

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 Hakan Bahadir  
(the “Agent”)

DECISION  
OF  
The General Insurance Council  
(the “Council”)

This matter involves an alleged violation of s. 480(1)(a) of the Act. It is specifically alleged that the Agent created fraudulent insurance certificates which were not in place nor in force, and did so knowingly, recklessly, or by willful omission, which exposed his various clients to undue risk or actual loss. It is therefore alleged that the Agent is guilty of fraud, deceit, dishonesty, untrustworthiness, or misrepresentation in contravention of s. 480(1)(a) of the Act.

In the alternative it is alleged that the Agent made false or misleading statements, representations, or advertisements in contravention of s. 509(1)(a) of the Act and has consequently violation s. 480(1)(b) of the Act.

**Facts and Evidence**

The matter proceeded to Council by way of written Report dated February 10, 2021 (the “Report”). The Report was provided to the Agent for review. The Agent was permitted to provide further evidence or submissions in response to the Report by way of addendum. The Agent provided a response by way of addendum [undated] (the “Addendum”) which was considered by the Council.

The AIC's investigation commenced in response to a Notice of Termination received from Agent's former employer, the "Former Agency" also referred to herein as "*A.I. Brokers*", which advised that the Agent was terminated for cause. The Agent previously held a certificate of authority authorizing him to act in the capacity of a general level one insurance agent. The Agent held the certificate from May 26, 2014 to March 12, 2019 and again between the period of March 18, 2020 to October 8, 2020, when the Agent was terminated 'for cause'.

The Former Agency provided the AIC with a copy of the Agent's termination letter, entitled "*Termination of Employment contract*" dated March 6, 2019 (hereinafter the "Termination Letter");

This is to advise you that your producer agreement with [A.I. Brokers] will terminate effective immediately based violating your employment agreement and your fraudulent activities.  
[...] We have knowledge that you have been providing confidential client information to another brokerage which violates the following [...] [confidentiality clauses] [...]

We have knowledge that you have been committing fraud by providing fake certificates of Insurance to commercial clients, knowing full well there is no coverage in place. Due to your actions, we have now been put in a potential E&O situation where you provided a liability insurance certificate confirming insurance coverage without binding the policy, a claim has happened and the client is looking to our office for payment of the claim. [...]

We have knowledge that you have been committing fraud by providing fake Automobile Insurance slips to individuals, knowing full well there is no coverage in place, again putting us in a potential E&O situation in the event something was to happen.[...] We will be reporting your fraudulent actions to both AIC and the local police force so they can investigate and prosecute as they see fit.

In response to a request for information, the Former Agency provided a 781 investigative report outlining the alleged acts of fraud and misrepresentation committed by the Agent. The cover page, dated April 1, 2019 provided;

[...] please find enclosed the following documents requested:

1. Copies of file notes and correspondence with respect to this mater.
2. Copies of "Fake certificates of insurance"
3. Copies of "Fake automobile insurance slips".
4. Contac [sic] information for each affected client, included [W.S.][redacted commercial client]
5. Information regarding the claim that was made for a client's insurance policy that was not in force by [the Agent]

The Former Agency's investigation alleged that 26 insurance clients, both commercial and private, were affected by the Agent's activities. Allegedly 52 insurance certificates were "issued" by the Agent but were not in existence nor were in force, which consisted of; 6 certificates of liability, 1 tenant's legal liability, commercial general liability and "other", and 44 "pink cards", or, automobile insurance certificates.

The Agency confirmed through its' own investigation process that the policies did not exist within its' records. As such, the AIC contacted all insurers named within the Agency's report by way of *request for information* on the below dates. The *request for information* required, in part:

1. I [AIC Investigator] have attached a list of policies to confirm if the following individuals and companies have commercial or personal insurance with your company between June 1, 2017 and April 1, 2019 or if applications were submitted (please note the policy numbers provided may not be correct)  
[...]
2. If insurance with your company, please provide a copy of their in-force policy or cancellation[...]

The insurers were contacted on the following dates (respective of each insurer) [redacted for privacy purposes];

- March 18, 2019 – Insurer: [R&S Alliance] – detail requested regarding Client #6, [W.S. Ltd.]
- April 16, 2019 – Insurer: [W.I.] – provided list of policies to confirm existence
- April 16, 2019 – Insurer: [D.I.] – provided list of policies to confirm existence
- April 16, 2019 – Insurer: [G.M.] – provided list of policies to confirm existence
- April 16, 2019 – Insurer [O.G.I.] – provided list of policies to confirm existence
- April 16, 2019 – Insurer [A.I.] – provided list of policies to confirm existence
- May 16, 2019 – Insurer: [I.I.] – provided list of policies to confirm existence

Note insurer, [P.I.] were not contactable although they were named by the Former Agency's investigation. The policies in those instances were verified by the Former Agency.

