

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 Adile Tamguicht
(the "Agent")

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

This case involves an allegation pursuant to s. 480(1)(a) or, in the alternative, s. 509(1)(a) of the Act. Specifically, it is alleged that the Agent misappropriated client funds for personal gain rather than remitting the proceeds to his client (the "Client") directly. In so doing, it is alleged that the Agent is guilty of misrepresentation, fraud, deceit, untrustworthiness and/or dishonesty, which constitutes a violation of s. 480(1)(a) of the Act. In the alternative, it is alleged that the Agent made false or misleading statements, as contemplated by 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 to Council dated August 11, 2020 (the "Report"). The Report was forwarded to the Agent for his review and to allow the Agent to provide the Council with any further evidence or submissions by way of Addendum. The Agent did not respond.

The Agent concurrently held both Life insurance and Accident and Sickness ("A&S") insurance agent certificates of authority between the period of March 24, 2009 and December 7, 2016, and again between the period of November 20, 2017 to April 11, 2019.

The Agent's employment was terminated on April 29, 2019 as a result of the alleged misappropriation of client funds. The Agent is not presently licensed.

This matter arose in response to correspondence dated April 11, 2019 received from the Agent's Agency "Sponsor" and Client's "Insurer". The Sponsor and associated Agency advised the AIC that an investigation had commenced against the former Agent in response to a "*probable forgery and fraud.*"

On April 4, 2019, the Client had submitted a complaint to the Sponsor alleging that the Agent acquired \$17,822.90 of his LIRA funds for his personal use. The Client recounted:

“Everything seem to suspicious [sic] and on April 04, 2019. I decided to Call [Redacted Insurer] to ask them about the whole situation. I asked them about my Lira funds and why I couldn't get my money now, is when a Lady called [redacted][L.G.] told me that the funds were already deposited in the the bank account provided by Adile Tamgucht. [Insurer] e-mail me the information provided by Adile Tamgucht to them.

The Agency subsequently filed a Notice of Termination which terminated sponsorship of the Agent's certificates of authority effective April 29, 2019.

The AIC contacted the Agency and Sponsor to gather further information regarding the alleged breach. On May 27, 2019 the Chief Administrator of the Agency [redacted] [J.K.] advised as follows:

[...]

We have completed our investigation with the following points:

1. We have determined that the advisor had personal financial dealing with the client/complainant while his license was suspended by the AIC.
2. **We have determined from the client's complaint that the former advisor misappropriated and directed funds from a segregated funds redemption into his own personal corporate account...**
3. [...]
4. After an extensive investigation and review involving all parties. We have concluded that in combination with the advisors past history of compliance concerns, **we formally terminated his sponsorship and independent broker contract which will halt his ability to cause any further harm to the consumer.** [Emphasis Added].

On June 4, 2019 [J.K.] provided the Agency's investigation materials relating to the Agent to the AIC. Amongst the Agency's investigation material, the following where included:

- Correspondence between the Client and the Agency dated April 10, 2019, detailing the Client's chronology of events;
- Handwritten cover page which enclosed a 15-page facsimile communication to the Insurer, and provided;

“From Adile TAMGUICHT
to: [Insurer]
Client: [Redacted]
Account [redacted]**641
Fax [redacted]
Number of Pages: 15”

- The facsimile enclosed the following;

Pages 2 - 5 “*Segregated Fund Individual Annuity Variable Contract*” signed by the Agent, the Client, and his Client’s spouse, which provided for “*Registered Retirement Income Fund (RRIF) Investment Instructions - investment amount 100%. RIF Payment Plan – Maximum EFT – Void Cheque Required*”

Pages 6 – 9 “*Segregated Fund Individual Annuity Variable Contract*” signed by the signed by the Agent, his Client, and his Client’s spouse, which provided for “*New Contract - Life Income Fund ‘LIF’ Investment Instructions - investment amount 50%[...] 50%.*”

Pages 10 – 11 Government of Alberta “*Pension Partner Waiver to Permit up to 50% Unlocking from a Locked-In Retirement Account on Establishment of a Life Income Fund or Transfer to a Life Income Type Benefit*” which provided;

4. Being the “pension partner” means that
(a) I am married to the member owner and have not been living separate and apart from that person for a continuous period longer than 3 years, or
[...]
I [Client’s Spouse], am the pension partner of [Client] [...]

