

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 Abhiram Kurupati
(the "Agent")

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

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

Facts and Evidence

This matter proceeded by way of a written Report to Council dated March 27, 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. On or about April 6, 2020 the Agent provided the AIC with copies of the requested Continuing Education ("CE") certificates, however the certificates were provided beyond the due date indicated in the formal Demand.

In February 2020, the AIC conducted audits to verify that the CE credits disclosed on licensees' renewal applications were correct. The auditees were randomly selected from a pool of agents who renewed their certificates of authority for the 2019 licensed period.

The Agent was the holder of a general insurance certificate of authority and was licensed from March 26, 2019 to February 26, 2020, when the Agent's certificate was terminated due to his voluntarily resignation from his former Agency.

On February 3, 2020, the AIC emailed the Demand letter to the Agent which provided him with thirty days to respond. Having received no response, the AIC emailed the Agent to remind him of his requirement to respond

to the Demand. On February 20, 26 and 28, 2020, the AIC called the Agent and left voicemail messages to the same effect.

On April 3, 2020, the Agent advised the AIC that he had moved out of the province of Alberta. The Agent duly satisfied the requirements of the audit on April 6, 2020.

Discussion

The AIC operates under a delegation from the Minister of Treasury Board and Finance that authorizes the AIC to investigate complaints against holders and former holders of insurance agent certificates of authority. Pursuant to the Ministerial Directive No. 01/11, the Minister has delegated his powers under s. 481 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 “... A person served with a direction ... who has the information must provide the information in accordance with the direction.”

The Council also considered s. 31 of the *Insurance Agents and Adjusters Regulation*, AR 122/2001. Specifically;

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 offence of failing to respond to a demand for information is one of strict liability. This means that in order to be found guilty, the AIC only needs to prove that the Demand was properly made and delivered. There is no requirement that the AIC prove that the Agent’s failure to respond was intentional. Once the AIC proves that the Demand was made, the onus 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. The investigation arose out of matters found in s. 480 of the Act and the Agent was given a reasonable opportunity to respond. Given the fact that the Agent failed to respond to the Report, he has not met the burden of establishing the due diligence defence and 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 holders, and former holders, of licenses provide information when called upon to do so. While the Agent

responded late to the Demand, he did provide strong reasoning for the delayed response. Therefore, in light of all of these circumstances the Council orders that a civil penalty in the amount of \$300.00 be levied against the Agent pursuant to s. 13(1)(b) of the *Certificate Expiry, Penalties and Fees Regulation*, A.R. 125/2001. The civil penalty must be paid within thirty (30) days of receiving this notice.

In the event that the civil penalty is not paid within thirty (30) days, interest will begin to accrue at the applicable prescribed rate. Pursuant to s. 482 of the Act (copy 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 General Insurance Council. The motion was duly recorded in the minutes of that meeting.

Dated: May 26, 2020

[Original signed by]
Amanda Sawatzky, Chair
General 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