The results of the AIC investigation are as follows, summarized here and redacted for the purpose of this decision;

Client Name/ Business entity [Redacted]	Policies “Issued”	Agency Findings	Insurer Findings	Additional Information
[C.C.S.] [redacted] (“Client 1”)	1 certificate of liability insurance	[A.I. Brokers] – no such policy exists	[G.I.] – no such policy exists	Client made a claim on May 14, 2019. Client subsequently discovered that the policy was not in force
[K.B.] [redacted] (“Client #2”)	1 certificate of liability insurance	[A.I. Brokers] – no such policy exists	[W.I.] – no such policy exists	
[F.C.] [redacted] (“Client #3”)	1 certificate of liability insurance	[A.I. Brokers] – no such policy exists	[P.I.] – no response collected	Agent was aware that the client required the <i>certificate of insurance</i> to satisfy a third party-lender’s condition that the third-party- lender be added as a “ <i>loss payable</i> ” under the insurance policy.  The Agent confirmed the third-party lender was added as a loss payable.  It was subsequently discovered that the policy did not exist at all
[E.G.] [redacted] (“Client #4”)	1 certificate of liability	[A.I. Brokers] – no such policy exists	[W.I.] – no such policy exists	-

Client Name/ Business entity [Redacted]	Policies “Issued”	Agency Findings	Insurer Findings	Additional Information
[M.C. Ltd.] (“Client #5”)	(1) commercial general liability / tenants legal liability/ non- owned automobile  (1) automobile insurance certificate	[A.I. Brokers] – no such policies exist	[D.I.][insurer #1] - no such policy exists  [A.I.][insurer #2] – no such policy exists	Agent signed as a Director of [M.C. Ltd.] on a contract bid to the Government of Alberta  Agent listed himself as the primary contact for [M.C. Ltd.] in an agreement with “[redacted] Restoration”  The Agent was aware that “Restoration” required valid insurance in accordance with a Limited Vendor Agreement  Agent emailed his own personal email address with copies of the insurance policies. The insurance “policies” were fabricated and did not exist
[W.S. Ltd.] [redacted] (“Client #6”)	2 certificates of liability insurance	[A.I. Brokers] – no such policies exist	[R.S. Alliance] – no such policies exist	2018/2019 term certificates were signed by a “Johny White” [...] The Agency confirmed that there was no person named “Johny White” employed at the Agency The Agency confirmed that the certificate of insurance was issued through the Agent’s private access broker account
[B.A.] [redacted] (“Client #7”)	1 automobile insurance certificate	[A.I. Brokers] – no such policy exists	[W.I.] - no such policy exists	-
[S.A.] [redacted] (“Client #8”)	1 automobile insurance certificate	[A.I. Brokers] – no such policy exists	[P.I.] – no response collected	-

Client Name/ Business entity [Redacted]	Policies “Issued”	Agency Findings	Insurer Findings	Additional Information
[K.A.] [redacted] (“Client #9”)	1 automobile insurance certificate	[A.I. Brokers] – no such policy exists	[I.I.] – no such policy exists	-
[S.B.] [redacted] (“Client #10”)	3 automobile certificates of insurance	[A.I. Brokers] – no such policies exist	[A.I./I.I.] (affiliated) – no such policies exist  [O.G.I.] - no such policy exists	Agent issued [S.B.] a 30-day automobile insurance certificate with one insurer and, later that same day, issued another 30-day automobile insurance certificate for a second vehicle through a secondary insurer
[M.B.] [redacted] (“Client #11”)	5 automobile certificates of insurance	[A.I. Brokers] – Agency records confirmed that the client was engaged with the business and owned other insured vehicles, but the Agency did not have records to support the certificates of insurance issued by the Agent (5)	[I.I.] – no such policies exist	-

<b>Client Name/ Business entity [Redacted]</b>	<b>Policies “Issued”</b>	<b>Agency Findings</b>	<b>Insurer Findings</b>	<b>Additional Information</b>
[A.C.] [redacted] (“Client #12”)	1 automobile insurance certificate	[A.I. Brokers] – no such policy exists	[D.I.] – automobile insurance certificate effective dates did not align with the dates bound by the former Agent	The insurer confirmed a policy was in force for [A.C.] however, the policy of [A.C.] did not come into force until November 2, 2018[...]. The dates did not align with the coverage indicated on the certificate of insurance
[A.E.] [redacted] (“Client #13”)	3 automobile insurance certificates	[A.I. Brokers] – no such policies exist	[D.I.] – had no record of policies	-
[F.G.] [redacted] (“Client #14”)	1 automobile insurance certificate	[A.I. Brokers] – no such policy exists	[W.I.] – no record of policy	-
[U.G.] [redacted] (“Client #15”)	6 automobile insurance certificates	[A.I. Brokers] – no such policies exist	[A.I./I.I.] – no record of policy	-
[S.K.] [redacted] (“Client #16”)	2 vehicles – 4 automobile insurance certificates	[A.I. Brokers] – no such policies exist	[A.I./I.I.] – no records of policies	Agent issued twelve-month long automobile certificates of insurance for both vehicles, and subsequently issued 30-day insurance certificates for overlapping time periods

