

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 Kent Devlin
(the "Agent")

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

This case involves allegations pursuant to ss. 480(1)(a) and (b) or alternatively, s. 509(1)(a) of the Act. Specifically, it is alleged that the Agent failed to accurately inform his client of an insurance refund policy. Additionally, it is also alleged that the Agent retained the insurance refund monies for his personal use rather than remitting the refunds to his client (the "Client"). In so doing, it is alleged that he is guilty of untrustworthiness or dishonesty which constitutes an offence pursuant to ss. 480(1)(a) and (b) of the Act. In the alternative, it is alleged that the Agent made false or misleading statements, as contemplated by s.509(1)(a) of the Act.

Facts and Evidence

This matter proceeded by way of a written Report to Council dated August 8, 2018 (the "Report"). The Report was forwarded to the Agent for his review and to allow the Agent to provide the Council with any further evidence or submissions by way of Addendum. The Agent responded and provided his version of the events.

The Agent is the former holder of a level 2 general insurance certificate of authority authorizing him to act in the capacity of a general insurance agent. The Agent also held life and accident and sickness (A&S) certificates of authority from October 18, 2006 until June 30, 2018. The Agent did not renew his life and A&S certificates during the 2018 renewal period, and accordingly the certificates of authority expired. The Agent was licensed as a general insurance agent from October 18, 2006 until April 13, 2018 when the Agent's employment was terminated as a result of alleged misappropriation of Client funds. Due to the termination of his employment, the Agent is not currently licensed.

This matter arose following receipt of correspondence received from Federated Insurance (the "Agency") dated April 11, 2018 whereby the Agency notified the AIC of withdrawal of their sponsorship of the Agent's licenses. The

Agency also terminated the Agent's employment and Errors and Omissions coverage due to suspected misappropriation of Client funds.

On or around April 2, 2018, the Client contacted the Agency directly to request the estimated delivery of a refund cheque in the amount of \$13,650.00 (the "2017 Refund Cheque"). The Client communicated their dissatisfaction, as the Agent had informed them that the refund cheque would not be issued. The Agency confirmed that the refund cheque was in fact owed to the Client, and produced records indicating that the 2017 Refund was cashed on February 5, 2018.

An investigation was initiated by the Agency to locate the missing 2017 Refund Cheque. The Agency unearthed that an additional refund cheque in the amount of \$17,379.21 (the "2015 Refund Cheque") was misappropriated by the Agent for personal use. To provide context, the Client advised:

The November 21/16 statement said we had a refund cheque for \$17,379.21. I remembered that amount and went back to Kent's account with [us] and that is the same amount we put on his account as a credit which he said was his advertising bonus.

The Agent misled the Client to believe that the funds of \$17,379.21 were owed to him by the Agency as a marketing bonus. Under this falsity, the Agent opened an account with the Client under his name to be used for the purchase of personal goods and services. To dispel any suspicion as to why the cheque was issued to the name of the Client, the Agent told the Client that the Agency had drafted the cheque to the Client's name on his request. Believing that the funds belonged to the Agent, the Client cashed the cheque and opened an account in the Agent's name. Financial records show that the Agent used a portion of the funds to pay for his golf club membership in March, 2017, and also paid for repairs to his all-terrain vehicle.

The AIC asked the Agent to provide an accounting of the events surrounding the termination of his employment. In an email dated May 7, 2018, the Agent advised that he attempted to remit the 2015 Refund Cheque to the Client, but at that time the Client had praised him for saving the company a large sum of money, and asked to help the Agent "save some money in return". The Agent advised that the marketing of his business at the golf club was a large expense for him, and the Client agreed to cover his financial costs associated with his golf membership. The Agent also admits that the Client was financially responsible for the monies associated with the repairs to his all-terrain vehicle. The Agent further stated that:

I am very regretful of even having the conversation about myself getting a sort of "kickback" as I have the higher obligation to refuse any such offers [...] An agent should never accept s [sic] bribe or kickback as a form of performing the job they are enlisted to do.

The Agency maintains that:

- The 2017 Refund Cheque had originally been issued and sent directly to Mr. Devlin at his request on July 18, 2017 for delivery to the Client, and has been reissued and sent directly to Mr. Devlin again at his request on February 6, 2018
- The 2015 Refund Cheque was actually a refund owing to the Client from 2015 for additional insurance coverage they were intending to purchase from Federated but ultimately did not require;
- The 2015 Refund Cheque was originally issued and sent directly to Mr. Devlin at his request on November, 2015 for delivery to the Client, and was reissued and sent to Mr. Devlin again at his request in November 2016; and
- Federated pays any and all earned marketing bonuses directly to its licensed sales agents[...]

The Agency reimbursed the Client the refund monies owing for the 2015 Refund Cheque and 2017 Refund Cheque.

Discussion

The first allegation in the Report is that the Agent acted in a dishonest or untrustworthy manner pursuant to s. 480(1)(a) of the Act when he failed to provide accurate insurance refund information to the Client. The evidence presented to the Council clearly proves that the Agent failed to provide accurate insurance refund information to the Client; not only did the Agent misrepresent important information, but he used Client monies for his personal purposes. The Agent has a duty to his employer, Federated Insurance, in addition to his fiduciary duty to the Client. The Agent was entrusted with the stewardship of the Client's money, and had a fiduciary obligation to act in the best interests of the Client. The Agent failed to do so. The Council acknowledges the Agent's version of events, but rejects his explanation regarding the mismanagement of Client funds, even had he believed that he had reached a private agreement with the Client with respect to receiving "kickbacks". Given the evidence before the Council, the Council believes that the conduct of the Agent was intentional, and the behavior was distinctly dishonest and untrustworthy as contemplated by s. 480(1)(a) of the Act. Accordingly, the Council finds the Agent guilty of the offence as alleged under s. 480(1)(a). As a result of this finding it is unnecessary for the Council to consider the alternative charge alleged pursuant to s. 509(1)(a).

Pursuant to s. 13(1)(a) of the *Certificate Expiry, Penalties and Fees Regulation*, the Council has the jurisdiction to levy a civil penalty in an amount not exceeding \$5,000.00. Were the Agent presently licensed, the Council would also have the jurisdiction to suspend the Agent's certificate of authority for a period of up to 12 months, or order that the certificate be revoked for one year. Given that the Agent is not presently licensed, no such direction has been made.

The Council agrees that a substantial civil penalty is warranted under the circumstances. Honesty and transparency are the hallmarks of a trustworthy Agent's conduct, especially where client funds are concerned. When an Agent fails to act in the best interests of the client, it does more than simply expose the client to possible loss. As noted in these findings, the Agent's actions deprived the Client of the correct knowledge and information

with respect to the refunds owed to them. The Council therefore orders that a civil penalty in the amount of \$5,000.00 be levied against the Agent. Additionally, the Agent will be required to undertake the LLQP Ethics module examination prior to reapplying for a general insurance certificate of authority in the Province of Alberta.

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 (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.

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.

Date: December 5, 2018

[Original signed by]

Lorrie King, Chair
General 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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402 Terrace Building
9515-107 Street
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