

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 Alfred Merkli  
(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 30, 2017, (the "Report"). In October 2016, the AIC launched a pilot project to audit Continuing Education (CE) credits that licensees disclosed on their application. The AIC sent an email to agents randomly selected from a pool of agents who submitted their certificate renewal application(s) on the last day of the May 1, 2016 to June 30, 2016 renewal period. These agents were asked to provide proof of CE credits for the past 3 licensing periods from 2013 to 2016. This investigation was opened as the Agent failed to provide the AIC with records. The Report was forwarded to the Agent for review and to allow the Agent to provide the Council with any further evidence or submissions by way of Addendum. The Agent did not respond to the Report.

The AIC emailed the Agent on November 2, 2016 and provided him 30 days to respond to the CE audit. An AIC investigator emailed the Agent on December 9, 2016 to remind him that he had not responded to the AIC's audit request. Following another non-responsive period, the investigator mailed the Demand to the Agent by letter dated January 5, 2017. The Demand required that the Agent provide the requested information by January 19, 2017. On January 24, 2017, the investigator emailed the Agent to advise him that the AIC would be submitting the Report concerning his failure to respond to the Council shortly.

**Discussion**

The AIC operates under a delegation from the Minister of Treasury Board and Finance (the “Minister”). Through this delegation, the AIC has authority over 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. As such, the AIC has the onus to prove that the Demand was properly made upon the Agent (proper in the sense that it met the requirements under the Act) and that the Agent did not comply. Once this occurs, the onus shifts to the Agent to establish that he exercised due diligence in meeting his statutory requirement to respond. In order to substantiate this due diligence defence, the 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 Agent had complied with his continuing education requirements. In furtherance of this investigation, the investigator sent the Demand to the Agent and the 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 ignored the investigation and we are of the view that a substantial civil penalty is warranted. As such, we order that a civil penalty in the amount of \$1000.00 be levied against the 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