<b>Client Name/ Business entity [Redacted]</b>	<b>Policies “Issued”</b>	<b>Agency Findings</b>	<b>Insurer Findings</b>	<b>Additional Information</b>
[D.L.][redacted] (“ <b>Client #17</b> ”)	1 automobile insurance certificate	[A.I. Brokers] – no such policy exists	[I.I.] – no record of policy	-
[D.L.] [redacted] (“ <b>Client #18</b> ”)	4 automobile insurance certificates	[A.I. Brokers] – no such policies exist	[D.I.][insurer #1]– no record of policies  [I.I.][insurer #2] – no record of policies	Agent issued automobile insurance certificates on overlapping and repeating dates, spanning several certificates
[M.M.] [redacted] (“ <b>Client #19</b> ”)	1 automobile insurance certificate	[A.I. Brokers] – no such policy exists	[W.I.] – no record of policy	-
[E.O.] [redacted] (“ <b>Client #20</b> ”)	1 automobile insurance certificate	[A.I. Brokers] – no such policy exists	[A.I.] – no record of policy	-
[A.O.] [redacted] (“ <b>Client #21</b> ”)	3 automobile insurance certificates	[A.I. Brokers] – no such policies exist	[A.I./I.I.] – no such policies exist for the time period. However, client was a former client of insurer, [I.I.]	-



<b>Client Name/ Business entity [Redacted]</b>	<b>Policies “Issued”</b>	<b>Agency Findings</b>	<b>Insurer Findings</b>	<b>Additional Information</b>
[A.O.] [redacted] <b>(“Client #22”)</b>	1 automobile insurance certificate	[A.I. Brokers] – no such policy exists	[I.I.] – the policy exists – however – client cancelled the policy the date of commencement	-
[M.S.][redacted] <b>(“Client #23”)</b>	2 automobile insurance certificates	[A.I. Brokers] – no such policies exist	[D.I.] – no record of policies	Agent issued two consecutive automobile insurance, the latter of which appears to have been edited by hand
[A.S.] [redacted] <b>(“Client #24”)</b>	3 automobile insurance certificates	[A.I. Brokers] – no such policies exist	[A.I.] – no record of policies	-
[N.U.] [redacted] <b>(“Client #25”)</b>	1 automobile insurance certificate	[A.I. Brokers] – no such policy exists	[I.I.] – no record of policy	-

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In the instance of client [M.B.] “**Client #11**” above, the Agency advised that **Client #11** was issued five automobile insurance certificates by the Agent providing “coverage” for the following dates;

- Coverage effective from February 6, 2018 to February 13, 2018
- Coverage effective from April 23, 2018 to May 8, 2018
- Coverage effective from May 8, 2018 to June 8, 2018
- Coverage effective from June 22, 2018 to July 22, 2018
- Coverage effective from August 12, 2018 to September 12, 2018

**Client #11** was an existing client of the Former Agency. However, the policies “issued” by the Agent did not cover the vehicle on record with the Former Agency. Client #11 transacted directly with the Agent through email to continue the rolling “coverage” as indicated above. In an email dated April 22, 2018 between Client #11 and the Agent, Client #11 stated;

*“I want to just insurance [sic] but don’t add it to the policy just want a paper thank you bro.” [emphasis added].*

On February 15, 2018 Client #11 emailed the Agent;

*Can you send me insurance it’s 2008 Nissan Titan just a temporary*

On May 8, 2018 Client #11 emailed the Agent:

*[...] can you send me another longer expiry date for the Porsche thank you*

and on June 21, 2018 Client #11 emailed;

*[...] can you get me more day on Porsche send me another pink slip please and thank you*

On June 24, 2018 Client #11 emailed;

*[...] can I get the up to the November thanks brother.*

On August 9, 2018 Client #11 sent a final email, being;

*[...] can you email me slip Porsche boxster thank you brother*

The Agent “issued” multiple short-term insurance certificates to Client #11 over a period of eight months. The Former Agency had no record of the policies “issued” by the Agent. The policies were not bound nor in force. The insurer, [I.I.], confirmed that no records of the policies issued to Client #11 for the vehicles at issue for the above noted dates existed within their system.

The Former Agency alleged that several instances of rolling, short-term automobile insurance policies were prepared the Agent, analogous to Client #11. The vehicles did not exist within the records of the Former Agency and the policies were confirmed by the insurers to neither exist nor be in force. Namely, this allegedly occurred with respect to **Clients #10, #13, #15, #16, #18, #21, and #24.**

The Former Agency’s report also alleged that the Agent entered fraudulent or fabricated information into the internal record-keeping system. Specifically, with respect to **Client #6**, [W.S. Ltd.], the Agent issued 2 certificates of liability insurance which covered the following dates;

- ‘effective’ January 16, 2018 - January 16, 2019; and
- ‘effective’ January 16, 2019 - January 16, 2020.

