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 Peeyush Sharma
(the "Agent")

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

This case involved an allegation pursuant to s. 480(1)(a) of the Act. Specifically, it is alleged that the Agent signed an application for life insurance on an insured (JE) without being present to witness the insured's signature or the completion of the application and that this was done without JE's knowledge or consent. In so doing, it is alleged that he acted in a dishonest and untrustworthy manner and that this constitutes an offence pursuant to s. 480(1)(a) of the Act.

Facts and Evidence

This matter proceeded by way of a written Report to Council dated May 26, 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 May 27, 2014 and he submitted a one page Addendum for consideration.

The Agent was licensed from February 11, 2010 to December 3, 2013 for life and accident & sickness ("A&S") insurance. The Agent's life and A&S certificates of authority were terminated on December 3, 2013. By letter dated September 12, 2013, an official of the Agent's sponsoring insurer (the "Sponsor") wrote to the AIC to inform it that they had terminated their relationship with the Agent on account of the Agent's fraudulent activity. In this letter the official also advised that:

> We have confirmed that [the Agent] submitted an application for our client [JE], with a false signature. We received a complaint letter from [JE] indicating that she did not apply for coverage with our Company and immediately commenced an investigation. During the course of the investigation, a meeting was arranged with [the Agent] and during that

> meeting, [the Agent] confirmed that the application was not signed by the client but was signed by himself and submitted.

Included in the attachments was a copy of a written response from JE to the Sponsor dated August 30, 2013. In this letter, JE advised, among other things, that "I knew something was wrong and now that I see the application, that is not my signature. I do not recall meeting with this agent on that date and my name is spelled incorrectly on the whole entire document where a signature is required."

Also included amongst the attachments was a copy of the Application at issue. The policy was for $50,000.00 of coverage and it contains a payor signature regarding the pre-authorized payment agreement, a signature purporting to be that of the insured, and the questions and answers relating to the conditional certificate of temporary insurance. All signatures were dated April 20, 2013.

In section A3 (which is the advisor's report), the answer "No" was indicated to the question of whether the conditional certificate of temporary insurance was drawn up and given to the policyholder. Instructions also indicated that 100% of commissions were to be paid to the Agent.

On December 5, 2013, the Agent attended the AIC's Calgary office and met with the AIC Director of Compliance ("JD"). During this meeting, the Agent inquired about the status of the investigation into the Sponsor's allegations and whether or not he could contract with another insurer.

On December 12, 2013, the investigator wrote to the Sponsor to request information and documentation. The investigator also asked the Sponsor to confirm if a policy was issued to JE and if any premium payments were made by JE.

By email dated December 12, 2013. the Sponsor advised the investigator that the annual premium payment mode was chosen on JE's application such that payment would be made upon policy delivery. The Sponsor further advised that no premium payment was received from JE and that the policy was not "issued".

On December 12, 2013, the investigator also spoke with the Sponsor's official who advised the investigator that a policy was never issued to JE as there were outstanding underwriting requirements to be met. The official further explained that the further outstanding underwriting was necessary because JE had an

existing policy with the company and that but for this there would have been no other underwriting requirements given the amount of the policy's face amount. Finally, the official said that one of the Sponsor's regional managers contacted JE to discuss the outstanding underwriting requirements and it was then that JE advised that she did not apply for the coverage.

On January 3, 2014, the investigator received an unsolicited letter dated December 30, 2013 from the Agent. In this letter, the Agent advised that he wished to provide the "true facts" in regard to the matter. The Agent further advised that JE had sent a letter to the AIC and he enclosed a copy of the letter. The attached letter signed by JE was dated September 29, 2013. This letter stated that there was a misunderstanding and that the Agent explained the incident to her satisfaction and she therefore had no complaint against the Agent and would like to treat the matter as closed.