6. I am signing this waiver form to permit the unlocking of 50% of the pension funds held in the LIRA before the establishment date of the LITB account or a LIF [...]

9. I have chosen to sign this waiver form and, in doing so, agree to the unlocking of pension funds as described above.

CERTIFICATION OF PENSION PARTNER

I sign this waiver form on

Dated 03/10/2019

[signed by pension partner][Client’s Spouse]

STATEMENT OF WITNESS

I certify that I am not related to this pension partner and that I witnessed this pension partner sign this waiver form in the absence of the plan member on

Dated 03/10/2019

[Witnessed by the Agent, Adile Tamguicht]

[Emphasis added]

Pages 12 - 13 Government of Alberta “*Pension Partner Waiver to Establish a Life Income Fund from a Locked-in Retirement Account*” which provided;

This waiver form must be signed by a pension partner in order to permit a member owner of a Locked-In Retirement Account (LIRA) to establish a Life Income Fund (LIF), if that member owner has a pension partner on the establishment of the LIF.

[...]

7. Being the “pension partner” means that:

(a) I am married to the member owner and have not been living separate and apart from that person for a continuous period longer than 3 years [...]

I [Client’s Spouse], am the pension partner of [Client]

[...] 8. Pension funds for the member owner are currently held in LIRA with [Insurer], [...]

9. I understand that I do not have to sign this waiver form unless I agree to the establishment of a LIF rather than the commencement of payment under a 60% joint and survivor annuity. Nonetheless, I am signing this waiver form to permit the member owner to establish a LIF.

[...] I sign this waiver form on 03/10/2019

[Signature of the pension partner][Client’s Spouse]

STATEMENT OF WITNESS

I certify that I am not related to this pension partner and that I witnesses this pension partner sign this waiver form **in the absence of the plan member** on 03/10/2019

[Witnessed by the Agent, Adile Tamguicht]

[Emphasis added]

Page 14 - Letter of Direction “Re: Cash out from my RIF account” from [Client] to [Insurer], dated March 22, 2019, which provided;

I, [Client][redacted], am looking to transfer 50% of my LIRA account to a RIF account. Attached an application [sic] to open a new RIF account.

Please cash out all the funds in my RIF account and transfer the funds to the void cheque sent with this application. I am aware of probable withholding taxes associated to this transaction and all the processing fees.

[signed][Client]

[signed] Agent

Page 15 – A void cheque to a numbered Alberta company, *****50 Alberta Ltd.

- Text messages exchanged between the Client and the Agent;
- A handwritten note from the Client to the Insurer dated April 4, 2019 which stated;

“I have sent you a void cheque.

[Client name and address]

Plus direct my funds to this account.

Do not use the void che [sic] provided by Adile Tamguicht[sic]

[signed by the Client] April-04-1 [cut off]

The Agency’s investigation material detailed the Client’s chronology of events. The following timeline was provided by the Client:

I met with Adile on **March 01, 2019** at the [redacted] Tim Hortons to discuss the withdrawal of the \$ 20,000 invested back in October, 2017. He [Agent] also told me that I could withdraw 50 % of the LIRA that I had invested at [Insurer]. Adile also told me that 30 % of the \$ 20,000 was going to be held until next January of 2020.

On March 07, 2019 Adile [sic, throughout] sent me some forms to sign and told me to send them back to him signed, and I would get the money invested by the end of March 2019. Since I didn't work that day I signed, scanned and sent the forms back to Adile the same day. Also I sent a VOID personal cheque as per Adile's request.

On March 29, 2019. I texted Adile to ask him about when the \$ 20,000 was going to be deposit [sic] to my account and he texted me back saying I was going to receive the money by the end of the month. Also he texted me saying the I was going to receive a cheque instead of a deposit.

On April 02, 2019 we met again at the [redacted] Tim Hortons, Adile gave me a cheque for \$ 8,000 from the \$ 20,000 invested, and he said that I was going to get another check for \$ 6,000 by friday [sic] that week, and the remaining \$ 6,000 I was going to receive them on January of 2020.

I also asked Adile about my Lira investment to when I was going to get a deposit in my bank account. Adile told me that [Insurer] were going to hold the funds until January 2020, I had no access to that money.

