

ALBERTA INSURANCE COUNCIL
(the "AIC")

In the Matter of the *Insurance Act*, R.S.A. 2000 Chapter I-3
(the "Act")

And

In the Matter of Bruce Ian Mawer
(the "Agent")

DECISION
OF
The Life Insurance Council
(the "Council")

This case involved an allegation pursuant to Section 481(2) of the Act. Specifically, it is alleged that the Agent failed or refused to provide information and documentation requested by an AIC investigator within the time specified in a Demand for Information (the "Demand"). In so doing, it is alleged that he contravened s. 481 of the Act.

Facts and Evidence

This matter proceeded by way of a written Report to Council dated December 1, 2014 (the "Report"). The Report was forwarded to the Agent for review and to allow the Agent to provide the Council with any further evidence or submissions by way of Addendum. Through counsel, the Agent provided additional information and submissions dated January 27, 2015.

The Agent held a certificate of authority to act as a life insurance agent from 1999 to 2014 and as an accident and sickness ("A&S") insurance between 2006 and 2014. By letter dated February 4, 2014, Equitable Life ("Equitable") registered a complaint with the AIC against the Agent. This complaint related to the surrender of a contract, which the Agent owned and was the annuitant. In short, it appears that an error occurred during a series of transactions that resulted in a duplicate payment of approximately \$33,000.00 being made to the Agent's contract. Rather than alerting the affected parties of the error, Equitable indicated that the Agent surrendered the contract to take advantage of the duplicate deposit. In so doing, Equitable suggested that the Agent acted in a fraudulent manner.

The investigator spoke with the Agent on April 7, 2014. During this telephone conversation the investigator informed the Agent of the complaint. In response, the Agent advised that he requested the surrender of a non-registered segregated fund account with Equitable but was not aware of the error. He further advised that he

believed he was entitled to access the funds with Equitable and that he inquired as to their availability so as to deal with debts in regard to his mother passing away. In response, the investigator told the Agent that he would be writing to him to request information and documentation in relation to the matter. The Report indicates that the investigator asked the Agent to confirm what address he wished the investigator to use and that the Agent said he would prefer the letter be sent to the address of his managing general agency ("PPI").

The investigator wrote to the Agent on April 29, 2014. This letter requested certain information and documents and was made as a Formal Demand for Information pursuant to ss. 481(1) and (2) of the Act (the "Demand"). As the Agent was no longer affiliated with PPI, the investigator sent the Demand to the Agent's home address.

The Demand was returned on May 6, 2014. It bore the notation "Moved/Unknown". The investigator called the Agent by telephone on the same day and he left a message for the agent to return the call. The investigator left the Agent a second voice mail on May 20, 2014. Having had no response, on May 22, 2014, the investigator reprinted the Demand with that date and emailed it to the Agent (the "Second Demand"). The Second Demand indicated that the Agent had to respond by June 6, 2014 and that failing to comply with it was an offence under the Act.

On May 26, 2014, the AIC received a copy of a May 23, 2014 notice of termination from the Agent's recommending insurer. The next day (May 27, 2014) the Agent left the investigator a voice message confirming that he had indeed received the investigator's previous voice mails but that he had been away for a period of time and was unable to respond. The Agent also advised that the Demand was not amongst the mail that he picked up from the PPI office. In response to this voice message, the investigator telephoned the Agent on May 29, 2014 and left a further message requesting that the Agent contact the investigator. The Agent telephoned the investigator on May 29, 2014 after business hours and left the investigator a message that he would attempt to speak with the investigator the following day.

On May 30, 2014, the Investigator left another voice message with the Agent asking that the Agent return his call. The investigator wrote that he also confirmed the AIC business hours during his message. Later that day, the Agent and investigator finally connected by telephone. In this call, the investigator told the Agent that the Demand had been sent to his home address rather than his business address as he was no longer with PPI and that the Demand was returned unclaimed. The investigator also explained to the Agent that he had reprinted the Demand with a current date and that he sent it to the Agent's email address on file with the AIC. The Agent advised the investigator that he had moved from his home address. However, he would not confirm his new home address when the investigator requested it. The investigator asked the Agent if he received the Second Demand

via e-mail. The Agent confirmed the investigator had the right email address but suggested that he had not received the email but would review his junk folder to confirm.

