

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 Michelle Van Ieperen
(the "Agent")

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

This case involves an allegation pursuant to s. 480(1)(a) of the Act, or in the alternative, ss. 509(1)(a) and 480(1)(b) of the Act. Specifically, it is alleged that the Agent behaved in a dishonest or untrustworthy manner by fabricating policy details with the intent to extend or alter the coverage period of a client's automobile liability insurance policy. In so doing, it is alleged that the Agent is guilty of untrustworthiness or dishonesty as contemplated by s. 480(1)(a) 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, by providing incorrect coverage information to an insurance company, and therefore also violated s. 480(1)(b) of the Act.

Facts and Evidence

This matter proceeded by way of a written Report to Council dated November 4, 2018 (the "Report"). The Report was forwarded to the Agent for review and to allow her to provide further evidence by way of Addendum. The Agent did provide an Addendum dated November 26, 2018, which the Council considered.

The Agent is the holder of a general level 1 certificate of authority, which authorizes her to act in the capacity of a general insurance agent and has held this certificate from October 3, 2013 to present. The Agent's certificate was terminated on March 20, 2018. The certificate was reinstated through the sponsorship of a new employer in July 2018.

This matter arose from the AIC's receipt of *Notice of Termination* dated May 4, 2018, received from the Agent's employer, BrokerLink (the "Agency"). The Agency advised that the Agent's "*employment was terminated after it was discovered that she had back dated an automobile liability certificate for a customer at his request.*"

The AIC sought further details from the Agency regarding the termination. On June 13, 2018, the Agency provided the *Termination of Employment* and appended *Summary of Events by [redacted] Team Lead*, dated March 15, 2018 (the "Termination Investigation"). The Termination Investigation presented that a client of the Agency had attended on numerous occasions between the period of March 7 and 9, 2018 to request that his insurance policy effective date be backdated from January 9, 2018 to January 6, 2018. The client's visits were prompted by a significant increase to his annual premium due to the existence of two undisclosed driving convictions. The client was charged with an additional traffic violation by police on January 6, 2018. The records indicate that the Agent complied with the request of the client to modify the coverage date and liaised with an underwriter to amend the policy effective date due to "broker error". To support the investigation, copies of the client's statements, pink cards, and the automobile insurance policy application dated January 9, 2018 (the "application") were provided. Paragraph 7(a) of the Application stated, "Give particulars of all CONVICTIONS arising from the operation of any automobile during the past THREE years" to which the answer was noted as "Description NONE."

Contained within the Termination Investigation was a memo dated January 18, 2018 from the Insurance Company underwriting team, Novex, which indicated:

New Business rewrite has taken place to rate for active convictions that were not declared.
(2) Convictions 11/04/2015 SPEEDING & 30/17/2017 ILLEGAL U-TURN
Premium has increased an extra \$377, giving a new Total \$1,250 on the Annual premium.

On July 16, 2018, the AIC contacted the Agent to better understand the chronology of events leading to the occurrence. The Agent replied on July 16, 2018 as follows:

[...] On Friday, March 9, 2018 [client name, redacted], a client of BrokerLink [...] [advised] he wanted the policy that was effective Jan 9, 2018 to start on Jan 6, 2018. I told him "no, absolutely not, I cannot do that, nobody can help you with that". He started on a lengthy dialogue [...] I let him [...] I couldn't help him with this matter and he continued and wouldn't leave my office. I wanted to end this conversation with him and thought, I'll call Underwriting, and let them know he was in my office with this request, and that would put an end to this pretty quick and he would leave once he had heard it from the Underwriter. I dialed the U/W and put the call on speakerphone so he could hear it. [...] **I asked if we could rewrite the policy with an effective date of Jan 6 vs Jan 9 and she asked me a few questions about if he had any claims or convictions since then and I said no as that was what [client] [had] answered to me when I asked him. She said we could do it and I just went with that [...] She asked what the reason was and we hummed and hawed a bit and I said "Broker Error" because she needed something for a reason and then it was done. I printed [client] a new pink card [...]**
(emphasis added)

In an email dated March 13, 2018, the Agent advised her employer of her error:

[...] [I, the Agent] read [redacted] (referred to herein as "Broker 1") Broker 1's activity about him [the client] not being happy due to premium increase shortly after the policy was released [...] the first line of it talked again about him disputing the tickets on his MVR from 2015 and I read "no further" than that at the time. [...] **If I would have read further I would have seen that [the client] had been issued a ticket for failing to stop on January 6/18, and he had been trying to have [redacted] (referred to herein as "Broker 2") change the date of the coverage from the 9th to the 6th.** [...] I saw his folder on my desk that

he had a yellow ticket for some kind of conviction but I did not know what it was for or what that date was. He then asked me if we could change the date of the policy to January 6/18. I tell him that “no, we cannot do that” [...]

