

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 T & T Power Sports Ltd.
(the "Dealership")

As represented by
Designated Individual,
(the "DI")

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

This case involved an allegation pursuant to s. 425(1) of the Act. Specifically, it is alleged that the Dealership acted as a restricted insurance agent during a period of time in which it did not hold a valid and subsisting Certificate of Authority and that this constitutes an offence pursuant to s. 480(1)(b) of the Act.

Facts and Evidence

This matter proceeded by way of a written Report to Council dated July 7, 2014 (the "Report"). The Report was forwarded to the DI for review and to allow the Dealership to provide the Council with any further evidence or submissions by way of Addendum. The DI signed the Report on July 8, 2014 and did not adduce any further evidence.

The Dealership is the holder of a restricted certificate of authority that enables it to sell equipment warranty insurance products. It first held a certificate of authority on June 22, 2005. However, it did not hold an equipment warranty certificate of authority between November 1, 2007 and January 2, 2014. The DI has acted in this capacity since January 2, 2014.

On November 15, 2013, the Dealership submitted a 2013/2014 restricted agent certificate application form to the AIC. The application was dated October 4, 2013. The AIC sent the Dealership requests for further information on November 26 and December 13, 2013. Among other things, the AIC asked that the Dealership confirm whether it had been compensated for the sale of equipment warranty insurance policies since November 1, 2007 (the date that its last valid certificate of authority was no longer in force).

The AIC sent another letter to the DI dated February 4, 2014. Once again, the DI was asked to provide details as to how many equipment warranty insurance policies the Dealership had written during the period of time it did not hold a valid and subsisting certificate of authority and what, if any, compensation it received.

On February 18, 2014, the AIC received a letter from the DI which listed all of the equipment warranty insurance policies the Dealership had written during the period of time that they did not hold a valid and subsisting certificate of authority. The list of equipment warranty policies the DI provided the AIC listed six policies sold during the unlicensed period.

By letter dated February 19, 2014, the AIC asked that the Dealership's third party service provider confirm the number of insurance policies the Dealership had written during the period of time that it did not hold a valid and subsisting Certificate of Authority. The third party provider responded by email dated April 11, 2014 and indicated to the AIC that the Dealership wrote nine policies on behalf of Virginia Surety Company of Canada ("Virginia").

Given the apparent discrepancy, the AIC sent a letter to Virginia that sought details as to how many equipment warranty insurance policies the Dealership had written during the period of time that it did not hold a valid and subsisting certificate of authority in addition to details of the compensation that the Dealership received for these sales. An official responded by email on May 8, 2014 and suggested that the Dealership sold six policies and received compensation of \$1,150.00. Ultimately, the investigator was able to determine that the Dealership sold an additional three policies that were underwritten by a different insurer and that the Dealership was compensated \$1,147.00.

Discussion

In order to prove the allegations in the Report, the AIC must adduce sufficient evidence to demonstrate that the Dealership acted in the capacity of an insurance agent as defined in the Act during a period in which it did not hold a valid and subsisting certificate of authority. In our view, the evidence is clear that the Dealership's certificate of authority lapsed in 2007. It is equally clear that the Dealership did not obtain another certificate of authority until January 2, 2014. During this period it sold at least nine new insurance policies and was compensated for doing so. Given this, we are satisfied that the Dealership contravened s. 452(1) by acting as an insurance agent without a valid certificate of authority and, thereby, contravened a section of the Act as contemplated in s. 480(1)(b). While we could find that it committed nine separate offences (one for each of the policies around which it acted as an agent), we choose instead to treat the period of unlicensed activity as one offence.

In terms of the applicable sanction, we have the ability 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). Due to length of time that the Dealership was unlicensed and given the facts in their totality, we believe that a civil penalty at the high end of the spectrum would be appropriate and we order that a civil penalty in the amount of \$1000.00 be levied against the Dealership. We once again note, however, that the Dealership could have been found guilty of an offence for each of the policies that were sold and a corresponding civil penalty could have been ordered for each offence. 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 Dealership'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 Dealership 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: September 9, 2014

Original signed by
Thom Young, Member
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