

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 Brian McNab
(the "Adjuster")

DECISION
OF
The Insurance Adjusters' Council
(the "Council")

This case involved an allegation pursuant to s. 481(2) of the Act. Specifically, it is alleged that the Adjuster 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 Adjuster 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 10, 2018 (the "Report"). The Report was forwarded to the Adjuster for review and to allow the Adjuster to provide the Council with further evidence or submissions by way of Addendum. The Adjuster did not respond to the Report.

In September, 2017 the AIC conducted audits to verify that the Continuing Education ("CE") credits disclosed on licensees' renewal applications were correct. The AIC randomly selected licensees for audit who were pulled from a pool that renewed their certificates of authority during the final days of the May/June renewal period. The selected licensees were asked to provide proof of their CE credits for the past 3 licensing periods.

The Adjuster is the former holder of an adjuster's certificate of authority, and other than from July 1, 2014 to May 31, 2016 the Adjuster was licensed from July 22, 2013 until November 1, 2017. The Adjuster's certificate of authority was suspended on November 1, 2017 due to his failure to produce proof of CE certificates.

On September 22, 2017 the AIC advised that a formal audit of his CE credits would be forthcoming. The AIC then emailed a Demand letter to the Adjuster on September 29, 2017 and provided him with thirty days to respond. On October 5, 2017 the AIC telephoned the Adjuster and requested that he respond to the CE audit

within the 30 day period set out in the Demand, and then emailed the Adjuster on October 16, 2017 requesting that the Adjuster respond in accordance with the Demand. The Adjuster did not respond.

Discussion

As we have noted previously, 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 adjuster 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 s. 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 of failing to respond to a demand for information is one of strict liability. This means that in order to be found guilty, the AIC only needs to prove that the Demand was properly made and delivered. There is no requirement that the AIC prove that the Adjuster’s failure to respond was intentional. Once the AIC proves that the Demand was made, the onus shifts to the Adjuster 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. The investigation arose out of matters found in s. 480 of the Act and the Adjuster was given a reasonable opportunity to respond. Given the fact that the Adjuster 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 public relies on the AIC to investigate complaints and the Act requires that holders and even former holders, such as the Adjuster, provide information when called upon to do so. Therefore, the public is not well-served when adjusters 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 Adjuster 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 Adjuster but to all licensees. Therefore, we order that a civil penalty of \$750.00 be levied against the Adjuster. The civil penalty must be paid within thirty (30) days of the mailing of this Decision.

In the event that the civil 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 Adjuster 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 Insurance Adjusters' Council. The motion was duly recorded in the minutes of that meeting.

Dated: June 1, 2018

Original signed by
David Hicks, Chair
Insurance Adjusters' 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