

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 Designated Representative Dale Stothert  
(the "DR")

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

This case involved an allegation pursuant to s. 467(1)(c) of the Act. Specifically, it is alleged that the DR failed to disclose the existence of an unsatisfied judgment when he completed the renewal application forms that he submitted to renew certificates of authority. In so doing it is alleged that he contravened a section of the Act or regulations as contemplated in 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 DR for his review and to allow the DR to provide the Council with any further evidence or submissions by way of Addendum. The DR signed the Report on June 13, 2016. He did not adduce further submissions or evidence.

The DR is a holder of an Insurance Agent's Certificate of Authority for the sale of general insurance, and has been since at least January 30, 1992. As the DR, he was responsible for the management and supervision of his agency and he was also responsible for renewing his agency's certificate of authority (the "Agency").

On July 29, 2014, the AIC received an email from a legal assistant ("KL"). In this email, KL provided the AIC with a copy of an Order filed in Alberta's Court of Queen's Bench dated June 12, 2014 (the "Order"). The Order named the DR and his agency as defendants and sets out a judgment against the DR and agency in the amount of \$112,992.64.

On July 4, 2014, the DR submitted an application form to renew the Agency's certificate of authority. Among other things, the DR was required to indicate whether or not the Agency was subject to "...a judgment of court against the firm for the award of money that has not been satisfied." In answer to this question, the DR checked a box indicating "No".

In the following year, the DR again submitted an online renewal application form to renew the Agency's certificate of authority. He did this on June 26, 2015. Once again, the DR checked the box indicating that the Agency was not subject to an unsatisfied judgment. The Report contained evidence in the form of a statement from the judgment creditor that the judgment remained unsatisfied until July, 2015.

By letter dated January 13, 2016, an AIC investigator wrote to the DR and requested information regarding the reasons that the DR did not disclose the existence of the judgment. As the DR failed to respond, the investigator wrote to the DR again on February 2, 2016. This letter was sent pursuant to the demand for information provisions found in s. 481 of the Act. The DR did not respond to the demand for information and this Council subsequently found him guilty in regard to his failure to respond. The Council levied a civil penalty of \$1,000.00 in that regard. The investigator and the DR communicated with each other by telephone between March 8, 2016 and April 5, 2016. The DR indicated that he would provide the investigator with documents that demonstrated that he satisfied the judgment prior to submitting the Agency's 2015/2016 renewal on line application.

By email dated April 5, 2016 the DR provided the investigator with an unsigned and undated acknowledgment that the parties arrived at a proposed settlement of the judgment. He also provided the investigator with correspondence that the DR's counsel sent to counsel for the judgment creditor regarding the anticipated settlement of the judgment. However, these documents did not speak to the date that the judgment was actually satisfied and do not contradict the judgment creditors assertion that the judgment remained unsatisfied until July, 2015.

### **Discussion**

Section 467 of the Act requires that applicants disclose information required by the Minister in order to issue certificates of authority and this role is delegated to the AIC. The question as to whether or not the DR failed to provide the required information is a strict liability matter. In other words, if it is shown that the DR failed to disclose the existence of an unsatisfied judgment an onus falls on the DR to

demonstrate that he took all reasonable measures to avoid committing the offence. The AIC does not need to show that the DR acted intentionally.

In this case, the DR submitted applications in 2014 and 2015. In answering whether or not the Agency was subject to any unsatisfied judgments, the DR answered “No” on both applications. In regard to the 2014 application, the date of the judgment was May 22, 2014. It was signed on behalf of the DR and Agency by their counsel and filed on June 121, 2014. The evidence before us is that the judgment was not satisfied when the DR submitted the July 4, 2014 application and the DR has not provided the Council with any information as to the due diligence he exercised so as to avoid providing the false information. Therefore, we find the DR guilty of the offence in relation to the 2014 application.

As to the application he submitted in 2015, the judgment creditor indicated that the judgment was not satisfied until July, 2015. The DR has not provided any evidence to the contrary. He has also provided no information as to the efforts that he took in 2015 to avoid providing the council with the required information. Given this, we find that the Agent contravened a section of the Act with regard to the 2015 application as alleged.

As to the applicable sanction, we normally have the ability to levy civil penalties in an amount not exceeding \$1,000.00 per offence pursuant to s. 480 of the Act and 13(1)(b) of the *Certificate Expiry, Penalties and Fees Regulation*, A.R. 125/2001. We also have the ability to suspend an agent’s certificate of authority for a period of time or revoke it for one year. In this case, the Agent submitted the 2014 application to the AIC a matter of weeks after it was signed and then filed with the Court. Similarly, in the following year the Agent and the judgment creditor were in active settlement talks and, while not fully satisfied, its existence could not have been merely overlooked. We further note that the DR was previously found guilty of failing to provide information in response to a s. 481 demand for information. This demand was made in the course of investigating this file and we levied a civil penalty in the amount of \$1,000.00.

In light of all of the circumstances, we order that a civil penalty of \$1,000.00 be levied against the Agent in respect of each of the two offences (\$2,000.00 total). Notwithstanding the Agent’s previous disciplinary offences, we do not believe that a suspension or revocation would be appropriate. However, the Agent has now been convicted of three offences in a relatively short period of time and in the event

of further disciplinary action a future Council could very well come to the conclusion that monetary penalties cannot effectively manage the Agent's conduct and other measures may be required. Obviously, any decision in such an eventuality would have to be made by the Council of the day and this comment is neither binding or pre-judging any future case.

The civil penalties must be paid within thirty (30) days of receiving this notice. In the event that the civil penalties are not paid within thirty (30) days, the Agent's certificate of authority will be automatically suspended pursuant to s. 480(4) of the Act and interest will accrue at the 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: August 30, 2016

Original Signed By

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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