The investigator then contacted JE and they spoke on January 8, 2014. The investigator indicated that he reviewed the mandate and jurisdiction of the AIC and confirmed to JE that a complaint was received from the Agent's Sponsor. The investigator also confirmed receipt of JE's letter dated September 29, 2013. The Report indicates that the investigator advised JE of his understanding of her September 29, 2013 letter and that she misunderstood the events and that the Agent explained the incident to her satisfaction such that she no longer had any complaint against the Agent. In response, JE stated that the Agent and the Agent's wife drove to her home and requested that she sign a letter he had prepared for her. JE told the Agent that she wanted to make some changes to the letter prepared by the Agent, so she edited the letter, signed it and gave it to the Agent. JE also told the investigator that she had a copy of the original letter prepared by the Agent and she would forward a copy to the AIC. JE further advised that the matter came to light when the Sponsor contacted her about the application that she claimed that she did not sign. The Investigator asked JE if the Agent gave an explanation in relation to the submission of the Application and JE answered that it was difficult to recall his specific explanation but she thought that the application was related to a contest that the Sponsor had for its agents. JE said the Agent advised her that he would write to her for additional information and documentation in regard to applying for insurance. Later on the same day, JE sent an email to the investigator with an accompanying attachment. The attached letter was the draft that JE described to the investigator.

On January 9, 2014, the Investigator spoke with the Agent and confirmed the AIC's ongoing investigation into the matter. The Investigator also confirmed receipt of the Agent's unsolicited letter dated December

30, 2013 that included a copy of the September 29, 2013 letter that JE signed. Among other things, the investigator asked the Agent to explain his version of events to the allegations raised by his Sponsor. In response, the Agent said that another of the Sponsor's agents ("TS") had given him JE's application as they were in a company contest. The Agent said that JE's signature was already on the application when it was delivered to him. The investigator told the Agent that he would write to TS to corroborate this information.

The investigator spoke to TS on January 13, 2014. After telling TS that he was investigating a matter in relation to an application for insurance, the investigator asked TS whether he solicited the completion of an application that contained JE's signature dated April 20, 2013. The investigator also asked TS to confirm if he had given the application to the Agent for submission to the insurer. In response, TS said that he did not know JE let alone ever met with her and that he did not complete the application on her life dated April 20, 2013. TS further advised that he had health issues during 2013 and was not very active as an insurance agent. The investigator told TS that he would write to him to request further information and documentation and the investigator did so on January 15, 2014. On the same day, the investigator also wrote to JE to confirm the Agent's story.

JE faxed a response to the investigator on January 20, 2014. In this response, JE wrote that she did not meet with TS on April 20, 2013 to complete the Application. JE further advised that the signature on the application was not hers and that her name was also spelled incorrectly. Once again, JE advised that the Agent and his wife drove from Calgary on September 29, 2013 and that the Agent explained there was a group of agents who decided to submit "policies" for a company contest and that the Agent asked her to sign a letter he had prepared. The fax went on to say that JE did not hold a grudge against the Agent but she did express the opinion that his ethics and motives appeared to be questionable.

TS responded by way of fax on January 22, 2014. In this fax, TS wrote that he wasn't working for the Sponsor on the date that the application was completed and that he had started working for another agency on April 12, 2013. Given this, there was no question that he would have been involved in completing JE's application at the time. TS once again denied that he ever met with JE and that he completed the application or gave it to the Agent so that it could be submitted to an insurer.

In response to a request for more information, the Agent wrote to the investigator by letter dated April 5, 2014 the following:

At the outset I must apologize for the delay in my reply. I have been trying very hard to get jobs and make my ends meet [sic]. Couple of months in the season [sic] I was hired by Moores Clothing store and now since 6 weeks [sic] I am working for Canadian Payment Services, Electronic processing. I am doing nothing related to insurance industry directly or indirectly.

As spoken to you over phone, the application for life insurance for [JE] was handed to me in the office, asking me to submit. I had gone through the application and saw all sections, details and information complete. Thus had no reason to doubt. Yet, prior to submitting the application, I spoke to [JE] confirming that an application for a 50,000 of life coverage was being applied for, she was aware of it and was non committed. After a few days I called her again asking her about her doctor visit and some health update [sic] as was asked by the underwriter. On a third occasion I spoke to her again informing the probable cost of the coverage, at this time she said she did not wish to proceed owing to financial reasons. I immediately informed the company about this decision and asked the application to be withdrawn.

