

INSURANCE COUNCILS APPEAL BOARD OF ALBERTA

In the Matter of the *Insurance Act*, R.S.A. 2000, c. I-3, as amended

And in the Matter of the *Certificate Expiry, Penalties, and Fees Regulation*, Alta. Reg. 125/2001, as amended

And in the Matter of the *Insurance Councils Regulation*, Alta. Reg. 126/2001, as amended

BETWEEN:

ROBERT VAUGHAN

Appellant

and

THE LIFE INSURANCE COUNCIL

Respondent

Heard in Edmonton, Alberta on May 28, 2019

Before:

**TRENA GRIMOLDBY – Appeal Panel Chair
DEAN HUNT – Appeal Panel Member
TREVOR JOHNSTON – Appeal Panel Member**

REASONS FOR DECISION AND ORDER

1. This is an appeal of a decision of the Life Insurance Council (“LIC”) dated January 21, 2019 (the “LIC Decision”) in which the appellant was found guilty pursuant to section 480(1)(a) of the *Insurance Act* (the “Act”)¹ of two offences of misleading two clients by providing them with false financial information about their segregated funds, and in so doing, demonstrating dishonesty or untrustworthiness.
2. As a result of the above, and pursuant to section 13(1)(a) of the *Certificate Expiry, Penalties and Fees Regulation* (the “Regulation”)², the LIC levied a penalty in the amount of \$5,000.00 per

¹ *Insurance Act*, R.S.A. 2000, c. I-3.

² *Certificate Expiry, Penalties and Fees Regulation*, Alta. Reg. 125/2001.

offence against the appellant for a total of \$10,000.00 in penalties, and ordered that his certificate of authority be revoked for one year.³

3. Section 480(1)(a) of the Act provides as follows:

Sanctions affecting certificates

480(1) If the Minister is satisfied that the holder or a former holder of a certificate of authority

(a) 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.

4. Section 13(1)(a) of the Regulation provides as follows:

Section 480 penalties

13(1) For the purposes of section 480(2) of the Act, the amount of the penalty that may be imposed may not exceed the following:

(a) \$5000 for a matter referred to in section 480(1)(a) of the Act;

...

Factual Background and Procedural History

5. The appellant is the holder of certificates of authority authorizing him to act as a life and accident & sickness insurance agent. He has held these certificates for varying periods from 1996 to the present time.⁴
6. The events leading up to the appellant's convictions pursuant to section 480(1)(a) of the Act are set out in the LIC Decision and began in March 2018.⁵
7. On March 19, 2018, the Alberta Insurance Council ("AIC") received an email from the appellant's then-employer RBC Insurance ("RBCI") who advised the AIC that the appellant's employment had been terminated on March 14, 2018 "for cause as a result of his misleading business activities contrary to policies and procedures and his failure to provide a satisfactory explanation for his

³ Life Insurance Council Submission to the Panel regarding Robert Vaughan dated February 22, 2019 ("LIC Submission"), pdf pages 184-185.

⁴ LIC Submission, pdf page 177.

⁵ LIC Submission, *supra*.

actions”.⁶ RBCI then provided information about the appellant’s termination and the internal investigation that had been conducted into the matter to the AIC via email on April 17, 2018.⁷

8. The AIC requested further details from RBCI via email on May 4, 2018 and was provided with further information about the appellant’s termination and the internal investigation that had been conducted into the matter in subsequent emails from RBCI on May 22 and 23, 2018.⁸
9. The AIC requested information from the appellant on June 11, 2018, which he provided that same day. The AIC then contacted the former clients of the appellant involved in the matter on August 2, 2018 to request further information. One of the clients (“Client 1”) responded with further information via email on August 9, 2018. The AIC investigator spoke with the other client involved in the matter (“Client 2”) on August 14, 2018. On September 7, 2018, the AIC requested further information from RBCI and was provided with it in emails on September 7 and 18, 2018. The AIC investigator spoke with the appellant on September 18, 2018, requested further information about the matter, and was provided with same by the appellant that same day.⁹
10. The AIC investigation was summarized in a written report to the LIC dated October 5, 2018¹⁰. The appellant was given the opportunity to respond to this information and did so via his addendum dated October 5, 2018¹¹.
11. The LIC issued its Decision in the matter on January 21, 2019. On February 19, 2019, the Superintendent of Insurance received the appellant’s Notice of Appeal of the LIC Decision¹². This Panel (“panel”) of the Insurance Councils Appeal Board (ICAB) was selected to hear the appeal herein on February 20, 2019.¹³
12. The appeal hearing date was originally set for March 18, 2019 via Notice of Hearing distributed to the parties via email on March 1, 2019. Due to issues with the parties’ availability, an Amended Notice of Hearing was issued on March 20, 2019 with a new hearing date of April 29, 2019.
13. On April 21, 2019, the appellant requested an adjournment of the hearing in order to request certain documents from RBCI. Counsel for the AIC opposed the request on April 22, 2019, and asked alternatively that if an adjournment were granted, that it be short. The panel granted the appellant’s adjournment request on April 22, 2019, and a further Amended Notice of Hearing was issued on April 26, 2019 with a new hearing date of May 28, 2019.

