

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 Heather Martinson
(the "Agent")

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

This case involves an alleged violation of s. 480(1)(a) of the Act. Specifically, it is alleged that the Agent omitted or withheld client information on insurance applications in order to obtain favorable terms, coverage and/or premium amounts for prospective clients. Therefore, it is alleged that the Agent is guilty of misrepresentation, fraud, dishonesty, deceit, or untrustworthiness in contravention of s. 480(1)(a) of the Act. In the alternative it is alleged that the Agent made false or misleading statements, representations, or advertisements in contravention of s. 509(1)(a) of the Act, and has consequently violation s. 480(1)(b) of the Act.

Facts and Evidence

This matter proceeded by way of written Report to Council dated October 30, 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 by way of Addendum. The Agent provided further submissions by way of signed addendum dated November 14, 2020 . The Council considered all materials in reaching their decision.

The Agent is the former holder of general insurance agent certificates of authority. The certificate holder worked for the Complainant ("Agency") and held a general level 2 certificate between the period of April 17, 2019 to October 4, 2019. The Agent also held various forms of general insurance certificates of authority (cumulatively) between the period of October 7, 2004 to October 4, 2019. On October 4, 2019 a representative of the Agency advised the AIC that the Agent "*is no longer employed with [Agency] effective October 3, 2019. [Agent] was released from our office with cause*". In response the AIC terminated the Agent's certificate of authority on October 4, 2019 in accordance with the provisions of the Act.

The AIC requested further information from the Agency on October 25, 2019. The Agency replied on November 5, 2019 in part;

[...] We can tell you that we have found 27 files to date where inaccurate information had been passed on to the insurance company. We have also involved the Insurance Company and they are fully aware of all of the affected files and we are working with them to ensure that the remedies as directed by the insurance company are being applied. [...]

On November 29, 2019 the Agency produced its internal investigative findings, the “File Reviews”, of all relevant insurance policies sold by the Agent. The entirety of the Agency’s report was not provided for the Council’s review. Only the material and relevant information to substantiate a potential breach of the Act or Regulations was provided by the investigator (the “Agency’s Limited Report”).

Portions of the Agency’s Limited Report provided as follows, in part;

Client	Agency’s Limited Report findings (as quoted as direct excerpt from the Agency’s Limited Report)	Summary for purpose of GIC Decision 69688
Client Name: [R.V.] [redacted] (“Client 1”)	[...] No MVR with the application [...] Question 9A (disclosure of past cancellations for non-payment) on the application, was crossed out (indication that no prior cancellations for non-payment) [...]** No notes that calls were made to prior carriers for any outstanding balances owing**[...] Client only has 1.5 years of verifiable insurance history with Motorcycle. Client is receiving a Driving Record 3*	<ul style="list-style-type: none"> • Removal/ omission of information • Rating error(s)
Client: [L.A.S.] [redacted] (“Client #2”)	[...] Application states no claims, accidents, losses or convictions on driving record; [...]there is 1 conviction on the client's license: August 17, 2017 Speeding [...]Client is currently rated at a Driving Record 5 with a discount for Conviction Free.	<ul style="list-style-type: none"> • Removal/ omission of information
Client: [M.S.] [redacted] (“Client #3”)	[...] Application states no claims, losses, convictions, no prior cancellation; [...] Accident on Autoplus report states that [spouse] had an At-Fault Loss -June 6, 2017 Collision [amount] (100% at-fault);[...] MVR on file states release date of September 4, 2019 and there is 1 Out of Province Speeding on November 10, 2017 [...] Found MVR in file for [spouse], but he is not listed on the policy as an Insured or as a driver. One conviction, July 5, 2017 Speeding. [...] Client receiving Conviction Free Discount - would not have qualified for this discount.	<ul style="list-style-type: none"> • Removal/ omission of information • Rating error(s)
Client: [D.S. & K.L.B.] [redacted] (“Clients #4A and #4B, respectively)	[...] Application states no convictions and 1 claim with no payout [...] MVR on file for [Client #4A] on August 26, 2019[...][Internal record keeping] states no convictions on license [...] Abstract shows the following: August 29/16 Driving a Motor Vehicle While Unauthorized, April 9/16 to February 13/17 Demerit Suspension, August 29/16 to February 27/17 Suspension due to Driving While Unauthorized	<ul style="list-style-type: none"> • Removal/ omission of information • Rating error(s)

