

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 NBHL Financial Ltd.
(the "Agent")

And

As represented by
Mary Neal (A.K.A. Maryel Neal)
(Designated Representative ("DR"))

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 Agency failed to maintain their Errors and Omissions ("E&O") insurance coverage. In so doing, it is alleged that the Agency subsequently violated s. 480(1)(b) of the Act.

Facts and Evidence

This matter proceeded by way of a written Report to Council dated March 17, 2023 (the "Report"). The Report was forwarded to the Agency for review, and to allow the Agency an opportunity to provide the Council with any further evidence or submissions by way of Addendum.

The AIC conducted an E&O audit in November 2022, which sought to verify that E&O coverage was in place, following the expiration date noted in the licensees' 2021/2022 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 Agency was selected as an auditee and, in this instance, was asked to provide proof of current E&O coverage.

The Agency has been the holder of Life and Accident and Sickness ("A&S") certificates of authority since June 21, 2017.

On November 10, 2022, the AIC sent a Demand for Information (the “Demand”) to the Agency, via registered mail and email, providing a deadline of December 12, 2022, requesting the following information:

[...], the E&O insurer you disclosed on your application advised the AIC that their records do not align with the information provided. Please clarify the details you provided at renewal by providing the following documents [...]:

- E&O coverage details by way of a copy of a policy summary page(s) from your E&O policy documents showing coverage was in place for the 2021/22 licensing year and is currently in place

[...]

On November 10, 2022, the Agency provided the AIC with the following information:

[...] My Corporate E&O was a 2 year [sic] term from October 2020 to October 2022. [...]

[R.S.A.] [redacted] (hereinafter the “Former E&O Provider”) wouldn’t renew the E&O so it took me about a month of delays to get the new Corporate E&O. The certificate arrived yesterday. No insurance or segregated business was done during this E&O coverage lapse. [...]

In the same email, the Agency provided the following documents:

1. A Certificate of Insurance from [A.B.S.I.] [redacted] (hereinafter the “E&O Provider”), with a policy coverage period of November 8, 2022 to November 8, 2023; and
2. E&O Insurance Quotation from the Former E&O Provider.

On November 21, 2022, the AIC requested the Agency provide the following:

[...]

The [Former E&O Provider] document shows a quotation. Please provide the bound policy documents.

[...]

On November 24, 2022, the Agency provided the AIC with a Professional Liability Insurance Policy Declaration from the Former E&O Provider, with a policy coverage period of October 9, 2020 to October 9, 2022.

On November 29, 2022, the AIC investigator sent [A.R.S.I.] [redacted] (hereinafter the “E&O Broker”), a request for information, seeking the following information:

[...]

The AIC received notification that [the E&O Broker] was made aware on May 4, 2020 that [the Former E&O Provider] were not renewing errors & omissions (E&O) program policies [the E&O Broker] had beyond the 2021 renewal period. Further to the notice, we are reviewing NBHL Financial Ltd.’s E&O coverages with this transition. To assist in my investigation, please provide the following information and supporting documents [...]:

- Notice sent to NBHL Financial Ltd. that the policy was not going to be renewed (how, when & any delivery issues);
- Any/all correspondence between [E&O Broker] & NBHL Financial Ltd. regarding this matter;

- Any/all other relevant information you relied on to make your decision.
- [...]

On December 15, 2022, the E&O Broker provided the following response to the AIC investigator:

[...]

Prior to October 9, 2022 NBHL Financial Ltd. had E&O coverage under [the E&O Broker's] Corporate E & O Pro facility. [...]

NBHL's last renewal with [the Former E&O Provider] occurred on October 9, 2020 for a period of two years and was expiring on October 9, 2022. On July 25, 2022 our office sent an email (first attachment) to the principal of NBHL, Maryel Neal together with the [T.U.I.] [redacted] (hereinafter the "Potential E&O Provider") Corporate Entity Professional Liability Facility Insurance Application to be completed by her. The email stated that the renewal would be underwritten by [the Potential E&O Provider] and provided detailed renewal instructions as well as important information on the policy as a claims made and reported form. At the time of sending this email we expected that the renewal of NBHL's policy would proceed smoothly.

No response was received from Maryel Neal to our July 25 email as a result of which an identical follow up email (second attachment) was sent to her on August 31, 2022 along with the [Potential E&O Provider's] Application. No response was received to our August 31 email and a further identical follow up email (third attachment) was sent on September 27, 2022 [...].

