

## **INSURANCE COUNCILS APPEAL BOARD OF ALBERTA**

In the matter of the Insurance Act, R.S.A. 2000, c.1-3 as amended {Insurance Act}

And in the Matter of the Insurance Councils Regulation, Alta. Reg.125/2001, as amended {"Insurance Councils Regulation"}

BETWEEN: ADEBOLA ADEOGUN

**Appellant**

-and-

LIFE INSURANCE COUNCIL

**Respondent**

Heard at Edmonton, Alberta September 25, 2018

<b>Before:</b>	HAMISH J.D. HENDERSON	Appeal Panel Chair
	M. PATRICK SOULIERE	Appeal Panel Member
	DEAN HUNT	Appeal Panel Member

### **REASONS FOR DECISION AND ORDER**

1. This is an appeal by Adebola Adeogun. ("the Appellant") of the May 15, 2018 decision of the Life Insurance Council to impose a fine on the Appellant for failing or refusing to provide information and documentation requested by AIC through a Demand for Information. The Life Insurance Council held the Appellant be levied a civil penalty of \$750.00 for the Appellant's failure to respond to the Demand for Information.

#### **Procedural History**

2. By letter dated June 10, 2018 to the Superintendent of Insurance, the Appellant commenced the appeal of the May 15, 2018 decision. On June 19, 2018 the Superintendent of Insurance selected the Panel of the Insurance Councils Appeal Board to hear the appeal. On September 3, 2018 the Panel issued notice to the Appellant and to the Council confirming the date, time and place of hearing.

#### **Preliminary Matters**

3. Both parties participated in the hearing on September 25, 2018. Mr. R. Martz appeared as Counsel on behalf of the Life insurance Council. The Appellant participated in the hearing via telephone conference call.
4. The parties confirmed they had no objection to the constitution of the Panel and raised no objection to the Panel's jurisdiction to hear and decide the appeal.

5. At the outset of this hearing, the Panel admitted into the record the Record before the Life Insurance Council and its May 15, 2018 decision.
6. Counsel for the Life Insurance Council indicated he would call no further evidence. The Appellant indicated that she would not be testifying but wished to proceed with submissions.

#### **Issue to be Determined**

7. Does the Appellant fail to meet the requirements of a Demand for Information and contravene a provision of the Act as contemplated in s. 480(1)(b)?

#### **Relevant Legislation**

8. The AIC operates under a delegation from the Minister of the Treasury Board and Finance that authorizes the AIC to investigate complaints against holders and former holders of insurance agent certificates of authority. Pursuant to the Minister of Finance Directive No. 05/01, the Minister may also delegate his powers under s. 481 of the Act, which section states that the "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 in the direction any information specified by the Minister relating to matters in s. 480(1)." Subsection 2 states that "...a person served with a direction ...who has the information must provide the information in accordance with the direction".

#### **Submissions**

9. Counsel for the Life Insurance Council reviewed the information that was before the Council and the Council's decision. He elected to call no further evidence.
10. The Appellant argued that did not receive any notice of the Demand for Information. In particular, she stated as follows:
  - a. The Appellant did not receive any correspondence or other contact from AIC regarding this matter until she received correspondence notifying her of the civil penalty;
  - b. The Appellant had the same email address for some 24 months prior to the Demand for Information being issued. She advised the Panel that she checks it regularly and did not see any email relating to the Demand, although she acknowledged that she received regular updates and emails from the Insurance Council;
  - c. The Appellant advised that she similarly had not received any telephone calls relating to the matter.
  - d. Here telephone number and email address on file with AIC were correct, and she appeared to have received all other correspondence and updates from AIC over that period.

#### **Discussion**

11. Although the Insurance Act does not define the scope of an appeal, the Insurance Councils Regulation allows that the Appeal Board proceedings need not be based solely on the record before the Life Insurance Council. Section 21 of the Insurance Council Regulation allows a party to introduce evidence and call witnesses. Section 22 of the Insurance Councils Regulation directs that a panel's decision is confined to the submissions and evidence submitted to it.

12. While the Appellant denied receiving notice of the Demand for Information, she confirmed that the email address and telephone number on file with the Insurance Council were correct.
13. The offence that is the subject of this Appeal is one of strict liability. That is, the AIC only needs to prove that the Demand for Information was properly made and delivered. Once the AIC proves that the Demand for Information was made, the onus shifts to the Agent to demonstrate that she took all reasonable steps to comply with the Demand and avoid committing the offence.
14. There was no evidence provided to the Life Insurance Council or to this Panel to show the Demand for Information was not properly made and delivered. In failing to respond to the Demand for Information the Appellant has not met the burden of establishing a due diligence defence, and accordingly there is no basis on which to vary the Decision of the Council.
15. The civil penalty levied against the Appellant is within the range permitted to be levied under the Legislation. The Life Insurance Council decision noted that the public is not well served when Agents fail to comply with Demands for Information, and that the inordinate number of failures of licensees to respond to Demands for Information, as well as the lack of any meaningful response by the Appellant necessitated the assessment of a significant civil penalty to deal with both general and specific deterrence. Therefore, there is no reasonable basis to interfere with the Civil Penalty imposed.

#### **Appeal Fee**

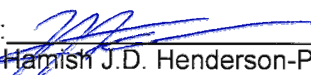
16. Section 24 of the Insurance Councils Regulation provides that, in determining an appeal, a panel shall also determine the disposal of the appeal fee paid by the appellant to commence the appeal to one or both parties taking into consideration both results of the appeal and the conduct of the parties. Given the result of the appeal, the Panel is of the view that the appeal fee paid by the Appellant should be awarded to the Life Insurance Council.

#### **Order**

17. For the reasons set out above, it is ordered that:
  - a. The Decision of the Life Insurance Council is confirmed.
  - b. The appeal fee is awarded to the Life Insurance Council.

DATED at Edmonton, Alberta the 25<sup>th</sup> day of September, 2018.

INSURANCE COUNCILS APPEAL BOARD OF ALBERTA

Per:   
Hamish J.D. Henderson-Panel Chair

Per:   
M. Patrick Souliere-Panel Member

Per:   
Dean Hunt-Panel Member