<p>Client: [K.R. & J.L.] [redacted] (“Client #5A” and “Client #5B”, respectively)</p>	<p>Application in both names, but only 1 signature found on file Application indicates no convictions for either driver; MVR for [Client #5A] [...] August 30, 2017 Speeding, June 5, 2018 Merit Course</p> <p>MVR for [Client #5B] [...] August 21, 2017 Speeding; June 18, 2018 Speeding; May 31, 2019 Speeding [...] Multiple policies found on Autoplus report, multiple claims [...] On application - no claims listed [...] On [internal record keeping]- 2 claims listed: [re Client #5B]; December 23, 2012 Not-At-Fault; November 23, 2012 Not -At -Fault; Autoplus report [re Client #5B] shows the follow claims and losses: January 6, 2017, At Fault = Collision [amount] ; July 1, 2014 Theft, Comprehensive [amount] ; April 2, 2010, At Fault= Property Damage [amount]; Collision [amount] Due to At-Fault loss in January 2017, [...] the policy should only qualify for Driving Record 2 and a surcharge applied due to convictions. Policy has been issued at Driving Record 9. Policy is also receiving a Conviction Free discount that the clients would not have qualified for [...]</p>	<ul style="list-style-type: none"> • Missing signatures • Removal/ omission of information • Rating error(s)
<p>Client: [E.R.] [redacted] (“Client #6”)</p>	<p>New automobile application completed. Coverage states on application \$1 Million liability and \$1000 Comprehensive [...] account information; [...] 3 convictions on MVR - incorrect dates entered into [internal record keeping] [...]</p>	<ul style="list-style-type: none"> • Rating error(s)
<p>Client: [S.P.] [redacted] (“Client #7”)</p>	<p>[...]Policy Number: *****480 [...] No Broker Report and unsigned application (broker); [...] Application indicates no convictions, claims or losses; MVR on file for [Client #7], no MVR on file for [redacted][spouse][Client #8]. [...] [Client #8] was added to that policy during the term, unsure of when added and/or removed. [...] Application stated no claims: [...] Autplus [sic] report shows for [Client #7] [...] July 21, 2015 - Hail \$11,403 paid [...] Client is receiving a No Comprehensive Claims Discount, which she would not qualify for as there was a hail claim in 2015</p>	<ul style="list-style-type: none"> • Missing signatures • Removal/ omission of information • Rating error(s)
<p>Client: [D.] & [S.P.] [redacted] (“Client #8” & “Client #7”, respectively)</p>	<p>Application documents state effective date of June 17, 2019 to June 17, 2020. [...] New policy issued on [...] shows effective date of June 20, 2019 to June 20, 2020; [...] No claims or losses on the application - but disclosed on [internal record keeping]; [...] No prior insurance company or policy number listed on the application; no mortgage company listed on the application; [...] Application was signed by the insureds, but not dated, no Broker Questionnaire or Broker Signature on the application; [...]</p>	<ul style="list-style-type: none"> • Removal/ omission of information
<p>Client: [K.P.] [redacted] (“Client #9”)</p>	<p>[...] Application is incomplete (convictions, claims/losses, prior cancellations, prior carrier) [...] No Broker signature or report on the application;[...] MVR information on [internal record keeping] shows 3 convictions - however the MVR found on file, shows 4 convictions [...]</p> <p>Autoplus Report on file shows the following information: [redacted policy details] effective September 8, 2014 to September 8, 2017 [...] Entered on [internal record keeping] as effective September 8, 2013 to September 8, 2017 [...]</p> <p>[continued next page]</p>	<ul style="list-style-type: none"> • Missing signatures • Removal/ omission of information • Rating error(s)

On [internal record keeping], it states MPI - Manitoba Public Insurance [redacted] in effect from September 1, 2007 to July 15, 2013. Found no prior insurance history on file from MPI [...] agreed to offer higher collision deductible due to "hard marked and stiff UW rules" [...]

Policy Status: Policy is still in force. Conviction surcharge is incorrect as the 4th conviction was not entered into [internal record keeping]. Possibility that Section C coverage would not have been offered if full disclosure of convictions was included. Will require UW assistance to correct the policy rating.

Client: [S.M. & C.S.] [redacted] (“Client #12” & “Client #13”, respectively)

New Motorhome Policy issued through [redacted policy information] for a 2013 Hemisphere, s/n *****783. Policy was effective August 15, 2019 and the premium was \$476.00 annually; [...] No notes on [internal record keeping] in regards to *****6WRV being "purged" or "voided" in our system. When the new policy documents were received in our office on September 9/19 by [redacted] for policy *****6WRV, it was transacted as New Business and the broker (Heather Martinson) received commission in the amount of \$23.80; [...] On September 21/19, [redacted] issued a registered letter of cancellation for policy *****6WRV for non-payment of premium. [...] received [...] October 3/19 [...]

