

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 Autumn Rose Funeral Home Ltd.
(the "Restricted Agent")

As represented by Gordon Pawluk
Designated Individual,
(the "DI")

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

This case involved an allegation pursuant to s. 452(1) of the Act. Specifically, it is alleged that the Restricted Agent acted in the capacity of a restricted insurance agent when it did not have a valid and subsisting certificate of authority. In so doing, it is alleged that the Restricted Agent 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 dated March 30, 2016 (the "Report"). The Report was forwarded to the DI for review and to allow the Restricted Agent to provide the Council with any further evidence or submissions by way of Addendum. The DI signed the Report on April 18, 2016 and provided the Council with further evidence or submissions through a letter dated April 15, 2016.

The Restricted Agent is currently the holder of a restricted insurance agent's certificate of authority for the sale of funeral services insurance, and was first licensed on September 24, 2013. It held this certificate of authority until June 30, 2014 at which time it expired. The expiry dates of certificates of authority are printed directly on the certificate.

On June 29, 2015 (approximately one year later) the AIC received a payment of \$150.00 from the Restricted Agent. This payment was placed on account under the DI's AIC profile. This payment did not accompany an application form of any kind. Additionally, it could not be processed as a renewal payment because the Restricted Agent's certificate of authority expired the previous year and there was no certificate to renew.

The Restricted Agent or DI did nothing further until approximately seven months later when, on January 15, 2016, the DI faxed the AIC and wrote the following:

This is to confirm that our firm did hold an active license that expired on June 30, 2014. We did not receive an email from the AIC for renewal, however, we did apply to license our firm in June of 2015 and did forward the required application fee and thought that everything was done. Apparently, we failed to submit a form 5 to complete this process. This is now being completed by Assurant Life of Canada and will be submitted directly to you.

Compensation was received for applications completed from June 2014 – current date in the amount of \$10,084.22.

The Report contains the application form to which the DI referred. The DI signed this application on January 6, 2016 and the Restricted Agent's sponsor signed it on January 15, 2016. The AIC received this application form on January 19, 2016.

An AIC investigator wrote to the DI by way of email dated February 10, 2016 and asked the DI to provide further information and documentation regarding the Restricted Agent's activities during the period of time in which it did not hold a certificate of authority. The DI responded through a letter dated February 25, 2016. As to why the Restricted Agent failed to renew its certificate of authority by June 30, 2014 the DI wrote as follows:

Autumn Rose failed to renew its restricted insurance agent certificates of authority on June 30, 2014 because, although it did not receive a renewal reminder from the AIC at that time, it submitted the application fee for renewal understanding that a fee payment would renew its licence. As the AIC accepted and cashed Autumn Rose's fee payment, Autumn Rose believed its licence was duly renewed. However, Autumn Rose subsequently became aware that that was not the case late in 2015, and realized that a Form 5 was required. With such knowledge, Autumn Rose duly completed the requirements and received confirmation of its licence on January 19, 2016.

The DI also detailed the number of policies sold during the period in which it did not hold a valid license and the amount of the compensation that it received in this regard.

On February 25, 2016 the investigator wrote to an Assurant Life of Canada (“Assurant”) official (“CA”) and asked that she confirm the number of policies that the Restricted Agent sold in the relevant time period and the compensation that it received. He also asked that she outline the procedures by which compensation was paid to the Restricted Agent.

CA responded by way of letter dated March 8, 2016 and confirmed that the Restricted Agent sold 34 policies and was compensated in the amount of \$13,116.99. She also confirmed that Assurant compensated the Restricted Agent by way of electronic fund transfer.

In its April 15, 2016 submissions, the DI wrote, in part, as follows:

We (Autumn Rose) have read the investigation report, and the facts determined by investigation, and can confirm that they are technically correct. However, what is not evident is the context to which the investigator presented the facts.

During the last several months, we did not receive communications such as renewal reminders, about the licensing process or responses to our queries of such in a timely manner. We we (sic) not even aware to look out for a renewal notice via email or letter from our third party consultants at Nunn Shannick Preeed Solutions. Without guidance, we found the licensing system and the renewal procedures challenging to navigate.

As well, when we did not receive a refund for the payment of the licensing fee nor receive feedback regarding the submission of form 5, and when we were issued a licence upon submitting a form, we believed there was not an issue with our licence.

Consideration of this context—a lack of guidance regarding the licensing process and an understanding that our license was not in jeopardy—is important. As well, please consider that the unlicensed period was not a result of, and was not evidence of our failure to distribute preneed (sic) policies according to fair marketing practices and in good faith to our funeral service customers.

We now understand, though, the ins and outs of the licensing procedures, and feel confident of navigating them correctly upon our next renewal period.

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 Restricted Agent specifically intended to act as an insurance agent without a valid

certificate of authority. Rather, the AIC only needs to establish that the Restricted Agent acted 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 Restricted Agent 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, 2014. This should have come as no surprise to the DI or Restricted Agent as the certificate's expiry date is printed on the certificate itself.

As to the question of whether the Restricted Agent acted in the capacity of an insurance agent during the period in which it was not authorized to do so, it is also clear that the Restricted Agent sold insurance policies and was compensated for this activity. As such, the elements of the offence are made out and the onus shifts to the Restricted Agent to demonstrate that it took all reasonable steps to avoid committing the offence.

After reviewing the submissions, we do not believe that the Restricted Agent took all reasonable steps such that it can be said that it acted with due diligence. As noted above, certificate expiry dates are printed directly on the certificate when it is issued. Had the DI diarized this date when the certificate was issued it is unlikely that he would have missed the fact that it had to be renewed before June 30, 2014. As there are license holders on this Council, we know that the AIC sends out repeated email reminders during the two-month renewal period. These are sent to certificate holders that have not renewed their certificates. However, even if this was not done, it is the Restricted Agent's responsibility to renew its certificate prior to its expiry and it must also ensure that it does not continue to act in the capacity of an insurance agent if it fails to renew its certificate.

In our view, it is also immaterial that the DI provided the AIC with a payment on June 29, 2015. First, the Restricted Agent did not provide the AIC with an application that gave any direction to the AIC. While the DI suggests, in his January 15, 2016 fax, that the Restricted Agent applied for a license in June of 2015, it did no such thing as there was no application. Second, this payment was submitted almost one year to the date that the Restricted Agent's previous certificate of authority expired.

Third, the DI asserts that the AIC did not give him appropriate guidance. This is difficult to countenance given the fact that there is no evidence that the Agent took any steps to obtain clarification about the licensing processes or requirements. If the DI did not understand what he needed to do to renew the Restricted Agent's license it was incumbent on him to seek information sometime during the two month period that he could have renewed the certificate of authority.

Given all of the above factors, we find that the Restricted Agent breached s. 452 of the Act by acting as an insurance agent when it did not have a valid and subsisting certificate of authority as alleged in the Report. In so doing, it therefore breached a section of the Act as contemplated by s. 480(1)(b) of the Act.

In regard to the appropriate sanction, we note that this is the Restricted Agent's only disciplinary infraction. Given this, we are prepared to treat its unlicensed activities as two offences (one offence for each of the certificate years that the Restricted Agent acted without a certificate of authority). In regard to the first offence, we issue a civil penalty of \$450.00 and for the second offence we issue a civil penalty 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 distinction between the amounts recognizes that the Restricted Agent avoided paying its \$150.00 license fee for one of the years.

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 Restricted Agent'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 Restricted 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: June 20, 2016

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