

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 Core Financial
(the "Agency")

And

Brian Undershute
(the "Designated Representative")

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 Agency failed or refused to provide information and documentation requested by the AIC through a Demand for Information (the "Demand"). Subsequently, it is alleged that the Agency 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 May 7, 2018 (the "Report"). The Report was forwarded to the Designated Representative of the Agency for review, and to allow the Agency to provide the Council with any further evidence or submissions by way of Addendum. The Agency did not respond to the Report.

Through audit activities initiated in October 2017 to verify that errors and omissions insurance coverage ("E&O") indicated on licensees' renewal applications was in place, in March 2018 the AIC asked licensees to provide proof of E&O coverage. This investigation arose out of the Agency's failure to provide proof of E&O insurance.

The Agency is the holder of an accident and sickness (A&S) certificate of authority and has held this certificate since August 5, 2008. In accordance with the audit, the AIC emailed the Designated Representative of the Agency on March 16, 2018 and provided him with a formal Demand letter. The Demand required the Agency to provide proof of E&O coverage indicated on the Agency's renewal application. On April 4, 2018 the AIC emailed the Designated Representative and requested that he respond in accordance with the deadline set out in the Demand.

The AIC then telephoned the Designated Representative on April 12, 2018 to advise him that the response deadline was fast approaching. The Designated Representative did not answer the telephone and accordingly the AIC left a voicemail message to this effect. The Agency did not respond to the report.

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 agent 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 “... 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 Agency’s failure to respond was intentional. Once the AIC proves that the Demand was made, the onus shifts to the Agency via the Designated Representative 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 Agent was given a reasonable opportunity to respond. Given the fact that the Agency failed to respond to the Report in any way, the Agency has not met the burden of establishing the due diligence defence and we find the Agency 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 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 Agency 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 Agency 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.

In the event that the civil penalty is not paid within thirty (30) days, the Agency's certificate of authority will be suspended and interest will begin to accrue at the applicable prescribed rate. Pursuant to the Act, specifically s. 482 (excerpt appended), 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: July 4, 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 2C