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 Jeslie Gajes
(the "Former Agent")

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

This case involved allegations pursuant to ss. 480(1)(a) and 509(1)(a) of the Act. Specifically, it is alleged that the Former Agent indicated on applications to renew his certificates of authority that he completed his continuing education ("CE") requirements for life and accident & sickness ("A&S") insurance when he did not, in fact, complete his CE requirements. In so doing, it is alleged that he made misrepresentations or acted in a dishonest or untrustworthy manner pursuant to s. 480(1)(a) of the Act. Alternatively, it was alleged that the Agent made false or misleading statements as contemplated in s. 509(1)(a) of the Act by reporting that he had completed CE courses to renew his life and A&S certificates of authority for the 2016 certificate term when he did not.

Facts and Evidence

The Former Agent held life and A&S certificates of authority from June 1, 2015 to November 15, 2016. When the Former Agent submitted his renewal applications for life and A&S insurance on June 30, 2016, he declared: "I confirm that I have completed the [CE] required by the regulation for the certificate in the class of [A&S] [Life]. I further certify that I have certificates to support the [CE] which I have entered and will retain those certificates in accordance with the regulation."

In October, 2016 the AIC conducted a random audit of the Former Agent's continuing education and the AIC requested that he provide his CE certificates and records. As the Former Agent did not respond, the AIC investigator requested these records again on February 3, 2017. The Former Agent responded on February 19, 2017 by providing the AIC with four (4) CE course certificates. Of these, only one was verified and the three remaining were for courses that were not accredited for Alberta CE purposes.

Ultimately, he was unable to provide CE certificates for the courses that he entered when completing his 2016 renewals.

The Former Agent advised that he renewed his licenses with his brother-in-law and may have made errors entering his CE courses. He was adamant that he had no ill intent to enter incorrect CE courses to renew his licenses.

Discussion

In order to conclude that the Former Agent has committed an offence pursuant to s. 480(1)(a) of the Act, the Report must prove, on the basis of clear and cogent evidence, that it is more likely than not that the Agent committed the act as alleged. The requirement of clear and cogent evidence reflects the fact that our findings can dramatically impact an insurance agent's ability to remain in the industry.

Additionally, the elements of s. 480(1)(a) offences have been discussed by the Alberta Court of Queen's Bench in *Roy* v. *Alberta (Insurance Councils Appeal Board)*, 2008 ABQB 572 (hereinafter "*Roy*"). In *Roy*, the Council found that an Agent committed an offence pursuant to s. 480(1)(a) of the Act when he attested to completing the applicable CE when he did not, in fact, have the required CE. The Agent also held a securities license and stated that he believed that the CE required to maintain his securities license was applicable to his insurance agent requirements. 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 his reasons for judgment, Mr. Justice Marceau reviewed the requisite test to find that an offence pursuant to s. 480(1)(a) of the Act has been made out and expressed it 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 <u>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</u>. 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] <u>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</u>

> 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)

As to the section referenced in the alternative charge, s. 509(1)(a) of the Act provides that "[n]o insurer, insurance agent or adjuster may make a false or misleading statement, representation or advertisement." This section falls into a category of offences called strict liability offences. As such, the AIC only has the onus to prove that the Former Agent's statement that he had earned the reported CE credits was false. Once this occurs, the onus shifts to the Former Agent to establish a defense of due diligence. To establish this, he must prove that he took all reasonable measures to avoid making the false statement.

Considering the evidence before us, we are of the view that the Former Agent is guilty of an offence pursuant to s. 509(1)(a) of the Act. In terms of CE, the AIC cannot prove a negative – that the Former Agent did not complete the CE to which he attested. Rather, it is incumbent on the Former Agent to provide CE certificates that substantiate the courses he reported to demonstrate that he did take them. Given his failure to provide these certificates we find that he made a false declaration on his renewal applications and that he did not act with sufficient diligence.

As to the appropriate sanction for this conduct, we can levy civil penalties in an amount up to $1,000.00 for offences pursuant to s. 480(1)(b) and 13(1)(b) of the *Certificate Expiry, Penalties and Fees Regulation*, A.R. 125/2001. Based on these factors and the evidence before us, we order that a civil penalty of $300.00 be levied against the Former Agent.

The civil penalty must be paid within thirty (30) days of the mailing of this decision. If the civil penalties are not paid within thirty (30) days, the Former Agent's certificate of authority will be automatically suspended and 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.

Dated: June 27, 2017

Ken Doll
Kenneth Doll, Chair
Life Insurance Council

<u>Extract from the *Insurance Act*, Chapter I-3</u>

<u>Appeal</u>

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.

<u>Extract from the *Insurance Councils Regulation*, Alberta Regulation 126/2001</u>

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
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