The investigator heard nothing further. Therefore, he phoned the Agent on June 26, 2014 and left the Agent a voicemail requesting the Agent to call. The Agent did so on July 2, 2014 and left the investigator a message confirming that he had received the Second Demand and that he had retained counsel. Given this, the investigator wrote to the Agent on July 3, 2014. In this letter, the investigator confirmed the information the Agent had provided in his previous day's voice message and requested that the Agent confirm the name and contact information of his lawyer. On July 10, 2014, the investigator received a response from the Agent which advised that the "company" was "Lloyds" and that he was waiting to hear back from them as they had not assigned him a lawyer.

The investigator wrote to the Agent on the same day to tell the Agent that he was not aware of a law firm known as "Lloyds" and he requested that the Agent provide the name and phone number of the firm. On July 15, 2014, the Investigator received an e-mail from the Agent which advised that Lloyds of London was his errors and omissions insurance carrier and they had not yet assigned him a lawyer. It was not until September 12, 2014 that the Agent emailed the investigator to advise that he had retained Dawson Stevens Duckett & Shaigec Barristers ("Dawson") to represent him. The name of the specific lawyer was Laura Stevens ("LS") and he advised that she would be writing the investigator within a week.

The investigator emailed LS on September 15, 2014 to ask that she confirm that she had been retained. As no response was forthcoming, the investigator phoned Dawson on September 29, 2014 and was informed by a receptionist that LS was no longer with the firm as she had been appointed a judge.

The investigator then wrote to the Agent on October 8, 2014. In this letter, the investigator indicated that he had not received a letter from LS or any other person with Dawson. The investigator further advised that the Agent had not responded to the Second Demand. The letter also informed the Agent that he would be charged for not responding if he did not respond by October 15, 2014.

The Agent sent an email to the investigator on October 8, 2014. In this email, the Agent outlined communications between him and someone from Dawson who said that Kelly Dawson ("KD") wanted to meet with the Agent prior to accepting a retainer on Dawson's behalf. The Dawson representative also asked whether or not the Agent wished KD to inform the investigator of the delay.

The investigator wrote to the Agent on October 9, 2014 and requested that he have his lawyer confirm if they will be representing him in regard to this file as soon as possible. Hearing nothing from the Agent in reply, the investigator reprinted the Second Demand (which was, in turn, a reprint of the Demand) and sent it to the Agent again with a November 7, 2014 date (the "Third Demand"). The investigator sent the Third Demand by registered mail and email. It required that the Agent provide the information and documents by November 25, 2014. The Agent did not respond by November 25, 2014.

As noted above, the Report is dated December 1, 2014 and it was sent to the Agent for review and to give him the opportunity to respond to the allegation that he did not comply with the Second and Third Demands as required. By letter dated January 28, 2015, Counsel responded to the Report on the Agent's behalf. Among other things, the response contained a thirteen paragraph document setting out the Agent's version of the facts, emails and records detailing the Agent's return to Edmonton from Palm Springs on November 4, 2014 and a January 12, 2015 letter from his present counsel confirming the Agent had retained Dawson and outlining events around LS' appointment to the Bench.

The Agent's 13 paragraph submission reads as follows:

1. [the Agent] admits the contents of paragraphs 1-9 of the Investigator's report.
2. Regarding paragraph 10 of the Investigator's report: [the Agent] was in Iron River, Alberta for the bulk of May 2014. He did not have access to e-mail, and his wife did not relay any voice messages from the Investigator.
3. Regarding paragraph 14 of the Investigator's report: [the Agent] has no recollection of being asked for his address, or refusing to provide the same to the Investigator. However, in late May of 2014, [the Agent] was in the process of preparing to move and did in fact move in with a friend in early June. In early July he moved into his current address at 10919-116 Street, Edmonton Alberta.
4. Regarding paragraph 16-20: [the Agent] was confused about the nature of his errors and omissions insurance company, and mistakenly thought that this company (Lloyds) would be representing him.
5. From mid-July to September, 2014, [the Agent] was actively seeking legal counsel, including making telephone calls to multiple firms through the lawyer referral line. Ultimately, he was referred to [Dawson].
6. Regarding paragraph 21: [the Agent] had an interview at [Dawson] on September 11, 2014. At this time [the Agent] believed that [LS] would be retained and a letter from her to the Investigator would be forthcoming.
7. While [LS] had not yet been retained, the associate indicated that once [the Agent's] retainer was perfected, [LS] would be in contact with the Investigator.