In any life insurance application, any money or commission can be made only when the policy is approved, placed and acknowledged by the insured. How can one think of placing a policy if the application is not genuine or fabricated? There is no purpose of doing this. Since many years 1 have been submitting in excess of 200 applications each year and never has any problem or irregularity been reported since 1997.

Any application has a main purpose to cater to the applicant's needs and if the business is placed to the applicant's satisfaction, we the sales persons make an income. I an [sic] application which does not cater to client needs, nor is generated accordingly and has no chance of any income generation, there is no purpose of such an action at all. Why would I as an insurance sales person initiate this.

I understand the AIC has nothing to do with how my renewals or commissions are handled as per the contract, yet I firmly believe that this action has been instigated by some one [sic] who is now pocketing all my career earning of renewals and commissions of over 16 years. There I see a purpose of doing an act as such. Whereas I had no reason in doing this on my own.

Since February 1997, I have met, serviced and provided insurance to approximately 3,800 persons. Some of them have maintained contact as well. I have clients who are friends from social circle, church contacts, auto mechanics/trades men that I visit in need [sic] and even my children are clients on company policies. It is impossible that I will not meet or talk to somebody I know who is also a client with Pennlife/La Capitale. Yes, I am abstaining from any insurance related talk totally, even with my children.

In the months following my termination I got many phone calls from clients asking various questions, some even asking for a quote or to sell a new policy. These calls reduced with time. Then the company sent in a letter regarding my termination and once again I received quite a few calls. Two of these persons have specifically informed me that they have been

> asked to speak to me and then call the company reporting that I made a sales contact. A lot of bad mouthing has also been done as a slur on my reputation. Some clients who listen to it, do feel otherwise and call me. I have taken it all lying down, asking any one [sic] who called to just not pay any heed and carry on with their lives as usual. In due course of time, I believe these call will end. I have absolutely no desire to get in to any conflicts and am seeking a career otherwise.

In his May 20, 2014 Addendum, the Agent wrote as follows:

> A copy of the report is enclosed as asked in your letter of 30th April, 2014.
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> I must mention here, the insurance industry and insurance companies are accepting on line electronic applications where face to face interview with the applicant is not necessary. Even on phone applications are accepted. Both, for life and disability insurances [sic]. The Advisor need not be present with the applicant.
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> However, I was made to believe that a life insurance advisor was present when the application was signed in June 2013. I had no knowledge of the reality being different until I was so informed by the company way later in September, 2013. Yet, I did, in due diligence, check it out on phone with the signatory or the client, referred to as JE, before submitting the application. Neither JE nor I, knew that the application was not genuine. I had no reason to know that this was a 'trap' being laid for me.
>
> All through my career since I have been a licensed insurance advisor since February 1997, and a very active one at that, not a single complaint has been made against me by any person or company or authority ever. This may be checked with the licensing authorities in Ontario as well. I have always been appreciated by clients I have met and done or even not done business transactions with. My erstwhile President and Vice President and various managers of Penncorp Life can even be contacted for this purpose and they will give a highly decent and professional opinion about my activities. Not one incident of wrong doing would be cited by any one [sic]. I was, honestly, expecting a more humane and understanding response from an authority like yours. Not as harsh.
>
> It is evident that there is no purpose for me to submit an application like this. Any advisor would do an act only for a purpose. It is also very clear that those who laid a 'trap' had a purpose. In usurping the renewals of a career agent of 17 years there lies [sic] a real purpose. I request to you in all my humble earnest appeal to look into what goes behind an act like this and to what end. Please reconsider your decision.

Discussion

In order to conclude that the Agent has committed an offence pursuant to s. 480(1)(a) of the Act, the Report must prove, on the basis of clear and cogent evidence, that it is more likely than not that the Agent committed the act as alleged. The requirement of clear and cogent evidence reflects the fact that

our findings can dramatically impact an insurance agent's ability to remain in the industry.

