

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 Paul Hooke
(the "Agent")

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

This case involved an alleged violation pursuant to s. 465(1) of the Act. Specifically, that the Agent failed to renew his Errors and Omissions ("E&O") insurance coverage prior to the policy expiring. In so doing, it is alleged that the Agent subsequently violated s. 480(1)(b) of the Act.

Facts and Evidence

This matter proceeded by way of written Report to Council dated May 6, 2022 (the "Report"). The Report was forwarded to the Agent for review, and to allow the Agent an opportunity to provide the Council with any further evidence or submissions by way of Addendum

The AIC conducted an Errors and Omissions ("E&O") audit in March 2022, which sought to verify that E&O coverage was in place, following the expiration date noted in the licensees' 2020/2021 renewal application. The auditees were selected at random and asked to provide proof of current E&O coverage in compliance with s. 465 of the Act and s. 33 and s. 35 of the *Insurance Agents and Adjusters Regulation*, AR 122/01 ("the Regulation"). The Agent was selected as an auditee and, in this instance, was asked to provide proof of current E&O coverage.

The Agent held a Life sole proprietor's certificate of authority during the period of January 30, 2017 to April 29, 2022, when the Agent's certificate of authority was suspended due to the Agent's failure to provide current E&O coverage in accordance with s. 478(2) of the Act.

On March 18, 2022, the AIC emailed a Demand for Information (the "Demand") to the Agent, providing a deadline of April 25, 2022, requesting the following information:

[...] According to your 2020/21 renewal application, you disclosed that your E&O insurance policy coverage had an expiration date between July 1 – August 31, 2021. As such, please provide E&O coverage details of your current E&O insurance policy. The following documents may be submitted by email to audits@abcouncil.ab.ca:

- A copy of an E&O insurance policy summary page(s) or certificate of insurance showing coverage was in place after the expiration date and is currently in place; [...]
- A copy of the issued E&O insurance policy(s) showing coverage was in place after the expiration date and is currently in place.

[...]

[Emphasis in original document]

On March 21, 2022, the Agent provided the AIC with a copy of a *Certificate of Insurance* from [C.U.A.I.B.L.] [redacted] for *Corporate Errors and Omissions Liability* for Paul Martin Hooke, dated June 11, 2021 (the “Insurance Certificate”). The Certificate provided the following as it related to E&O coverage:

This is to certify that **Paul Martin Hooke** is covered for Corporate Errors and Omissions Liability, including the Insurance Agencies (B.C.) Endorsement, Licensed Insurance Agencies – Alberta Endorsement, Licensed Insurance Agencies – Saskatchewan Endorsement and Insurance Agencies Fraud Extension Endorsement as a licensed representative of the Insured(s) listed below. [...]

On March 22, 2022, the AIC provided the following information to the Agent:

[...]

You provided E&O documents for a corporation. But you have a Life Sole Proprietor License. Please provide documents showing coverage for yourself as a sole proprietor.

[...]

By way of email dated the same, the Agent responded to the AIC with the following:

[...]

I was under the impression that my license is part of the [I.C.U.] [redacted] corporate license [sic]

[...]

By way of email dated the same, the AIC provided the Agent with the following information:

[...]

You may wish to review your license. This can be done by logging into the licensing portal.

[...]

On April 12, 2022, the AIC requested the Agent respond to the following request:

[...]

We are still waiting for a response to the following:

“You provided E&O documents for a corporation. But you have a Life Sole Proprietor License. Please provide documents showing coverage for yourself as a sole proprietor.”

Please note you have not satisfied the audit and are required to do so by the deadline indicated in the Original Demand.

[...]

On April 13, 2022, the Agent responded to the AIC with the following:

[...]

I am really not sure what is going on with this.

I have not had a change in my licensing structure since 2013 or 2014, and as such should not have had a change to my E&O structure . [sic]

Could you please advise me as to when there was a change made to either the licensing or the E&O coverage?

[...]

On April 22, 2022, the AIC responded to the Agent by way of email with the following information:

[...]. You do not have corporate licenses, nor have had licenses under [I.C.U.] [redacted] as per the corporate E&O documents provided. The agency only has general licenses and you have a life license. That said, the way it is currently set up, you could not have current licenses under the corporate business.

We cannot comment on what E&O coverage you have with your provider as this is YOUR insurance. Please advise if this is the only E&O policy you have?

Please note the deadline is end of day Monday, April 25, 2022.

[...]

On April 27, 2022, [E.A.] [redacted], a Financial Planning Specialist (the “Agency Representative”) with [I.C.U.] [redacted] (the “Agency”), emailed the AIC requesting the following information:

[...] I am part of the support team at [Agency]. I wanted to reach out to discuss the below request for confirmation of E&O coverage for Martin Hooke as a Sole Proprietor. Martin currently has E&O coverage under the [...] [redacted] policy.