8. On September 18, 2014 [LS] was appointed as a judge. She was forced to immediately cease acting for all of her clients. [Dawson] then undertook the process of transferring carriage of [LS'] active clients. As [the Agent] had not yet perfected a retainer, his matter was not assigned to any of the associates at the firm.
9. [Present Counsel] wrote to [the Agent] on September 25, explaining that [LS] would not be able to accept any retainer given her appointment to the Provincial Court. [Present Counsel] explained that [KD] was interested in [the Agent's] matter, but that he would need to meet with [the Agent] before deciding whether to accept the retainer. [KD] was on holiday, and [Present Counsel] advised [the Agent] that if he wanted to meet with [KD], he should contact the Investigator to explain the delay.
10. [The Agent] copied portions of the correspondence he had with [Present Counsel] in an e-mail which he sent to the Investigator on October 8, 2014. His intention was to explain the delay in retaining counsel.
11. [KD] met with [the Agent] on December 1, 2014.
12. On January 12, 2015, [Present Counsel from Dawson], was retained to assist [the Agent]. [Present Counsel] immediately wrote a letter to the Investigator advising him of the same.
13. [Present Counsel's Letter] explained to the Investigator that [the Agent] does not have copies of any of the documents referred to in the [Second Demand]. [Present Counsel] requested disclosure of those documents to review the same with [the Agent] prior to drafting a response.

Discussion

As noted in similar cases before, the AIC operates under a delegation from the Minister of Treasury Board and Finance. Through this delegation, the AIC has authority to investigate complaints against holders and former holders of insurance agent certificates of authority. Pursuant to the Minister of Finance Directive No. 05/01, the Minister also delegated his powers under s. 481 to the AIC. Section 481 states that "[t]he Minister may direct the holder or former holder of a certificate of authority to provide to the Minister within a reasonable period of time specified by the Minister relating to the matters in section 480(1)." Subsection 2 states that the "... person served with a direction under subsection (1) who has the information must provide the information in accordance with the direction."

We believe that regulatory offences such as these are strict liability offences. As such, the AIC has the onus to prove that demands for information were properly made upon the Agent (proper in the sense that they meet all of the requirements under the Act) and that the Agent did not comply. Once this occurs, the onus shifts to the Agent to establish that he exercised due diligence in meeting his statutory requirement to respond. In order to substantiate this due diligence defence, the Agent must demonstrate that he took all reasonable means to avoid the offence.

The evidence is clear that the AIC investigator was investigating Equitable's allegations and that these fall squarely within the bounds of s. 480(1). Equitable asserted that the Agent acted in a fraudulent manner. This type of conduct is explicitly referenced and prohibited by s. 480(1)(a) of the Act. In furtherance of this investigation, the investigator sent the Demand, the Second Demand and the Third Demand to the Agent. All three were delivered on the basis of the addresses or email addresses supplied by the Agent to the AIC. If these were not accurate through the course of the investigation, we are of the view that it was the Agent's obligation to update the AIC with new addresses. The investigator wrote that the Agent was unwilling to provide a new address when they spoke in May 2014. The Agent does not deny that he said this. Rather, he simply states that he has no recollection of this. That being said, he clearly knew in May 2014 that the investigator was attempting to correspond with him and he confirmed that the investigator had his correct email address. Therefore, we believe that (at the very least) the Second and Third Demands were properly sent to the Agent. We also find that the time periods to respond were reasonable in the circumstances and the Agent did not respond. Therefore, the AIC has satisfied its burden in proving the offence and the onus now shifts to the Agent to demonstrate that he exercised due diligence in the circumstances.

Through counsel, the Agent raises a number of issues. First, he states that he changed residences. As noted above, if the Agent changed addresses it was incumbent on him to contact the investigator and provide a new address. Additionally, even if this is a valid assertion regarding the initial demand sent in April, it really has no bearing on the Second and Third Demands. The investigator and Agent spoke about the Second Demand and the fact that it was also sent by email. The Third Demand was sent in November 2014 and this is well after they spoke. There must be more to establishing due diligence than simply asserting that he did not have access to email or that his wife did not forward messages to him.

