

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 Nilima (Huai Yun) R. Kang
(the "Agent")

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

This case involves allegations made pursuant to ss. 5(a) and 2(a) of the *Replacement of Life Insurance Contracts Regulation* (the "Regulation") and s. 509(2) of the Act. Specifically, it is alleged that the Agent recommended the replacement of an existing life insurance contract but that she failed to present and review a Life Insurance Replacement Declaration ("LIRD") with the applicant and that this constitutes an offence pursuant to s. 5(a) of the Regulation. In Count 2, it is alleged that the replacement was detrimental to those who were insured and that this constitutes an offence pursuant to s. 2(a) of the Regulation. In addition, or in the alternative to Count 2, it is alleged that the Agent made false or misleading statements when completing the LIRD and that this constitutes an offence pursuant to s. 509(2) of the Act.

Facts and Evidence

This matter proceeded by way of a written Report to Council dated July 9, 2013 (the "Report"). The Report was forwarded to the Agent for her 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 September 11, 2013 and provided an Addendum by way of a one-page letter.

The Agent has held certificates of authority to act in the capacity of a life and accident & sickness ("A&S") agent since April 15, 2009. On February 12, 2013, the AIC received a letter from an insurance agent ("RE") wherein RE voiced concerns about the replacement of life insurance contracts of two individuals ("EC" and "NC"). RE alleged that the Agent replaced EC and NC's existing life insurance policy with another policy that contained a premium rating on NC's life and that the Agent did not complete the

required LIRD form. RE further alleged that the Agent did not disclose the rating to the clients until after the delivery receipt was signed and after the client questioned the Agent as to why the premiums were higher than those previously illustrated by the Agent. Additionally, RE indicated that the premium requirement for the new policy has been a hardship on EC and NC and that they are considering reducing their coverage so as to save money on premium payments.

In further communications, RE again indicated that when the Transamerica policy was issued with a rating it was not explained by the Agent and that EC and NC only learned of the rating months later when they questioned the Agent as to why their premium was higher than what was illustrated. RE also provided a breakdown of the premium and death benefit between the two policies and advised that he believed the Agent had an obligation to offer a second policy to cover the difference in death benefit and provide coverage on the children without cancelling the existing policy issued with a standard rating.

On March 7, 2013, the investigator wrote to Transamerica and requested information and documentation. "EH" responded on Transamerica's behalf and provided the AIC with the following documents:

- i) A copy of three pages of LIRD forms. The first contains handwriting on the top of the page which indicates, "ATTENTION TO UNDERWRITING DEPT." and "CLIENT NAME: [NC]". In the upper left hand corner the LIRD form indicates "(Page 1 of 1)" and on the bottom it contains fax transmission details with a date of 01/05/2012. The LIRD form is different from the prescribed LIRD form available on the AIC website as it is spelled with a small "i" in "Life insurance Replacement Declaration" and "you" in "Questions about you present life insurance policy". The LIRD form also included handwritten explanations to the eight questions on the one page. The second and third pages of the LIRD forms were completed in relation to EC and contain similar differences to the one page LIRD form for NC. The LIRD form on EC was signed by EC and the Agent on November 7, 2011. To question six on page two, "What guarantees apply to your present and proposed policies? Which policy has the best guarantees?" the Agent answered, "The new policy has better guarantees". To question seven on page two, "Will either of the policy premiums (payments) go up? For how long will the premiums stay the same? How much will they increase?" the Agent answered, "No. It stays the same."
- ii) A copy of the application without medical information completed by the Agent on EC (Proposed Life Insured-Life 1) and NC (Proposed Life Insured-Life 2) in relation to the proposed Transamerica policy. The application was signed by EC and NC on November 7, 2011. The quoted total premium was \$264.06 monthly and the question of whether the proposed insurance was intended to replace any existing insurance was answered "Yes" for both EC and NC.

