

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 Croix Justin Wright
(the "Agent")

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 Agent failed or refused to provide information and documentation requested by an AIC investigator (the "Investigator") through a Demand for Information (the "Demand") contrary to s. 481 of the Act. In so doing, it is alleged that the Agent contravened a provision of the Act pursuant to s. 480(1)(b).

Facts and Evidence

This matter proceeded by way of a written Report to Council dated December 12, 2017 (the "Report"). The Report was forwarded to the Agent for review and to allow the Agent to provide the Council with any further evidence or submissions by way of Addendum. The Agent did not respond.

In August, 2017 the AIC sent correspondence to various insurance companies that requested confirmation that certain AIC licensees held the mandatory Errors and Omissions ("E&O") insurance coverage required by the Act. The AIC opened investigation files against licensees when insurers stated that their records did not align with the E&O information the licensees disclosed to the AIC upon renewing their certificates of authority. This matter arose out of the AIC's E&O audit.

The Agent was the holder of life and accident & sickness ("A&S") certificates of authority and was first licensed on February 3, 2017. The AIC sent correspondence to the Agent dated October 16, 2017 requesting that he provide the AIC with information regarding his E&O coverage required by s. 465 of the Act.

As the Agent did not respond, the AIC sent the Demand dated November 10, 2017 to the Agent's business address via registered mail. The Demand requested that the Agent provide the information as requested in the

AIC's prior correspondence dated October 16, 2017, specifically proof of E&O insurance to satisfy the audit. The Demand required that the Agent respond by Tuesday, November 28, 2017. Canada Post indicated that the Demand was delivered on November 15, 2017.

The AIC contacted the Agent on November 21, 2017 via telephone and left a voicemail message requesting that he contact the AIC in accordance with the Demand. Once again, the Agent did not respond.

Discussion

As has been noted in a number of similar recent cases, 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 Agent in this case) 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 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. This means that in order to be found guilty, 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 Agent's failure to respond was intentional. Once the AIC has proven that the demand was made, the onus shifts to the Agent to demonstrate that he took all reasonable efforts to avoid committing the offence. From the evidence in the Report, we are satisfied that the AIC's Demand meets the requirements of s. 481 of the Act. Given the fact that the Agent 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 Act requires that holders and former holders of licenses provide information when called upon to do so. Given the facts in their entirety, we order that a civil penalty in the amount of \$1,000.00 be levied against the Agent 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 civil penalty is not paid within thirty (30) days, the Agent's certificates of authority will be suspended in accordance with s. 480(4) of the Act and 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: March 13, 2018

Original signed by
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