

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 Yadwinder Singh Sandhu
(the "DR")

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

This case involved an allegation pursuant to Section 10(2)(c) of the *Insurance Agents and Adjusters Regulation*, AR 122/2001 (the "Regulation"). Specifically, it is alleged that the DR recommended that certain clients replace an existing policy of life insurance. However, a cancellation letter was faxed from the DR's office to the insurer before the proposed policy contract came into effect. No one employed by the DR's agency (the "Agency"), including himself, admitted to having sent the fax. In so doing, it is alleged that the DR failed to properly manage and supervise the employees or staff of the Agency and that this constitutes an offence pursuant to s. 10(2)(c) of the Regulation, and thereby 480(1)(b) of the Act.

Facts and Evidence

This matter proceeded by way of a written Report to Council dated October 14, 2014 (the "Report"). The Report was forwarded to the DR for his review and to allow the DR time to provide the Council with any further evidence or submissions by way of Addendum. The DR signed the Report on November 6, 2014 and submitted an Addendum for further consideration.

The DR and the agency that he manages and supervises have been licensed since October 31, 2012. At all material times, the DR was the Agency's only authorized insurance agent. The AIC commenced its investigation as a result of an August 18, 2013 complaint letter that it received from "HS". HS is an insurance agent who registered the complaint on behalf of two of his clients ("SS" and "BS", collectively the "Clients"). In his letter, HS wrote that the DR recommended that the Clients replace an existing contract of insurance and that the DR cancelled their existing policy before the new one was delivered.

Amongst the attachments were two letters signed by the Clients both dated July 27, 2013. One of these was addressed to the AIC and advised, "...But we agreed to apply and then decide to replace old policy. Later on we decided to keep our old policy and decided not to proceed with new policy. But [the DR] cancelled our old without our wish so we want [AIC] to take strict action against [the DR] for cancelling our policy." The second letter was a copy of a letter addressed to the existing insurer, Desjardins Financial Security Life Assurance Company ("Desjardins"), requesting reinstatement of the existing policy.

On September 19, 2013, the investigator wrote to a Desjardins official and requested that she provide certain information and documents. Another official provided the following:

- 1) A copy of the "Letter of Cancellation" dated June 28, 2013. This was signed by the Clients and requested "Cancellation for the Contract # 20170805". It bears a July 4, 2013 date received stamp;
- 2) A copy of a letter dated July 8, 2013 from Desjardins to the Clients. The letter advised that the Clients' life insurance policy had been terminated;
- 3) A copy of a letter dated July 27, 2013 from the Clients to Desjardins. The letter advised, "Our Policy got cancelled by mistake. Other Life Insurance agent [the DR] cancelled our policy by misleading us." The letter also requested the reinstatement of their policy; and
- 4) A copy of a letter dated September 25, 2013, from Desjardins to the Clients. The letter advised that Policy No. 20170805 had been reinstated.

On November 15, 2013, the investigator wrote an official associated with the insurer of the replacing life insurance policy – Industrial Alliance Insurance and Financial Services Inc. ("INALCO") – to obtain further information and documents. The INALCO official responded by way of letter and attachments dated November 25, 2013. In her letter, the INALCO official indicated that the Clients' new policy did not take effect because certain outstanding requirements were not met. The following attachments were also included with INALCO's November 25, 2013 letter:

- 1) A copy of SS's application for proposed coverage with INALCO. This application disclosed his existing coverage and confirmed his intention to replace it with the INALCO policy;
- 2) A copy of BS's application for new coverage. This application also made reference to existing coverage and the intention to replace that policy;
- 3) A copy of a Life Insurance Replacement Declaration form dated May 26, 2013 and signed by the Clients. In answer to the questions listed under item 3, namely, "When should you cancel your

present policy? When is your next annual dividend paid? Will the timing affect your cancellation charges?" there is a handwritten statement which reads, "After the approval of proposed policy.";

- 4) A copy of "Policy Delivery Instructions" from INALCO to the Agency which indicated an "Issue date" of June 8, 2013. The document set out the outstanding requirements to be completed in order for the contract to be considered as "in-force". The document indicated the Agency as the "Agent"; and
- 5) A copy of a "Confirmation of Issue" from INALCO which indicated a policy effective date of June 7, 2013 and the premium due amount.

On April 4, 2014, the investigator wrote to the DR and requested information and documentation. Counsel for the DR responded by way of email and attached letter dated May 2, 2014. After confirming that the DR had retained him, counsel advised that the Clients signed the proposed INALCO applications in the DR's presence on May 26, 2013 and that an LIRD form was completed at the time. Through counsel, the DR further indicated that "Without my knowledge or consent, a letter of cancellation was faxed in error to the existing life insurer by my associate, GB, or my administrative assistance (sic) on July 3, 2013. Neither [GB] nor my assistant would admit to this mistake." By way of background, GB is another insurance agent who transacted business through the same managing general agency as that of the DR. In his addendum, the DR indicated that he and GB worked cooperatively on some matters and split commissions arising from those transactions.