Second, the Agent suggests that he was confused about errors & omissions coverage and representation that might have arisen under such coverage. The obligation to respond to the demands that were made rests with the Agent and is not contingent on whether his errors & omissions was prepared to fund his defence. To suggest otherwise would undermine the AIC's ability to fulfill its public protection mandate.

Third, the Agent asserts that he was attempting to retain counsel in September 2014 and references the circumstances around LS' appointment as a judge. We do not believe that the Agent's efforts in this regard establish that he acted with due diligence. While he may have been in contact with LS, his submission makes it clear that he never did actually retain her or Dawson in September 2014. In October 2014 he emailed the investigator and outlined his efforts to engage counsel. In this email, he noted that the lawyer he intended to meet (presumably KD) was on vacation until mid-October. However, nothing was forthcoming in terms of responding

to the Second Demand and this resulted in the issuance of the Third Demand on November 15, 2014. We note that he was back in the country on November 4, 2014. He did not meet with counsel until December 1, 2014. The Agent's conduct in this regard falls far short of establishing that he took all reasonable means to respond to the demands that were made. Therefore, we find that the Agent failed to respond to the Second and Third Demands as alleged in the Report and contravened s. 481.

In terms of the applicable sanction, the public relies on the AIC to investigate complaints and the Act requires that holders and even former holders, such as the Agent, provide information when called upon to do so. Therefore, the public is not well-served in the event that agents simply ignore demands like those made in this case. In this case, the Agent has largely ignored the investigation and has consistently failed to respond. The investigator repeatedly extended deadlines in an attempt to accommodate the Agent and his circumstances. Given the facts in their entirety, we are of the view that a substantial civil penalty is warranted. As such, we order that a civil penalty in the amount of \$1000.00 be levied against the Agent pursuant to s. 13(1)(b) of the *Certificate Expiry, Penalties and Fees Regulation*, A.R. 125/2001. The civil penalty must be paid within thirty (30) days of receiving this notice. In the event that the civil penalty is not paid within thirty (30) days, interest will begin to accrue at the prescribed rate of 12% per annum. Pursuant to s. 482 of the Act (copy enclosed), the Agent has thirty (30) days in which to appeal this decision by filing a notice of appeal with the Office of the Superintendent of Insurance.

This Decision was made by way of a motion made and carried at a properly conducted meeting of the Life Insurance Council. The motion was duly recorded in the minutes of that meeting.

Date: February 25, 2015

Original Signed By

Kenneth Doll, Chair
Life Insurance Council

Extract from the *Insurance Act*, Chapter I-3**Appeal**

482 A decision of the Minister under this Part to refuse to issue, renew or reinstate a certificate of authority, to impose terms and conditions on a certificate of authority, to revoke or suspend a certificate of authority or to impose a penalty on the holder or former holder of a certificate of authority may be appealed in accordance with the regulations.

Extract from the *Insurance Councils Regulation*, Alberta Regulation 126/2001**Notice of appeal**

16(1) A person who is adversely affected by a decision of a council may appeal the decision by submitting a notice of appeal to the Superintendent within 30 days after the council has mailed the written notice of the decision to the person.

(2) The notice of appeal must contain the following:

- a) a copy of the written notice of the decision being appealed;
- b) a description of the relief requested by the appellant;
- c) the signature of the appellant or the appellant's lawyer;
- d) an address for service in Alberta for the appellant;
- e) an appeal fee of \$200 payable to the Provincial Treasurer.

(3) The Superintendent must notify the Minister and provide a copy of the notice of appeal to the council whose decision is being appealed when a notice of appeal has been submitted.

(4) If the appeal involves a suspension or revocation of a certificate of authority or a levy of a penalty, the council's decision is suspended until after the disposition of the appeal by a panel of the Appeal Board.

Address for Superintendent of Insurance:

Superintendent of Insurance
Alberta Finance
402 Terrace Building
9515-107 Street
Edmonton, Alberta T5K 2C3