

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 Jim Albert Scantland
(the "Former Agent")

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

This case involved an allegation pursuant to s. 784(b) of the Act. Specifically, it is alleged that the Former Agent acted to assign the benefits of life insurance policies to a third party named Life Premium Finance Corporation Ltd. ("LPFC") in relation to a non-recourse loan program ("Loan Program"). In so doing, it is alleged that the Former Agent trafficked in life insurance policies in contravention of s. 784(b) of the Act and, in so doing, breached a section of the Act as contemplated by s. 480(1)(b).

Facts and Evidence

This matter proceeded by way of a written Report to Council dated June 5, 2015 (the "Report"). The Report was forwarded to the Former Agent for his review and to allow the Former Agent to provide the Council with any further evidence or submissions by way of Addendum. The Former Agent signed the Report on July 2, 2015 and submitted an Addendum by way of a one page letter for further consideration.

The Former Agent first became licensed on January 22, 1993 for life and accident and sickness ("A&S") insurance. He held life and A&S certificates until they expired on February 15, 2001. He did not hold a life insurance certificate of authority again until April 6, 2004 and did not obtain a new A&S certificate until July 3, 2007. The Former Agent had another break in his licensing when his certificates were terminated on August 7, 2013. He reentered the industry when new licenses recommended by Industrial Alliance Insurance and Financial Services Inc. ("IA") were issued on July 29, 2014. These certificates were ultimately cancelled when IA withdrew its recommendation on September 4, 2014.

This case arose out of a letter dated September 15, 2014 that “GW” sent to the AIC. GW is a life insurance agent resident in Kelowna, British Columbia. In his letter, GW set out, among other things, the circumstances that led to his complaint:

- On July 11, 2014 [the Former Agent’s] contract to write business with Industrial alliance (IA) via our MGA was effective.
- Within a short period of time (July 11th to August 21st) [the Former Agent] submitted 23 applications for Life Insurance with IA.
- Every client applied for the same coverage - a minimum funded, level COI, face + fund Universal Life Insurance policy with IA.
- In every instance the application for insurance was for a new coverage (none were replacing any in force coverage).
- When one of the first cases placed [“AR”] sent in an absolute assignment to IA assigning the policy to the Life Premium Finance Corporation Ltd.”, IA performed an internal audit on all of [the Former Agent’s] applications.
- As a result of their investigation they terminated [the Former Agent’s] contract effective August 29th, 2014 and their sponsorship of his Alberta license as of the same day.
- IA wants no part of a scheme whereby insured lives are only applying for insurance on the basis of their premiums will be paid via a loan/assignment arrangement with a third party.
- In our opinion this practice also brings into question insurable interest and suitability of product.
- In terms of the insurable interest it was confirmed during a conversation between myself and [the Former Agent] on the 29th of August 2014 that every policy was sold on the basis that the insured lives would never pay a premium and upon death of the financing company would pay out to their beneficiaries the net difference between the death benefit and the total of premiums loaned plus interest. Furthermore these insured lives were required to put up cash, homes or other assets as a form of collateral for these loans.
- In our opinion this method of selling and assigning life insurance policies skirts the rules on viaticles (sic).
- In terms of suitability of product we need only look at the premium in relation to the income. Normally in circumstances where the premiums represent a large percentage of one’s gross income we expect to see an estate conservation need and/or a client who is asset rich.

- Upon finding out of these cases were not for estate conservation we have an issue with the suitability of the premium and the relation between Gross Income and Annual Premium.
- Some instances of this are highlighted below (and in an attached Excel spreadsheet):

Name	Age	Income	Death Benefit	Annual Premium	% of Gross income
"CH"	64	\$110,000	\$2,000,000	\$51,437	47%
"TR"	65	\$60,000	\$1,000,000	\$30,906	52%
"GM"	62	\$120,000	\$2,000,000	\$55,956	47%

- After hearing from IA and their concerns we also did an audit of [the Former Agent's] business and this brought to light another situation - the dating of applications.
- [The Former Agent's] license in Alberta came into effect on July 29th 2014 (sic), however as you can see below there were over 13 clients who were Alberta residents who just happened to be in Kelowna prior to the 29th of July when the applications for insurance were signed.

