

INSURANCE COUNCILS APPEAL BOARD OF ALBERTA

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In the Matter of the Appeal of Mr. Russell Campbell from the
Decision of the General Insurance Council dated May 1, 2015

RANDOLPH LANGLEY	-	Chair of Panel
PAULA JEREZ	-	Panel Member

REASONS FOR DECISION

PROCEEDINGS TO DATE

The Appellant Russell Campbell is a holder of a General Insurance Agent's Certificate of Authority substantially continuously since 1998. From 2008 until October 2015 he and his company M.C. Insurance & Risk Management Inc. ("M.C.") were in a contractual relationship with A-WIN Insurance Ltd. ("A-WIN"). Specifically from December 3, 2012 the Appellant and M.C. were parties to a contract with A-WIN title A-WIN Insurance Branch Partner Agreement.

On June 6, 2014 a complaint was received by the Alberta Insurance Council ("AIC") from the designated Representative of A-WIN against the Appellant. The allegation was that the Appellant had used monies received as premiums and deposited into a personal Bank account for personal expenses. The Panel references section 504 of the **Insurance Act** (the "**Act**"), wherein premium funds received by and agent are held in trust. In addition, it was alleged that the Appellant had collected additional fees from clients without having in hand documentation and the Panel references section 505 of the **Act** wherein the requirement to have in hand an agreement in writing for the payment of additional fees before the service is provided.

An Investigation was conducted and a Report prepared and submitted to the General Insurance Council ("GIC") on January 29, 2015. The report included numerous materials relevant to the investigation for a total of 140 pages. This Report and attachments appears as Section 1 of the Record marked on this

appeal as Exhibit 2. It was the submission of the AIC that the Appellant contravened section 480(1)(a) of the **Act** by reason of dishonesty or untrustworthiness and that the GIC ought to consider a civil penalty on that account of \$500.00 pursuant to section 13(1)(a) of Regulation 125/2001, *Certificate Expiry, Penalties and Fees Regulation* and amendments thereto. In addition, it was submitted by the AIC that by reason of contraventions of section 505(2) of the **Act** and the collection of additional fees without agreement in writing that an additional civil penalty by imposed of \$300.00.

A letter of response to the report dated January 29, 2015 was provided by the Appellant.

The matter came before a meeting of the GIC and decision made by motion carried on May 1, 2015. The Decision appears as Section 2 of the Record Exhibit 2. The GIC Decision was that the Appellant had acted in a dishonest and untrustworthy manner such that an offence was proven under section 480(1)(a) of the **Act**. The Sanction applied was a civil penalty of \$5,000.00 and in addition it was ordered that the appellant's certificate of authority be revoked for one year.

On the second matter the GIC found there were 34 counts of unauthorized collection of fees for which a civil penalty of \$100.00 on each count was levied. The total civil penalty levied on the Appellant was \$8,400.00.

The Decision was appealed by the Appellant and the letter of Appeal dated May 11, 2015 has been marked as Exhibit 3 on this Appeal.

Pursuant to the *Insurance Councils Regulation* the then Manager of Compliance appointed the Panel on May 14, 2015, that letter being marked as Exhibit 1 on this Appeal. The Panel received a request for an extension of time for the hearing and marked as Exhibit 4 is the Decision granting that extension.

Panel Member Amanda Friess resigned from the Insurance Councils Appeal Board and the Notice of Hearing for the Appeal as it proceeded on December 16, 2016 was entered as Exhibit 5 on the Appeal.

At the outset of the Appeal hearing the parties agreed to the Panel sitting as two and agreed to the entry of the Exhibits.

FACTS

The Parties had helpfully agreed upon a Statement of Agreed Facts and Exhibits which was entered as Exhibit 6 on this Appeal. In addition Certificates of Completion of accredited courses completed by the Appellant were entered as Exhibit 7. Exhibit 6 supplemented and in a number of instances clarified the facts and materials outlined in the Investigative Report.

Mr. Campbell was sworn and provided some brief clarification of facts.

The parties agreed that the facts on the use of the bank account were correct and that the facts on the charging of fees without a prior written agreement were correct with an agreed probable number of occurrences of 20.

