

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 Chen Shen
(the "Agent")

DECISION
OF
The General 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 January 25, 2018 (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 provide any further evidence or submissions by way of an addendum.

The Agent is the holder of a Level 1 general insurance agent certificate of authority. The Agent first held the certificate of authority on October 13, 2016. The AIC was notified that the Agent allegedly engaged in unlicensed activity by selling life insurance without a valid certificate of authority.

On November 10, 2017 the AIC emailed the Agent a request for information to establish the number of life insurance policies sold (if any), and to determine if he had profited from this alleged activity. The Agent responded to the AIC by way of email on November 11, 2018 but did not provide the information requested. The AIC contacted the Agent via telephone on November 14, 2017 and requested that he respond in accordance with the request for information. The Agent did not respond.

The Agent provided only a partial response. Therefore, the AIC issued a Demand by way of registered mail on November 24, 2017. He was required to provide the information by December 8, 2017. The Agent responded by email on December 23, 2017 and stated that he was willing to cooperate however, his response was received outside of the period set out in the Demand. Further, the Agent's additional responses offered no explanation as to the Agent's actions. To date, the Agent has offered no further information.

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, of insurance agents' 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 Agent's failure to respond was intentional. Once the AIC has proven that the demand was made, the onus then 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 Demand meets the requirements of s. 481 of the Act. The investigator was investigating whether the Agent had acted in the capacity of a life insurance agent notwithstanding the fact that he did not hold a life insurance certificate of authority. As the Agent did not respond within the timeframe required by the Demand 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 agents 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 \$250.00 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 the Agent's licenses will be suspended 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 General Insurance Council. The motion was duly recorded in the minutes of that meeting.

Date: April 19TH, 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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