

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 Harvey Johnson
(the "Agent")

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

This case involved allegations made pursuant to s. 480(1)(a) and, in the alternative, s. 509(1)(a) of the Act. Specifically, it is alleged that the Agent led the Client to believe that the Client had an active policy, when in fact, there was no policy had in place for the Client. In so doing, it is alleged that he is guilty of misrepresentation, fraud, deceit, untrustworthiness, or dishonesty as set out in s. 480(1)(a) of the Act. In the alternative, it is alleged that the Agent made false or misleading statements or representations or advertisements in violation of s. 509(1)(a) of the Act, and subsequently violated s. 480(1)(b) of the Act.

Facts and Evidence

This matter proceeded by way of a written Report to the Council dated September 23, 2021 (the "Report"). The Report was forwarded to the Agent to review and provide further evidence or submissions to support his position.

The Agent currently holds Life and Accident and Sickness ("A&S") certificates of authority authorizing him to act in the capacity of a life and A&S insurance agent and has held these certificates continuously since February 13, 1996.

On February 8, 2021, the AIC received an email from [R.F.] [redacted] (hereinafter the "Client"). The email provided by the Client provided the following complaint against the Agent:

Please see the below text message screenshots of my communications with Harvey Graham Johnson (license number: M-678**-***-**** [redacted]), with regards to my [Insurer] [redacted] (hereinafter the "Insurer") Life Insurance Plan. I had initially opened up this plan with [T.L.F.] [redacted], who was being trained by Mr. Johnson. Mr. Johnson took over my plan when [T.L.F.] [redacted] quit working for the Insurer, and I began dealing directly with him. The following is the time line:

- I contacted Mr. Johnson in May 2019 to separate my insurance policy because my [redacted]
- Over the next 4 months, Mr. Johnson gathered information from me by text message in order to complete the change in our policies
- He originally claimed that he would need my signature, but that we could do it via e-mail
- In August of 2019, he had informed me that the split had happened, and that the policies would be in force by September 1st, 2019. I had not signed any paperwork, and neither had [redacted]

- On September 5th I received a request for payment from the Insurer. I sent this to Mr. Johnson, and he never responded.
- I contacted him again when my next payment didn't come out (Oct 16). He responded that he was checking on it. He claimed the policies are in Force, and then didn't follow up.
- I followed up a week later, with no response.
- On October 29, I received a lapse notice for the existing policy, and sent this to Mr. Johnson. I received no response from this
- Mr. Johnson reached out on November 13, 2019 to assure me that he was waiting on the policies and that we should meet up to sign them. I did not hear from him again.
- In the following 12 months, I kept following up with him, and he kept putting me off.
- In May 2020 he had sent me information to pay for the original policy, but it had lapsed.
- In June 2020 I received a letter and a refund cheque, because the policy had lapsed. I forwarded it on to Mr. Johnson, and from then he never replied in writing.
- The last screen shot is of my call history with Mr. Johnson. You can see that when I texted him In May, June, Sept 2020, and Jan 2021 he called me almost immediately thereafter:
 - o May 4, 2020 – I texted 5:26, he called me at 5:29
 - o May 24, 2020 – I texted at 3:45, he called me at 3:46
 - o June 16, 2020 – I texted at 7:08, he called me at 7:15
 - o September 7, 2020 – I texted at 3:43, he called me at 3:47
 - o January 6, 2021 – I texted at 6:45, he called me at 6:57

I trusted my agent, and he held himself as an authority. I inquired multiple times over an 18 month period, and with every inquiry he assured me that my policy was in Force while he was doing the split of policies from [redacted] Refer to the below messages for the exact timeline. I now find myself with no insurance, and not knowing that I have not had Life Insurance for the past 18 months. I'm in a position, that was not of my own making, where I need to apply for new Life Insurance or fight to get my old insurance plan back.

In the email of February 8, 2021 received from the Client, were screenshots of text messages and a call log between the Agent and the Client from May 4, 2019 to January 14, 2021. The text messages provided the following timeline of events:

[May 4, 2019 12:51p.m.]

