

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 DesLaurier Financial Services Inc. o/ TravelInsure.ca
(the "Agency")

as Represented by Designated Representative, Tracy DesLaurier
(the "DR")

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

This case involves an allegation pursuant to s. 504(1) and (2) of the Act. Specifically, it is alleged that the Agency collected premiums from clients for travel insurance policies and failed to remit those premiums to BK (the "insurance company"). In so doing, it is alleged that he contravened s. 504(1) and (2), and subsequently violated a section of the Act as contemplated by s. 480(1)(b).

Facts and Evidence

This matter proceeded by way of a written Report to Council dated February 21, 2018 (the "Report"). The Report was forwarded to the DR for his review and to allow the DR to provide the Council with any further evidence or submissions by way of Addendum. The DR adduced further evidence and submissions by way of Addendum and these accompanied the Report.

The DR is the holder of life and accident and sickness ("A&S") certificates of authority, which the DR first held from May 3, 2012. On October 31, 2017 the AIC was notified that the DR collected premiums for client policies however, the DR failed to remit those premiums to the insurance company. As a result of the DR's failure to remit premiums, the insurance company sent the DR a formal demand letter dated July 14, 2017 (the "Formal Demand"), which stated:

We hereby make formal demand upon you for payment of the sum of \$45,856.54 plus interest and costs which represents the amount owing to our client for unpaid premiums, net of commission. Despite repeated demand, you have failed to make this payment.

On November 1, 2017 the DR was subsequently served with a Notice to Arbitrate and advised to retain legal counsel.

Having received the complaint from the insurance company, the AIC sent a demand letter (the “Demand”) to the DR requesting an explanation. In an email dated December 15, 2017 the DR responded to the Demand and acknowledged that he owed the premiums to the insurance company. The DR advised that he had since entered into an agreement with the insurance company to pay the overdue premiums. The DR stated that he was negotiating the sale of his agency and intended to pay the insurance company the premiums that were owed from the proceeds of that sale.

On December 18, 2017 the AIC sent an email to the DR requesting confirmation that the insurance company had agreed to receive payment from the proceeds resulting from the sale of his Agency. The DR provided emails that evidenced that the insurance company was aware of the arrangement, and stated that the DR would transfer the amount owed over the course of 30 days.

The AIC contacted the insurance company by way of telephone on January 15, 2018. The insurance company advised the AIC that although the insurance company agreed to receive payment from the proceeds of the sale of the DR’s Agency, the insurance company understood that the sale of the Agency had not gone through. As a result, the insurance company contacted the DR and demanded payment. The insurance company subsequently received a cheque from the DR for the amount of (\$26,000.00) which “bounced” when deposited.

In an email dated January 15, 2018 the insurance company advised the AIC that, to date, the Agency owed \$45,856.54 in premiums and \$7,567.20 for premiums refunded by the insurance company, which were owed to clients.

Discussion

Section 504(1) of the Act requires that insurance agents are deemed to hold premium funds in trust for the insurer. Section 504(2) goes on to state that:

If the insurance agent fails to pay the premium, less the agent’s commission and any deductions to which, by the written consent of the insurer, the agent is entitled, over to the insurer within 30 days after the agent receives a written demand for payment of the premium, the agent’s failure is proof, in the absence of evidence to the contrary, that the agent has used or applied the premium for a purpose other than paying it over to the insurer.

Here, the test to prove that an agent has violated s. 504(2) the AIC need only show that the insurance company wrote to the Agency and demanded payment of the unremitted premiums. After 30 days, if the agent failed to respond, they were deemed to have used the premiums for a purpose other than paying it to the insurer. Given that the DR admitted that he took the policy premiums for the Agency but failed to remit them to the insurance

company and the copy of the Demand Letter provided by the insurance company, the test has been met and we find that the Agency violated Section 504(2) of the Act.

We are not insensitive to the fact that, from time to time, accounting issues do arise between agencies and insurance companies. Generally speaking, these can occur when there is a change in policy premiums, a change in coverage, or a change in contract terms between the Agency and the insurance company. When they do arise, they often involve small amounts and are resolved quickly. In this case, the premiums totaled almost \$50,000.00 and their non-payment is more than a simple “accounting issue”.

In our view a significant civil penalty is warranted in the circumstances. The DR breached his trust obligations by taking funds and failing to pass them on to the insurance company. The Minister of Treasury Board and Finance has granted the Council the ability to levy civil penalties up to \$1,000.00 pursuant to s. 480(1)(b) of the Act and s. 13(1)(b) of the *Certificate Expiry, Penalties and Fees Regulation*, A.R. 125/2001. Based on the severity of this offence, we feel that a civil penalty in the amount of \$1,000.00 be levied against the DR. We also order that the DR’s certificates of authority be suspended for a period of six (6) months. The suspension shall commence 7 days after the mailing of this Decision.

The civil penalty must be paid within thirty (30) days of receiving this notice. In the event that the penalty is not paid within thirty (30) days, interest will begin to accrue. Pursuant to s. 482 of the Act (copy enclosed), 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 General Insurance Council. The motion was duly recorded in the minutes of that meeting.

Dated: June 13, 2018

[Original signed by]
Jim Brownlee, Council Member
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