Everything seem to [sic] suspicious and on **April 04, 2019.** I decided to Call [Insurer] to ask them about the whole situation. I asked them about my Lira funds and why I couldn't get my money now, is when a Lady called [L.G.][redacted] told me that the funds were already deposited in the the [sic] bank account provided by Adile Tamgucht. [Insurer] e-mail me the information provided by Adile Tamgucht to them.

On April 05, 2019. I met with Adile again at the same Tim Hortons and he gave me another cheque for \$ 6,000 from the \$ 20,000 invested back in October 2017. Then again he told me that I was going to get \$ 6,000 next January 2020.

The Client concluded the above by stating:

- Some of the Forms I signed for Adile [sic] were different to the ones he sent to [Insurer]
 - Clearly he forged my signature on the Direction forms
 - Instead of **sending my Void cheque** to [Insurer] Adile sent his Personal cheque
 - Adile hasn't return my calls
- [Emphasis Added]

Text messages, which pre-date the Client's call to the Insurer on April 4, 2020, provide:

Friday, March 29, 2019

[Client] Hi Adile, when can I expect de [sic] deposit?

[Agent] Hi [Client]. **Just talked to them this morning. Everything is supposed to be done by the end of the month. You wont have a deposit but a cheque instead.** I need to meet with you again to discuss your options for the LIRA.

[...]

[Client] **Is the cheque coming in the mail?**

[Agent] **No. I will have it with me when I see you.** Probably Tuesday. I will confirm

[...]

[Client] **Hi Adile. Can I get a copy to see where the money is. I have to show my wife where the money is**

[Agent] **Sounds good. I will ask for it**

[Agent] Which one?

[Client] from lira

[Agent] You will receive statements from [Insurer] for sure.

[Emphasis added]

The Client did not discover the redirection until such time as he personally contacted the Sponsor on April 4, 2020. The Sponsor confirmed that 50% of the LIRA funds were advanced to the Agent's personal corporate account, unbeknownst to the Insurer and the Client.

In turn, the AIC contacted the Agent to respond to the allegations made against him. On June 20, 2019, the Agent responded and provided a copy of the Sponsor's termination letter, the LIRA Redemption forms, and a notarized *Client Termination Letter*, dated April 20, 2019, (the "Client Termination Letter").

The Agent recalled that the Client expressly instructed him to deposit the funds into the Agent's corporate account. The Agent defended his actions, and stated that he sought the guidance of the Sponsor's *Client Service Department* regarding the transfer, and was advised that a transfer from the Client's LIRA account into the Agent's corporate account was permissible so long as the Client consented to the transfer.

The duly notarized "Client Termination Letter", provided by the Agent, stated:

April 20, 2019
Client termination letter
Between: [Client]
AND
Adile Tamguicht – Financial Advisor

This letter confirms that effective April 12th, 2019 Adile Tamguicht is no longer the financial advisor for [Client]. This decision was agreed upon mutually from both parties after the last transaction involving [Client] LIRA account with [Insurer].

[Client] instructed Adile Tamguicht to cash out 50% of his LIRA account with [Insurer]:

- [Client] was aware of all the fees, withholding taxes and any additional taxes involved with his transaction.
- Aware of all the information, [Client] agreed to go ahead with the transaction.
- [Client] instructed Adile to deposit the money into *****50 Alberta LTD account.
- [Client] received all his money from *****50 Alberta LTD

All the services provided to [Client] by Adile Tamguicht are free of charges for [Client].

[Client] aware and agreed [sic] that Adile Tamguicht is not responsible for any losses, taxes anything that has to do with [Client] past or future investment.

[Signed by all parties and duly notarized]

A recorded interview was conducted between the AIC and the Agent. The AIC questioned what motivation the Client could have to direct the LIRA funds into the Agent's corporate account. The AIC reported;

The Former Agent stated that the deposit was made into his corporate bank account at the request of the Client. The Former Agent recalled that he was directed to make the change on or around March 20, 2019. The Former Agent was asked if he had any records of these instructions from the Client, to which he recalled the instructions were given in person or by phone.

During the Interview, the Former Agent was asked if he told the Client that the LIRA Redemption would be withheld by the Sponsor until January 2020. The Former agent denied saying that, as he stated, "He knew all the

time where the money was [...] probably I cannot prove it, but I am telling you, he knew all the time where the money was”.

