

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:

KENNETH MOLAND as Designated Representative ("DR")

of NIB Insurance Group (the "Agency")

Appellant

-and-

THE GENERAL INSURANCE COUNCIL

(the "Council")

Respondent

Heard at Edmonton, Alberta JULY 11, 2019

Before:	HAMISH J.D. HENDERSON	Appeal Panel Chair
	KELLY ANN PARROTT	Appeal Panel Member
	BERK BILGEN	Appeal Panel Member

REASONS FOR DECISION AND ORDER

1. This is an appeal by Kenneth Moland. ("the Appellant") of the March 9, 2017 decision of the General Insurance Council to impose Civil Penalties in the amount of \$6,000.00 and Revocation of the Appellant's Certificate of Authority for offences under section 480(1)(a) and 509(1) (a) and (c) of the Act. The Council found that the Appellant collected insurance premiums from the Agency's clients but failed to remit those payments to I3 Underwriting Managers Inc., resulting in findings of untrustworthiness or dishonesty in his dealings with his Clients and the Agency. Further, it was found that he had made false or misleading statements to the AIC Investigator in the course of investigating the matter.

Procedural History

2. By letter dated March 24, 2017 to the Superintendent of Insurance, the Appellant commenced the appeal of the March 9, 2017 decision. On April 6, 2017 the Superintendent of Insurance selected the Panel of the Insurance Councils Appeal Board to hear the appeal. There were a number of delays in the Hearing of this matter, as a result several issues, including a change in Counsel of the Appellant, ****Personal Information** and one of the Panel Members leaving the jurisdiction and having to be replaced. The matter was finally heard on July 11, 2019, and written submissions were there after provided to the Panel by both Counsel.

Preliminary Matters

3. Both parties participated in the hearing on July 11, 2019. Mr. R. Martz appeared as Counsel on behalf of the General insurance Council. Mr. G. Lintz appeared for the Appellant.
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.General Insurance Council and its March 9, 2017 decision.
5. Counsel for both the General Insurance Council and for the Appellant called evidence.

Relevant Legislation

- 7 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.

Submissions

8. The parties called evidence and each Counsel made written submissions.
9. The Appellant conceded that all premiums were not forwarded on a timely basis. However, the Appellant argued that Mr. Moland was neither dishonest or misleading regarding the forwarding of

****To protect the privacy of third parties, their personal information has been removed from the records in accordance with section 40(4) of the FOIP Act.**

premiums or his interactions with the Investigator. He pointed out Mr. Moland's lengthy career in the Insurance Industry and this being the first disciplinary matter in which he has been involved.

10. The Respondent argued that Mr. Moland was an experienced agent who understood that he held premiums in trust for the Insurers, and that he understood that he was committing a serious offence and acting in an untrustworthy manner by failing to remit the premiums to the insurer, and was therefore guilty of the Offence under section 480(1)(a). Further, he argued that failure to pay premiums was a strict liability offence pursuant to sections 504(1) and 504 (2). He also argued that the making of false or misleading statements to the Investigator was a further strict liability offence pursuant to s. 509.

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. Both parties agreed that the standard of review is a hearing *de novo*.
12. The Appellant admits that not all premiums were paid to I3 after they were collected. The evidence was that the premiums were eventually paid, albeit some considerable time later and after a complaint by I3.
13. His evidence and that of his Accountant was that he had found some Bookkeeping errors in March 2016 and replaced his Accountant at that time. At the same time, he learned that there were issues with funds claimed to be due to I3, whom he understood he had paid in December 2015 with a payment of \$78,000.00. There were discussions and correspondence between his Accountant and the Accountant for I3. He advised the Panel in his testimony that there were what appeared to be some calculation errors, however at some point I3 simply terminated their relationship with him and reported him to the Superintendent of Insurance, at which time he simply paid what they alleged was due and owing to them. The difference between the party's calculations was not an insignificant amount, being some \$15,000.00.

14. Mr. Moland's further evidence was that he had no similar issues with any other Company other than I3.
15. The Investigator was responding to a complaint by I3 regarding unpaid Insurance premiums. He did not receive any response to his initial demand letter and may not have ever received some of the information he sought in his investigation. Indeed, Mr. Moland agreed that he did not take the matter as seriously as he should have.
16. The Offences under section 504 and 509 are strict liability offences. Pursuant to section 504, the Agent who receives premiums in trust for an insurer must remit them to the insurer within 30 days of a written demand must remit premiums. Pursuant to section 509, all that need be shown is that the Agent, on a balance of probabilities, made misleading statements.
17. Mr. Moland acknowledged that he did not take the matters as seriously as he should have. Regulation of Professions is important for the public protection as well as public confidence in the Profession. Investigations taken on behalf of the Profession must be taken seriously and all necessary steps taken to comply. Being cooperative, forthright and truthful is critical to the investigation process.
18. Mr. Dias was somewhat frustrated in his attempts to get cooperation from Mr. Moland, and thwarted in his efforts to ultimately get the matter resolved for both parties. He was unable to be of any great assistance without cooperation from Mr. Moland.
19. While Mr. Moland's conduct may not be intentional, it is appropriate to find that, as he did not fully cooperate, in fact ignoring a demand letter, his conduct was such that the Investigator was misled, and that he is guilty of the Offence under Section 509 of the Act. The penalty imposed by the General Insurance Council was \$1,000.00, which is fair and reasonable in the circumstances. Indeed, had Mr. Moland been cooperative and treated the matter with the seriousness it required, the matters may well have been resolved at the Investigative stage.

