

ALBERTA INSURANCE COUNCIL
(the "AIC")

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

And

In the Matter of Mahsa Gholami
(the "Agent")

DECISION
OF
The Life 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) of the Act. Specifically, it is alleged that the Agent falsely declared the completion of continuing education hours ("CE") when, in fact, the CE hours had not been completed. In so doing, it is alleged that the Agent acted in a deceitful, dishonest or untrustworthy manner in violation of s. 480(1)(a) of the Act. In the alternative, it was alleged that the Agent made false or misleading statements as contemplated in s. 509(1)(a) of the Insurance Act when the Agent reported that the required CE hours had been completed to renew the life and accident & sickness ("A&S") certificates of authority for the 2020/2021 certificate term (July 1, 2020 to June 30, 2021) when, in fact, they were not completed.

Facts and Evidence

This matter proceeded by way of a written Report to Council dated September 17, 2021 (the "Report"). The Report was forwarded to the Agent for review and to allow the Agent to provide the Council with any further evidence or submissions by way of Addendum.

The Agent is the former holder of both life and A&S insurance agent certificates of authority. The Agent held these certificates during the period of July 9, 2018, to September 7, 2021. On September 7, 2021, the Agent's certificates of authority were suspended due to the failure to produce CE certificates pursuant to s. 31(3) of the *Insurance Agents and Adjusters Regulation*, AR 122/01 (the "Regulation").

As part of the AIC's annual CE audits, an "Alberta Insurance Council Continuing Education (CE) Audit" request was sent to the Agent by way of email correspondence dated August 23, 2021 (the "Demand"). The formal Demand was provided in accordance with s. 481(2) of the Act and required the Agent to produce CE certificates for both certificates of authority regarding all declared CE within the 2020/2021 certificate term. The Demand provided a deadline for response within 30 days of receiving the Demand, being September 21, 2021.

The Agent responded on September 3, 2021, stating the following:

[...] In response to your audit request, I have gone through all my CE certificates and realized that I have made an error and entered a course # incorrectly and too many credits were entered for the period. The course # entered was 30*** [redacted] on Aug 11, 2020 incorrectly and it gave me 7.5 credits for Life and A&S each. This entry made me believe that I had enough credits when I renewed. Therefore I do not have proof of the full amount of credits required. I am very sorry about this and have already started taking online courses to achieve the required credits.

I have attached the course certificates for the courses I have completed.

I sincerely apologize for this mistake. [...]

On September 7, 2021, the Agent followed up by email, informing the AIC that the required credits were now completed and entered. The Agent also provided the CE certificates for the courses undertaken on September 3 and September 5, 2021.

By way of email dated September 8, 2021, the AIC Compliance Department requested the Agent produce the CE certificates for Course #49*** [redacted], completed July 7, 2021, and Course #54*** [redacted], completed September 6, 2021. The Agent provided the two requested CE certificates on September 8, 2021.

On September 9, 2021, the AIC Compliance Department requested the Agent correct the declared course date of Course #54*** [redacted] as the CE certificate stated a completion date of September 5, 2021, however, the Agent declared a completion date of September 6, 2021. The Agent corrected the completion date for Course #54*** [redacted] on September 9, 2021.

The Agent provided a letter dated September 20, 2021, in response to the Report, which stated:

In response to the Investigation Report, I am respectfully asking you to consider these things before you decide my penalty.

I assure you that it was not my intention to be dishonest or misrepresent. I realize now I was not careful to check the course numbers that were entered and compare them to the Course ID# on the certificates. At the time of renewal, [...]and it was a time of great stress for me. I rushed through the process of online renewal and did not double check.

I assure you that it was an honest mistake and I take my licensing and regulations very seriously. I definitely will exercise more care and attention in the future. I hope you will take this into consideration when looking at this.

Honesty and integrity is one of my care values and I was so upset when I realized I made this error and ended up in this situation. I take responsibility for this error but would like to ask that you choose a waived or reduced fine.

I assure you that I will take great care when completing my CE credits and entering them in the future.

Discussion

In order to conclude that the Agent has committed a violation of 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 requirement of clear and cogent evidence reflects the fact that the findings of the Council can dramatically impact an insurance agent's ability to remain in the industry. Additionally, the elements of s. 480(1)(a) offences 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 insurance agent committed an offence pursuant to s. 480(1)(a) of the Act when he attested to completing the applicable CE when he, in fact, did not have the required CE.

The agent in *Roy* concurrently held a securities license and believed that the CE required to maintain his securities license was also applicable to his insurance agent CE requirements. The Insurance Councils Appeal Board also found the Agent guilty of a s. 480(1)(a) violation. The Agent appealed the decision of the Insurance Councils Appeal Board to the Court of Queen's Bench of Alberta.

In his reasons for judgment, Mr. Justice Marceau reviewed the requisite test to find that a violation 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)

With respect to the Report, the Council was satisfied that the Agent did not possess the required CE credits required by the Regulation for the 2020/2021 certificate term. However, the Council did not conclude that the Agent made deliberate misrepresentations with the intent to deceive the AIC during this audit process. To do so, the Council would need to prove on the balance of probabilities that it is more likely than not that the Agent provided the information to the AIC intentionally, knowing that the information was false. The Council did not find the Agent guilty of such a violation and, as such, the Council turned to the alternative allegation of a s. 509(1)(a) offence under the Act.

Section 509(1)(a) of the Act provides that “[n]o insurer, insurance agent or adjuster may make a false or misleading statement, representation or advertisement.” A s. 509(1)(a) offence falls into a category called strict liability offences. As such, the AIC only has the onus to prove that the Agent’s statement that the required CE hours had been completed was false. Once this occurs, the onus shifts to the Agent to establish a defence of due diligence. To establish this, the Agent must prove that all reasonable measures were taken to avoid making the false statement.

The Council considered all the evidence before it, in particular the information shared by the Agent that the course number was incorrectly entered, leading the Agent to believe they had obtained enough CE hours. Once the Agent realized they did not have the required number of CE hours, the Agent enrolled in courses to complete the CE hours. Therefore, the Council finds that the Agent made a false or misleading statement as contemplated by s. 509(1)(a) of the Act and therefore has breached s. 480(1)(b) of the Act.

As to the appropriate sanction for this conduct, the Council may levy civil penalties in an amount up to \$1,000.00 for an offence pursuant to s. 480(1)(b) and 13(1)(b) of the *Certificate Expiry, Penalties and Fees Regulation*, A.R. 125/2001. Based on these factors and the evidence before the Council, the Council orders that a civil penalty of \$750.00 be levied against the Agent.

The civil penalty must be paid within thirty (30) days of the mailing of this decision. If the civil penalty is not paid within thirty (30) days interest will begin to accrue at the prescribed rate. If the Agent has active certificates of authority at the time that the civil penalty becomes due, and that civil penalty has not been duly satisfied, the Agent's active certificates of authority will be suspended in accordance with s. 480(4) of the Act. 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 and carried at a properly conducted meeting of the Life Insurance Council. The motion was duly recorded in the minutes of that meeting.

Dated: November 2, 2021

[Original Signed By]

Michael Bibby, Chair
Life 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.

Contact Information and Useful Links for Appeal:

Email: tbf.insurance@gov.ab.ca

Phone: 780-643-2237

Fax: 780-420-0752

Toll-free in Alberta: Dial 310-0000, then the number

Mailing Address: 402 Terrace Building, 9515 – 107 Street Edmonton, AB T5K 2C3

Link: [Bulletins, notices, enforcement activities | Alberta.ca](#) – *Interpretation Bulletin 02-2021 – Submitting Notices of Appeal of Insurance Council Decisions*