- iii) A copy of the “Endorsement To Application” in relation to the proposed Transamerica policy. The endorsement related to question two of part one of the application for EC.
- iv) A copy of the “Schedule of Benefits and Premiums” in relation to the proposed Transamerica policy. Under “Contract Information” it indicates a policy issue date of February 13, 2012. Under “Coverage Details” it indicates a “Substandard Risk” in relation to the coverage issued to NC with an “Initial Annual Premium” of \$2,790.00 and a total “Initial Annual Premium” of \$3,949.00. Under the “Summary of Premiums” it indicates a “Total Premium at Issue” of \$355.41 monthly. [The Initial Annual Premium of \$2,790.00 for NC calculates to \$5.58 per thousand of coverage and the Initial Annual Premium of \$830.00 for EC calculates to \$1.66 per thousand of coverage] Under the “Schedule of Premium Changes” the renewal premium increases to \$38,262.50 annually on February 13, 2032 for a total of \$1,150,000.00 of coverage. This includes the Sum Insured of \$150,000.00 on “HC”, in addition to \$500,000.00 of coverage on EC and NC, but does not include the child rider benefit as that coverage expires on February 13, 2031.
- v) A copy of the signed and dated “Amendment To Application” in relation to the proposed Transamerica policy. The document was signed by EC and NC on February 16, 2012 and indicates, “THIS POLICY IS ISSUED WITH AN EXTRA PREMIUM RATING. THE TOTAL RATE IS CALCULATED AT 150% ON THE LIFE OF [NC].”
- vi) A copy of the four page point of sale illustration in relation to the proposed Transamerica policy with a preparation date of November 5, 2011. The illustration sets out details for the proposed coverage including the insurance amount and premiums. The illustration also discloses, “The actual premium payable may vary from this illustration. The premium guaranteed at issue will depend on Transamerica’s final underwriting decision.” (emphasis added). The Glossary also discloses that the “Total Annualized Policy Premium” includes the guaranteed premium and guaranteed annual policy fee set out at \$50.00.
- vii) A copy of the two page “Contract Placement List” and one page “Delivery Receipt” in relation to the proposed Transamerica policy. The Contract Placement List is dated February 13, 2012 and sets out the requirements in order to place the contract in effect including the collection of the additional premium to reflect the substandard rating on NC. The Delivery Receipt states that the policy was delivered to EC and NC on February 16, 2012 and is signed by both EC and NC.

On April 2, 2013, the Investigator wrote to “LL” with Assumption Life and requested information and documentation in relation to the Assumption Life policy. LL responded by way of letter dated April 8, 2013 and attached a number of documents including:

- i) A copy of a "Policy Service Request" form signed and dated by EC and NC on March 11, 2012. The form requested the cancellation of EC and NC's existing Assumption Life policy and indicated "personal matters" under the reason for cancellation.
- ii) A copy of the Assumption Life policy issued to EC and NC. The Policy Specifications page indicated the issue date was April 28, 2011 and provided details of the annual premium for both EC and NC. The "Annual Premium" for EC was \$628.00 and the "Annual Premium" for NC was \$1,292.00. [The Annual Premium for EC calculates to \$1.57 per thousand of coverage and the Annual Premium for NC calculates to \$3.23 per thousand of coverage] In the "Contract Premiums" provision it states, "The annual premiums for the policy or any rider, as applicable, are indicated in the Policy Specifications and are guaranteed unless otherwise specified in the contract". On page 17 of 18 of the policy (Renewal Premium Rates Per \$1,000), the renewal rate for EC at attained age 65 equals \$15.60 per thousand which calculates to a renewal premium of \$6,240.00 annually for \$400,000.00 of coverage. The renewal rate for NC at attained age 69 equals \$33.91 per thousand which calculates to a renewal premium of \$13,564.00 annually for \$400,000.00 of coverage. The total renewal premium for EC and NC totals \$19,804.00 annually for a total of \$800,000.00 of coverage.

By letter dated April 11, 2013, the Agent wrote to the investigator to provide information on this matter. She also enclosed certain documents. The Agent advised:

I have prepared explanation to the questions you have emailed me:

1. The old insurance with Assumption Life only covers husband and wife. I have recommended the new policy with more coverage and [sic] covers the whole family. When they got approved it just happened that [NC] got 150% rated due to his health issue. Upon delivering the policy I have explained very well [sic] to the client, that this new policy has been rated 150%, it means their premium will go up. But they still chose to take the new policy and signed the amendment.
2. Yes, I have reviewed their existing Assumption Life. It is a 20 year term policy with \$400,000 coverage each life, with no children's rider.
3. On the application date, I forgot to do a replacement form for [NC], I realized it when I received an email from Transamerica on November 21, 2011 that I was missing the replacement form. I tried [sic] few times to get a hold of client [sic] and finally got a hold of client [sic] in early January and got the LIRD form signed.
4. The new policy has better guarantees because it gives the couple more coverage and insured the whole family as well.
5. I meant to write the premium stays the same for 20 years as their old policy.
6. Since the policy has been in place, there was [sic] no changes made.

