

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 Tracy Ernest Deslaurier
(the "Agent")

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

This case involves an allegation pursuant to s. 480(1)(a) or alternatively, s. 509(1)(a) and subsequently s. 480(1)(b) of the Act. Specifically, it is alleged that the Agent acted in an untrustworthy or dishonest manner, as contemplated by s.480(1)(a) when he failed to provide information relating to a travel insurance refund to his client which was ultimately refunded to DesLaurier Financial Services Inc./TravelInsure.ca (the "Agency"). In the alternative, it is alleged that the Agent made false or misleading statements to conceal or retain the refund intended for his client, in violation of s.509(1)(a) of the Act, and subsequently in violation of s.480(1)(b) of the Act.

Facts and Evidence

This matter proceeded by way of a written Report to Council dated February 27, 2019 (the "Report"). The Report was forwarded to the Agent for his review and to allow the Agent to provide the Council with any further evidence or submissions to support his position. The Agent did not respond.

The Agent was the former holder of a full life certificate of authority from January 29, 1994 to December 5, 2018 and an accident & sickness certificate of authority from January 26, 1996 to December 5, 2018. The Agent's certificates of authority were suspended for six months on December 5, 2018 as ordered by the *Insurance Councils Appeal Board of Alberta*, in their Decision dated November 2, 2018.

On November 6, 2018 Greatway Financial Inc. ("Greatway") advised the AIC that the Agency had failed to refund two travel insurance policy put in place for [B.S.](("Client 1") and [B.S.I.] ("Client 2"). As an intermediary, Greatway Financial Inc. relied on the Agency as its Managing General Agent to place and manage travel insurance policies. Greatway resolved the outstanding refund with Client 2 by advising the Agent to pay the amount owed. However, Client 1 was never refunded the amount owed. As such, it is alleged by Greatway that the Agency failed to provide refunds of travel insurance policies put in place for Client 1 and Client 2.

On November 7, 2018 Greatway provided copies of communications with the Agent and further details surrounding the refund of the cancelled travel insurance policies. Greatway advised that the Agent was acting as a broker for “*Brokerage A*”. Brokerage A, through their internal policies, provide refunds directly to the Agent rather than refunding their clients. As such, the Agent was provided the refund amounts intended for Client 1 and 2 directly for their cancelled policies. Greatway alleged that this allowed the Agent to retain the refunded values (albeit that Client 2 was eventually returned) rather than remitting them to the client directly.

The AIC sought an explanation from Brokerage A as to the remittance of refunds to the Agent. In an email dated January 8, 2019, the Brokerage A President & CEO, and Compliance Officer, offered the following response:

“...[...] Mr. Deslauriers of Travellsure.ca received all premiums net of his commission (which he had to add in order to refund his clients) by electronic transfers from our company. However, Mr. Deslauriers has chosen NOT to refund any of his clients that were due early returns or cancellation refunds, as to why, we do not know. I have tried several times, in the past, to contact Mr. Deslauriers via emails or calls (leaving numerous voice mails) but to no avail. He has not responded to any of our emails or calls. [Brokerage A][redacted] has cancelled his broker agreement for quite some time now and we do not deal with him any longer...[.]”

On January 14, 2019, Brokerage A provided the AIC with email correspondence between themselves and the Agent, which confirmed payment of the refund to the Agent. A *Policy Ledger* was also provided, dated April 30, 2016, which stated “[Client 1] Premium Cheque -\$1,899.27 PLEASE REFUND YOUR CLIENTS”. In an email from Greatway, the policy cancellation confirmation evidenced that the policy had been cancelled effective April 22, 2016.

The AIC corresponded with the Agent to discuss the allegations and particulars of the cancelled travel insurance policy and amount owing. On January 23, 2019, the AIC received an email from the Agent which stated:

“...[...] I will endeavor to pay him back personally at some point in time even though there is no obligation on my part, but I cannot promise a time frame.”

Discussion

It is alleged in the Report that the Agent acted in a dishonest or untrustworthy manner pursuant to s. 480(1)(a) of the Act by failing to provide the refund to the Client 1 and withholding the refund of Client 2 until discovered by Greatway.

The evidence contained in the Report shows that the Agent failed to remit the refund owed to Client 1. As confirmed by the Compliance Officer of Brokerage A, Brokerage A policies dictate that the Agent be refunded the amount under explicit instructions to provide the monies to their mutual client. The licensee, in his role as an

insurance agent, was entrusted with the stewardship of Client 1 and Client 2's money and had a fiduciary obligation to act in the best interests of those Clients. However, the Agent admits that he has not provided the refund duly owed to the Client. Given the evidence before the Council, and the Agent's statements, the Council believes that the conduct of the Agent was intentional, and the behavior was distinctly dishonest and untrustworthy 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).

As a result of this finding under s.480(1)(a) the Council rejects the alternative charge alleged pursuant to s. 509(1)(a) and subsequently s. 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. Honesty and transparency are the hallmarks of a trustworthy Agent's conduct, especially where client funds are concerned. As noted in these findings, the Agent's actions deprived the Client to the refunds owed to them. The Council therefore orders that a civil penalty in the amount of \$5,000.00 be levied against the Agent.

Pursuant to s. 480(1) of the Act, the Council may also revoke or suspend certificates of authority where the holder of the certificates contravenes any provisions of the Act. Given the seriousness of the actions of this Agent, the Council also orders the revocation of the Agent's certificates of authority.

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, interest will begin to accrue. 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.

Date: May 3, 2019

[Original signed by]

Michael Bibby,
Chairperson, 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