GW also enclosed:

- a list of the Former Agent's Alberta resident clients with applications signed in Kelowna, B.C. prior to the Former Agent obtaining certificates of authority to act as an insurance agent in Alberta.
- A copy of a spreadsheet document listing the clients that applied for life insurance with IA through the Former Agent. The document contains columns with information including the name, province of residence, date application signed and other information related to the client and coverage applied for.
- A copy of a letter dated August 29, 2014 from IA to the Former Agent. The letter advised, "Effective immediately, [IA] has to terminate your contract because we do not accept to be part of a sales concept called 'Investor Owned Life Insurance' or any similar concepts supported by [LPFC] or any other third party."

On October 16, 2014, the investigator wrote to another IA official (“CG”) and asked that she provide additional information. CG responded by way of letter dated October 30, 2014. CG indicated that, among other things, the Former Agent processed 16 policies on Alberta residents and that IA received collateral assignments naming LPFC as the assignee on 12 of those. She further indicated that IA issued a warning notice to all of IA’s branch managers and managing general agencies (“MGA’s”) that described LPFC’s program and how IA would respond if their agents became involved in its promotion. This notice reads as follows:

We have recently come across a new scheme in the life insurance market in Canada. This scheme is known under different names such as *Life Collateral Loans*, *Premium Financed Loan*, or *Non-Recourse Premium Financing*. Other names are also possible. This is in fact the financing of life insurance premiums by an external lender who has no bond whatsoever with the insured.

With this scheme, the client subscribes a life insurance policy of thousands and even millions of dollars with a well-known insurance company. An external lender, without any bond with the insured, grants a loan to the insured and pays the premiums on the policy: the policy is thereby assigned as collateral to the lender. The loan and the paid premiums constitute a loan that bears interest at a rate up to 12% annually, which will be repaid with the death proceed; excess amount, if any, is to be paid to the designated beneficiary.

We think that such a scheme goes against the main principles of insurance, which lay on insurable interest and wealth protection of an individual. Using insurance as an investment vehicle by a third party who has no real insurable interest constitute a practice that we consider on healthy for our industry and to which we do not want to participate.

Such transactions are not allowed at Industrial Alliance and consequently, it is not permitted to submit any policy using this scheme or any variation of it. We will refuse any such applications or other transactions that will be submitted and should we discover after a policy has been issued and subsequently assigned to a third party, these policies will be terminated and all charge backs will be applied. Any agents who contravenes this rule will have their contract terminated.

Please inform immediately your Superintendent or regional sales director if the agents in your agency have already submitted applications using this scheme. (emphasis in original)

In addition to policy applications that the Former Agent completed, CG’s letter also contained copies of “Beneficiary, Trustee Assignment for Collateral, Name Correction” forms (“Assignment Forms”) that were submitted in relation to the 12 Alberta residents referenced above and LPFC appears as the assignee on each. Of note is that the Former Agent signed some of the Assignment Forms as “Agent-witness”.

On January 21, 2015, the investigator spoke with the Former Agent and advised the AIC was conducting an investigation in relation to applications relating to the LPFC program. The investigator asked the Former Agent to explain his relationship with Rick Burley ("RB") and LPFC. The Former Agent advised that he was simply receiving referrals from RB for clients who wanted to purchase life insurance and that he was not aware of the details of the Loan Program. The Former Agent advised that the clients would subsequently contact him to complete the Assignment Forms and that he is not aware of the status of any client policies and whether the clients were continuing to pay the premiums or if they received any loan proceeds in relation to the Loan Program. The Former Agent also advised that the applications with Alberta residents were signed in Kelowna, B.C. The investigator advised the Former Agent he would write to request information and documentation and he did so on January 22, 2015.

The Former Agent responded by email on February 5, 2015. The accompanying attachments included an unsigned letter from the Former Agent that reads as follows (paragraph numbers referring to the investigator's questions have been omitted):

I first met Mr. Burley in the spring of 1995.

