

ALBERTA INSURANCE COUNCIL
(the "AIC")

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

And

NIB Insurance Group Ltd.
(the "Agency")

As represented by
Designated Representative, Kenneth Moland
(the "DR")

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

The matter involves an alleged violation of s. 480(1)(a) of the Act, being that the Agency is guilty of misrepresentation, fraud, deceit, untrustworthiness or dishonesty in contravention of s. 480(1)(a) of the Act.

Specifically, it is alleged that the Agency collected the premiums amounts but failed to remit the premiums to the insurance company as required by the Act. Alternatively, it was alleged that the Agency committed an offence pursuant to s. 509(1)(a) of the Act by making false or misleading statements to its client that insurance premiums were duly paid to the insurer when they in fact were not. Such a violation would also contravene s. 480(1)(b) of the Act.

Facts and Evidence

This matter proceeded by way of a written Report to Council dated November 19, 2020 (the "Report"). The Report was forwarded to the DR for review and to allow the Agency to provide the Council with any further evidence or submissions by way of Addendum.

The Agency was the former holder of a General Insurance certificate of authority but is presently inactive. The DR is the former holder of a General Insurance certificate of authority held at various levels between the period February 11, 1996 and January 8, 2020. The individual acted as the DR for the Agency for the entirety of the Agency's existence before the DR's certificates of authority were terminated on October 15, 2018.

On March February 28, 2019 the AIC received a letter from the insurer (hereinafter “S.I.”). The relationship with S.I. and NIB was explained by the insurer as follows; “[redacted] [S.I.] do not have a broker contract with NIB, so we have not encountered similar issues. FYI, [redacted] [S.I.] has a broker contract with [redacted]“TCIM” which sub-brokered the account on behalf of NIB.”

To clarify, TCIM acted as a *Managing General Agency* of the insurer. Meaning that the insurer outsourced part of its duties to a third-party administrator. The third-party administrator oversaw the activities of the agencies recommending the insurer insurance products. Such a relationship is commonly called a “Managing General Agency”. TCIM were contracted to oversee the activities of NIB.

S.I. advised the AIC that;

TCIM (our broker) paid us in full. NIB did not pay TCIM. [F.IF.](the “Lender”) paid NIB in full. Since TCIM did not receive payment they asked us to proceed with canceling by registered letter due to non-payment. Please refer to the attached pdf binder for the information”.

The “Lender” referred to herein provided premium financing to the insured.

Therefore, the insurer, S.I., alleged that NIB received the payment of the insurance premium on behalf of the client as secured by the Lender, but failed to remit the premium amount to the Managing General Agency acting on behalf of the insurer.

S.I. enclosed the following by way of correspondence of February 28, 2019;

1. The chronology of events relating to the investigation including attempts to contact NIB to retrieve the premium amounts;
2. Copies of insurance policies
3. Copies of bank cheques and statements relating to the unremitted premiums
4. Notes, correspondence and records on file relating to the investigation

S.I.’s chronology provided, in part;

[Redacted] [S.I.] General Insurance Company [...] received the application for [the client] [redacted] [TCIM] on February 13, 2018 and quoted the Auto and Property & Casualty policies on February 14th. The Auto was bound for \$174,997@ 7.5% commission and P&C for \$16,343@ 20% commission on February 14th with an effective date of February 18th. The assigned policy numbers were *****4237 for Auto and *****908413 for P&C. TCIM sub-brokered the account on behalf of NIB. The account was agency billed and there was financing in place through [redacted][Lender]

- August 10, 2018 – [redacted], Automobile Manager, [S.I.], was blind carbon copied on an email from [redacted] President, TCIM to Ken Moland, President, NIB asking Ken to call him urgently as Ken's voice mail was full.

