

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 Stephanie Rooney  
(the "Agent")

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

This case involved an allegation pursuant to ss. 480(1)(a) or 509(1)(a) of the Act. Specifically, it is alleged that the Agent provided employment letters to a mortgage lender in order to secure a mortgage. She claimed these letters were prepared by a staff member of the HR department of AMA. There was no such person employed by AMA and the letters stated her salary was almost double than what was actually paid to her. In so doing, it is alleged that she is guilty of misrepresentation, dishonesty or untrustworthiness pursuant to s. 480(1)(a) of the Act. In the alternative, it is alleged that the Agent is guilty of misrepresentation or dishonesty pursuant to s. 509(1)(a) of the Act.

**Facts and Evidence**

This matter proceeded by way of a written Report to Council dated August 12, 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 did not adduce any further evidence.

The Agent was the holder of a Level 1 general insurance agent certificate of authority. She was first licensed on March 25, 2015 and held this certificate through AMA until April 30, 2015. Between June 3, 2015 and July 15, 2015 she worked for an insurer. She has not held a certificate of authority since July 15, 2015.

AMA's Insurance Manager ("MM") commenced this matter by writing to the AIC on April 30, 2015 to inform the AIC of the Agent's dismissal for cause. An AIC investigator wrote to MM on May 7, 2015 to

request more information about the Agent's dismissal. MM responded by way of letter dated May 11, 2015. In his letter, MM included a copy of the dismissal letter that AMA sent the Agent.

MM responded on May 11, 2015 and provided a copy of the termination letter that AMA sent to the Agent on April 30, 2015. The letter, in part, reads as follows:

This letter is to confirm that effective April 30, 2015 your employment as an insurance adviser with the Alberta motor association has been terminated for just cause. The reason for your terminations stems from the employment confirmation letters dated April 10, 2015 and April 20, 2015 sent to paradigm quest your mortgage application. These letters were not written by anyone in Human Resources, People Advisory Services or an AMA employee authorized to provide employment confirmation letters. You forged these letters or had someone forge them on your behalf. These actions amounted to fraud against AMA, [the mortgage broker] and the employee whose name you used.

The reasons for termination or more specifically defined as:

1. Breach of AMA's or values of open and honest communication, integrity by:
  - a. Creating forged employment confirmation letters on AMA letterhead and written under the name on an AMA employee without her consent or knowledge;
  - b. Representing the forged letters as true statements from AMA to an outside institution; and
  - c. Intentionally withheld information or lied when asked questions about the letters;
2. Breach of AMA's code of conduct in your actions through:
  - a. Possible breach of Canada's criminal code;
  - b. Misuse of company resources and assets; and
  - c. Acting inappropriately representing AMA to an outside organization.

AMA's HR Manager ("LP") provided further information about the Agent's termination from AMA on May 21, 2015. In her e-mail, LP wrote as follows:

The following lists a situation we experienced with [the Agent]. I understand that you already have a copy of her termination letter.

1. The mortgage broker contacted AMA to confirm what was written in to employment letters they received from [the agent]. The salary information was incorrect and the person who "signed" the letters had been on leave the past month prior to the date the letter. The name was also spelled incorrectly....
2. Confirmed the two letters were forged.
3. She was suspended while we investigated.
4. Our investigation concluded she created the documents.

5. We attempted to arrange a meeting with her several times. At first in Fort McMurray. Then when she told us she was in Edmonton, we tried to arrange a meeting in Edmonton, but she became suddenly unavailable since she had a vacation flight booked the next day.
6. As she avoided meetings with us after her suspension, termination for cause had to be conducted in writing and sent by e-mail. Paragraph we have not heard from persons, no reply to termination letter/e-mail

On May 27, 2015, the investigator wrote to the Agent and asked that she provide a chronology of events leading to her termination and also to advise if the allegations of fraud against her were accurate.

The Agent responded on May 27, 2015. Among other things, she wrote:

- March 23<sup>rd</sup>: I initially started my mortgage application process where several items were requested of me such as a letter of employment, pay stubs, previous employers T4's, proof in down payment, intent to purchase letter from the builder etc (sic)
- Sometime between March 23<sup>rd</sup> and April 9<sup>th</sup> I spoke to my hiring manager Kristen for advice on how to proceed obtaining such said documents she suggested I speak to AMA's HR department in regards to what was being asked of me. I do not have the exact date as this would all be on AMA work station. I either called or inter emailed HR and was informed by a lady in HR that would be intermailing me all the documents I required. I do take honest (sic) that I should have reviewed said documents before scanning them & forwarding them off to the mortgage broker but I did not alter or forge any documents in any way.  
April 9: Approved for such said mortgage
- I Received (sic) an inter office message from someone in HR asking if it was okay to disclose my information to the [mortgage broker] who was doing a background check on me in regards to my mortgage application – I stated yes of course that is normal is it not (sic).
- This is when events started turning suspicious as I received several inter office message (sic) (AMA calls it lynx similar to MSN) from again a lady in HR asking me where I had received the documents from and if I had copies. I stated that I received them from AMA HR department. Please see attached)
- April 23<sup>rd</sup>: I was called into the boardroom at AMA by my supervisor...as my hiring manager was away on vacation and informed I was on immediate paid leave for suspected tampering of documents. I was dumbfounded and surprised to say the least. I was very calm & collected my belonging (sic) and was escorted off the AMA premises.
- April 30<sup>th</sup>: I received an email from again (sic) HR department (see attached) stating I was being terminated effective immediately for forging documents.  
I have attached any documentation I have on my personal email for your review.

