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 William James Clarke
(the "Agent")

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

This case involved an allegation pursuant to s. 467(1)(c) of the Act. Specifically, it is alleged that the Agent failed to disclose that he had been convicted of a Mutual Fund Dealers Association ("MFDA") offence on his May 26, 2014 life and accident & sickness ("A&S") insurance renewal applications. In so doing, it is alleged that this constitutes an offence pursuant to s. 467(1)(c), and thereby, s. 480(1)(b) of the Act.

Facts and Evidence

This matter proceeded by way of a written Report to Council dated May 29, 2015 (the "Report"). The Report was forwarded to the Agent for his review and to allow the Agent to provide the Council with any further evidence or submissions by way of Addendum. The Agent signed the Report on June 23, 2015 and did not adduce any further evidence.

The Agent has been licensed since at least September 14, 1999 for life and A&S insurance. On May 26, 2014 the Agent submitted his individual and corporate online renewal applications for life and A&S insurance. On the individual renewal applications, the Agent answered "No" on each application to question that asked the Agent whether or not, since the date of his last application he had been "…convicted of an offence under the Insurance Act, the Criminal Code or any other enactment?" (emphasis added) The Agent also answered "No" to the same question on corporate renewal application forms.

The AIC obtained information from another provincial insurance agent regulator suggesting that the MFDA found the Agent guilty of an offence. After opening the AIC's investigation file, the investigator obtained a

copy of an "Order" dated February 11, 2014 and "Reasons for Decision" dated March 23, 2014 on the MFDA website. The Order and the Reasons for Decision indicate the Agent entered into a "settlement agreement" with the MFDA, dated November 26, 2013, wherein the Agent agreed that he breached MFDA rules and he agreed to pay a fine in that regard. An MFDA panel approved the terms of the settlement agreement with the Agent.

On December 10, 2014, the Investigator wrote to the Agent and requested information and documentation. The Agent responded by way of email dated December 29, 2014. In this email the Agent wrote:

> The only explanation I have for this is that I was answering these questions corporately for my renewal. I did not purposely mislead the AIC in answering this way but the MFDA was a personal matter as commissions in Alberta are not allowed to be paid into a corporation. This is the only plausible explanation for me answering the question this way as I always knew that this would crop up as a (sic) issue that would be flagged and possibly needing further explanation, I am sorry if the answers were improper and am willing to further explain this situation to you if necessary.

The investigator wrote to the Agent December 31, 2014 to request additional information and documentation. In his letter, the investigator also advised the Agent that he reviewed the Agent's corporate on-line renewal applications for his agency and noted that the Agent had answered "No" to the question of whether his agency had been convicted of any offences.

By response email dated January 5, 2015, the Agent advised that:

> In furtherance to the request for information. I wanted to make clear that I was not receiving any commissions from my MF license during the period in question. All MF commissions are paid personally and thus the MFDA settlement does not interfere with my corporate renewal and thus I answered 'no' to the question. As per my personal license, I answered 'no' in error and should have been 'yes'. I am sorry for the confusion and was not purposely omitting the information as I knew from being re-contracted with Hub Capital and with my E&O carrier that this issue was a focus.

Discussion

Section 467 of the Act requires applicants to provide the information that is requested on application forms. One of the questions found on application forms asks whether or not the applicant has any convictions. The reason for this is that an applicant is not entitled to hold a license if he or she has been convicted of an offence that renders the applicant unsuitable to hold a license (see ss. 5(1)(d) and 5(2)(e) of the *Insurance Agents and Adjusters Regulation*, A.R. 122/2001 as amended, hereinafter referred to as

the "Regulation"). Failing to provide this information impedes the AIC's ability to effectively determine an applicant's eligibility to act as an insurance Agent and it constitutes a breach of the Act pursuant to s. 480(1)(b). In our view, the MFDA sanction was a conviction as contemplated under the Regulation and that the Agent was required to disclose its existence. As he did not do so, we find him guilty of the offence as alleged.

As to the appropriate sanction, we have the ability to levy civil penalties in amounts not exceeding $1,000.00 for these types of matters pursuant to ss. 480(1)(b) of the Act and 13(1)(b) of the *Certificate Expiry, Penalties and Fees Regulation*, A.R. 125/2001. We also have the ability to suspend his certificate of authority for a period of time or suspend it for one year. The Agent has no previous disciplinary convictions with the AIC and cooperated throughout the course of the investigation. Given this and the nature of the MFDA conviction, we order that a civil penalty in the amount of $250.00 be levied against the Agent. We decline to order any related license suspension or revocation.

The 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, the Agent's certificates of authority will be automatically suspended pursuant to s. 480(4) of the Act. 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: August 11, 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