During the Interview, the Former Agent presented his theory that the Client wanted to hide money from his wife. The Former Agent stated the Client wanted the LIRA Redemption to be deposited into the Former Agent’s corporate bank account and then the Former Agent would transfer the funds to the Client at a later date and/or dates at the Client’s request. Accordingly, the Former Agent was then asked for his opinion on why the Client would contact the Sponsor to inquire about the status of his money and to submit a complaint if he knew where the money was. The Former Agent speculated that the Client probably took this course of action because the Client’s wife discovered the LIRA Redemption had been deposited and the Client wanted to hide things from her.

[...]

The Former Agent later added that the Client Termination Letter was signed in front of a notary whom the Client knew.

The Agent also provided a statement by way of email dated May 1, 2020, which he specifically requested be included in the Report. The statement is as follows;

[...] As I said during our chat, I am still surprised about the complaint as I was when I first heard about it the first time. The complaint was made on April 4th, 2019 at the same time [the Client] already received 8000 draft and we met the following day April 5th when he received another 6000 draft. Our April 5th meeting was absolutely normal and I he never told me about the complaint.

Documents supplied by the Agency and former Agent confirm that the misappropriated funds were returned to the Client in full. In response to the question why the Client would have signed the Client Termination Letter on April 20, 2019, the Client advised the AIC that he felt he was under duress, and was fearful that he would not recover the remaining LIRA funds should he protest the contents of the Agent’s document.

The AIC also requested that the Agency comment on the Agent’s statement that the Agency endorsed the transfer from the Client’s LIRA account to the Agent’s personal corporate account so long as the Client approved of the transfer. The Agency’s MGA’s Chief Compliance Officer confirmed, by way of telephone “[...] the Agency and the Sponsor would not instruct an advisor to direct client funds into their own personal/business accounts. [...] further [...] was surprised that the Sponsor did not pick up on the fact that the void cheque specifying where the accounts were to be deposited was from a numbered company.”

The Agency’s Internal Investigation Report confirms the scope and findings of the Agency’s investigation;

PRELIMINARY FINDINGS

Based on these preliminary findings, Internal Audit opened an investigation to determine if allegations of misappropriation of clients’ funds were founded.

SCOPE OF THE INVESTIGATION

Internal Audit

- reviewed the files of the two clients involved, including records of conversations with the Complainant [Client];
- conducted a phone interview with one of the clients;
- conducted a phone interview with the advisor [Agent]

[...]

CONCLUSION

Internal audit concluded that the fraud allegations related to misappropriation of funds in a numbered Alberta corporation bank account under the control of the advisor, Mr. Adile Tamguicht, are founded. The advisor took inappropriate action in having the Complainant's funds deposited in the numbered Alberta corporation bank account and therefore intermingled with his business account transactions. Although the advisor claims he had the verbal authorization of the Complainant, given the Complainant's evidence, including his original complaint that he had not received the funds, we did not find the advisor's evidence to be credible. We find that the advisor secured a false statement from the Complainant to cover his misconduct. Internal Audit supports that the advisor be terminated by [Sponsor] and the same with [Agency] as an affiliated agent.

On August 11, 2020 the AIC emailed the entirety of the Report to the Agent and invited the Agent to provide further evidence to support his position. The AIC also mailed the Report by way of Registered Mail to the last known address of the Agent. The Report was returned, undeliverable. The AIC sent several emails between the period of August 19, 2020 and August 21, 2020, requesting a response no later than August 26, 2020. The Agent did not respond.

Discussion

In order to conclude that an agent has violated s. 480(1)(a) of the Act the evidence must prove, on the basis of clear and cogent evidence, that it is more likely than not that the agent committed the act as alleged. The requirement of clear and cogent evidence reflects the fact that the Council's findings can dramatically impact an insurance agent's ability to remain in the industry.

The elements of a s. 480(1)(a) violation are discussed by the Alberta Court of Queen's Bench in *Roy v. Alberta (Insurance Councils Appeal Board)*, 2008 ABQB 572 (hereinafter referred to as "Roy"). In *Roy*, the insurance Council found that an agent committed a breach of the Act pursuant to s. 480(1)(a) when he attested to completing the required continuing education when he did not, in fact, have the required courses. The agent concurrently held a securities license and stated that he believed that the education requirements to maintain his securities license were applicable to his insurance agent requirements. The *Insurance Councils Appeal Board* (of Alberta) also found the agent guilty of violating s. 480(1)(a) of the Act. The agent subsequently appealed that Decision to the Court of Queen's Bench of Alberta.