- August 10, 2018 – [...] [S.I.] to prepare registered letters of cancellation for non-payment for *****908413 & *****4237 as they had not been paid by NIB.
- [...]
- August 14, 2018 – [...] sent an email to [redacted][Lender] providing a copy of their funding notice and [S.I.] cancellation.
- August 15, 2018 - received confirmation BC filing was cancelled as requested.
- [...]
- August 22, 2018 – [redacted][Lender] sent an email stating they had been attempting to secure confirmation of remittance to [S.I.] but hadn't received confirmation and wanting [sic] to know if the outstanding premium had been paid to us. [redacted] responded in an email advising TCIM had not received payment. [Lender] advised he had a voice mail from Ken Moland, President of NIB advising he would be resolving all outstanding items by end of the day tomorrow.
- August 22, 2018 – [...] [S.I.] Accounts Department asking if NIB sent any payment to [S.I.] and was advised they hadn't received anything.
- August 23, 2018 – [S.I.] received an email from [S.I.] Accounts Department advising TCIM paid [S.I.] the full amount of \$174,997 at 7.5% commission on their May statement.
- August 29, 2018 – [S.I.] emailed [Lender] to advise TCIM had still not been paid and asking him to follow up with NIB for payment. [...]
- August 29, 2018 – [...] [Lender] advised the last contact he had with Ken Moland was a voice message received August 28, 2018 at 4:20 pm indicating Ken was going to the office to arrange payment.
- August 29, 2018 – [...] TCIM sent an email confirmation they received a payment of \$25,000 and included a copy of electronic fund transfer.
- August 30, 2019 – [S.I.] emailed [...] [TCIM] to see if TCIM had received the balance owing.
- August 31, 2018 – [T.C.I.M.] emailed requesting a copy of the cancellation indicating the return premium.
- [...]
- October 22, 2018 -Audra sent a copy of the automobile cancellation [...] TCIM.[...]

The client retained legal counsel in response to the canceled insurance policies of the business. The *“Resolution of the Board of Directors of [client]”* advised; *“[...] the Corporation wishes to appoint [redacted][legal counsel] as the corporate’s representative to handle the corporation’s insurance claim matter, specifically in connection with the losses suffered due to instantaneous cancellation of insurance policy *****4237 by [S.I.] Insurance Company.”*

The Client’s legal counsel responded to the AIC’s request for information on April 3, 2019;

On February 14, 2018, NIB Insurance and Kenneth Moland acted for [redacted] [client of a commercial business](hereinafter the “Client”). as insurance broker to obtain insurance policy# *****4237 (the "Policy"), from the insurer, The [S.I.] General Insurance Company. This policy was obtained for a term of one-year, effective February 18, 2018 to February 18, 2019. The total premium for the Policy was \$198,566.00. [Redacted] [the Client] paid \$23,776.91 as down payment for the premium amount to NIB Insurance and the remaining premium, in the amount of \$174,789.09, was funded by [redacted][the Lender].

Upon invoice from NIB Insurance and execution of Commercial Premium Finance Agreement, which included an undertaking by NIB Insurance that NIB Insurance will promptly remit all funds received from [the Lender] and [the Client] for the policies due to the insurers issuing the policies, all funds in the amount of \$198,566 .00 were transferred to the [...] NIB Insurance Group Ltd.

- The written agreement dated February 14, 2018, between [the Lender], [the Client], and NIB Insurance, which obligated NIB Insurance to promptly remits all funds received from [the Lender] and [the Client] to

the insurer. All funds were duly submitted to NIB Insurance.

- [the Client] thereafter, as per the agreement reposed complete trust and confidence in NIB Insurance's professional abilities and left it to NIB Insurance to remit the policy premium in a timely manner.
- [the Client] on August 13, 2018, received a notice of cancellation of the insurance policies from the insurer due to non-payment of premium, effective August 30, 2018.
- NIB Insurance failed to remit the premium to the Insurer in a timely manner, which caused the Insurer to cancel the policy instantaneously. The cancellation caused great difficulties for the insured, including but not limited to uncertainty as to the future of business, financial loss, reputational harm and great amount of stress. Absence of an Insurance policy would have brought the business to a halt, resulting in breach of contracts, employees without job and many such problems.
- Unpaid premium, in the amount of \$83,228.20 is currently in NIB Insurance's trust account. Upon inquiry as to their position with regards to the amount, they have failed to respond. [Client] has received a demand letter from [the Lender] to return the funds. NIB Insurance is in possession of the funds.

