

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 Mireille Kiala
(the "Former Agent")

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

This case involved allegations pursuant to ss. 30(1)(a) and (b) of the Insurance Agents and Adjusters Regulation. Specifically, it is alleged that the Former Agent failed to submit the necessary continuing education ("CE") records to confirm she met the CE requirements to renew her life and accident and sickness ("A&S") certificates of authority in the 2015 and 2016 certificate terms. Alternatively, it was alleged pursuant to ss. 31(1) and (2) that the Former Agent failed to keep a record of her CE course certificates in relation to her life and A&S certificates of authority in the 2015 and 2016 certificate terms. In doing so, she violated s. 480(1)(b) of the Act.

Facts and Evidence

The Former Agent was first licensed for life and A&S insurance on October 30, 2014, and she continued to retain those certificates of authority until to November 15, 2016, when they were terminated for failing to respond to the request for her CE records.

Pursuant to a CE compliance audit, the AIC emailed the Former Agent several times, beginning on October 11, 2016, to request copies of the CE certificates that corresponded to the courses she reported on the AIC's online system when renewing her certificates of authority in the 2015 and 2016 certificate terms. Here is a brief summary of what she reported:

<u>Year</u>	<u>Certificate</u>	<u>Requirement</u>	<u>Reported</u>
2015	A&S	11.25	13.25
2016	A&S	12.50	13.25
2015	Life	11.25	19.75
2016	Life	7.50	29.75

When the Former Agent finally responded to the audit request on March 13, 2017, she wrote back as follows:

...I saw the email when they first started coming but I didn't read them for I was depressed (after losing my job in October) and was going through quite a few personal problems; I wanted to respond to them at a later date, as well as I was not certain that I wanted to continue being an agent and was not planning to renew my licence. I failed to print and keep copies of my CE courses when I took them and to add insult to injury, my computer's HD failed and had to recycle it.

To assist the Former Agent, the AIC investigator explained to her that she could log into her AIC profile from any computer to obtain a record of her courses. Then she would need to contact the CE providers directly and have duplicate certificates issued.

The investigator next heard from the Former Agent on March 29, 2017 and she advised that she recently started attending "workshops" for credits and will be "resourcing" online courses to obtain the necessary credits to renew. The Investigator explained to her that the Former Agent did not currently hold a valid and subsisting certificate of authority to renew. She would have to submit new agent application to "reinstate" her certificates of authority, but that she was still obligated to submit her CE records. There has been no contact since.

Discussion

Sections 30(1)(a) and (b) of the Insurance Agents and Adjusters Regulation require an agent holding a certificate of authority to complete in each certificate term at least 15 hours of approved continuing education courses. Sections 31(1)(a) and (b) require the agent to keep records of those continuing education courses for 3 years following the expiry of the certificate term and to provide them upon request. These sections fall into a category of offences called strict liability offences. As such, the AIC only has the onus to prove that the Former Agent did not retain her CE completion certificates for the

period required. Once this occurs, the onus shifts to the Former Agent to establish a defense of due diligence. To establish this, she must prove that she took all reasonable measures to avoid the offence. In this case, it may be that the Former Agent could not automatically produce her certificates because her computer was damaged. However, in those circumstances she had the responsibility to contact the course providers to obtain the certificates and she failed to take this reasonable step. Therefore, we find the Former Agent guilty of failing to provide her CE records as required by the Regulation.

As to the appropriate sanction for this conduct, we can levy civil penalties in an amount up to \$1,000 for offences pursuant to s. 480(1)(b). In this case, we are cognizant of the fact that this is the Former Agent's first disciplinary infraction and the fact that she no longer holds a certificate of authority. Given this, we are of the view that a civil penalty at the lower end of the spectrum is appropriate. Therefore, we order that a civil penalty of \$300.00 be levied against the Former Agent.

The civil penalties must be paid within thirty (30) days of the mailing of this decision. If the civil penalties are 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.

Date: June 27, 2017

Ken Doll
Ken 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