[Agent] Hi Client. This is Graham Johnson from the Insurer. I will be assisting you with the splitting of your life insurance policy. Please let me know if you have time tomorrow?

[Client] Hi Graham, I should be around tomorrow, [...]

[May 13, 2019 5:37 p.m.]

[Client] Hi Graham, just wondering if you need anything from me to make the changes I had asked [T.L.F.] [redacted] about. Please let me know. Thank you!

[May 15, 2019 4:27 p.m.]

[Agent] Hi Client. Just flying back into town this evening, I do need your signature but we can do it through email. What is your email address please?

[Client] [Email Address 1] [redacted]. Let me know if you need to have a conversation about all the changes I'm looking to have happen as well. Briefly they are:

-changing the bank accounts that the deductible comes out of

-having the beneficiary be [redacted]

-if [redacted] and I are both gone changing the beneficiary to [redacted]

Thank you!

[May 22, 2019 7:46 a.m.]

[Agent] Good morning Client. How are you? I do need to see you as I need a new void cheque for change of banking info. Easier to come and see you. Please let me know what works best for you?

[Client] Hi Graham, I'm doing well thanks, and you? I'm available later in the evening tomorrow, or all evening on Monday. Do either of those work for you? I could make other days work [...]

[May 24, 2019 7:20 a.m.]

[Agent] Monday evening works for sure. What time is best?

[Client] Anytime after 430 would be good.

[Agent] Ok. Let's aim for 5:30-6pm?

[Client] Perfect!

[June 19, 2019 1:01 p.m.]

[Client] Hey Graham, I haven't [sic] heard anything about changing the life insurance plan, and the banking info on it.

[Client 5:39 p.m.] Can I drop off the new accounts for direct debit to you at some point? Let me know.

[June 20, 2019 10:18 a.m.]

[Agent] Hi Client. Apologize I am in [redacted] Home Sunday. I will see you Monday or Tuesday.

Take care of everything.

[Client] Sounds good Graham thank you.

[June 24, 2019 7:38 a.m.]

[Client] Did you want to meet up today or tomorrow?

[Agent] We are delayed from [redacted] a due to storms. Flying back today. Tomorrow works best. I will come to your place. That work? What time is best?

[Client] That works for me. I will be home at 530. Thanks!

[June 25, 2019 5:24 p.m.]

[Agent] Hi Client. What is the house number again?

[Client] [Address] [redacted]

[July 17, 2019 7:42 p.m.]

[Agent] Hi Client. Policy's will be in my hands next week. I will deliver ASAP after that. Thank you

[Client] Sounds good Graham! The payment came out of [redacted] account on July [sic] 16 for both of us. Will the accounts be updated for the Aug 16 payment then as well?

[Agent] Yes

[August 16, 2019 8:51 p.m.]

[Agent] Hi Client. Please confirm no payment for the old policy comes out tonight. New policies for both are dated for Sep. 1. Premiums are to start Sept 16. If by chance one comes out tonight, it will be refunded. I just want to make sure. Policies are in force. Just FYI. Thank you, Graham

[Client] Thanks for letting me know that it's all good to go Graham. I will let you know if the payment gets taking [sic] out.

[Client] Hey, I checked with [redacted] as it's his bank account that it was coming out of, and they did take the payment. I let him know that it would be refunded.

[September 3, 2019 1:09 p.m.]

[Client] Hi Graham, they never reversed the charges that were taken from [redacted] last month.

[Client] I never had anything come out of my account last month either if it was supposed to.

[Agent] Hi. Nothing out of your account until September 15. Refund back to [redacted] in form of cheque. Takes a bit. Apologies. Driving.

[Client] All good. Thank you Graham. I'll let [redacted] know. Does that mean we didn't make a payment at all for August?

[Agent] They give you grace for August. All good

[September 5, 2019 8:16 p.m.]

[Client] [picture sent of a bill from the Insurer]

[Client] Hi Graham, I received this in the mail, and I'm not sure what to do with it. It says I should set up the payment, but I think this is double what I should be paying. Right now, [redacted] and I pay [redacted] for both of our plans and this letter is for that same amount.

