

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 Jonathan Colp
(the "Former Agent")

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

This case involved an alleged violation of s. 481(2) of the Act. Specifically, it is alleged that the Former Agent failed or refused to respond to or provide information requested by formal demand for information (the "Demand"). In so doing, it is also alleged that the Former Agent subsequently violated s. 480(1)(b) of the Act.

Facts and Evidence

This matter proceeded by way of a written Report to Council dated March 31, 2020 (the "Report"). The Report was forwarded to the Former Agent for review, and to allow the Former Agent to provide the Council with any further evidence or submissions by way of Addendum. The Former Agent provided an addendum, which the Council considered.

The Former Agent was the holder a life insurance agent certificate of authority, which he held from March 8, 2018 to March 5, 2020. The Former Agent also held an accident & sickness ("A&S") insurance agent certificate of authority, which he held between the period of March 8, 2019 to June 30, 2019. The A&S certificate lapsed on June 30, 2019 when the Former Agent did not renew the certificate of authority. On March 5, 2020, the Agent's life insurance certificate of authority was suspended due to his failure to respond to the Demand.

In February 2020, the AIC audited the Continuing Education ("CE") credits claimed on licensees' 2019 renewal applications. The auditees were randomly selected, and asked to provide proof of CE credits for the past licensed period in accordance with the requirements under s. 31 of the *Insurance Agents and Adjusters Regulation*, AR 122/01 (the "Regulation").

On February 3, 2020, the AIC emailed the Demand for information, which required the Former Agent to produce proof of CE credits for the 2019 period on or before March 3, 2020. The AIC received no response. On February 14, 2020, the AIC emailed the Former Agent to remind him of his requirement to respond by the deadline provided. The AIC called the Former Agent on February 20, 2020 and left a voicemail message to the same effect. On February 26, 2020, the AIC telephoned the Former Agent and discussed his requirement to respond. The Former Agent advised that his response was forthcoming.

The Former Agent did not respond by the March 3, 2020 deadline required in the Demand. The Former Agent was mailed the formal Report to Council. After receiving the Report, the Former Agent produced the requested certificates.

Discussion

The Minister of Treasury Board and Finance has delegated its' authority to the AIC to investigate complaints against holders and former holders of insurance agent certificates of authority. Pursuant to Ministerial Directive 01/11, the Minister has delegated powers under s. 481 of the Act to the AIC; "[t]he 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 s. 480(1)." Subsection 2 states that the "... A person served with a direction ... who has the information **must** provide the information in accordance with the direction" (emphasis added).

A violation of s. 481(2) of the Act of failing to respond to a demand for information is one of strict liability. Meaning that, in order to be found guilty, the AIC must prove that the Demand was properly constructed and delivered to the certificate holder. Once the AIC has proven that the Demand was sent, the onus then shifts to the agent to demonstrate that all reasonable steps were taken to avoid making the offence. There is no requirement that the AIC prove that the agent's failure to respond was intentional.

In consideration of all of the evidence before it, the Council is satisfied that the Demand provided by the AIC meets the requirements of s. 481 of the Act. The Council agrees that the Former Agent was given a reasonable opportunity to respond. Given the fact that the Former Agent failed to respond when called upon, the Former Agent has not met the burden of proof to establish the due diligence defence. As such, the Council finds him guilty as alleged in the Report.

In terms of the applicable sanction, the public relies on the AIC to investigate complaints, and the Act requires that all certificate holders provide information when called upon to do so. The public is not well-served when agents fail to comply with demands, like those made in this case. Pursuant to s. 13(1)(b) of the *Certificate Expiry, Penalties and Fees Regulation*, A.R. 125/2001, the Council has the discretion to levy a civil penalty in an amount up to \$1,000.00. Here, the Former Agent only communicated with the AIC after receiving the Report. Given that the Former Agent chose to respond only after receiving the Report the Council orders that a penalty in the amount of \$500.00 be levied against the Former Agent.

The civil penalty of \$500.00 must be paid within thirty (30) days of the mailing of this Decision. In the event that the civil penalty is not paid within thirty (30) days interest will begin to accrue at the prescribed rate. Pursuant to s. 482 of the Act (excerpt 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.

Dated: May 19, 2020

[Original signed by]
Michael Bibby, 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