

**INSURANCE COUNCILS APPEAL BOARD OF ALBERTA**

**In the Matter of the *Insurance Act*, R.S.A. 2000, c. I-3, as amended**

**And in the Matter of the *Certificate Expiry, Penalties, and Fees Regulation*, Alta. Reg. 125/2001, as amended**

**And in the Matter of the *Insurance Councils Regulation*, Alta. Reg. 126/2001, as amended**

**BETWEEN:**

**MICHELLE VAN IEPEREN**

**Appellant**

**and**

**THE GENERAL INSURANCE COUNCIL (GIC)**

**Respondent**

Heard in Calgary, Alberta on April 23, 2019

Before:

**TRENA GRIMOLDBY – Appeal Panel Chair**

**LAREESE GRAF – Appeal Panel Member**

**CHRIS MILLER – Appeal Panel Member**

**REASONS FOR DECISION AND ORDER**

1. This is an appeal of a decision of the General Insurance Council (“GIC”) dated February 15, 2019, (the “GIC Decision”) wherein the GIC found the appellant guilty of violating section 480(1)(a) of the *Insurance Act* (the “Act”) for acting in a dishonest or untrustworthy manner for providing inaccurate information to an underwriter to facilitate the extension of automotive insurance coverage.
2. As a result of this finding, pursuant to section 13(1)(a) of the *Certificate Expiry, Penalties and Fees Regulation* (the “Penalties Regulation”), the GIC imposed a \$5,000.00 fine on the appellant. It is only the quantum of that fine that the appellant seeks to appeal herein<sup>1</sup>.

**Relevant Law**

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<sup>1</sup> General Insurance Council Submission to the Panel regarding Michelle Van Ieperen dated April 9, 2019 (“GIC Submission”)

3. Section 480(1)(a) of the Act provides 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

...

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.

4. Section 13(1)(a) of the Penalties Regulation provides as follows:

Section 480 penalties

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:

- (a) \$5000 for a matter referred to in section 480(1)(a) of the Act;

....

### **Factual Background and Procedural History**

5. The appellant is the holder of a general level 1 certificate of authority which authorizes her to act in the capacity of a general insurance agent. She held one of these certificates from October 2013 to March 2018 when it was terminated. The appellant has since had her certificate reinstated via the sponsorship of another employer as of July 2018<sup>2</sup>.
6. The events leading up to the appellant's conviction pursuant to section 480(1)(a) of the Act are set out in the GIC Decision and began in March 2018.<sup>3</sup>
7. On May 4, 2018, the AIC received a Notice of Termination from the appellant's then-employer, who also advised the AIC that the appellant's employment had been terminated "after it was discovered that she had back dated an automobile liability certificate for a customer at his request"<sup>4</sup>. The AIC requested further details from that party and was provided with further information about the appellant's termination and the internal investigation that had been conducted into the matter in June 2018. The AIC then requested information from the appellant

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<sup>2</sup> GIC Submission, pdf page 108.

<sup>3</sup> GIC Submission, pdf pages 108-111.

<sup>4</sup> GIC Submission, *supra*.

on July 16, 2018, which she provided that same day. The AIC then contacted the underwriter involved in the matter and the manager of the appellant's agency in October 2018, who responded with further information. The AIC investigation was summarized in a written report to the GIC dated November 4, 2018<sup>5</sup>. The appellant was given the opportunity to respond to this information and did so via her addendum dated November 26, 2018<sup>6</sup>.

8. The GIC issued its decision in the matter on February 15, 2019<sup>7</sup>. On March 19, 2019, the Superintendent of Insurance received the appellant's Notice of Appeal of the GIC Decision<sup>8</sup>. This Panel ("panel") of the Insurance Councils Appeal Board (ICAB) was selected to hear the appeal on March 21, 2019<sup>9</sup> and the appeal hearing date was set for April 23, 2019 via Notice of Hearing distributed to the parties via email on April 3, 2019.

### **Appeal Hearing – Evidence and Argument**

9. Prior to the hearing, the AIC provided the appeal materials pursuant to section 20 of the *Insurance Councils Regulation* ("ICR") on April 4, 2019 and written submissions to the panel on April 9, 2019 in accordance with section 21 of the ICR. The appellant did not provide written submissions. At the hearing, counsel for the AIC and the appellant both provided evidence, argument and submissions in support of their positions on this appeal.
10. The appellant submitted, among other things, that her conduct was not intentional or deliberate and that she had been attempting to take responsibility for her misconduct<sup>10</sup>. She stated she was not trying to deceive the agency and further submitted that the \$5,000.00 penalty was excessive in light of other section 480 convictions where the actions, misconduct, or facts involved were more serious, deliberate, and demonstrative of patterns occurring over time.<sup>11</sup>
11. Counsel for the AIC submitted, among other things, that the GIC found that the appellant should have known or knew that her actions were wrong.<sup>12</sup> He submitted that this was a less serious version of a section 480(1)(a) offence, and that as such, this was accounted for by the GIC not suspending or revoking the appellant's certificate.<sup>13</sup> He further submitted that the appellant's experience in the industry was an aggravating factor in this appeal, as was her lack of due diligence in the matter.<sup>14</sup> He argued that the quantum of the fine imposed in this case was intended to serve a deterrent effect and was appropriate given the circumstances.<sup>15</sup>

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<sup>5</sup> GIC Submission, pdf page 108.

