

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 allegations 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 including two of 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 give her the opportunity to provide the Council with further evidence or submissions by way of Addendum. The Agent did not respond.

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 when the agency for whom she worked (the "Agency") terminated her employment as a result of alleged fraudulent activities. By letter dated November 23, 2015 an AIC investigator wrote to the Agency to obtain information about the fraudulent acts attributed to the Former Agent.

Between October and December, 2015 the Agency provide the AIC with correspondence outlining that the Agent's employment was terminated for alleged fraudulent activities in regard to 11 client files. The Agency's December 1, 2015 letter provided information and documentation in this regard as follows:

1. (“RA”): The Agency received a telephone call from RA inquiring as to why his 2002 Honda did not appear on his automobile insurance policy as he was driving that vehicle to work and did not request the Agent to remove that vehicle. The Agency added the 2002 Honda back onto RA automobile policy effective October 10, 2015;
2. (“JC”): An underwriter from an insurance company advised the Agency that the Agent contacted the insurance company to request coverage on a 1999 Chevrolet with an earlier effective date as the Agent failed to request that coverage be added to that vehicle. JC was involved in an accident with that vehicle. The insurance company agreed to add coverage to the 1999 Chevrolet with the effective date as the earlier date as requested by the Agent and cover the claim;
3. (“AE”): The Agent completed a new automobile insurance application for AE, with the premium amount of \$1745.00. The insurance company issued AE’s automobile insurance policy with the premium amount of \$5542.00. The Agent did not complete a monthly authorization form or collect a void Cheque from AE and as a result the insurance company did not collect any premiums for AE’s insurance policy. The policy was set up on agency bill and as a result there is an outstanding balance due on the policy;
4. (“JR”): The Agency was unable to locate an automobile insurance file for JR and as a result contacted the insurance company. The insurance company advised the Agency that it cancelled JR’s automobile insurance policy for nonpayment with a balance owing, which amount was sent to a collection agency. The Agency stated that they located an automobile insurance application signed by JR in the Agent’s desk, which application the Agent failed to submit to an insurance company. The Agency also discovered in the Agent’s desk that JR paid the Agent the amount owing and a down payment for the new automobile insurance policy. The Agency advised that the Agent issued a receipt to JR showing he paid the premiums, which receipt was not the Agency’s standard computer generated receipt. The Agent signed a statement confirming that she collected payments from JR and failed to submit the payments to the Agency.
5. (“JM”): The Agent completed an automobile insurance application for JM and charged the premium amount of \$441.12 to another individual’s credit card (“NM”), without NM’s knowledge or consent;
6. (“NM”): The Agent charged three transactions on NM’s credit card, which NM did not authorize the Agent to do, namely JM’s automobile policy (as described above) and the Agent’s own home and automobile insurance policies in the amount of \$775.47 and \$240.49 respectively;
7. (“PO”): The Agent completed an automobile insurance application to place PO’s two vehicles on a personal lines automobile insurance policy, when the Agent knew or ought to have known that those vehicles required commercial lines insurance coverage as PO had a previous commercial lines policy for those vehicles through the

Agency and the coverage was in relation to a bus and a van which were used for tours. The Agency advised that the Agent issued a certificate of insurance that showed PO had commercial insurance coverage in place for the two vehicles the Agent placed on a personal lines insurance policy;