- Rating error(s)
- Alleged commissions churning

New Travel Trailer Policy issued through [redacted] under policy #*****6ETT for a 2013 Hemisphere, s/n *****783. Policy was effective August 15, 2019 and the premium was \$541.00 annually; [...] The broker (Heather Martinson) transacted the New Business on August 15/19 at the incorrect policy commission amount and received an additional payment of \$33.81. [...] As well, policy *****6WRV was cancelled in our system for non-payment of premium. [...] I talked to [redacted] @ [insurer], who reviewed both policies. He has reversed the registered letter of cancellation on policy *****6WRV and cancelled the policy flat, effective August 15/19.

Client: [W.B.J.V.] [redacted] (“Client #16”)

[...] Question 9A was not answered on the application (prior cancellations, declines or refusals of insurance); [...] AutoPlus report was pulled on September 13/19 and was attached to the application. [...] Report shows the following cancellations for non-payment of premium: [3 redacted policies] Claims were disclosed on the application and on [internal record keeping]; [...] MVR for [Client #16] was ordered and received on September 13/19. Client had 3 convictions on his license, plus a Suspension [redacted] Full Payment noted on the application, only [amount] cash was received by the client; Payment reminders sent to the client [...] Registered Letter of Cancellation for Non-Payment issued by [insurer] [...] No payment has been received in office or with [insurer]. Policy has now cancelled for non-payment of premium.

- Removal/ omission of information
- Rating error(s)

Client: [H. Contracting Inc. &/or J.M.V.D.A.] [redacted] (“Client #17”)

Application states no convictions and no claims. Notes on file shows that prior insurance is from ICBC, no history obtained from ICBC [...] Section 9A on application (prior cancellations by insurance companies) answered No [...] Driver has been rated a Class 36, no Commercial Vehicle Supplement attached to the file;

- Missing signatures
- Removal/ omission of information
- Rating error(s)

[continued next page]

Autoplus report on file from August 12/19 shows the following details:

- [redacted] Policy #*****980 effective March 28, 2019 and cancelled June 26, 2019
- [redacted] Insurance #*****23 effective August 16, 2018 and cancelled July 16, 2019 for Non-Payment
- [...] [redacted] [internal record keeping] show that there have been no previous cancellations in the past 3 years

Prior Insurance history on [redacted] [internal record keeping] entered as:

- ICBC for Private Passenger, effective July 31, 2010 to July 31, 2017

No MVR from ICBC on file, cannot order AB Abstract as the only license number on file is BC License #*****3 [...] Applied Quote states "Inexperienced Operator and Risk does not meet Acceptability Criteria" [...] Policy set up on the monthly payment plan. Signed monthly payment authorization form on file, no banking information found; Broker (Heather Martinson) did not sign the automobile application;

Risk rated at a Driving Record 6 - insufficient insurance history on file to support driving record assignment;

Client was contacted by our office on November 8, 2019 requesting ICBC information and Alberta Driver's License. And a confirming email was also sent same day.

Status of Policy: [...] Policy reissued effective August 12, 2019 at a Driving Record O and the premium has increased [amount]

Client: [A.D.]
[redacted]
("Client #19")

[...] Application states no claims or losses, no convictions, no previous cancellation by insurance companies; Application shows [...] no Alberta Drivers abstract [...] [internal record keeping] states that an MVR was received on September 5/19 with no convictions [...] Ontario Abstract found on file dated August 6/19- licensed May 30/17 to present [...] Application states completion of Driver Training, entered into [internal record keeping] [...] could not find a copy of the Driver Training Certificate on file; [...] No Autoplus report could not be found on file; [...] Prior insurance history can only be verified from October 2017 to present, Driving Record 3 on the [insurer] policy (can only verify 2 years of history) and not proof that Driver Training was completed.[...]

- Removal/ omission of information
- Rating error(s)

Client [A.C.]
[redacted]
("Client #21")

New Automobile Application issued through [internal record keeping] by Heather Martinson; [...] Application states no accidents or tickets, Driving Record O due to gaps in coverage; Question 9A (prior cancellations, declines or refusals of insurance) was unanswered on the application; [...] As per AutoPlus report, Cancellation for Non-payment by [insurer] [redacted] #****102 on February 13, 2017 [...] [#****102] policy documents were issued on July 19/19 [...] Driving record 1* applied [...] Discounts for Conviction Free applied [...]

- Removal/ omission of information
- Rating error(s)

MVR was released on July 19/19 and it shows the client has 2 convictions (speeding) on her license. This was attached to the broker file on July 23/19 but it was not updated on the [insurer] policy *****260 (conviction free discount is still applied).[...]

