

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 Sheldon P Stier
(the "Agent")

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

This case involved allegations pursuant to s. 452(2)(a) of the Act and s. 5(a) of the *Replacement of Life Insurance Contracts Regulation* (the "Regulation"). Specifically, it is alleged in Count 1 that the Agent acted as an insurance agent during a period of time in which he did not hold a valid and subsisting certificate of authority to do so contrary to s. 452(2)(a) of the Act. In Counts 2 and 3, it is alleged that the Agent recommended or was instructed to replace an existing life insurance contract and in so doing, it is alleged that he failed to complete the required Life Insurance Replacement Declaration ("LIRD") and did not provide the client with a written summary of the advantages and disadvantages of the replacement and that this constitutes an offence pursuant to s. 5(a) of the Regulation.

Facts and Evidence

This matter proceeded by way of a written Report to Council dated July 26, 2013 (the "Report"). The Report was forwarded to the Agent for his review and to allow the Agent to provide the Council with any further evidence or submissions by way of Addendum. The Agent signed the Report on August 27, 2013 and submitted an Addendum for further consideration.

The Agent has held certificates of authority since at least January 8, 1991 for the sale of life and accident & sickness ("A&S") insurance. On September 8, 2011, the AIC received written notice from RH that advised that the Agent had resigned from Stier Financial Group Inc. ("SFGI"). RH was the designated representative of SFGI. As a result, the AIC terminated the Agent's certificates of authority for life and A&S insurance effective September 8, 2011.

On September 22, 2011, the Agent applied for life and A&S certificates of authority. As the applications were not complete, an AIC licensing officer wrote to the Agent on September 23, 2011 to outline the information that was required to process his applications. In this letter, the AIC advised the Agent that he was not authorized to act as an insurance agent until his certificates of authority were issued.

The Agent submitted revised application forms to the AIC on October 3, 2011. Accompanying the application forms was a letter dated September 23, 2011. In the letter, the Agent wrote that he was applying to be the designated representative of a business known as Fresh Start Insurance & Investments (“Fresh Start”). The AIC subsequently issued the Agent’s certificates of authority for life and A&S insurance effective October 6, 2011. Therefore, the Agent did not hold certificates of authority to act as an insurance agent between September 8, 2011 and October 6, 2011.

On March 27, 2012, the AIC received a letter from RH. RH explained his relationship with the Agent and advised that he had a number of concerns regarding the Agent’s conduct. Included amongst the concerns were allegations about the replacement of certain life insurance policies. RH provided the AIC with further documents in an email dated March 29, 2012. Included with the e-mail from RH were the following attachments:

- i) A copy of a “Notification of Replacement” dated November 4, 2011 from Canada Life to Fresh Start in regard to a client (“KM”) and a copy of the LIRD form signed by KM and the Agent and dated October 27, 2011; and
- ii) A copy of an e-mail dated September 23, 2011, from the Agent to someone that indicated that the Agent did not retire and that he opened a new company called Fresh Start and that the phones for this business were being activated on September 28th.

On April 16, 2012, an AIC investigator wrote to the Agent and requested information and documentation. Specifically, she asked that the Agent provide an explanation in response to the allegation that the Agent acted as an insurance agent without valid certificates of authority.

By letter dated April 24, 2012, the Agent advised that he did not solicit any SFGI clients after his departure from SFGI and that any clients who did transfer to him had done so of their own will after learning he had left SFGI. In his handwritten letter, the Agent further advised that the clients had signed non-solicitation and transfer forms as they wished to have him as their agent. Additionally, the Agent specifically wrote

that: "If inadvertently a client signed a transfer for insurance you can be well assured that no transactions were done until October 12th at least. I had no program to act in a deceptive manner re doing business while not licensed. Only intent was exempt market business." The Agent also advised, "There was NO attempt to do business during the period of non-licensing."

Further correspondence from the Agent asserted that RH's complaint against him was "without merit". The Agent again advised that there was no intent to transfer any SFGI clients to his new managing general agency ("MGA") which was PPI Solutions (Calgary) Inc. ("PPI"). Further, he indicated that any issues related to the transfer of his agent codes was made in error by PPI or his sponsoring insurer (Equitable Life).