I [the Agent] did not forge or alter any documents in any way. I was upfront and honest about the whole process with everyone at AMA including fellow employees who knew of my desire to purchase a home, my hiring manager...was well aware I was looking for a transfer back to Edmonton once the home purchase was finalized. I did everything by the book and provided documents that someone in the AMA HR department provided

me with. My question to you [the investigator] and AMA is why did AMA not release such said employees (sic) name in the AMA HR department that supposedly wrote these forged documents and ask them if it was a simple human error that was made on their end.

I spoke to several ladies in the AMA HR department throughout this whole ordeal and not once was I given a solid answer.

At no point was I given a chance to defend myself with AMA. I as well as you [the investigator] would like to see what proof AMA has that I specifically forged said documents.

At no point during my employment was I given access to AMA HR department papers or names. I would never forge a document that I knowingly knew was incorrect. Again I do take responsibility for forwarding my mortgage broker documents that I should have reviewed. To my defence when a major company like AMA intermails you documents you expect them to be correct...I never would have expected this to lead to my termination.

Following my termination which was a blessing in disguise I did not wish to pursue any further action as AMA is clearly an unjust company, I was never given a chance to defend myself or even asked what had happened. I was surprised and bewildered at how AMA had treated the situation. Knowing what I know now I would never work for AMA again knowing there (sic) HR department clearly does not have their ducks in a line. I whole heartedly believe an individual in AMA's HR department wrote those documents – whether it was a simple human error of copy & paste or a new employee.

This information is the best to my knowledge an honest account of my version.

In response to further questions posed by the investigator about AMA's processes, LP indicated (on June 18, 2015) that “[a] Human Resources or People Advisory Services employee typically would create an employment letter upon written request of the AMA employee. A manager would also have authorization.” LP further indicated that AMA's HR department did not have an employee exactly matching the name found on one of the documents in question. While they did have an employee with a similar name (the one on the document was spelled incorrectly and contained an additional letter), that person was on maternity leave at the time the Agent submitted the document to the mortgage broker. However, this individual was not part of the HR department as written on the letter. LP also provided emails that demonstrated AMA's efforts to speak with the Agent prior to her termination. However, the Agent was on vacation on April 30, 2015 and was not available to meet.

The mortgage broker also provided a number of documents that it received from the Agent as part of her mortgage application. These included a letter on AMA letterhead dated April 10, 2015 regarding the Agent's employment status. It does not make reference to her salary. The Agent sent a second letter to the mortgage broker on April 20, 2015. This letter stated the Agent earned a net salary of \$78,000. The Agent's actual salary was \$39,000.

On August 7, 2015 the investigator tried calling the Agent at the cell phone number she had provided but only got her voice mail and was unable to leave a message as her voicemail was full. That same day the investigator tried contacting the Agent at her new agency, however, the agency informed him that the Agent started working there on June 1, 2015 and she failed to attend work after June 29, 2015.

### **Discussion**

The first allegation in the Report alleges that the Agent acted in a dishonest or untrustworthy manner pursuant to s. 480(1)(a) of the Act in regard to preparing a false employment letter to secure a mortgage. 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)

It is clear that the Agent sent documents to the mortgage broker that included a letter dated April 20, 2015. It is equally clear that this letter was inaccurate in a number of important respects. First, the salary information it contained was double that of the Agent's actual salary. Second, the letter purports to be someone from AMA's HR department when, in fact, the only person with a similar name is AMA's Orientation Coordinator. Third, the Orientation Coordinator with a similar name was on maternity leave on April 20, 2015. Fourth, the HR department reference does not make sense because these types of letters are generated by "Advisors" within "People Advisory Service".

AMA has stated that these letters were not generated by AMA and that they terminated the Agent because she either produced them or had someone wrongfully produce them on her behalf. In essence, they are saying that authorship of the letters can be inferred from the fact that the Agent sent them and there is simply no evidence that they were produced by AMA. The Agent states that she received them from AMA and sent them to the mortgage broker without reading them and that if they were false, AMA is responsible.

As noted above, the applicable standard of proof in this case is the civil burden. In other words, the question is whether it is more likely than not that the Agent wrote the false letters. Apart from the Agent's submissions, there is no evidence that AMA drafted the letters at issue. The added difficulty with the Agent's submissions is that they require that some unknown person within AMA wrote a letter that doubled the amount of the Agent's actual wage, misspelled the name of an AMA employee who was not even actively at work at the time that the letter was drafted and misidentified that individual's title and department. This explanation simply makes no sense.

In light of all of the evidence, we are convinced that it is more likely than not that the Agent either fabricated the documents at issue or directed that someone else produce them for the purpose of obtaining a mortgage. In so doing, we find that the Agent acted in a dishonest or untrustworthy manner as set out in s. 480(1)(a) of the Act.

Pursuant to s. 13(1)(a) of the *Certificate Expiry, Penalties and Fees Regulation*, we have the jurisdiction to levy civil penalties in an amount not exceeding \$5,000.00 in relation to our finding that the Agent acted in a dishonest or untrustworthy manner pursuant to s. 480(1)(a) of the Act. We normally also have the jurisdiction to suspend an agent's certificate of authority to act as a general insurance agent for a period of up to 12 months or revoke it for one year. Given the fact that the Agent no longer holds a certificate of authority these options are not available.

Honesty and trustworthiness are hallmarks of the insurance industry and the relationship between an insurer and a client is characterized by the utmost good faith. The same ethical standards must be demanded of insurance agents who act as the conduit between insurers and the public. As such, we believe that a significant civil penalty is warranted in the circumstances. Therefore, we order that a civil penalty in the amount of \$2,500.00 be issued 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, interest will begin to accrue. 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: September 18, 2015

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Original Signed By  
Amanda Sawatzky, Member  
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