

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 Gurjeet Singh Kang
(the "Agent")

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

This case involved allegations pursuant to s. 480(1)(a), (b) and s. 509(1)(c) of the Act. Specifically, it was alleged that the Agent demonstrated dishonesty or untrustworthiness by assisting, or interfering with, a colleague's successful completion of the Harmonized Life License Program certification examination ("HLLQP Certification Exam"). Alternatively, it was alleged that the Agent engaged in unfair practice by aiding an examinee, with the intent of tampering or skewing exam results. Further, it was alleged that the Agent misled the Agency, World Financial Group Insurance Agency of Canada Inc. ("WFG"), by promoting a false-pass result, in violation of s. 509(1)(c) of the Act.

Facts and Evidence

This matter came before the Council by way of written Report to Council dated July 9, 2018 (the "Report"). The Report was forwarded to the Agent for review, and to provide him with an opportunity to produce evidence and make submissions by way of Addendum. The Agent signed the Report on July 20, 2018, and did not submit Addendum materials.

The Agent is the former holder of life and accident & sickness ("A&S") certificates of authority, and was licensed from August 31, 2017 to October 27, 2017. The Agent's certificates of authority were suspended on October 27, 2017, following a *Notice of Termination*, received from the Agent's employer. Specifically, in correspondence dated November 22, 2017, WFG advised that an internal investigation into acts of collusion, flagged by the company's course provider, Oliver Publishing, had resulted in the termination of two agents from their employment at WFG. WFG adduced that the agents were dismissed due contraventions of the HLLQP Certification Exam guidelines.

On November 24, 2017, WFG described the discovery of Agent's activities, WFG's subsequent investigation, and the Agent's ultimate termination:

[...] I am confirming that the termination of the two agents in question was a direct result of our findings in relation to violations during the course provider HLLQP examination through Oliver Publishing. The course provider proctors the examinations through a web camera and during the course of the exam session by candidate [redacted], the two licensed associates, [J.G.] and Gurjeet Singh Kang were observed assisting the candidate during the examination, which is in direct contravention of the course provider's examination rules. The pictures provided below are from the examination session of the candidate, [redacted] and provided to us by Oliver Publishing. The candidate's affiliation with WFG has been terminated as well.

As noted by WFG, screenshots were included in the November 24, 2017 correspondence that exhibited the Agent viewing the computer screen of the examinee.

The AIC sent a letter to WFG on April 26, 2018 requesting further details surrounding the termination of the Agent.

In correspondence dated May 7, 2018, WFG responded:

1. October 24, 2017 – a notification received from [OP] of a violation of HLLQP course provider examination rules.
October 26, 2017 – evidence from proctoring process obtain [sic] and investigation plan put in place; [WFG] committee voted unanimously to terminate the involved individuals.
2. WFGIA has not received any complaints from any clients of GK
3. Please see attached ["Investigation of HLLQP Qualifying Exam Violations"]
4. GK and [J.G.] are members of the same team at WFGIA's branch location at [redacted]. [...]

In the *Investigation of HLLQP Qualifying Exam Violations* dated October 26, 2017, [the "Investigation Report"], WFG concludes:

Given the serious nature of the violations and in view of the broader investigation conducted by the WFGIA Compliance regarding signals that the HLLQP exams have been compromised, it is the recommended [sic] that all involved individuals be terminated for cause from [WFG] (for dually [sic] licensed associates, i.e. [J.G.][examinee]Agent).

On May 7, 2018 the AIC wrote to the Agent and requested that he provide details surrounding the termination of his employment. The Agent responded on May 16, 2018:

I would like to report that [examinee] is my co-worker, I don't have any personal relation [sic] with him. I recruited him in the business. The day [examinee] was writing his exam in the office at [address redacted], WGF office. [J.G.] called me in the office to discuss something regarding some client files. We were sitting in the office and discussing our things. [...] while [examinee] was writing the exam in the office where me and [J.G.], my SMD [Senior Marketing Director], were sitting to work on my client files [WFG] saw us in the camera during the exam which is required to be on while certification exam was happening. WFG thought we were helping him pass the exam but in reality we had no intention to do so. I would clearly say that I never assisted [examinee] in certification exam of HLLQP. It all happened just innocently.

As a result my license has been terminated and my income from WFG has stopped.[...]

In a further communication with the AIC, dated June 7, 2018, the Agent provided the following:

3) Please provide an understanding of the exam incident involving [examinee]

[...] On the day in question, [examinee] was completing a mock examination in [Senior Marketing Director's] office [...]. During this time [examinee] had a question regarding the meaning of some of the words in the questions. As I wasn't able to understand what he was asking, I stepped up to the computer screen to read the questions and clarify what the question was asking. I did not provide [examinee] with the answers to the question, but rather formulated the question in Punjabi to him so that he would be better equipped to answer. As I did not provide him with the answers, I felt that I did nothing wrong.

