

respondent should not be permitted the opportunity to reoffend. A permanent ban is appropriate."

The *Re Lalonde* decision of IIROC dated February 7, 2012 provided some helpful comments for the DHC to consider when considering penalty. It reads:

"One of the main concerns of a hearing panel when determining an appropriate penalty is prevention of a repetition of the conduct of the type under consideration, not only by the Respondent but by industry members. without reanalyzing the principles stated in the numerous prior decisions, we mention more particularly the following text from the decision in Re Mills (2001) I.D.A.C.D. No. 7, April 17, 2001:

"Industry expectations and understandings are particularly relevant to general deterrence. If a penalty is less than industry understandings would lead its Members to expect for the conduct under consideration, it may undermine the goals of the Association's disciplinary process; similarly, excessive penalties may reduce respect for the process and concomitantly diminish its deterrent effect. Thus the responsibility of the District Council in a penalty hearing is to determine a penalty appropriate to the conduct and respondent before it, reflecting that its primary purpose is prevention rather than punishment."

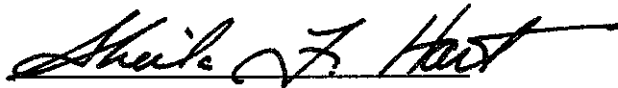
The DHC has taken into consideration the above two noted decisions. It has also considered the following facts when it levied the sanctions imposed above:

1. Mr. Sly has no history of disciplinary action or concerns with the Life Insurance Council;
2. Mr. Sly did not co-operate with the CIC of the Life Insurance Council. Mr. Sly ignored an order of the Saskatchewan Superintendent of Insurance.
3. Mr. Sly chose to not attend his hearing to defend himself. Mr. Sly used the excuses of alcohol and marital breakup with the CIC but we have no proof;
4. Mr. Sly took advantage of someone who was at one time a family relation of his. It is evident that Mr. Moore trusted Mr. Sly;
5. Mr. Sly took advantage of someone who was out of Canada. In reading the many emails in Exhibit 3 it is evident Mr. Sly used alleged lack of email connection as a ruse for his lack of communication and deception. The DHC echos the words used by Ms. Stadnek that this was a "crime of opportunity". Mr. Sly did go to considerable lengths in misleading Mr. Moore. He created two fictitious financial statements, even using accurate unit values for the Ideal segregated funds.

6. Mr. Moore has lost \$139,650.00. Mr. Moore has not been reimbursed by any insurance company. Mr. Moore's only recourse for recovery is through the court system.

In totality the DHC considered general deterrence. We believe a message must not only be made to Mr. Sly but it must be made to the insurance industry that misappropriation of funds for personal use, that false and misleading statements, and that not co-operating with the Life Insurance Council and Superintendent of Insurance is unacceptable behavior by a licensee. There are no persuasive mitigating factors in this case. Mr. Sly's actions were fraudulent, deliberate and without regard for the consequences of the consumer, Mr. Moore.

Dated this *2nd* day of April, 2012.

A handwritten signature in cursive script that reads "Sheila F. Hart". The signature is written in black ink and is positioned above the printed name.

Sheila F. Hart, Chairman