The Client's legal counsel provided the following in support of the above chronology;

1. [Client] account statements indicating transfer of down payment to NIB Insurance;
2. Policy Cancellation Letter;
3. Commercial Premium Finance Agreement (Between [Lender], [Client] & NIB Insurance);
4. Demand Letter from [the Lender] to [Client].

The March 6, 2019 Demand Letter from the Lender to the Client provided as follows, in part;

We understand that your client is pursuing a claim against the broker and that it will add the amount owing to our client as part of that claim. Our client trusts that any amounts received from the insurance broker in respect of the absconded funds will be directed to our client to be applied as against the outstanding balance under the PFA.

Our client confirms that it will hold off on bringing proceedings against [Client] for the time being to give it an opportunity to collect from the broker.

On April 3, 2019, the AIC sent an email to Kenneth Moland, as the former DR of the Agency, requesting information and documentation in relation to the alleged misappropriation of premium funds. The AIC requested;

[...]

We have received a complaint from [Client's solicitor] with respect to insurance policy #*****4237 alleging that the Agency collected premiums and did not remit to the insurer, resulting in cancellation for non-payment. In order to assist in my investigation, please provide the following information:

- A detailed summary of your discussion and chronology of events relating to the above complaint;
- Copies of file notes and correspondence with respect to this matter;
- A copy of the down payment receipt;
- A copy of the premium finance agreement between [the Lender] and the client;
- A copy of the cancellation letter sent to the client;
- An explanation as to why premiums have not been remitted to [S.I.] or [the Lender]; and
- An explanation of where the funds are currently being held and what they are being used for.

The DR was provided a deadline of April 18, 2019 to respond. The DR responded on April 8, 2019;

Thank you for your letter of April 3, 2019 . We answered [AIC Investigator] on his file 68992 which has the same factual foundation. Both complaints refer to the same financed insurance for [Client] through [Lender]. [AIC Investigator] was sent a box of material in response to his request dated February 1, 2019, and I would defer to that response and that box of material, a copy of which I have not retained. [...]

To which the AIC investigator replied;

CMS file #68992 pertains to a complaint from [Lender] and [unrelated brokerage]. I have reviewed the documentation relating to [Client] from the box of material you previously indicated below. Please note that I will be investigating with respect to the complaint from [Client] only.

Please find attached a copy of the documentation that I located in the box and advise if this is your complete response to my original request for information [...] Please provide me with your response and documentation as indicated above on or before April 25, 2019.

Within the materials provided by the DR was a copy of the Commercial Premium Finance Agreement between the Client, Agency, and the Lender, which was signed in counterpart. The Agency signed the Commercial Premium Finance Agreement on February 14, 2018 and the Client signed the Commercial Premium Finance Agreement on February 11, 2018.

The Commercial Premium Finance Agreement provided;

Broker's representations and warranties

In connection with the Policies, the Broker [being the Agency in this Decision] also represents and warrants that:

- 1) the Insured received a copy of this Agreement and authorized the transaction;
- 2) if the Broker has agreed to collect the cash down payment, and/or any instalments due from the Insured, Broker has collected such payment;
- 3) the listed Policies are in full force and effect, and the information contained in the Schedule is correct;
- 4) the Broker is the authorized policy issuing broker of the insurers or the Broker placing the coverage directly with the insurer on all Policies except as indicated in the Schedule;
- 5) no direct company bill, audit, or reporting form policies, or policies subject to retrospective rating or to minimum earned premium are included, except as indicated in the Schedule or specifically disclosed to [redacted][the Lender] and the deposit of provisional premiums is not less than anticipated premiums to be earned for the full Policies' term;
- 6) the Policies can be cancelled by the Insured or [the Lender] (or its successors or assignees) with proper notice, and the unearned premiums will be computed by standard short rate or pro-rata tables;
- 7) to the best of Broker's knowledge, there are no bankruptcy, receivership or other Insolvency proceedings affecting the Insured or Broker;
- 8) Broker shall hold [Lender] harmless from, and be liable to [Lender] for, any costs, damages or other expenses (including attorney's fees) Incurred by [Lender] or its assignee as a result of or in connection with violation of these representations and warranties, Broker breach of the Agreement or from errors, omissions, and inaccuracies of Broker in preparing this Agreement;
- 9) Broker recognizes the Insured's assignment of the unearned premium to [Lender];
- 10) to hold in trust for [Lender] any payments made or credited to the Insured through or to the undersigned, directly or indirectly, actually or constructively, by the insurers or [Lender] and pay the monies and any unearned commission to [Lender] promptly upon demand to satisfy the indebtedness of Insured without any deduction of amounts owed by Insured to Broker;
- 11) to the best of Broker's knowledge, the Policies do not require advance notice of cancellation to any party (other than notice required to be given by [Lender]), are not for a term of less than one year or subject