He was teaching sales training and I retain his services. The nature of our relationship was sporadic over the years and we would reconnect from time to time.

In the spring of 2014 he shared with me the info from the offices of LPFC. I did not receive any compensation from Mr. Burley and he did not receive compensation in the form of referral fees.

I met the clients listed through personal introductions from Mr. Burley

I confirm that I personally met with each of the clients listed.

My family is in Alberta along with many old friends, old clients and colleagues.

In today's modern age of e-mail, conference calling, Face Time and Skype, I have been able to manage these clients quite easily. Most of my discussions have been over the telephone with the occasional face to face.

But I believe that the reason is because of their trust in Mr. Burley

I confirm that in most cases, a full needs analysis was done (copy attached)

Additional needs were determined through discussion regarding the goals and objectives of the insureds.

I personally delivered each of the policies.

The client requested the collateral assignments which were filled out by them and Mr. Burley and LPFC.

Attached are the policy proceeds that I have copies of.. (sic)

My understanding of the [LPFC] program is that Mr. Burley handled the marketing and explanation of the program and that when the clients decided to move forward after I provided them with a needs analysis, I wrote the policy.

My understanding of why they were assigned to LPFC is that the clients asked me for it which I provided. They signed the collateral assignment which was forwarded to [IA] I have no awareness of any other third party paint the premiums on behalf of the policy owners.

My understanding is that no client of [IA] who had a policy of written by IA has received a loan proceeds as a result of assigning the policy to LPFC, including my spouse.

I have no Marketing Materials for LPFC. (formatting in original)

On February 6, 2015, the investigator wrote to the Former Agent and requested additional information and documentation. Included in the investigator's letter was a request for an explanation to why the Former Agent's name appears on a document titled "Welcome to a New way of Thinking!!" with the name of RB. The investigator attached a copy of the document for the Former Agent's reference.

On February 13, 2015, the investigator received an e-mail with attached letter dated February 12, 2015, from the Former Agent. The Former Agent advised, "The information that [RB] shared with me at that time was simply that he was working with a company out of Toronto that provided loans to individuals and that those loans also required to be life insured as a condition of the loan. He asked if I could provide the life insurance for this requirement."

The Former Agent further advised, "As indicated in our conversation, I stated that I personally had signed the applications in Kelowna. Evidently, that was an error on my part."

The Former Agent also advised, "[RB] attached my name to that document without my approval. Once I became aware of it, I asked him to remove it. S.A.F.E.P.L.C. as far as I am aware it is a referral network providing introductions of individuals to specialized professionals."

GW wrote to the investigator again by letter dated May 21, 2015. In this letter he wrote (among other things):

1. [LPFC]: in September 2014 I was first approached by [the Former Agent] of Kelowna to discuss the opportunity to write insurance policies with [LPFC]. I declined to accept the offer to write policies that were attached or obtained to the type of financing strategy as it contravened insurance rules and regulations. After receiving this offer and consulting about the qualities of this strategy I called [name and firm omitted] to report the incident and asked more questions about "Trafficking" of life insurance. In addition to conducting this due diligence I discovered several articles and recent industry reports indicating how these types of insurance writing tactics and practices were illegal and ill-advised by most insurance providers. As I was under contract with [firm a name omitted] as a licensed agent I had no

intention or desire to pursue any relationship with any agent that had direct or in-direct ties to [LPFC]. I additionally advised that [the Former Agent] follow the same process.

2. [The Former Agent]: on November 19, 2014 I met with the [the Former Agent] as he had called me to discuss his recent situation of having his license suspended/rescinded by the BC Insurance Council. I learned of the nature of why this occurred and how it was that [the Former Agent] was held accountable for his actions. I further informed him that I would personally never write any policies that were obtained via the means in which [LPFC] uses or encourages it's (sic) agents to implement. [The Former Agent] realized that this error in judgement (sic) after the fact.