The term certificates were signed by an individual acting as the authorized representative of the Former Agency identified only as “*Johnny White*”. The certificates of insurance identified [R&S Alliance] as the insurer. The Former Agency confirmed that no such record of the policies existed within their system and that no such person named “*Johnny White*” was employed at the Agency. The certificates of insurance were issued through the Agent’s private access broker account. On March 20, 2019, the insurer [R.S. Alliance] confirmed to the AIC that the certificates do not exist, and coverage is not in force.

**Client #5**, [M.C. Ltd.], was provided a certificate of liability insurance and a certificate of automobile insurance with different signatures, dates, and email addresses effective from May 1, 2018 to May 1, 2019. At the time, the Agent was an acting director of [M.C. Ltd.] and was [M.C. Ltd.]’s primary contact. The Agent signed as a *Director* on a bid with the Government of Alberta for contracted employment on behalf of [M.C. Ltd.]. The Agent listed himself as the primary

contact between [M.C. Ltd] and a third party, [redacted] Restoration. The Agent was aware that [redacted] Restoration required proof of valid and existing insurance as condition of an agreement with [M.C. Ltd]. The Former Agency advised that the Agent created and emailed himself fictitious certificates of insurance for [M.C. Ltd] to his personal email address on several dates. The Agent provided the falsified certificates of insurance to the third party, as “proof” of valid and existing insurance coverage. The Former Agency and insurer, [D.I.], confirmed that the policies did not exist.

Similarly, **Client #3**, [F.C.], was issued a certificate of liability insurance effective from March 9, 2018 to March 9, 2019. The insurer was listed as [P.I.]. **Client #3** informed the Agent that a third-party lender, R.B.C., (the “Lender”), placed a condition for funding which required the Lender to be listed as a party to the insurance policy as a “*loss payable*”. The Agent was contacted directly by Counsel for the Lender to confirm that the condition was met. The Agent altered the certificate of insurance to meet the Lender’s requirement and advised the Lender’s legal Counsel that the request was actioned, however, the Agency and the insurer subsequently confirmed to the AIC that the policy did not exist in any form.

On April 12, 2019 the AIC provided the Agent with a request for information, which requested, amongst other things, the Agent’s version of events relating to the Former Agency’s allegations. The Agent responded on April 29, 2019, in part;

[...] Please note that I do not have access to the work email address due to termination of my employment with [Former Agency] therefore the dates may not be the actual dates for the events relating the complaints. However I do my best and check my mobile devices and conversation dates to inform you accurately.

My contract started with [Former Agency] in October 2015 as an independent broker. The brokerage is based in Mississauga, ON and they do not have any office located in AB. We work on commission split based, all the expenses including laptop, stationary and marketing tools covered by me.

In regards to proving [sic] certificate for customers when coverage is not in place, there was this particular client, [C.C.S.][**Client #1**], approached me for Liability insurance for his business. I had his auto insurance for over 2 years and know him personally too. I only do not talk to my clients for business, usually I build relations and work on getting their trust for future referrals.

My client asked me about the coverage and I explained him [sic] how I can get him a certificate. He asked about the premium for basic \$2M Cgl policy, I advised him that I can not provide him a quote right away but usually it comes to be around \$700 a year, but once I can get the quote I let him know. The way how it works for CGL policy quote, I need to fill out an app and send it over to brokerage then someone provide a quote and then finally I get to know the client about the premium. This particular client waited for a day and next day he called again, asked for the certificate.

I advised him that I do not have the quote yet, He needed the certificate right away because whether his contractor would not pay his earning without the liability certificate or he does not get any work from that employer. I supposed that there would not be a problem to get him a temporary liability certificate and once I get the app I will collect his signature..I just did not want him to wait for any longer and did not want to lose a good client of mine. I emailed him the certificate, confirmed that received by the client and advised him that he needs to sign the application, I am not sure If I emailed him the quote for signature after received by the brokerage. after few months, I totally forgot about him. the client called and I t [sic] and inquired about the insurance papers as he has not received anything in the mail. I checked and found out that the app never signed and send back to the brokerage.

the client also advised that he caused a damage to a condo while performing a flooring job and wanted to know if the coverage is in place..I advised him that the app was never signed and there is no coverage in place. He did not estimate the damage but I advised him if it is a small damage you do not even have to go through your insurance if it was in place. He was not sure and wanted to wait and see the report from the restoration company.

In the mean time, I tried to reach someone at the brokerage about the case but I could not find anyone or help from the brokerage side to help figure out to solve the problem. I advised my client that I was suppose remind him the application status and he was also suppose to sign and send it back to me.

**I could not handle the situation very well. I did not want the client to be liable for my mistake either and I advised him that I can be responsible for my mistake. He called the brokerage and told them about what happened then someone sent me an email from the brokerage..[...]**

I asked my client to call my brokerage and figure out what they can do to save him from a loss caused by my mistake.