⁶ LIC Submission, *supra*.

⁷ LIC Submission pdf page 5.

⁸ LIC Submission, pdf pages 178-179.

⁹ LIC Submission, pdf pages 6-7.

¹⁰ LIC Submission, pdf pages 4-163.

¹¹ LIC Submission, pdf pages 165-175.

¹² LIC Submission, pdf page 189.

¹³ LIC Submission, pdf page 203.

Appeal Hearing – Evidence and Argument

14. As noted above, the appeal hearing was held on May 28, 2019. Prior to the hearing, the AIC provided the appeal materials pursuant to section 20 of the *Insurance Councils Regulation* (“ICR”) on February 22, 2019 and written submissions to the panel on May 21, 2019, in accordance with section 21 of the ICR. The appellant did not provide written submissions.
15. At the hearing, counsel for the AIC and the appellant both provided evidence, argument and submissions in support of their positions on this appeal. At the hearing, the appellant sought to have the panel consider various materials he had not previously filed with the panel or made available to counsel for the AIC for review. The panel decided at the hearing to receive the materials and counsel for the AIC advised following the hearing and upon review of same that he had no further submissions or comments on the materials. The panel is of the view that the materials were not particularly relevant to the issues in this matter nor were they helpful generally in assisting the panel to arrive at a decision in this matter, and as such has afforded them low weight in this matter.
16. At the hearing, the appellant submitted, among other things, that there was no doubt he had made mistakes in the situation at hand but that RBCI did not have training, coaching or other support resources available to enable him to correct them.¹⁴ He stated that, as he did not have a manager, he looked to RBCI for guidance and support.¹⁵ He stated he did not know he was doing anything wrong.¹⁶ He submitted he was trying to be accountable and show contrition¹⁷ and that he had received no complaints in his 30 year career with the AIC, the Mutual Fund Dealers’ Association, or the Canadian Securities Institute.¹⁸
17. He admitted he had created documents that contained inaccurate or misleading information about his clients’ investments and signed them as well as placed a stamp on them and provided these to the clients, and had also had a series of conversations with the clients via text and phone about their investments which also contained inaccurate or misleading information.¹⁹ He also admitted he had provided the clients with inaccurate or misleading information about how he was compensated.²⁰ He stated he had done this hundreds of times at RBCI with their knowledge, he had come to understand this was the process to be used, and he had not been advised or

¹⁴ Hearing Transcript dated May 28, 2019 (“Transcript”), page 8, lines 11-14.

¹⁵ Transcript, page 23, lines 5-7.

¹⁶ Transcript, page 23, lines 12-14.

¹⁷ Transcript, *supra*, lines 18-20.

¹⁸ Transcript, page 11, lines 20-24.

¹⁹ Transcript, page 19, lines 15-27; page 20, lines 1-5; page 21, lines 10-16; page 22, lines 3-5; page 24, lines 23-27; page 25, line 1; page 26, lines 1-9.

²⁰ Transcript, page 63, lines 14-23.

otherwise made aware by RBCI this was an issue or to cease the practice.²¹ He stated he had not intended to deceive or mislead any clients at any time.²²

18. He submitted that after RBCI had completed their internal investigation into the matter and he was dismissed, he was devastated, humiliated, and ashamed.²³ He stated that he had learned from his mistakes and would do things differently going forward should he have the opportunity to do so.²⁴
19. Counsel for the AIC submitted, among other things, that the appellant's convictions under section 480(1)(a) included findings that the appellant's conduct was intentional.²⁵ He highlighted the appellant's admissions that he had created documents that contained inaccurate or misleading information about his clients' investments and signed them as well as placed a stamp on them and provided these to the clients, as well as the series of conversations between the appellant and the clients via text and phone about their investments which also contained inaccurate or misleading information.²⁶
20. He submitted that the appellant had shown no due diligence in the matter²⁷ and that the panel's consideration of intentionality in this matter should also include recklessness and whether the appellant was willfully blind to the consequences of his actions.²⁸ He submitted that the appellant's actions were reckless and did not show due regard for the potential consequences of his misrepresentations to the clients.²⁹ He submitted that the appellant was an experienced agent and should have known his actions were improper.³⁰
21. He argued that the penalty and the quantum of the fine imposed by the LIC on the appellant in this case were intended to serve a deterrent effect and were appropriate given the circumstances.³¹ He submitted that the deterrence and public protection purposes of the Act are generally effected via monetary fines and certificate revocations, respectively. He submitted there were some mitigating factors in this case, including that the appellant's conduct was confined to the clients in question and was not part of a persistent or systemic scheme or issue as has been the case in other AIC matters where certificate revocations have been ordered.³²

²¹ Transcript, page 17, lines 1-18; page 43, lines 7-10; page 44, lines 2-5.

