

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 Cris Flores  
(the "Agent")

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

This case involved an alleged violation of s. 481(2) of the Act. Specifically, that the Agent failed or refused to provide information requested by the Minister, through the AIC, by way of a formal demand for information (the "Demand"). In so doing, it is alleged that the Agent subsequently violated s. 480(1)(b) of the Act.

**Facts and Evidence**

This matter proceeded by way of a written Report to Council dated April 21, 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 provided an addendum response which was considered by the Council along with a copy of the Agent's licensing profile as at June 24, 2020.

The AIC conducted an audit in March 2020, which sought to verify that the CE credits claimed on licensees' 2019 renewal applications were correct. The auditees were selected at random and asked to provide proof of continuing education ("CE") credits, in accordance with the requirements of s. 31 of the *Insurance Agents and Adjusters Regulation*, AR 122/01 (the "Regulation"). The Agent was selected as an auditee and, in this instance, was asked to provide records relating to the 2019 licensed period.

The Agent concurrently held both life and Accident and Sickness ("A&S") insurance agent certificates of authority between the period of November 8, 2017 to April 3, 2020, when the Agent's certificates of authority were suspended due to his failure to produce continuing education records in accordance with ss. 31(3) of the *Insurance Agents and Adjusters Regulation*.

Section 31 provides:

(3) If the individual does not provide the records **within 30 days after receiving a request from the Minister, the certificate of authority is suspended until the demand is complied with.**

On March 2, 2020, the AIC emailed the Demand to the Agent which provided a deadline of 30 days to respond and produce the required CE certificates. The deadline provided was April 2, 2020. On March 27, 2020, the AIC attempted to contact the Agent by way of telephone however, the Agent did not respond to the call and there was not ability to record a voicemail message. Subsequently, an email was sent reminding the Agent to respond by the deadline provided. A further reminder email was sent on April 1, 2020.

On April 2, 2020, the Agent responded by providing partial CE certificates. However, the Agent did not provide all of the required information as set out within the Demand by the Deadline provided and the Agent's certificates were suspended in accordance with s. 31(3) of the *Insurance Agents and Adjusters Regulation*.

After receiving the Report to Council which detailed the above, the Agent provided all of the records requested under s. 31 of the *Insurance Agents and Adjusters Regulation*. The licensing profile of the Agent as at June 24, 2020 confirms an entry from the investigator to the Director of Licensing advising that the Agent had as of May 5, 2020 passed the CE audit. The Agent did respond, but it was outside of the period set out by the Demand.

### **Discussion**

The Minister of Treasury Board and Finance has delegated its' authority to the AIC to investigate complaints against holders, and former holders, of certificates of authority. Pursuant to Ministerial Directive 01/11 to the AIC "[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 "... A person served with a direction ... who has the information **must** provide the information in accordance with the direction" (emphasis added).

The Demand referenced compliance with s. 31 of the *Insurance Agents and Adjusters Regulation*, AR 122/2001. Specifically, this section provides;

#### **Records**

31(1) An individual who holds a certificate of authority must keep a record issued by a continuing education provider respecting the continuing education courses completed by the individual during that certificate term.

(2) The records must be kept for a period of 3 years following the expiry of the certificate term and **must be provided to the Minister upon request.**

(3) If the individual **does not provide the records within 30 days after receiving a request from the Minister, the certificate of authority is suspended until the demand is complied with.**

The Demand itself is formed under s. 481(2) of the Act.

Section 481 provides, in part;

#### **Demand for information**

481(1) The 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 section 480(1).**

**(2) A person served with a direction under subsection (1) who has the information must provide the information in accordance with the direction.**

Section 480 of the Act provides:

#### **Sanctions affecting certificates**

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

(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, [...]

Section 780 of the Act stipulates:

#### **Offences**

780 A person who contravenes any of the following provisions is guilty of an offence:  
[...] (c) in Part 3, sections [...] 481(2)

In this regard, the act of failing to provide the CE certificates (or “credits”) in accordance with s. 31(3) of the *Insurance Agents and Adjusters Regulation*, and the potential violation of s. 481(2) regarding the Demand prompted the AIC to commence an investigation.

Regulatory offences such as these are strict liability offences. As such, the AIC has the onus to prove that the Demand was properly made upon the Agent, proper in the sense that they meet all of the requirements under the Act, and that the Agent did not comply. Once this occurs, the responsibility then shifts to the Agent to establish that he exercised due diligence in meeting his statutory requirement to respond. To substantiate this due diligence defence, the Agent must prove that he took all reasonable means to avoid making the offence. There is nothing that requires the AIC to prove that the Agent’s failure to respond

was intentional. Given the facts in their entirety, it is clear that the Agent did not act with due diligence and we find him guilty of violating ss. 481(2) and 480(1)(b) of the Act, as alleged.

In consideration of the evidence before it, and the appropriateness of the request to confirm CE records under the *Insurance Agents and Adjusters Regulation*, the Council is satisfied that the Demand met the requirements of s. 481 of the Act. The Council agreed that the Agent was given a reasonable opportunity to respond to the Demand. Given the fact that the Agent failed to respond when called upon, the Agent has not met the burden of proof to establish the due diligence defence. As such, the Council finds the Agent guilty of violating s. 481(2) of the Act, and also finds that the Agent has subsequently violated s. 480(1)(b) of the Act.

In terms of the applicable sanction, the Act requires that all holders, and former holders, of certificates of authority produce information when called upon. The public is not well-served when agents fail to comply with demands, like the Demand 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 levy a civil penalty in an amount up to \$1,000.00. In this case, the Agent did not satisfy the audit by the deadline provided, however subsequently satisfied the audit after receiving the Report. In consideration of all of the evidence, the Council orders that a penalty in the amount of \$500.00 be levied against the Agent.

The civil penalty of \$500.00 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. If the Agent has active certificates of authority at the time that the civil penalty becomes due, and that civil penalty has not been duly satisfied, the Agent's active certificates of authority will be suspended in accordance with s. 480(4) of the Act. 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: July 27, 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