Also included with the e-mail from the DR's lawyer were the following attachments:

- 1) A copy of an LIRD form dated May 26, 2013 and signed by the Clients and the DR;
- 2) A copy of the "Letter of Cancellation" dated June 28, 2013 with a copy of the "Fax Confirmation Report" which indicated two pages were sent dated July 3, 2013 at 2:23 a.m. on Wednesday; and
- 3) A copy of the DR's calendar notes, dated May 26, 2013, which referenced the Clients and a meeting.

On May 6, 2014, the investigator wrote to the DR and requested additional information and documentation.

The DR responded through counsel and advised that:

With respect to the 'Letter of Cancelation' (sic) faxed to the insurer on July 3, 2013, I was present with my associate, [GB], when the [Clients'] signed the letter during our initial meeting with them on May 26, 2013. It was explained to the [Clients] at that time that we would not send the letter until their new coverage was confirmed.

Further communication passed between the investigator and the DR. Amongst other things, the DR indicated that as a result of what occurred here he was going to change the protocols that he used in replacement situations. For example, he wrote that he would no longer draft standard cancellation letters for his clients and that the client will have to prepare and submit their own policy cancellation letter.

The investigator made numerous attempts to contact GB but was not successful.

Counsel made a number of submissions on behalf of the DR. Among other things, he wrote:

...In this particular case, [GB] had approached [the DR] with clients [SS and BS] in Calgary, Alberta who were interested in reviewing their life insurance. [The DR] and [GB] met with [the Clients] and among other documents completed, a policy cancelation letter was drafted with the express understanding that it would not be sent to the insurer until replacement coverage was in force. The cancelation letter was placed on file for use in the future once new coverage was obtained.

On or about July 3, 2013, the letter of cancelation was faxed to [Desjardins] without [the DR]'s knowledge and consent. [The DR]'s then administrative assistant, [JP], has advised that [GB] was at the Winnipeg office during this time and faxed the cancelation letter. Although [JP] is no longer working at the Winnipeg office, she is prepared to give evidence that [GB] faxed the cancelation letter. [JP] has provided a letter confirming her information which is attached for your reference.

Following this incident, [GB] left the MGA. Since receiving the complaint from [the Clients], [the DR] has attempted to contact [GB] to discuss the circumstances involving [the Clients] but [GB] has not returned any attempts to contact him. [GB] has also not cooperated with the AIC Investigator. [GB]'s lack of communication and cooperation is further evidence that suggests he made a mistake in faxing the cancelation letter. [GB] has not renewed his license and we understand he has left the industry.

[GB] has abandoned the MGA and has left [the DR] to deal with the aftermath of [GB]'s actions. Although [GB] was an independent agent, the AIC Investigator submits [the DR] was the primary agent and thus guilty for failing to ensure the cancelation letter was not sent by [GB], who had the same rights and access to the file as [the DR]. It needs to be kept in mind that [the Clients] were [GB]'s clients and [GB] had independent rights and responsibilities to these clients, including rights to access the client file. This is not a situation where [the DR] was the supervising manager of [GB] and was responsible for overseeing and supervising [GB] at all times. These were merely two independent agents doing business together as colleagues. Both [GB] and [the DR] had equal responsibility for management and supervision of the business pursuant to s. 10(2)(c) of the *Insurance Agents and Adjusters Regulation*. However, to punish [the DR] for actions done by an independent agent without his knowledge or consent is both unfair and unjust. [The DR] has not contravened his responsibilities to their shared client...

...In conclusion, [GB] was the independent agent responsible for faxing the cancellation letter and any disciplinary actions should be addressed with him. [The DR] is a reputable agent with a clean disciplinary history. He is very concerned about having a finding of guilt on his disciplinary record particularly in circumstances where he had no active involvement or knowledge of canceling a client's life insurance. [The DR] is also concerned with how a finding of guilt will affect his ability to renew his license in Alberta and Manitoba. He is concerned that he will be unable to maintain his business in the future along with the effect it will have on his reputation. [The DR]'s business is based on having a good reputation in the industry. A negative disciplinary finding would affect his professional reputation and his clientele. The party responsible for this incident, [GB], has left the industry and will no longer be a risk to the public. [The DR] has learned a valuable lesson and has changed his practice to prevent any future incidents. It is our submission the [the DR] is not guilty of the charge laid against him and that the stress and expense of replying to these allegations have led to permanent changes in [the DR]'s practice that will ensure the public is protected in the future...

