

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 Mabel (Belle) Scharf
(the "Agent")DECISION
OF
The General Insurance Council
(the "Council")

This case involved an allegation pursuant to s. 480(1)(e) of the Act. Specifically, it is alleged that the Agent issued a confirmation of insurance letter (the "Confirmation Letter") to a consumer for a period in which the consumer did not have insurance. The consumer subsequently provided the Letter to law enforcement personnel. It is also alleged that the Agent erroneously cancelled another consumer's automobile insurance without his knowledge, instruction or consent. As a result of these instances, it is alleged that the Agent demonstrated incompetence pursuant to s. 480(1)(e) 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 her review and to allow the Agent to provide the Council with any further evidence or submissions by way of Addendum. The Agent did not submit any additional material for our consideration.

The Agent first held a general insurance agent certificate of authority on January 4, 2012 and she continuously held a certificate of authority until the agency for which she worked (the "Agency") terminated her employment on January 11, 2016.

The Agency's Compliance Manager ("LM") wrote to the AIC on January 15, 2016 to confirm that the Agency terminated the Agent's employment. LM indicated that the termination was the result of two incidents that she described as follows:

On November 12th, 2015 [the Agent] provided a client with a letter confirming that he had automobile insurance coverage when he did not. The customer was involved in an auto accident and received a ticket for driving without insurance. He subsequently asked [the Agent] for and she provided him with a letter confirming that he had auto insurance at the time of the accident, which he provided to law enforcement in an attempt to have the charges dropped.

A second incident in late December 2015 involved [the Agent] cancelling a policyholder's auto policy without the client's consent. After the policyholder's automobile was deemed a total loss, he asked [the Agent] to transfer coverage from this vehicle to a new vehicle. Instead, she cancelled the existing policy and wrote a new policy without supporting documentation.

In reviewing this second concern, [the Agent's] office worked with our Underwriting Department to ensure reinstatement of the original policy with a change in vehicle and the policyholder was not negatively impacted.

An AIC investigator wrote to LM on January 26, 2016 and she requested that LM provide the AIC with all of the relevant documentation regarding the two incidents described above. LM responded by letter dated February 9, 2016. In addition to the letter, LM provided the investigator with a number of attachments. Among these was the Confirmation Letter and the Agent's written statement.

In her written statement, the Agent indicated that the Letter was generated after she contacted the underwriter. Specifically, she said that she asked whether the client had coverage and that the underwriter told her that his coverage would be reinstated if the client paid the premium that he owed. She indicates that she understood this to mean that he had uninterrupted coverage in that the coverage would be reinstated to the original policy issue date. The underwriter's accompanying notes confirm the details of what the Agent asked and what the underwriter said in answer to her questions.

The Agent wrote a November 2015 statement that she provided to the AIC. As to the second issue that the Agency raised, she wrote, in part, the following:

Insured called and requested that the insurance policy a vehicle he had for sale be cancelled. I cancelled the policy as requested.

Previously this client called to state that an existing old vehicle he had for sale was not selling as fast as he had originally anticipated. He stated that he was concerned that the 30 day coverage overlap between his new and old vehicle would expire before he was able to sell the old vehicle. I informed him that his concern would be addressed by writing a new policy for the new vehicle he had acquired to ensure he would have insurance coverage for both vehicles.

This prevented his old vehicle from not having coverage if its sale occurred more than the 30 days after the acquisition of his new vehicle.

The Report also contained documentation about the Agency's processes around the cancellation of insurance and copies of internal notes.

Discussion

In order to conclude that the Agent demonstrated incompetence to act as insurance agent pursuant to s. 480(1)(e) of the Act, we believe that we must be satisfied that the Agent's behaviour was a marked and pronounced departure from the level of competence expected of similar agents in similar circumstances. Making reference to "similar agents in similar circumstances" recognizes that agents with thirty years of experience will most often have more knowledge and experience than an agent with five years of experience. Likewise, agents who work exclusively in one area of insurance would exhibit more expert skills than the typical agent without the same experience. In this respect, the standard by which we judge an agent's competence has both objective and subjective elements.

We also note that s. 480(1)(e) of the Act speaks to conduct that goes to the essence of an agent's competence and it is our view that making an error or mistake does not necessarily equate to incompetence. Were this to be otherwise, it is unlikely that any individual could hold a license for long. Therefore, incompetence will generally be characterized by a pattern of conduct or one or more repeated errors. In this regard we say "generally" because there are some mistakes that are so egregious in nature that we could conclude that an agent is incompetent notwithstanding the fact that it only occurred once.

In this case, the Agent wrote the confirmation letter after seeking clarification from the underwriter. However, there seems to have been some confusion in her mind as to what the underwriter meant by the word "reinstatement." It appears that the Agent believed that the policy would be in force retroactively once the client made the outstanding payment. Conversely, the underwriter meant that coverage would resume on a go-forward basis if the client made the payment.

While the Agent could have been clearer or could have asked more questions in light of the fact that an accident had taken place, we do not believe that her conduct amounts to incompetence. Rather, it appears that both the Agent and underwriter contributed to the error and, while unfortunate, it is not the

type of mistake that suggests overall incompetence. As to the second allegation, there may have been other more appropriate ways to deal with the client's newly acquired vehicle in the context of his existing policy. However, we do not believe that the evidence substantiates a finding of incompetence on the Agent's part. This is particularly the case given the fact that there is some dispute as to what the client told the Agent. Therefore, we find the Agent not guilty of the allegations as set out in the Report.

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: November 2, 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