

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 Jaspreet Singh Gill
(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 June 10, 2010 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, the subsequent investigation, and the ultimate termination, of the Agent:

[...] 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 [OP]. The course provider proctors the examinations through a web camera and during the course of the exam session by candidate [G.K.], the two licensed associates, Jaspreet Singh Gill and [G.K.] 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, [examinee], and provided to us by [OP]. The candidate's affiliation with WFG has been terminated as well.

As noted, the November 24, 2017 correspondence included screenshots which pictured the Agent observing the computer screen of the examinee.

In correspondence to WFG dated April 26, 2018, the AIC requested details surrounding the Agent's dismissal. WFG responded by way of correspondence May 7, 2018:

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 JG
3. Please see attached ["Investigation of HLLQP Qualifying Exam Violations"]
4. JG and [examinee] are members of the same team at WFGIA's branch location at [redacted]. [...]

In the *Investigation of HLLQP Qualifying Exam Violations* report 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. Jaspreet Gill).

On May 7, 2018 the AIC wrote to the Agent and requested that he provide details surrounding the termination of his employment. On May 15, 2018, the Agent responded:

[Examinee] was writing his certification exam on approximately 3rd week of October 2017 at [address redacted], Edmonton WFG office. Exam happened in my individual office inside our [address redacted] office. As [examinee] was writing the exam, myself and [G.K.] we were discussing some client stuff at the same time in the same office. As a result we were seen in the camera that is required to be on while the certification exam was happening.

[WFG] thought that we were trying to help [examinee] in his exam because of our presence there. But the truth is we were never intended to do so [...] so I am clearly stating that neither me nor [redacted] assisted him in certification exam of HLLQP. It all happen [sic] innocently that we could never think about. We never realized that he has to be left alone during exam.

As a result my license has been terminated[...]

The Agent also provided a copy of correspondence, addressed to WFG (undated):

[...] Last month me and one of my associate name [GK] code [redacted] made an unconscious mistake believing that the certification exam just like mock exam. We did not realize that the person taking the exam has to be left alone. We thought the LLQP exam is open book exam on word and we did not realize that being with a person would be considered cheating. Because we have been seen in the camera by WFGEI [WFG] and they reported to [WFG], that cause me and my associate termination. [...] I never take shortcuts to grow my business and [...] I never have or had any attention [sic] of doing the things wrong way. [sic] [...]

The Report included an email chain between the AIC investigator and the Agent, ranging from May 25, 2018 to June 7, 2018, wherein the Agent stated:

3Q. Provide an understanding of exam explaining what happened and if [examinee] asked any [sic] help from me?

The certification exam happened in my individual office that is a small room in our large team office [...]. [Examinee] used to come to my office to practice mock exams on regular basis, during that process sometime he could not understand some English words in questions. And few times he read me the questions to get better understanding of the questions and sometime I read the questions on computer screen and translate back to him in Punjabi language. I never had any intention to help him to pass any of the exams.

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 and 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, the Council concluded that the Agent was indisputably present during the examinee’s HLLQP Qualifying Examination. The Council considered the images captured by the course provider, Oliver Publishing, wherein the Agent is pictured sitting next to the examinee, observing the examination screen, despite the claim that he was present only to attend an unrelated meeting. Further, by the Agent’s own admission, the Agent assisted the examinee in the comprehension of, or translation of, portions of the HLLQP Certification Exam. In consideration 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. Therefore, 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
Email: tbf.insurance@gov.ab.ca