

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 Loretta Lutz
(the "Agent")

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

This case involves an allegation pursuant to s. 481(2) of the Act. Specifically, it is alleged that the Agent failed or refused to provide information and documentation requested by the AIC through a formal Demand for Information (the "Demand"). In so doing, the Agent allegedly 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 October 4, 2018 (the "Report"). The Report was forwarded to the Agent for review, and to allow the Agent to provide the Council with any further information by way of Addendum. The Agent did not respond to the Report.

In July 2018 the AIC commenced audits to verify that the Continuing Education ("CE") credits claimed on licensees' renewal applications were correct. Auditees were randomly selected from a pool of agents that renewed their certificates of authority during the final weeks of the May/June renewal period. Particularly, the Agent herein was asked to provide proof of CE credits claimed from the period of 2017 to 2018.

The Agent is the former holder of a general insurance certificate of authority, which she has held from January 26, 1996 until February 15, 2002, and again during the period of March 25, 2011 to August 29, 2018. The Agent's certificate of authority was suspended on August 29, 2018 due to failure to produce proof of CE credits.

The Agent was served with a Demand on July 25, 2018, which required the Agent produce proof CE credits within 30 days. The AIC telephoned the Agent on August 8th, 9th and 10th, 2018, to remind the Agent to respond within the 30 day deadline set out in the Demand. On August 8th the AIC left a voicemail message requesting a response. However, on August 9th and 10th the voicemail box was at its capacity and no further voicemails could

be recorded. The AIC then emailed the Agent on August 9, 2018 and requested a response to the Demand. The Agent did not respond to any of the AIC communications.

Discussion

The AIC operates under a delegation from the Minister of Treasury Board and Finance that authorizes the AIC to investigate complaints against holders of insurance agent certificates of authority. Pursuant to the Ministerial 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.*” [emphasis added].

The offence of failing to respond to a demand for information is one of strict liability. As such, the AIC need only prove that the Demand was properly made upon the Agent (proper in the sense that the AIC has met all of the requirements under the Act) and that the Agent did not comply. Once this occurs, the onus shifts to the Agent to demonstrate that she exercised due diligence in meeting her statutory requirement to respond. To substantiate this due diligence defence, the Agent must prove that she took all reasonable means to avoid making the offence. From the evidence in the Report, the Council is satisfied that the AIC’s Demand meets the requirements of the Act. Given the fact that the Agent failed to respond to the Report she has not met the burden of establishing a due diligence defence and accordingly, the Council finds the Agent guilty as alleged under s. 481(2) of the Act and, subsequently, s. 480(1)(b) of the Act.

In terms of the applicable sanction, the public relies on the AIC to investigate complaints, and the Act requires that holders of certificates of authority provide information when called upon. 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 Agent has not responded in any meaningful way and the Council is of the opinion that a significant civil penalty must be assessed to emphasize the significance of complying with AIC requests. Therefore, we order that a civil penalty of \$750.00 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 (copy 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.

Dated: 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:

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