

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 Cory Derek Vanderjagt
(the "Agent")

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

This case involved an allegation pursuant to s. 467(1)(e) of the Act. Specifically, it is alleged that the Agent failed to disclose that he had been subject to personal bankruptcy on his renewal application for an insurance agent certificate of authority. In so doing, it is alleged that he committed an offence pursuant to ss. 467(1)(e) and 480(1)(b) of the Act.

Facts and Evidence

This matter proceeded by way of a written Report to Council dated June 4, 2015 (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 did not adduce any further evidence.

The Agent has been licensed since October 27, 2008 for general insurance. On October 30, 2013, the Agent submitted his online renewal application for general insurance. The Agent answered "No" to question 5, "Since the date of the last application in Alberta for a Certificate of Authority or Renewal thereof have you...Engaged in any business which has been subject to proceedings in bankruptcy, or subject to personal bankruptcy?"

On October 14, 2014 the Agent submitted a Form 2 Application for a general insurance agent certificate of authority (the "Form 2 Application") to the AIC. It was signed and dated October 6, 2014. The Form 2 Application required that the Agent indicate whether he had been subject to bankruptcy proceedings in the last ten years. The Agent checked the "Yes" box and provided attachments that showed that the Agent filed an assignment in bankruptcy on April 29, 2013.

The AIC wrote to the Agent on October 16, 2014 and requested additional information in relation to the Form 2 Application he submitted and why he did not disclose his bankruptcy. The Agent responded to the AIC e-mail with e-mails dated October 16, 2014 and October 22, 2014. The Agent advised that he claimed personal bankruptcy on April 29, 2013.

The investigator wrote to the Agent on December 18, 2014 and requested information and documentation and the Agent responded by letter dated January 6, 2015. In essence, the Agent states that he misinterpreted the question as he thought that the question only related to insurance business-related bankruptcies. The Agent further advised that:

At or near the time of my first renewal, I had asked a colleague to contact the AIC with a hypothetical scenario regarding personal bankruptcy, and misinterpreted the answer relayed via 3rd party to mean that if my bankruptcy was related to the business of insurance, I would not have to worry. I believe I misunderstood the question because I thought the concern had to do with business bankruptcy, and not my own personal financial situation, and so I did not declare as I had no business debts related to the insurance industry. I did not keep any record of that conversation and cannot provide documentation satisfactory to the compliance committee.

On April 27, 2015, the AIC wrote to the Agent and requested confirmation of the Agent's date of discharge. The Agent responded by e-mail dated April 27, 2015, and advised that his estimated date of discharge is June 30, 2016.

Discussion

Insurance agents must renew their certificates of authority every year. Section 467 of the Act requires that applicants provide the AIC with the information requested on application forms. This is the case even if the information would not prevent an agent from renewing his or her certificate.

Sections 5(1) and (2) of the *Insurance Agents and Adjuster's Regulation*, A.R. 122 of 2001 establish the eligibility requirements for new agents and those renewing their certificates of authority. An individual that is an undischarged bankrupt cannot apply for a new certificate of authority. This blanket prohibition does not exist in relation to agents that are renewing their certificates. Rather, the Regulation states that they can continue to hold a certificate even if they are an undischarged or conditionally discharged bankrupt as long as the bankruptcy did not arise from the "individual's

activities as an insurance agent, as a registrant under the *Securities Act*, or as a mortgage broker within the meaning of the *Real Estate Act*.”

It appears from the evidence that the Agent’s bankruptcy did not arise from his activities as an insurance agent, as a registrant under the *Securities Act*, or as a mortgage broker with the meaning of the *Real Estate Act* and that the bankruptcy likely had no impact on his ability to renew his certificate of authority. However, this does not change the fact that he had to disclose the existence of the personal bankruptcy to the AIC. Applicants, whether new or those that have held a certificate for years, are required to answer all questions completely and truthfully. This is the case whether or not a given answer would impact an applicant’s eligibility. Therefore, we find that the Agent failed to disclose information required on his application such that he contravened s. 467 of the Act.

In relation to this finding, we have the ability to levy civil penalties in an amount not exceeding \$1,000.00 pursuant to s. 480(1)(b) of the Act and s. 13(1)(b) of the *Certificate Expiry, Penalties and Fees Regulation*, A.R. 125/2001. We also have the ability to suspend the Agent’s certificate of authority for a period of time or revoke it for one year. In light of all of the evidence and submissions before us, we order that a civil penalty in the amount of \$250.00 be levied against the Agent.

The civil penalty must be paid within thirty (30) days of the mailing of this Decision. In the event that the civil penalty is not paid within thirty (30) days, the Agent’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 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 General Insurance Council. The motion was duly recorded in the minutes of that meeting.

Date: September 2, 2015

Louise Clare
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
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Edmonton, Alberta T5K 2C3