In his reasons for judgment, Mr. Justice Marceau reviewed the requisite test to find that an offence pursuant to s. 480(1)(a) of the Act has been made out and expressed it 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 Decision of the *Insurance Council's Appeal Board* (of Alberta) was subsequently upheld, its' findings confirmed, and the agent was found guilty of an offence pursuant to s. 480(1)(a) of the Act.

Collectively, the Council is comprised of both industry and public members who are well- equipped to assess consumer risk and industry competence. The Council weighted the effects of the alleged actions, the evidence presented, and the accounts of all parties involved when arriving at their conclusion.

At the outset, the Council considered the disjunctive elements of the alleged breach, that is, did the Agent's conduct amount to misrepresentation, fraud, deceit, dishonesty and/or untrustworthiness, as alleged.

The text messages exchanged between the Agent and the Client were of significance to the Council's Decision. The Agent misrepresented that the LIRA statement would be issued by the Insurer, and that the funds would be received in due course;

[Client] Hi Adile. **Can I get a copy to see where the money is.** I have to show my wife where the money is

[Agent] Sounds good. **I will ask for it**

[Agent] Which one?

[Client] from lira

[Agent] **You will receive statements from [Insurer] for sure.**

The Agent stated that he will "*ask for it*", implying that there was some other administrator controlling the LIRA, all while the funds were securely deposited within his personal corporate account. Had the Agent's statements been true, the Agent would have no reason to delay the whereabouts of, and transfer of the LIRA funds to the Client. The Client reasonably believed that the deferment was an administrative delay. Given that the Client called the Insurer, and not the Agent, to inquire of the whereabouts of the LIRA funds supports the Client perspective. As such, the Council confirmed that the Agent had knowingly abused his certificates of authority as an insurance agent to gain access to the Client's funds.

In the Council's opinion, these materials demonstrate that the Agent acted in a dishonest, deceitful, fraudulent and untrustworthy manner as contemplated by the Act. Moreover, were the Agent's alternative version of events to be accepted, than he knowingly assisted the Client in sheltering assets from his spouse. As such, the Council could not support that the Agent's statements were not, in fact, dishonest or deceitful.

While the Agent emphasizes that the Client was eventually reimbursed, the Council does not believe that this necessarily bears upon the question of whether the Agent is guilty of an offence. The Council's mandate is to enforce the provisions of the Act and the Council believes that the intention behind the Agent's conduct is determinative in deciding whether an offence has been committed. Both consumers and insurers rely on agents to act with integrity, with honesty, and in the best interests of their clients. Had the Client not investigated the whereabouts of the LIRA funds there could have been potentially far-reaching and serious consequences to all of the parties involved. While the Client was not prejudiced by virtue of the transfer-back, this may not have been the case were it not immediately discovered. The Client trusted that the Agent would not expose his assets to unreasonable risk, and the Council has no hesitation in concluding that the Agent, on this basis alone, is guilty of the allegations as set out in the Report. Similarly, the Agent owes the Insurer a duty to disclose the truth in all aspects relating the Client's accounts. On each of these points, the Council was satisfied that the Agent breached his fiduciary duties to the Client and the Insurer.

In conclusion, and on the whole of the evidence submitted, the Council orders that the Agent acted in a fraudulent, deceitful, dishonest and untrustworthy manner as alleged pursuant to s. 480(1)(a) of the Act. As a result of this finding it is unnecessary for the Council to consider the alternative alleged offence pursuant to s. 509(1)(a) of the Act.

In terms of the available sanction, the Council may impose a civil penalty for a violation of s. 480(1)(a) of the Act not exceeding \$5,000.00, and may choose to suspend or revoke the Agent's active certificates of authority in accordance with the *Certificate Expiry, Penalties and Fees Regulation*, AR 125/2001. As the Agent no longer holds certificates of authority the Council is in no position to revoke or suspend of the Agent's certificates. As to the amount of the civil penalty, the Council is of the view that the Agent's conduct merits the maximum penalty that can be imposed, and orders that a civil penalty in the amount of \$5,000.00 be levied against the Agent.

The civil penalty must be paid within thirty (30) days of receiving this Decision. In the event that the 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.

Date: November 3, 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