

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 Allison E. Klanke
(the "Agent")

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

This case involved allegations pursuant to ss. 480(1)(a), 509(1)(a) and 481(2) of the Act. Specifically, it is alleged in Counts 1 – 8 that the Agent misappropriated client premium funds or issued pink cards in an untrustworthy manner in relation to 8 clients such that the Agent acted in an untrustworthy or dishonest manner as contemplated in 480 (1)(a) of the Act. Alternatively, in Counts 9 – 16 it is alleged that the Agent used client funds without their consent or the consent of her employer and that the Agent made misleading statements pursuant to s. 509(1)(a) of the Act. Finally, it is alleged that the Agent failed to respond to a Demand for Information that was made upon her pursuant to s. 481 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 give her the opportunity to provide the Council with further evidence or submissions by way of Addendum. The Agent did not respond.

The Agent was the holder of a certificate of authority authorizing her to act in the capacity of a general insurance agent. She held this certificate of authority from July 15, 2008 until it was terminated by her employer (the "Agency") on February 4, 2016. She also previously held life and accident & sickness certificates of authority between 2010 and 2012.

By letter dated February 4, 2016, the Agency's Managing Partner ("ML") wrote to the Agent to advise her that the Agency was terminating the Agent's employment for cause because it believed that the Agent "had

engaged in the act of theft and fraud.” The termination was communicated to the AIC on the same day and the Agent’s license was terminated.

On February 9, 2016 an AIC investigator wrote to ML and requested documents related to the termination of the Agent’s employment and the Agency’s investigation. ML responded by way of letter dated February 15, 2016. This letter, in part, read as follows:

Over the last few months we had some files, that had been handled personally by [the Agent] that had kept showing up on our 1st and 15th of the month statement’s (sic). Balances that had been carried forward longer than usual and past our dates that we have in order to cancel said policies without penalty. I plan to go over file by file what transpired in recent months leading up to the termination date and what has been brought to our attention since her termination.

[The Agent] was called in [“J’s] office by me [ML] on the morning of February 3, 2016 at 12:00 noon and presented written documents on the [“HB”] file, copies of those documents are attached as well as the [“JD”] file and [“TK”] file. After discussing the manner in which these files were dealt with (I will go into further details on subsequent pages) she was provided 3 hours to gather emails and evidence to dispute our claims that money was missing and false notes were made, and invoices were manipulated and backed out. We called her back into [J’s] office at 3:30 pm and asked her to provide evidence disputing our claims. She advised she did not have the said evidence but assured us that [HB] was aware of the goings on and could verify that the notes on the file would be confirmed once we spoke to him. We advised her that she was being suspended effective immediately pending our conversation with [HB] (we had left a message for him earlier that day).

[HB] showed up the next day and advised he had no idea of the notes in the computer and had not once spoken to [the Agent] since September 3, when he received the lapse letter. An email was sent to [the Agent] confirming her termination and we started to look into other questionable accounts. I will discuss these in detail.

A copy of [the Agent’s] termination letter is attached (item #1), copy of an email form (sic) [the Agent] dated February 9, 2016 (item #2), copy of another email from [the Agent] dated February 15, 2016 (item #3) admitting to the clients that had money stolen. Item #4 is a ticket number opened by Interact (sic) for [client “DB”] from [a corporation “AP&C”] alleging fraud. They could not release information to me but can to the authorities. Item 5 is a listing of the accounts that had money taken

ML responded by way of letter dated February 15, 2016 and advised “Over last few months we had some files, that had been handled personally by [the Agent] that had kept showing up on our 1st and 15th of the month statement’s. ... she [the Agent] was provided 3 hours to gather emails and evidence to dispute our claims that money was missing and false notes were made, and invoices were manipulated and backed out. She advised she did not have the said evidence ...”. Included with the above letter was comprehensive

summaries of seven client files detailing the transactions relating to misappropriation of monies by the Agent and one file where the Agent provided her husband with an unauthorized pink card. A copy of this correspondence is attached as Exhibit D. (pages 12 to 59).