ISSUES

The issues before this Panel accordingly are related to penalty. Section 480 of the **Act** reads as follows:

Sanctions affecting certificates

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

(a) has been guilty of misrepresentation, fraud, deceit, untrustworthiness or dishonesty,

(b) has contravened any provision of this Act or the regulations or similar legislation in another jurisdiction or legislation that is a predecessor of this Act or the regulations,

(c) has unreasonably failed to pay any premium collected by the holder within the time period stipulated in the holder's agency contract to an insurer or an insurance agent who is entitled to the premium,

(d) has placed insurance with an insurer not licensed in Alberta under this Act without complying with the provisions of this Act relating to unlicensed insurers, or

(e) has demonstrated incompetence to act as an insurance agent in the case of an insurance agent's certificate of authority or to act as an adjuster in the case of an adjuster's certificate of authority,

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.

The *Certificate Expiry, Penalties and Fees Regulation* in section 13 provides a limit on civil penalties of \$5,000.00 for a matter referred to in section 480(1)(a) and \$1,000.00 a a matter referred to in section 480(1)(b) through 480(1)(e).

REASONS FOR DECISION

The position of the Appellant as ably presented by counsel is that the matter of the withdrawals from the "trust" account (a term used for convenience as descriptive of the account into which the premiums were initially paid) were a consequence of contractual miscommunication with A-WIN. It was argued that

the withdrawals were reckless rather than intentional and for business operations only. A series of mitigating factors were reviewed in the record Exhibit 2 and the Agreed Facts Exhibit 6. It is clear that he had made significant efforts, including the newly reported efforts in paragraph 21 of Exhibit 6, to ameliorate or otherwise address the problems created by the withdrawals and issues with A-WIN. With particular reference to pages 76 to 80 inclusive it appears that these are statements for the "trust" account and that the debit references to "operating" indicate withdrawals for business operations. The Panel notes these references start in October 2012 and continue intermittently to March 2014.

It is also clear in the evidence, including that in paragraph 25 and following in Exhibit 6, that the oversights in compliance with the fee agreements were actively addressed. The figure of 20 non-compliant transactions was acknowledged by the parties as an appropriate estimate.

The Appellant was forthright in his communications with the AIC. It also appears he has sought additional education addressing Ethics and the Insurance Profession.

The Appellant sought an order that did not include the revocation of the certificate of authority but rather only civil penalties.

The Panel was provided by the AIC with a number of reports of decisions of Insurance Councils or appeals therefrom and have reviewed them. They are in the Panel's view reflective of the application of the revocation of certificate sanction in various serious circumstances.

The Panel is of the view that the mishandling of premium payments impressed as they are with a trust under section 504 of the **Act** is extremely serious. The withdrawals did occur over a period of time and whatever explanations may be proffered they in no way diminish that seriousness. In all of the circumstances the Panel confirms the decision of the GIC save only in respect of the number of breaches of section 505 of the **Act**. In that case the civil penalty remains \$100.00 for each offence but with the number of offences being held to be 20.

It is accordingly the decision and Order of the Panel:

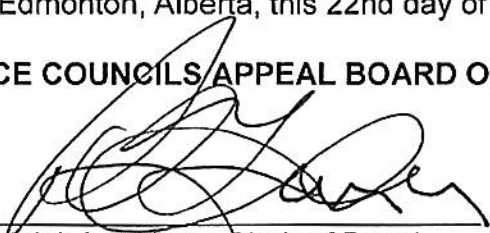
- 1. under the authority of section 23(1) of the Insurance Councils Regulation 126/2001 as amended that the certificate of authority of Russell Campbell is revoked for a period of one year and the decision of the General Insurance Council is accordingly confirmed in that respect, the revocation to commence on January 1, 2017 or such other date as may be agreed to by the parties;**

2. further under the authority of section 23(1) of the Insurance Councils Regulation 126/2001 and section 13(1)(a) of the Certificate Expiry, Penalties and Fees Regulation a civil penalty of \$5,000.00 is levied and the decision of the General Insurance Council is accordingly confirmed in that respect;
3. further under the authority of section 23(1) of the Insurance Councils Regulation 126/2001 and section 13(1)(b) of the Certificate Expiry, Penalties and Fees Regulation, and in respect of the breaches of section 505 of the Insurance Act a civil penalty of \$2,000.00 is levied and the decision of the General Insurance Council is accordingly confirmed in respect of the amount of \$100.00 per count but for 20 counts;
3. In view of the Order made the Panel directs that under section 24 of the Regulation the amount of the Appeal fee paid by Mr. Campbell is to be paid to the Alberta Insurance Council.

DATED at Edmonton, Alberta, this 22nd day of December, 2016.

INSURANCE COUNCILS APPEAL BOARD OF ALBERTA

Per: _____


Randolph Langley – Chair of Panel