[October 17, 2019 8:56 a.m.]

[Client] Hi Graham, mine and [redacted] new insurance premiums did not get direct debited yesterday. He also has not received his refund in the mail yet. Could you look into this for me please?

[Agent] Good morning Client. Read my mind. Checking on it now. I can see policies are still in force. I will figure it out

[Agent] ASAP

[Client] Perfect, thanks Graham!

[October 23, 2019 8:02 p.m.]

[Client] Hi Graham, did you find anything out?

[October 27, 2019 2:19 p.m.]

[Client] Did you get any news about the new payments and the refund?

[Agent] Yes and yes. Just headed back into [redacted]. Will call you again tonight

[October 29, 2019 5:57 p.m.]

[Client] [picture of Policy Lapse letter for the Insurer]

[Client] Just got this in the mail

[November 13, 2019 5:30 a.m.]

[Agent] Good morning Client. New policies in my hands Friday. Refund also. Let's find time this weekend so I can get them to you.

[Client] Hi Graham, I'm away the rest of the week until Sunday. Can we do Sunday later afternoon/early evening?

[Agent] Absolutely [...]

[January 18, 2020 10:04 a.m.]

[Client] Hey Graham, I still don't think I'm paying for life insurance yet...do we need to get together?

[Agent] Lol!! I just checked on Thursday. We do need to get together to deliver policies and premiums start after that. I am in Edmonton and Winnipeg until Tuesday. Maybe Wednesday evening?

[February 27, 2020 11:01 a.m.]

[Client] Hey Graham, just touching base as I still haven't gotten the new policy. Has [redacted] gotten his? Thanks.

[May 4, 2020 5:26 p.m.]

[Client] Hey Graham, any news on signing this paperwork...? I don't think I've been covered since last August.

[Phone call from Agent at 5:29 p.m., 3 mins 4 secs]

[Client 8:48 p.m.] Hi Graham, let me know if you need my email address.

[Agent] Yes please. Thank you. Just on a video conference call

[Client] No prob it's: [Email Address 1] [redacted]. [Redacted] is: [Email Address 2] [redacted]

[May 5, 2020 10:16 p.m.]

[Client] Did you figure out the plan number for me to make my first payment?

[Agent] Hi client. Yes I have figured out. I am just on a zoom call with [redacted]. I will text you in a bit with the policy number and instructions.

[May 24, 2020 3:29 p.m.]

[Client] Do you have much [sic] policy number and instructions by chance?

[Phone call from Agent at 3:46 p.m., 1min 18 secs]

[Agent] Yes. I do. Give me 2hrs to get home. Don't know number off top of head.

[Agent] Payee name: the Insurer Premium amount: \$52.45 Policy number: 108***** [redacted] (Some banks do not require the 10 at the beginning of policy number)

[Client] Thank you Graham

[June 16, 2020 7:08 p.m.]

[Client] [Picture of letter from the Insurer regarding the lapsed policy]

[Client] Hey Graham, I got this letter. It says they have enclosed a Reinstatement Application, but this was the only page in the envelope. Do I need to do anything??
[Phone call from Agent at 7:15 p.m., 1 min 39 secs]

[September 7, 2020 3:43 p.m.]

[Client] Hey Graham, is there someone at the Insurer that I should be calling to set up direct debit for my monthly premiums?

[Client] I don't think it's coming out of my account regularly.

[Phone call from Agent at 3:47 p.m., 1 min 9 secs]

[January 6, 2021 6:45 p.m.]

[Client] Hey, I'm still not getting anything coming out of my bank account for premiums and neither is [redacted]...do I need to call someone to get that set up??

[Phone call from Agent at 6:57 p.m., 1 min 49 secs]

[January 14, 2021 9:00 a.m.]

[Client] Hey Graham, did you figure anything out about our accounts?? Is there a number I should call at the Insurer to figure out the payment situation? Thanks!

