

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 Mary Debra Ann Gareau
(the "Agent")

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

This case involved an allegation pursuant to 452 of the Act. Specifically, it is alleged that the Agent acted in the capacity of an accident & sickness ("A&S") insurance agent when she did not hold a valid and subsisting certificate of authority. In so doing, it is alleged that she 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 dated November 15, 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 additional submissions and evidence by way of email dated November 27, 2015 and attached documents.

The Agent is the holder of a certificate of authority that entitles her to act in the capacity of an A&S insurance agent. The material before us includes a license history report that indicates that the Agent first held a certificate of authority on May 1, 2012. It also details the fact that the Agent's 2013/2014 certificate of authority was issued on January 25, 2013 and that she was licensed to act as an agent of Pharmassurance Pharmaceutical Insurance Marketing Inc./Pharmassurance marketing d'assurances pharmaceutics inc. ("Pharmassurance") and that her certificate subsequently expired on June 30, 2014. The Agent did not complete a renewal application to obtain a certificate of authority for the period July 1, 2014 to June 30, 2015.

The evidence indicates that the Agent submitted applications to receive new life and A&S insurance agent certificates of authority that the AIC received on June 26, 2015. The Agent signed the application on June 15, 2015 and her sponsoring insurer appears to have signed them on June 24, 2015.

As the Agent's certificates of authority were suspended the previous June 30, the AIC requested that the Agent confirm whether or not she continued to act in the capacity of an insurance agent after her previous certificates expired.

The Agent emailed the AIC on July 27, 2015. In this email the Agent advised that she received compensation by an hourly rate in 2014 and that she did not know her licenses had expired in Alberta. An AIC investigator subsequently contacted the Agent by letter dated September 2, 2015 and he asked that the Agent provide information as to her insurance agent activities during the period in which she did not have a valid certificate of authority.

In a response email dated September 24, 2015 the Agent indicated that she believed she was licensed to act as an insurance agent in Alberta during the time period in question. She further advised that the business she worked for, Pharmassurance Pharmaceutical Insurance Marketing Inc. /Pharmassurance marketing d'assurances pharmac ("Pharmassurance"), completed monthly audits of all licensed representatives and that the Alberta site indicated she was licensed throughout 2014 up until April, 2015. The Agent further advised that she completed a new Form 1 application which she had on file, thinking that it was the required application to renew her licenses. The Agent advised that she had completed the Form 1 application which was delivered to Pharmassurance for the sponsor signature. The Agent also confirmed that she is compensated by an hourly rate and did not receive commissions. Accompanying material outlined that she completed 309 Alberta insurance transactions during the period in which she did not hold an Alberta certificate of authority.

On September 28, 2015 the investigator wrote to an official ("PK") of BMO Life Assurance Company (the insurer on the policies that the Agent sold through Pharmassurance, hereinafter referred to as "BMO"). In this letter the investigator asked that BMO confirm the number of policies that the Agent sold.

PK replied by way of email dated October 13, 2015 and wrote that their records indicated a total of 357 sales. PK further advised that BMO did not have a contractual agreement with the Agent but that it

contracted with Pharmassurance for their services. PK advised that BMO is billed for the time spent by Pharmassurance agents on a monthly basis and payment is made directly to Pharmassurance.

Among other things, the Agent's additional submission contained an email from someone who spoke to the person responsible for conducting license searches. Apparently the person conducting the "...monthly audit for our licenses...confirmed that you were actually licensed on the Alberta council website when she did her monthly check in March and April. I'm almost sure you were licensed." Another email referenced a 2014 application form that was located.

In the body of her submissions, the Agent noted that the certificate of authority issued on January 25, 2013 and bore an expiry date of June 30, 2014. She also asked for an explanation as to why her certificates were suspended on June 30, 2014. She also referenced the 2014 application form that was located and that it was her understanding that it had been forwarded to the AIC to renew her license.

In concluding her submissions, the Agent wrote:

In closing, upon my review of documentation pertaining to the why and/or how my licenses had expired for the year 2014; I sincerely feel and hope your findings confirm that this happened during a time where as the Alberta Licensing Department and Pharmassurance Pharmaceutical Marketing Inc. were undergoing some major administrative changes to enhance the delivery of client/customer services.

Having stated that, I'd truly did feel that I had done my due diligence in following all parties involved procedures (sic) in assurance that the regulations were followed to insure (sic) my licenses were indeed renewed for the year 2014....

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 Agent acted with the specific intention to act as an insurance agent without a valid certificate of authority. Rather, the AIC only needs to establish that the Agent acted as an insurance agent when she did not have a valid certificate of authority. If these facts are proven an onus would then shift to the Agent to demonstrate that she 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 Agent's certificate of authority to act in the capacity of an insurance agent expired on June 30, 2014. As noted above, when the certificate of authority was issued in January, 2013 this expiry date was clearly set out on the certificate. This answers the Agent's question as to why her certificate was suspended. Simply put, the certificate expired because it was not renewed and the Act and regulations use the term "suspended" for the status of a license that goes out of force when its certificate period ends. It is equally clear that the Agent continued to act in the capacity of an insurance agent after her certificate of authority expired on June 30, 2014. Given this, the onus shifts to the Agent to demonstrate that she took "all reasonable measures" to avoid acting as an insurance agent until a new certificate was issued.

The only things of note that the Agent submits in this regard is a statement by someone that someone else confirmed on the AIC website that the Agent held a license in March or April of 2015 and that she thought that application forms were submitted in 2014 to renew her certificates.

In our view, the Agent did not use all reasonable steps to determine whether or not she held valid certificates of authority to act as an insurance agent. Indeed, from the material that was presented it appears that the Agent took no steps to determine her licensing status. First, the reference to the "monthly" audits that took place were supposedly done in March or April of 2015. However, the Agent's certificates were no longer in force on July 1, 2014. It was reasonable for her to determine her licensing status prior to the expiry of her certificate and certainly shortly thereafter. It is also difficult to understand how audits that were done monthly were conducted nine or ten months later.

Second, the references to a June, 2014 application to renew her certificates do not make sense. In Alberta, renewals take place in the two months preceding the expiry of the certificates and agents renew their certificates of authority online after logging into the AIC licensing system by way of an individual identifier and password. The AIC sends out numerous email reminders to agents that have not renewed their licenses throughout the renewal period. Given the fact that renewals are processed online it is difficult to draw any conclusions about the application form that is referred to by the Agent and referenced in her materials. However, even if she did submit an application (perhaps she signed an

application for new certificates after her existing ones expired) it was still her responsibility to ensure that the applications were submitted and that new licenses were in force prior to acting as an insurance agent.

As such, we find that the Agent acted as an insurance agent when not authorized to do so as alleged in the Report. In regard to the appropriate sanction, we note that this is the Agent's only disciplinary infraction. Given this, we are prepared to treat here activities as one offence and levy a civil penalty in the amount of \$385.00 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 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 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

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