

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 Sean Ronson Nethercott
(the "Former Agent")

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

This matter involves an alleged violation of s. 480(1)(a) of the Act or, alternatively, a violation of s. 509(1)(a) of the Act, which subsequently attracts a violation of s. 480(1)(b) of the Act. Specifically, it is alleged that the Agent declared continuing education ("CE") courses that he, in fact, did not complete within the licensed period. Additionally, it is alleged that the former agent declared himself as a course instructor, which resulted in double CE credits, when he was not the instructor of the course. As such, it is alleged that the Former Agent misrepresented information, and/or has acted in a fraudulent, deceitful, dishonest or untrustworthy manner as contemplated by s.480(1)(a) of the Act. Alternatively, it is alleged that the Former Agent made false or misleading statements in contravention of s. 509(1)(a) of the Act, and has subsequently violated s. 480(1)(b) of the Act.

Facts and Evidence

This matter proceeded by way of a written Report dated January 30, 2020 (the "Report"). The Report was forwarded to the Former Agent to review and provide the Council with further evidence or submissions to support his position by way of Addendum. The Agent responded by way of addendum which was considered by the Council in addition to the Report.

The Former Agent held a certificate of authority to act as a general, level 2, insurance agent. This certificate of authority was held between the periods of January 29, 2016 to July 20, 2018, August 15, 2018 to November 19, 2018 and again between the period of November 27, 2018 to July 24, 2019.

AIC conducted audits in June 2019 which verified that the CE credits claimed on licensees' renewal applications were correctly declared. The AIC randomly selected agents who renewed their certificates of authority during the period of May 1st and June 30th, 2019. The auditees were asked to provide proof of CE credits for the past licensed period (July 1st, 2018 to June 30th, 2019). The Former Agent was selected as an auditee.

A discrepancy was discovered through the course of audit with respect to a course claimed by the Former Agent. On October 18, 2019 the AIC provided the Former Agent with a formal demand to respond (the “Demand”) pursuant to s. 481(1) of the Act. The Demand required the Former Agent to produce a CE record for a specific course on or before November 18, 2019.

The Former Agent responded to the AIC on October 21, 2019 that all relevant records were provided. The AIC responded;

[...] it appears we do not have your CE certificate for course [redacted] which your reported on October 1, 2018. While you did provide us with the CE certificate for this course for September 23, 2016; you declared that you completed the course [redacted] again on October 1, 2018. **Accordingly, it is the October 1, 2018 certificate that we are looking for at this time.** [...] **Further, please confirm whether or not you are [a] certified instructor for this course**
[Emphasis added]

Course instructors receive an exceptional benefit, as they are permitted to declare two-times the amount of CE hours towards the completion of the course. This means that the Former Agent received twice the amount of CE credits by indicating himself as a course provider within the AIC licensing system. The Investigator sought to validate that instructor status.

While awaiting a response from the Former Agent, the Investigator contacted the office of the Course Provider to obtain records relating to the course. The Investigator corresponded with A.N. [redacted], a Course Registrar, on November 12, 2019. A.N. responded to the Investigators questions as follows on November 13, 2019;

[...] could you please confirm:

- a. Whether or not Sean completed the “[redacted]” course on October 1, 2018;
- **NO, he successfully wrote the final exam ONCE on Sept. 1, 2016 as indicated above.**
- b. Whether or not Sean ever completed the “[redacted]” course after September 23, 2016;
- **NO he completed the final step on Sept. 1, 2016 as previously mentioned.**
- c. Whether or not Sean was an instructor for this course as of October 1, 2018; and,
- **NO Sean was not one of the [redacted] instructors or Faculty members.**
- d. Whether or not Sean was ever an instructor for this course at any time.
- **Sean was never at any time one of [redacted] instructor.**

[Emphasis added in original correspondence]

In an addendum response dated February 4, 2020 the Former Agent responded;

[...]

1. I completed the [redacted course in question] in 2016, not 2018.
2. This course generated a number of "life" CE credits in 2016. To my knowledge there were no CE credits from this course for my General licence.
3. I was licenced for 23 days in the 2019/2020 year to which this report relates. An audit of my CE to that time was completed by the council in June 2019, which I was told was all clear before my licence renewed on July 1 2019, and the auditor had verified all of my courses to ensure I met the requirements to renew at that time.
4. I had declared that I had 15 hrs of CE completed in 2018/19 which included [...]
5. The [course] was very similar to the [redacted] course I had completed in 2018 through BCC (same institution as [redacted]) as well as the [redacted] Financial Planning course and Estate Planning course (Exhibit 1) which were also completed in that period and generated about 40 CE credits for Life.
6. During the audit in June 2019, the auditor had claimed that he would contact [insurer] for certification of the courses that I had completed, and had sent me an email that I had passed the audit.
7. In October 2019, I was contacted by another AIC person who asked about the CE credits again. I told him that/ was not licenced, had not been licenced for more than 90 days and was not interested in being licenced again. I referred him back to the auditor.