On March 8, 2021, the AIC investigator sent a letter to the Agent requesting his version of events in light of the allegations made against him by the Client.

On March 23, 2021, the Agent responded to the AIC Investigator with the following explanation of events:

[...] The Client and [redacted] purchased a term life insurance policy through our company in December 2016. The Client was the primary and [redacted] in same policy. In the spring of 2019 client inquired about splitting the policy in two [...]. I went to see client and explain the process and options and to gain an understanding of what the client wished to do [...]. I advised client to confirm what had been agreed upon with [redacted] and that there was policy change paperwork required and to leave original policy in place until decided. It was August 2019 when I placed the original policy into quarterly billing status to keep original policy in force without further premiums being withdrawn from [redacted] bank account. I had been in touch with client with a number of phone calls explaining the status of policy and what next steps are required. My communication with the Client followed the pattern of a text with a phone call right away to explain in detail and to communicate with better clarity. I remember attempts to get with client as I required policy change paperwork to split policies, the appointments didn't happen and as a result the original policy entered a lapse status in late fall of 2019. At this point client was made aware of the need to now reinstate old policy before being able to then split into 2 separate policies. I communicated by phone what was required to reinstate the original policy and to decide what she wished to do. In November I communicated with client I needed to see her to complete policy reinstatement and policy change forms. My next recollection of communication was in January 2020 and re explaining the reinstatement needs including back premiums required and medicals to be done as the policy had lapsed. There would not be any new policies until this was done. I believe it was end of February, beginning of March when I communicated with client by phone. I reiterated that reinstating the old policy was still possible, that back payments were required and then split the old policy into two separate ones. Covid then took over the world and I didn't communicate with client until May of 2020. The process to reinstate was now complicated as no paramed [sic] appointments were being done and no face-to-face visits. All of this was communicated to client by phone. Client inquired if she could make a payment and she did, but it was for the wrong amount, resulting in the company refunding her deposit and explaining reinstatement requirements. I followed up by phone to explain options and amounts required to reinstate.

I heard from client in September 2020 inquiring about her options and I was again explained the reinstatement procedure. Client was aware her policy had lapsed, and I explained she still had the option to reinstate.

My last contact with client, as I remember was early January 2021. Client was made aware of lapsed status of old policy and the option was still available to reinstate. I had no further contact from that point on.

My regret in this situation is my lack of follow up with client and I should have been more diligent in doing so. There was no malicious intent on my part whatsoever. I am entering my 26th year licensed in this industry and I take my responsibilities very seriously. This past year has been hard on everyone, [redacted]. My follow up process needed to evolve, and changes have been implemented.

As it stands now, I have been coordinating with our head office in regard to this situation. We are now in the process of establishing the best solution for the client giving them the proper protection without any financial harm coming to them.

On August 3, 2021, the AIC sent a request for information to the Insurer requesting a copy of the Insurer's investigation findings along with a confirmation of how the investigation was concluded and any steps taken to reinstate or replace the Client's policies.

On August 31, 2021, the Senior Investigator for the Insurer provided all relevant documents in the matter to the AIC.

Within the documents provided from the Insurer was a letter to the Client, dated April 1, 2021, relating to the concerns the Client raised with the Insurer and the options the Client had available. The letter stated in part:

[...]

Our Review:

CSF RRSP account #777***** and request for reimbursement of DSC charges

Our review indicates that this account was set up on February 22, 2017, with instructions to invest funds from a registered incoming transfer [...]. On March 3, 2017, CSF received [redacted] and invested into DSC [redacted], as recorded on the application. Your servicing representative at the time was [T.L.F.] [redacted] who discontinued her contract with the Insurer companies in July 2019. Thus, Mr. Harvey Graham Johnson has been assigned to service your CSF RRSP account after [T.L.F.] [redacted] departure.

[...]

Following your request, on February 23, 2021, we assigned a new representative, [R.B.] [redacted], to service your account. We advised you via e-mail about her contact information and it has been confirmed by [R.B.] [redacted] that she was successful in assisting your needs.

[...]

Your life insurance policy #801***** [redacted]

[...]

