

## **INSURANCE COUNCILS APPEAL BOARD OF ALBERTA**

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### **In the Matter of the Appeal of Mr. Michael Milligan from the Decision of the Life Insurance Council dated August 27, 2015**

RANDOLPH LANGLEY	-	Chair of Panel
PATRICK SOULIERE	-	Panel Member
JEFFREY WILSON	-	Panel Member

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### **REASONS FOR DECISION**

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### **PROCEEDINGS TO DATE**

The Appellant Michael Milligan was first licensed to act as a life and accident and sickness insurance agent on November 18, 2010.

On December 6, 2013 the Alberta Insurance Council ("AIC") received a letter dated November 18, 2013 from the Mutual Fund Dealers Association of Canada advising of a complaint against an Agent named **C.L.** "CL") and an investigation was undertaken by the AIC.

The complaint centered upon a number of purported transfers of client accounts from Investors Group Financial Services Inc. to Manufacturers Life Insurance Company and these transfers involved the completion of certain Transfer Forms. A number of those forms bore the signature of the Appellant and in respect of

those documents and information developed in the investigation that a letter was sent to the Appellant by AIC formally demanding information under section 481 of the Insurance Act (the "Act").

An Investigation Report attaching a number of exhibits was submitted to the Life Insurance Council (the "Council") on or about April 23, 2015.

Section 480 of the Act provides that the Minister may impose sanctions affecting certificates or other penalties prescribed by regulation. That section reads in part as follows:

**Sanctions affecting certificates**

480(1) If the Minister is satisfied that the holder or a former holder of a certificate of authority

(a) has been guilty of misrepresentation, fraud, deceit, untrustworthiness or dishonesty,

...

the Minister may revoke, suspend or refuse to renew or reinstate one or more of the certificates of authority held by the holder, impose terms and conditions provided for in the regulations on one or more of the certificates of authority held by the holder and impose a penalty on the holder or former holder.

Under Section 494 of the Act the Minister may delegate his powers to an Insurance Council and under section 9 of the Insurance Councils Regulation, Alberta Regulation 126/01 (the "Regulation") the powers to impose sanctions affecting certificates may also be so delegated by the Minister. That has been done respecting a delegation to the Life Insurance Council.

The Council considered the Investigation Report relating to the complaints and by a motion made and carried at a meeting of the Council a Decision was rendered dated August 27, 2015 and sent to the Appellant by registered mail dated August 31, 2015. The written Decision appears in Section 2 of the Record submitted by the Council pursuant to section 20 of the Regulation. That Record was marked as Exhibit 2 on this Appeal.

It was the finding of the Council that the Appellant had acted in a dishonest and untrustworthy manner in respect of the completion of the transfer forms in eight instances and accordingly found him guilty of eight counts under section 480(1)(a) of the Act.

It was determined by the Council that civil penalty in the amount of \$2,000.00 be levied against the Appellant on each of the eight counts (total \$16,000.000). The Council further ordered that the Appellant's certificates of authority be suspended for a period of two months on each of the 8 offences but

that these suspensions be served concurrently such that the Appellant would not be entitled to act as an insurance agent for one two month period.

The decision of the Council further provided the civil penalties must be paid within thirty (30) days of notice of the decision. In the event that the penalties are not paid within thirty days the Appellants certificates of authority would be automatically suspended pursuant to section 480(4) of the Act. The two month suspension period was ordered to commence on the 8<sup>th</sup> day after mailing of the Council's decision. All these penalties are stayed pending completion of any appeal.

By letter dated September 18, 2015 the Appellant appealed the Council's decision pursuant to section 16 of the Regulation. That Notice of Appeal was marked as Exhibit 3 on this Appeal.

By letter dated October 15, 2015 the Superintendent of Insurance appointed this Appeal Panel pursuant to section 17 of the Regulation. That letter of appointment was marked as Exhibit 1 on this Appeal and no objection was taken at the Appeal Hearing to the makeup or appointment of this Panel or its right to hear this Appeal.

A Record of Evidence was submitted by the Council pursuant to section 20 of the Regulation was marked as Exhibit 2 on this Appeal by consent.

The Panel received a request from the AIC for an extension of the time period for the date of the hearing. Having heard from the Council the Panel adjourned the Hearing by a Decision marked as Exhibit 4 on this Appeal to a date to be fixed by agreement.

A further Notice of Hearing was subsequently issued by the Panel for a hearing on February 16, 2016. This Notice was marked as Exhibit 5 on this Appeal.

All parties being present and prepared to proceed, the Appeal was heard on December 16, 2013. The Appellant appeared in person and unrepresented and Mr. Warren Martinson appeared for the Council.