Client [K.B.]
[redacted]
("Client #22")

Application states 2019 Volkswagen purchased NEW- no copy of the bill of sale on file showing the buyer, purchase condition and purchase price; [...] Application was signed by [redacted][Client #22]
[...] Autoplus Report on file shows prior insurance company is [redacted] [insurer] #*****413, effective June 11, 2018 to June 11, 2020, Class 18/3, insuring a 2019 Volkswagen Tiguan s/n [redacted] [...] No copy of Driver Training Certificate on file to verify completion of course to qualify for Driver Training Credit;

- Missing signatures
- Removal/ omission of information
- Rating error(s)

New policy was issued through [internal record keeping. Email from [redacted] (prior broker in office) to Heather Martinson requesting a copy of the Bill of Sale and prior insurance policy to verify the client qualifies for the SEF 43R [Standard Endorsement](requested on June 25/19);

On June 26/19, Heather Martinson cancelled policy FLAT effective June 24, 2019 as she moved the vehicle to [redacted][Client #23] policy #*****600 with a note stating that the vehicle has been moved to Dad's policy; [...] There is no signed cancellation on file from [Client #22]. [...]

Checked [Client #23] policy #*****600 - the 2019 Volkswagen Tiguan is listed on this policy. Rated for [Client #23] as the Primary Operator. [Client #22] is not listed on the policy as a driver, still have no bill of sale on file for the Volkswagen and there is no SEF 43R coverage on the vehicle. [...]

Client [D.A.]
[redacted]
("Client #23")

Original application [...]was returned due to Quote Profile not being included in the submission; New Auto Policy issued through [insurer] [...] Transacted at 20% Agency Commission {should have been 12.5%} - broker received \$43 in payable commission instead of \$26.87

- Removal/ omission of information
- Rating error(s)

No MVR on system and no print off of MVR Predictor;

No Convictions disclosed on application or on [internal record keeping][...] MVR was pulled by management on October 1/19, and the client had 1 ticket [...] Excessive Speed [...]

Autoplus information on file:

- [Insurer][redacted], Policy #*****733 [...] Entered into [internal record keeping] as effective April 8, 2014 to April 8, 2018 as a Private Passenger Vehicle policy type; [...] Should have been effective April 8, 2014 to April 8, 2017 as a Motorcycle policy type
- [insurer][redacted], Policy #*****32338 [...] Entered into [internal record keeping] as effective May 1, 2013 to May 1, 2014 as a Private Passenger Vehicle policy type [...] Should have been effective May 17, 2013 to May 17, 2014 as a Motorcycle policy type
- [Insurer][redacted], Policy *****384 [...] Entered into [internal record keeping] as effective March 20, 2008 to March 20, 2013 as a Private Passenger Type policy [...] Should have been effective March 20, 2008 to March 20, 2009 as a Motorcycle or Recreational Vehicle policy type

[...] Client was receiving the Conviction Free discount as well as he was receiving a Driving Record 9. [...]

The Agency's Limited Report contained more extensive, specific details with respect to the Agent's alleged misconduct and the following clients;

Client: [C.M. & N.M.] [redacted] ("**Client #10**" & "**Client #11**", respectively)

- Incomplete and unsigned application on file (by insureds);
- Policy is on a monthly payment plan, but no signed monthly payment authorization form or banking information attached to the file;
- Application is in [Client #11] name only, however the policy issued through [internal record keeping] states both [Client #11 and Client #10] and [are][sic] policyholders
- No Bill of Sale to confirm that the vehicle was purchased new, but SEF 43R coverage included on the policy; [...] Prior insurance policy through ICBC does not display SEF 43 coverage (which is available) and the rating was Business Use;
- ICBC information only shows insurance history from 2013 to 2019, client only qualifies for Driving Record 6. New policy on [internal record keeping] issued at a Driving Record 9
- ICBC Plate History for [Client #10] shows coverage in place from April 2008 to December 2009 and again from April 2013 to October 2018;
- Insurance History on [internal record keeping] for [Client #10] is entered as ICBC from April 12, 2008 to March 31, 2020
- Need Claims Insurance History for [Client #11] from ICBC, only Drivers Abstract is on file (no plate history)
- Insurance History on [internal record keeping] for [Client #11] is entered as ICBC from April 12, 2008 to March 30, 2020
- No Autoplus insurance history reports on file - was pulled by management on September 28/19 to verify insurance history in Alberta; [...]Autoplus shows that the clients were insured in Alberta: [coverage details redacted][...]
- Application states that both [Client #11] and [Client #10] are Self-Employed (no other description of occupation), vehicle is rated at a Class 02 (commuting only).
- Clients were referred to [Agency] by [R.V.] - Commission paid to Heather Martinson;
- Further investigation into Heather Martinson's email/Outlook shows that emails were received from the insured's, but none of the emails were attached to the file and information was not updated in [internal record keeping]
- On June 25/19 an email was received from [Client #11], which included her Plate History from ICBC. Insurance History shows that she had insurance from April 12, 2008 to December 18, 2009 and again from April 27, 2013 to October 2, 2018, and again April 1, 2019 to March 31, 2020; At Fault Claim September 24, 2017, payout [amount] Property Damage
- Information and Accident was not entered into [internal record keeping]. Policy would have only qualified for a Driving Record 1 due to the at-fault loss. Clients receiving Driving Record 9
- Email from the insured on June 25/19 also included a copy of the Bill of Sale, which was not attached to the file.[...]
- Status of Policy: Still in force, however Underwriting needs to be involved to correct the errors on file (ie: driving record and loss history). Need to confirm with the client the use of the vehicle (commuting vs. business)

