

ALBERTA INSURANCE COUNCIL
(the "AIC")

In the Matter of the *Insurance Act*, R.S.A. 2000 Chapter I-3
(the "Act")

And

In the Matter of Zachary Vanalstyne
(the "Agent")

DECISION
OF
The Life Insurance Council
(the "Council")

This case involved an allegation pursuant to s. 481(1) and (2) of the Act. Specifically, it is alleged that the Agent failed or refused to provide the information and documentation requested by the AIC in response to a formal demand for information (the "Demand"). In so doing, it is alleged that the Agent subsequently contravened s. 480(1)(b) of the Act.

Facts and Evidence

This matter proceeded by way of a written Report to Council dated January 29, 2020 (the "Report"). The Report was forwarded to the Agent for review, and to allow the Agent to provide the Council with any further evidence or submissions by way of Addendum. The Agent did not respond to the Report.

An audit was conducted by the AIC in October of 2019 to verify that the Errors and Omissions insurance (E&O) claimed on licensees' 2019 renewal applications were correct. Auditees were randomly selected from a pool of agents and asked to provide proof of E&O insurance pursuant to the requirements under s. 33 of the *Insurance Agents and Adjusters Regulation*, AR 122/01, within thirty (30) days.

The Agent is the former holder an accident & sickness ("A&S") insurance certificate of authority, and held this certificate of authority from March 13, 2018 to November 6, 2019. On November 6, 2019 the Agent's certificate of authority was suspended due to his failure to respond to the Demand.

On October 4, 2019 the AIC emailed correspondence which detailed the formal Demand to the Agent, requiring him to provide proof of E&O insurance on or before November 4, 2019. The AIC sent an email on October 16, 2019 and October 29, 2019 to remind the Agent to respond by the November 4, 2019 deadline. The AIC left a

voicemail for the Agent to this effect on November 5, 2019 (albeit outside of the period set out in the Demand). The Agent did not respond.

Discussion

The Minister of Treasury Board and Finance has delegated its' authority to the AIC to investigate complaints against holders and former holders of insurance agent certificates of authority. Pursuant to the Minister of Finance Directive No. 01/11, the Minister also delegated his powers under s. 481 of the Insurance Act to the AIC. Section 481 states that “[t]he 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 s. 480(1).” Subsection 2 states that the “... A person served with a direction ... who has the information **must** provide the information in accordance with the direction” (emphasis added).

The offence of failing to respond to a demand for information is one of strict liability. Meaning that in order to be found guilty, the AIC must only prove that the Demand was properly made and delivered. There is no requirement on the AIC to prove that the Agent's failure to respond was an intentional one. Once the AIC has proven that the Demand was made, the onus then shifts to the Agent to demonstrate that he took all reasonable efforts to avoid committing the offence. From the evidence in the Report, the Council is satisfied that the AIC's Demand meets the requirements of s. 481 of the Act, and the Agent was given a reasonable opportunity to respond. Given the fact that the Agent has failed to respond, he has not met the burden of proof to establish the due diligence defence. As such, the Council finds him guilty as alleged in the Report.

In terms of the applicable sanction, the public relies on the AIC to investigate complaints, and the Act requires that licensees provide information when called upon to do so. The public is not well-served when agents fails to comply with demands from their professional regulator, like those made in this case. Pursuant to s. 13(1)(b) of the *Certificate Expiry, Penalties and Fees Regulation*, A.R. 125/2001, the Council has the discretion to assess a civil penalty in an amount up to \$1,000.00. In this case, the Agent did not respond to the Demand in any way. As such, the Council orders a civil penalty in the amount of \$750.00 to be levied against the Agent.

The civil penalty of \$750.00 must be paid within thirty (30) days of the mailing of this Decision. In the event that the civil penalty is not paid within thirty (30) days interest will begin to accrue at the prescribed rate. Pursuant to s. 482 of the Act (excerpt enclosed), the Agent has thirty (30) days in which to appeal this decision by filing a Notice of Appeal with the Office of the Superintendent of Insurance.

This Decision was made by way of a motion made and carried at a properly conducted meeting of the Life Insurance Council. The motion was duly recorded in the minutes of that meeting.

Dated: March 10, 2020

[Original signed by]
Michael Bibby, Chair
Life Insurance Council

Extract from the *Insurance Act*, Chapter I-3**Appeal**

482 A decision of the Minister under this Part to refuse to issue, renew or reinstate a certificate of authority, to impose terms and conditions on a certificate of authority, to revoke or suspend a certificate of authority or to impose a penalty on the holder or former holder of a certificate of authority may be appealed in accordance with the regulations.

Extract from the *Insurance Councils Regulation*, Alberta Regulation 126/2001**Notice of appeal**

16(1) A person who is adversely affected by a decision of a council may appeal the decision by submitting a notice of appeal to the Superintendent within 30 days after the council has mailed the written notice of the decision to the person.

(2) The notice of appeal must contain the following:

- a) a copy of the written notice of the decision being appealed;
- b) a description of the relief requested by the appellant;
- c) the signature of the appellant or the appellant's lawyer;
- d) an address for service in Alberta for the appellant;
- e) an appeal fee of \$200 payable to the Provincial Treasurer.

(3) The Superintendent must notify the Minister and provide a copy of the notice of appeal to the council whose decision is being appealed when a notice of appeal has been submitted.

(4) If the appeal involves a suspension or revocation of a certificate of authority or a levy of a penalty, the council's decision is suspended until after the disposition of the appeal by a panel of the Appeal Board.

Address for Superintendent of Insurance:

Superintendent of Insurance
Alberta Finance
402 Terrace Building
9515-107 Street
Edmonton, Alberta T5K 2C3