

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 Amy O’Brien  
(the “Agent”)

DECISION  
OF  
The General Insurance Council  
(the “Council”)

This case involved an allegation pursuant to s. 452(1) of the Act. Specifically, it is alleged that the Agent acted as an insurance agent during a period of time in which she did not hold a valid and subsisting Certificate of Authority and that this constitutes an offence pursuant to s. 480(1)(b) of the Act.

**Facts and Evidence**

This matter proceeded by way of a written Report to Council (the “Report”). The Report was forwarded to the Agent for 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 March 1, 2016 and provided the Council with further material by way of an undated letter.

The Agent is the holder of an insurance agent’s certificate of authority for the sale of general insurance. She first held a certificate on January 24, 2007. The Agent submitted an application for a general insurance agent certificate dated August 11, 2015. In this application the Agent sought a certificate of authority that enabled her to represent Centre Street Insurance Inc. (the “Agency”) as an independent contractor. The Agent’s name in this application differed from the name in which she was previously licensed.

The Report indicted that the AIC’s computerized licensing records contained a note dated August 17, 2015. The note states that an AIC licensing officer (“LK”) called the Agency and spoke with “SK” the

designated representative (“DR”) about the application. Specifically, LK advised SK that the AIC was waiting for the Agent to provide the AIC with documents that substantiated the Agent’s changed name.

The Agent emailed the AIC on September 23, 2015 and attached a copy of her marriage certificate to the email. In the body of the email the Agent wrote: “Here is my marriage certificate, there must have been on this communication in the office because I thought this had been forwarded on to you, sorry for any inconvenience. Is it possible that my license can be reinstated to date?”

By e-mail dated September 28, 2015 the Agency’s office manager (“SM”) wrote to the AIC’s Director of Licensing (“SB”). In her email SM wrote as follows:

I apologize for the delay as per our conversation Wednesday, September 23, 2015. I needed to investigate as to how the error occurred with regards to [the Agent’s] license suspension not being reactivated between, August 17, 2015-September 23, 2015 during which time she was being compensated as a broker.

Our office submitted license transfers to the Alberta Insurance Council via e-mail August 13, 2015 directly to [another AIC licensing officer “LN”] for processing. License applications submitted were for a corporate, DR, new and existing staff and for the purchase of [the Agency]. We’ve received a phone call from [LK] from the AIC, August 17, 2015 was that she was working on visa and [the Agent] was registered with the AIC under... Her maiden name. In order not to delay the processing of all other applications as [the Agent] was away until August 24, 2015 it was suggested we could suspend her license, submit her marriage license upon her return and her license would be reactivated. Our office chose to do this in order not to delay all other licenses being issued.

Upon [the Agent’s] return both myself and the DR for the office advised [the Agent] she was required to submit her marriage license immediately for proof of her name change, as her license has been suspended until they receive it. We followed up a couple of days later and she acknowledged it had been done.

It wasn’t until August 23, 2015 when [LK] from the AIC called advising they did not receive the marriage license, and her license was still in suspension. In speaking with [LK] she confirmed they typically do a follow up on outstanding issues sooner, but in this case it didn’t happen. We do not expect the AIC to baby sit us to ensure compliance, and did make the assumption that everything was taken care of based on my previous experience with the Licensing Department as I hadn’t heard anything to the contrary before this date and I to (sic) did not follow up.

[The Agent’s] marriage license was immediately submitted and her license was issued August 23, 2015. It has been determined after investigating: document was scanned, believed to have been forward it on to the AIC but due to a technology malfunction it was

not and concluded it was taken care of. It is our routine practice to confirm all licenses are active, by requesting a copy of everyone's license upon issuance. In this particular case I did not request copies, however I'd go onto the AIC website and confirm all others were issued at the time with the exception of [the Agent's].

During the month of August 2015 it was very hectic and dis-organized due to the purchase of [the agency and that transition between new ownership and previous owner. It was my responsibility to ensure all staff were actively licensed and I made the mistake of not confirming [the Agent's] license had been issued as I did with everyone else's. This has been my responsibility for a number of years and I've always been very diligent in ensuring wherever I've worked we are in compliance. Although, this situation arose from miscommunication, technology malfunction and assumption it is not our practice nor intention to be non-compliant.

The AIC investigator wrote to the Agent by letter dated November 6, 2015 and requested that she provide certain information and documentation. The Agent responded by email and attachments on November 13, 2015. Included amongst the attachments were a letter dated November 12, 2015 from the Agent to the investigator. In her letter the Agent wrote that the Agency was going through a transition period due to a change in ownership and technology issues that resulted in an particularly "hectic and chaotic time."