8. (“IG”): The Agent failed to add collision coverage on IG’s 2007 Lexus, which vehicle IG was involved in an accident. The insurance company agreed to add collision to the 2007 Lexus effective the initial dated that IG requested the coverage;
9. (“PR”): The insurance company canceled PR’s automobile insurance policy for nonpayment with an outstanding balance owing to the insurance company. The Agent completed a new automobile insurance application with PR and collected the outstanding balance and a down payment for the new insurance policy, both of which payments the Agent failed to submit to the Agency or the insurance company and as a result PR was driving without insurance. The Agent requested that PR meet her in the Agency’s parking lot to pay \$150.00 per month for a total of \$750.00 his insurance policy. The Agent entered false information onto the insurance company’s computer portal so PR could keep getting insurance from the insurance company;
10. (“DW”): The Agency advised that the Agent issued a liability card to DW that showed she had an automobile insurance policy in place through the Agency, which policy the Agency was unable to locate. In addition, DW stated to the Agency that the Agent collected a cash payment from her for the automobile insurance policy, which payment was not recorded on the Agency’s computer system; and
11. (“DD”): The Agency advised that the insurance company canceled DD’s automobile insurance policy for nonpayment on April 11, 2015, and then on May 1, 2015 the Agent issued a liability card to DD for a vehicle listed on the cancelled automobile insurance policy. The Agency discovered that the Agent completed an automobile insurance application with the effective date of August 1, 2015 for DD and as a result DD was without insurance for approximately three months.

By letter dated December 15, 2015 the AIC investigator wrote to the Agent and requested that she provide a response to the Agency’s allegations in regard to the 11 files in question. A short time later (December 18, 2015) the Agency notified the AIC that it had discovered two additional client files in which it appeared that the Agent collected premiums from clients but failed to issue policies (“WC” and “RS”).

As the Agent did not respond to the investigator’s December 15, 2015 letter, the investigator sent a further letter to the Agent by way of formal Demand for Information made pursuant to s. 481 of the Act on January 8, 2016. The Agent responded through a letter dated January 11, 2016 wherein the Agent wrote, in part, the following:

1. This was either a miscommunication on both our parts or dining in error + definitely not done intentionally. We're not only brokers, but we are responsible for entering items into their systems. This lady had purchased another vehicle + sub. was done.
2. This is the same as above, but with Intact's system. I write detailed notes in each file + the last note I had was to delete this vehicle from the Insured. She called + advised of claim a + I advised vehicle was reduced to comp. + she then advised she wanted full coverage. This is why I contacted underwriting /P/L + they made a concession.
3. [AE] had purchased of the bus to drive he + his family + sister's family on holidays in the summer to their parents. He was written with Nordic. They gave him a 0 as it was a new CA policy, even though he is a bus driver full time to (sorry going from memory) + had his class 3 + 1 for many years. Banking + void cheque were sent [with] app. (both Auth. + app. were signed + sent) + a letter was sent back from Nordic as they needed a down payment + original cheque + I spoke to the Insured + advised + coverage was reduced to comp. only + the balance was to be paid.
4. [JR]- I did sign a document about payment. It is my error that the app. was not sent in + poor judgment on my part + one I regret as I was going to pay [with] my own [credit card] + have done this with another file.
5. + 6. For [JM], I was going to use my credit card as she was having problems + with my home + auto insurance. I inadvertently used NM's [credit card] for the three transactions as I had her # on sticky for her file + mine was on sticky + was used in error. Upon returning from Holiday Nov. 3/15 when I was let go + advised by [an agency official], I emailed her my credit card info. To pay my home + auto ins. right away + am just learning about [JM] in your letter + it was also done accidentally. [JM's family] had been clients for over 4 yrs.
7. [PO] had a commercial lines policy through [the Agency] + I'm not sure where the personal lines app. Is coming from as he's always had his ins. with [the Agency] on one a policy. At the time of writing he was not doing the tows, but using his 1 vehicle for personal + in the other I believe I've read it as 07. It was an error on my part (inadvertently) if not amended two CA.
8. [IG's] Crowe friend + vehicle Lexus was added onto his policy with Aviva + at the time of doing the document (addition of vehicle) full coverage was listed but when I entered the vehicle in Gateway, Aviva, this coverage was missed on my part. (Therefore I provided the info-documents to underwriting P/L Aviva) + and they agreed to add the COU coverage as per the original endorsement.
9. [P R's] policy was the same as # 4 + poor judgment on my part.
10. Not sure why they couldn't locate [DW's] file. As per #4 + 9 I deeply regret my judgment on taking the payments.

I have been in the insurance industry for 23 years + have worked hard to provide the best knowledge, service etc. I'm not blaming [the Agency] but the last 6 years were not easy.

