

INSURANCE COUNCILS APPEL BOARD OF ALBERTA

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**In the Matter of the Appeal of Mark Leeb from the
Decision of the Life Insurance Council dated December 5, 2013**

RANDOLPH LANGLEY	-	Chair of Panel
MICHAEL STEWART	-	Panel Member
KENNETH NICHOLAS	-	Panel Member

REASONS FOR DECISION

PROCEEDINGS TO DATE

The Appellant Mark Leeb (the "Agent") is the holder of certificates of authority to act as an agent in respect of Life Insurance and Sickness and Accident insurance since 1996. He is the designated representative of 855473 Alberta Ltd. carrying on business as Leeb Sherwin Financial Services (the "Agency") in Lethbridge Alberta.

On December 18, 2012 the Alberta Insurance Council received a letter from the Alberta Securities Commission forwarding a complaint from complainants DA and SG respecting an investment made in 2008 in a firm called New Life Capital Corp. ("New Life") following a consultation with Mr. Leeb.

The Complaint was investigated and an Investigation Report dated July 31, 2013 was prepared and submitted to the Life Insurance Council. It was the allegation in the report that the Agent had failed to disclose another occupation or employment as required in the applications for renewal of his certificates for the years 2007 though 2009. It was the assertion of the Investigator that this omission was a violation of section 467(1)(c) of the Insurance Act that required that the application contain the information required by the Minister. That omission in turn it was asserted constituted a contravention of the Act and justified a sanction under section 480(1)(b) of the Act.

The matter was considered and by a motion made and carried at a meeting of that Council a decision was made. That Decision was made in writing dated December 5, 2013 and concluded that the Agent was engaged in another occupation or business that ought to have been disclosed in the applications for renewal of his certificates. Accordingly a finding was made that the Agent had breached section 480(1)(b) and was deserving of a sanction.

In as much as a civil penalty could not be levied because of the expiration of three years since the time of the non-disclosure, the Council directed that the Agent's Life and Accident and Sickness certificates be suspended for three months.

By a Notice of Appeal dated December 16, 2013 the Agent appealed the Council's decision pursuant to section 16 of the Regulation. That Notice of Appeal was marked as Exhibit 3 on this Appeal.

By letter dated January 14, 2014 the Superintendent of Insurance appointed this Appeal Panel pursuant to section 17 of the Regulation. That letter of appointment was marked as Exhibit 1 on this Appeal and no objection was taken at the Appeal Hearing to the makeup or appointment of this Panel or its right to hear this Appeal.

A Record of Evidence was submitted by the Council pursuant to section 20 of the Insurance Councils Regulation, Alberta Regulation 126/01 (the "Regulation"). That Record was marked as Exhibit 2 on this Appeal by consent.

The Panel received a request from the Council for an extension of the time period for the date of the hearing and the Panel adjourned the Hearing by a Decision marked as Exhibit 4 on this Appeal.

A further Notice of Hearing was subsequently issued by the Panel for a hearing on March 3, 2014. This Notice was marked as Exhibit 5 on this Appeal.

All parties being present and prepared to proceed, the Appeal was heard on March 3, 2014. The Agent appeared for himself and Mr. Warren Martinson, with Mr. Bernie Van Brabant appeared for the Council.

FACTS

The facts were substantially agreed in the presentation by consent of the Record. The Agent had been licensed for in excess of 13 years without complaints. He had acted for the complainants in respect of the purchase of life insurance.

At some point prior to 2008 the Agent had attended a life insurance seminar at which a presentation was given by New Life. On October 29, 2007 the Agent and Kathy Leeb signed as officers for the Agency an Agency Agreement with New Life under which New Life agreed to pay the the Agency compensation in the amount of 5% of the proceeds of completed sales with potential investors resulting from the efforts of the Agent. This Agent Agreement was

marked as Exhibit 6 and had not been referenced in the Record, Exhibit 2. It is noted that in the August 29, 2013 letter to the Investigator the Agent specifically denies having entered into such an Agent Agreement.

Under a document titled Report of Exempt Distribution (page 33 of 68 of Exhibit 2) it appeared that significant sums had been paid to the Agency in the listed amounts exceeding \$75,000. The Record indicates that the Investment Instructions (page 48 of 68) were witnessed by the Agent and his evidence was that he had access to the New Life website and could download the required documents. He further acknowledged that he had appeared as "Advisor" to the Complainant in respect of the Canadian Western Trust account (page 57 of 68) for the purpose of accessing and communicating the account status to the complainant. Ultimately he acted as a conduit for a communication (page 41 of 68) respecting the investors action in the KPMG New Life Receivership.

It was the Agent's position that as the referral fee as he described it was "related to the insurance industry offering life settlements on insurance policies" (reference Exhibit 3 - page 3, second paragraph 2) and he felt the payment to the Agency was therefore part of the same business.

ISSUES

1. Were the responses by the Agent to Question 10 of the Application For Agents Certificate of Authority a contravention of Section 467(1)(c) of the Insurance Act.
2. If the responses were in violation of the disclosure section what was the appropriate sanction?

REASONS FOR DECISION

The Panel is satisfied on the evidence that the Agent Agreement (Exhibit 6) makes it clear that a contracted service was being provided to New Life and that the Agency received compensation for that service. The Life Insurance Council did not have the benefit of the Agent Agreement but nonetheless concluded that the Agent had an active role in the transfer of funds to New Life.

This Panel does not believe that the matter turns on the degree of involvement in that transfer. It is clear to the Panel that the referral service referenced in the Agent Agreement is not part of the business of a life insurance agent and that the response to Question 10 was false. On all of the evidence the Panel is satisfied that the Agent knew that the New Life referrals were not part of the insurance business and merited a positive response and particulars.

Having made the finding that the Agent contravened section 467(1)(c) of the Act, the Panel also concludes that he breached section 480(1)(b) of the Act and is deserving of a sanction. It is however the view of the Panel that the three month suspension imposed by the Life Insurance Council is too harsh in the circumstances. It is not clear on the evidence that a

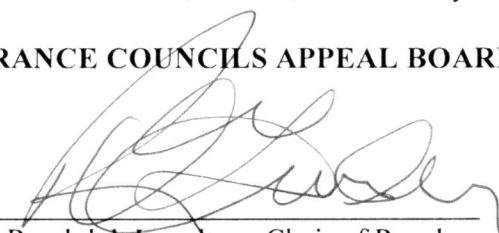
correct answer would have generated any action or response and in the absence of such evidence a lengthy suspension was not warranted. Having said this, the Panel is of the view that the contravention cannot go without sanction and accordingly this Panel imposed a suspension of the agent's certificates of authority for a period of two weeks (fourteen clear days) from the date of this decision.

It is further the decision of the Panel in the circumstance, and pursuant to section 24 of the Insurance Councils Regulation that the Appeal fee be remitted to the Alberta Insurance Council .

DATED at Edmonton, Alberta, this 13th day of March 2014.

INSURANCE COUNCILS APPEAL BOARD OF ALBERTA

Per: _____


Randolph Langley – Chair of Panel