Additionally, the elements of s. 480(1)(a) offences have been discussed by the Alberta Court of Queen's Bench in *Roy* v. *Alberta (Insurance Councils Appeal Board)*, 2008 ABQB 572 (hereinafter "*Roy*"). In *Roy*, the Council found that an Agent committed an offence pursuant to s. 480(1)(a) of the Act when he attested to completing the applicable CE when he did not, in fact, have the required CE. The Insurance Councils Appeal Board dismissed the appeal and also found the agent guilty of an offence. The agent subsequently appealed to the Court of Queen's Bench. In his reasons for judgment dismissing the agent's appeal, Mr. Justice Marceau reviewed the requisite test to find that an offence pursuant to s. 480(1)(a) of the Act has been made out and expressed it as follows at paragraphs 24 to 26:

> [24] The Long case, albeit a charge under the Criminal Code of Canada where the onus of proof is beyond a reasonable doubt (not on a preponderance of evidence as in this case), correctly sets out the two step approach, namely the court or tribunal must first decide whether objectively one or more of the disjunctive elements have been proven. If so, the tribunal should then consider whether the mental element required has been proved. While the Appeal Board said it was applying the Long decision, it did not make a finding as to whether step 1 had been proved with respect to each of the disjunctive elements. Rather it immediately went into a step 2 analysis and found that the mental element required for untrustworthiness might be less than the mental element required for fraud (as a given example).
>
> [25] I am of the view that statement was in error if it was made to convey a sliding scale of mens rea or intent depending on which of the constituent elements was being considered. In my view, the difference between the disjunctive elements may be found in an objective analysis of the definition of each and certainly, as demonstrated by the Long case, what constitutes fraud objectively may be somewhat different from untrustworthiness. However once the objective test has been met, one must turn to the mental element. Here to decide the mental element the Appeal Board was entitled, as it did, to find the mental element was satisfied by the recklessness of the Applicant.
>
> [26] While the language used by the Appeal Board may be characterized as unfortunate, on this review on the motion of the Applicant I need not decide whether the Appeal Board reasonably could acquit the Applicant on four of the disjunctive elements. Rather, the only matter I must decide is whether the Appeal Board acting reasonably could conclude, as they did, that the Applicant's false answer together with his recklessness justified a finding of "untrustworthiness". (emphasis added)

In applying this test to the case before us, it is clear that the Agent submitted JE's application to the insurer and it is equally clear that he signed the application in two spots indicating that he was JE's advisor. The date next to the Agent's signatures indicates that the documents were signed on April 20,

2013. It is beyond doubt that the Agent did not meet with JE to advise her on the transaction. The Agent does not dispute this as he states that someone else provided him with the application after it had already been completed and allegedly signed by JE. As such, the Agent was not JE's advisor when he signed the application. It is equally clear that he could not have signed the documents on April 20, 2013 because he states that he received the application sometime after it had allegedly been signed by JE. Given this, we are satisfied that he made representations on the application that were objectively false.

As to the Agent's intent in all of this, even if we were to accept his explanation, his intent can be presumed from his actions. He intentionally signed the application as JE's advisor, thereby giving the insurer the impression that he was the agent that advised JE to complete and submit the application and that he did so on April 20, 2013 when the application was signed. While JE's evidence is somewhat confused and disjointed, it was the Agent that said that TS provided the application to him for submission and this is simply not the case. The Agent's Addendum seems to back away from his allegations against TS and he instead refers to some unnamed "life agent" that provided him with the application and that this was some sort of trap laid for him. Given the Agent's admitted actions, this excuse (even if it were to be believed) is irrelevant.

As to the appropriate sanction for this conduct, we typically have the ability to levy civil penalties in an amount up to $5,000.00 for offences pursuant to s. 480(1)(a) and 13(1)(a) of the *Certificate Expiry, Penalties and Fees Regulation*, A.R. 125/2001. We also have the ability to order that certificates of authority be revoked for one year or suspended for a period of time. Based on the facts in this case, including his efforts to blame another agent that was clearly not involved in the situation, we believe that a significant civil penalty is warranted. As such, we levy a civil penalty of $5,000.00. As the Agent no longer has a certificate of authority, the option of suspending or revoking a certificate is a remedy that is not available.

Payment of the civil penalty is due within thirty days. In the event that it is not paid within this time interest will begin to accrue. 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
402 Terrace Building
9515-107 Street
Edmonton, Alberta T5K 2C3