

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 Phyllis Hay
(the "Agent")

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

This case involved 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 Demand for Information (the "Demand"). In so doing, it is alleged that the Agent contravened a provision of the Act as contemplated in s. 480(1)(b).

Facts and Evidence

This matter proceeded by way of a written Report to Council dated September 25, 2018 (the "Report"). The Report was forwarded to the Agent for review and to allow the Agent to provide the Council with any further evidence or submissions by way of Addendum. On October 3, 2018, the Agent responded to the AIC however, the response was received outside of the deadline set out by the Demand.

In July 2018 the AIC commenced audits to verify that the Continuing Education credits ("CE") claimed on licensees' renewal applications were correct. Auditees were randomly selected from a pool of agents who 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 her CE credits for the period 2015-2018 to the AIC within thirty (30) days.

The Agent is the former holder of both life and accident & sickness ("A&S") certificates of authority. The Agent held the life certificate of authority between July 16, 2007 to January 26, 2011, and again between the period of November 22, 2013 to August 29, 2018. The Agent held the A&S certificate of authority concurrently throughout the period July 16, 2007 to January 26, 2011, and again during the period of November 22, 2013 to June 30, 2018. On August 29, 2018 the Agent's certificates were suspended due to her failure to respond to the AIC.

On July 24, 2018 the AIC emailed the Demand letter to the Agent which required her to provide proof of CE credits on or before August 24, 2018. The AIC then telephoned the Agent on August 7, 8 and 10, 2018 and left voicemail messages requesting that the Agent respond within the thirty day (30) day deadline. Out of an abundance of caution, and to provide the Agent with a reasonable period to respond, the AIC resent the Demand letter to the Agent on August 9, 2018.

The Agent responded to the AIC and produced the requested CE certificates however, her response was provided outside of the thirty (30) day 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 and former 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.*” [emphasis added].

The offence of failing to respond to a demand 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 Agent’s failure to respond was intentional. Once the AIC proves that the Demand was made, the onus shifts to the Agent to demonstrate that she 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, and the Agent was given a reasonable opportunity to respond. Given the facts in their entirety, it is clear that the Agent did not act with due diligence and we find her guilty.

In terms of the applicable sanction, the public relies on the AIC to investigate complaints and the Act requires that licensees 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 Agent did not respond to the Demand and only seems to have

communicated with the AIC investigator after receiving the Report. Given that the Agent chose to respond only upon receipt of the Report the Council orders a civil penalty in the amount of \$500.00.

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) 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.

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: January 9, 2019

[Original signed by]
Michael Bibby, 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:

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9515-107 Street
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