Discussion

In order to conclude that the Agent has committed an offence pursuant to s. 480(1)(a) of the Act, the Report must prove, on the basis of clear and cogent evidence, that it is more likely than not that the Agent committed the act as alleged. The elements of s. 480(1)(a) offences have been discussed by the Alberta Court of Queen's Bench in *Roy v. Alberta (Insurance Councils Appeal Board)*, 2008 ABQB 572 (hereinafter "*Roy*").

In *Roy*, the Council found that an agent committed an offence pursuant to s. 480(1)(a) of the Act, when he attested to completing the applicable CE when he did not, in fact, have the required CE. In *Roy*, the agent also held a securities license believed that the CE required to maintain his securities license was applicable to his insurance agent requirements. The Insurance Councils Appeal Board also found the agent guilty of an offence and, in turn, *Roy* appealed the matter to the Court of Queen's Bench of Alberta.

In his reasons for judgment, Mr. Justice Marceau reviewed the requisite test to find that an offence pursuant to s. 480(1)(a) of the Act has been made out, and expressed it as follows at paragraphs 24 to 26:

[24] The *Long* case, albeit a charge under the Criminal Code of Canada where the onus of proof is beyond a reasonable doubt (not on a preponderance of evidence as in this case), correctly sets out the two step approach, namely the court or tribunal must first decide whether objectively one or more of the disjunctive elements have been proven. If so, the tribunal should then consider whether the mental element required has been proved. While the Appeal Board said it was applying the *Long* decision, it did not make a finding as to whether step 1 had been proved with respect to each of the disjunctive elements. Rather it immediately went into a step 2 analysis and found that the mental element required for untrustworthiness might be less than the mental element required for fraud (as a given example).

[25] I am of the view that statement was in error if it was made to convey a sliding scale of mens rea or intent depending on which of the constituent elements was being considered. In my view, the difference between the disjunctive elements may be found in an objective analysis of the definition of each and certainly, as demonstrated by the *Long* case, what constitutes fraud objectively may be somewhat different from untrustworthiness. However once the objective test has been met, one must turn to the mental element. Here to decide the mental element the Appeal Board was entitled, as it did, to find the mental element was satisfied by the recklessness of the Applicant.

[26] ...on this review on the motion of the Applicant I need not decide whether the Appeal Board reasonably could acquit the Applicant on four of the disjunctive elements. Rather, the only matter I must decide is whether the Appeal Board acting reasonably could conclude, as they did, that the Applicant's

false answer together with his recklessness justified a finding of "untrustworthiness".
[emphasis added]

Regarding the evidence in these types of cases and the concept of “clear and cogent” evidence, Chairperson Hopkins dealt with this issue in *The Matter of the Appeal of Arney Falconer*

(<http://decisions.abcouncil.ab.ca/abic/icaba/en/111052/1/document.do>) wherein she wrote:

The Life Insurance Council stated in the Decision that there is a requirement “for ‘clear and cogent evidence’ because our findings can dramatically impact an insurance agent’s ability to remain in the industry”. However, the requirement for clear and cogent evidence does not mean that the evidence is to be scrutinized any differently than it should be in any other civil case. In all civil cases evidence must be sufficiently clear, convincing and cogent to satisfy the balance of probabilities. In *F.H.v. McDougall* 2008 SCC (sic); [2008] 3 S.C.R. 41 the Supreme Court of Canada states:

[45] [...] There is only one legal rule and that is that in all cases, evidence must be scrutinized with care by the trial judge.

[46] Similarly, evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test. But again, there is no objective standard to measure sufficiency. [...] As difficult as the task may be, the judge must make a decision. If a responsible judge finds for the plaintiff, it must be accepted that the evidence was sufficiently clear, convincing and cogent to that judge that the plaintiff satisfied the balance of probabilities test.

In applying this test, it is clear that the Agent was present during the examinee’s HLLQP Qualifying Examination, and by the Agent’s own admission, the Agent assisted the examinee in the comprehension of, or translation of, questions posed on the HLLQP Qualifying Examination. In light of the circumstances and evidence presented, the Council concludes that the Agent has demonstrated dishonesty or untrustworthiness as described by s.480(1)(a) of the Act. Therefore, the Council finds the Agent guilty of the more serious allegation made against him pursuant to s. 480(1)(a) of the Act, and rejects the alternative charge under s. 509(1)(a) of the Act.

As to the appropriate sanctions for this conduct, the Council can levy civil penalties up to \$5,000.00 pursuant to s. 480(1)(a) and (b) of the Act and s. 13(1)(a) and (b) of the *Certificate Expiry, Penalties and Fees Regulation*, A.R. 125/2001. The Council also has jurisdiction to order that the Agent’s certificates of authority be revoked for a period of one year, or suspended for a period of time. Given that the Agent is not currently licensed, the Council does not have the ability to suspend or revoke the Agent’s certificates of authority. Accordingly, the Council orders that a civil penalty of \$5,000.00 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, interest will begin to accrue at the applicable prescribed rate.

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.

Dated: September 27, 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 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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402 Terrace Building
9515-107 Street
Edmonton, Alberta T5K 2C3
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