

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 Sean Ronson Nethercott
(the "Agent")

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

This case involves allegations pursuant to s. 480(1)(a) of the Act, or alternatively, s. 509(1)(a) and s.480(1)(b) of the Act. Specifically, it is alleged that the Agent made changes to his clients' insurance policies without his clients' knowledge or consent. In so doing, it is alleged that the Agent acted in a dishonest or untrustworthy manner as contemplated by s.480(1)(a) of the Act, or, in the alternative, it is alleged that the Agent made false or misleading statements, as contemplated by s.509(1)(a) and subsequently is 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 1, 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 by way of Addendum. The Agent submitted substantial materials for the Council's consideration. In arriving at its conclusion, the Council carefully reviewed all evidence presented. However, given the breath of the material provided, the Council did not outline every item of evidence submitted in its' reasons for Decision.

The Agent holds certificates of authority authorizing him to act in the capacity of a life insurance and Accident and Sickness ("A&S") insurance agent. The Agent has held these certificates of authority intermittently from April 4, 2007 to present.

This matter arose from correspondence received from the Agent's clients, RS and DS, (collectively referred to, herein, as the "Clients") alleging that the Agent did not arrange the life insurance policies in accordance with their instructions. In an email dated January 16, 2019, RS advised the AIC that:

[...] I have just learned that the life insurance my husband and I thought we had is not what we actually have. [...] We were under the impression that we had one \$500,000 term policy for me, and another of the same for my husband. We were told what to expect for the premiums and

those premiums have been coming out of our account for about a year. Despite what we thought we were agreeing to, turns out Sean instead set up a term policy for myself for a lesser amount, and then another for myself as an infinite [...] My husband's signature is on the second policy- which we had no knowledge of [...] No term policy was ever set up for my husband [...]

The Clients advised that in August 2017 the Agent led them to believe through consultative discussions that both DS and RS were approved for Individual Life Insurance term policies. However, the Clients subsequently discovered that the policies provided did not align with the agreed upon amounts, and that the Agent had created two policies under RS, but failed to create a policy for DS, leaving him uninsured.

All parties agree that DS was duly notified by the Agent that his life insurance application had been declined. However, DS contends that the Agent advised him that a reapplication would be processed. DS attended at the office of the Agent to process what he believed to be a new application for life insurance. DS alleges that the Agent presented him with a conversion document relating to his wife's coverage, which he unknowingly signed. Having believed that coverage was in force for both parties the Clients observed an increase in insurance payments. The amount of the increase was such that they interpreted this to be the value of their combined coverage. However, only RS was insured and DS was left both unaware and uninsured.

On January 17, 2019, the AIC contacted the Agency under which the Agent was employed to seek further clarity on the policies sold. The Agency provided the Client files (hereinafter referred to as the "Agency Documents"), which were considered by the Council.

Contained within the Agency Documents was the *Application for Conversion of Individual Term Insurance to Co-operators life insurance policy* (the "Conversion Document") which indicated the insured party's name as RS and the signatory name as DS.

Of further importance to the Council within the Conversion Document was the following:

- (a) The "financial advisor's information" was that of the Agent;
- (b) The "identity verification" identifies RS as the insured;
- (c) The "identity verification" indicates DS in the signatory line;
- (d) The "conflict of interest form" endorsed by the Agent, and the insured party is named as RS. The signature of the owner is DS.

On January 21, 2019, the AIC requested that the Agent respond to the allegation and provide his chronology of events. In an email dated January 21, 2019, the Agent replied:

I was approached by the [Clients] who were existing clients of mine for personal insurance about Life Insurance. At our original consultation a needs analysis was completed, and we applied for life insurance. During the underwriting process [...] Co-operators declined his application. I contacted him about the decline, and was able to arrange reconsideration [...] [a subsequent decline was issued] [...] I did not discuss these matters with his wife on his request.

I did then place the life insurance for RS for herself, and sought out alternative coverage with Federated Life Insurance with CPP which was our only option. However, when I reviewed the quote with DS it was too expensive, and he elected not to pursue it. Provisions were put into place to provide individual insurance for RS. Im [sic] not sure about the rest of it as it was more than 1 year ago that this policy was placed. I do not recall having spoken with them since that time.

In an email dated February 5, 2019, the Agent states:

[...] I met with the [redacted][Clients] together once, when they came into my office to buy Life Insurance. At that time an Eapplication was completed, in which they completed a docu-sign as per Cooperators Procedure, not a written signature. [...]

2. As per the emails notes, DS's application was declined [...] I went back to life underwriting and arranged for a reconsideration [...]

