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 Harjinder S Randhawa
(the "Agent")

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

This case involved an allegation pursuant to ss. 509(1)(a) and 480(1)(b) of the Act and s. 5 of the *Replacement of Life Insurance Contracts Regulation A.R. 127/2001* (the "Regulation"). Specifically, it is alleged in Count 1 that the Agent recommended the replacement of three existing Transamerica Universal Life ("UL") policies in relation to Mr. HG and Ms. HG (collectively "the HGs"). In so doing, it is alleged that he failed to present to and review a Life Insurance Replacement Declaration ("LIRD") form with the HG's prior to completing the three new applications for proposed UL insurance coverage in contravention of s. 5 of the Regulation, and thereby, s. 480(1)(b) of the Act. In Count 2, it is alleged that the Agent recommended the replacement of three existing policies and subsequently completed three LIRD forms, wherein he stated that the new policies did not have cancellation charges when, in fact, the new policies did have surrender charges. In so doing, it is alleged that the Agent made false or misleading statements and that this constitutes an offence pursuant to s. 509(1)(a) of the Act.

Facts and Evidence

This matter proceeded by way of a written Report to Council dated May 21, 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 June 2, 2014 and submitted an Addendum by way of two letters for consideration.

The Agent has held certificates of authority enabling him to act in the capacity of a life insurance agent and accident & sickness ("A&S") insurance agent since January 20, 2012. By letter dated September 12, 2013, the business development manager of a life insurance agency ("ML") registered a complaint against the

Agent with the AIC. In his letter, ML outlined the circumstances surrounding the replacement of certain life insurance contracts on behalf of two clients – the HG's. He stated that the HG's were clients of an agent affiliated with ML's agency ("PK") and that this agent had provided ML with a number of documents in regard to the Agent's actions. He further advised that they had concerns regarding the appropriateness of the new policies and whether the clients were provided with the required disclosure.

ML included the following attachments with his letter:

- A letter dated "Aug 27/2012" from PK to the AIC, which set out information in relation to two existing Transamerica UL policies that were replaced.
- Two Memos dated June 25, 2013, from Transamerica to PK, each with an accompanying copy of an LIRD form dated June 17, 2013 signed by the insured/owner, Mr. HG and Ms. HG. The Memo's advised PK of the receipt of new applications which were intended to replace existing coverage.

As a first step, the investigator wrote to a Transamerica official on September 20, 2013 and requested that she provide information and documentation in relation to the transaction. The official responded by way of letter dated October 4, 2013. Among the attachments accompanying her letter was a summary that set out information related to six different UL policies. Specifically, there were three existing UL policies sold by PK and these were replaced with three proposed UL policies that the Agent recommended to the HG's. The attachments also included policy documents specific to each of the six policies including applications, illustrations and completed LIRD forms.

In response to further requests for information, Transamerica officials advised the investigator that Transamerica requires a copy of the LIRD forms that agents complete but not copies of the written explanation referenced in the forms themselves. As such, Transamerica advised that it had no written explanation on file in relation to these replacements. The official also advised that the owners of the existing policies had the option to change to a level cost of insurance pursuant to the existing Wealth Advantage policies sold by PK and that Mr. HG previously applied for life insurance coverage in May 2012 but that this application was declined due to medical reasons.

On March 31, 2014, the Agent emailed the investigator and provided him with a number of documents including:

- A letter from the Agent to the AIC dated January 20, 2014. The Agent advised that Mr. HG is studying for the LLQP exam and that, "He understands the difference between policy plans and agreed to replace all three policies with his total consent." The Agent further advised that he provided three plans with increasing death benefits and level cost and that Mr. HG is satisfied with the new plans and wishes to keep them. The Agent also advised that the previous existing policies were the Wealth Advantage series of UL policies which had higher management fees than the proposed Prosperity series of UL policies.

- An undated letter signed by Mr. HG and Ms. HG to Transamerica. The letter advised that they were aware of the difference between YRT and Level and that they agreed to take the new policy with level cost of insurance. They further advised that they agreed to have level cost of insurance for their children's policies as well.

