

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 Mary Ann Jamora Bongcawil
(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 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 November 6, 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. The Agent provided an Addendum to the Report in the form of a Continuing Education ("CE") record.

In September, 2017 the AIC conducted an audit to verify that the CE credits disclosed on certain licensees' renewal applications were accurate. The AIC randomly selected agents from a pool of agents who submitted their certificate renewal application(s) on the last day 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. This investigation was opened as the Agent failed to respond to the Demand for CE certificates.

The Agent was the holder of a life and accident & sickness (A&S) certificates of authority and held these licenses from May 20, 2016 to November 1, 2017. On November 1, 2017 the Agent's certificates were suspended due to her failure to provide proof of CE credits as required by the AIC.

On September 22, 2017 the AIC advised the Agent that an audit of her CE would be forthcoming, and a formal request would follow. The AIC emailed the Agent the Demand on September 29, 2017 and it required that she respond within thirty days. On October 5, 2017 the AIC phoned the Agent and requested that she respond to the CE audit within the 30 day period set out in the Demand. On October 25, 2017 the Investigator emailed the Agent to remind her that she had not yet provided her CE certificates and the ramifications should this not happen by the deadline set-out in the Demand. 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 fact that the Agent did ultimately respond (albeit not in accordance with the Demand), 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 14, 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