20. With respect to s. 480 and 504 of the Act, it is not in issue that all premiums owing to I3 were not paid pursuant to the time frames set out in the Act. Section 509 being a strict liability offence provision, he would be guilty of an Offence under that section. However, the Panel must also consider that this arises, at least in part, from a dispute over the quantum of premiums owing. Ultimately the full amount was paid, but only because Mr. Moland felt compelled to do so after being reported. It may never be ascertained as to exactly how much was due and owing to I3, but the Panel has no reason to disbelieve that evidence of Mr. Moland and his Accountant that there were some issues. Again, however, had this matter been more expeditiously attended to, it may have been resolved without the necessity of going this far.
21. In terms of the offence under section 480(1)(a) the Panel must decide whether one or more of misrepresentation, fraud, deceit, untrustworthiness or dishonesty have objectively been made out. That is, would a reasonable person have found that the conduct amounted to misrepresentation, fraud, deceit, untrustworthiness or dishonesty? If so, then the question is whether the act was done intentionally, recklessly, or knowingly.
22. Mr. Moland gave evidence that he had previously had a Bookkeeper coming into his Office twice per week. In 2016, he noticed some issues and replaced his Bookkeeper with the Accountant he now employs, and who also gave evidence before the Panel.
23. The Accountant managed to resolve some of the minor issues with the business, but not the issue that arose with I3 and premiums alleged to be owing. He did enter discussions with I3 but was not able to resolve the accounting issues, in particular not receiving breakdowns of figures he had requested. Eventually, I3 sent a letter of complaint.
24. The evidence of Mr. Moland and his Accountant is that this was a civil dispute over accounts, and it is somewhat disturbing to the Panel that I3 chose to simply complain rather than provide requested information.

25. The evidence overall does not show that Mr. Moland was dishonest, untrustworthy or fraudulent in his dealings with I3. Nor was he deceitful nor did he make any misrepresentations. At best he did not give the matter the personal attention it may have deserved in the circumstances.

26. Mr. Moland is 65 years of age and still working. He had an Agency that he has now shut down. He has been in practice since 1981 with no complaints to his Association. His only issue was with I3, the Complainant in this matter. He has provided a reasonable explanation for the nonpayment of the premiums. Unfortunately, as the premiums were then paid in an effort to resolve the matter, albeit too late to stop the process, it may never be ascertained as to what amount was actually owing. We cannot know, now can we presume, exactly what may or may not have been owing to I3.

27. In the circumstances, while Mr. Moland may be responsible for delay and for not giving the issue the proper attention it may have warranted until it was too late, the Panel finds that it would be unreasonable to find that his behaviour amounted to that contemplated under section 480.

28. In terms of Penalty for the Offence under section 504, one must also consider the effect of a revocation of a Licence to Practice. Mr. Moland is 65. Judicial notice can certainly be taken by the Panel that it would be a hardship to revoke his certificate for a year and effectively put a Senior member of the Insurance Profession out of work. The Panel therefore declines to impose any suspension or revocation of the Certificate of Authority of Mr. Moland.

29. In terms of financial penalty, Mr. Moland by his own admission did not give the matters the priority they required and is to a great extent the master of his own misfortune here. However, his conduct is not so significant as to be to the level of conduct contemplated by section 430. The penalty of \$5,000.00 previously levied is the maximum permitted and would be for the most egregious matters. This case is not something that would attract a maximum penalty. Considering all the circumstances, a penalty of \$2,000.00 is appropriate.

Appeal Fee

30. 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. There has been mixed success here. Given the result of the appeal, the Panel is of the view that the one half of the appeal fee paid by the Appellant should be awarded to the Life Insurance Council, and one-half of the Appeal fee returned to the Appellant, by way of a payment toward his fines.

Order

31. For the reasons set out above, it is ordered that:
- a. The Decision of the General Insurance Council is varied to impose:
 - i. A Civil Penalty for the Offence under Section 504 in the sum of \$1,000.00;
 - ii. A Civil Penalty for the Offence under Section 509 pf \$2,000.00.
 - iii. No Suspension or revocation of the Appellant's Certificate of Authority
 - b. The appeal fee is divided between the parties, with Mr. Moland's portion going toward payment of his penalties.

DATED at Edmonton, Alberta the 20th day of October 2019.

INSURANCE COUNCILS APPEAL BOARD OF ALBERTA

Per: 
Hamish J.D. Henderson - Panel Chair

Per: 
Berk Bilgen - Member

Per: 
Kelly Ann Parrott - Panel Member