

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 Scott Low
(the "Agent")

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

This case involved an allegation pursuant to s. 467(1)(c) of the Act. Specifically, it is alleged that the Agent failed to disclose that he was engaged in an occupation or employment other than as an insurance agent when he completed the renewal application forms in relation to his life and accident & sickness ("A&S") insurance agent 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 Agent for his review and to allow the Agent to provide the Council with any further evidence or submissions by way of Addendum. The Agent signed the Report on February 13, 2016. He did not adduce further submissions or evidence. We also note that this case is related to another AIC investigation file and Council decision regarding agent "AL" (bearing file number 67689). AL and the Agent worked together. As such, the factual underpinnings of this matter closely mirror those found in this related decision.

The Agent has been licensed since July 7, 2015 for life and A&S insurance. He is an agent of FS Financial Strategies (the "Agency"). The Agency has been licensed since March 19, 2014 to act in the capacity of a life and A&S insurance agency. A similarly named agency, FS Financial Strategies Services Inc. ("FS"), has been licensed since September 18, 2015 for life and A&S insurance. The Agent is not licensed to represent FS.

The Report also contained copies of certain corporate registry documents of the Agency and FS. These indicated that the Agency was incorporated in Alberta on March 19, 2014. The Agency is also registered as a corporation in British Columbia and these registration documents state that the Agent is one of the Agency's directors and that he was appointed or elected on March 11, 2010. The agency FS, was previously incorporated under the name of 3I Capital G.P. Ltd ("GP") and was changed from GP to FS on July 30, 2015.

When the Agent submitted application forms to obtain his certificates of authority in May of 2015 he indicated on the forms that he did not have "...any other occupation or employment other than as an insurance agent?"

The Alberta Insurance Council ("AIC") received a Life Agent Reporting Form ("LARF") dated September 14, 2015, with attachment, from CB with Manulife. The LARF indicated that there was an allegation that the Agent was in a conflict of interest and that, as a result, the Agent's contract with Manulife was terminated effective October 10, 2015.

Included with the LARF, was an eight-page investigation report (the "Manulife Report") dated July 28, 2015. It was authored by CB. In the Manulife Report summary CB indicated that:

During the investigation and subsequent Business Practice Review (BPR) completed by [CB], Senior Compliance Officer with both [the Agent] & [AL], it was later discovered by [CB] that a number of existing Manulife clients were being referred by [AL] & [the Agent] to invest in a Limited Partnership (LP) called Clearpath LP that was not only structured and owned by [the Agent] & [AL], but that they are managing and receiving compensation for investment monies brought into the LP.

In the Manulife Report CB also quoted the Agent as saying that "Manulife had no knowledge of our books of business being connected to and utilized to fund a (sic) unregulated investment product (LP)." It appears that approximately 10 existing Manulife invested \$525,000 in purchasing shares of LP. The Agent was the President of GP.

CB subsequently provided the investigator with subscription agreements outlining the terms of compensation paid to GP or the Directors, Management, Promoters and Principal Holders of the Partnership. These types of documents also referenced the Agency's Vancouver address. CB also provided

an “Amended and Restated Limited Partnership Agreement” (the “Amended Partnership Agreement”) with attached schedules demonstrated that GP and 3i Capital Inc. entered into an agreement to form a partnership to carry on business together. In terms of compensation, the agreement stated that “...[GP] is entitled to receive a fee equal to ten percent (10%) of the value of Units sold by the Partnership, which fee will compensate the [GP] for the cost of setting up the Partnership, preparing, carrying out and completing this Offering and paying any finder’s fees payable to Agents.”

The Investigator wrote to the Agent by letter dated October 13, 2015 to request information and documentation as to the other activities he undertook in relation to promoting the investments. The Agent responded by letter dated October 16, 2015 wherein the Agent advised, “I am President and Director of [GP] now called Fs Financial Strategies Ltd. [The Partnership] is the Limited Partnership and I do not hold any units within this company.” The Agent further wrote that “[the Agency] would assist in the servicing of the clients and would be compensated with 50% of the new commissions generated if a new sale would be made but the ownership of the client remains with [the Partnership] and any trailer fees associated with this sale.” The Agent also advised that he correctly answered No to the question related to having any other occupation or employment other than insurance as he is not employed by any other company and is not involved in any business other than insurance and insurance related products.

The Investigator wrote to the Agent by letter dated November 30, 2015 and requested additional information and documentation. The Agent responded by way of email dated December 14, 2015. A number of attachments accompanied the Agent’s email. Amongst these were a ‘Management Services Agreement’ between the ‘Manager’ indicating that the Agency would receive 50% of the commissions generated by any new business.” The Agent further indicated the commissions earned by the Agency with \$80,838.98 total since inception.

Discussion

Section 467 of the Act requires that agents disclose whether or not they engaged in a business or occupation other than insurance since the date of their last application. There are a number of reasons for this requirement but the main one stems from the fact that a person cannot hold a certificate of authority to act as an insurance agent if another occupation places them in a position where they could exercise undue influence or coercion or puts them in a potential conflict of interest. There are many

businesses and occupation that do not raise any such concern. However, it is not up to an applicant to decide whether or not another occupation or business falls into these categories.

In order to prove that the Agent contravened a section of the Act as alleged in the Report, we must be satisfied that the activities undertaken by the Agent constitute another business or occupation. The evidence must then also prove that the Agent did not disclose the information to the AIC on his renewal documents. As this is a strict liability matter, it is not necessary for the AIC to prove that the Agent intentionally withheld information or intended to mislead the AIC and these objective elements of the offence are proven by examining his activities and the application forms. If we find that the information should have been disclosed, the onus would then shift to the Agent to prove that he took all reasonable means to avoid the offence.

The evidence before us proves that the Agent undertook business activities through GP (and its successor company). The activities and resulting commissions that were paid were not in relation to insurance agent activities. Rather, the Agent was soliciting investment funds and they were earned as a result of the business relationship that arose through GP and the limited partnership. More than \$80,000.00 of commissions were paid. In reviewing the activities and compensation, we are satisfied that the Agent was engaged in another occupation or business. It is equally clear that he failed to disclose this to the AIC when he submitted his applications to receive certificates of authority. As such, we find him guilty of the offence as set out in the Report.

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. However, the imposition of this type of sanction would be unusual given factors such as the length of time that the Agent has held a certificate and the fact that this is his first offence. Given all of the evidence before us, we are of the view that a civil penalty in the amount of \$300.00 is appropriate and we order that it be levied against the Agent.

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 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 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 22, 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