On October 4, 2022 Maryel Neal sent an email to us (fourth attachment) together with the completed [Potential E&O Provider's] Application. The application did not immediately raise any red flags [...]. It was expected at that time that the Application would be accepted by [the Potential E&O Provider] and NBHL's coverage renewed.

We submitted the Application to [the Potential E&O Provider] on October 5, 2022 (fifth attachment below – email at bottom of chain). This email chain contains details of our subsequent efforts to complete the placement of NBHL's coverage that includes:

- Follow up with [Potential E&O Provider] on October 7 for update;
- Receipt of email from [Potential E&O Provider] on October 11 declining the referral [...];
- Request by us on October 17 for [Potential E&O Provider] to consider coverage for Life only;
- Receipt of email from [Potential E&O Provider] on October 17 maintaining their declination of coverage;
- Requested by us on October 17 for [Potential E&O Provider] to reconsider;
- Receipt of email by us on October 17 from [Potential E&O Provider] maintaining their declination of coverage; [...]

On October 11th, a call was placed to Maryel in order to inform her of the declination of the policy under NBHL Financial. On October 14th, Maryel returned the call and was informed that the coverage was denied by the insurer. In response to this Maryel sent us by email a letter she wrote requesting a reconsideration of the declination based on the circumstances contained in the letter (sixth attachment above). On October 17 we sent the letter to [Potential E&O Provider] requesting reconsideration of the declination and the option for a Life only policy as mentioned in the email chain above. On October 28th, we received a call from Maryel, where the declination of insurance was reiterated. [...]

When it appeared that [the Potential E&O Provider] was not reconsidering the Applicant of NBHL we corresponded with Maryel Neal with the following emails:

- Email October 26 8:21 AM to Maryel Neal informing her that insurers declined to provide coverage, indicating a formal cancellation letter will follow, and recommending Extended Reporting.
- Email October 26 3:54 PM to Maryel Neal attaching cancellation letter effective October 9
- Email Oct 28 to Maryel Neal attaching October 26 email and letter informing that policy cancelled effective October 9, 2022 with Extended Reporting Period details

In addition to the emails the cancellation letter dated October 26 attached to the email of the same date was sent to Maryel Neal by registered mail on October 31. [...]

On April 24, 2023, the Agency provided the following additional information:

[...] I did not do any insurance business while the E&O coverage was being disputed. I did not wait to get coverage until after it expired, rather, I applied well before the expiry date but was declined after the expiry date. [...]

In the same email, the Agency provided a letter dated March 21, 2023, which stated:

[...] [E&O Broker] did not formally decline me until Oct 26, 2022. They said in the “decline” email that they would send me information regarding ERP coverage, which they never sent and for which I requested from them in an email sent Oct 28, 2022. To my knowledge I never got a reply to my email. While I was waiting for confirmation of coverage or decline, I was searching out other providers. I had sent in another application to [Former E&O Provider] which was also declined. Finally, I was able to get coverage [...] which was approved November 4, 2022.

At no time during this time did I do any insurance work. I am so sorry about not notifying you as I was under the impression that I was covered from the time I sent in the application until I was formally declined. At no time did it cross my mind that I needed to let you know that I did not have E&O, my focus was completely on getting coverage. [...]

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 Agency failed to maintain their E&O insurance coverage. Once this occurs, the onus then shifts to the Agency to establish a due diligence defence. The Agency must prove that all reasonable means were taken to avoid making the offence. There is no requirement on the AIC to prove the Agency’s intent.

In consideration of the evidence before it, the Council is satisfied that the Agency failed to maintain their E&O insurance coverage once they were informed by the Former E&O Broker that the renewal was declined. The Council considered the Agency’s explanation that their E&O coverage renewal was declined after the expiry date. In addition, the Council considered how many renewal reminders the E&O Broker sent to the Agency, and the date the Agency submitted the renewal application. Given that the Agency did not undertake the renewal of their E&O coverage in a timely manner, the Agency has not met the burden of proof to establish a due diligence defence. As such, the Council finds the Agency 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. 36.1(b) of the *Insurance Agents and Adjusters Regulation*, A.R. 122/2001, 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 Agency.

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 Agency has thirty (30) days in which to appeal this decision by filing a Notice of Appeal with the Office of the Superintendent of Insurance.

This Decision was made by way of a motion made and carried at a properly conducted meeting of the Life Insurance Council. The motion was duly recorded in the minutes of that meeting.

Dated: May 26, 2023

[Original Signed By]

Wilma Slenders, Vice-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*