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 Anthony Bentley
(the "Agent")

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

This case involves an allegation pursuant to s. 480(1)(a) of the Act or, in the alternative, s. 509(1)(a) and subsequently s.480(1)(b) of the Act. Specifically, it is alleged that the Agent created fraudulent insurance documents for non-existent policies and knowingly provided falsified documents to his clients. In so doing, it is alleged that the Agent guilty of misrepresentation, fraud, deceit untrustworthiness or dishonesty as contemplated by s.480(1)(a) of the Act. In the alternative, it is alleged that the Agent made false or misleading statements, as contemplated by s.509(1)(a) and has subsequently violated s. 480(1)(b) of the Act.

Facts and Evidence

This matter proceeded by way of a written Report to Council dated March 30, 2021 (the "Report"). The Report was forwarded to the Agent for his review and to allow the Agent to provide the Council with any further evidence or submissions by way of Addendum. In arriving at its conclusion, the Council carefully reviewed all evidence presented.

The Agent is the former holder of two level 2 general insurance agent certificates of authority under which he operated at two separate agencies. The Agent was licensed as a general insurance agent in various capacities from December 28, 1995 to December 11, 2019.

On December 10, 2019 the AIC received correspondence from the Agent's former agency (the "Former Agency") which confirmed the Agent's termination from employment "for cause". The AIC requested further information relating to the termination on January 31, 2020. In response, the Former Agency provided a

recounting of events leading to the Agent's termination, dated March 10, 2019 (the "Agency Report"). The Agency Report provided the Schedules mentioned below, and stated in part;

> […]
> Anthony Bentley had been working with our brokerage as a Producer. He was gradually transferring an existing client book to our brokerage. Mr. Bentley was never granted access to our systems. Although he did not have portal provisioning directly with insurers, on occasion he was given access by [D.M.][redacted], the branch manager at [Former Agency][redacted]. He would speak with clients about the transfer of their policy to [Former Agency][redacted], obtain the signed application and forward it to an agent at our office for processing. Occasionally Mr. Bentley would load the client information on the portal and forward the signed CSIO application and [D.M.] would then go in and bind the policy. In late September, there was a breakdown in the relationship between Mr. Bentley and [D.M.]. I personally intervened at that point in an effort to reconcile the relationship, including hosting conference calls and personally visiting Mr. Bentley. Mr. Bentley and [D.M.] continued to squabble over the quality and caliber of submissions; and ultimately in early November, [D.M.] asked Mr. Bentley to stop writing any business with [Former Agency] until we could resolve concerns with the existing applications. After this request from [D.M.], Mr. Bentley continued to complete applications, and in addition continued to provide temporary pink cards to clients without our [Former Agency's] knowledge or consent. Applications and documents were not submitted to our office, so no policies were ultimately issued.
>
> We confronted Mr. Bentley and sought his assistance to contact clients and properly issue policies. However, instead of assisting to remedy the situation, we found Mr. Bentley was continuing to issue temporary pink cards without coverage being bound. As a result, we terminated Mr. Bentley's license and demanded that he stop representing [Former Agency] and that he cease issuing any confirmation of coverage to insureds.
>
> Upon demand, Mr. Bentley provided us with a list of all of the clients for whom he had issued pink cards and we correlated that list to the policies bound with our insurer partners. Some of the policies dated back into September and October. As a result, in addition to the list provided by Mr. Bentley, we also reviewed all of the quotes that were done by our office and found additional clients that may have been given the impression that they had coverage in place. We asked Mr. Bentley to provide us with the completed and signed CSIO applications, which he was able to provide on most files, but in some cases all he had was a signed or initialed quote sheet. Because most of the applications were stale-dated we attempted to contact each client to obtain a new signed CSIO application. In total, 78 clients were given the impression that they had insurance when in fact no coverage was bound. Mr. Bentley does not appear to have retained any premium money. Attached as Schedule A is a list of those clients. Attempts were made to contact each client by telephone and also a letter was sent by courier advising that no coverage was placed and that pursuant to the statutory conditions for insurance policies in Alberta, the coverage afforded by the temporary pink card would cease to be in force five days after the delivery of the letter by courier. We invited the clients to contact us or to arrange coverage elsewhere. We were able to arrange proper coverage for those clients that wished to continue to do business with our office.
>
> We have had one uninsured claim resulting from a minor motor vehicle accident where our solicitor liaised with the third-party insurer and is arranging to make payment to the insurer.
>
> Since asking Mr. Bentley to cease representing [Former Agency] and since he has been unlicensed to represent [Former Agency], Mr. Bentley has continued to perform endorsements for clients by taking instructions for changes to policies and then asking our office to perform the change. We have repeated our demand that he stop representing himself as an agent for [Former Agency] and that he direct any clients queries directly to our office.
>
> In mid-January it came to our attention that Mr. Bentley issued a pink card to a client dated December 4, 2019 purporting to bind a policy of insurance. The pink card was issued under the brokerage [Former Agency] but