Client: [J.L.] [redacted] ("**Client #14**")

- Application scanned into the Broker System was not properly done, only have every other page (signature page was not included), unknown if any claims, losses, convictions or suspension, or previous cancellations were disclosed;
- Mechanical Inspection [vehicle details] was on file, however the inspection stated the owner was [K.D.] and it was completed on December 5, 2017;
- [Internal record keeping] states that a mechanical inspection was received, but dated as June 17, 2019;
- MVR found in file, release date of June 6/19, shows 1 conviction: May 30, 2018 [...]
- [Internal recording keeping] states that an MVR was received on June 17/19 and that there were no tickets on license;
- Autoplus report found on file show the following;
 - [...] [redacted] Policy #*****128, effective March 5, 2018 to March 5, 2020; Entered into

- [internal record keeping] as Private Passenger type policy, on Autoplus report it states Commercial Automobile
- [Redacted] #*****0210, effective March 12, 2015 and cancelled March 12, 2016 for Non-Payment of Premium. This policy was not entered into [internal record keeping]
 - ICBC, Policy #PLATE - effective March 1, 2007 to March 1, 2017. Could not find any ICBC information attached to the file
 - [Internal record keeping] states No Claims - claims found on Autoplus report:
 - July 11, 2017 - Theft [amount]
 - August 31, 2018 – Theft [amount]
 - Client was rated at Driving Record 9 and receiving the Conviction Free and No Comprehensive Claims Discount. Client had a 2 year and 1 month gap of coverage between [redacted] ([redacted] was a commercial policy and would not be considered). Client should have been at a Driving Record 2 with no discounts applied.
 - As the Mechanical Inspection information was outdated, physical damage coverage would not have been available.
 - Policy Status: Policy has been cancelled for non-payment of premium effective 12:01am October 29, 2019

Client: [D.L.] [redacted] (“**Client #15**”)

- Email attached to file between Heather Martinson, ([redacted]) and [redacted] confirming cancellation for non-payment on [redacted] September 23/19 and a cancellation form for the Harley Davidson was received from [insurer] effective September 20/19 (breach of confidentiality);
- [...]MVR shows the following convictions:
 - September 26, 2016 Driving without a Valid Operator's License (not entered on [internal record keeping])
 - June 20, 2018 [type of conviction]
 - Only the June 20/18 [type of conviction]was entered on [internal record keeping]
- Section 9A on the Automobile Application (any previous cancellations by an insurer) - not completed on app although as per the email between [insurer] and Heather Martinson, she was advised that the Truck Policy with [insurer] was cancelled for non-payment on September 23/19. No confirmation that any outstanding balances have been paid;
- Autoplus report on file shows the following:
 - [insurer] #*****69933, shows July 22, 2016 to July 22, 2020 - however, due to the email received from the [insurer], they advised that the truck policy was cancelled for non -payment effective September 23, 2019
 - Entered into [internal record keeping] effective July 22, 2017 to July 22, 2020
 - [Insurer] Policy #****139, shows effective April 25, 2016 and cancelled for non-payment effective August 2, 2016
 - [Insurer] Policy #4603369, effective April 24, 2003 to April 24, 2018 - listed as a Private Passenger type policy, however on Autoplus this is listed as a Commercial Policy, no vehicles, rating, driving record information available.
 - Claims History & approval had to be received by [insurer] for confirmation of Driving Record and History.

