

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 Canadian Funeral Programs Inc. / Funeral Plans-Canada  
(the "Agency")

As represented by  
Designated Representative Tina Dietrich  
(the "DR")

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

This case involved an allegation pursuant to s. 499 of the Act. Specifically, it is alleged that the Agency compensated a restricted agent (the "Restricted Agent") for acting in the capacity of an insurance agent when the Restricted Agent did not hold a valid and subsisting certificate of authority. In so doing, it is alleged that it breached a section of the Act as contemplated by 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 review and to allow the Agency to provide the Council with any further evidence or submissions by way of Addendum. The DR provided additional submissions by way of a letter dated March 18, 2016. We further note that this matter is related to a decision in Case 67714 wherein we found that the Restricted Agent acted as an insurance agent when it did not hold a valid and subsisting certificate of authority. The factual underpinnings of this case mirror those found in 67714.

The Agency is the holder of a valid and subsisting certificate of authority to transact the sale of life insurance and this has been the case since March 4, 2003. The DR also holds a valid and subsisting certificate of authority to transact the sale of life insurance and she first held this certificate on April 17,

2009. The Restricted Agent is the holder of a restricted insurance agent's certificate of authority for the sale of funeral services insurance and it was first licensed on March 25, 2014.

The AIC received a letter dated October 23, 2015 from an Equitable Life official ("DS"). DS advised that on October 7, 2015, Equitable Life became aware that the Restricted Agent had failed to renew its certificate of authority prior to the certificate's expiry on June 30, 2015. He further indicated that the Restricted Agent sold a total of 16 policies and he detailed the relevant information about these policies in terms of their application dates, dates of issue and the insurance amounts.

DS further advised that upon learning of the issue, Equitable Life and the Agency discontinued accepting applications from the Restricted Agent and that steps to recover the commissions paid to the Restricted Agent commenced.

In subsequent correspondence DS indicated that commissions were not paid in relation to 4 of the 16 policies. He also outlined the manner in which commissions are paid and that Equitable Life pays the entire commission to the Agency pursuant to the agreement. The Agency, in turn, pays the commission to the Restricted Agent based on the commission schedule. According to the list in the e-mail, the Agency paid a total of \$6,222.01 in commissions to the Restricted Agent in relation to the policies that it sold when it did not have a valid certificate of authority.

The Report contains correspondence between the investigator and the Restricted Agent's Designated Individual ("RK"). In some of this correspondence, RK advised that he failed to renew the Restricted Agent's certificate of authority, "...due to the fact that I was simply not aware that it was up for renewal." RK further advised that he did not receive an e-mail renewal notice from the AIC however, when it came to his attention that their certificate lapsed, he immediately took steps to reinstate their license. RK also suggested that, "...there was no compensation paid or received for the funeral plans entered into during the time of the lapsed certificate."

By letter dated December 2, 2015 the investigator wrote to TD to request further information and TD responded on December 15, 2015. In her letter, TD advised that compensation for funeral insurance sales is paid by Equitable Life to the Agency, who then in turn compensated the Restricted Agent through direct deposit to its bank account. TD further advised that "[a]ll commissions paid to [the Restricted Agent] were

charged back on the policies in question. As directed by [Equitable Life], upon confirmation of restricted licensing renewal of [the Restricted Agent], [RK] visited each of the clients in question and had the applications re-dated and initialed. We have received copies of this paperwork for each client and have reinstated the commissions to the funeral home.” TD also advised that due to an extended absence of a staff member, the Agency overlooked the Restricted Agent’s licensing before paying the compensation in relation to the funeral insurance sales in question. She also provided information as to the fact that the commissions were ultimately reversed.

In her March 18, 2016 letter, the DR asked, among other things, that the Council consider any infraction as one offence and that it has implemented more stringent systems and processes to ensure monitor the license status of those that the Agency pays.

### **Discussion**

The offence alleged in the Report is one of strict liability in nature. This means that the AIC does not need to prove that the Agency acted with the specific intention to compensate an unlicensed agent. Rather, the AIC only needs to establish that the agency compensated the Restricted Agent for acting as an insurance agent when it did not have a valid certificate of authority. If these facts are proven an onus would then shift to the Agency to demonstrate that it exercised due diligence so as to avoid committing the offence. In *R. v. Sue Sault Marie (City)*, [1978] 2 S.C.R. 1299, the Supreme Court of Canada stated that due diligence could only be proven where the offending party “...took all reasonable steps to avoid the particular event.”

From the evidence in the Report, it is clear that the Restricted Agent’s certificate of authority to act in the capacity of an insurance agent expired on June 30, 2015. It is equally clear that the Restricted Agent acted as an insurance agent during the relevant period and that the Agency did not take steps to determine whether or not the Restricted Agent held a valid certificate of authority prior to paying the commissions at issue. We further find that the ultimate “charge back” of commissions do not change the fact that the Agency compensated the Restricted Agent’s unlicensed activity. Therefore, we find that the Agency breached s. 499 of the Act as alleged in the Report.

In regard to the appropriate sanction, we note that this is the Agency’s only disciplinary infraction. Given this and the fact that they have given assurances that it has taken steps to ensure that further

infractions will not occur we are prepared to treat the numerous times that it compensated the Restricted Agent as one offence and levy a single civil penalty in the amount of \$300.00 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. 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 Life Insurance Council. The motion was duly recorded in the minutes of that meeting.

Date: June 20, 2016

**Original Signed By**

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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