In the interim, the AIC file was assigned to another investigator. On October 31, 2012, the new investigator spoke with RH and advised that, in the investigator's opinion, many of RH's complaints related to non-competition issues and agent of record transfers. In the investigator's opinion, these matters were contractual civil matters such that the AIC was not prepared to intervene. However, the investigator indicated that he would review RH's additional concerns.

Thereafter, the investigator began amassing information and documents from insurers with whom the Agent normally placed business. These companies included Canada Life and the BMO Life Assurance Company ("BMO").

By email dated November 20, 2012, a Canada Life official informed the investigator that the Agent did not submit any new business to Canada Life between September 8, 2011 and October 6, 2011. However, Canada Life subsequently supplied the AIC with the following:

- i) A copy of a universal life application dated October 13, 2011 completed by the Agent on insured, KM. The application indicated "rpl" to an existing Canada Life term policy; and
- ii) A copy of an LIRD form dated October 27, 2011, signed by KM and the Agent. No written explanation of the advantages and disadvantages of replacing the life insurance policy with a new policy was attached and the LIRD form indicated "Life Insurance Council of Saskatchewan" on the bottom.

In its written reply to the investigator, BMO stated that the Agent undertook a transaction dated October 2, 2011 and that he was compensated for this sale. BMO also enclosed the following documents:

- i) A copy of a critical illness application dated October 2, 2011 that was completed by the Agent on insured "SR";
- ii) A copy of the Agent's commission statement indicating the compensation paid to the Agent in relation to the sale to SR;
- iii) A copy of a term life application dated October 28, 2011 completed by the Agent on insured "KH" that indicated that the insurance was intended to be a replacement of existing coverage; and
- iv) A copy of an LIRD form signed by KH and dated October 28, 2011. The LIRD form did not contain an agent or broker signature or date. Additionally, no written explanation of the advantages and disadvantages of replacing the life insurance policy with a new policy attached. The LIRD form also indicated "Life Insurance Council of Saskatchewan" on the bottom.

On April 26, 2013, the investigator wrote to the Agent and requested information and documentation. The Agent responded on May 26, 2013. He advised in his response, among other things, that:

With reference to the situation where I took an application without having a license. I submit that was done without realization of the dates. Obviously was not thinking. An innocent error. I didn't try to put later date to comply with license. I just wasn't aware. I wrote the date of Oct 2/2011 with no thought of abusing the fact that I had no license authority. I could have left no date if I was trying to beat the system and I didn't because it was an honest mental error.

The Agent further advised:

With regard to [KM's] application I must state that I believed that an internal upgrade even though a replacement of sorts wouldn't require a form. I upgraded his insurance from a \$250000 10 year term to a \$500000 universal life to better protect his family and didn't think that was a replacement internally with Canada Life just an upgrade to benefit this valued client. When I found that a form was required I immediately had one done. Unfortunately it wasn't noted when I turned in the application and it took 2 weeks before I was advised.

...

I admit I didn't notice Sask Council on bottom but for sure I wasn't alone missing that. PPI is my form supplier. I had not prepared a written letter to the [clients] at that time but sat and went through the form in discussing advantages and disadvantages.

Included with the written response from the Agent were the following attachments:

- i) A copy of a letter dated May 24, 2013, from JB. JB provided a letter on behalf of the Agent in relation to the Agent's attempt to transfer clients from SFGI without authorization, and advised it was a result of an error in process by PPI.
- ii) A copy of the "Policy Transfer Request Form" in relation to the unauthorized client transfer request from SFGI to the Agent in regard to The Empire Life Insurance Company clients. The copy of the form contained handwritten notations indicating it was not the Agent's handwriting.
- iii) A copy of a written response from the Agent, dated May 21, 2013, in which the Agent sets out a written explanation of the advantages and disadvantages of replacing KM's previous life insurance policy.
- iv) A copy of an e-mail from KM to the Agent dated May 22, 2013. KM advised that the Agent informed him of the "pros and cons" of both policies and he agreed to the replacement.
- v) A copy of an undated and unsigned letter from LM with PPI with attached documents related to the LIRD form. LM advised that she had provided an LIRD form to the Agent, however, the LIRD form had "Saskatchewan" on the bottom.