The letter from the DR's former administrative assistant reads as follows:

My name is [JP]. I was employed as [the DR]'s administrative assistant at his Winnipeg Office in 2013. On or about July 3, 2013, [GB] was at our office and requested [the Clients] file. I recall providing the file to [GB]. After reviewing the Cancellation letter and fax confirmation sheet, I believe [GB] had faxed the letter to [Desjardins] while he was at our office at this time. I confirm that I did not fax the Cancellation letter. I am prepared to give evidence to this effect if required.

Decision of the Council

A number of things are clear and beyond dispute after reviewing the evidence before us. First, the DR acted in the capacity of an insurance agent vis-à-vis the Clients. While he may have been introduced to them by GB and may have acted in concert with GB in advising them to replace their existing insurance, he was at least one of their agents and advisors in replacing their insurance. Second, he was present when the application and cancellation request documents were signed. Third, these documents were (according to his former administrative assistant) retained in his agency's files. Fourth, even if we are to accept the fact that it was GB who communicated the previously signed cancellation to the existing insurer rather than the DR or his administrative assistant, the DR was the agent responsible for providing adequate management and supervision over his agency, its staff, and files to ensure that the cancellation was not processed until such time as the existing policy was placed. He did not do so in this instance. As such, we are satisfied that the DR committed the offence as alleged.

As to the appropriate sanction, we have the ability to levy civil penalties in an amount not exceeding \$1,000.00. We also have the jurisdiction to suspend the DR's certificate of authority for up to twelve months or revoke his certificate for one year. Following a revocation, the DR would have to reapply for a certificate and the Council would then be tasked to determine whether or not this decision renders the DR unsuitable to continue to act as an insurance agent. In our view, a suspension or revocation would not be appropriate in the circumstances. Likewise, given the facts before us, a civil penalty at the high end of the applicable spectrum is not warranted. There is no allegation that the DR acted in a dishonest or untrustworthy manner. The Report does not allege that the DR was acting in anything other than the Clients' best interests or that the replacement policy was inappropriate. What is being alleged, and what was proven, was that the Agent's administrative practices were deficient in this particular instance and that his business relationship with GB contributed to (or caused) what occurred here. He also indicated that he recognizes the risks associated with those practices and that he has instituted new safeguards to ensure that this situation will not present itself again. That being said, the premature cancellation of the Clients' existing insurance exposed them to potential harm that was largely, if not entirely, avoided by the fact that the existing insurer was prepared to reinstate the insurance. One can easily envisage scenarios where this might not have been possible. Therefore, we levy a civil penalty against the DR in the amount of \$500.00 pursuant to ss. 480(1)(b) of the Act and 13(1)(b) of the *Certificate Expiry, Penalties and Fees Regulation*, A.R. 125/2001. The civil penalty must be paid within thirty (30) days of receiving this notice. In the event that the penalty is not paid within thirty (30) days, the DR's certificate of authority will be automatically suspended pursuant to s. 480(4) of the Act. Pursuant to s. 482 of the Act (copy enclosed), the DR has thirty (30) days in which to appeal this decision by filing a notice of appeal with the Office of the Superintendent of Insurance.

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

Date: February 11, 2015

Original Signed By

Kenneth Doll, Chair
Life Insurance Council

Extract from the *Insurance Act*, Chapter I-3**Appeal**

482 A decision of the Minister under this Part to refuse to issue, renew or reinstate a certificate of authority, to impose terms and conditions on a certificate of authority, to revoke or suspend a certificate of authority or to impose a penalty on the holder or former holder of a certificate of authority may be appealed in accordance with the regulations.

Extract from the *Insurance Councils Regulation*, Alberta Regulation 126/2001**Notice of appeal**

16(1) A person who is adversely affected by a decision of a council may appeal the decision by submitting a notice of appeal to the Superintendent within 30 days after the council has mailed the written notice of the decision to the person.

(2) The notice of appeal must contain the following:

- a) a copy of the written notice of the decision being appealed;
- b) a description of the relief requested by the appellant;
- c) the signature of the appellant or the appellant's lawyer;
- d) an address for service in Alberta for the appellant;
- e) an appeal fee of \$200 payable to the Provincial Treasurer.

(3) The Superintendent must notify the Minister and provide a copy of the notice of appeal to the council whose decision is being appealed when a notice of appeal has been submitted.

(4) If the appeal involves a suspension or revocation of a certificate of authority or a levy of a penalty, the council's decision is suspended until after the disposition of the appeal by a panel of the Appeal Board.

Address for Superintendent of Insurance:

Superintendent of Insurance
Alberta Finance
402 Terrace Building
9515-107 Street
Edmonton, Alberta T5K 2C3