Policy #*****960

- Client took collision coverage, declined Comprehensive coverage
- [Vehicle][redacted] was purchased from [W.B.J.V.][redacted][CLIENT #16] (who is also part of this audit);
- On October 25/19 at 13:13pm our office received a call from the insured advising that he received a message from the RCMP that the [vehicle] was involved in an accident on October 23/19. Broker Notes attached below:

[CLIENT #15] [redacted] called in and advised he received a VfVI from the RCMP in red

deer stating someone had taken his vehicle without permission and it was involved in an accident, and likely written off [CLIENT #15] was told it may be someone he knows, but the constable is off until Monday now so he really has no idea who took his vehicle as he is away working 10 hours from here. I gave him the number for [insurer] claims to initiate claim

*Followed up in regards to Claim - November 27, 2019@ 14:31pm
Spoke with Telephone adjuster and was advised that the driver of the [redacted] was turning left and was deemed at-fault for collision with another vehicle. More than likely the vehicle will be written off [redacted][unrelated agent] advised the adjuster that there are no other drivers listed on the policy other than [CLIENT #15]. The Claim Payout is \$7958 less a \$500 deductible. Adjuster was advised by [CLIENT #15] that there was \$5000 worth of work done to the vehicle and the Claims Department is waiting on receipts from the I insured.*

Contact client to discuss signing a cancellation form as the 2009 [vehicle] has been written off.

Client: [J.D.] [redacted] (“**Client #18**”)

- Completed application was not scanned properly into [internal record keeping], missing every other page. Application portion that has the client's signature is not present;
 - Section 6A, 6B, 7A, 7B, 8, 9A, 9B, 9C- all missing
 - Broker's signature not present
- Policy was commissionable to Heather Martinson[...]
- Autoplus report on file show:
 - [Insurer][redacted] Policy #*****6467 effective August 28/18 to August 28/20 [...] Entered into [internal record keeping] with effective dates August 28/17 to August 28/19
 - [Insurer][redacted] Policy *****230 effective August 3/18 to August 23/18 [...] Entered into [internal record keeping] with effective dates August 28/17 to August 28/18
 - [Insurer][redacted] Policy *****928 effective August 3/16 to August 3/18 [...] Entered into [internal record keeping] with effective dates July 3/15 to August 28/17
 - ICBC information entered into [internal record keeping] from January 1, 2014 to August 3, 2015 [...] No ICBC Information could be found on file
- No Claims entered on [internal record keeping] system. Autoplus shows the following losses:
 - August 19, 2016 At Fault 100% - Property Damage \$1942
- MVR information entered on [internal record keeping]: February 13, 2019 Speeding & December 8, 2018 Speeding [...] MVR on file shows:
 - July 2, 2009 Blood Alcohol exceeds .08
 - February 13, 2017 Learner Drive M/V Unsupervised by Operators License Holder
 - January 4, 2019 Speeding
 - February 20, 2019 Speeding
 - July 2, 2009 to February 1, 2017 Suspension (Alcohol Related)
 - July 2, 2009 to July 1, 2010 (Prohibition Suspension)
 - August 3, 2016 to February 1, 2017 (Interlock Device Requirement) Driving
- Record 5 was given. Maximum Driving Record that could be applicable would be 3 [...]

Client: [M.D.] [redacted] (“**Client #20**”)

- No MVR attached to the application and application states no convictions. MVR for [Client #20] was ordered by management on October 1/19[...] [Client #20] has 2 convictions (October 28/16 speeding & January 24/18 speeding) [...] [internal record keeping] shows that a full report was ordered/entered eff [sic “effective”] August 30/19 and there are no Violations/Suspensions. Client is receiving the Conviction Free discount, but does not qualify [...]
- Autoplus report on file for [Client #20] states the following:
 - [redacted][insurer] Insurance #*****0540 from August 26, 2018 to August 26, 2019- cancelled per insured's request [...] Entered into [internal record keeping] effective August

