

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 Samantha Louise Sherwood
(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 altered material information on two automobile insurance quotes, without the knowledge or consent of the consumers requesting the quotes. Additionally, it is alleged that the Agent issued an automobile insurance policy to a consumer that showed a future effective date and failed to collect premiums for that policy for two weeks. In light of the above, it is alleged that the Agent is guilty of misrepresentation, contrary to section 480(1)(a) of the Act.

Facts and Evidence

This matter proceeded by way of an unsigned written Report to Council dated August 4, 2015 (the "Report"). The Report was forwarded to the Agent for her review and to allow the Agent to provide the Council with any further evidence or submissions by way of Addendum. The Agent provided the Council with further submissions by way of a letter dated October 27, 2015.

The Agent is a holder of an insurance agent certificate of authority for the sale of general insurance. She first held a certificate on November 27, 2012. On May 29, 2015 a representative of her agency ("CA") emailed the AIC to indicate that it had terminated the Agent's employment due to the fact that she had breached its Code of Conduct and Ethics policy.

By email dated June 3, 2015 the AIC requested further information as to the reasons for the Agent's termination. A different agency official ("CL") replied by email on June 5, 2015. In this email CL indicated, among other things, that the Agent's employment was terminated for:

1. Falsifying driving information - ie: if the client had driving convictions that were impacting the rates - [the Agent] changed the dates so that there would not be a pricing impact to the customer, thereby providing the client with a rate lower than what their driving record would indicate is required.
2. Falsifying annual mileage usage of the vehicle - similar to above – [the Agent] would falsify the records so the client would pay a lower premium than what their actual usage would indicate is required...

Lastly, another situation arose where [the Agent] essentially waived premium for a client for 2 weeks by issuing a policy for a future date and “binding” in the notepad.”

An AIC investigator wrote to the Agent on 12, 2015 and asked that she provide a response to the allegations against her. On the same date the investigator also wrote to CL obtain copies of any documentation underpinning the complaint against the Agent.

On June 19, 2015 the Agent delivered a letter to the AIC’s Edmonton office wherein she admitted the first two allegations set out above. Portions of her letter read as follows:

In November 2014 I took on a new role....This was a very demanding sales position, cold and warm calling existing and new business to purchase auto and home insurance. We had high targets to reach, we were strictly sales based...no commission. I never received ANY FINANCIAL GAIN the very few times I did alter drivers (sic) information to reduce premiums or change kms.

I did so due to the fact that I was always trying to help the client, I had quoted them a set price for the sale and when it changed and the client provided extreme dissatisfaction in the matter of an increased premium as most clients buy strict on price. (sic) I attempted to solve the problem to obtain the sale. Our sales targets were unrealistic and I was only trying to get reach (sic) these goals.

Believe me when I say I have learnt my lesson, this is a horrible, horrible place to be in and I regret my actions. I have a few job offers on the table to start in the coming month and I pray that my license will remain intact and in good standing. I have gone through enough humiliation as I have never been hired (sic) from a job in my life.

I do believe my termination had more to do than (sic) the noted three reasons noted in our letter, I know my compliance was a large factor as well. This was mentioned to me right away in my first meeting with HR, the day I was sent home initially on May 14/2015.

I love insurance and I need my license to continue on in this field, I have careers now lined up and offers have been accepted. I have learned my less, please let me gather what dignity I have left and move on.

The AIC received an email dated June 23, 2015 from CL that included a letter from the Agency, in which letter advised that the Agency received notification from an Underwriting Quality and Control Specialist that identified that the Agency had a “sales integrity issue” and as a result, the Agency met with the Agent to discuss the issues. CL advised that during the meeting, the Agent “accepted responsibility for her action.” In response to an additional request for information, another official (“JL”) provided the investigator with documents that included results of the internal audit they conducted and computer screen printouts that demonstrated that the Agent altered the material information on two automobile insurance quotes.

In her October 27, 2015 submissions, the Agent wrote as follows:

I am writing this letter in hopes of salvaging my reputation and career as an insurance agent in the province of Alberta. This year has been a tremendously hard on me professionally and emotionally, infact (sic) I don't remember a more difficult period for me another than the year my Mom passed away.

On May 25/2015, I lost a great career...that I took tremendous pride in, it was a position I loved going to every morning, a position where I had made countless friends. I couldn't speak to my friends about what happened as I was ashamed and morified (sic). It devastated (sic) me, crushed me ... I have never been fired from a position in my life. The fact is I have no one to blame but myself for my termination. I took the side of the clients before [the employer], I was so concerned with the backlash of the client's premium increases over undisclosed convictions, and my code of conduct as an insurance professional.