4. I met with DS in September and completed the questionnaire, statement, and verbal authorization [...] These were the only signed documents I recall him signing. There was no new application, or any other documents related to his wife's policy at that time as this meeting was only with DS, RS did not attend the meeting. [Emphasis added by Agent]

5. These documents were submitted to Life underwriting who were inclined to provide terms for DS [...]. Therefore in October the policy was again declined, for a second time. No second application was written as I contacted our secondary carrier who advised that terms were available with Canada Protection Plan, but the cost was substantial, and the [Clients] declined to pursue that.

6. I did not ever meet with DS again after September 2017, and did meet with DS one other time at which she signed the documents. The policy(s) were sent to her in late 2017, and I never met with her after that, or to my knowledge, spoke with her after that.

[...]

8. Therefore, the only forms that the clients would have signed would have been DS's disclosure statements, which he wrote himself and signed, and the questionnaire, and RS's change form which was enclosed. [...]

The Agent provided a detailed response to the Report. The Agent names this document as "Response to Investigation #69456". In response to the Conversion Document, the Agent states:

[...] 3. I strongly disagree with RS's comments and the chronology of the events. I have reviewed the exhibit c described [...]. I do not know whether these were provided by Co-operators and then sent by RS, or if they were documents she had, as they seem to be very similar to the documents provided by the agency. I have no recollection of which documents were signed by whom, or when.

[...] 5. I agree that the agency sent the same documents to the Investigator. I cannot speak to the contents of the file, only that several items were missing such as the needs analysis from the Cooperators system, notes on conversions with underwriting, [...]

[...] Because we did write a lot of policies before the year end, that required amendments in the file, the name of the client would be on the signature page as it did not have any other identifying marks as to which policy owner it was for. As for the Signatures by DS I do not understand why his signature was on the change form except that it was signed in error when she should have been signing it at a meeting. [...]

Discussion

In order to conclude that the Agent has committed an offence pursuant to s.480(1)(a) of the Act, the Report before the Council must prove, on the basis of clear and cogent evidence, that it is more likely than not that the Agent committed the act as alleged. The intent and requirement of clear and cogent evidence is reflected in the Act, and the Council duly considered that findings of guilt under s. 480(1)(a) can dramatically impact an insurance agent's ability to remain in the industry.

It was an undisputed item of evidence that the Conversion Document was written under the insured name of RS, but was signed by DS. The parties differ in their recollection of events leading to the signature, however, the Agent was the named financial advisor overseeing the Conversion Document. The Agent also admitted that the Conversion Document ought to have been signed by RS but that it was actually signed by DS. Furthermore, the Clients allege that the increase in premium and Agent's actions were steps taken to persuade them that coverage was in place for both parties. As a separate item of discussion was the validity of the signatures collected by the Agent. As the Council are not an authority on the authenticity of handwriting, they did not opine in this regard.

Insurance agents work in a profession which necessitates the accurate completion of forms and insurance documents. Clients can experience severe difficulties when forms are incorrectly completed, as observed in this instance. Because of this, it is not unreasonable to expect a high standard of due diligence be practiced by insurance agents when soliciting and finalizing insurance documents. The relationship between the agent and the client is such that the client relies on the agent's competency, integrity and expertise to effect the discussed coverage. Loss, error, or lapse of such coverage caused by an insurance agent's oversight unduly exposes the client to risk. The Agent's actions deprived RS and DS of the full knowledge and information required to action supplemental insurance coverage to safeguard their family.

In light of all the evidence, the Council is satisfied that there is sufficient, clear and cogent evidence that the requisite elements of an offence under s.480(1)(a) have been met, and that the Agent's conduct was intentional, and is dishonest or untrustworthy as contemplated by s.480(1)(a) of the Act.

The Council agrees that a substantial civil penalty is warranted under the circumstances as honesty and transparency are the hallmarks of a trustworthy agent, especially when advising and presenting services to their clients. Given the seriousness of the offence the Council orders that a civil penalty in the amount of \$5,000.00 be levied against the Agent pursuant to s. 480(1)(b) and 13(1)(b) of the *Certificate Expiry, Penalties and Fees Regulation*, A.R. 125/2001.

Under the offence of 480(1)(a) the Council also has the jurisdiction to suspend the Agent's certificates of authority for the period of up to 12 months, or alternatively has the authority to revoke the certificates of authority for the period of up to one year. Given the conduct of the Agent, the Council orders that the Agent's certificates of authority be revoked for the period of one year.

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: June 7, 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:

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