

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 1863050 Alberta Ltd. o/a Budget Auto Sales  
(the "Dealership")

And

CH Amer Sarwar  
(the "Designated Individual")

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

This case involved an allegation pursuant to s. 481 of the Act. Specifically, it is alleged that the Dealership failed or refused to provide information and documentation requested by the AIC through a formal Demand for Information (the "Demand"). In so doing, it is alleged that the Dealership, through the Designated Individual ("DI"), contravened a provision of the Act as contemplated by ss. 481(2) 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 11, 2021 (the "Report"). The Report was forwarded to the Dealership via the Designated Individual for review, and to allow the DI to provide the Council with any further evidence or submissions by way of Addendum. The DI did not provide any additional material by way of Addendum.

This investigation arose out of the Dealership's failure to provide information to the AIC licensing department related to the replacement of the DI.

The Dealership holds a restricted certificate of authority for the sale of equipment warranty insurance products and has held this license since April 23, 2019. The AIC sent a Demand to the Dealership by way of email and registered mail on February 17, 2021. The Demand set a deadline for the DI to respond of 4:30 p.m. March 3, 2021. The Demand was sent to the Dealership by registered mail to the address recorded within the AIC Register. The Demand was returned to the AIC office on February 19, 2021 marked "*Moved/Unknown*".

The AIC contacted the Dealership by way of telephone on February 24<sup>th</sup> following up with an email as the voicemail inbox was full and no message could be left. The AIC contacted the Dealership again on March 2<sup>nd</sup> by telephone, following up with an email as the voicemail inbox was full and no message could be left. The AIC made one final attempt to contact the Dealership on March 3<sup>rd</sup> by telephone, because the voicemail inbox was still full, the AIC sent a follow-up email on the same day reminding the Dealership that the response was due by the end of the day. The Dealership, through the DI, did not respond.

In accordance with the instructions of the AIC, the Dealership updated its Errors and Omissions insurance within the Register. However, the Dealership continued to fail to respond to the AIC with respect to the replacement of the DI for the Dealership.

### **Discussion**

As previously noted, the AIC operates through delegated authority granted by Minister of Treasury Board and Finance which authorizes the AIC to investigate complaints against holders, and former holders, of certificates of authority. Pursuant to the Minister of Finance Directive No. 05/01, the Minister also delegated his powers under s. 481 to the AIC. Section 481 states that “[t]he Minister may direct the holder or former holder of a certificate of authority to provide to the Minister within a reasonable period of time specified in the direction any information specified by the Minister relating to the matters in s. 480(1).” Subsection 2 states that “... A person served with a direction ... who has the information must provide the information in accordance with the direction.”

The offence of failing to respond to a demand for information is one of strict liability. This means that in order to be found guilty, the AIC only needs to prove that the Demand was properly made and delivered. There is no requirement that the AIC prove that the DI’s, and ultimately the Dealership’s, failure to respond was intentional. Once the AIC proves that the Demand was made, the onus shifts to the Dealership via the DI to demonstrate that it took all reasonable efforts to avoid committing the offence. From the evidence in the Report, the Council is satisfied that the AIC’s Demand meets the requirements of s. 481 of the Act.

The investigation arose out of matters found in s. 481 of the Act and the Dealership was given a reasonable opportunity to respond. Given the fact that the Dealership failed to respond to the Report, but updated its’ Errors and Omissions insurance information within the Register, the Council is of the opinion that the Dealership willfully or negligently chose not to respond to or acknowledge the Demand for information. As the Dealership has not met the burden of establishing the due diligence defense and the Council finds the Dealership guilty of violating ss. 481(2) of the Act, as alleged.

In terms of the applicable sanction, the public relies on the AIC to investigate complaints and the Act requires that current and former certificate holders provide information when called upon. Therefore, the public is not well-served when an insurance intermediary simply ignore demands like those made in this situation.

The Council may levy civil penalties up to \$1,000.00 pursuant to s. 13(1)(b) of the *Certificate Expiry, Penalties and Fees Regulation*, A.R. 125/2001. Given the facts in their entirety, the Council is of the view that a significant civil penalty is warranted in the circumstances. Therefore, the Council orders that a civil penalty in the amount of \$1,000.00 be levied against the Dealership. The Council orders that the Dealership's certificate of authority be suspended for a period of three (3) months. The suspension shall commence 30 days after the mailing of this Decision.

In the event that the civil penalty is not paid within thirty (30) days, interest will begin to accrue at the prescribed rate and the Dealership's license will be suspended, if it is active. Pursuant to the Act, s. 482 (relevant excerpt enclosed), the Dealership has thirty (30) days in which to appeal this decision by filing a notice of appeal with the Office of the Superintendent of Insurance.

This Decision was made by way of a motion made and carried at a properly conducted meeting of the General Insurance Council. The motion was duly recorded in the minutes of that meeting.

Dated: May 4, 2021

[Original Signed By]  
Janice Sabourin, Chair  
General Insurance Council

**Extract from the *Insurance Act*, Chapter I-3****Appeal**

482 A decision of the Minister under this Part to refuse to issue, renew or reinstate a certificate of authority, to impose terms and conditions on a certificate of authority, to revoke or suspend a certificate of authority or to impose a penalty on the holder or former holder of a certificate of authority may be appealed in accordance with the regulations.

**Extract from the *Insurance Councils Regulation*, Alberta Regulation 126/2001****Notice of appeal**

16(1) A person who is adversely affected by a decision of a council may appeal the decision by submitting a notice of appeal to the Superintendent within 30 days after the council has mailed the written notice of the decision to the person.

(2) The notice of appeal must contain the following:

- a) a copy of the written notice of the decision being appealed;
- b) a description of the relief requested by the appellant;
- c) the signature of the appellant or the appellant's lawyer;
- d) an address for service in Alberta for the appellant;
- e) an appeal fee of \$200 payable to the Provincial Treasurer.

(3) The Superintendent must notify the Minister and provide a copy of the notice of appeal to the council whose decision is being appealed when a notice of appeal has been submitted.

(4) If the appeal involves a suspension or revocation of a certificate of authority or a levy of a penalty, the council's decision is suspended until after the disposition of the appeal by a panel of the Appeal Board.

Address for Superintendent of Insurance:

Superintendent of Insurance  
Alberta Finance  
402 Terrace Building  
9515-107 Street  
Edmonton, Alberta T5K 2C3