

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 Rishikesan Balasubramaniam
(the "Agent")

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

This case involved an allegation pursuant to ss. 452(2)(c) and 480(1)(b) of the Act. Specifically, it is alleged that the Agent acted as an insurance agent while not holding a valid and subsisting certificate of authority as required by s. 452 of the Act. In so doing, it is alleged that he violated a section of the Act as contemplated by s. 480(1)(b) of the Act.

Facts and Evidence

This matter proceeded by way of a written Report to Council dated April 15, 2014 (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 April 25, 2014 and did not adduce any further evidence.

The Agent is the holder of an Insurance Agent's Certificate of Authority for the sale of general insurance, and has been so licensed since June 6, 2011, other than for the period November 1, 2012 to November 7, 2013.

On October 9, 2013, the AIC received an Application for Agents Certificate of Authority from the Agent. On October 15, 2013, the AIC sent the Agent a letter advising him that we could not process his application until further information was provided and he was asked to sign and date a document entitled "Work History for [the Agent]".

On October 29, 2013, the AIC sent an e-mail to the Agent that asked him to confirm in writing and under his signature whether he had been compensated for acting as a general insurance agent in Alberta from November 1, 2012 to the date of the e-mail. The AIC sent a follow-up e-mail on November 4, 2013, and on November 7, 2013, the AIC received an e-mail from Co-operators General Insurance Company's compliance manager (the "Compliance Manager") that contained a letter signed by both her and the Agent. That letter stated, in part, as follows: "During the period that he was not licensed in Alberta [the Agent] did take 280 calls from November 2012 to September 2013. He was taken off Alberta calls on Sept 6th, 2013...Call centre employees are salaried and do not receive commissions." The Compliance Manager also confirmed the Agent's salary.

On November 25, 2013, the AIC sent a letter to the Agent asking him to confirm the number of files he worked on, what he did on those files, the number of new policies he wrote, and the amount of compensation that he received during the period when he did not hold a valid and subsisting certificate of authority. On December 6, 2013, the AIC received an e-mail with attachments from the Compliance Manager. The attachments confirmed that, while unlicensed, the Agent took 280 telephone calls, and that the work he performed on those files consisted of "...typical transactions, auto changes, payments, updates, habitation changes, payments, updates, general inquiries and sales." The Agent also advised that of all of those files "...only 1 was a new client auto insurance bind." Finally, he confirmed that he did not receive any commission income during the unlicensed period, only his salary.

On January 28, 2014, the AIC wrote to the Agent asking him to confirm why he acted as an insurance agent when he did not hold a valid and subsisting certificate of authority to do so. On February 6, 2014, the AIC received a letter dated February 4, 2014 from the Agent, in which he stated, in part, as follows: "I completed the renewal applications for all other 9 Provinces where I hold a license and was sure that I had completed my Alberta renewal. I do understand that it was my responsibility to check and confirm that payment was received and not to assume the renewal had been issued however, this was an oversight on my part..."

On April 7, 2014, the AIC sent an e-mail to the Compliance Manager, requesting that she describe what processes Co-op has in place to ensure that unlicensed agents are not compensated. On April 9, 2014, she responded by e-mail, in which she advised that while the Agent and his coach had received notice of the approaching license renewal date, that coach was in the process of moving to a new position and the new

coach did not receive the same notice. She also wrote that “ [the Agent] fully understands that at the end of the day this is his responsibility and it was an oversight as he has never not renewed...[t]his is the first time this has happened for [the Agent]...”

Discussion

From the evidence in the Report, it is clear that the Agent acted in the capacity of an insurance agent at a time during which he did not hold a valid and subsisting certificate of authority. The Agent freely admits this and provided an explanation as to how this situation transpired. As such, we do find that he breached s. 452(2)(c) of the Act and; therefore, contravened a section of the Act as contemplated by s. 480(1)(b).

As to the applicable sanction, we have the jurisdiction to levy civil penalties in an amount not exceeding \$1,000.00 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. In light of the Agent’s cooperation, his explanation, and the fact that he stopped working on Alberta files when he became aware he was unlicensed, we are of the view that a civil penalty at the high end of the range would not be appropriate in the circumstances. We likewise are of the view that a license suspension or revocation is not warranted. Therefore, we order that a civil penalty in the amount of \$300.00 be levied against the Agent. 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, 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 General Insurance Council. The motion was duly recorded in the minutes of that meeting.

Date: July22, 2014

Original signed by

Amanda Sawatzky, Chair
General 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