

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 Dave Herasymiuk (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 within the time specified in a Demand for Information (the "Demand"). In so doing, it is alleged that the Agent contravened s. 481 of the Act.

Facts and Evidence

This matter proceeded by way of a written Report to Council dated February 15, 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 was the holder of life and accident & sickness insurance certificates of authority and had been licensed from March 17, 2014 to February 15, 2018. On January 11, 2018, the AIC emailed the Demand to the Agent and it required that the Agent provide the AIC with proof of his errors and omissions insurance ("E&O") coverage within thirty days. As the Agent did not respond to the Demand, the AIC suspended his certificates of authority on February 15, 2018 pursuant to s. 478(2) of the Act and opened the compliance file that resulted in the Report.

Discussion

The AIC operates under a delegation from the Minister of Treasury Board and Finance (the "Minister"). Through this delegation, the AIC has authority over matters relating to current and former holders of insurance agent certificates of authority. 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 by the Minister relating to the matters in section 480(1)." Subsection 2 states that the "... person served with a direction under

subsection (1) who has the information must provide the information in accordance with the direction.”

Regulatory offences such as these are strict liability offences. As such, the AIC has the onus to prove that the Demand was properly made upon the Agent (proper in the sense that they meet all of the requirements under the Act) and that the Agent did not comply. Once this occurs, the onus shifts to the Agent to establish that he exercised due diligence in meeting his statutory requirement to respond. To substantiate this due diligence defence, the Agent must demonstrate that he took all reasonable means to avoid the offence.

The evidence is clear that the AIC investigator was attempting to determine whether the Agent had the E&O required under the Act and regulations. In furtherance of this investigation, the investigator sent the Demand to the Agent and the Agent did not respond. Given these facts, the onus shifts to the Agent to prove that he took all reasonable means to respond as required. As he did not reply to the Report or provide any additional evidence or submissions, the Agent has failed to prove that he acted with due diligence and we find him guilty failing to respond to the Demand.

In terms of the applicable sanction, the public relies on the AIC to investigate complaints and the Act requires that holders and even former holders, such as the Agent, provide information when called upon to do so. Therefore, the public is not well-served when agents fail to comply with demands like those made in this case. Pursuant to s. 13(1)(b) of the *Certificate Expiry, Penalties and Fees Regulation*, A.R. 125/2001, the Council has the discretion to assess a civil penalty in an amount up to \$1,000.00. This Council has reviewed an inordinate number of cases relating to the failure of licensees to respond to demands for information. In this case, the Agent has not responded in any meaningful way and we believe that a significant civil penalty must be assessed to send a strong message to not only the Agent but to all licensees. Therefore, we order that a civil penalty of \$750.00 be levied against the Agent. The civil penalty must be paid within thirty (30) days of the mailing of this Decision. If the civil penalty is not paid within thirty (30) days, interest will begin to accrue.

Pursuant to s. 482 of the Act, 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: April 16, 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