Therefore, as noted above, I had completed the adequate number of hours to meet the requirements to renew of 15 without the erroneous [redacted] course. I would have had 19.5 hours with the [...] carry forward courses for my renewal. As such I would have had 4.5 hours to carry forward without the [redacted] course (as was found by the audit in June). The report claims that a concern was identified in June, however, **it was more than 90 days later that I was contacted by the AIC about this concern.** During that time my licence was renewed, and no mention was made of the "concern"? This is obviously because I had more than enough CE credits to renew as was verified in the audit, which is why [Investigator] was directed back to the auditor. Furthermore, since I had not been licensed for months at the time, it is clear that this entire line of questioning was moot.

Further since the AIC has spent a great deal of time auditing my CE credits from 2016 through to 2019, it is clear that I had carry forward credits in each year of the maximum allowable, and had met the requirements. Therefore there is no motive or cause for misrepresentation, since I had completed the requirements in each year. In fact there were a number of courses completed during that period that I did not report as I had already completed both the required CE for that year, but also the carry forward for each year up to that point. In Exhibit B of the AIC submission this is clearly shown that the [redacted] course was unnecessary to renew, since the [separately claimed] course generated 12 hours.

As discussed with Ms Yaqoob, I have no interest in returning to the Insurance industry, and am not interested in contesting this beyond the erroneous finding that there was some sort of intentional deceit that would have allowed a renewal under false pretenses. As noted above, I had far more CE hours than necessary in each year for my licences, and did not have to "make up" false CE credits to meet these requirements.

[Emphasis in original document]

The Former Agent added further comments by way of email dated February 4, 2020;

As per the attached response, Obviously the "misrepresentation" was in error, as I had lots of CE for both life and General for that year in addition to the 7.5 hours of carryforward I took the [redacted unrelated course] brokers training, [Insurer] cyber breach insurance course, and various other courses at [insurer] in 2018. For [sic] Life I took Capstone as well as several other courses which are attached so as per the audit findings I would not only have 15 hours for that year, but carryforward for 2020- 21. My response to the council is attached along with course documents for courses completed but not needed for CE for that period along with the findings of the audit.

Also as discussed I am not licensed and do not wish to be so regardless of the findings of the council. I will not be contesting them.

Discussion

The Report alleges that the Former Agent misrepresented information, and/or acted in a fraudulent, deceitful, dishonest or untrustworthy manner pursuant to s. 480(1)(a) of the Act. The applicable test to determine whether the Former Agent is guilty of this offence was set out in *Roy v. Alberta (Insurance Councils Appeal Board)*, 2008 ABQB 572 (hereinafter “*Roy*”). In *Roy*, the Life Insurance Council found that an agent committed a violation of s. 480(1)(a) of the Act when he attested to completing his required continuing education when he, in fact, did not. The agent appealed to the Insurance Councils Appeal Board, who upheld the decision of the LIC and found the agent guilty of violating s. 480(1)(a) of the Act. The agent appealed to the Court of Queen’s Bench of Alberta. In his reasons for judgment dismissing the appeal, Mr. Justice Marceau wrote 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)

The Council considered the Former Agent’s version of events. Specifically, that the Agent satisfied the CE requirements to renew his certificate of authority, which was proven by the records provided by the Former Agent. Be that as it may, the Council turned to the mental element to examine whether the Former Agent’s misstatement was intentionally false, misleading or evidenced dishonesty or untrustworthiness as contemplated by s. 480 of the Act.

The Former Agent did not dispute that he claimed a course that he did not complete during a licensed period. The Former Agent also declared himself a course provider, indicating that he taught the course. The Former Agent agrees that he did not instruct the course. The arguably allowed the Former Agent to carry forward excess hours to the following licensed period for a course that he did not complete, nor instruct. The Council finds that the Former Agent has deliberately deceived or mislead the AIC on his renewal application, to claim the benefit of duplicate credits. Given the clear and cogent evidence presented by the Report, the Former Agents acts were intentional, conduct the Council finds to be dishonest and untrustworthy as contemplated by s. 480(1)(a) of the Act.

As such the Council finds the Former Agent guilty of violating s. 480(1)(a) of the Act. In light of this finding the Council contemplate the alternative allegation against the Former Agent of an offence pursuant to s. 509 of the Act.

Pursuant to s. 13(1)(a) of the *Certificate Expiry, Penalties and Fees Regulation*, the Council has the jurisdiction to levy a civil penalty in an amount not exceeding \$5,000.00 in relation s. 480 violations. The Council acknowledges that the Former Agent has previously appeared before this Council on matters of conduct and, as such, the Council agrees that a significant penalty is warranted under the circumstances. In light of all of the evidence, the Council orders a civil penalty in the amount of \$5,000.00 be levied against the Former Agent.

The civil penalty must be paid within thirty (30) days of receiving this notice. In the event that the penalty is not paid within thirty (30) days, interest will begin to accrue. Pursuant to s. 482 of the Act (excerpt enclosed), the Former 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 General Insurance Council. The motion was duly recorded in the minutes of that meeting.

Date: April 30, 2020

[Original Signed By]

Amanda Sawatzky, Chair
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