²² Transcript, page 90, lines 12-14.

²³ Transcript, page 31, lines 14-16.

²⁴ Transcript, page 69, lines 1-6.

²⁵ Transcript, page 9, lines 14-27; page 10, lines 2-7.

²⁶ Transcript, page 76, lines 22-27; page 77, lines 1-8.

²⁷ Transcript, page 77, lines 10-22.

²⁸ Transcript, page 78, lines 9-25.

²⁹ Transcript, page 80, lines 12-16; page 81, lines 24-26; page 82, lines 13-17 and 25-27; page 84, lines 4-9.

³⁰ Transcript, page 80, lines 18-22.

³¹ Transcript, page 84, lines 23-27; page 85, lines 1-3.

³² Transcript, page 87, lines 12-27; page 88, lines 1-2.

Standard of Review

22. The panel considers the standard of review articulated by Chairperson Hopkins in *In the Matter of the Appeal of Arney Falconer* (2015-07-02), whereby the panel there considered the appeal as a tribunal of first instance but were mindful of the decision before it being appealed, to be instructive here. Accordingly, this panel finds that it is hearing the appeal herein as a tribunal of first instance while also being mindful of the LIC Decision.

Discussion

23. The panel has carefully reviewed the evidence and materials filed and presented by the parties in this matter. This includes both the evidence and materials before the LIC as well as the evidence and materials presented at the hearing of this appeal. The panel notes that the LIC did not have the benefit of receiving the *viva voce* evidence from the appellant that the panel herein did.
24. Having considered all of the foregoing, the panel is unable to agree with the findings of the LIC that the appellant's conduct was dishonest and untrustworthy pursuant to section 480(1)(a) of the Act and that he had committed two offences in that regard.
25. The panel is of the view that, based on all of the foregoing, the appellant is guilty of misrepresentation pursuant to section 480(1)(a) of the Act, and that he has committed three (3) offences in this regard. The three offences are as follows: (1) the appellant created the misleading stamped guarantees and provided them to the clients, (2) the appellant created the misleading text messages and sent them to the clients, and (3) the appellant misrepresented to the clients the manner and nature of commissions or similar compensation he may have received while employed with RBCI.
26. In light of the above finding, the panel declines to make any findings about the appellant's conduct in this matter pursuant to section 509 of the Act.
27. The panel finds that both mitigating and aggravating factors are present in this matter and may be considered in terms of determining the quantum of any penalty to be imposed pursuant to section 13(1)(a) of the Regulation for the above noted three offences.
28. In terms of aggravating factors, the panel finds that the appellant has lengthy experience in the industry and as such, he should have known his actions were improper and his misrepresentations were reckless and/or negligent. In terms of mitigating factors, the panel finds that the appellant has held a certificate for many years without incident, disciplinary offence, or client complaint, that he cooperated with and provided information to the AIC investigator throughout this matter, and that his actions were not a part of a persistent, larger scheme.
29. In light of all of the above, and in this specific instance, the panel is of the view that the quantum of the appellant's fine should be increased to include the additional offence under section

480(1)(a). As such, the panel imposes upon the appellant a \$5,000.00 penalty per offence, pursuant to section 13(1)(1) of the Regulation, for a total penalty amount of \$15,000.00 for the three offences he has committed. The panel is mindful of the deterrence purpose of the Act and related regulations, and finds that this quantum of penalty is appropriate and aimed at serving that deterrent effect in this case.

30. The panel is also unable to agree with the findings of the LIC that the practices of the appellant were unethical and that his certificate of authority should be revoked for one year as a result. Accordingly, the panel makes no order of revocation of the appellant's certificate of authority.

Disposition and Appeal Fee

31. Having carefully considered all of the foregoing, the Panel imposes a \$15,000.00 penalty on the appellant pursuant to section 13(1)(a) of the Regulation for having committed three offences pursuant to section 480(1)(a) of the Act; and

32. The Panel further directs that the appeal fee in this matter be remitted to the appellant forthwith.

Order

33. For the above reasons, it is ordered that:

(a) A penalty in the amount of \$15,000.00 is hereby levied on the appellant for having committed three offences pursuant to section 480(1)(a) of the Act, payable within thirty (30) days of receipt of this Decision; and

(b) The appeal fee is to be remitted to the appellant forthwith.

DATED at Calgary, Alberta, this 14th day of August, 2019.

INSURANCE COUNCILS APPEAL BOARD OF ALBERTA

Per: Original signed by _____
Trena Grimoldby - Appeal Panel Chair

Per: on behalf of _____
Dean Hunt - Appeal Panel Member

Per: on behalf of _____
Trevor Johnston - Appeal Panel Member

Appearances:

Mr. R. Martz on behalf of the Alberta Insurance Council

Mr. R. Vaughan Appellant