The Agent submitted further documents by way of an Addendum that included, among other things, client comments and news articles outlining his experience. In an email dated August 26, 2013, the Agent wrote:

I went to Edmonton with an Exempt Market license to work and had arranged dinner with Mr. and Mrs. [SR] former clients and persons I considered as friends. We had a mutual friend that passed away from cancer and who had a CI policy. [SR] had procrastinated acquiring a similar plan but that day Oct 2, 2011 at dinner [sic] said it was time. We also discussed RRSP opportunities but his focus was on CI. For some reason (a mental block) I just didn't think of dates or licensing issues [sic] just surprised by his decision. I honestly didn't mean to circumvent insurance and licensing process. At that moment it was about pleasing client [sic] and protecting him from his health concerns. I obviously wrote the application on Oct 2nd/2011 [sic]. At time of meeting with [the Investigator] I forgot date of

meeting with [SR]. I had correspondence from PPI stating app [sic] submitted Oct 12/2011 and that date was foremost [sic]

In my mind [sic]. That doesn't necessarily excuse my action but there was NO INTENT [emphasis in original] to mislead [the Investigator] in writing or in person. I hope my actions can be forgiven as an honest error. I made no attempt to place different dates on the app to mislead. I wasn't aware of my error. There was no attempt to be sneaky. It wasn't until AIC sent notification re [sic] the date that I was made aware of this issue.

Count#2

Before I respond I would like to state that I have been licensed since 1986 and am a lifetime member with MDRT and proud of my ethics and NEVER [emphasis in original] had any issues. I always followed the rules. My main concern has always been to ensure clients had the right product/program to best suit their needs. I believe their interests were primary.

With reference to [sic]

[KM] , he is a major client and friend and in visiting his home he had asked that I become his agent for himself and family as well as investment advisor. I reviewed his personal policy (he currently has a one million dollar business policy) and found him to be under insured with only a \$250000 -10yr term policy for current and longterm [sic] family protection. When discussed he agreed and we went into detail of value of upgrading with Canada Life to a permanent UL \$500000 policy T100. [sic] (cost okayed) and what that meant to former policy and Effects [sic] to him. Family [sic] agreed this was a valued move. As far as I was [sic]

Concerned [sic] this was an internal upgrade not a replacement.

Please see correspondence sent to [KL] - Canada Life Ombudsman. Discussion involved what upgrading meant and how current contract was affected. No replacement forms were completed at that time as I believed that this was an internal upgrade and an enhanced program with the same /company [sic] I turned app [sic] into PPI/MGA and until 2 weeks later no request came for replacement form. I then went to see client [sic] and explained that I didn't realize my internal upgrade was considered a replacement and a form was required. It was signed and submitted. A problem occurred when my mail was sent/opened/kept by [RH]. This went incorrectly from PPI. Obviously my name being Stier was an issue for Stier Finl [sic] and myself. All this caused disruption and non privacy [sic] of business. I sincerely believe as our ethics state that even though the letter of the law was not followed, re forms [sic] and letters, that the best interests of the client were well served. The client for sure was well satisfied and I believe Canada Life felt the same with this quality UL program.

I hope the Council will overlook my apparent errors and see that my intent was to best look after the [KM] family and not to do anything negative affecting [sic] Canada Life and the insurance industry. I did not do a letter but most certainly reviewed all issues and letter [sic] re page 101 was once again discussed with [KM] on May 21 ,2013 and acknowledged. It seems to me that although the letter of insurance procedure was missed (inadvertently) I did provide [KM] with the best program possible and isn't that what replacement forms are meant to do to protect and look after client interests?

