

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 Kenneth Moland, Designated Representative
(the "DR")

For

NIB Insurance Group Ltd.
(the "Agency")

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

This case involved an allegation pursuant to s. 481(2) of the Act. Specifically, it is alleged that the DR failed or refused to provide information and documentation requested by the AIC through a formal Demand for Information (the "Demand"). In so doing, it is alleged that the DR, in his capacity as a designated representative for 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 October 5, 2018 (the "Report"). The Report was forwarded to the DR for review and to provide the DR with an opportunity to submit further evidence by way of Addendum. The DR responded to the Report on October 19, 2018 however, the response was received outside of the deadline specified in the Demand.

On September 11, 2018, the AIC received a complaint which alleged that the Agency and/or DR had misappropriated the insurance premiums of a client. The complainant advised that the Agency/DR had secured funding for their client through a third party. In turn, that third party had received notice that their mutual client's insurance policy may be cancelled due to non-remittance of premium funds to the carrier, in the amount of \$83,228.20. The third party inquired with the DR, but communications were sparse and did not clarify whether the premiums were properly remitted. The third-party financier ultimately paid the insurance premium to the carrier on behalf of the client.

The AIC sent a Demand to the DR on September 14, 2018 requesting that the DR provide details surrounding the allegations, on or before September 28, 2018. The DR responded on October 19, 2018 requesting that an extension be granted, however, the request was made outside of the deadline set out by the Demand.

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 “... *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. As such, the AIC only has the onus to prove that the demand was properly made upon the licensee, and that the demand has met all of the requirements under the Act, and that the licensee did not comply. Once this occurs, the responsibility then shifts to the licensee, to demonstrate that he exercised due diligence in meeting his statutory requirement to respond. To substantiate this due diligence defence, the licensee must prove that he 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 DR failed to respond to the Report, the DR has not met the burden of establishing a due diligence defence and accordingly, the Council finds the DR guilty of failing to provide information and documentation requested by the AIC as contemplated by s. 481(2) of the Act, and subsequently finds him guilty of violating 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 certificate holders provide information when called upon to do so. Therefore, the public is not well-served when licensees 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 DR has not responded to the Demand, and the Council is of the opinion that a significant civil penalty must be assessed to send a strong message to the DR. Therefore, the Council orders that a civil penalty of \$1,000.00 be levied against the DR.

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 DR 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: January 15, 2019

[Original signed by]
Amanda Sawatzky, Vice 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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