

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 Adelaida Sescon
(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 the AIC through a Demand for Information (the "Demand"). In so doing, it is alleged that the Agent contravened a provision of the Act as contemplated in s. 480(1)(b).

Facts and Evidence

This matter proceeded by way of a written Report to Council dated November 10, 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.

On September 29, 2017 the AIC conducted an audit to verify that the Continuing Education ("CE") credits disclosed on licensees renewal applications were accurate. The AIC sent emails to randomly selected agents who were pulled from a pool of agents that applied for renewal of their certificate(s) between the period of May 1, 2017 to June 30, 2017. The selected agents were asked to provide proof of CE credits for the past 3 licensing periods from 2014 to 2017.

The Agent was the holder of life and accident & sickness ("A&S") certificates of authority and was licensed from April 12, 2016 until November 1, 2017. The Agent's certificates of authority were suspended on November 1, 2017 due to her failure to provide the required proof of CE credits.

On September 22, 2017 the AIC emailed the Agent advising that an audit of her CE would be forthcoming, and a formal request would follow. The AIC emailed the Agent a Demand on September 29, 2017 with a thirty (30) day response period. On October 5, 2017 the AIC telephoned the Agent and requested that she respond to the CE audit within the 30 day period set out in the Demand. Further, the AIC emailed the Agent on October 16, 2017 to request a response to the Demand before the deadline. The Agent did not respond in accordance with the 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 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 she 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, she has not met the burden of establishing the due diligence defence and we find her 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 \$300.00 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 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 General 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