

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 Sara Taborda Hernandez
(the "Agent")

DECISION
OF
The Life 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 Demand for Information (the "Demand"). In so doing, the Agent allegedly 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. The Agent did not respond.

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 CE credits for the past three years (2015-2018).

The Agent was the former holder of life and accident & sickness ("A&S") certificates of authority, and held these certificates from August 9, 2017 to August 29, 2018. The Agent's certificates were suspended on August 29, 2018 due to failure to provide proof of CE credits claimed.

On July 24, 2018 the AIC emailed a formal Demand requiring the Agent to produce proof of CE credits within 30 days. To allow the Agent a fair opportunity to respond the AIC telephoned the Agent on August 7, 9 and 10, 2018 to remind them to respond to the Demand within the deadline however, the Agent did not respond to the calls and there was no ability to leave voicemail messages. Accordingly, the AIC reminded the Agent by way of email on August 9, 2018. The Agent did not respond.

Discussion

The AIC operates under a delegation from the Minister of Treasury Board and Finance (the “Minister”). Through this delegation, the AIC has authority over matters relating to current and former holders of insurance agent certificates of authority. 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 by the Minister relating to the matters in section 480(1).” Subsection 2 states that the “... person served with a direction under subsection (1) who has the information must provide the information in accordance with the direction.”

An offence under s. 481(2) of the Act is an offence of strict liability. As such, the AIC only has the onus to prove that the Demand was properly made upon the Agent (proper in the sense that they meet all of the requirements under the Act) and that the Agent did not comply with the Demand. Once this occurs, the responsibility then shifts to the Agent to prove 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. Given the facts in their entirety, it is clear that the Agent did not act with due diligence and we find her guilty of violating s.481(2) of the Act and, in turn, has also violated 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, and even former holders, such as this Agent, to 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 consideration of the facts, 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 prescribed rate. 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, 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: December 6, 2018

[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:

Superintendent of Insurance
Alberta Finance
402 Terrace Building
9515-107 Street
Edmonton, Alberta T5K 2C3
Email: tbf.insurance@gov.ab.ca