As an individual licensed in Alberta is he required to also hold Sole Proprietorship E&O insurance coverage in addition to the Corporate Policy coverage? If so can you explain why the individual must hold Sole prop. [sic] E&O when covered under a Corporate policy which lists Licensed Insurance Agencies – Alberta endorsement? If he does not require both, do we need to update his licenses?

[...]

On May 3, 2022, the AIC responded to the Agency Representative as follows:

[...]

Please find attached *Insurance Agents & Adjusters Regulation 122/2001* for your reference.

You may wish to review section 465 of the *Insurance Act*.

Should you or the broker have E&O documents showing coverage as a Sole Proprietor, please send those documents asap.

[...]

[Emphasis added in original document]

By way of email dated the same, the Agency Representative requested further clarification from the AIC.

On May 18, 2022, after receiving the Report, the Agent provided the following response:

[...]

I don't know if you have checked your voice mail this morning however I did call and leave you a message asking for a phone conversation. Could this be scheduled for tomorrow May 19th by chance?

I received the hard copy of your correspondence in the mail yesterday , [sic] May 17th so, this doesn't leave me much time to respond.
Please note that I have included my Branch Manager and his team in this correspondence as well.
[...]

On May 31, 2022, the Agent responded to the AIC with the following, by way of email:

[...]
My sole reason for holding my AB license was to service my existing business in Alberta and have , [sic] to my recollection , [sic] not solicited or written new business in a number of years.
[...]

In the same email dated May 31, 2022, the Agent provided a letter from the Senior Manager at [I.F.P] [redacted], dated May 30, 2022 ("The Letter"). The Letter stated the following:

[...] I am the Senior Manager of [I.F.P] [redacted] [...]. I am writing this letter in support of my employee Martin Hooke. It has been brought to my attention that Martin was chosen as part of your annual audit process for E&O insurance coverage.

I would like to acknowledge that both Martin and I, were under the assumption that our current corporate E&O coverage included an endorsement for Alberta. After discussion with [...] [redacted] we have been advised that [I.F.P] [redacted] does not have coverage in Alberta. This was a complete oversight by [I.F.P] [redacted] and no fault of Martin.

I understand that Martin may be fined as a result of [I.F.P] [redacted] oversight and would like to request you consider rescinding your recommendations of a \$1000.00 fine.

Currently Martin is the only advisor licensed within our team to provided [sic] insurance in Alberta and no longer actively solicits business in the province. As such Martin will be looking to forego his Alberta license and will be working exclusively within BC.
[...]

Discussion

The Council contemplated s. 465(1) of the Act, which provides that *"Every business and individual that holds a certificate of authority must meet the requirements respecting financial guarantees set out in the regulations."* (emphasis added). This offence is strict liability in nature. Under a strict liability offence, the AIC has the onus to prove that the Agent failed to renew his E&O insurance coverage. Once this occurs, the onus then shifts to the Agent to establish a due diligence defence. The Agent must prove that all reasonable means were taken to avoid making the offence. There is no requirement on the AIC to prove the Agent's intent.

In consideration of the evidence before it, the Council is satisfied that the Agent failed to renew his E&O insurance coverage prior to its expiration. The Council considered the Agent's explanation that he assumed the *Corporate Errors and Omissions Liability* coverage would also cover the Agent's E&O insurance coverage as Sole Proprietor. However, the Act specifically states, *"Every [...] individual that **holds** a certificate of authority [...]"*. Given that the Agent held a Life sole proprietor certificate of authority, it is

the responsibility of the Agent to ensure that he held valid and proper E&O insurance. The Agent has not met the burden of proof to establish a due diligence defence. As such, the Council finds the Agent guilty of violating s. 465(1) and has subsequently violated s. 480(1)(b) of the Act.

In terms of the applicable sanction, the Act requires that all holders of certificates of authority have active E&O insurance coverage. 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 consideration of all the evidence, the Council orders that a civil penalty in the amount of \$1,000.00 be levied against the Agent.

The civil penalty of \$1,000.00 must be paid within thirty (30) days of the mailing of the 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: July 20, 2022

[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.

Contact Information and Useful Links for Appeal:

Email: tbf.insurance@gov.ab.ca

Phone: 780-643-2237

Fax: 780-420-0752

Toll-free in Alberta: Dial 310-0000, then the number

Mailing Address: 402 Terrace Building, 9515 – 107 Street Edmonton, AB T5K 2C3

Link: [Bulletins, notices, enforcement activities | Alberta.ca](#) – *Interpretation Bulletin 02-2021 – Submitting Notices of Appeal of Insurance Council Decisions*