

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 Personal Travel Management Ltd.
(the "Restricted Agent")

As represented by Designated Representative Rikki Hepburn
(the "DR")

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

This case involved an allegation pursuant to s. 452(1) of the Act. Specifically, it is alleged that the Restricted Agent acted as an insurance agent for sales of travel insurance from July 1, 2016, through to March 5, 2017, without holding a valid and subsisting certificate of authority to do so. This constitutes an offence pursuant to s. 480(1)(b) of the Act.

Facts and Evidence

This matter proceeded by way of a written Report to Council dated May 3, 2017, (the "Report"), which was reviewed and signed by the DR on May 15, 2017.

The Restricted Agent submitted a Form 5-G Application for Restricted Agents Certificate of Authority ("Form 5-G") dated February 23, 2017. Given the fact that the Restricted Agent previously held a restricted certificate that was not renewed, AIC licensing staff asked it to confirm whether it had continued to act as a restricted insurance agent following the expiry of its license on July 1, 2016. The DR advised that they had because they were unaware their license had not been renewed until it was brought to their attention by Manufacturer's Life Insurance Company ("Manulife") on February 28, 2017.

The DR subsequently explained that the e-mail notices from the AIC that customarily went out to all license holders during Alberta's license renewal period (May 1 to June 30) went to the "clutter folder" on her computer. She has since taken steps to ensure this could never happen again.

During the unlicensed period, 72 transactions occurred: 6 refunds/reissues, and 66 travel insurance policies were sold. It generated a total of \$10,281.80 in commission sales. Both the DR and Manulife agree that no business was accepted for the province of Alberta between February 28, 2017 and March 5, 2017 (the date the Restricted Agent applied to have the certificate of authority reinstated).

Discussion

In order to prove the allegations in the Report, the AIC must adduce sufficient evidence to demonstrate that the Restricted Agent acted in the capacity of an insurance agent, as defined in the Act, during a period in which it did not hold a valid and subsisting certificate of authority. Once this is done, the onus shifts to the Restricted Agent to demonstrate that all reasonable measures were taken to avoid acting as an insurance agent absent a certificate of authority. There is no requirement that the Council prove that the Restricted Agent acted intentionally.

The evidence in the Report establishes that the Restricted Agent acted in the capacity of an insurance agent with actual proof of transactions spanning the period July 27, 2016, through to February 15, 2017. This is beyond doubt and the DR does not deny this. As to the defense of due diligence, the applicable certificate terms are set out in the Certificate, Expiry, Penalties and Fees Regulation and the circumstances outlined by the DR prove that the Restricted Agent did not take all reasonable means to avoid the offence. For example, the DR could have independently diarized the renewal to avoid missing the applicable dates. Therefore, we find that the Restricted Agent committed the offence as set out in the Report.

In terms of the applicable sanction, we can levy civil penalties in an amount up to \$1,000.00 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). In this case, this is the Restricted Agent's first infraction of the Act and we do not believe that a civil penalty at the high end of the spectrum is appropriate. In the totality of the circumstances, we order that a civil penalty in the amount of \$300.00 be levied against the Restricted Agent. The civil penalty must be paid within thirty (30) days of receiving this notice. In the event that the civil penalty is not paid within thirty (30) days, interest will begin to accrue. Pursuant to s. 482 of the Act (copy enclosed), the Restricted 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.

Date: June 27, 2017

Ken 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