**I am aware of my mistake but I never intended to do a fraud..It may be a misrepresentation occurred by miscommunication. I would not jeopardize my career and built client base over 3 years by a small incident such this.**

My book of business has grown from year to year and **there were times that the business was not handled professionally by myself.** However, after this incident, starting in May 2018 the brokerage began preventing my ability to provide quality customer services to my clientele by closing my access to insurance portals, preventing to write new insurance policies for new clients and re-market existing clients to other carriers, preventing to issue liability slips for automobile policy changes. despite all these preventions, I keep working in my best behaviour and proving the best services possible for my clients.

[...]

- In regards to my position at [M.C. Ltd.], **Client #5**, My cousin, [I.S.][redacted], owned a construction company and filed a bankruptcy in March 2018, He needed to open a new company to get contracts as a subcontractor and asked me to open a company on his behalf as he can not be the director any longer, He approached me and we opened a company **Client #5**, [M.C. Ltd.]. He is still the shareholder of the company. **I have never involved myself into performing this job or whatsoever.** Since the beginning, my cousin performed one job only until today which can be proved by bank statements. My cousin is still working for other contractors by himself. I am the director of this company on paper but I pursued my career in insurance and devoted my time to my clients. I advised my brokerage about my position at the company and they understood, on my social media account I included myself as the director at **Client #5**, [M.C. Ltd.].

- [Former Agency] lost some of their markets including [I.I.] and [R.S. Alliance], %80 to %90 of my book of business was with [I.I.][insurer] in personal lines. [I.I.] started sending letters to my clients on renewal stating that [I.I.] no longer working with [Former Agency]. Clients call and require information about what to do and needed some advise. I advised them that I can no longer write insurance policies due to my prevention and can not remarket them with another carrier. My clients were very disappointed about the letters and some of them accused myself due to the preventions because they do not know anyone else in the brokerage and they can not find any representative in Alberta.

I advised them to call [Former Agency] for possible remarketing or new quotes. most of them did not want to deal with [Former Agency] because of the time difference and waiting for long response when they called. Eventually, **they have found a broker which a client of mine's college friend and some of them advised me to send their information over to email address provided by them.** The clients wanted to deal with a local broker and know each other.

I have build my clientele over 3 years with hardwork and best possible customer services, it was not easy to earn their trust, I worked day and evenings to help my clients and always be there for them when they needed. **I have never shared or disclosed my client's confidential information to any third party brokers without their consent.** One of my clients happened to know his friend is a broker and managed to get his friends from my book and carried over to the other brokerage as [I.I.] no longer does renewal with [Former Agency] and those clients asked me to send their info to that brokers email address for quotation.

[...]

[Emphasis added throughout]

On May 1, 2019 the AIC requested further information from the Agent, as follows;

[...]

1. An explanation as to why pink cards and certificates of insurance were issued without valid insurance policies;
2. The names of your contacts at the other brokerage;
3. A copy of your employment contract (please highlight the area that relates to client ownership); [...]

On May 14, 2019 the Agent responded as follows;

As I mentioned on the first letter, **I had a recent misrepresentation incident involving [C.C.S] [Client #1] other than that i have never intended to issue a pink card or certificates without valid insurance policies. There were few cases customers approached for insurance policies, I give them quotes and they verbally accept the quotes provided then I email them the application either same day or next day(if quote provided after hour in the evening) and advise them to send signed application back to me.I send them a temporary pink card along with the application form to move forward but some client never returns and can not reached.**

[I.I.] terminated their contract with [Former Agency] and my clients started receiving non renewal letter. They asked for my advise about the situation and I asked them to seek another brokerage or agency so renew their policy because I am not allowed to write a new policy. One of my friends and also good customer has a friend [E.H.] who is a broker at [redacted] helped him with his insurance as he received non renewal letter from [I.I.] afterwards all of his friends from my client list started moving their policies over to [E.H.]. **They gave me consent to share their policies and information with [E.H.] via email.** Despite all I can assure you that I do not have any relation to this broker. Attached you can find a copy of the employment agreement.

[...]

[Emphasis added throughout]

On September 24, 2020 the AIC sent a further request for information to the Agent. Specifically, the investigator requested further information with regards to the Agent's termination "for cause" from the Former Agency. The Agent responded on October 5, 2020, in part, as follows;

1. A response to the allegations that you were providing fake automobile insurance slips to individuals when you were aware that no coverage was in place.

I have never issued a fake pink slips for clients as mentioned to [AIC Investigator] in the past. the only pink card issued by me was 30/60 days temporary pink slips as soon as the client's consent received verbally or by signed apps.

1. Copies of all materials that you advised [AIC Investigator] that you wished to submit.

I am truly not sure what kinda [sic] materials [AIC Investigator] meant. copies that [AIC Investigator] may referred could be the commissions that I have not received without any notice by [Former Agency] while employed for 3-4 months

1. Any/all other relevant information or documentation that may assist in understanding the material facts in relation to the allegations.

in regards to this allegations: there were issues about clients receiving their policy docs sent by the insurer. after sending the signed apps and supported docs to the insurer, the insurer send the paper docs by mail to [Former Agency] office in Mississauga, ON and then docs mailed by [Former Agency] to clients home address. when I receive the signed approval I used to issue pink cards for 30 days so most of the times clients were not receiving original pink cards in the mail within 30 days.

so I had to issue another 30 days pink slips (if this is what they meant by fake pink slips) and there were times the client forgets about the 30 days and gets pulled over by police with 30 days expired pink card then the clients call me to explain them to the police officers that's when I used to explain the situation and issue another pink card..and there were cases the clients received fines due to not providing evidence of insurance..again all these clients I had their verbal consent and signed apps.. [...]