- to any other liens, and have not been paid for other than as described herein;
- 12) Broker will promptly remit all funds received from [Lender] and the Insured for the Policies due to the insurers issuing such Policies; and
 - 13) Broker is not an agent of [Lender] and is not authorized to bind [Lender] and has not made any representation to the contrary.

The DR requested various extensions to review information. The AIC obliged, and on July 9, 2019 the DR provided his final response to the investigation;

Thank you for the additional time to look through the box previously provided to [AIC investigator], as well as to search for other available records.

Unfortunately, the additional time did not bear fruit:

- 1) As you know, NIB was wound up last year, its contents were packed and placed into pods. A search of those pods to date have been unable to retrieve anything relevant to the [Client] file;
- 2) Since [Client] was a Didsbury file, I had hopes that the Didsbury office would have the records I was looking for to answer your remaining questions. I made contact with the Didsbury office - which has not been in my control for quite some time - and was advised that nothing from the [Client] file (or other NIB files) had been kept; and
- 3) my review of the box in [former AIC investigator's] office which you have reviewed, did not yield what I was looking for.

As such, the following is the best I can do with respect to your outstanding questions:

- 1) A detailed summary of your discussion and chronology of events relating to the above complaint;

I do not think I can do much here with the available limited documentation other than to say that [Client] required insurance which was placed for them. The premiums were raised through premium loan. Those proceeds should have been paid over to the insurer - or at least their portion - but apparently not all of them were (**** I do have note of a payment dated August 16, 2018 for \$15,689.28 for *****908413). I will be in contact with [Client], [Lender], and the insurer to figure out who is out what and to appropriately resolve their respective claims. What I need to complete is an accounting regarding this file to determine: amounts in, amounts out, and amounts owing.

- 2) An explanation of where the funds are currently being held and what they are being used for.

I am unable at this time to reconcile my trust account and account for the remainder of the monies, or even determine what that amount is. I have not been able to locate sufficient records.

- 3) An explanation as to why premiums have not been remitted to [S.I.] General Insurance or [Lender]. I realize from a review of the material that is available, that non-payment was being alleged by the insurer and the lender (the records were indicated I was personally advised August 13, 2018), and that I failed to ensure payment to them. However, I have decided to give up that type of control over an insurance office anyways. I have taken a job at [redacted] where I just sell and service insurance, so that I do not have to worry about billing, collection, and payments on account.

Trusting this explanation will suffice pending your many other question

On December 3, 2019 the DR responded to the entirety of the Report to Council;

