

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 Aslam Chaudhri  
(the "Agent")

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

This case involved an allegation pursuant to s. 480(1)(a) or, in the alternative, s. 509(1)(a) of the Act. Specifically, it is alleged that the Agent made false representations to the effect that the insurance agency with which he was associated (World Financial Group – hereinafter "WFG") was a provider of home and automobile insurance when that was not the case. In so doing, it is alleged that the Agent made a misrepresentation pursuant to s. 480(1)(a) of the Act. Alternatively, it is alleged that he made a false or misleading statement or misrepresentation as contemplated in s. 509(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 review and to provide him the opportunity to adduce further evidence or submissions. The Agent submitted a five-page addendum for our consideration. While the Report and Agent's addendum total approximately 100 pages, the essential facts in this case can be quickly summarized.

The Agent obtained a certificate of authority to act in the capacity of a life and accident & sickness ("A&S") agent on August 14, 2015 and he is affiliated with WFG. Between January 11, 2016 and January 25, 2016 the complainant ("MM") sent a series of email to the AIC. In one of these MM wrote, in part, the following:

I replied to a business opportunity posting by [the Agent]. He presented the business opportunity. He informed me that he could handle all my insurance needs. I indicated that I would like to see an auto insurance quote for myself to see how competitive the

company for the opportunity was. I asked for an automobile quote. He provided one. I checked his ability to sell Auto Insurance and found the lack of licensing for such.

MM also included one of the emails that the Agent sent to him. In this email the Agent provided MM with a number of auto premium quotes and also wrote the following passage: “As discussed in earlier emails that WFG provides all types of insurance products including auto, home and life but its main focus is Life insurance”. (emphasis added)

The Report contained, among other things, documentation related to a referral program that WFG agents could utilize to refer their clients to a property and casualty insurance agency. However, WFG agents were not entitled to provide product recommendations or premium quotations under the referral program. WFG also required that the Agent successfully complete a course entitled “Ethics for Insurance Professionals.”

In his addendum, the Agent (among other things) denies breaching the Act in the manner alleged in the Report. He argued that he did not intend to breach the Act and stated that “MM consistently, email after email, in a cunning, systematic and a methodical approach COERCED me to send the quotation on New Year’s Eve, knowing very well that AON won’t be available to do it on New Year’s Eve. He knew very well (sic) his vindictive suggestions.” (emphasis in original)

### **Discussion**

In order to conclude that the Agent has committed an offence pursuant to s. 480(1)(a) of the Act, the Report must prove, on the basis of clear and cogent evidence, that it is more likely than not that the Agent committed the act as alleged. The requirement of clear and cogent evidence reflects the fact that our findings can dramatically impact an insurance agent’s ability to remain in the industry.

Additionally, the elements of s. 480(1)(a) offences have been discussed by the Alberta Court of Queen’s Bench in *Roy v. Alberta (Insurance Councils Appeal Board)*, 2008 ABQB 572 (hereinafter “*Roy*”). In *Roy*, the Council found that an Agent committed an offence pursuant to s. 480(1)(a) of the Act when he attested to completing the continuing education (“CE”) required to renew his license when he did not, in fact, have the required CE. The Agent also held a securities license and stated that he believed that the CE required to maintain his securities license was applicable to his insurance agent requirements. The Insurance Councils Appeal Board also found the Agent guilty pursuant to s. 480(1)(a) and the agent appealed to the Court of Queen’s Bench. In his reasons for judgment, Mr. Justice Marceau reviewed the

requisite test to find that an offence pursuant to s. 480(1)(a) of the Act has been made out and expressed it as follows at paragraphs 24 to 26:

[24] The Long case, albeit a charge under the Criminal Code of Canada where the onus of proof is beyond a reasonable doubt (not on a preponderance of evidence as in this case), correctly sets out the two step approach, namely the court or tribunal must first decide whether objectively one or more of the disjunctive elements have been proven. If so, the tribunal should then consider whether the mental element required has been proved. While the Appeal Board said it was applying the Long decision, it did not make a finding as to whether step 1 had been proved with respect to each of the disjunctive elements. Rather it immediately went into a step 2 analysis and found that the mental element required for untrustworthiness might be less than the mental element required for fraud (as a given example).

[25] I am of the view that statement was in error if it was made to convey a sliding scale of mens rea or intent depending on which of the constituent elements was being considered. In my view, the difference between the disjunctive elements may be found in an objective analysis of the definition of each and certainly, as demonstrated by the Long case, what constitutes fraud objectively may be somewhat different from untrustworthiness. However once the objective test has been met, one must turn to the mental element. Here to decide the mental element the Appeal Board was entitled, as it did, to find the mental element was satisfied by the recklessness of the Applicant.

[26] While the language used by the Appeal Board may be characterized as unfortunate, on this review on the motion of the Applicant I need not decide whether the Appeal Board reasonably could acquit the Applicant on four of the disjunctive elements. Rather, the only matter I must decide is whether the Appeal Board acting reasonably could conclude, as they did, that the Applicant's false answer together with his recklessness justified a finding of "untrustworthiness". (emphasis added)

In applying this test to the case before us, it is clear that the Agent made a representation that was false. WFG did not offer auto insurance. As such, the first element of the offence is satisfied. However, we do not believe that there is sufficient evidence for us to conclude that the mental elements of the offence have been satisfied. Therefore, we are not prepared to conclude that the Agent committed an offence pursuant to s. 480(1)(a).

However, the Report alternatively alleged that the Agent made a false or misleading statement pursuant to s. 509(1)(a) of the Act. This section is what is known as a strict liability provision. It is proven if there is sufficient evidence that the Agent made a false or misleading statement or representation. The AIC is not required to prove that the Agent acted intentionally. If it is shown that the Agent made a false or misleading

statement or representation, to avoid being found guilty the Agent must prove that he took all reasonable means to avoid committing the offence.

As noted above, the Agent's statement that "WFG provides all types of insurance products including auto, home and life..." is objectively false and the Agent must demonstrate that he took all reasonable means to avoid making this false or misleading statement. The Agent repeatedly alleges that MM acted with ulterior motives when he communicated with him. This may or may not be the case. However, it cannot be said that MM coerced him in any sense of the word or that the Agent was entrapped. The Agent made a false statement and that is the case irrespective of MM's motivations (whatever they might have been) and we do not believe that the Agent was entrapped by MM. As such, we find the agent guilty of an offence pursuant to s. 509(1)(a) of the Act.

In terms of the applicable sanction, we have the ability to impose 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 jurisdiction to suspend the Agent's license for a period of time or revoke it for one year. The Agent has not been licensed for a long period and has no previous convictions under the Act. This is not a case where the Agent gained financially from his conduct and no consumers were put at risk and WFG required that the Agent complete additional ethics training so as to avoid similar conduct in the future. Given the circumstances in their entirety, we order that the Agent pay a civil penalty in the amount of \$300.00. We do not believe that a license suspension or revocation would be appropriate.

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 suspended in accordance with 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 Life Insurance Council. The motion was duly recorded in the minutes of that meeting.

Date: August 15, 2016

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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