

IN THE INSURANCE APPEALS TRIBUNAL

IN THE MATTER OF a disciplinary
action in the Disciplinary Case No.:
DISC/08/2022 (Enforcement Case No.:
ENF/19/0031/0001) made by the
Insurance Authority dated 25 May 2023
against Yeung Wai Hung (Licence No.:
IC2194)

AND IN THE MATTER OF section 101
of the Insurance Ordinance, Cap. 41

BETWEEN

YEUNG WAI HUNG

APPELLANT

AND

INSURANCE AUTHORITY

RESPONDENT

Tribunal: Ms Rachel Yan Kay Lam, SC, Chairperson

Mr Lee Pak Kee, Member

Mr Mark Norman Reginald Johnson, Member

Date of Hearing: 17 November 2023

Date of Determination: 31 October 2024

DETERMINATION

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A. **Introduction & Background**

1. The Appellant, Mr Yeung Wai Hung, applied for a review of the decision of the Insurance Authority (“IA”) dated 25 May 2023, whereby it was determined that his licence as a licensed technical representative (agent) was to be suspended for a period of 8 months (“the Decision”).
2. From 13 April to 1 September 2017, Mr Yeung was a registered technical representative (broker) appointed by Aon Hong Kong Limited (“Aon”).
3. From 3 November 2017, Mr Yeung was registered as a technical representative (agent) and responsible officer of Anshare Insurance Service Company (“Anshare”).
4. The relevant conduct which was the subject of the Decision dates back to 2018, when Mr Yeung was a technical representative (agent) of Anshare. Mr Yeung had sold a butcher shop owner, Mr Lee Sai Kit (“Mr Lee”), an employee compensation insurance policy for his shop, Kwong Yuen Meat Stall, in the prior year when he was a technical representative of Aon.
5. The policy for the second year, which was the subject of the Decision, differed from the Aon policy in that it had an exclusion clause which excluded any claims arising from the use of machinery powered by electricity. This exclusion was not specifically explained to Mr Lee or drawn to his attention, despite Mr Lee indicating that he wished to follow what had been done in the previous year and to adopt the same indemnity amount.
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6. The policy ultimately quoted was via Target Insurance Company, Limited (“**Target**”) – a SME Business insurance policy dated 7 May 2018.

7. Prior to the finalisation of this policy, Mr Yeung visited the butcher shop in June 2018. He claims that he had read out all the terms of the quote, including the exclusion clause, and that subsequent thereto, Mr Lee signed on the same. He said that he could not guarantee that all the terms were fully explained since Mr Lee was also serving customers during this brief meeting. The policy was issued on 6 June 2018.

8. Mr Yeung further says that in his first visit to the shop, he noticed one of two meat grinders. However, he said he not been aware that it was an electrical one, and instead thought it was manually operated.

9. Subsequently, part of an employee’s finger was severed in an accident involving one of the electric meat grinders. Mr Lee then attempted to claim on the policy, but discovered that the claim was not covered owing to the exclusion clause.

10. The IA issued a Notice of Proposed Disciplinary Action on 17 August 2022 proposing an 8 month suspension on the basis that his conduct had impugned his fitness and properness to be a licensed insurance intermediary. Following a disciplinary panel meeting on 20 March 2023, the IA issued the Decision. Mr Yeung had participated in the process throughout.

11. The disciplinary panel of the IA found that the Appellant’s conduct contravened the standards of a technical representative required by

A the Clauses 76(e) and (f) of the Code of Practice for the
B Administration of Insurance Agents (“**Code of Practice**”) issued by
C the Hong Kong Federation of Insurers (“**HKFI**”).¹

D 12. The following are notable points from the original investigation, the
E original hearing and from the hearing before this Tribunal:

F (1) Mr Yeung has consistently affirmed that he had no prior
G experience selling insurance to “fresh meat stalls”, and that his
H area of experience was catering businesses.

I (2) It was in such context that he noticed the meat grinder, but
J perhaps because of his unfamiliarity with fresh meat stalls, was
K not sufficiently aware to note whether it was electrical or not.
L Mr Yeung’s case is that Mr Lee had concealed this information
M or not drawn it to his attention.

N (3) The explanation of the policy was hurried and Mr Yeung
O acknowledged he had not gone through the policy a second
P time to ensure that Mr Lee fully understood it.

