

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 Canada Brokerlink Inc.
(the "Agency")

And

In the Matter of Tony Consalvo
(the Designated Representative "DR")

DECISION
OF
The General Insurance Council
(the "Council")

This case involved an allegation pursuant to s. 499(1) of the Act specifically, that the Agency compensated an unlicensed agent. The Agency in turn subsequently violated s. 480(1) of the Act.

Facts and Evidence

This matter proceeded by way of a written Report to Council dated February 23, 2018 (the "Report"). The Report was forwarded to the Agency and DR for review, and to allow the Agent to provide the Council with any further evidence or submissions by way of Addendum. The DR signed the Report on March 9, 2018 and provided further materials by way of Addendum.

The Agency is the holder of a general insurance agency class certificate of authority and has been licensed from August 31, 2004. On May 25, 2017, the Agency advised the AIC that one of its Agents had failed to reinstate an insurance advisor's certificate of authority after her return from a leave of absence. As a result, during the period of March 9, 2017 to April 25, 2017 the insurance advisor conducted unlicensed activities leading to the sale of 7 insurance policies. The AIC confirmed with the relevant insurers that the Agency sold 7 policies and that it was compensated in the amount of \$1, 695.07.

The Report indicated that the Agency had been disciplined before for offences relating to the compensation of an unlicensed individual. The Report set out the following previous offences:

- i. Compensating an unlicensed agent. A civil penalty of \$250.00 was ordered and paid in September, 1999
- ii. Compensating an unlicensed agent. A civil penalty of \$250.00 was ordered and paid in July, 1999
- iii. Compensating an unlicensed agent. A civil penalty of \$1,000.00 was ordered and paid in November, 2014
- iv. Compensating an unlicensed agent. A civil penalty of \$300.00 was ordered and paid on September, 2015

In response to the AIC's request for further information on June 19, 2017, the DR confirmed that, the Agency has strengthened internal procedures to prevent reoccurrence. In his May 24, 2018 letter to the AIC the DR also noted that the Agency self-reported the error. The DR also stated:

Upon recognizing the error in our oversight we immediately stopped [the advisor] from performing any further activities requiring a licence. We have attached a full list of her activity in handling transactions for BrokerLink clients while unlicensed. We have completed a full review of these transactions to ensure that the clients were serviced appropriately

[...]

In this instance, an omission in providing a notice of leave, a delay in entering and retrieving data from the data bases we rely on led to delay in providing notice of an inactive license. We can confirm that the error was detected through this process and acted upon promptly.

Discussion

In order to prove the allegations in the Report, the AIC must adduce sufficient evidence to demonstrate that the Agency compensated an unlicensed individual for acting in the capacity of an insurance agent, as defined in the Act, during a period in which she did not hold a valid and subsisting certificate of authority. Once this is done, the onus shifts to the Agency to demonstrate that the Agency took all reasonable measures to avoid the employee acting as an insurance agent when they did not hold a valid certificate of authority. The evidence in the Report establishes (and the Agency admits) that the Agency compensated an individual that did not hold a valid certificate of authority. It is equally clear that the advisor continued to act in the capacity of an insurance agent. Given this fact, the objective elements of the offence have been proven and the onus then shifts to the Agency to demonstrate that they took all reasonable means to ensure that their agents did not act as an insurance agents while they did not hold a certificate of authority.

The Agency indicated that they did not take steps to ensure that the insurance advisor's license was reinstated after her return to work. Neither the Agency or the insurance advisor confirmed that the certificate was in place and we conclude that the allegation in the Report has been proven and find the Agency guilty of one offence for each of the 7 policies sold.

In terms of the applicable sanction, we have the ability to levy civil penalties in an amount not exceeding \$1,000.00 pursuant to ss. 480(1)(b) of the Act and 13(1)(b) of the *Certificate Expiry, Penalties and Fees Regulation* (A/R 125/2001) for each time that the insurance advisor acted as an insurance agent while unlicensed. We also have the jurisdiction to suspend the certificate of authority of the Agency, or revoke it, for one year. In light of all of the circumstances including the Agency's similar previous convictions, we believe that it would be appropriate to a levy civil penalty for each of the 7 offences. We do not believe that a suspension or revocation is warranted in this instance, as the Agency has since enhanced their policies to protect consumers from agents acting without a license. Additionally, we note that the Agency reported this matter to the AIC and has indicated that it has redoubled its efforts to implement practices to prevent the reoccurrence of this issue in the future. Therefore, we do not believe that the maximum civil penalty of \$1,000.00 or a license suspension is warranted. As such, we order that a civil penalty in the amount of \$500.00 per policy be issued against the Agency, resulting in a total civil penalty of \$3,500.00.

The civil penalty must be paid within thirty (30) days of receiving this notice. In the event that the civil penalty is not paid within thirty (30) days, the Agency's certificate of authority will be automatically suspended pursuant to s. 480(4) of the Act. Pursuant to s. 482 of the Act (copy enclosed), the Agency 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: May 2, 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 T5K 2C3