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 Amy Tan
(the "Former Agent")

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

This case involved allegations pursuant to sections of the *Insurance Agents and Adjusters Regulation* relating to the Former Agent's continuing education ("CE") obligations. Specifically, it is alleged that the Former Agent failed to obtain the mandatory CE required of her in relation to her 2015 and 2016 life and accident and sickness ("A&S") certificates of authority. 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.

It was also alleged that the Former Agent violated s. 480(1)(a) of the Act in that she made misrepresentations as to completing the required CE when she did not. Alternatively, it was alleged the Former Agent contravened s. 509(1)(a) of the Act and made a false or misleading statement and representation by reporting that she had completed CE courses to renew her certificate of authority for life insurance in the 2016 certificate term and to renew her certificate of authority for A&S insurance in the 2015 and 2016 certificate terms when she had not. Consequently, she violated a section of the Act as contemplated in s. 480(1)(b).

Finally, it was alleged that the Former Agent violated s. 481(2) of the Act when she failed or refused to provide information and documentation requested by the AIC Investigator, and therefore contravened a provision of the Act pursuant to section 480(1)(b) of the Act.

Facts and Evidence

This matter proceeded by way of a Report to Council ("Report") dated May 3, 2017. The Report was provided to the Former Agent to allow her the opportunity to adduce additional evidence or submissions. The Former Agent did not respond.

The facts are relatively straightforward. On October 11, 2016, as part of a CE compliance audit, the AIC requested that the Former Agent produce records of the courses she reported having completed when she submitted license renewal applications in 2015 and 2016. On both those occasions she 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 a series of emails from November 11 through 21, 2016, the Former Agent provided a number of CE certificates. However, she also acknowledged that these were incomplete in that she was waiting for one CE provider to give her a certificate.

The Former Agent and the AIC investigator exchanged further emails. One of these included a formal Demand for Information pursuant to section 481(1) and (2) of the Act. The last communication from the Former Agent came on March 14, 2017 when she advised she was in the United States and would be returning to Calgary in a couple of days. By April 25, 2017, there had still been no word from the Former Agent. Given this, investigator reconciled the Former Agent's CE profile with the information in hand and deleted those courses for which the Former Agent could provide no CE certificates. This resulted in the following summary:

Year	License	Required	Reported	Shortage
2015	A&S	9.50	8.00	(1.50)
2016	A&S	16.50	11.50	(5.00)
2016	Life	14.50	11.50	(3.00)

Discussion

Count 1:

Sections 30(1)(a) and (b) of the Regulation require an agent holding a certificate of authority to annually complete 15 hours of CE for each class of certificate they hold. Sections 31(1)(a) and (b) require an agent to keep records of those continuing education courses for 3 years following the expiry of the certificate term in which they were earned and to provide them to the AIC upon request. These sections fall into a category of offences called strict liability offences. For example, 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, the Former Agent made declarations to the AIC that she completed the required CE and that she possessed the certificates to substantiate this. She further declared that she would retain them for the period required by the Regulation. The fact that she could not provide the course completion certificates on request proves that she did not comply with the retention requirement and in the absence of certificates the only reasonable conclusion is that the Former Agent did not obtain the CE that was required.

Count 2:

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 Former 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 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. 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).
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> [25] 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 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.
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> [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)

In applying this test to the case before us, it is clear that the Former Agent did not possess the required CE in either the 2015 or the 2016 certificate terms for each class of license she held. However, based on the evidence before us, we are not able to conclude that she made a deliberate misrepresentation with the intention to deceive the AIC.

Alternatively, it was alleged that the Former Agent violated s. 509(1)(a) of the Act, which 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, she must prove that she took all reasonable measures to avoid making the false statement. She did not do this. Based on this evidence, we find that the Former Agent's statements on her renewal applications were false or misleading pursuant to s. 509 of the Act.

Count 3:

We turn next to the allegation that the Former Agent violated s. 481(2) of the Act. 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."

As noted above, regulatory offences such as these are strict liability offences. The evidence proves that the AIC made a Demand for Information of the Former Agent and that she did not respond as required. As the Former Agent has not responded to the Demand or the Report, there is no evidence before us to suggest that the Former Agent took all reasonable means such that she can avail herself of the applicable due diligence defence. Given this, we find the Agent guilty of failing to respond to the Demand.

As to the appropriate sanctions for this conduct, we have jurisdiction to levy civil penalties of up to $1,000.00 per offence pursuant to s. 13(1)(b) of the Certificate Expiry, Penalties and Fees Regulation. As the Former Agent no longer holds a certificate of authority we have no ability to order a license suspension or revocation. As to our findings in regard to Count 1 we order that a civil penalty of $300.00 be levied. As to our findings in relation to Count 2 we order that a civil penalty of $300.00 be levied against the Former Agent as to each of the renewals that she submitted (the 2015 and 2016 certificate terms) for a total of $600.00. As to Count 3 and the Former Agent's failure to respond to the Demand for Information, we order that a civil penalty of $1,000.00 be levied.

The civil penalties totaling $1,900.00 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 Former 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: July 12, 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