Q (4) At the hearing before this Tribunal, Mr Yeung gave further
R evidence that although the explanation of the policy was in
S Chinese, the document passed to Mr Lee was in English (which
T he assumed Mr Lee would not be able to read). He accepted
U that he wasn’t aware of the dangerous machinery, and that he

S ¹ “A registered person shall: ...

T (e) give advice only on those matters in which he is competent to deal with or otherwise seek advice
U from his Principal(s) or appointing insurance agent when necessary;

V (f) explain the cover afforded by each policy recommended to ensure that the potential policy holder
understands what he is buying.”

didn't do a point by point comparison of the Target policy to the prior year's policy. He also explained that it never occurred to him to ask questions of Target about the exclusion terms. Finally, he explained that the rush was "for the benefit of the client" so that he wouldn't lose coverage.

13. The grounds of appeal, as set out in Mr Yeung's letter dated 12 June 2023, are as follows:

(1) Mr Yeung says that Mr Lee misrepresented to him during the application process about the state of affairs in the shop, as well as about prior breaches of labour laws;

(2) He believes the responsibility ought not to be borne by him alone, as he says that both the policyholder and the insurer have responsibility to audit the proposal / purchase process;

(3) He says that the matter took place prior to the establishment of the IA, and hence there was no procedure or checking mechanism for him to cross check matters; and

(4) He says that he had always carried on his business with honesty and had a good track record, doing each job with the best of his ability.

14. He has not shown any remorse, nor made any apology.

B. Relevant Principles

15. Specified decisions made by the IA may be appealed to this tribunal (see Part 2 of Schedule 9 to the Insurance Ordinance, Cap. 41 ("IO")).

The disciplinary decision that is the subject of the present appeal is a specified decision because it falls within the meaning of item 16 of Part 2 of Schedule 9 to the IO, “imposition of a disciplinary sanction on a specified person as defined by section 112 of Schedule 11”. Section 112 of Schedule 11 to the IO defines a “specified person” to include (c) a technical representative registered with Insurance Agents Registration Board (“IARB”).

16. The applicable basis and standard of review by the IAT pursuant to section 100 of the IO is by way of a *de novo* hearing and determination: see *Carol Macrady Leung Chee Kuen v Insurance Authority*, IAT/IARB/11/2019 (30 September 2021), §35. Pursuant to section 101(5) of the IO, the standard of proof required to determine any question or issue before the IAT is to be the standard of proof applicable to civil proceedings in a court of law. In other words, matters must be proved on a balance of probability.

17. In Mr Yeung’s case, the relevant Code of Practice which is relevant is the 2010 Code of Practice (Seventh Edition issued on 1 March 2010) and the 2018 Code of Practice (Seventh Edition (with special addendums and housekeeping amendments) issued on 28 May 2018).

(1) A “Registered Person” is defined in Clause 2 to include “(d) a *Technical Representative of an Individual Agent or an Insurance Agency*”.

(2) A “Technical Representative” is defined in Clause 2 as follows: “*in relation to an insurance agent means a person (not being an insurance subagent who is classified as an insurance agent for the purposes of this Code) who provides advice to a policy*

holder or potential policy holder on insurance matters for such insurance agent, or arranges contracts of insurance in or from Hong Kong on behalf of that insurance agent.”

18. Clauses 44(d) and (e) of the Code of Practice provide that:

“(d) when all representations concerning the matter...have been considered by the IARB and the IARB is of the view that either there has been a breach of this Code or the matter at issue renders the respondent not fit and proper to be or continue to be registered as a Registered Person, the IARB may take disciplinary or other action in the matter set out in sub-clause (e) below and/or require the Principal or any Registered Person (including the respondent’s appointing insurance agent) to take disciplinary or other action in the matter set out in sub-clause (e) below;

(e) disciplinary or other action may include: -

(i) issuing a reprimand to the relevant respondent;
(ii) suspending or terminating the appointment of the relevant respondent;

or

(iii) taking or refraining from taking such other action (including, for the avoidance of doubt, refunding premiums paid by persons affected by the conduct of the relevant respondent) as the IARB thinks fit. Any respondent whose appointment has been terminated in these circumstances will have their registration cancelled and will be barred from appointment and registration as an insurance agent, a Responsible Officer or Technical Representative for a specified period as determined by the IARB.”

