

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 Rahime Motors Ltd./DiscountMotors.ca
(the "Dealership")

as Represented by Designated Individual Wassam Rahime
(the "DI")

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

This case involved an allegation pursuant to s. 481 of the Act. Specifically, it is alleged that the Dealership failed to respond to a Demand for Information. As such, it is alleged that it contravened a section of the Act or regulations as contemplated by s. 480(1)(b).

Facts and Evidence

This matter proceeded by way of a written Report to Council dated January 5, 2018 (the "Report"). The Report was forwarded to the DI for review and to allow the Dealership to provide the Council with any further evidence or submissions by way of Addendum. The Dealership did not respond to the Report.

The Dealership was the holder of a certificate of authority for the sale of equipment warranty insurance. The Dealership first held a certificate on January 6, 2011. On June 30, 2016 the certificate expired and the Dealership did not hold another valid certificate of authority until May 8, 2017. The DI was named as the Dealership's designated individual when it first held a certificate and continued to be the Dealership's DI thereafter.

The Dealership submitted an application for a new certificate of authority on May 4, 2017. By email date May 5, 2017 the AIC requested that the DI confirm whether the Dealership received compensation for the sale of equipment warranty insurance policies since July 1, 2016. In a May 8, 2017 email, the Dealership

confirmed that the Dealership sold equipment warranty policies during the period in which it did not hold a valid Certificate.

The AIC sent another email to the DI on May 23, 2017 and requested that he provide the AIC with information regarding the equipment warranty insurance policies sold through Dealership when it did not hold a certificate of authority. The DI responded in an email dated September 6, 2017, indicating that the Dealership did not sell any equipment warranty policy during the unlicensed period.

On September 6, 2017 the AIC emailed an official of the Dealership's recommending insurer and requested that he confirm whether or not the Dealership sold any equipment warranty policies during the relevant period. The insurer responded in an email dated October 6, 2017 and advised the AIC that the Dealership sold five equipment warranty policies during the unlicensed period. It also provided the AIC with copies of the applications.

On October 10, 2017 the AIC sent a demand letter to the DI (the "Demand") pursuant to s. 481 of the Act. The Demand required that the that the Dealership confirm the number of equipment warranty policies sold during the unlicensed period. In an email dated October 20, 2017 the DI wrote that the Dealership leased a portion of their office space to another entity and that it was this entity that sold the equipment warranty policies rather than the Dealership.

The AIC Sent an email to the DI dated October 30, 2017 that requested that the DI provide information regarding the other entity. As the DI did not respond, the AIC sent the DI a second registered demand letter to the Dealership's business address dated November 17, 2017 (the "Second Demand"). The Second Demand required that the DI provide the information as requested in the AIC's prior email dated October 30, 2017. Canada Post records indicate that the Dealership received the Second Demand on November 20, 2017. The DI failed to respond in accordance with the Second Demand.

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 (such as the Dealership in this case) of insurance Dealership 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 of time 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 offence set out in s. 481 of the Act is one of strict liability. As a result, the AIC only needs to prove that a demand for information was properly made and delivered. There is no requirement that the AIC prove that the Dealership’s failure to respond was intentional. Once the AIC has proven that the demand was made, the onus shifts to the Dealership to demonstrate that he took all reasonable efforts to avoid committing the offence. From the evidence in the Report, we are satisfied that the Second Demand meets the requirements of s. 481 of the Act. Given the fact that the Dealership failed to respond to the Report, he has not met the burden of establishing the due diligence defence and we find him guilty as alleged in the Report.

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 Dealerships 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 \$500.00 be levied against the Dealership 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. In the event that 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 Dealership 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 General Insurance Council. The motion was duly recorded in the minutes of that meeting.

Date: March 12, 2018

original signed by _____

Lorrie King, Chair
General 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

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