

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 Agents and Adjusters Regulation*, Alta. Reg. 122/2001, as amended ("*Insurance Agents and Adjusters Regulation*") and the *Certificate Expiry, Penalties and Fees Regulation*, Alta. Reg. 125/2001, as amended ("*Fees Regulation*")

BETWEEN:

MARINA STARKMAN

Appellant

- and -

LIFE INSURANCE COUNCIL

Respondent

Heard in Edmonton, Alberta on July 12, 2018

Before:

GWEN HARRIS  
OSCAR BUERA JR.  
DEAN HUNT

Appeal Panel Chair  
Appeal Panel Member  
Appeal Panel Member

DECISION AND ORDER

1. This is an appeal by Marina Starkman ("the Appellant") of the April 16, 2018 decision of the Life Insurance Council. The Life Insurance Council held that the Appellant failed to respond to a demand for information pursuant to section 481 of the *Insurance Act* and imposed a penalty of \$500 pursuant to section 13(1) of the *Fees Regulation*.

## **Procedural History**

2. By letter dated May 6, 2018 to the Superintendent of Insurance, the Appellant commenced the appeal of the April 16, 2018 decision. On May 28, 2018, the Superintendent of Insurance granted the Chair's request for an extension of the statutory time limit for hearing the appeal and finalized the selection of panel members from the Insurance Councils Appeal Board to hear the appeal. On June 5, 2018, the Panel issued notice to the parties confirming the date, time and location of the hearing.

## **Preliminary Matters**

3. The Appellant attended the hearing on July 12, 2018. Mr. Martz appeared as counsel on behalf of the Life Insurance Council.
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. The Life Insurance Council conducted its review of the Appellant's matter on a documentary basis. At the outset of the appeal hearing, the Panel admitted into the record the Record provided by the Life Insurance Council which included the materials before the Life Insurance Council, the April 16, 2019 decision of the Life Insurance Council and the April 26, 2018 letter from the Alberta Insurance Council to the Appellant transmitting the decision of the Life Insurance Council. In addition, the Panel admitted the following documents made available subsequent to the decision of the Life Insurance Council:
  - a. Letter dated May 6, 2018 from the Appellant to the Superintendent of Insurance.
  - b. The written submission of the Life Insurance Council dated July 4, 2018.
  - c. A printout of the Appellant's personal information from the Alberta Insurance Council database as accessed by the Appellant on July 11, 2018.
  - d. Letter dated May 25, 2018 to the Appellant from IA Financial Group.
  - e. Letter dated October 2, 2017 to the Appellant from Steam-Flo Industries Ltd.

6. Counsel for the Life Insurance Council indicated he would call no further evidence. The Appellant indicated that she would speak on her own behalf.

### Issues to be Determined

7. **Did the Appellant comply with the Alberta Insurance Council direction to provide the continuing education certificates for courses taken within the deadline specified?**
8. **If not, is the penalty of \$500 imposed by the Life Insurance Council appropriate?**

### Relevant Legislation

9. Section 481 of the *Insurance Act* provides authority for the Minister to direct a licensed insurance agent to provide certain information. The provisions that are the focus of this appeal, sub-sections 481(1) and (2) provide:

481(1) 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 the matters in section 480(1).

(2) A person served with a direction under subsection (1) who has the information must provide the information in accordance with the direction.

10. Section 480 of the *Insurance Act* as referenced in section 481(1) allows, in part:

480(1) If the Minister is satisfied that the holder or a former holder of a certificate of authority

(b) has contravened any provision of this Act or the regulations ...

the Minister may revoke, suspend or refuse to renew or reinstate one or more of the certificates of authority held by the holder, impose terms and conditions provided for in the regulations on one or more of the certificates of authority held by the holder and impose a penalty on the holder or former holder.

(2) The amount of a penalty imposed under subsection (1) is governed by the regulations.

11. The Minister's powers duties and functions set out in the sections quoted above were delegated to the Life Insurance Council by the Minister of Finance in a 2001 directive.

12. The requirements for the completion of continuing education and the maintenance and submission of records of courses completed are addressed in the *Insurance Agents and Adjusters Regulation* as follows:

30(1) An individual or a sole proprietor who holds

- (a) a life insurance agent's certificate of authority,
- (b) an accident and sickness insurance agent's certificate of authority,

...

must complete in each certificate term at least 15 hours of the continuing education courses approved under section 29 with respect to the certificate of authority.