19. Clause 58 of the Code of Practice provides that “[i]n considering whether a person is fit and proper to be or continue to be registered as a Registered Person, the IARB may take into account:

(g) whether the person has failed to conduct insurance agency business in a manner complying with clauses 73 to 83 (Part F: Minimum Requirements of Model Agency Agreement and Part G: Conduct of Registered Persons) of this Code and/or the rules of the HKFI;

(h) whether the person is or has ever been found not to have complied with or to be in breach of this Code and/or the rules of the HKFI; ...

(k) [2018 Code of Practice] / (m) [2010 Code of Practice] such other matters as the IARB considers relevant in the circumstances”.

20. Clause 59 provides that “The IARB may consider a person not fit and proper to be or continue to be registered as a Registered Person if: ...

(b) in the opinion of the IARB, by his words or actions, he has manifested a material lack of understanding of the duties and ethical responsibilities of a Registered Person.”

21. Clause 76 provides that “A Registered Person shall:...

(e) give advice only on those matters in which he is competent to deal with or otherwise seek advice from his Principal(s) or appointing insurance agent when necessary;

(f) explain the cover afforded by each policy recommended to ensure that the potential policy holder understands what he is buying.”

22. The IARB’s Guidelines on Disciplinary Actions (Effective on 1 July 2015) set out the maximum disciplinary action in terms of period of termination of registration for common types of misconduct. The maximum disciplinary action for “failure to make reasonable effort to ensure the policy meets the needs of the policyholder” in breach of clause 76(f) of the Code of Practice is 3 years of termination of registration.

C. Discussion

23. We refer to the matters summarised above in the Background section. Having reviewed the relevant documents and evidence, and having heard from Mr Yeung during the hearing, we have come to the view

A that his conduct fell well below the standards expected of a technical
B representative as set out in Clause 76 of the Code of Practice (FN1
C above).

D 24. The following are particularly notable points: E

F (1) He recommended the policy without seeking advice from
G Target, when he was fully aware that he did not have sufficient
H knowledge or expertise regarding fresh meat stalls and their
I insurance needs.

J (2) His attempts to push the responsibility back onto either the
K insured (the point about misrepresentations) or the insurer (for
L not auditing the process more closely) or even the IA (for being
M established later in time) misses the point completely as to the
N nature of his obligations as a technical representative. It was his
O responsibility to have a fundamental level of competence such
P that he would be able to ascertain the relevant circumstances
Q and recommend the proper policy, not anyone else's
R responsibility.

S (3) The failure to properly explain the policy is also notable. He
T ought to have ensured that the terms were fully understood,
U particularly with such a significant exclusion clause being
V different from the prior year's policy. His failure to recognise
this is jarring.

25. In summary, Mr Yeung was not fit and proper to be a technical
representative and ought to be sanctioned accordingly.

26. Insofar as the nature and length of the sanction, reference may be made to the standard disciplinary sanction for failure to complete Continuing Professional Development (“CPD”) hours, which is typically a 3-months suspension. In the present case, the lack of competence is more serious than simply missing CPD hours.

27. Mr Yeung has asked us to take into account his prior track record. We have duly factored this in.

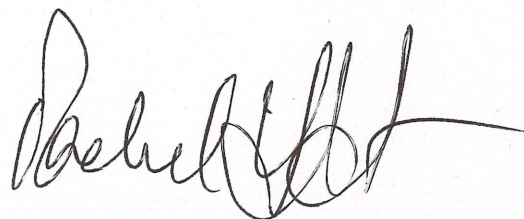
28. His failure to recognise the severity of the situation and his lack of remorse is also something we consider relevant.

29. Taking all of these factors together, we consider that the 8-month period of suspension is appropriate.

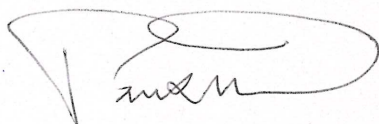
30. The appeal is therefore dismissed, with no order as to costs.

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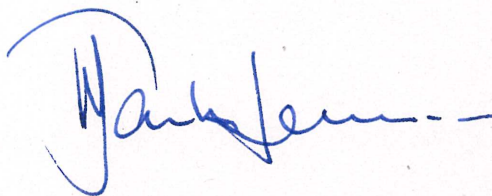
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(Ms Rachel Yan Kay Lam, SC)
Chairperson, Insurance Appeals Tribunal



(Mr Lee Pak Kee)
Member



(Mr Mark Norman Reginald Johnson)
Member



The Appellant, Mr Yeung Wai Hung, present and unrepresented

Ms Tiffany Tsun Hoi Yan, instructed by the Insurance Authority, for the
Respondent