December 3, 2020

To: General Insurance Council

Re: Case #69243 Response to Investigation Report

1. I urge upon the Council a finding and fine only on 480(1)(b) on the basis of contravening a provision of the Act, and not to act on the baseless suggestion of misrepresentation, fraud, deceit, untrustworthiness or dishonesty, of which there is no evidence.
2. If anything, the evidence shows that our (now former and closed) agency, NIB Insurance Group Ltd., of which I was the DR, received a premium and failed to forward it to the insurer – at least in full. Of that I am satisfied, by reviewing the available documentation. That is against the Act.
3. However, while this exhibits negligence and failure in duty on our part, it certainly doesn't show misrepresentation, fraud, deceit, untrustworthiness or dishonesty. I certainly did not misrepresent. It appears from the Investigation Report (IR) that I provided the very documents upon which [AIC Investigator] bases his conclusions. It would also appear that I answered all inquiries on this matter promptly and to the best of my ability. As for the suggestion that I was misrepresenting the matters at hand to the client or others who inquired on the status, I can say this – it was never knowingly done. If I said I was going back to the office to look into the matter or get the payment completed, that would have been true when it was said. I would have made inquiries and given direction to my staff – such as my bookkeeper who handled such matters of payment. I cannot say whether they just could not figure it out, or whether they were just behind or otherwise. Whatever the case, I was always left with the impression that it was being done or being taken care of, and that someone would let the client (or other inquirer) know. I should have been more hands on and less trusting, I realize that now.
4. [...] We, quite frankly, and over the last portion of time before we sold the book of business and closed the brokerage, lost control of our record keeping, financial and otherwise, and simply could not reconcile this account (and some others). It is negligence, perhaps mismanagement, but not fraud or the other descriptors. [...]
5. I wish I could be more helpful, and I know it is my duty to be. However, multiple things are working against my ability to do so:
 - a. the file was a Didsbury file, we had a Didsbury office, that office stopped working with me long ago and I simply do not have their file nor their cooperation;
 - b. [Client] file (even though not active) was included with the transfer of files as part of the Book of Business sold to [redacted], where I went to work after selling NIB. Since that time, [redacted] and I became in a dispute over the sale and purchase of the brokerage (amongst other things) and they would have at least a portion of the file there, which they have acknowledged. My legal counsel has requested same, but to date I am not aware that we have received it;
 - c. I simply cannot find, from the available books and records, more than I have already provided, and it shows a deficit of payment on a file I did not sell or arrange, but am responsible for. I assure you there was no misrepresentation, fraud, deceit, untrustworthiness or dishonesty.
6. Currently, I am not working in the industry, but my reputation is extremely important to me.

Discussion

Although not otherwise contemplated by the investigative report of the AIC, ss. 504(1) and (2) of the Act relate to the control of premium amounts paid to insurance intermediaries;

Agent trustee of premiums

504(1) An insurance agent who acts in negotiating, renewing or continuing a contract of insurance with an insurer and who receives a payment from the insured for a premium for the contract is deemed to hold the premium in trust for the insurer.

(2) If the insurance agent fails to pay the premium, less the agent's commission and any deductions to which, by the written consent of the insurer, the agent is entitled, over to the insurer within 30 days after the agent receives a written demand for payment of the premium, the agent's failure is proof, in the absence of evidence to the contrary, that the agent has used or applied the premium for a purpose other than paying it over to the insurer.

From the wording of these sections is clear that each single premium payment an agent receives is explicitly held in trust for the insurer. To that extent, if an insurance intermediary refuses or neglects to remit premium funds to an insurer it is presumed that the agent has used the funds for an improper purpose. The Agency agrees that it received premiums funds on behalf and purports “*I simply cannot find, from the available books and records, more than I have already provided, and it shows a deficit of payment on a file I did not sell or arrange, but am responsible for.*”

The DR maintains that his professional reputation is important to him, and the Council remains cognizant that findings under s. 480(1)(a) of the *Insurance Act* can have long-lasting effects on professionals in the insurance and financial industries. The Council therefore applies stringent tests to weigh the evidenced produced. In order to conclude that the Agent committed a violation pursuant to s. 480(1)(a) of the Act, the Report must prove, on the basis of clear and cogent evidence, that it is more likely than not that the Agent committed the act(s) as alleged.

The elements of a violation of s.480(1)(a) of the Act in the decision of the Court of Queen’s Bench of Alberta, *Roy v. Alberta (Insurance Councils Appeal Board)*, 2008 ABQB 572 (hereinafter referred to as “*Roy*”). In *Roy*, the Life Insurance Council found that an agent violated s. 480(1)(a) of the Act. The agent falsely attested to completing the required continuing education (“CE”) necessary to maintain his insurance certificates when he did not, in fact, have the required CE. The agent concurrently held a securities license and believed that the CE required to maintain his securities license was applicable to his insurance certificates of authority.

The agent appealed the decision of the Life Insurance Council to the *Insurance Councils Appeal Board* of Alberta. In their findings, the *Insurance Councils Appeal Board* set aside the findings with respect to “misrepresentation, fraud, deceit and dishonesty” as contemplated by s. 480(1)(a) of the Act, but upheld the conviction of “untrustworthiness”, a disjunctive element of a s.480(1)(a) offence. The agent appealed the Decision to the Court of Queen’s Bench of Alberta on a matter of judicial review.