The AIC sent the entirety of the Report to the Agent for review, and to provide the Agent with an opportunity respond to the allegations and evidence before the Council. The Agent responded on February 23, 2021 through his Addendum, as follows;

To AIC

Investigation report to the General Insurance Council

Below is the summary of my general response regarding complaints in this investigation.

Please consider that [Former Agency] has no physical office in Calgary and I did all my business working from home. [Former Agency] does not have any type of supports for its brokers in Alberta. I personally do all sort of marketing and cover business expenses. [Former Agency] did not offer us with technical support such as electronic signature. [Former Agency] upgraded customer management systems to [redacted][internal record keeping system] which i was briefly trained over the phone. There may have been minor mistake when creating new clients profile or issuing clients new clients code during my employment.

During last few months of my employment, [Former Agency] started limiting my access to the files and carrier portals. I was not able to access to client's files in brokerage management systems. [...]

[...] Now, I received all these allegations which I have no supportive document or sort of healthy [sic] evaluation. If the former agent [sic][meaning the former AIC investigator] had broken down these facts or given me names and files, I would have kept my conversations, paper docs, signed apps, or etc. after 2 years I lost most of my records.

I have given my best performance during my employment by learning the broker management system on my own and there may be some mistakes on the way, clients docs may have been uploaded to some other clients codes. however i think there is no harm to my clients at any level. it is not just right to be accused by these type of complaints by the [Former Agency]. as you notice there is no direct complaint from my clients. I had built great trust with my clientele and managed decent size of book of business during my employment without any technical and management support from the brokerage.

...

I have never issued a fake pink certificates for clients as mentioned to [former AIC investigator] in the past. The only pink card issued by me was 30/60 days temporary pink certificates as soon as the client's consent received verbally or by signed apps. there were cases that the client buys vehicles and obtains insurance then he calls back and cancels insurance as the vehicle turns out to be a fail so i might have preferred not sending the docs to the insurance company for processing due to same day cancelation. I have also never issued fake property certificates about complaints mentioned in this investigations, there were cases that the clients found out that they do not require rentals insurance or the houses are not insurance due to conditions. For most cases, after sending



the signed apps and supported docs to the insurer, the insurer send the paper docs by mail to [Former Agency] in Mississauga, ON and then docs mailed by [Former Agency] to clients home address. When I receive the signed approval I used to issue pink cards for 30 days so most of the times clients were not receiving original pink cards in the mail within 30 days. So I had to issue another 30 day pink certificates (if this is what they means by fake pink certificates) and there were times the client forgets about the 30 days and gets pulled over by police with 30 days expired pink card then the client call me to explain them to the police officers that's when I used to explain the situation and issue another pink card... there were cases the clients receives fines due to not providing evidence of insurance... again all these clients I had their verbal consent and signed apps.

I had to deal with many clients not receiving their pink cards in time and within 30 days signing apps they change vehicles and i had to issue pink cards.

[...] I would like you to know that I have never violated my duties by creating fraudulent insurance documents and making false or misleading statements.

[excerpt from Report] *Fact Determined by the Investigation about [C.C.S.][Client #1]*  
**[Client #1]** was issued a certificate of liability insurance by the Agent effective from April 17, 2018 to April 17, 2019, and the insurer was listed as [G.I.] The [Former Agency] had no record of this policy and, as noted in the [G.I.] Response, [G.I.] had no record of an insurance policy for [Client #1]. [Client #1] made a claim believing that there was underlying insurance on May 25, 2018. The Agent admitted to misrepresenting coverage for this client in his May 14, 2019, response to the request for information, previously attached hereto as Exhibit "I", but the Agent maintains it was a mistake and not intentional fraud. [...]

As I mentioned on the first letter, I had a recent misrepresentation incident involving [Client #1] other than that I have never intended to issue a pink card or certificates without valid insurance policies. In regards to [Client #1] case, the owner of the company contacted me on Friday and asked for CGL policy as his contractor requested to pay him. I had issued him liability certificate and told him after that quote and app to follow. I had placed his commercial auto insurance for 2 years before this incident and we had built strong relations within this time therefore the liability certificate was issued before receiving the signed app. After issuing the certificate, I had forgotten to follow up with the client with signed application and advised him with the premium. The client called in after few months and advised about an incident at work place, damage to property, then i realized application is not signed. I advised client accordingly and admitted the mistake. I contacted the brokerage by email and explained what happened however i never received any help instead they asked me to pay for the damage and deal with the client directly and handle the problem with the client. as I was discussing the options and trying my best to resolve the problem I got letter of termination..