Included in the letter is an additional page where ML states “We are a well-respected family owned brokerage and have been around since 1984. I have been employed here since 2000. We treat our staff very well ... She took cash and payments that DID NOT belong to her and then lied to our insurance companies, clients, staff and employers and then went to extremes to cover up these.” Attached is this copy as Exhibit E (page 60)

On February 11, 2016 the investigator spoke to the Agent and advised her that he would be emailing her a request for information to get her version of the case in question. He also confirmed her email address and mailing address during the phone call. Following this conversation on February 16, 2016, the investigator wrote to the Agent and requested information about the allegations in question. A copy of this letter is included as Exhibit F (pages 61 to 62).

The Agent did not respond back to the Investigator’s request for information. On March 9, 2016, the investigator sent the Agent a DEMAND for information (both mailed and emailed) under Sections 481(1) and (2) of the Act. Attached is this correspondence as Exhibit G (pages 63 to 65)

The Agent did not respond to the above correspondence from the investigator either. Attached as Exhibit H is the Canada Post Track Result Detail that shows the demand letter sent by the investigator to the Agent was unclaimed. (pages 66 to 68)

The agent however, confessed about this activity to her employer Plains. A copy of this document is attached as Exhibit J. (page 70).

On April 5, 2016, in response to a phone call from the investigator, ML provided a summary of transactions and monies of Plains clients that were missing due to the Agent’s conduct. The total funds missing from Plains clients is \$7,217 over the period July 2015 to January 2016. None of these monies were paid back by the Agent, however, Plains reimbursed its clients. Attached as Exhibit I is this documentation. (page 69)

Discussion

As noted above, the Report alleges that in eleven instances the Agent acted in a dishonest or untrustworthy manner pursuant to s. 480(1)(a) of the Act in regard to the use of client credit cards, the submission of insurance applications and the amendment of client policies. 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)

We find that the wrongful use of client credit card information (including a payment that she made on her own insurance policy) and collecting premiums that were not then remitted to her agency are clear cases of dishonest or untrustworthy activity that were wholly intentional in nature. Her conduct also included the making of false entries onto the agency's computer system in an effort to conceal her activities. As to the remaining counts, we find that the Agent was, at the very least, reckless in processing client applications and amendments such that she acted in an untrustworthy manner as contemplated in s. 480(1)(a) of the Act. We believe that untrustworthiness is conduct that demonstrates that an individual does not merit trust. In many cases, client documents were found unprocessed in the Agent's desk. The Agent's reckless and untrustworthy conduct in attending to her duties exposed her clients, agency and insurer to real or potential harm. As such, we find her guilty of eleven counts pursuant to s. 480(1)(a) of the Act.

In terms of the appropriate sanction in regard to our findings, we have the jurisdiction levy civil penalties in an amount not exceeding \$5,000.00 pursuant to s. 13(1)(a) of the Certificate Expiry, Penalties and Fees Regulation, A.R. 125/2001. As the Agent no longer holds a certificate of authority, we do not have the ability to suspend her certificate for a period of time or to revoke it for one year.

In this case, the Agent utilized client credit cards and premium payments to enrich herself. In some instances, she ascribes this to being cases of "bad judgment" or to "errors". In other instances, her recklessness in submitting applications and processing amendments evidenced a complete disregard of her obligations as an insurance agent. Regardless of how her conduct is categorized, we are of the view that untrustworthy conduct of the type evidenced by the Agent requires a significant civil penalty. As such, we order that a civil penalty in the amount of \$4,000.00 be levied against the Agent in relation to each of the eleven findings we have made. Therefore, we levy civil penalties totaling \$44,000.00.

The civil penalties must be paid within thirty (30) days of receiving this notice. In the event that the penalties are not paid within thirty (30) days, interest will begin to accrue at the applicable prescribed rate. 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: October 6, 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

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