- A document entitled, "Advisor Notes on Replacement of Policies". The document is dated June 17, 2013 and is signed by Mr. HG, Ms. HG, and the Agent. The document indicated that Mr. HG and Ms. HG were advised of changes that would take effect in the new policies. The document further advised that the Agent suggested the replacement of all three policies and that they are aware of the suicide clause and that the fund values would be lost. The document also indicated that the Wealth Advantage series of policies could not be converted into the Prosperity series of policies.

- Copies of three separate LIRD forms, one for each replacement, with an accompanying copy of the written explanation. All three LIRD forms were signed by the Agent, Mr. HG, and Ms. HG and were dated June 17, 2013. To question 5 on all three written explanations, "Are there cancellation charges on the new policy?" the Agent answered, "No cancellation charges, just not getting our premiums back, which is okay because we still save more with new policy."

On April 1, 2014, the investigator wrote to SA with Transamerica and requested confirmation of whether the proposed policies sold by the Agent contained cancellation or surrender charges. A Transamerica official emailed the investigator on April 7, 2014 and confirmed that there were surrender charges on the policies.

Given the discrepancies regarding cancellation or surrender charges, the investigator wrote to the Agent on April 7, 2014 and asked that the Agent explain why he indicated, "No cancellation charges…" regarding question five on the LIRD form.

The Agent responded by email on April 9, 2014. In a letter attached to the email, the Agent wrote:

> As I explained the [sic] client about advantages and disadvantages of new and old policies, I made it clear to the client that they will not get their paid premiums back as it will be considered as surrender charges however they will not need to pay anything more than what they have already paid. Therefore there will be no additional surrender charges. Client agreed to it and policies were replaced.

On April 17, 2014, the Agent again emailed the investigator to outline his position regarding the surrender or cancellation charge issue. In this email, the Agent wrote that "…its [sic] very clear that my client Mr. [HG] was well aware of surrender charges on his old policies. He just didn't want to pay anything extra on the [sic] top of what he already paid that's why he meant 'no cancellation charges' to be paid." The Agent advised that he worked in the client's best interest and that he only replaced the policies after the client's insistence when he learned the difference between the two types of policies.

On May 12, 2014 the Agent emailed the investigator and wrote the following regarding the applications, LIRDs and the surrender charges:

> 1: I advised the client that there will be no additional surrender charges other than what they have already paid. Yes, I do understand question 5 which relates to the new policy and the client was advised of the new surrender charges of the new policies.
>
> 2: The reason for the policies 080851313 to contain two dates, June 16, 2013 and June 17, 2013 is that client was being harassed by [PK] who was the ex advisor, even during the application process the client was getting calls from him telling them not to replace the policies as he will lose his commission. So client felt pressured after all the calls he was receiving from [PK] continuously. So the client suggested us to come back next day and complete the rest of applications and LIRD forms.
>
> 3: As I mentioned all these concerns in my older emails relating the reason of cancelling the previous policies, the older policies which were wealth advantage and had a cost of insurance as ART and death benefit was LEVEL. Now I have made it to LEVEL cost of insurance and increasing death benefit, the client was aware and was happy to hear that he will have a level cost for the remaining period of the policies.

> 4: The client showed me his policies in which it stated that he had ART cost of insurance. I am also attaching the forms from his old policies along with this email so you could see the difference between the older policies and new policies. You asked if Transamerica was asked about in force policy illustrations. I want to acknowledge that Transamerica marketing team managers provide trainings [sic] in our office every month. We don't call them on each policy base but in general they have suggested us to replace ART to level if need to replace a policy. Wealth advantage and prosperity UL are 2 different products. Wealth advantage is an expensive product which I replaced with more economical life product. I am also adding attachments of amendment pages which were not signed by their ex advisor [PK].
>
> I want to also mention that Mr. [HG] was mislead by [PK] about WFG business. He was advised not to join WFG and study LLQP so he wouldn't know the real difference about policies. Also to mention that [PK] was terminated by WFG because of his misleading business practices. If you need more information about [PK]'s dealing with Transamerica Please call [AC] … as he is the regional sales manager in Alberta. [PK] only stopped calling the client after he was warned by the client that they will call police on him if he didn't stop calling them and harassing them.