It was stipulated by the Parties at the outset of the Appeal that the finding of guilt was not disputed and only the penalty was at issue.

## **FACTS**

The Appellant was sworn and entered as exhibits the following:

Exhibit 6: the Appellant's 2012 T-1 General Income Tax Return showing income of \*

\*To protect the privacy of third parties their personal information has been from this record in accordance with section 40(4) of the Freedom of Information and Protection of Privacy Act.

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Exhibit 7: the Appellant's 2013 T-1 General Income Tax Return showing income of \$

Exhibit 8: two pages of Royal Bank account entries showing two entries Manulife commission income deposits and wire transfers or cheques from the account in the same amounts as the Manulife deposits

It was the oral evidence of the Appellant that, although he knew what he had done was not right he was coerced by C.L. and what he was doing was known to the agency for which he was working at the relevant times.

In addition he emphasized the detrimental financial effect of the existing penalty upon him and the impact on his professional reputation within the insurance community. He referred to a number of cases of other cases decided by the Council where the fines were significantly less than levied against him. Although not provided by the Appellant, copies of certain cases he cited were provided by counsel for the AIC including the Talbot and Vakaria cases where civil penalties of \$2,500 were ordered. In addition the Reddekopp case where a penalty of \$1,000 was levied. In these cited cases the Appellants no longer held certificates.

The Appellant also gave evidence that C.L. had not been affected by the matters at issue but conceded that he in fact had been the subject of a Council decision, provided by Council for the AIC, wherein he was fined \$32,000 and subjected to revocation of his certificate.

It was the Appellant's submission that a civil penalty of \$5,000.00 or less would be appropriate and suggests that the various counts be considered as one.

The position of counsel for the Council was that the decision of the Life Insurance Council was not in all of the circumstances unreasonable.

## ISSUES

The sole issue before the Panel is whether or not the penalties ordered by the Life Insurance Council were appropriate.

## REASONS FOR DECISION

The Panel is mindful that the evidence before it consists of the Record entered as Exhibit 2 and the sworn evidence of the Appellant. The matters on which the findings of guilt were made are not at issue.

In reviewing the matters in mitigation raised by the Appellant, in particular the alleged coercion or manipulation by C.L. and the alleged knowledge or condonation of others of the improper scheme, we note that these were raised before the Council in the Investigator's Report and the Appellant's addendum. It is also noted that the financial impact upon him was also raised before the Council.

The other cases referred to by the Parties were of course not before the Council and where the written decisions were provided they were considered by the Panel. It is the Panel's determination that the cases, with the exception of the C.L. case, were not sufficiently factually similar to provide material guidance on the penalty issue. The C.L. case was decided by the Council on August 14, 2015, twelve days prior to the decision in the Appellant's case. The facts, from the written decisions, appear substantially identical and the differences in penalties between the two cases appear to reflect the relative responsibility the Council felt properly allocated as between C.L. and this Appellant.

The Panel understands that although it is presiding over a *de novo*, or new hearing, the decision of the Council being appealed from is before it and merits weight and deference. The Panel, in this area, is guided by the Appeal Board's decision in Kosior, where the issue of whether it was confined to an assessment of the Council's decision solely on "reasonableness". More particularly, is this Panel confined to reviewing the Life Insurance Council's decision solely on whether it was "within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law".

The question of penalty as assessed by a professional body such as the Life Insurance Council is in this Panel's view entitled to not merely weight, but high degree of deference if the evidence on the appeal is not sufficiently substantial to warrant interference. Reference is made to Byrnes v. Law Society of Upper Canada [2015] CarswellOnt 12397 at paragraph 130 (Ontario Supreme Court of Justice), and Neinstein v. Law Society of Upper Canada [2015] CarswellOnt 19301 at paragraph 68 (Ontario Supreme Court of Justice).

It is the conclusion of the Panel that the materials and evidence before do not support the Panel making a finding as to penalty that departs from that made by the Life Insurance Council. The Council's decision was in the Panel's view reasonable and appropriate given the C.L. decision referenced before this Panel.

It is accordingly the decision of the Panel that the decision of Life Insurance Council of August 27, 2015 is hereby confirmed. The references in that decision as to the date of "received this notice" and date of "mailing of this decision" shall refer to the date of receipt of this decision as an email attachment.

Pursuant to section 24 of the Regulation, and taking into account the results of the appeal and the conduct of the parties, the Panel directs that the appeal fee be remitted to the Alberta Insurance Council.

DATED at Edmonton, Alberta, this 25 day of February, 2016.

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Per:   
Randolph Langley – Chair of Panel