

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 Kensington Insurance Services Ltd.
(the "Agency")

As represented by
Designated Representative, Stothert, Dale (44562)
(the "DR")

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

This case involved an allegation pursuant to s. 481(2) of the Act. Specifically, it is alleged that the Agency failed or refused to provide information requested by the AIC in a Demand for Information (the "Demand"). In so doing, it is alleged that the Agency contravened a section of the Act as contemplated in s. 480(1)(b) of the Act.

Facts and Evidence

This matter proceeded by way of a written Report to Council dated December 19, 2014 (the "Report"). The Report was forwarded to the DR for review and to allow the DR to provide additional evidence or written submissions on behalf of the Agency. The DR did not adduce any further evidence or written submissions for the Council's consideration.

The Agency is the holder of a corporate insurance agent's certificate of authority for the sale of general insurance and has been licensed since at least December 13, 2000. The DR has been the agency's designated representative since December 13, 2000.

On July 29, 2014, the AIC received an email from a representative of a law firm. This letter was in relation to a Court of Queen's Bench Judgment (the "Judgment") against the Agency that was filed on June 12, 2014. The Judgment against the Agency was in the amount of \$112,992.64.

Following receipt of this letter, the AIC wrote to the DR on September 30, 2014. The investigator asked that the DR indicate why he failed to disclose the existence of the Judgment when he renewed the Agency's certificate of authority in 2014.

On October 14, 2014, the AIC received an email from the DR. In this email, the DR indicated that his lawyer would respond to the request for information. However, he further wrote that the lawyer was on vacation and that he wanted an extension to respond. The AIC investigator responded by email on October 15, 2014 stating that a response was required by October 29, 2014.

On October 29, 2014, the AIC received a fax from the law firm representing the DR. It indicated that the lawyer on the matter was out of the country until November 7, 2014 and that a response would be forthcoming sometime after his return.

Having heard nothing from the DR or counsel, the investigator sent the Demand to the DR on November 27, 2014. The Demand required that the DR provide information as to why he renewed the Agency's certificate of authority without disclosing the Judgment. The Demand required that the Agency provide this information by way of written and signed statement no later than 4:00 pm on December 11, 2014.

The Report indicates that the letter was successfully delivered to the Agency on December 1, 2014 and that the DR did not respond to the Demand by the December 11, 2014 deadline.

Discussion

As has been noted in other decisions of this type, the AIC operates under a delegation from the Minister of Treasury Board and Finance. Through its delegation, the AIC has authority to investigate complaints against holders and former holders of insurance agent certificates of authority. Pursuant to Ministerial Directive No. 05/01, the Minister also delegated his powers under s. 481 to the AIC. Section 481 states that "[t]he Minister may direct the holder or former holder of a certificate of authority to provide to the Minister within a reasonable period of time specified in the direction any information specified by the

Minister relating to the matters in section 480(1).” Subsection 2 states that the “...person served with a direction ... who has the information must provide the information in accordance with the direction.”

The investigator was in possession of a Judgment against the Agency and was seeking to clarify why it was not disclosed on the Agency’s online renewal submission. Section 467 of the Act requires that agents and agencies provide the AIC with information sought on its application forms. All agents and agencies are required to disclose outstanding Judgments. Given this, it is clear that the AIC’s investigation fell within the scope of s. 480(1) of the Act and that the investigator was entitled to rely on the demand provisions found in s. 481. The investigator sent the Demand to the Agency at its business address. Therefore, we find that the Demand was properly made and it was incumbent on the Agency to respond. The Report indicates that the DR did not respond in writing on the Agency’s behalf by December 11, 2014 and there is no evidence from the DR to suggest otherwise. Therefore, we find that the Agency failed to respond as required by s. 481 and thereby contravened a section of the Act as contemplated in s. 480(1)(b).

In terms of the applicable sanction, the AIC cannot fulfill its public protection mandate if insurance agents and agencies refuse to provide information when called upon to do so. Acting as an insurance agent is a privilege that is afforded under the provisions of the Act. With that privilege come certain obligations and one of these is to provide the AIC with information. The Agency and its DR failed to meet one of these obligations when it did not respond to the Demand.

As to the appropriate sanction, pursuant to s. 13(1)(b) of the *Certificate Expiry, Penalties and Fees Regulation*, A.R. 125/2001, we have the jurisdiction to levy civil penalties that do not exceed \$1,000.00 for matters of this nature. We also have the authority to suspend the Agency’s certificate of authority for a period of time or revoke it for a period of one year. In this case, the DR did not respond to the Demand as required and chose not to provide the Council with any written submissions in response to the Report for us to consider. Given the facts in their totality, we are of the view that a civil penalty at the high end of the spectrum is appropriate and we order that a civil penalty of \$1,000.00 be levied against the Agency. The civil penalty must be paid within thirty (30) days of receiving this notice. In the event that the civil penalty is not paid within thirty (30) days, the Agency’s certificate(s) of authority will be automatically suspended pursuant to s. 480(4) of the Act. Pursuant to s. 482 of the Act (copy

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 General Insurance Council. The motion was duly recorded in the minutes of that meeting.

Date: March 26, 2015

Original Signed By

Louise Clare, Chair
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