

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 Lorraine Frilles
(the "Agent")

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

This case involved an allegation pursuant to s. 481(2) of the Act. It is specifically alleged that the Agent failed or refused to provide information requested by the Minister, through the AIC, by way of a formal demand for information (the "Demand"). In so doing, it is alleged that the Agent has 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 27, 2020 (the "Report"). The Report was forwarded to the Agent for review, and to allow the Agent to provide the Council with any further evidence or submissions by way of Addendum. The Agent provided an addendum response which was considered by the Council.

The AIC conducted an audit in February 2020, which sought to verify that the CE credits claimed on licensees' 2019 renewal applications were correct. The auditees were selected at random and asked to provide proof of continuing education ("CE") credits, in accordance with the requirements of s. 31 of the *Insurance Agents and Adjusters Regulation*, AR 122/01 (the "Regulation"). The Agent was selected as an auditee.

The Agent concurrently held both life and Accident and Sickness ("A&S") insurance agent certificates of authority between the period of January 7, 2019 to March 5, 2020, when the Agent's certificates of authority were suspended due to her failure to respond to the formal Demand.

On February 3, 2020, the AIC emailed the Demand to the Agent which provided a deadline of 30 days for the Agent to respond and produce the required CE certificates. The AIC received no response. On February 14, 2020, the AIC sent email correspondence reminding the Agent to respond by the deadline provided. The AIC made significant efforts to contact the Agent, as follows;

- February 20, 2020 – AIC telephoned the Agent and advised of requirement to respond to the Demand by the deadline of March 3, 2020.
- February 20, 2020 – AIC emailed the Agent to confirm the conversation held via telephone.
- February 28, 2020 – after having received no response to the Demand, AIC telephoned the Agent. A voicemail message was left reminding the Agent to respond by the deadline provided for in the Demand.
- February 28, 2020- AIC sent an email to the Agent reminding the Agent of the deadline to the Demand.

The Agent did not respond before the Demand deadline. The AIC telephoned the Agent again on March 16, 2020 and left a voicemail message which repeated the request for proven CE.

On March 30, 2020 the AIC sent the written Report to the Agent by way of registered mail, to allow her to respond to her alleged violation of s. 481(2) of the Act, and subsequently the alleged violation of s. 480(1)(b) of the Act. The Agent satisfied the requirements of the audit in response to the Report on April 13, 2020.

Discussion

The Minister of Treasury Board and Finance has delegated its' authority to the AIC to investigate complaints against holders, and former holders, of 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).

The Report referenced compliance with s. 31 of the Regulation. Specifically, this section provides;

Records

31(1) An individual who holds a certificate of authority must keep a record issued by a continuing education provider respecting the continuing education courses completed by the individual during that certificate term.

(2) The records must be kept for a period of 3 years following the expiry of the certificate term and must be provided to the Minister upon request.

(3) If the individual does not provide the records within 30 days after receiving a request from the Minister, the certificate of authority is suspended until the demand is complied with.

A violation of s. 481(2) of the Act 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 served, the onus then shifts to the agent to demonstrate that all reasonable steps were taken to avoid making the offence. There is nothing that requires the AIC to prove that the Agent's failure to respond was intentional.

In consideration of the evidence before it, and s. 31 of the Regulation, the Council is satisfied that the Demand met the requirements of s. 481 of the Act. The Council agreed that the Agent was given a reasonable opportunity to respond. Given the fact that the Agent failed to respond when called upon, the Agent has not met the burden of proof to establish the due diligence defence. As such, the Council finds the Agent guilty of violating s. 481(2) of the Report.

In terms of the applicable sanction, the Act requires that all holders, and former holders, of certificates of authority produce information when called upon to do so. The public is not well-served when agents fail to comply with demands, like the Demand 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. In this case, the Agent did not satisfy the audit by the deadline provided. In consideration of all of the evidence, the Council orders that a penalty in the amount of \$500.00 be levied against the 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. If the Agent has active certificates of authority at the time that the civil penalty becomes due, and that civil penalty has not been duly satisfied, the Agent's active certificates of authority will be suspended. 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