Apart from stating that she thought that her license was valid during the relevant period, the Agent wrote:

Upon my return from vacation, August 24, 2015, I was notified that my license was suspended and advised as to the reason why, from both the Office Manager and Designated Representative from our office. They advised me of what was required to have my license re-activated (submission of my marriage license to reflect the name change). On August 25, 2015 I scanned this document from our main printer/scanner and it was my belief that the scan would have either been sent directly to the Office Manager or DR for submission as they both had been dealing with the AIC – [LK]. It was my error in not following up to ensure this had been received and forwarded onto to (sic) the AIC, I just assumed everything was in order and did not give it another thought. It wasn't until September 23, 2015 that the Office Manager received a phone call from [LK] stating this was still outstanding and that she too did not follow up sooner as they normally do, and that my license was still in suspension. As a result of the technology problems we were having at the time, I could not locate what had happened to the scanned document. Speaking with my Office Manager and DR after the fact, they never received this document and also concluded it had been taken care of from my end.

Immediately, upon my manager receiving the phone call from [LK], I went home and got my marriage license, scanned and emailed it to [LK]. My Office Manager then followed up to ensure she had received it and requested my license be issued promptly. Our office manager also questioned [LK] as to what will happen as I was not licensed during this time and knew the importance of being non-compliant, she was referred to contact [SB] detailing how this event occurred and it would be reviewed. We were never reported by anyone other than ourselves as we know the repercussions and importance of being non-compliant and this was never mine or the Agencies (sic) intentions. This truly was just a human/technology error.

...

In conclusion, I would have not consciously acted without a valid license. I have been a licensed broker for almost 10 years and would never risk my integrity or jeopardize my career on being a non-compliant. It was a human a/technology error in that no one followed up in a timely manner, including myself, our office manager, our DR and [LK] that resulted in this mistake. However, I do realize alternately it is my responsibility to ensure my licence was re-activated and I am truly sorry.

The Agent's attachments also included a schedule of the 11 new policies that the Agent submitted while unlicensed and a letter from the Agency's President/Owner ("BB"). BB advised that the Agent has been employed by the Agency since August 1, 2015 and with the previous owner from 2010 to 2015. He also confirmed that the Agency paid the Agent compensation in the form of annual salary (rather than by way of commission) during the period in question.

The additional material that the Agent submitted in response to the Report corrected some of the dates suggested in previous correspondence. Specifically, she stated that LK contacted the Agency's office on September 23, 2015 rather than August 23, 2015 and that references to the date that the Agent's license was issued was also September 23, 2015 rather than August 23, 2015.

### **Discussion**

In order to prove the allegations in the Report, the AIC must adduce sufficient evidence to demonstrate that the Agent acted in the capacity of an insurance agent, as defined in the Act, during a period in which she did not hold a valid and subsisting certificate of authority. Once this is done, the onus shifts to the Agent to demonstrate that she took all reasonable measures to avoid acting as an insurance agent when she did not hold a valid and subsisting insurance agent certificate of authority. The evidence in the

Report establishes that the Agent held a certificate of authority but that it was suspended when a change in the Agency's corporate ownership or structure took place. According to the Agency, it was the Agent's responsibility to deal with the AIC and her change of name after she returned from vacation. Conversely, the Agent states that she sent the marriage certificate to the office manager and assumed that this was tended to by the Agency. In any event, it is clear that the Agent's certificate of authority was not reinstated following her return. It is equally clear that the Agent continued to act in the capacity of an insurance agent before her certificate of authority was issued on September 23, 2015. Given this fact, the objective elements of the offence have been proven and the onus then shifts to the Agent to demonstrate that she took all reasonable means to ensure that she did not act as an insurance agent while she did not hold a certificate of authority.

The Agent indicated that she did not take steps to ensure that her license was reinstated and assumed that the Agency or the DR forwarded her marriage certificate to the AIC upon her return. Indeed, the Agency suggests that it followed-up with the Agent and that the Agent confirmed that she had provided the AIC with the documentation that was required. Regardless of what precisely occurred, neither the Agency or the Agent confirmed that the certificate was in place and we find that the allegation in the Report has been proven. The Agent also recognized that it was ultimately her responsibility to ensure that her license was in force.

In terms of the applicable sanction, we have the ability 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) for each time that the Agent acted as an insurance agent while unlicensed. We also have the jurisdiction to suspend her certificate of authority or revoke it for one year. In light of all of the circumstances, we do not believe that it would be appropriate to levy civil penalties for each of the 11 policies that the Agent processed. Likewise, given the length of time that the Agent has held a certificate of authority without incident, we also do not believe that a suspension or revocation is warranted. Therefore, we order that a civil penalty in the amount of \$500.00 be issued against the Agent.

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 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: June 29, 2016

Original Signed By

Lorrie King, Member  
On Behalf of the 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