

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 Ron McGuffin  
(the "Agent")

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

This case involved an allegation pursuant to Section 481(2) of the Act. Specifically, it is alleged that the Agent failed or refused to provide information and documentation requested by an AIC investigator within the time specified in a Demand for Information (the "Demand"). In so doing, it is alleged that he contravened s. 481 of the Act.

**Facts and Evidence**

This matter proceeded by way of a written Report to Council dated January 9, 2017, (the "Report"). The Former Agent was licensed from at least January 1, 1989 to March 12, 2012 for life and accident & sickness ("A&S") insurance. The AIC received a termination notice from London Life dated March 12, 2012. This notice also indicated that London Life was investigating the Former Agent's conduct. The AIC opened an investigation file on that matter (Case #67040). The AIC subsequently received another complaint from a consumer that had provided funds to the Former Agent and the AIC opened an additional file against the Former Agent on April 24, 2012. This decision relates to the investigation of this latter file and the Former Agent's alleged failure to respond.

The complaint alleged that the Former Agent invested \$25,000.00 of his funds in non-insurance related investment while representing London Life and that the Former Agent had failed to return the funds. The investigator spoke with the Former Agent about this and the other investigation file in a telephone conversation on May 15, 2012. In this call the investigator told the Former Agent that he would write to request further information and documentation about the two files. The Former Agent confirmed his mailing address and this was the home address on file with the AIC.

The investigator wrote to the Former Agent by letter dated May 31, 2012 and requested information and documentation including that related to the non-insurance related investment sold to the client. When the Former Agent did not respond, the investigator subsequently sent a demand letter on September 5, 2012. Once again, the Former Agent did not respond.

The Former Agent applied for a Probationary General Insurance Agent's Certificate of Authority on July 21, 2016. Given that the Former Agent had not yet responded and resolved the issues stemming from the previous investigations, the investigator re-opened this investigation file on August 15, 2016. Using the contact information that the Former Agent submitted on his application, the investigator spoke with the Former Agent on August 26, 2016. The investigator advised that this file was re-opened and confirmed the previous discussion on May 15, 2012 and asked about the previous unanswered demands for information. The Former Agent indicated that he could not recall if he had received the letters, however, the Former Agent advised that the address on the letters would have been correct at that time. After telling the Former Agent that he would be sending the Demand, the Former Agent said that he may not be able to respond in a timely basis as there had been a recent death in his family.

The investigator sent the Demand to the Former Agent by letter dated August 26, 2016. The Demand required that the Former Agent respond by September 23, 2016. To date, the Former Agent has not responded to the investigator's request for information and documentation.

### **Discussion**

The AIC operates under a delegation from the Minister of Treasury Board and Finance (the "Minister"). Through this delegation, the AIC has authority matters relating to current and former holders of insurance agent certificates of authority. Section 481 states that "[t]he Minister may direct the holder or former holder of a certificate of authority to provide to the Minister within a reasonable period of time specified by the Minister relating to the matters in section 480(1)." Subsection 2 states that the "... person served with a direction under subsection (1) who has the information must provide the information in accordance with the direction."

Regulatory offences such as these are strict liability offences. This means that the AIC has the onus to

prove that the Demand was properly made upon the Agent (proper in the sense that they meet all of the requirements under the Act) and that the Agent did not comply. Once this occurs, the onus shifts to the Former Agent to establish that he exercised due diligence in meeting his statutory requirement to respond. In order to substantiate this due diligence defence, the Former Agent must demonstrate that he took all reasonable means to avoid the offence.

The evidence is clear that the AIC investigator was attempting to determine whether or not the Former Agent misconducted himself in regard to the funds that he handled on his client's behalf. In furtherance of this investigation, the investigator sent the Demand to the Former Agent and the Former Agent did not respond. Given these facts, the onus shifts to the Agent to prove that he took all reasonable means to respond as required. As he did not reply to the Report or provide any additional evidence or submissions, the Agent has failed to prove that he acted with due diligence and we find him guilty failing to respond to the Demand.

In terms of the applicable sanction, the public relies on the AIC to investigate complaints and the Act requires that holders and even former holders, such as the Agent, provide information when called upon to do so. Therefore, the public is not well-served when agents simply ignore demands like those made in this case. In this case, the Agent has repeatedly ignored AIC investigations. While we are not the Council that would deal with the Former Agent's general insurance agent application, his conduct strongly suggests that he cannot be effectively regulated given his repeated and prolonged refusal to deal with the matters that prompted the AIC's inquiries.

Given all of the factors, the Council orders that the maximum civil penalty of \$1,000.00 be levied against the Former Agent pursuant to 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 the mailing of this Decision. 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, 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: March 16, 2017

KENNETH DOLL  
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