As noted above, the Former Agent provided the council with additional submissions by way of letter dated July 2, 2015. In this letter the Former Agent wrote:

Further to your communication and our discussions, I hereby question and dispute the interpretation of S784 (b) of the Act. My intention in all of the cases was to provide a service as requested. Each of the individuals and knew what they were doing (as far as I understood it) and did so of their own free will.

I also question the "opinion and recommendations" of the Investigator. But that stated, I leave it to the council to form their own decision and perceive accordingly.

Discussion

Section 784 of the Act prohibits the trafficking of life insurance policies. Specifically, this section prohibits the trafficking or trading in life insurance policies for the purpose of procuring the sale, surrender, transfer, assignment, pledge or hypothecation of the benefits under those policies to any person. The applicable standard of proof in cases such as these is the civil burden. In other words, we must be satisfied that it is more likely than not that the Former Agent committed the offence as alleged. Furthermore, s. 784 is a strict liability offence. This means that it is not necessary to prove that the Former Agent intended to contravene the Act. Rather, the offence is proven if it is shown that the Former Agent trafficked in life insurance policies as contemplated in the Act.

The evidence indicates that the Former Agent entered into a business arrangement with RB whereby RB would send clients to the Former Agent to obtain life insurance for the sole purpose of assigning the policies to LPFC. This is not a case where a client obtains a life insurance policy to insure a loan. Rather, the program, as described by IA, contemplated a loan only where an insurance policy was first issued. After this, the policy would be assigned to LPFC and the insured's would not be responsible for further premium payments. Rather, the premium and interest would be included in the loan amount and

subsequently paid by the death benefit of the policy. The Report notes that the Former Agent acted as a witness on a number of the Assignment Forms that were submitted to IA. He also tried to enlist GW to participate in the program but GW demurred on the basis that he was not prepared to engage in this type of conduct. These factors, coupled with the fact that the “referrals” were being sent to him as part of the program proves that the Former Agent knew that the sole purpose of the insurance he was selling was its ultimate assignment to LPFC.

The Former Agent states that he did not know the details of the program or that the insurance clients would not be paying the premiums. Based upon the evidence before us we do not believe that is the case. As noted in the original complaint letter, a number of the clients did not have the financial means to pay the premiums. For example, the gross income set out on CF’s application was \$110,000.00. While she had a relatively high net worth, the money laundering and terrorist financing documents accompanying the application stated that the source of the funds for the insurance would be paid from employment income and not paid by anyone else. It is simply inconceivable that the Former Agent actually believed that CF, aged 63 at the time of the application, would be paying more than \$51,000.00 of insurance premiums per year while earning gross employment income of \$110,000. Similarly, TR applied for \$1,000,000.00 of life insurance with premiums exceeding \$30,000.00 per year despite the fact that he was a labourer making \$60,000.00 per year. The net worth portion of the application form was not completed. It is also interesting that no needs analysis was done in relation to either TR or CF. The Former Agent only provided the Council with 4 needs analyses and one of these was completed in regard to himself and his wife. Apart from these facts, GW indicated in his letter that the Former Agent explicitly told him that the insured lives would never pay the insurance premiums.

Therefore, based upon the evidence in its totality, we are prepared to find that the Former Agent contravened the Act in relation to the 12 instances alleged in the Report. In regards to the applicable sanctions, we have authority to levy civil penalties in an amount not exceeding \$1,000.00 on each offence 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 normally also have the jurisdiction to suspend licenses for a period of time or revoke them for one year. However, the Former Agent no longer holds a certificate of authority and this option is not available.

We are of the view that significant civil penalties are warranted here. The prohibition against trafficking life insurance policies is long-standing and its purpose is to avoid any number of risks and abuses that can be visited upon consumers. Given this, we order 12 civil penalties in the amount of \$1,000.00 each (\$12,000.00 total).

The civil penalties must be paid within thirty (30) days of receiving this notice. In the event that the penalties are not paid within thirty (30) days, interest will begin to accrue. Pursuant to s. 482 of the Act (copy enclosed), the Former 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: September 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