<sup>6</sup> GIC Submission, pdf pages 109-110.

<sup>7</sup> GIC Submission, pdf page 111.

<sup>8</sup> GIC Submission, pdf pages 114-15.

<sup>9</sup> GIC Submission, pdf page 125.

<sup>10</sup> Hearing Transcript dated April 23, 2019 ("Transcript"), page 22, lines 9-22; page 29, lines 18-20.

<sup>11</sup> Transcript, page 30, lines 10-25.

<sup>12</sup> Transcript, page 41, lines 21-25; page 42, lines 1-13.

<sup>13</sup> Transcript, page 43, lines 1-9.

<sup>14</sup> Transcript, page 44, lines 7-15.

<sup>15</sup> Transcript, page 53, lines 2-4.

## Standard of Review

12. The panel considers the standard of review articulated by Chairperson Hopkins in *In the Matter of the Appeal of Arney Falconer* (2015-07-02), whereby the panel there considered the appeal as a tribunal of first instance but were mindful of the decision before it being appealed, to be instructive here. Accordingly, this panel finds that it is hearing the appeal herein as a tribunal of first instance while also being mindful of the GIC Decision.

## Discussion

13. The panel has carefully reviewed the evidence and materials filed and presented by the parties in this matter. This includes both the evidence and materials before the GIC as well as the evidence and materials presented at the hearing of this appeal. The panel notes that the GIC did not have the benefit of receiving the *viva voce* evidence from the appellant that this panel did.
14. The panel finds that both mitigating and aggravating factors are present in this matter and should be considered in terms of determining the quantum of any penalty to be imposed pursuant to section 13(1)(a) of the Penalties Regulation.
15. In terms of aggravating factors, the panel finds that these include the appellant's section 480(1)(a) conviction as well as the facts and circumstances involved therein, and her experience in the industry which meant that she should have known or did know her actions were improper.
16. In terms of mitigating factors, the panel finds that the appellant held a certificate for many years without incident or disciplinary offence, she admitted the wrongdoing quickly afterward, she cooperated with and provided information to the AIC investigator, the appellant's actions were not planned and were not motivated by/did not result in personal gain or benefit, and were not a part of numerous offences occurring over a period of time.
17. The panel also finds that the misconduct involved here is of a lesser nature than that involved in previous decisions of the GIC and Life Insurance Council in *Dhaval Vakaria* (2015-08-28), *Gurjeet Singh Kang* (2018-09-27), *Jaspreet Singh Gill* (2018-09-27), and *Russell Gordon Campbell* (2015-05-01), referred to in the Appeal Brief of the GIC at Tabs 1-4.
18. In light of all of the above, and in this specific instance, the panel is of the view that the quantum of the appellant's fine should be varied to the amount of \$2,500.00. The panel is mindful of the deterrence purpose of the Act and related regulations, and finds that this quantum of penalty is appropriate and aimed at serving that deterrent effect in this case.

## Disposition and Appeal Fee

19. Taking into consideration all of the foregoing, the panel allows the appeal and varies the quantum of the penalty imposed on the appellant to the amount of \$2,500.00.

20. The panel further directs that the appeal fee in this matter be remitted to the appellant forthwith.

**Order**

21. For the above reasons, it is ordered that:

(a) The appeal is allowed and the penalty imposed on the appellant pursuant to section 13(1)(a) of the Penalties Regulation is varied to the amount of \$2,500.00; and

(b) The appeal fee is to be remitted to the appellant forthwith.

DATED at Calgary, Alberta, this 20<sup>th</sup> day of June, 2019.

INSURANCE COUNCILS APPEAL BOARD OF ALBERTA

Per: Original signed by \_\_\_\_\_  
Trena Grimoldby - Appeal Panel Chair

Per: on behalf of \_\_\_\_\_  
Lareese Graf - Appeal Panel Member

Per: on behalf of \_\_\_\_\_  
Chris Miller - Appeal Panel Member

Appearances:

Ms. M. Van Ieperen

Appellant

Mr. R. Martz - Burnet, Duckworth & Palmer LLP

on behalf of the Respondent