In his reasons for judgement, Mr. Justice Marceau reviewed the requisite test to find that a violation of s.480(1)(a) of the Act has been made, and expressed that reasoning at paragraphs 24 to 27 as follows:

[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). [Emphasis added]

[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. [Emphasis added]

[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]

[27] Clearly the false answer was one which the Alberta Life Insurance Council could not trust as a basis for renewing the Applicant's Life Insurance Certificate of Authority. That satisfies the objective element. Just as clearly the finding that "the best that can be said of the Appellant's approach to the required statements is that he did not know if he had the required credits or not and likely gave the form little or no thought" is a finding of wilful[sic] blindness, of recklessness, and that is sufficient to prove intent in this context. The Board was aware that recklessness could satisfy the intent requirement and made no error on that score. Having read the transcript of the hearing, I find that it was not unreasonable for the Appeal Board to conclude that the evidence of the Applicant about vaguely thinking that among all the courses he took he believed there would be enough crossover from courses taken for his securities licence to the life insurance requirements **fell far short of the due diligence expected of someone entrusted with fiduciary and good faith obligations.** [Emphasis added]

The Council weighed the effects of the DR's alleged actions, the evidence presented, and accounts of all parties when reaching its' conclusion. Insurance intermediaries are held to a high standard of due diligence when managing insurance products and client premiums. The relationship between an insurance intermediary is such that the client relies on the Agency's expertise, competency and integrity to affect the discussed coverage. The negligence exhibited in this case exposed the Client to undue risk, both financially and operationally which "*[in] Absence of an Insurance policy would have brought the business to a halt, resulting in breach of contracts, employees without job and many such problems.*"

The DR of the Agency responded "*However, while this exhibits negligence and failure in duty on our part, it certainly doesn't show misrepresentation, fraud, deceit, untrustworthiness or dishonesty.*" [...] "*As for the suggestion that I was misrepresenting the matters at hand to the client or others who inquired on the status, I can say this – it was never knowingly done.*" The Council did not agree that the Agency's recollection was supported by evidence. The Client, the Lender and the Insurer [S.I.] provided a matching chronology and corroborating evidence which proved that several demands had been made of the Agency to remit the premiums to the Insurer immediately. The Client also retained legal counsel to compel the payment of insurance premiums to protect the insurability of the commercial limited corporation. However, the Agency never remitted these funds. As such, the Council finds that it is more likely than not that the DR was aware of his obligation that premiums are held in trust, and that the misappropriation of the insurance premium was done knowingly, and with intention.

The Council found that the Agency's conduct was negligent, reckless, deceitful, intentional, dishonest, untrustworthy, and fraudulent and moreover constituted misrepresentation (particularly as to the whereabouts of the insurance premiums, which still have not been located). In light of all the information before it, the Council is satisfied that there is sufficient, clear and cogent evidence to prove that the requisite elements of a s. 480(1)(a) violation are met, and that the Agency's conduct was a violation of s. 480(1)(a) of the Insurance Act.

In terms of the applicable sanctions, the Council has the jurisdiction to order civil penalties in an amount not exceeding \$5,000.00 in relation to a s. 480(1)(a) offence, pursuant to ss. 480(1)(b) of the Act and 13(1)(b) of the *Certificate Expiry, Penalties and Fees Regulation*, A.R. 125/2001. As the DR no longer holds a certificate of authority, and the Agency is not active, the Council cannot suspend or revoke the certificate. Were the Agency to be licensed the Council would have exercised its authority to revoke the certificates of authority in the interest of public protection.

In light of its finding the Council levies a civil penalty in the amount of \$5,000.00 pursuant to ss. 480(1)(b) of the Act and 13(1)(b) of the *Certificate Expiry, Penalties and Fees Regulation*, A.R. 125/2001.

The 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, interest will begin to accrue at the prescribed rate. Pursuant to s. 482 of the Act (excerpt enclosed), the Agency 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 18 , 2021

[Original signed by]

Chairperson Janice Sabourin,
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