> the policy pouch provided to the client showed the name [A-W][redacted] Insurance [Agency]. No policy was ever issued, there was no Work in Progress in our records and no [Former Agency] office was ever notified that a pink card was issued. To compound matters we were advised by [Insurer][redacted] that Mr. Bentley called them on January 7, 2020 falsely representing himself as working for [Former Agency] and he advised [Insurer] that [Former Agency] took over the policy by Letter of Brokerage, but there was no such letter on file at [Insurer] or at [Former Agency]. Attached as Schedule B is a copy of the pink card and attached as Schedule C is a copy of the email communication from [Insurer]. Our solicitor sent a cease and desist letter to Mr. Bentley on January 14, 2020. A copy of our solicitor's letter is attached as Schedule D.
>
> Since our letter of January 14, 2020, we have had no further interaction with Mr. Bentley and we are not aware of any further incidences involving him.

In response, the AIC sent a detailed formal demand to the Agent which required his response no later than July 21, 2020 (the "Demand"). An extension was ultimately granted which provided a deadline of August 7, 2020 to respond to the Demand. The Demand requested the following;

> […]
> The AIC is reviewing a number of allegations regarding your conduct as an insurance agent. Specifically, the allegations include, but are not limited to:
>
> - Holding out that you work for various insurance companies despite no longer working for them
> - Issuing insurance documents to individuals through companies you no longer work for
> - Issuing home and auto insurance policies and documents despite not being licensed to do so
> - Improperly and unethically advising individuals
> - Improperly advising that coverage was in place when in fact it was not
> - Falsifying/inaccurately tracking client information
> - Forging documents
> - Not following client instructions
> - Not making requested changes despite indicating that you would/have done so
> - Backdating endorsements and applications
> - Offering coverage to clients that you knew they did not/would not be able to qualify for
> - Not disclosing material facts
> - Not disclosing deductible amounts to clients
> - Double processing payments on client accounts
>
> Accordingly, I write you to request the following information:
>
> 1. An explanation as to why you continued to represent, to clients and on insurance documents, that you worked for [newly named additional agency] after July 8, 2019, despite your license with them being terminated as of July 8, 2019.
>
> 2. An explanation as to why you continued to speak to customers of [newly named additional agency] despite your employment with them concluding as of July 8, 2019.
>
> 3. An explanation as to why you continued amending coverage and taking requests from clients of [newly named additional agency] after July 8, 2019.
>
> 4. An explanation as to why you continued to represent, to clients and on insurance documents, that you worked for [Former Agency] after December 11, 2019, despite your license with them being terminated on December 11, 2019.

5. An explanation as to why you continued to speak to customers of [Former Agency] despite your employment with them concluding as of December 11, 2019.
6. An explanation as to why you continued amending coverage and taking requests from clients of [Former Agency] after December 11, 2019.

7. A confirmation of whether or not you sold, issued, or provided advice regarding any general insurance policies after December 11, 2019.