I did not know during that episode that he had been in office before trying to get the date changed as once again, I did not read to the end of (Broker 2’s) activity.

(emphasis added)

Having sought her manager’s direction, on March 13, 2018 the Agent acted to correct the mistake:

[...] While I was out and about that morning I realized I had to correct my mistake with U/W on my own, and so when I got back to my office after lunch I called Novex and I think I spoke to [redacted]. I ...Gave [redacted] the client name and we got to work on voiding the change I made on Friday with [original U/W name, redacted][...]

In October 2018, the AIC contacted the Novex Underwriter, who responded on October 16, 2018:

[...] I spoke to brkr Michelle about binding cover on the n/b on the 10 Buick from Jan 6-Jan 9, 2018. I had agreed to bind the coverage for 3 days. I don’t recall the reason she gave me, but as per our conversation it was due to brkr error.

A few days later, brkr Michelle called back and got senior u/w [redacted] and as per [her] notes, [redacted] had declined to bind coverage as brkr mentioned that insured got a ticket on Jan 6, 2018 and wanted to be covered for it.

Due to that new information [redacted] decided not to bind coverage on that vehicle. [...]

Having obtained the chronology of events from the Agent, and information from the original Underwriter, the AIC contacted the Agency manager to describe the incident. The manager responded on October 11, 2018, as follows:

March 7, 2018: [Client] came in & saw [redacted] Broker 1. He was upset about the premium on his new policy being higher than Michelle Vanleperen [sic] had quoted. Broker 1 reviewed notes by the underwriter and advised him that NOVEX found 2 undisclosed moving violations on his Jan 10, 2018 MVR. [Client] insisted this was not true. Broker 1 directed him to registries office to inquire.

March 9, 2018: [Client] came in again & saw our broker, Broker 2 [redacted] and again disputed those 2 convictions. [Redacted] Broker 2 told him to consult registries. He also advised [redacted] Broker 2 that he had another ticket on Jan 6, 2018. He had no insurance at that time and requested a pink card effective for that date. [Redacted] Broker 2 refused.

March 9, 2018: [Client] contacted Michelle & requested a meeting. They met that day. Michelle noted the file that she got consent from underwriter, [redacted], to change the effective date to 3 days earlier, Jan 6, due to broker error. That call is recorded & I was able to confirm that Michelle did tell the underwriter that it was broker error. That the application was signed on Jan 9 but it was supposed to be dated Jan 6. Michelle gave [client] a Liability Card effective date Jan 6, 2018 [...]

In response to the entirety of the Report, the Agent provided an Addendum dated November 26, 2018. The Agent disputed the allegation that she knew or ought to have known that the client was driving without insurance at the time of the conviction, but ultimately the Agent concluded:

I am saddened and deeply [sic] that I am involved in this matter, and I accept my share of the blame however some of the information you received was the first time I have ever heard about it. Once again, I would ask that the Council take into consideration that this has never happened before [...] that “there have been no other instances” on my file.

Discussion

The Report alleges that the Agent acted in a dishonest or untrustworthy manner, pursuant to s. 480(1)(a) of the Act, when she provided inaccurate information to an underwriter to facilitate the extension of a client's automobile insurance coverage. The Council considered that, while the Agent was attempting to assist her client by extending the coverage, the Agent is duty-bound to protect the public and her employer by adhering to the *Insurance Act*, and its Regulations. An insurance policy is a legally binding document and the effective date plays an important role in the protection of the insured, and those making claims against the insured. As evidenced in the Report, the Agent allowed the alteration of the effective date and knew through admission by the client, or ought to have known through the review of her colleague's records, that the client's request was reliant on a fallacy; that the coverage was active on January 6, 2018 when it, in fact, was not. The *Termination Investigation* plainly indicates that the Application was dated January 9, 2018. The Council acknowledges the Agent's version of events but rejects her explanation for allowing such a concession. Given the evidence before the Council, the Council concludes that the Agent has failed to uphold an ethical practice in her day to day insurance dealings, and has acted in a dishonest or untrustworthy manner, 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) of the Act. As a result of this finding the Council rejects the charge in the alternative pursuant to s. 509(1)(a) and 480(1)(b) of the Act.

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. The Council agrees that a substantial civil penalty is warranted under the circumstances, as honesty and transparency are the hallmarks of a trustworthy Agent. Therefore, the Council orders that a civil penalty in the amount of \$5,000.00 be levied against the Agent.

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, the Agent's certificate of authority shall be suspended, and interest will begin to accrue at the 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 directly 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: February 15, 2019

[original signed by]

Catherine Cake, 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
Edmonton, Alberta T5K 2C3
Email: tbf.insurance@gov.ab.ca