**I asked my brokerage to back date the application to the certificate issue date but declined. as a broker, I thought I have the authority of binding coverages.** as mentioned i have known this client for 5 years now and had his auto insurance insured 2 years before the incident. there was no any sort of intentional mistake.

[...]

[Emphasis added]

**Discussion**

The Report alleges that the Agent contravened s. 480(1)(a) of the Act by creating fraudulent insurance certificates which did not exist nor were in force, and did so knowingly, recklessly, or by willful omission, which exposed his clients to undue risk or actual loss. It is therefore alleged that the Agent is guilty of fraud, deceit, dishonesty, untrustworthiness, or misrepresentation in contravention of s. 480(1)(a) of the Act.

In the alternative, the Report alleges that the Agent made false or misleading statements, representations, or advertisements, an offence as contemplated by s. 509(1)(a) of the Act and has consequently violated s. 480(1)(b) of the Act. The Council considered the first and more serious allegation of a s. 480(1)(a) violation of the Act.

The applicable legal test to determine the Agent's guilt in violating s. 480(1)(a) of the Act is set out in the Court of Queens's Bench of Alberta Decision, *Roy v. Alberta (Insurance Councils Appeal Board)*, 2008 ABQB 572 (hereinafter "*Roy*"). In *Roy*, the Life Insurance Council found that an agent violated s. 480(1)(a) of the Act by attesting to have completed the required continuing education hours when he did not, in fact, complete the required courses. The *Insurance Councils Appeal Board* also found agent guilty on appeal. The agent advanced the decision 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 evidence in these types of cases is based on the concept of “*clear and cogent*” evidence. In *The Matter of the Appeal of Arney Falconer*, Chairperson Hopkins dealt with this principal of clear and cogent evidence and provided as follows;

The Life Insurance Council stated in the Decision that there is a requirement “for ‘clear and cogent evidence’ because our findings can dramatically impact an insurance agent’s ability to remain in the industry”. However, the requirement for clear and cogent evidence does not mean that the evidence is to be scrutinized any differently than it should be in any other civil case. **In all civil cases evidence must be sufficiently clear, convincing and cogent to satisfy the balance of probabilities.** In *F.H.v. McDougall* 2008 SCC (sic); [2008] 3 S.C.R. 41 the Supreme Court of Canada states:

[45] To suggest that depending upon the seriousness, the evidence in the civil case must be scrutinized with greater care implies that in less serious cases the evidence need not be scrutinized with such care. I think it is inappropriate to say that there are legally recognized different levels of scrutiny of the evidence depending upon the seriousness of the case. There is only one legal rule and that is that in all cases, evidence must be scrutinized with care by the trial judge.

[46] Similarly, evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test. But again, there is no objective standard to measure sufficiency. In serious cases, like the present, judges may be faced with evidence of events that are alleged to have occurred many years before, where there is little other evidence than that of the plaintiff and defendant. As difficult as the task may be, the judge must make a decision. If a responsible judge finds for the plaintiff, it must be accepted that the evidence was sufficiently clear, convincing and cogent to that judge that the plaintiff satisfied the balance of probabilities test.

Contraventions of section 480(1)(a) are *mens rea* offences that require proof of intent, knowledge, or recklessness on a balance of probabilities. Section 480(1)(a) of the Act reads:

If the Minister is satisfied that the holder or a former holder of a certificate of authority has been guilty of misrepresentation, fraud, deceit, untrustworthiness or dishonesty, [...]  
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.

The Council considers the objective element of “*misrepresentation*” to take on the meaning that a member of the general public would understand. Being, are the Agent’s actions such which, if accepted, leads an individual to an apprehension other than, and different from, that which actually exists. Likewise, the Council interprets “*deceit*”, “*dishonesty*” and “*untrustworthiness*” to mean an act not worthy of trust, an act that is deceptive, disingenuous and untruthful in nature.

With respect to the disjunctive element of “*fraud*”; *Gilbert v. Alberta Insurance Council*, 2009 ABQB 673 addressed arguments regarding the requisite test required to determine an act of fraud. The Honourable Mr. Justice Sanderman ruled in favor of the Council’s decision, and discussed the parties submissions as follows;

[31] Mr. Gilbert argues that the Panel’s interpretation of s.480(1)(a) of the Insurance Act was unreasonable. He submits that the finding of the Appeal Panel that he had the requisite intent to support a finding of misrepresentation, fraud, deceit, untrustworthiness or dishonesty was unreasonable. He cites *Anderson v. British Columbia Securities Commission*, [2004 BCCA 7 \(CanLII\)](#), 2004 BCCA. 7 as authority for this proposition. At paras. 27 and 29 the following statement of law is found.