In his Addendum the Agent wrote:

> This letter is in response to your Investigation report of replacement policies of Mr. [HG]and Mrs. [HG] which I received. I do not agree with your report. You are accusing me of misleading my client and accusing me of not getting LIRD forms signed prior to the new applications. I have a lot of arguments about that. First thing is that applications were not fully completed on 16th of june [sic] 2013. Never [sic] submitted to Transamerica on june [sic] 16th 2013. It was a lot of work that needed to be done and as I mentioned that Mr. [HG] was also getting harassing phone calls from [PK] while we were filling the applications, trying to convince him not to replace his policies. As I stated previously that Mr. [HG] wanted me to come back and complete all applications next day. He put whatever date on it that was his choice. Other than that there could be any reasons for next day's date on it according to client's circumstances. Mr. [HG] confirms that by an attachment letter. I also explained [sic] him about cancellation charges and he confirms that in his [PK] who has been harassing my client and his family since the replacement. My· client was being harassed and that's why we postponed everything till [sic] next day. I wasn't expecting it to become such a big issue. I didn't intend to make the policy change just for my own profit. New policies are a better choice for my client and they know that as Mr. [HG]is studying LLQP. As I have sent you before an attachment of example of an amendment that was never signed by [PK]. I ask you to drop all charges against me as it will be the right thing to do.

The Agent's Addendum also includes a further statement from the client explaining, among other things, that the LIRDs were completed prior to the applications and that they understood the cancellation/surrender charge conditions in the existing policies.

Discussion

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

> s. 509(1) No insurer, insurance agent or adjuster may
>
> (a) make a false or misleading statement, representation or advertisement
>
> 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. 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.

In this case, the applications at issue are dated June 16, 2013. However, the LIRDs are dated June 17, 2013. Both the Agent and the client Mr. HG suggest that the applications were started on the 16th but completed on the 17th and that this satisfies the requirements in the Regulation. We disagree. As noted above, the purpose of the LIRD is to provide the consumer with tools to assist him or her to consider whether or not an existing insurance policy should be replaced. This should be done in advance of starting the application form.

Additionally, the Agent's and the HG's submission as to the timing of the signatures in relation to filling out the applications does not make sense and raises significant errors and omissions issues. In signing the application, the applicant is making a number of declarations throughout. If we are to believe the Agent and Mr. HG, a portion of the application was completed and signed on the 16th and some unknown portion was completed on the 17th. If that is the case, how was the applicant attesting to the truth of the contents and making the required declarations before the questions were even answered? This is even more troubling given the Agent's submission that Mr. HG was studying to become a life

insurance agent. On the basis of the evidence, we are prepared to conclude that the LIRDs were not completed prior to the taking of the applications and that the Agent breached the Regulation as alleged.

Count 2 of the Report alleges that the Agent made a false statement in contravention of s. 509 of the Act by stating that the new policies did not contain surrender or cancellation charge clauses. It is clear that the new policies contained such provisions. While the HG's understanding somewhat mitigates the effect of this false statement it was, nonetheless, not correct. Once again, including something that is false or not entirely forthright raises significant errors and omissions issues for the Agent and the insurer involved. Over the course of intervening years, one can easily imagine a situation where a client subsequently disavows the understanding that they supposedly had at the time the LIRDs were completed. Were that to occur the completed LIRDs would be the best evidence of the clients' understanding at the time. The LIRDs must contain truthful and accurate information regardless of what the Agent thinks the clients know. As such, we find that the Agent breached s. 509 as alleged.

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 for each of the offences. 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. Likewise, the clients have not suffered any harm and have been prepared to stand by the Agent and his advice. Given all of the facts, we order that a civil penalty in the amount of $300.00 be levied against the Agent in regard to the failure to complete the LIRDs in accordance with the Regulation. On the second count, we decline to order any civil penalty. However, this does not alter the fact that we found that the offence was made out on the evidence. We do not feel that a license suspension or revocation would be appropriate here.

In summary, the Council has found that the Agent contravened one section of the Regulation and one section of the Act. We have also ordered that a civil penalty in the amount of $300.00 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 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 Life Insurance Council. The motion was duly recorded in the minutes of that meeting.

Date: August 22, 2014

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
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Edmonton, Alberta T5K 2C3