31(1) An individual who holds a certificate of authority must keep a record issued by a continuing education provider respecting the continuing education courses completed by the individual during that certificate term.

(2) The records must be kept for a period of 3 years following the expiry of the certificate term and must be provided to the Minister upon request.

(3) If the individual does not provide the records within 30 days after receiving a request from the Minister, the certificate of authority is suspended until the demand is complied with.

13. Section 13 of the *Fees Regulation* authorizes the imposition of the financial penalty that is the subject of this appeal as follows:

13(1) For the purposes of section 480(2) of the Act, the amount of the penalty that may be imposed may not exceed the following:

...

(b) \$1000 for a matter referred to in section 480(1)(b), (c), (d) or (e) of the Act.

## **Submissions**

14. Counsel for the Life Insurance Council reviewed the information that was before the Council and the Council's decision. He submitted in addition:

- a. It is undisputed that the Insurance Council sent the demand for the information to the Appellant via email on November 14, 2017 and followed up with a telephone call on November 28, 2017.
- b. The Insurance Council did not receive a response from the Appellant with the 30-day time limit.
- c. It is the practice of the Council to reduce the penalty to \$500 in cases where the requested information is provided after the deadline for submission.



15. The Appellant argued that the penalty imposed by the Insurance Council for not submitting the requested information by the deadline is harsh and unfair. Further, she claimed improper service of the demand for records. In support of her position, she provided the following information:

- a. She only worked in the insurance industry for a short period of time following a layoff from her usual occupation.
- b. After taking the insurance courses and writing the exam, she helped a friend who owned a company.
- c. Although licensed in 2016, she did not practice in the industry until May 2017.
- d. She earned approximately \* in the few months she worked in the insurance industry.
- e. She was very busy during her time working in the insurance industry as she also had a second job that she worked on in the evenings and was always on the computer looking for work in her usual occupation.
- f. On October 8, 2017, she submitted a request to the Alberta Insurance Council to terminate her Full Life and Accident and Sickness licences as she had a job offer with a company not related to the insurance business.
- g. As she had submitted her resignation, she was not expecting anything from the Insurance Council and was not always checking her email.
- h. She may have received the November 14, 2017 email notice but does not remember. She may have inadvertently erased the email in handling the large volume of emails she received.
- i. She does not remember receiving the November 28, 2017 telephone call. Her children may have erased a message left on voice mail.
- j. Some of the dates on the licensing record of the Insurance Council are incorrect and her profile did not include her cell phone number. The Insurance Council should have called her cell phone number rather than her home phone number.
- k. Missing the submission deadline was not intentional.

## Discussion

### Compliance with Alberta Insurance Council Directive

16. The *Insurance Act* stipulates that in order to act as an insurance agent an individual must hold a valid insurance agent's certificate of authority. The *Insurance Agents and Adjusters Regulation* details the personal attributes and limitations, educational qualifications and reporting requirements the

holder of a certificate of authority must meet in order to maintain the certificate.

17. It is clear in the legislation that participating in continuing education is an important aspect of having the certificate of authority. The *Insurance Agents and Adjusters Regulation* provides for the approval of courses and course providers to qualify for continuing education credit, sets minimum requirements for participating in continuing education courses and requires each holder of a certificate of authority to maintain a record of the courses completed and provide a record of the courses when requested.
18. The record shows that the Appellant held a life insurance agent's certificate of authority and an accident and sickness insurance agent's certificate of authority beginning April 22, 2016. The record shows that the certificates of authority terminated on October 10, 2017. It is undisputed that at the time of the demand for proof of continuing education credits, the Appellant was a 'former holder of a certificate of authority' for purposes of section 480 and 481 of the *Insurance Act* and is thus captured by the legislated requirement to submit the required documentation.
19. In this case, the record shows that the Alberta Insurance Council directed the Appellant to provide proof of the continuing education courses she had declared for the period of her licence. The Demand for Continuing Education Certificates/Records, which included notice of the 30-day time limit for submission and the consequences of a failure to respond, was sent to the Appellant's email address noted on her 'Profile' on November 14, 2017.
20. The Panel acknowledges the Appellant's claim that she was not properly served with the demand from the Life Insurance Council because she does not remember receiving the email or telephone call and the record of the Life Insurance Council does not list her cell phone number which she submits the Council should have called rather than her home telephone number.
21. The evidence as to proper notice is as follows:
  - a. The Appellant did not dispute the accuracy of the email address to which the Insurance Council sent the demand for records of continuing education courses.
  - b. The evidence before the Panel does not indicate the Insurance Council demand was not delivered to the Appellant's electronic mail box. Rather, the Appellant acknowledged in her letter to the Superintendent of Insurance that she saw the notice.
  - c. In the Appellant's May 6, 2018 letter to the Superintendent of Insurance she stated "I saw the email mentioned above almost past