8. An explanation as to why you advised clients improperly by:

    a. Advising clients that they had insurance coverage when they did not
    b. Providing documents to clients showing they had insurance when they did not
    c. Advising clients that they did not owe money when in fact they did
    d. Advising clients that they owed money when in fact they did not
    e. Advising clients to misrepresent facts on their applications
    f. Advising clients changes would be/had been made when on their policies when in fact they were not [sic]

9. Any additional information or documentation which will assist in understanding the material facts related to this matter.

The Agent did not respond. The AIC investigator again advanced the matter on March 30, 2021. As the AIC had not received a response to the Demand the Report to Council was compiled and sent to the Agent to provide a response to the entirety of the Report.

The Agent responded to the Report on April 13, 2021 as follows;

> In response to your email of the 30 March 2021 I would like to state some facts which should correct your rush to judgement.
>
> The Agent's Version of Facts vs Facts determined by the investigation.
> **4**. In 2018 [agency] lost its contract with [Insurer]. Arrangements were made in October 2018 that upon the renewal of my clients' [Insurer] policies they would be transferred to [Former Agency]. Eventually policies with other carriers were transferred and /or new or renewal applications were done. Once a new or renewal application is taken a temporary pink card is issued as required by any licensed agent and the applications were sent to [D.M.] at [Former Agency] for processing. At no time did I take any application nor did I issue a pink card beyond the termination of my General Insurance of authority.
> [KT.H.][redacted client name] obtained home and auto policies as of 28 October 2017 with [Insurer] through another agent in our office, it is not unusual that a client would have a policy pouch marked [agency] as that was the pouch given to clients during the time of our affiliation with [agency]. I did not issue a pink card dated 4 December 2019 to [K.T.H.] as stated in your Exhibit "E"
> On 7 January 2020 [K.T.H.] approached me and requested that I call [Insurer] on his behalf as he has not received his policies. [Insurer] was told that the client was in our office and I was calling on his behalf. This something I or you can do for an insured. if asked.
> Your Exhibit "E" states that "Mr Bentley has never granted access to our systems." Untrue.
>
> **5**. At the time of new or renewal applications taken pink cards are issued and the applications were sent to [D.M.] at [Former Agency] for processing. Upon my perusal of your Exhibit "F" I could not find the

issuance of pink cards outside 10 December 2019 except [H&R.M.][former clients] whose auto policy was effective 21 December 2019 but the application and the issuance were done early December 2019.

6. I repeat I did not create or issue a pink card to [K.T.H.] as per your Exhibit "G". [K.T.H.] obtained home and auto policies as of 28 October 2017 with [Insurer] through another agent in our office, it is not unusual that a client would have a policy pouch marked [agency] as that was the pouch given to clients during the time of our affiliation with [agency]. On 7 January 2020 [K.T.H.] approached me and requested that I call [Insurer] on his behalf as he has not received his policies. [Insurer] was told that the client was in our office and I was calling on his behalf something you or I can do for anyone if asked.

[…][redacted for privacy concerns]

8. I could not respond as per your Exhibit "I" as I was a patient in the ICU at the FMC recovering from surgery […][redacted for privacy concerns]

9. 10. & 11. I was in a state of a very rough recuperation after a very harsh surgery.

12. Your letter dated July 6, 2020 which seemed then like a fishing expedition hence I could not give my version as it lacked specifics who, what, where and when. See your "Exhibit "M".

Summary
You have concluded that I am "guilty of misrepresentation, fraud, deceit, untrustworthiness and/or dishonesty" which is furthest from the truth. These aspects can be attributed to [Former Agency] and [D.M.]. As of today I was not paid for the business [Former Agency] has acquired from me. I will attend to this matter when I am fully recovered as I had another surgery in January 2021 […][redacted for privacy concerns]

On 4 March 2020 I ceased commuting to work with my Rav4. A change request was sent to [D.M.] at [Agency]. In October I contacted [Insurer] and in one instance [redacted] at [Insurer] assured me that he has contacted [D.M.] at [Agency] who will process the change. In another instance [redacted] at [Insurer] had her manager [C.H.] contact [D.M.] to put through the change request. On 10 December 2020 I spoke to [redacted] at [Insurer] who after speaking to her manager called me back and stated that since the broker ([D.M.]) has not put through the change request she will do it. See attachment.

