

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 Deborah E. Nicholls
(the "Agent")

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

This case involved an allegation pursuant to s. 480(1)(a) of the Act. Specifically, it is alleged that the Agent bound coverage but failed to submit applications for automobile insurance coverage to insurance companies or amend insurance policies as requested by clients. It is also alleged that the Agent used a client's credit card to pay premiums for insurance policies belonging to other people and that two of these policies were the Agent's own automobile and property insurance policies. In so doing, it is alleged that the Agent acted in a dishonest and untrustworthy matter pursuant to s. 480(1)(a) 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 her review and to allow the Agent to provide the Council with any further evidence or submissions by way of Addendum. The Agent provided additional submissions by way of a letter dated .

The Agent is a former holder of a general insurance agent certificate of authority for the sale of general insurance and was so licensed from October 31, 2006 until November 9, 2015. Between October and December, 2015 the AIC received correspondence wherein it was alleged that the Agent acted inappropriately in regard to 11 client files. Specifically, it was alleged that the Agent mishandled client funds remitted to the agency for whom she worked. On December 18, 2015 an agency official sent the AIC an email indicating that two additional client files were discovered wherein it appeared that the Agent collected premiums but failed to issue insurance policies to those individuals.

An AIC investigator wrote to the Agent on January 8, 2016 and requested information as to the alleged incidents. As the Agent did not respond, the investigator sent a further letter, by way of the Demand for Information provisions set out in the Act, on January 8, 2016.

The AIC received a letter dated January 11, 2016, from the Agent. In this letter she explained the reasons behind her actions and suggested that she mishandled the files due to miscommunication or poor judgement.

The AIC sent another letter to the Agent on February 18, 2016. This letter requested information as to the two additional allegations that arose after the agency registered its first complaint. As the Agent did not respond, the AIC investigator sent another Demand Letter on March 4, 2016. The Track-Result Detail printout page from Canada Post Corporation's web site showed that the Agent received the demand letter on March 9, 2016. She did not respond as required.

Discussion

The AIC operates under a delegation from the Minister of Treasury Board and Finance that authorizes the AIC to investigate complaints against holders and former holders of insurance agent certificates of authority. Pursuant to the Minister of Finance Directive No. 05/01, the Minister also delegated his powers under s. 481 to the AIC. Section 481 states that “[t]he Minister may direct the holder or former holder of a certificate of authority to provide to the Minister within a reasonable period of time specified in the direction any information specified by the Minister relating to the matters in section 480(1).” Subsection 2 states that the “...A person served with a direction ... who has the information must provide the information in accordance with the direction.”

The complaints raised issues of possible misrepresentation, fraud, deceit, dishonesty or untrustworthiness as set out in s. 480(1)(a) of the Act. In furtherance of this investigation, the investigator sent the Demand to the Agent. Given the fact that she did not respond in accordance with the Demand, we find that she breached s. 481 of the Act and, in so doing, contravened a section of the Act as contemplated in s. 480(1)(b).

In terms of the applicable sanction, the public relies on the AIC to investigate complaints and the Act requires that holders and former holders of licenses provide information when called upon to do so.

Therefore, the public is not well-served when agents simply ignore Demands like those made in this case. Given the facts in their entirety, we order that a civil penalty in the amount of \$750.00 be levied against the Agent pursuant to s. 13(1)(b) of the *Certificate Expiry, Penalties and Fees Regulation*, A.R. 125/2001. The 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, interest will begin to accrue at the applicable prescribed rate. 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