

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. / BrokerLink
(the "Agency")

As represented by
Designated Representative, Foley, Colleen (98980)
(the "DR")

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

This case involved an allegation pursuant to 499(1) of the Act. Specifically, it is alleged that the Agency compensated a general insurance agent (the "Agent") during a period of time in which she did not hold a valid and subsisting Certificate of Authority.

Facts and Evidence

This matter proceeded by way of a written Report to Council dated May 29, 2014 (the "Report"). The Report was forwarded to the DR for review and to allow the Agency to provide the Council with any further evidence or submissions by way of Addendum. The DR signed the Report on June 11, 2014 and submitted an Addendum for consideration.

The Agency is the holder of a valid certificate of authority to transact business as a general insurance agency. On December 4, 2013, the Agent sent the AIC a letter by email. In this letter, the Agent admitted that she had acted in the capacity of an insurance agent at a time that she did not hold a valid and subsisting certificate of authority.

On December 31, 2013, the AIC sent a letter to the Agent that asked her to outline the number of general insurance policies she sold and the compensation she received for acting as an agent during a period in which she was not licensed.

On March 10, 2014, the AIC received a letter from the Agent. Among other things, she wrote:

My position at [the Agency] included assisting clients to obtain the right insurance product and adequate coverage, completing endorsement requests, processing payments, and contacting underwriters for approval. I was compensated by annual salary with bonus commissions in campaign periods...since I am no longer at [the Agency], I have no way of compiling a list of policies and files that I worked on.

The Agent also provided proof of her annual salary during the period of time in issue.

On March 11, 2014, the AIC sent a letter to the DR that requested that she provide the AIC with details of the Agent's employment and a listing of all policies the Agent sold while unlicensed and what the Agency paid the Agent during this period. The DR responded by fax on April 3, 2014. In this fax, she wrote that the Agent failed to complete "...the paper work..." in relation to her license. She also confirmed that the Agent was employed by the Agency from November 26, 2012 to November 15, 2013 and received an annual salary as an employee of the Agency. A six page computer printout described as "...a complete listing of the new business policies [the Agent] wrote during the time she was employed by [the Agency]" was also attached to the correspondence.

On April 4, 2014, the AIC sent an e-mail to the DR that requested a breakdown as to the policies found in the printout and indicate which policies were new policies versus those that were renewals. On April 7, 2014 the DR responded by e-mail and advised as follows: "Broker Transfers – 8, New – 111, Total – 119."

On May 2, 2014, the AIC sent an e-mail to the DR. In this email, the investigator commented that "...this is the fifth file we have opened against your agency for compensating unlicensed agents". The investigator then asked the DR to describe the processes the Agency had in place to ensure that unlicensed agents were not acting as agents and to confirm whether or not those processes were being followed.

The DR responded by email dated May 27, 2014. In this communication, the DR described the process put in place in March 2014. In this letter, the DR wrote, among other things:

Further to your email of May 2, 2014, I am outlining the extra steps we have taken to ensure all employees who provide Insurance advice to the public are licensed to represent BrokerLink.

1. On March 2014, we implemented a new process for all New Hires to the Organization. Our Internal Systems Support team records all new hires to the organization as shown on the attached excel document
2. The SOS team indicates the start date, position and identifies if they are AIC licensed
3. The date the application is sent to the AIC is recorded
4. The AIC website is checked by Colleen Foley to ensure the application has been issued by Alberta Insurance Council
5. On May 21, 2014 the attached communication was sent to all Alberta Managers, Regional Branch Managers and Head of Alberta outlining the licensing process.

With all of Management aware of the processes and the new internal controls that have been added, as the designated representative I am confident we will not encounter any further issues with the license of new BrokerLink Employees.

She also provided the AIC with a memorandum dated May 21, 2014 and indicated that this was sent to "...all Alberta Managers, Regional Branch Managers and Head of Alberta..."

The Report also referenced the previous cases where the Agency was sanctioned for compensating unlicensed agents. Specifically, in June and August, 1999 the GIC levied two civil penalties of \$250.00 each. In 2009 and 2011, the AIC also investigated allegations of unlicensed conduct. At that time, the Agency was cautioned.

Decision of the Council

The evidence in the Report establishes a number of things beyond any doubt. First, the Agent and the Agency admitted that the Agent acted in the capacity of an insurance agent during a period of time in which she did not hold a valid and subsisting certificate of authority that authorized her to act in that capacity. Additionally, the Agency admits that it employed the Agent and compensated her for acting as an agent. All told, the Agent sold 111 new policies during the unlicensed period. Given these facts, the evidence proves that the Agency breached the section of the Act as alleged.

As to the applicable sanction, pursuant to s. ss. 480(1)(b) of the Act and 13(1)(b) of the *Certificate Expiry, Penalties and Fees Regulation*, A.R. 125/2001, we have jurisdiction to levy civil penalties of up to \$1,000.00 per offence. We also have jurisdiction to suspend the Agency's certificate of authority for a period of time or revoke it for a year. At the outset, it is significant that this is not the first time that the Agency has been sanctioned by the Council for compensating unlicensed agents. In this case, the Agent acted in an unlicensed capacity for almost a year. Additionally, the Agency is a relatively large firm and should, given its size, have the ability to implement systems to ensure that it does not compensate unlicensed individuals for acting as agents. That being said, the Agency has cooperated throughout the investigation and indicates that new processes have been put in place so as to avoid further contraventions of this nature.

Given the evidence in its totality, we are of the view that a civil penalty of \$1,000.00 is appropriate in the circumstances. However, the Agency should understand that the civil penalty we have levied represents a further (and perhaps final) chance to implement and follow compliance policies that prevent further breaches. As such, this civil penalty must not be viewed simply as an additional \$1,000.00 cost of doing business. Were future non-compliance to occur, the Council could conceivably levy civil penalties of \$1,000.00 per offence. In this case alone, the civil penalties could have totaled \$111,000.00. The Council could have also suspended the Agency's certificate of authority for a period of time or revoked it for a year.

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: October 14, 2014

Original Signed by _____

Amanda Sawatzky, 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