It must be noted that [Insurer] is not a direct writer and any changes must be done by the broker or be requested by the broker. For whatever reason [D.M.] refused to process the change in ten months [Insurer] decided to do it - a page from [D.M.]'s play book.

[Emphasis added in source document]

Discussion

In order for the Council to conclude that an agent has committed an offence 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 as alleged. The Council is cognizant that findings of guilt under s. 480(1)(a) can dramatically impact an insurance agent's ability to remain in the industry. Therefore, the Council carefully weighs all evidence before it before reaching its' Decision.

Misconduct considered in s. 480(1)(a) were discussed by the Alberta Court of Queen's Bench in *Roy* v. *Alberta (Insurance Councils Appeal Board)*, 2008 ABQB 572 (hereinafter "*Roy*"). In *Roy*, the Council found that an Agent committed an offence pursuant to s. 480(1)(a) of the Act when he attested to completing his required continuing education when he did not, in fact, do so. 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 his reasons for judgment, Mr. Justice Marceau reviewed the requisite test to find that an offence pursuant to s. 480(1)(a) of the Act has been made out and expressed it 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]

Violations of this nature are decided on the civil balance of probabilities, meaning that the Council must prove that it is more likely than not that the prohibited act occurred as alleged.

The Council acknowledges that whilst the Former Agency took measures to eliminate the risk posed to their clients as a result of the Agents actions, a claim was filed resulting from a minor motor-vehicle

accident. The Former Agency negotiated with the Insurer to effect coverage on the client's behalf. However, the Council is very aware that, during the time where the Agent's actions were not discovered, a serious claim could have occurred on a policy that was never bound nor in force. The Council was concerned that this placed the public at very real and severe risk.

The Agent has no disciplinary history with the Council and is a long-standing and experienced agent. However, an agent of such experience would be well-aware of the process followed by Agents, Brokers and Insurers to effect insurance coverage for clients. Given the level of conflict between the former Agent and the Former Agency, and the Agent's willingness to negate the brokerage process and call the Insurer directly, on behalf of client K.T.H., the Council believes that the Agent's involvement with a former client meets the definition of acting as an *"insurance agent"* under the Act, being;

> (bb) "insurance agent" means a person who, for compensation,
> (i) solicits insurance on behalf of an insurer, insured or potential insured,
> (ii) transmits an application for insurance from an insured or potential insured to an insurer,
> (iii) transmits a policy of insurance from an insurer to an insured,
> (iv) negotiates or offers to negotiate insurance on behalf of an insurer, insured or potential insured or the continuance or renewal of insurance on behalf of an insurer or insured, or
> (v) enrolls individuals in prescribed contracts of group insurance, but does not include an insurer;

The Council acknowledged, and the Agent admitted, that the Agent contacted the Insurer directly on behalf of K.T.H., during a time that he was unlicensed. It was the Agent's position that this was of benefit to his client, however, the Council was satisfied that this action meets the threshold of a s. 480(1)(a) violation of *"fraud, deceit, dishonesty, untrustworthiness or misrepresentation".*

The Agent's actions were deliberate and intentional, regardless of their motivation. As such, the Council finds that the Agent breached s. 480(1)(a) as alleged in the Report.

As to the appropriate sanction for this conduct, the Council has the ability to levy civil penalties in an amount up to $5,000.00 for offences pursuant to s. 480(1)(a) and 13(1)(a) of the *Certificate Expiry, Penalties and Fees Regulation*, A.R. 125/2001. The Council also has the ability to order that any active certificates of authority be revoked for one year or suspended for a period of time. As such, we order that a civil penalty in the amount of $5,000.00 be levied against the Agent. Given that the Agent is not presently licensed the matter of suspension and revocation was not considered.

The civil penalty must be paid within thirty (30) days of the date the decision is mailed. In the event that the civil penalty is not paid within thirty (30) days, interest will begin to accrue. 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.

Date: June 11, 2021

[Original Signed By]

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