

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 Tangerine Bank
(the "Restricted Agent")

As represented by
Designated Individual Siham Alibux
(the "DI")

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

This case involved an allegation pursuant to s. 452(1) of the Act. Specifically, it is alleged that, between July 1, 2014 and May 26, 2015, the Restricted Agent acted as an insurance agent for sales of credit related ("CR") insurance during a period of time in which it did not hold a valid and subsisting certificate of authority to act as an insurance Agent. Therefore, it is alleged that the Restricted Agent breached s. 452(1) of the Act and thereby contravened a section of the Act as contemplated in s. 480(1)(b).

Facts and Evidence

This matter proceeded by way of a written Report to Council dated October 15, 2015 (the "Report"). The Report was forwarded to the DI for review and to allow the Restricted Agent to provide the Council with any further evidence or submissions by way of Addendum. The DI signed the Report on October 30, 2015 and submitted an addendum by way of a letter.

The Restricted Agent was previously licensed under the entity ING Bank of Canada o/a ING Direct ("ING"). It was licensed in this manner from October 19, 2001 to June 30, 2014. DT was the Designated Individual for ING from March 14, 2005 to June 30, 2014 and has continued in this role for the Restricted Agent since May 27, 2015.

By letter dated May 20, 2015 DT submitted an application on behalf of the Restricted Agent that was signed on May 5, 2015. In the letter DT advised that the Restricted Agent recently became aware that its restricted certificate of authority lapsed on or about May 1, 2014. DT further advised that the Restricted Agent was previously licensed under their former business name ING. In response, an AIC investigator wrote to DT on June 19, 2015 and requested that DT provide additional information about the Restricted Agent's insurance activities during the period in which it did not hold a certificate of authority.

An official of the Restricted Agent ("EP") responded by way of email on June 26, 2015. In this email EP indicated that the Restricted Agent sold 22 "mortgage life insurance sales" during the time period in question and that it received \$2,427.92 in compensation. DT further advised that:

I understand from [the Restricted Agent's] discussions with the [AIC] that the AIC may have sent one email to me in 2014 advising that it was time to renew its license. I do not recall seeing that email, nor can I confirm that I received it. For its part, Canada Life advised [The Restricted Agent] on or about May 6, 2015 that it appeared [the Restricted Agent's] Alberta license may not have been renewed in 2014. As a result, no sales were executed by [the Restricted Agent] in Alberta after May 6, 2015. [the Restricted Agent] has since implemented process changes to ensure its license will be renewed annually going forward."

In response to an additional request for information, a different representative of the Restricted Agent wrote the investigator on July 14, 2015 and confirmed that in addition to keeping a percentage of the premium it collected, the Insurer (in this case Canada Life) also compensated the Restricted Agent in the form of "experience-rated pooled plan component" which is calculated annually after deducting expenses. A Canada Life official confirmed this by letter to the investigator.

Decision of the Council

From the evidence in the Report, it is clear that the Restricted Agent's certificates of authority to act in the capacity of a credit-related insurance agent expired on June 30, 2014. This is the last day of the certificate year and insurance agents that do not electronically renew their certificates of authority online by this date are no longer entitled to act as agents. The evidence also proves that, notwithstanding the expiry of its certificate of authority, the Restricted Agent continued to act as an insurance agent and it did not hold a valid certificate until May of 2015. As such, we are satisfied that the Restricted Agent breached s. 452 of the Act and, in so doing, contravened a section of the Act as contemplated in s. 480(1)(b).

As to the applicable sanctions, we have the ability to levy a civil penalty 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 per offence. We could also order that the Restricted Agent's certificate of authority be suspended or revoked. In the totality of the circumstances, we are of the view that the appropriate sanction in regard to this conduct is a civil penalty in the amount of \$300.00 in addition to \$375.00 representing the licensing fees that the Restricted Agent would have paid had it renewed its certificate. Therefore, we order the levying of a civil penalty of \$675.00. This 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 Restricted 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 Restricted 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 19, 2016

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