

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 Centre Street Insurance Inc. o/a Centre Street Insurance
(the “Agency”)

As represented by Designated Representative
~~Landon Boseh~~
Jocelyn Payne
(the “DR”)

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

This case involved an allegation pursuant to s. 499(1) of the Act. Specifically, it is alleged that the Agency compensated an individual (“AO”) for acting as an insurance agent during a period of time in which AO 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 Agency for review and to allow the Agency to provide the Council with any further evidence or submissions by way of Addendum. The DR signed the Report and provided the Council with further material in the form of a short letter. We also note that this matter is related to the investigation and decision on file number 67716 that we concurrently issued in relation to AO. Given the nature of these matters, the relevant facts in the two cases are identical.

The Agency is the holder of certificates of authority for the sale of general, life and accident & sickness (“A&S”) insurance. ~~It first held its general insurance certificate of authority on September 15, 2015 and~~
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and the DR has exercised that role since issuance. The Agency was previously licensed under a different name and a different individual was the designated representative.

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 [AO'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 for the purchase of [the Agency]. We 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 [AO's] return both myself and the DR for the office advised [AO] 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 babysit 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.

[AO'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 [AO'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 AO 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.

Amongst the attachments that AO submitted was a schedule of the 11 new policies that she handled while unlicensed and a letter from the Agency's President/Owner ("BB"). BB advised that AO had been employed by the Agency since August 1, 2015 and that she was also employed by the predecessor agency from 2010 to 2015. He also confirmed that the Agency paid AO compensation in the form of annual salary (rather than by way of commission) during the period in question.

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

Discussion

The offence alleged in the Report is one of strict liability. This means that in order to prove the allegations in the Report, the AIC must adduce sufficient evidence to demonstrate that the Agency compensated an unlicensed individual for acting in the capacity of an insurance agent. Once this is proven, the onus shifts to the Agency 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. In these types of offences, the AIC does not have to prove that the Agency intended on breaching the Act.

The evidence in the Report establishes that AO held a certificate of authority but that it was suspended when the Agency's corporate ownership or structure changed. According to the Agency, it was AO's responsibility to deal with the AIC and her change of name after she returned from vacation and, according to the Agency's official, AO confirmed that she had done so. However, it is clear that AO'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 and that the Agency compensated her in this regard. Given these facts, the objective elements of the offence have been proven and the onus then shifts to the Agency to demonstrate that it took all reasonable means to ensure that it did not compensate AO act as an insurance agent while she did not hold a certificate of authority.

The Agency candidly admitted that it did not follow-up to ensure that AO's certificate of authority was reinstated so that she could again commence her insurance agent duties and that it assumed that everything was in order. Given this, it cannot be said that the Agency took all reasonable means to avoid committing the offence and we conclude that the Agency is guilty of compensating an unlicensed agent as alleged.

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 OA acted as an insurance agent while unlicensed. We also have the jurisdiction to suspend the Agency's 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 OA processed. Likewise, we are also of the view that a suspension or revocation would not be appropriate in the circumstances given that this is the first time that the Agency has contravened the Act. Therefore, we order that a civil penalty in the amount of \$300.00 be issued 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 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: June 29, 2016

Amended: December 9, 2020

Amendments made by way of 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

Original Signed By
Lorrie King, Member
On Behalf of the General Insurance Council

Original Signed by
Amendments - Amanda Sawatzky, Chairperson
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