

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 Lourdes Lungay
(the "Agent")

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

This case involved an allegation pursuant to s. 509(1)(a) of the Act. Specifically, it was alleged that the Agent provided inaccurate information to the AIC in relation to her Errors & Omissions insurance policy ("E&O") during the 2017/2018 renewal process. Alternatively, it was alleged that the Agent contravened s. 467(1)(c) of the Act and, in doing so, breached a section of the Act or regulations as contemplated under s. 480(1)(b).

Facts and Evidence

This matter proceeded by way of a written Report to Council dated June 14, 2018 (the "Report"). The Report was forwarded to the Agent for her review and to allow the Agent to provide the Council with any further evidence or submissions by way of Addendum. The Agent did not produce further evidence.

This matter arose out of an AIC compliance audit which sought to verify that the errors and omissions insurance coverage ("E&O") indicated on licensees' 2017/2018 renewal applications was correct. Auditees were selected at random from a pool of licensees that renewed their certificates of authority during the final weeks of the May/June renewal period.

The Agent was the former holder of life and accident and sickness ("A&S") certificates of authority, which she held from January 4, 2013 until December 6, 2017. In a matter unrelated to this Report, the Agent's licenses were suspended on December 6, 2017 due to the Agent's failure to provide proof of continuing education certificates.

On March 16, 2018 the AIC emailed a formal Demand letter to the Agent that required her to provide a copy of her 2017/2018 E&O policy summary page. The Agent responded to the AIC on March 28, 2018 and provided the summary page, as requested. In a subsequent email dated March 28, 2018, the AIC requested a copy of the Agent's 2016/2017 E&O policy summary page and, on March 28, 2018, the Agent duly provided the document.

Through a comparison of the Agent's renewal applications, the provided E&O summary pages, and the Agent's licensing records, the AIC determined that the Agent inaccurately recorded her E&O policy number as her license number on her 2017/2018 renewal application. On March 28, 2018 the AIC emailed the Agent to determine why the renewal information was inaccurate. The Agent provided a response which stated:

I apologize for my mistake. I didn't realize that until this email pointed out. I will make sure next time I will be very careful. [sic]

Discussion

The Council contemplated s. 509(1)(a) of the Act, which provides that "[n]o insurer, insurance agent or adjuster may make a false or misleading statement, representation or advertisement." This section of offences falls into a category called "strict liability offences". Under a strict liability offence, the AIC only has the onus to prove that the Agent's E&O Policy information, as stated by the Agent, was false. Once this occurs, the onus then shifts to the Agent to establish a due diligence defence. The Agent must prove that she took all reasonable measures to avoid making the false or misleading statement in order to establish this defence.

The Council acknowledged that Agent provided copies of the E&O summary pages when called upon however, the Agent neglected to use the documents at her disposal to accurately complete the renewal application. Insurance agents work in a profession that relies heavily on the accurate completion of forms and insurance papers. Clients can experience severe difficulty when forms are incorrectly completed. It is not unreasonable to expect the same standard from an agent when completing their renewal applications. It is questionable whether the Agent's actions were intentional, given the evidence, however, this is a matter of strict liability. In other words, where it is proven that the Agent gave a false statement, the essential elements of the offence are proven. In consideration of all of the presented circumstances, the Council finds the Agent guilty of making a false or misleading statement as contemplated by s. 509 of the Act, and has subsequently violated s. 480(1)(b) of the Act.

As to the appropriate sanction for this conduct, the Council can levy a civil penalty in an amount up to \$1,000.00 for an offence pursuant to s. 480(1)(b) and 13(1)(b) of the *Certificate Expiry, Penalties and Fees Regulation*, A.R. 125/2001. The Council also has the jurisdiction to order that the Agent's certificates of authority be revoked for one year or suspended for a period of time. Based on the factors and the evidence before the Council, the Council orders that a civil penalty of \$300.00 be levied against the Agent.

The civil penalty must be paid within thirty (30) days of the mailing of this decision. If the civil penalty is not paid within thirty (30) days interest will begin to accrue. Pursuant to s. 482 of the Act (excerpt 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.

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
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