- 26, 2018 to August 26, 2020
- [redacted][insurer] Insurance #****624 from August 26, 2015 to August 26, 2018 - this is an All-Terrain vehicle policy [...] Entered into [internal record keeping] as a Private Passenger Type policy
- [redacted][insurer] Insurance #****560 effective November 28, 2013 to November 28, 2014 [...] Entered into [internal record keeping] effective November 28, 2013 to November 28, 2015
- [...] No verifiable insurance history from November 2014 to August 2018 (over 24 months)- [Client #20] would only qualify for a Driving Record 1 due to lapse of insurance history on a Private Passenger type policy (All -Terrain vehicle policy does not count). Client was receiving a Driving Record 8[...]
- Autoplus report on file for [spouse][redacted]
- Personal Insurance, policy #*****724 effective September 8, 2006 to September 24,2014[...] Entered into [internal record keeping] effective September 8, 2006 to September 8, 2015
- Claims listed on [spouse's] AutoPlus report that are not on [internal record keeping] or disclosed on the application [...] - August 7, 2014 Hail Damage [amount]
- MVR pulled by management on October 1/19 - abstract shows 3 convictions on license: [...] April 28, 2017[type of conviction], June 6/18[type of conviction], April 24/19 [type of conviction]
- [...] Mechanical Inspection Report on file - but it was completed on March 20, 2019 and the name on the inspection form is not our insured (can only make out a last name of [redacted][unrelated client]??)
- As per information on [internal record keeping] on November 27, 2019:
 - Reported Claim September 5, 2019
 - Date of Loss February 7, 2018
 - Animal Collision with a 2015 GMC [redacted]
 - Payout of [amount]
- Policy Status: Policy has been cancelled for non-payment/lapse due to down payment going NSF. Coverage ceased on August 30, 2019

On August 11, 2020, the Agency provided the Agent's termination letter and release. The termination letter, dated October 3, 2019, provided, in part;

- [...] it was determined that you:
- Intentionally omitted relevant claim, conviction, and payment history information from insurance applications and insurance company portals in order to obtain coverage or favourable premiums and payment plans for an applicant in circumstances where coverage would likely have been denied, or the premiums would have been higher and/or payment plans would have been denied;
 - Intentionally withheld and/or misrepresented information on the applications of friends and/or family members in order to obtain coverage, which coverage would have been either (a) denied, or (b) granted at a higher premium and/or with less favourable payment terms; and
 - In many of the cases noted above, you profited from your wrongdoing in the form of commissions.

The actions constitute a fundamental breach of the employment relationship and a revelation of character that is incompatible with your continued employment thereby justifying [Agency's] decision to immediately terminate your employment. Lastly, your actions have placed [Agency's] business relationship with its insurers and its insurance licences at risk.[...]

On August 11, 2020 the AIC requested a response “*detailing your recollection of the facts in response to [Agency's] allegations that they terminated you for cause for intentionally misrepresenting client information on insurance applications*”.

The Agent engaged with various AIC contacts through the course of the investigation, and responded on August 13, 2020, as follows;

As I advised both [investigator] and [investigator], I have zero reference material [sic] with regards to this situation, there was no affect on commision [sic] as was claimed, I was walked out October 2nd, with only my box of personal items, advised there would be no further contact surrounding the incidentwpq [sic]. My actions were not of malintent. [...] You are free to contact me by phone, [...] and take a recorded verbal statement. Or, you may provide me with a more detailed request via email, as to the persons, policies, etc. and I will be happy to respond with any information that I have, at my earliest convenience.

The Agent also responded as follows on September 9, 2020;

With regards to the below files, as i have been out of the industry for a month short of a year, with no access to the files, or information, unfortunately, I am unable to recollect with confidence any details.

As for the 'loophole' mentioned in the below email, again, I have not had access to these systems in almost a year, therefore I am unable to provide any information with confidence at this time.

The AIC sent the entirety of the Report to the Agent for review, and to provide the Agent an opportunity to respond to the allegation and evidence put before the Council. The Agent returned the Report, signed November 14, 2020, and enclosed an addendum response (the "Addendum").

The Addendum provided (in part);

I have taken the time to thoroughly read over this report, and again, am unable to with confidence recall any of the details, with regards to the files in question. [...] If I am unable to recall with absolute confidence the facts regarding and surrounding this matter, I would not be speaking the truth. I have not had access to files, or client information, since October 3, 2019. [...]

The AIC responded on December 2, 2020

[...] Upon reviewing your response to the Report to Council (i.e. your addendum), we discussed your concerns regarding your inability to recall specific details related to the allegations. As such, it was decided that, along with the review pages that were contained in the original report, you should have the opportunity to review the policies in detail where wrongdoing has been alleged; therefore, I have attached the complete policies where wrongdoing has been alleged, along with the review pages provided by the Complainant, for your consideration. [...]

In response to the entirety of the Report and the supporting investigative materials, the Agent responded on December 9, 2020:

[...] Thank you very much for your time on this file. As well, the consideration by both yourself, and council to allow me the opportunity to review the policies in detail, is appreciated. However, I am not interested in reviewing this matter any further at this time. Please proceed without response.

