

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 Taylor Planning & Financial Services Ltd.
(the "Agency")

And

Robert Taylor
(the Designated Representative "DR")

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

This case involved an allegation pursuant to s. 481(2) of the Act. Specifically, it was alleged that the Agency failed or refused to provide information or documentation requested by the AIC through a Demand for Information (the "Demand"). In so doing, it was alleged that the Agency contravened a provision 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 May 28, 2018 (the "Report"). The Report was forwarded to the DR for review, and to allow the Agency to provide the Council with any further evidence or submissions by way of Addendum. The Agency provided an Addendum for consideration on June 8, 2018 and additional materials on July 10, 2018, were considered in conjunction with the Report.

This matter arose out of an audit conducted by the AIC which verified that 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 Agency is the holder of life and accident & sickness ("A&S") certificates of authority, and has held the licenses since December 13, 2000. In accordance with the audit, the AIC emailed a Demand letter to the Agency on March 16, 2018, by way of the DR. The Demand letter set out a response deadline of thirty (30) days, and required the Agency to produce a copy of the E&O policy summary page related to the coverage claimed on the

2017/2018 renewal application. On April 4, 2018, the AIC emailed the DR requesting a response before the thirty (30) day deadline. Subsequently, the AIC attempted to reach the DR via telephone on April 13, 2018 however, the AIC was not able to record a message. No response was received from the Agency before the deadline set out in the Demand.

As previously mentioned, the Agency provided further evidence for consideration by way of Addendum. The June 8, 2018 Addendum stated:

[...] 3. I have gone through my e-mail communication and also requested that our IT provider recover any lost or missing e-mails. We have been unsuccessful in locating the March 16th and April 4th e-mails and our IT provider also has not been able to recover these e-mails.

4. I was out of the country on April 13, 2018 when AIC tried calling my residence at [redacted]. AIC was unable to leave a voicemail, not because the voicemail was full, but because I do not have voicemail.

In a further letter to the Council, dated July 10, 2018, the DR continued:

[...] In further response to your opinions and recommendations, I wish to confirm that I do not blame the AIC for the failure to meet the demand. It is evident that the e-mails were sent to the correct address.

Discussion

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 the “... 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. Once the AIC proves that the Demand was made, the onus shifts to the Agency to demonstrate that it 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. As disclosed, 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 facts in their entirety, it is clear that the Agency did not exercise due diligence and the Council finds the Agency guilty.

In terms of the applicable sanction, the public relies on the AIC to investigate complaints and the Act requires that holders, and even former holders, provide information when called upon to do so. Therefore, the public is not well-served when agents fail to comply with 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 upon receipt of the Report. 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 certificates of authority shall be suspended and interest will begin to accrue at the applicable prescribed rate. 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, pursuant to s. 482 of the Act (excerpt enclosed).

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: September 18, 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
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