Also the reason replacement form with Sask [sic]. On bottom was used [sic] was it came from PPI and I didn't notice that. All verbage was same [sic] as Alberta. See examples of forms at end of the AIC form [sic]. No intent [sic] was to mislead AIC/Canada Life/or [sic] [KM]. Please see pages 102 and

Count #3. Please see page #113

[KH] called me to discuss her 10 year term insurance renewal. She clearly said she would not renew and only wanted a lower cost program. I had offered conversion to WL/UL but she wanted a cost effective program that would suit her. Offered [sic] a compulife [sic] quote and she chose acceptable quote. We did a replacement form unfortunately once again an unnoticed Sask [sic] form and fully discussed the necessary issues brought on by this requested change. Form examples page 103 onward. [sic]

I am now totally aware of needed procedure re insurance replacement forms. [sic]

I also am enclosing some personal photos indicating some past items re my career [sic]. I have always endeavoured [sic] to be a quality agent for 27 years and had a good reputation. This is my only blemish. The stresses of leaving my former company obviously brought on unwanted never before experienced [sic] issues. If it pleases the Life Insurance Council I would respectfully submit that the above issues were inadvertent and not intentional and deliberate and hope for consideration. Page 97-99 was last communication with AIC.

Decision of the Council

By way of introduction, the materials in the Report and Addendum comprise more than one hundred pages. To a certain extent, many of the communications from RH and the Agent deal with allegations that the Agent breached non-compete or non-solicitation obligations that he owed to RH. As noted by the investigator, those allegations are largely a contractual matter between RH and the Agent. As such, the Council is obviously reluctant to adjudicate these questions. This is not to say that the Council could never take action against an agent for breaching agreements of this sort; however, we do not believe that it is appropriate in the case before us and the Council takes no position as to whether or not the Agent was in breach here.

As to the specific issues alleged in the Report, a number of things are clear. First, it is clear that the Agent acted in the capacity of an insurance agent at a time during which he did not hold a valid and subsisting certificate of authority. Despite his earlier assertion that he did not act in the capacity of an agent while unlicensed, the Agent later freely admitted this and provided a full explanation as to how this situation transpired. Notwithstanding his explanation, acting in the capacity of an agent while not holding a certificate of authority is prohibited by the Act and inadvertence or confusion is no defence. As such, we do find that he breached s. 452(2)(a) of the Act and; therefore, contravened a section of the Act as contemplated by s. 480(1)(b).

As to the applicable sanction, we have the jurisdiction to levy civil penalties in an amount not exceeding \$1,000.00 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. We also have the jurisdiction to suspend the Agent's certificates of

authority for a period of time or revoke them for one year. On the basis of the evidence and submissions before us, including the Agent's history and experience, we order that a civil penalty in the amount of \$500.00 be levied against the Agent. The AIC explicitly informed the Agent that he could not undertake insurance agent activity until certificates of authority were issued. Despite this, the Agent met with a client and completed an insurance application. We do not feel that a license suspension or revocation is warranted.

In Counts 2 and 3, from the evidence in the Report, it is not in dispute that a replacement of the existing policy was intended. Indeed, the applications themselves explicitly note this intention. As such, the Agent was required to complete the approved replacement declaration for the client prior to taking the application pursuant to s. 5 of the Regulation. He failed to do so and; therefore, breached the Regulation. We also note that the prescribed form clearly contemplates a written summary of the advantages and disadvantages of the replacement because, in signing the form, the client agrees that he/she received such a summary. As the Agent did not provide such a summary, we are satisfied that he contravened s. 5(a) of the Regulation.

As to the applicable sanctions, we have the ability to levy civil penalties in an amount not exceeding \$1,000.00 pursuant to s. 13(1)(b) of the *Certificate Expiry, Penalties and Fees Regulation*, A.R. 125/2001. We also have the ability to suspend or revoke the Agent's certificate of authority to act as an insurance agent. The Agent has no prior disciplinary history with the AIC and appears to have cooperated with the investigator during the course of the investigation. Given all of the facts, we order that a civil penalty in the amount of \$300.00 be levied against the Agent on each count (\$600.00 total for Counts 2 and 3). We do not feel that a license suspension or revocation would be appropriate here.

In summary, the Council has found that the Agent contravened two sections of the Regulation and one section in the Act and we have ordered that civil penalties totaling \$1,100.00 be levied 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 penalties must be paid within thirty (30) days. In the event that the penalties are not paid within thirty (30) days, the Agent's certificates of authority will be automatically suspended pursuant to s. 480(4) of the Act. Pursuant to s. 482 of the Act (copy 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.

Date: January 31, 2014

Original Signed By

Ken 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