

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 Cook Southland Funeral Chapel Ltd.
(the "Restricted Agent")

As represented by Rod Krushel
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 (the "Report"). The Report was forwarded to the DI for review and to allow the Agency to provide the Council with any further evidence or submissions by way of Addendum. The DI signed the Report and did not provide the Council with further evidence or submissions.

The Restricted Agent is currently the holder of a restricted insurance agent's certificate of authority for the sale of funeral services insurance, and has been so licensed since March 25, 2014. On October 23, 2015 the AIC received a letter from an Equitable Life ("Equitable") official ("DS"). In this letter, DS advised that 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 and that the Restricted Agent had sold a total of 16 policies after its certificate of authority lapsed. DS also listed information in relation to the 16 policies including the

application date, date of issue and the insurance amount and indicated that Equitable became aware that the Restricted Agent did not have a valid license on October 7, 2015.

DS further advised that upon learning of the issue, Equitable Life and the “third party administrator” discontinued accepting applications and began to recoup commissions that were paid to the Restricted Agent. The investigator wrote to DS on November 3, 2015 and requested information and documentation and DS responded by way of email dated November 11, 2015. In this email DS advised that the third party administrator of the insurance the Restricted Agent sold is Canadian Funeral Programs Inc. (“CFP”), known as Funeral Plans Canada. DS advised that as part of their administrative duties, CFP processes commission payments to restricted agents.

DS also listed commissions paid in relation to the 16 policies sold and explained that commissions were not paid in regard to four clients after they discovered the Restricted Agent was not licensed. DS advised that Equitable pays the entire commission to CFP and that CFP, in turn, pays the commission to the Restricted Agent based on the commission schedule. According to the list in the e-mail, CFP paid a total of \$6,222.01 in commissions to the Restricted Agent.

On December 1, 2015 the investigator wrote to the DI and he requested that the DI provide certain information and documentation regarding the Restricted Agent’s activities during the period in which it did not hold a valid and subsisting certificate of authority. The DI responded by way of email on the same day wherein he conceded 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.” The DI further advised that he did not receive a renewal notice from the AIC however, when it came to his attention that their certificate lapsed, he immediately took steps to reinstate their license. The DI also suggested that “...there was no compensation paid or received for the funeral plans entered into during the time of the lapsed certificate.” The list of insurance policies sold by the Restricted Agent and provided by the DI correspond to the that provided by Equitable.

In the course of reviewing this matter the investigator also wrote to an official of CFP - “TD” on December 2, 2015 and requested information and documentation. TD responded by way of email and accompanying attachments on December 15, 2015. Amongst the attached documents were documents detailing that compensation was paid to the Restricted Agent but that this was subsequently obtained back from the

Restricted Agent, that clients subsequently re-signed and re-dated the applications that the Restricted Agent sold to them during the period in which it did not hold a valid and subsisting certificate of authority and that the commissions were ultimately repaid to the Restricted Agent. The documents also included a list of the 16 contracts issued with columns and offsetting entries of “Commission Paid” (\$10,065.70) and “Chargeback” (-\$10,065.70).

Decision of the Council

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 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 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, 2015. This should have come to 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 clear that the Restricted Agent sold insurance policies and was compensated for this activity. The fact that there were commission payments that could be subject to a “charge back” demonstrate that at some point the Restricted Agent was compensated for acting as an agent. The mere fact that the compensation was subsequently taken back by CFP does not alter the fact that the Restricted Agent acted in the capacity of an insurance agent. Therefore, the onus now 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 fact when the certificate

was issued it is unlikely that he would have missed the fact that it had to be renewed before June 30, 2015. As this Council contains license holders, we also know that the AIC sends numerous emails to certificate holders during the two-month renewal period. However, even if this was not sent to the DI, it is the Restricted Agent's responsibility to renew its certificate of authority prior to its expiry if it wants to continue to act as an insurance agent. Therefore, we are of the view that the Restricted Agent did not use all reasonable steps to avoid the offence and find that it breached s. 452 of the Act as alleged in the Report.

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 one offence and levy a 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 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