

**INSURANCE COUNCILS APPEAL BOARD OF ALBERTA**

In the Matter of the *Insurance Act*, R.S.A. 2000, C I-3 ("the Act")

BETWEEN:

Shelina Lalani

**Appellant**

-and-

The Life Insurance Council ("the Council")

**Respondent**

Heard via Zoom Video Conference May 16, 2022

BEFORE:

Thomas S. Kent

Appeal Panel Chair

Myrna Kwasnecha

Appeal Panel Member

David Brittain

Appeal Panel Member

**REASONS FOR DECISION AND ORDER**

This matter came before us on May 16, 2022 in a hearing conducted via Zoom video conferencing. The Appellant appeared unrepresented. The Council was represented by Zabeda Yaqoob.

The Appellant's position is that the Council's decision finding her in breach of section 480(1)(b) of the Act was in error and that this panel should find her not in breach as she never received the notices to provide information to the Alberta Insurance Council ("AIC"). The Council levied a penalty of \$500.00, which the Appellant also wants set aside.

The Council's position is that the Appellant had been sent multiple notices by email and a phone call attempt had been made in connection with provision of proof of Continuing Education Credits ("CE Credits"), which she failed to reply to thereby putting herself in breach of section 480(1)(b) of the Act.

The Council tendered the Affidavit of \*\* personal information sworn May 5, 2022 but called no witnesses. The Appellant testified and was cross-examined by Ms. Yaqoob.

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

In its Appeal Submissions, the Council takes the position that it can demonstrate the *actus reus* of an offence under section 480(1)(b) of the act and that the Appellant then has only the defence of due diligence, which she cannot meet. In any event, the Council states that it is not in dispute that the Appellant did not submit the information requested within the 30-day time period given.

The Appellant takes the position that she responded immediately by providing proof of the CE Credits once she was contacted by the AIC's investigator. She also tendered screenshots of her email account in an email to the Panel and the Council dated May 5, 2022. The screenshots were to attempt to demonstrate that she did not receive the notices sent by the AIC.

## FACTS AND EVIDENCE

### THE COUNCIL

Ms. Yaqoob confirmed that the Council relies upon the Appeal Package, its Written Submissions dated May 9, 2022 and the affidavit of **\*\*p.i.** to prove its case. **\*\* personal information**  
**\*\* personal information**

His affidavit makes it clear that he was asked to review the AIC's email system to confirm that four emails had been sent to [shellalani@shaw.ca](mailto:shellalani@shaw.ca) starting on October 4, 2021 and ending on November 3, 2021. Further, he was to confirm if there had been any responses or "bounce backs" received in relation to said emails sent. He confirms that the emails were sent and that no responses or bounce backs were received.

### THE APPELLANT

The Appellant testified that she was concerned when she had communications with the AIC investigator (an email from him and her call to him) on November 10, 2022 advising her that she had been sent prior emails. She states that she immediately checked her email by subject and dates but found nothing.

She states that she provided the proof of CE Credits the next day to the investigator. She then decided to contact Shaw to seek assistance in determining if she had received the four emails from the AIC. As a result, she provided the Panel with a screenshot that indicated that Shaw had restored some emails deleted from her email. There was nothing relevant in any of the three screenshots provided.

In her Notice of Appeal dated March 1, 2022, she states that no emails had been received from "[systems@abcouncil.ab.ca](mailto:systems@abcouncil.ab.ca) or Audits". While it was not raised in her evidence, the AIC emails

had been sent by [system@abccouncil.ab.ca](mailto:system@abccouncil.ab.ca) and [audits@abccouncil.ab.ca](mailto:audits@abccouncil.ab.ca) as is clear from <sup>\*\*p.i.</sup> affidavit.

Ms. Yaqoob questioned the Appellant. There was some confusion about what the Appellant's CIPR number is, however, nothing seemed to turn on this. The Appellant confirmed that the information contained in Exhibit "C" to the Council's Written Submissions (pg. 24 of the PDF) was accurate. This is the Appellant's online Licensing Profile, which includes her email address, cell phone number and address.

Questioning by Panel member M. Kwasnecha revealed that the Appellant had updated the information on her online profile with the AIC when she learned from the investigator that the AIC had tried to telephone her before the 30-day notice period had run out. Her profile then had contained her old land line number which she had disconnected.

Ms. Yaqoob then elicited that the AIC could not reach the Appellant by telephone before the update.

#### RELEVANT STATUTORY SECTIONS

##### Section 480(1)(b) of the Act

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

(b) has contravened any provision of this Act or the regulations or similar legislation in another jurisdiction or legislation that is a predecessor of this Act or the regulations,

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."



## Section 481 of the Act (in part)

### “Demand for information

481(1) The Minister may direct the holder or former holder of a certificate of authority to provide to the Minister within a reasonable period of time specified in the direction any information specified by the Minister relating to the matters in [section 480\(1\)](#).

(2) A person served with a direction under subsection (1) who has the information must provide the information in accordance with the direction.”

## SECTION 480 (1)(b) OFFENCE

The Council points out that this offence is a public welfare and, therefore, a strict liability offence. The Council need only show that the demand for information was made, and that the Appellant failed to comply within the time set. The Council notes that the Appellant has not disputed that the proof of CE Credits was delivered after the 30-day period.

Thus, the only real issue before the Panel was whether the demands for information were sent. <sup>\*\* p.i.</sup> affidavit answers that question and the Appellant did not counter that evidence with anything relevant from her email account or her provider.

The Appellant raised no evidence of due diligence during the relevant period i.e., the 30-day notice period. As aforesaid, her attempt afterward to determine why she did not receive the emails determined nothing and was not a well thought out investigation in any event. Her failure to keep her online profile up to date also played into her problem and that certainly points in the opposite direction of due diligence.

The Act does not specify any method of delivery of notices under section 481. The AIC made reasonable attempts to communicate with the Appellant and gave a reasonable time period of 30 days to produce the continuing education information.

The Panel sees no reason to interfere with the Decision of the Council dated January 25, 2022.

## ORDER

The Panel dismisses this appeal.

Appeal Fee

Regulation 126/2001 provides as follows:

"In determining an appeal, the panel shall determine the disposal of the appeal fee to one or both of the parties to the appeal taking into consideration

- (a) the results of the appeal, and
- (b) the conduct of the parties".

Given the Council's success and there being no conduct giving rise otherwise, the Appellant's appeal fee shall be retained by the AIC.

DATED the 18th day of May 2022.

INSURANCE COUNCILS APPEAL BOARD OF ALBERTA

Per:



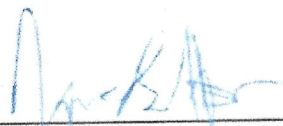
Thomas S. Kent – Panel Chair

Per:



Myrna Kwasnecha – Panel Member

Per:



David Brittain – Panel Member