Please understand that I receieved (sic) no financial gain by my misconduct, I made a mistake in judgement and it will NEVER HAPPEN AGAIN. I can promise you that...Audit me for the rest of my career, fine me but please don't revoke or suspend my license as I could not take the heart ache of losing another position in the Insurance industry. It would break me...I love my new job. I get deal (sic) with people face to face, email and through the phone... Selling them auto and home insurance at a respectable brokerage. This job was made for me, and I plan on getting my Level 2 and CAIB within the next few years.

I have turned over a new leaf, of truth and honesty...Please understand that I have learned my lesson ten fold (sic) and I am so sorry for the bad choices I have made. My insurance license is very important to me and I will forever treat it with the highest respect. I am a work horse at my current position and I am so through (sic) when completing my applications, that I don't want to miss a thing and am constantly on the phone with Underwriters.

Regarding the following accusations:

- 1) Falsifying driving information - True ... NEVER AGAIN
- 2) Falsifying (sic) annual kilometers – True ... NEVER AGAIN

3) Waiving premium for a client for 2 weeks by issuing a policy for a future date and "binding" in the notepad - NOT TO MY KNOWLEDGE OR RECOLLECTION/THIS WAS NEVER DISCUSSED WITH ME???

I am always the first one to admit I am wrong, and I'll admit it now as I admitted to [the employer] in May. I was dishonest and I am ashamed of what I did but it WILL NEVER HAPPEN AGAIN. I wish I could talk to young rookie insurance agents, who are placed in a high sales roll as myself. Outbound sales were difficult but my numbers and client dissatisfaction in price were nowhere near worth the sacrifice of my reputation and career.

I say all this, but you have no reason to believe me... They are only words on paper. You don't know me from a fly on the wall, but please know I am a good person. As the report states on page 17 of 36: Ms. Sherwood's actions did not negatively impact the customers and at this time we have not had any customer complaints as a result of Ms. Sherwood's breach.

I treat everyone the way I want to be treated, with respect and kindness. Here is my favorite quote in the workplace by Mahatma Gandhi -

"A customer is the most important visitor on our premises. He is not dependent on us. We are dependent on him. He is not an interruption of our work. He is the purpose of it. He is not an outsider of our business. He is part of it. We are not doing him a favour by serving him. He is doing us a favour by giving us the opportunity to do so."

All I can do is apologize for my actions ... They were immoral, unethical and a solid lack of judgement. PLEASE ACCEPT MY SINCEREST APOLOGIZES (sic).... [formatting amended where appropriate].

Discussion

The allegation in the Report alleges that the Agent made misrepresentations as contemplated in s. 480(1)(a) of the Act by entering false driving history information when obtaining insurance quotes for clients. 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)

In our view, the evidence found in the Report and accompanying exhibits prove that the Agent entered the false information related to client driving history as alleged and that she did so intentionally. The Agent freely admitted her actions in this regard. The Agent notes that clients were not harmed as a result of her actions and states that she was motivated to take their side over that of her employer. Obviously, her actions prevented the insurer from accurately assessing the risk it was assuming as well as the ability to charge the appropriate premium for the policy that it issued. Apart from that, it is never in the client's interest to use false information to obtain an insurance quote or issue a policy. The reason for this is that if an agent chooses to do this the client could end up being blamed for the false information and his or her coverage could be jeopardized as a result. Insurers who issue policies and consumers who purchase them expect their agents to act in the utmost good faith in carrying out their work and the Agent failed to do this. As such, we find that the Agent breached s. 480(1)(a) as alleged in the Report.

Pursuant to s. 13(1)(a) of the *Certificate Expiry, Penalties and Fees Regulation*, we have the jurisdiction to levy civil penalties in an amount not exceeding \$5,000.00 in relation to our finding that the Agent acted in a dishonest or untrustworthy manner pursuant to s. 480(1)(a) of the Act. We also have the

jurisdiction to suspend the Agent's certificate of authority to act as a general insurance agent for a period of up to 12 months or we could order that it be revoked for one year.

To arrive at an appropriate penalty we have considered all of the evidence and submissions of the parties. Among other things, we note that the Agent was first licensed in 2012 and that she has found new employment as an insurance agent. We also note that she admitted her actions and provided the AIC investigator with frank and complete disclosure and cooperation. She also appears to understand what will be expected of her in the future were we to allow her certificate of authority to remain in place. As noted, clients were not ultimately harmed by the Agent's actions. Given everything before us, we order that a civil penalty in the amount of \$1,000.00 be levied against the agent

The civil penalty must be paid within thirty (30) days of receiving this notice. In the event that the penalty is not paid within thirty (30) days the Agent's certificate of authority will be automatically suspended and interest will begin to accrue. 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: March 14, 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 T5K 2C3