Discussion

The Report alleges that the Agent contravened s. 480(1)(a) of the Act by intentionally removing, or negligently omitting, critical information on client insurance applications. The applicable legal test in determining whether the Agent is guilty of this offence was set out in *Roy v. Alberta (Insurance Councils Appeal Board)*, 2008 ABQB 572 (hereinafter “*Roy*”). In *Roy*, the Life Insurance Council found that an agent violated s. 480(1)(a) of the Act when he attested to completing his required continuing education when this was not, in fact, the case. The Insurance Councils Appeal Board also found the agent guilty of an offence and the agent appealed to the Court of Queen’s Bench. In reasons for judgment dismissing the appeal, Mr. Justice Marceau wrote as follows at paragraphs 24 to 26:

[24] The Long case, albeit a charge under the Criminal Code of Canada where the onus of proof is beyond a reasonable doubt (not on a preponderance of evidence as in this case), correctly sets out the two step approach, namely the court or tribunal must first decide whether objectively one or more of the disjunctive elements have been proven. If so, the tribunal should then consider whether the mental element required has been proved. While the Appeal Board said it was applying the Long decision, it did not make a finding as to whether step 1 had been proved with respect to each of the disjunctive elements. Rather it immediately went into a step 2 analysis and found that the mental element required for untrustworthiness might be less than the mental element required for fraud (as a given example).

[25] I am of the view that statement was in error if it was made to convey a sliding scale of mens rea or intent depending on which of the constituent elements was being considered. In my view, the difference between the disjunctive elements may be found in an objective analysis of the definition of each and certainly, as demonstrated by the Long case, what constitutes fraud objectively may be somewhat different from untrustworthiness. However once the objective test has been met, one must turn to the mental element. Here to decide the mental element the Appeal Board was entitled, as it did, to find the mental element was satisfied by the recklessness of the Applicant.

[26] While the language used by the Appeal Board may be characterized as unfortunate, on this review on the motion of the Applicant I need not decide whether the Appeal Board reasonably could acquit the Applicant on four of the disjunctive elements. Rather, the only matter I must decide is whether the Appeal Board acting reasonably could conclude, as they did, that the Applicant’s false answer together with his recklessness justified a finding of "untrustworthiness". (emphasis added)

It is the Council’s view that the Report’s evidence and the accompanying Agency’s Limited Report prove that the Agent intentionally entered false information on her clients’ insurance applications which allowed the Clients to obtain favourable terms, coverage, and/or premiums that they would have likely not been able to obtain had the Former Agent entered the correct information. The Council was troubled to see that there was an established pattern of behaviour, the Council determined that these actions were more than a clerical oversight, and that the Agent omitted the information intentionally. The Council notes that the Former Agent states that her actions were not done with mal-intent but instead were done to the benefit of her

Clients. , The Council is of the view that the Agent's actions prevented the insurer from accurately assessing risk assumed through their prospective clients, and also affected the ability to charge the appropriate premium for the policies issued. Moreover, it is never in the client's interest to use false information to obtain an insurance coverage. If an agent enters false information the client could be blamed for failing to disclose information and his or her coverage could be jeopardized as a result.

Insurers who issue policies and consumers who purchase them expect that the insurance agents will act in the utmost good faith in carrying out their work. Honesty and integrity are the hallmarks of a good insurance agent, and the certificates of authority require the Agent to act in a fiduciary duty to her clients and to her insurers. The Agent failed to uphold her duties and as a result, the Council is of the opinion that the Agent has brought the profession into disrepute. The Agent acted in a dishonest, deceitful, misleading, untrustworthy, and fraudulent manner pursuant to s. 480(1)(a) of the Act. As such, the Council finds that the Agent guilty of breaching s. 480(1)(a) of the Act as alleged in the Report.

Pursuant to s. 13(1)(a) of the *Certificate Expiry, Penalties and Fees Regulation*, the Council has the jurisdiction to levy civil penalties in an amount not exceeding \$5,000.00 in relation to misconduct under s. 480(1)(a) of the Act. The Council also has the jurisdiction to suspend the Agent's certificate of authority to act as a general insurance agent for a period of up to 12 months, or to revoke the certificates for one year. Given that the Agent is not presently licensed, the Council cannot suspend or revoke the Agent's certificates. Had the Agent been licensed at the time of this Decision, the Council would have exercised its right to revoke the Agent's certificates in the interest of public protection.

To arrive at an appropriate penalty the Council has considered all of the evidence before it. The Council orders the maximum civil penalty \$5,000.00 be levied against the Agent for her gross misconduct.

The civil penalty must be paid within thirty (30) days of receiving this notice. In the event that the penalty is not paid within thirty (30) days the 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 General Insurance Council. The motion was duly recorded in the minutes of that meeting.

Date: February 19, 2021

[Original signed by]

Janice Sabourin,
Chairperson, 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