

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 Prosperity Protection Corp.
(the "Agency")

As represented by
Designated Representative Ivica Demo
(the "DR")

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

This case involved an allegation pursuant to s. 467(1)(c) of the Act, specifically alleging that the Agency (through its DR) failed to disclose that it was convicted of an offence in relation to a matter between the Agency and the Life Insurance Council of Saskatchewan ("SK Council"). Specifically, it is alleged that the Agency failed to disclose the convictions on its life and accident and sickness (A&S) renewal applications that it submitted on June 1, 2016. In so doing, it is alleged that this constitutes an offence pursuant to s. 467(1)(c), and thereby, s. 480(1)(b) of the Act.

In addition, it is alleged that the Agency violated s. 465(1) of the Act when it failed to renew its errors and omissions ("E&O") insurance coverage prior to the policy period ending on April 12, 2014, and did not renew the E&O coverage until May 21, 2014, resulting in a 38-day period during which the Agency did not hold valid E&O insurance coverage, and therefore, the Agency contravened s. 465(1) of the Act and consequently s. 480(1)(b) of the Act.

Facts and Evidence

This matter proceeded by way of a written Report to Council dated April 10, 2017 (the "Report"). The Report was forwarded to the DR for his review and to allow the DR to provide the Council with any further evidence or submissions by way of Addendum. The DR signed the Report on April 18, 2017, and did not adduce any further evidence.

The Agency has been licensed since June 19, 2013 for life and A&S insurance, and the DR has been licensed as the Designated Representative of the Agency since June 19, 2013 for life and A&S insurance. The DR submitted the Agency's renewal applications on June 1, 2016 for life and A&S insurance, and on each application, answered "No" to the question, "Since the date of the last application in Alberta for a Certificate of Authority or Renewal thereof have you: ... Been convicted of an offence under the Insurance Act, the Criminal Code or any other enactment?"

The AIC obtained a copy of the "Consensual Agreement and Undertaking" between the SK Council and the Agency dated October 21, 2015, in which the Agency acknowledged and agreed that the Agency violated Bylaw 8, Section 2(g) [failing to maintain a valid policy of errors and omissions insurance], and consented to a fine in the amount of \$527.00, as well as the payment of investigation costs in the amount of \$330.00.

In response to the AIC's investigation into the Agency's lapse in E&O coverage, the DR advised that the E&O renewal notice was inadvertently overlooked and that this resulted in a 6-week period where the Agency was without coverage. Notwithstanding this, the Agency still carried on business. However, it should be noted that the individual agents maintained their own additional E&O coverage during this period.

As to the question of the DR's failure to disclose the existence of the SK conviction, the DR indicated that he misinterpreted the nature of the question. In this case, he did not believe that a fine levied against the Agency constituted a conviction "under any other enactment", nor did he believe that it rose to a level requiring a "Yes" response to the question in the online renewal application process.

During its investigation, the AIC further learned that a second prosecution was being pursued against the Agency in British Columbia for a similar offence. An "Intended Decision" and "Order" in relation to the matter between the Insurance Council of British Columbia ("ICBC") and the Agency dated January 23, 2017 and February 15, 2017, respectively, alleges the Agency failed to disclose the SK Council matter in that province and a fine of \$1,000 was proposed.

Discussion

Section 467 of the Act requires applicants to provide the information that is requested on application forms. One question requires that the applicant disclose or not the applicant has any convictions. The

reason for this is that an applicant is not entitled to hold a license if he or she has been convicted of an offence that renders the applicant unsuitable to hold a license (see ss. 5(1)(d) and 5(2)(e) of the *Insurance Agents and Adjusters Regulation*, A.R. 122/2001 as amended, hereinafter referred to as the “Regulation”). Failing to provide this information impedes the AIC’s ability to effectively determine an applicant’s eligibility to act as an insurance agency and it constitutes a breach of the Act pursuant to s. 480(1)(b). This type of offence is strict liability in nature. In other words, it is not necessary to prove that the Agency intentionally withheld the information. Rather, the material acts in the offence are proven when it is shown that the disclosure was not made and, at that point, the onus shifts to the Agency to demonstrate that it took all reasonable means to avoid committing the offence. This is referred to as establishing a “due diligence” defence. In our view, the SK Council sanction was a conviction as contemplated under the Regulation and the Agency was required to disclose its existence. The DR did not disclose the offence and the question then turns to whether the Agency took all reasonable efforts to avoid committing the offence. From our review of the facts, the offence arose because the DR made certain assumptions as to what the question asked and took no steps to determine whether the SK offences should have been disclosed. Obviously, the DR considered the question of whether it should have been disclosed but he took no steps to contact the AIC to ensure that his assumptions were correct. Having failed to do this it cannot be said that the Agency acted in a duly diligent manner and we find the Agency guilty of the offence as alleged.

As to the appropriate sanction, we can levy civil penalties in amounts not exceeding \$1,000.00 for these types of matters pursuant to ss. 480(1)(b) of the Act and 13(1)(b) of the *Certificate Expiry, Penalties and Fees Regulation*, A.R. 125/2001. We also can suspend the Agency’s certificate of authority for a period up to maximum of one year. The Agency has no previous disciplinary convictions with the AIC and we note that the DR cooperated fully throughout the course of the investigation. Considering these facts, we levy a civil penalty in the amount of \$300.00.

We further find that the Agency is guilty on Count 2 of the Report and has violated section 465(1) of the Act because it did not have the required E&O insurance. This offence is also one of strict liability and we similarly find that the Agency did not act with due diligence. Regarding this finding we order that a civil penalty in the amount of \$300.00 be levied against the Agency. We do not believe that license suspensions or revocations would be appropriate in the circumstances.

The two civil penalties (totaling \$600.00) must be paid within thirty (30) days of receiving this notice. If the civil penalties are not paid within thirty (30) days, the Agency's certificates of authority will be automatically suspended pursuant to s. 480(4) of the Act. Pursuant to s. 482 of the Act (copy enclosed), the Agency 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.

Dated: June 12, 2017

Michael Bibby
Michael Bibby, Member
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