

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 ASF Advisory Group Inc.
(the "Agency")

As represented by
Designated Representative Lenard Cole
(the "DR")

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

This case involved an allegation pursuant to s. 481(2) of the Act. Specifically, it is alleged that the Agency failed or refused to provide information and documentation requested by the AIC within the time specified in the demand for information. In so doing, it is alleged that this constitutes an offence pursuant to s. 481(2) of the Act.

Facts and Evidence

The Agency is the holder of life and accident & sickness ("A&S") certificates of authority for the sale of life and A&S insurance. It was first licensed on November 10, 2014. On September 4, 2015, the Insurance Councils of Saskatchewan ("ICS") and the Agency entered a Consensual Agreement and Undertaking to pay a fine amount of \$2,121.00 for violating the ICS's bylaws (Schedule A, Part II, Section 6, subsection (1) ... failing to maintain a valid policy of errors and omissions insurance).

During the 2016/2017 renewal application process for its Alberta certificates of authority, the DR answered "No" to the following: "QUESTION: 3 Been convicted of an offence under the Insurance Act, the Criminal Code or any other enactment?". This was the same answer given on both renewal applications.

The AIC sent an email dated March 10, 2017, to the DR requesting that he provide an explanation as to why he failed to disclose on the 2016/2017 renewal applications that the Agency was convicted of an offence by the ICS. The Agency did not respond. As a result, on April 4, 2017, the AIC sent a demand letter to the DR that requested that he provide a response to the AIC's prior email dated March 10, 2017. Once again, the DR did not respond.

Finally, on May 3, 2017, after the Report had been forwarded to the Council for review, a signed copy of the Report was received from the DR with the following handwritten annotation:

My appologies [sic] for not responding earlier, I am an accountant as well and was in the middle of tax season and missed seeing the first letter that was sent. When filling out the license renewal, I answered the questions as myself not as ASF by mistake. We always had E&O but the Sask Insurance Council changed the rules and we had to find a new carrier for our insurance, also meant that we had to then register our corporation in MB and AB as well which all took time. As to this matter by mistake (I found your renewal site confusing) I answered the questions as myself personally and not as ASF.

Discussion

The AIC operates under a delegation from the Minister of Treasury Board and Finance that authorizes the AIC to investigate complaints against holders and former holders of insurance agent certificates of authority. Pursuant to the Minister of Finance Directive No. 05/01, the Minister also delegated his powers under s. 481 to the AIC. 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 specified in the direction any information specified by the Minister relating to the matters in section 480(1).”

Subsection 2 states that the “...A person served with a direction ... who has the information must provide the information in accordance with the direction.”

The complaint raised issues of possible misrepresentation, fraud, deceit, dishonesty or untrustworthiness as set out in s. 480(1)(a) of the Act. In furtherance of this investigation, the investigator sent the Demand to the address at which the Agent was licensed. While the DR eventually responded in the context of receiving and responding to the Report, the DR did not respond in the period required by the Demand.

Offences of these types are known as strict liability offences. This means that the AIC does not need to

prove that the Agency intentionally breached a section of the Act or regulations at issue. Rather, the only thing that needs to be proven is that the Agency failed to respond to the Demand as required. Once that is proven, the onus then shifts to the Agency to prove that it took all reasonable means to avoid committing the offence. This is known as the defence of due diligence.

The evidence proves that the Demand was properly made and we are of the view that the required timeline was reasonable. The evidence also proves that the Agency failed to respond in accordance with the Demand. While the Agent finally responded, his explanations do not rise to the level of due diligence. As such, we conclude that he breached s. 481 of the Act and, in so doing, contravened a section of the Act as contemplated in s. 480(1)(b).

In terms of the applicable sanction, the public relies on the AIC to investigate complaints and the Act requires that holders and former holders of licenses 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. Given the facts in their entirety, we order that a civil penalty in the amount of Five Hundred Dollars (\$500.00) against the Agency 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 receiving this notice. If the penalty is not paid within thirty (30) days, interest will begin to accrue at the applicable prescribed rate. 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.

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 9, 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