7. The copies that I have [sic] I don't see the difference, and if there is any difference its [sic] because one was done on November 7, 2011 and the other one was done on January 4, 2012, could be a different form.

8. Please see number 3 as the answer is the same.

In the attachments, the Agent provided LIRD forms completed on EC and NC. The copy of the LIRD form on EC is the same as that previously provided by Transamerica and is dated November 7, 2011. The investigator noted that the copy of the LIRD form on NC also contained the second page which was not provided by Transamerica. The LIRD form on NC was signed by him on January 4, 2012. The answers by the Agent to questions five, six and seven are the same as the LIRD form completed on EC.

In her Addendum, the Agent wrote as follows:

I, Nilima Kang, truly apologize with [sic] the mistake I've done for my clients, by giving them more coverage including their kids. It was not intentional. The new plan coverage was properly explained to the clients and when the approval came out rated for client [NC], they still decided to take the policy and signed the amendment, as this new plan includes their three children, which the eldest child even has her own coverage and two other children was [sic] riders. I thought I was doing the right thing. I was at [sic] my first year of my career and doing this part time with less experience and knowledge. But this serves as a big lesson for me to team on how to properly help clients with their financial needs.

I do hope for your kind consideration as this situation will never happen again.

Discussion

By way of introduction, the relevant sections of the Regulation read as follows:

s. 509(2): No person may, by means of misleading or false statements, procure or induce or attempt to procure or induce any person to forfeit, surrender or allow the lapse of any policy of insurance.

s. 2(a) of A.R. 127/2001: An insurer or insurance agent must not, where it would be detrimental to the interests of the policyholder,

(a) directly or indirectly induce or attempt to induce a policyholder to effect a replacement of a contract...

s. 5(a) of A.R. 127/2001: Where a replacement of a contract is recommended by an insurance agent or instructed by a policyholder, the insurance agent must, prior to taking a new application,

(a) present to and review with the applicant a declaration statement in a form approved by the superintendent, ...

In regard to Count 1, it is not in dispute that a replacement of the existing policy was intended. As such, pursuant to s. 5 of the Regulation, the Agent was required to complete a replacement declaration for each client prior to taking the application. This particular form is prescribed under the Regulation and agents are required to obtain a client's signature on it prior to taking an application for insurance. The form prompts clients to ask their agent questions that could be relevant in deciding whether or not to replace their existing insurance. While the Regulation does not explicitly require a written explanation as to the advantages and disadvantages of the new policy, the prescribed form clearly contemplates a written summary because, in signing the form, the client agrees that he or she has received one. Given the fact that the Agent did not complete the required form for one of the applicants, we are satisfied that she contravened s. 5(a) of the Regulation.

As to the applicable sanctions, we have the ability to levy civil penalties in an amount not exceeding \$1,000.00 pursuant to s. 13(1)(b) of the *Certificate Expiry, Penalties and Fees Regulation*, A.R. 125/2001. We also have the ability to suspend or revoke the Agent's certificate of authority to act as an insurance agent. The Agent has no prior disciplinary history with the AIC and appears to have cooperated with the investigator during the course of the investigation. Given all of the facts, we order that a civil penalty in the amount of \$300.00 be levied against the Agent. We do not feel that a license suspension or revocation would be appropriate here.

In Count 2, from the evidence presented in the Report, it is clear that the Agent effected a replacement with the clients and that, given the rating, the replacement was detrimental to the clients. Therefore, we find that the Agent contravened s. 2(a) of the Regulation.

Again, we have the ability to levy civil penalties in an amount not exceeding \$1,000.00 pursuant to s. 13(1)(b) of the *Certificate Expiry, Penalties and Fees Regulation*, A.R. 125/2001. We also have the ability to suspend or revoke the Agent's certificate of authority to act as an insurance agent. In this case, we determined that a higher penalty is warranted and order that a civil penalty in the amount of \$750.00

be levied against the Agent. We do not feel that a license suspension or revocation would be appropriate here either.

As to the alternative or additional allegation of making false or misleading statements, we find that the Agent did contravene s. 509(2) of the Act by misstating the guarantees between the two policies. However, given the circumstances in their entirety and our findings above, we exercise our discretion and choose not to levy a civil penalty in this regard.

In summary, the Council has found that the Agent contravened two sections of the Regulation and one section in the Act, and ordered that civil penalties in the amount of \$1,050.00 be levied 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. The Penalty must be paid within thirty (30) days of receiving this notice. In the event that the penalty is not paid within thirty (30) days, the Agent's certificate 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: January 28, 2014

Original signed by
Ken 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