

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 Act On Your Dream Travel and Cruise Inc.
(the "Agency")

And

Sheryl Chiles
(the "Designated Individual")

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 Individual 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 reply by way of Addendum dated May 28, 2018.

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 a travel agency certificate of authority and has held the license on December 4, 2002 except for the period of July 1, 2014 to November 20, 2016 when the Agency did not hold the license. In accordance with the audit, the AIC emailed the Designated Individual on March 16, 2018 and provided her with the formal Demand letter. The Demand required that the Agency provide proof of E&O coverage indicated on the

Agency's renewal application. On April 4, 2018 the AIC emailed the Designated Individual and requested that she respond in accordance with the deadline set out in the Demand. Having not heard from the Designated Individual, the AIC telephoned the Designated Individual on April 17, 2018 to advise her that the response deadline was fast approaching. The Designated Individual did not answer the telephone and the AIC investigator recorded a voicemail message. The Designated Individual provided a response on behalf of the Agency by way of Addendum dated May 28, 2018, which stated:

[...] I stopped selling travel and insurance in the fall of 2017, therefore I cancelled my E&O policy. There is no cause for this investigation. If you were to research my sales history with Manulife you will find that I have sold zero insurance since the day I cancelled my E&O policy.

I accept fault for not notifying Alberta Insurance Council that I no longer sell travel insurance. [...]

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. Regardless of the fact that the Agency has claimed to no longer sell travel insurance, once the AIC proves that the Demand was made the onus shifts to the Agency via the Designated Individual to demonstrate that she 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 Agency was given a reasonable opportunity to respond. Given the circumstances, 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 license holders provide information when called upon to do so. Therefore, the public is not

well-served when licensees fail to comply with formal 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. In this case, the Agency did not respond to the Demand and only seems to have communicated with the AIC investigator upon receiving the Report. The Council is reviewing a large number of files relating to the failure to respond to demands for information. In our view, it is clear that the Council must send a strong message to all license holders, former and current, regarding the necessity to provide information when called upon. In light of all of the facts, we levy a civil penalty of \$500.00. The civil penalty of \$500.00 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 s. 482 of the Act (relevant excerpt attached), 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 Life Insurance Council. The motion was duly recorded in the minutes of that meeting.

Dated: July 5, 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