If ill, even though on a comm. basis only money was deducted-sometimes up to \$350/day. My issues with them never stopped my needed than + now to help others. + the times I did accept payment to pay via [credit card] was only out of pure desperation.

I did not receive my last pay Nov. 30/15 or vacation pay, as I believe all payments were made to policies. I am a good person who made poor judgement calls. It was not done intentionally to hurt others, [the Agency] or the person.

11. I had once again inadvertently forgot to issue the policy + when it came to my attention when [DD substituted] vehicles. I advised him of my error + explained I would do a new app. He advised he had been out of province for a little bit, but I was very sincerely apologetic. The [company] agreed to re-write on a mpp. basis.

I know that you must do what you have to do ...moving forward + if that means revoking my licence (sic), etc. I won't appeal your decision.

I would just ask that you factor in the mental, emotional, financial stress I was under at [the Agency]. My Doctor has many notes to this effect once the over the last 6 years.

I grew the book of business in 5 years to over 1 mm. dollars on my own. Doing my own entry + handling all aspects of the file from start to finish. With some errors, yes, but NEVER on purpose to the jeopardy of the client or [the Agency].

I know that someone was hired to replace me there within 2 weeks. This is neither here nor there, but I hope he has more support than I!

I would ask that you please do NOT place a fine or criminal charges as I do NOT have the means to pay anything financially

Discussion

As noted above, the Report alleges that in eleven instances the Agent acted in a dishonest or untrustworthy manner pursuant to s. 480(1)(a) of the Act in regard to the use of client credit cards, the submission of insurance applications and the amendment of client policies. The applicable legal test in determining whether the Agent is guilty of this offence was set out in *Roy v. Alberta (Insurance Councils Appeal Board)*, 2008 ABQB 572 (hereinafter "*Roy*"). In *Roy*, the Life Insurance Council found that an Agent committed an offence pursuant to s. 480(1)(a) of the Act when he attested to completing his required continuing education when this was not, in fact, the case. The Insurance

Councils Appeal Board also found the Agent guilty of an offence and the Agent appealed to the Court of Queen's Bench. In reasons for judgment dismissing the appeal, Mr. Justice Marceau wrote 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)

We find that the wrongful use of client credit card information (including a payment that she made on her own insurance policy) and collecting premiums that were not then remitted to her agency are clear cases of dishonest or untrustworthy activity that were wholly intentional in nature. Her conduct also included the making of false entries onto the agency's computer system in an effort to conceal her activities. As to the remaining counts, we find that the Agent was, at the very least, reckless in processing client applications and amendments such that she acted in an untrustworthy manner as contemplated in s. 480(1)(a) of the Act. We believe that untrustworthiness is conduct that demonstrates that an individual does not merit trust. In many cases, client documents were found unprocessed in the Agent's desk. The Agent's reckless and untrustworthy conduct in attending to her duties exposed her

clients, agency and insurer to real or potential harm. As such, we find her guilty of eleven counts pursuant to s. 480(1)(a) of the Act.

In terms of the appropriate sanction in regard to our findings, we have the jurisdiction levy civil penalties in an amount not exceeding \$5,000.00 pursuant to s. 13(1)(a) of the Certificate Expiry, Penalties and Fees Regulation, A.R. 125/2001. As the Agent no longer holds a certificate of authority, we do not have the ability to suspend her certificate for a period of time or to revoke it for one year.

In this case, the Agent utilized client credit cards and premium payments to enrich herself. In some instances, she ascribes this to being cases of “bad judgment” or to “errors”. In other instances, her recklessness in submitting applications and processing amendments evidenced a complete disregard of her obligations as an insurance agent. Regardless of how her conduct is categorized, we are of the view that untrustworthy conduct of the type evidenced by the Agent requires a significant civil penalty. As such, we order that a civil penalty in the amount of \$4,000.00 be levied against the Agent in relation to each of the eleven findings we have made. Therefore, we levy civil penalties totaling \$44,000.00.

The civil penalties must be paid within thirty (30) days of receiving this notice. In the event that the penalties are 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: August 30, 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

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