27. In *R. v. Thérout*, [1993 CanLII 134 \(SCC\)](#), 100 D.L.R. (4th) 624, 79 C.C.C. (3d) 449, [1993] 2 S.C.R. 5 (S.C.C.) at 20 [S.C.R.], Madam Justice McLachlin (as she then was) summarized the element of fraud as follows:

... the *actus reus* of the offence of fraud will be established by proof of:

1. the prohibited act, be it an act of deceit, a falsehood or some other fraudulent means; and
2. deprivation caused by the prohibited act, which may consist in actual loss or the placing of the victim’s pecuniary interests at risk.

Correspondingly, the *mens rea* of fraud is established by proof of:

1. subjective knowledge of the prohibited act; and 2004 BCCA 7, [2004] B.C.W.L.D. 367, 23 B.C.L.R. (4th) 182, [2004] 4 W.W.R. 81, [192 B.C.A.C. 119](#), 315 W.A.C. 119
2. subjective knowledge that the prohibited act could have as a consequence the deprivation of another (which deprivation may consist in knowledge that the victim's pecuniary interests are put at risk).

McLachlin J. also cited with approval at 23 the words of Taggart J.A. who stated in *R. v. Long* (1990), 51 B.C.L.R. (2d) 42, [1990 CanLII 5405 \(BC CA\)](#), 61 C.C.C. (3d) 156 (B.C.C.A.) At 174:

... the mental element of the offence of fraud must not be based on what the accused thought about the honesty or otherwise of his conduct and its consequences.

Rather, it must be based on what the accused knew were the facts of the transaction, the circumstances in which it was undertaken and what the consequences **might be of carrying it to a conclusion**. [...]

29. Fraud is a very serious allegation which carries a stigma and requires a high standard of proof. While proof in a civil or regulatory case does not have to meet the criminal law standard of proof beyond a reasonable doubt, it does require evidence that is clear and convincing proof of the elements of fraud, including the mental element.

The Council is satisfied that clear and cogent evidence is present to establish all of the elements of a s. 480(1)(a) violation. The Agent has himself candidly admitted that *'I only do not talk to my clients for business, usually I build relations and work on getting their trust for future referrals'* and *'It may be a misrepresentation occurred by miscommunication.'* and *'there were times that the business was not handled professionally by myself.'* and *'I had a recent misrepresentation incident involving [C.C.S] [Client #1]'*. In addition, the evidence submitted from the Former Agency and the Insurers confirm that the Agent advised his clients that policies were in place when no such policies existed.

With respect to the allegation of *'fraud'*, the Report confirms that the Agent committed falsehoods on a number of occasions. In particular, the Agent entered the falsified and non-existent name of *"Johnny White"* within the brokerage system as a representative of the Former Agency. That person did not exist. The Agent also corresponded with Legal Counsel the third-party Lender, R.B.C., and

deceptively advised them that they were duly named as a 'loss payable' on the contract of insurance. That contract of insurance did not exist.

The multiple automotive policies issued by the Agent as a 'placeholder' were not bound and the Agent even engaged with law enforcement to attest to the insurance policies were in place when they in fact, were not.

The deficiency was far-reaching in this instance. There could have been real and severe loss. Examples include but are not limited to automobile accidents causing bodily injury or fatalities. In these circumstances, victims and the clients themselves could have had very little recourse to cover any loss. Serious financial damage could have occurred on a commercial basis, as demonstrated by the actual loss of Client #1.

As to the Agent's intent, the Agent ascribes his actions to being bad judgment/errors. The Agent states his actions were not deliberate, and claims that there was very little guidance and oversight in his practice as a general level 1 insurance agent. Whilst the Council is cognizant that the Act and its Regulations require oversight of general level 1 insurance agents, the Agent's reckless and untrustworthy conduct in attending to his duties exposed his clients, and the general public to real and actual harm.

The Council rejects the Agent's position, as his complete utter disregard of his duties as an insurance agent fall far beyond an administrative oversight, and results in willful blindness. Regardless how the Agent's behavior is categorized, the Council is of the view that the Agent's intention has been demonstrated.

Insurers who issue policies and consumers who purchase them expect that insurance agents will act in utmost good faith while carrying out their work. Honesty and integrity are the hallmarks of a good insurance agent. The Agent has brought the insurance industry into disrepute and as a result, the Council finds the Agent guilty of dishonesty, deceitfulness, untrustworthiness, and fraud pursuant to s. 480(1)(a) of the Act.

The Council orders a civil penalty per demonstrated offence in the amount of \$500.00 resulting in fifty-two (52) offences, equaling a total civil penalty of twenty-six thousand dollars (\$26,000.00 total).

The civil penalty must be paid within thirty (30) days of receiving this notice. If the penalty is not paid within thirty (30) days, interest will begin to accrue at the rate of 12% per annum as prescribed by s. 13(2) of the *Certificate Expiry, Penalties and Fees Regulation*, A.R. 125/2001.

Pursuant to s. 482 of the Act (copy 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 General Insurance Council. The motion was duly recorded in the Minutes of that meeting.

Date: April 1, 2021

[ORIGINAL SIGNED BY]

Janice Sabourin,  
Chairperson, 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