the due date, as I read it, it was my understanding that since I left the industry I did not need to continue further correspondence". The panel finds it reasonable to interpret the statement 'almost past the due date' to mean that the Appellant saw the email notice prior to the due date.

22. In light of this uncontroverted evidence, the Panel is satisfied that the Appellant was properly notified of the requirement to submit documentation within 30 days.
23. As it is undisputed that the Appellant did not submit the requested documentation prior to the deadline, the panel finds that the Appellant failed to comply with the Insurance Council's Demand for Continuing Education Certificates/Records.
24. The failure to comply with the demand as authorized in section 481 of the *Insurance Act* and section 31(2) of the *Insurance Agents and Adjusters Regulation* is categorized as a regulatory or public welfare offence that attracts strict liability. In the present case, this means that once the failure to comply with the demand for records is established, liability is avoided only if the Appellant can establish on a balance of probabilities that she was diligent in taking all reasonable steps to prevent the failure to comply with the demand.
25. We acknowledge the Appellant's statement to the Superintendent of Insurance that "it was never intentional not to respond or ignore this request" and her submissions that circumstances at the time did not allow her to be on top of things. However, neither intention nor preoccupation with other matters is a defence to a strict liability offence. Neither is her expectation that further correspondence was unnecessary because she had left the industry a defence to this strict liability offence.
26. At the time the demand was issued, the Appellant was the former holder of certificates of authority that had allowed her to act as an insurance agent. As a requirement of and included in the authority to work in the insurance business as an agent are obligations to enroll in and take at least 15 hours of approved continuing education courses, to maintain records of the completed continuing education courses and to submit those records when requested. The reference in the *Insurance Agents and Adjusters Regulation* to former holder and to keeping up to 3 years of records clearly signals that the obligation to respond and report persists beyond a request to conclude industry licensing.
27. The evidence before the Panel does not show the Appellant took any steps to comply with the demand to submit the proof of continuing education

courses following delivery of the Insurance Council notice to her email address on November 14, 2017. Neither is there evidence of her taking reasonable action once she saw the notice 'almost past the due date'. The Appellant did not respond to the demand until after receiving the investigator's report in February 2018. Thus, the Panel finds on the evidence that the Appellant did not exercise the diligence necessary to excuse her failure to comply with the demand to submit the required documentation prior to the deadline.

28. On the first issue, the panel finds that the Appellant did not comply with the Alberta Insurance Council direction to provide the continuing education certificates for courses taken during her previous licensing period within the specified deadline.

### Penalty

29. The *Fees Regulation* allows for a penalty of no more than \$1000 for a breach of the provision that is the subject of this appeal. The Life Insurance Council reduced the penalty imposed on the Appellant to \$500 on the basis that she submitted the records demanded after receiving the investigator's report in February 2018.
30. The Panel accepts the reasoning of the Life Insurance Council and its practice as to the reduction in the amount of the penalty and finds the amount to be appropriate.

### **Conclusion**

31. In the final result the Panel concludes the Appellant failed to comply with the Alberta Insurance Council direction to submit continuing education records within the 30-day time limit and that the penalty of \$500 imposed by the Life Insurance Council is appropriate in the circumstances.

### **Appeal Fee**

32. 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 of the parties taking into consideration both the 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. The conduct of the parties provides no reason to do otherwise.

**Order**

33. For the reasons set out above, it is ordered that:


- a. The April 16, 2018 Decision of the Life Insurance Council is confirmed.
- b. The appeal fee is awarded to the Life Insurance Council.

DATED at Edmonton, Alberta this 24<sup>th</sup> day of July 2018.

INSURANCE COUNCILS APPEAL BOARD OF ALBERTA

Per:   
Gwen Harris – Panel Chair

Authorized to sign for:

Per:   
Oscar Buera Jr. – Panel Member

Per:   
Dean Hunt – Panel Member