

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 Amanda Jenner
(the "Agent")

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

This case involves an allegation pursuant to s. 480(1)(a) of the Act. Specifically, it is alleged that the Agent behaved in a dishonest or untrustworthy manner by repeatedly using client funds for personal purposes. In doing so, it is alleged that the Agent is guilty of dishonest or untrustworthy behavior in her dealings with her employer, Bencharski Insurance Services Ltd. (the "Agency") and her clients. Consequently, it is alleged that the Agent is guilty of untrustworthiness or dishonesty as contemplated by s. 480(1)(a) of the Act.

Facts and Evidence

This matter proceeded by way of a written Report to Council dated January 17, 2019 (the "Report"). The Report was forwarded to the Agent for review and to allow the Agent to provide further evidence by way of Addendum. The Agent corresponded through her Counsel.

The Agent is the former holder of a general insurance certificate of authority that authorized her to act in the capacity of a general insurance agent and held this certificate from February 28, 2018 to August 9, 2018. The Agent's certificate of authority was terminated on August 9, 2018 as a result of her dismissal from employment with the Agency.

The AIC received notice of the Agent's termination on August 9, 2018. The Agency advised at that time that "*we discovered that [the Agent] had been embezzling funds over the past 6 months at least*". In response, the AIC asked the Agency to provide further information relating to the dismissal. On August 17, 2018 the Agency responded:

[...] On July 27, 2018, Amanda failed to come in to work (I was still not aware of the theft) [...] Monday morning (July 30, 2018) [...] I received a short text saying "I won't be coming in today". [...] I did not get a response until 2:56 p.m. [...] she would not be returning. [...] I further investigated the

trust account balance, the deposits. I noticed there were very few bank deposits. For example, while I would have expected 1 to 2 deposits weekly, there were only 2 deposits for the month of July. This made me review the payment envelopes to see what we had record of receiving (focusing specifically on the payments received by cash. In creating a spreadsheet of all cash received and comparing it to the cash deposited, I found that the deposits were short by more than \$32,000.00. [sic]
The payments that these cash envelopes reflected had been properly processed in terms of remitting payments to the insurers either by our trust credit card or trust cheques.

In support of the above, the Agency provided spreadsheets and supporting financial documentation which evidenced the shortfall of \$32,000.00.

On August 20, 2018 the AIC contacted the Agent to obtain her comment with respect to the allegations. Having received no significant response, the AIC served a formal Demand for Information on October 3, 2018 (the "Demand"). The Demand set out a response deadline of October 18, 2018. On October 18, 2018 the Agent responded through her Counsel, as follows:

[...] [5.] In Summer of 2017, I started skimming money from each cash deposit I made for Bencharski. Sometimes clients would pay with cash on hand and I would transfer the equivalent electronically from the company account to the insurance provider. [...]
[9.] I resigned from my position with Bencharski. I was told that I will not be returning to my position.
[...]
[11.] I know what I did was wrong and I sincerely want to rectify the matter by making restitution.

Representations were made by the Agent's counsel seeking a reduction of the civil penalty.

Discussion

The Report alleges that the Agent acted in a dishonest or untrustworthy manner as contemplated by s. 480(1)(a) of the Act when she collected client funds for her own personal use, falsified the Agency's financial records, and intentionally concealed the loss of Agency funds. The Agent, through her Counsel, disclosed the details of a significant personal hardship endured during the course of her non-compliance. The Agent has cited this as the primary cause of her conduct. The Agent expressed remorse for her behavior and understands the severity of her actions. However, the Council found that the Agent owed a duty to her employer, Bencharski Insurance Services Ltd., and to her clients to supervise and safeguard the funds with which she was entrusted. The Agent also held a fiduciary duty as an insurance agent to act in the best interests of her clients. Honesty and transparency are the hallmarks of a dutiful agent's conduct, especially when client funds are involved. The Agent failed to meet both obligations. The evidence before the Council proves that the Agent falsified statements for her personal benefit. Given the Agent's admission, the objective and subjective elements of the applicable legal test under s. 480(1)(a) are met. This was intentional conduct and it is dishonest and untrustworthy as contemplated pursuant to s. 480(1)(a) of the Act.

The Council recognizes that no Agency clients suffered a loss as a result of the Agent's transgressions, and the Council is ever-mindful of striking the correct balance between the penalty, the conduct evidenced and the potential harm to consumers. The Agent's Counsel submitted that the Agent's cooperation with the investigation should dissuade the Council from levying the maximum civil penalty. However, the *Insurance Act* and its Regulations act as a mechanism of public protection. If the Council did not impose the maximum penalty the impression might be left that actions of this nature are allowable, so long as a subsequent act of contrition follows. It is the view of the Council that the Agent's deception was more than a chance offence, fueled by her personal circumstances – it was deliberate. Accordingly, a significant civil penalty is warranted under the circumstances. As such, the Council orders the maximum civil penalty allowable under s.480(1)(a) of the Act and pursuant to s. 13(1)(a) of the *Certificate Expiry, Penalties and Fees Regulation*, A.R. 125/2001, being \$5,000.00. Were the Agent presently licensed, the Council would have exercised its authority to revoke the Agent's certificates of authority for the period of one year.

The civil penalty must be paid within thirty (30) days of receiving this notice. If the 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 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.

Date: May 2, 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
Alberta Finance
402 Terrace Building
9515-107 Street
Edmonton, Alberta T5K 2C3
Email: