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 Jennifer Anderson
(the "Agent")

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

This case involves allegations pursuant to s. 480(1)(a) of the Act, or in the alternative, s. 509(1)(a) and s.480(1)(b) of the Act. Specifically, it is alleged that the Agent falsified information presented to clients, the Former Agency, and Insurers. In so doing, it is alleged that the Agent acted in a dishonest, deceitful, fraudulent or untrustworthy way and/or that the Agent is guilty of misrepresentation 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 February 26, 2021 (the "Report"). The Report was forwarded to the Agent for her 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 a General insurance agent's certificate of authority which the Agent held, almost exclusively, between the period of June 27, 2003 to October 25, 2019. On October 25, 2019 the Agent's certificates of authority were suspended as a result of the Agent's employment termination by her former employer (hereinafter the "Former Agency").

This matter arose from a notice of termination received on October 24, 2019 from the Vice President of Operations of the Former Agency. The Former Agency advised that the Agent was *"[...] terminated from her position at C** [Former Agency] effective October 22, 2019".* In response, the AIC requested further details from the Former Agency on December 18, 2019. Specifically, *"a summary of the events that led to the termination".*

The Former Agency responded, in part, on December 18, 2019, and with more fulsome details on February 24, 2020. The Former Agency advised;

> [Redacted commercial client] [hereinafter "Big H."] was not an existing client of [redacted] [Former Agency]. Sales staff member, [redacted] was in discussions with this entity to earn their business.
>
> [Agent] was assigned as the Account Manager to market and prepare customer proposal for this potential new business for [staff member]. [Agent] was required to market business which meant to obtain insurance quotes from specific insurers. She was to obtain quotes from [Insurer #1], [Insurer #2], [Insurer #3] and [Insurer #4].
> […]
>
> [Insurer #2] confirms receiving a submission and assigns quote #*****130 for P&C and quote #*****815 for auto. No further action was taken by [Insurer #2] or [Agent].
>
> [Insurer #4] is contacted by [Agent] and additional information is requested. Some information is sent but not all information required is sent.
>
> On October 1, 2019, [Agent] provided [staff member] with a proposal for [Big H.] for their insurance program that would be effective Oct 11, 2019. This proposal is fraudulent as there are no formal quotations from insurers to support this proposal.
>
> This proposal was presented to the client by [staff member]. It was accepted by the client and signed applications received. [Staff member] and the client was unaware that they were looking at a fraudulent proposal.
>
> [Staff member] provided instructions to [Agent] to bind the quotes and prepare insurance documents.
>
> Days later, [Agent] provides insurance documents, pink cards, certificates of insurance and finance contracts to [Big H.] for the purported quotes that she claimed to have bound with [Insurer #2] and [Insurer #4].
>
> On Friday, October 18, 2019, our internal review of ongoing business discovers there is no documentation supporting this proposal in [internal computer system]. [Staff member] [redacted] sends an email to [Agent] requesting [Agent] attach all quote and binding emails today in our [internal] computer system.
>
> On October 22, 2019, during the internal audit [Agent] was asked to provide copies of quotes and binding instructions for [Big H.]. She provides [Former Agency] management with a copy of an email from [staff member] [redacted] from [Insurer #2] showing that quote #Q642**6 was bound for [Big H.].

> [Former Agency] immediately sends that binding email to [Insurer #2] to confirm authenticity and [Former Agency] is told by [Insurer #2] that:
>
> 1. this email is fraudulent and no such email was sent from their computer email system;
> 2. The details in this email have been altered as the original content in the email was sent on behalf of an account named [redacted] [Client #2]; and
> 3. [Insurer #2] did not quote or bind anything for [Big H.].
>
> This information was presented to [Agent] where she denied committing any fraudulent actions. She left the room and walked out of the [Former Agency] office.
> […]
>
> [Agent] created false documents and communicated false information to mislead [Former Agency], clients and insurers. This intentional deception to mislead was to secure unfair or unlawful gain by purporting to have done work that was not completed and to be paid salary and commission income from insurance policies that were fictitious.

Copies of supporting records (emails) were also appended to the Former Agency's Report. The Report alleged similar fraudulent activity for some 28 client files. A chronology was appended to the February 24, 2020 Former Agency Report, and provided as follows;

> October 1, 2019
> [the Former Agent] [email to] [staff member] 2:34pm - pink cards & certs attached.
> NOTE: pink cards attached to email issued eff Oct 11/19 thru [sic] [Insurer #2].
> No certificates were attached but corrected finance contract showing effective date as October 11, 2019 with [Insurer #2] for $24,000 and [Insurer #4] for $36,000
> […]
>
> Re October 22, 2019 emails to and from [Insurer #2] re binding of account.
> Note the following:
> [Agent]] email to [Insurer #2 staff member] @ 8:41 a.m. - shows email was sent from external source - Note reply from [Insurer #2] at 9:04 a.m.
>
> Compare the above email to the actual email received from [Insurer #2], which is also dated 9:04 a.m. but clearly shows the subject line as *"[Client #2] - New Business Submission - Q64**86."*
>
> In this email, [Insurer #2] advised [Agent] that they never heard back from our office [Former Agency] on this account.
>
> Appears as though [Agent] took this [Insurer #2] email of 9:04 a.m., changed the subject line to read [Big H.] –
> [October 22, 2019 email] Confirms Bound, and changed the contents of the email to read: *Confirm bound as per your request-effective October 11, 2019.*
>
> Note that the quote# remain unchanged, which was clearly for [Client #2] and not [Big H.]

The AIC sent a Demand for Information to the Agent, dated January 15, 2021 (the "Demand"), which was formed pursuant to s. 481(1) and (2) of the Act. The Demand required the Agent's response to the broader allegations by no later than February 1, 2021. The Demand provided;

> The AIC is in the process of reviewing a complaint from your former employer, [Former Agency], that you misled clients, the [Former Agency] team, and insurers about insurance policies which lead [sic] to your employment with [Former Agency] being terminated for cause. Specifically, [Former Agency] has alleged that you intentionally created fraudulent insurance proposals/documents and communicated false information, in varying degrees, in order to secure higher salary and commissions from the fictitious insurance policies on no less than 28 client files.
>
> Accordingly, please provide me with your version of events regarding your termination for cause from [Former Agency] and regarding the above noted allegations. In your response, please provide all information/documentation which you feel may assist in understanding the material facts related to this matter.

The AIC did not receive a response. On January 25 and 29, 2021 the AIC reminded the Agent of her statutory obligation to respond to the Demand by the deadline provided.

On February 1, 2021 the Agent responded; *"Kindly forward me a copy of the letter referenced in the below thread as I do not have a copy. Once I have read the letter I will be able to respond."* The AIC responded and reattached the previously served Demand. The AIC provided an extension to the Agent to respond by February 5, 2021, failing which *"constitutes an offence under the Insurance Act and may lead to disciplinary proceedings, the imposition of a civil penalty and/or, if applicable, the suspension or revocation of your certificate of authority".*

The Agent responded on February 5, 2021 as follows;

> I have read over the letter and find it difficult to respond to.
> I have not worked for that company on over a year and a half. I do not live in Alberta any longer and thus find it difficult, if not impossible to provide any period or evidence to the contrary given that I have no access to any of the information the company suggests. How am I supposed to provide any contrary information? I have not seen or been shown any evidence relating to the allegations being made and as I understand it I have a right to be advised of such.
> I have contacted an attorney in Alberta and they will need to be provided the evidence in order for us to provide a proper defense.
> I of course cannot respond successfully until such time as we have been able to further review the allegations being made. Kindly advise of next steps we can take in order to resolve this matter.
> I look forward to hearing from you.

Given that the Agent was provided an extension, and the opportunity to obtain legal advice, and did not respond to the questions directly put to her within the Demand, the AIC Investigator proceeded with his investigatory summary by way of Report to Council dated February 26, 2021. The Report was sent to the Agent on that same date. The AIC provided the Agent with an opportunity to respond to the entirety of the Report. That response was requested no later than March 15, 2021.

The Agent responded on March 15, 2021 as follows;

> After careful review I have a few concerns.
> After not having worked for the company in question for more than a year, and having no contact with them or any of the clients and no access to the emails, computer system or files that are in question I have no way to be able to defend myself which is categorically not part of due process. I have asked my lawyers to further review the so called evidence and they will be responding and requesting further information from you and the company in order to properly be able to respond to the complaint.
> We would require an additional 2 weeks in order to be able to properly obtain further evidence to defend myself.[…]

To which the AIC responded on March 16, 2021;

> As per our process, in order to provide all respondents with a fair and unbiased opportunity to respond to the full allegations against them, respondents are provided two weeks (14 days) to respond to a report to council. For your ease of reference, I have attached a copy of our investigation process document from our website for your review. In this case, due to the fact that the report was not mailed/emailed to you until late Friday afternoon on February 26, 2021, you were provided with 18 days to respond to the report. Further, as noted in the report, the report is not the first opportunity that you had to respond to the allegations as I sent you a demand for information on January 15, 2021, (to which an 7 day extension to the deadline to respond was granted) whereby you had the opportunity to respond to the allegations and provide your version of events in relation to same.
>
> At this point in time, you have had no less than 40 days to formally respond to the allegations. As such, I have been advised that we cannot grant you an additional two weeks to respond to the report and I will be submitting the report for council's consideration without your response to same.

The Agent did not respond further.

Discussion

In order for the Council to determine an violation of s.480(1)(a) of the Act has been substantiated 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) of the Act can drastically impact an insurance agent's ability to remain in the industry. Therefore, the Council carefully weighs all evidence before it prior to reaching its Decision.

The requirement of clear and cogent evidence 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 Insurance Councils Appeal Board upheld the Decision of the Council which found an agent guilty of a s. 480(1)(a) violation. The Agent appealed that decision to the Court of Queen's Bench of Alberta.

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]

Insurance agents work in a profession which necessitates the accurate completion of forms and insurance documents. Clients can experience severe difficulties when forms are incorrectly completed. Insurers also rely on the honesty and integrity of insurance intermediaries, like brokerages, agents and Agencies, to complete information accurately. If there was no responsibility of an insurance intermediary, like the Agent, to ensure accuracy of forms the Insurer would presumably assume high-risk clients unknowingly. This is the nature of the insurer, broker, and client relationship. The Broker, and agents collect information of prospective clients, the Insurer assesses risk, and a quote is generated. Therefore, it is not unreasonable to expect a high standard of due diligence of insurance agents when soliciting and finalizing offers of

insurance. Clients are never well-served when information is falsely entered on their behalf, as the client could later be accused of falsifying information, and, more importantly, the insurance policy could be cancelled entirely leaving the client uninsured.

With respect to the Agent's ability or inability to provide a response; regulatory offences such as neglecting to respond to a Demand for Information are entrenched in the Act under s. 481(2). It is the Agent's statutory responsibility to respond when called upon. That necessity to respond is a mechanism of consumer protection, and a requirement of being professionally regulated. As such, the AIC must only prove that the Demand was properly made upon the Agent (proper in the sense that they meet all of the requirements under the Act) and that the Agent did not respond. The public is not well-served when agents simply ignore demands like those made in this case. Although the Council did not levy a civil penalty or make findings in this regard, discussion did surround the Agent's opportunity to respond. In this case, the Council found that the Agent was given a reasonable opportunity to respond, and simply chose not to do so.

In light of all the evidence, the Council is satisfied that there is sufficient, clear and cogent evidence that the Agent's conduct was intentional, negligent, dishonest, deceitful, untrustworthy, fraudulent, and constituted misrepresentation as contemplated by s.480(1)(a) of the Act. The Council orders a civil penalty in the amount of $5,000.00 be levied against the Agent pursuant to s. 480(1)(b) and 13(1)(b) of the *Certificate Expiry, Penalties and Fees Regulation*, A.R. 125/2001.

The civil penalty must be paid within thirty (30) days of receiving this notice. In the event that the 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 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: May 25, 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