Agent's statement

Based on the information provided by the agent, he was in communication with you regarding separation of the policy [...] since spring 2019. He confirmed to us that he had been in touch with you with a number of phone calls explaining the status of the policy and what next steps are required. He stated that his communication with you followed the pattern of a text with a phone call right away to explain in detail and to communicate with a better clarity. Regardless of the efforts, the policy lapsed.

Mr. Johnson regrets that his lack of follow up with you resulted in the policy lapsing. He further stated that "There was no malicious intent on my part whatsoever."

[...]

Within the documents provided by the Insurer on August 31, 2021, a document entitled “Review and summary of the Client matter”. This document in part stated:

Review and Summary of Client matter

Allegations: Client raised concerns regarding the representative’s failure to submit the necessary documentation to split the policy (policy #108***** [redacted]) with her [redacted] [...]. The representative kept reassuring the client that her coverage was in force and that he had the policy to deliver. The client learned in February 2021 that she has no insurance with the Insurer when she called the Insurer Client Services Department. Following this, she filed a complaint requesting to reinstate her policy with no back payments. In addition, given her experience, she no longer wanted to deal with the representative, Harvey Johnson. Further, the Client asked to waive the remain Deferred Sales Charges in her Insurer CSF RSP account #777***** [redacted].

Our Review:

Insurer Life Insurance policy #108*** [redacted]**

- On October 12, 2016, the Client signed an application for life insurance [...]
- On October 28, 2016, the policy was issued. [...]
- On November 13, 2016, the Client signed a Policy Delivery Receipt confirming that she understands and accepts the policy as issued.
- On November 13, 2016, the Client signed a Policy Change Application asking to exchange her current coverage [...]
- On November 21, 2016, the policy was re-issued with the requested changes.
- On January 18, 2017, the Client signed a Policy Delivery Receipt confirming that she understands and accepts the policy as issued.
- On October 22, 2017, the Client elected to cancel the Increasing Benefit rider. [...]
- On August 19, 2019, the Initial Premium Notice was mailed to the Client advising her that the monthly premium was not received and the due date to pay the premium was September 16, 2019. [...] At that time the servicing agent was Harvey Graham Johnson [...]
- On October 18, 2019, the Late Pay Offer Notice was mailed to the Client in which the following was stated: *‘Unfortunately, your insurance coverage has lapsed because we did not receive your premium payment(s). (...) If we do not receive payment within 20 days of the date of this letter, our offer will no longer be valid and you will be required to apply for the reinstatement of your coverage by providing evidence of insurability.’*
- On May 25, 2020, the Insurer sent a letter to the Client regarding the payment received in the amount of [redacted] stating the following: *“Thank you for submitting a payment for your Insurer life insurance policy. (...) At this time, however, we are unable to apply your payment as your coverage lapsed. So that you may be able to enjoy your valuable coverage once again, we have enclosed a Reinstatement Application which we will require before considering the reinstatement of your policy.”*
- The Insurer has no record of receiving the required Reinstatement Application nor did we receive any calls or inquiries from the client or from the agent regarding this requirement. As a result, the reinstatement process could have not been initiated. As such, on July 22, 2020, the Insurer sent a refund cheque in the amount [redacted] to the Client, as the required paperwork was not received.
- On October 17, 2020, the Insurer sent a letter regarding Unclaimed Property Notice to the Client advising that the cheque number 000***** [redacted] dated 20/07/2020 for [redacted], made payable to her has not been cashed or deposited.
- On February 5, 2021, the Client contacted our Client Services Department and inquired about her policy. She was advised that the policy lapsed on September 16, 2019.
- On February 8, 2021, the Client filed a complaint with our Client Services Department. Subsequently, her concerns were forwarded to our department for handling.
- On February 16, 2021, acknowledgment letter was sent to the Client confirming receipt of her concerns by our department. Additionally, the Client was advised via e-mail ([Email Address 1] [redacted]) that we received her concerns and will handle in accordance with our handling procedures.

- On February 23, 2021, a new representative has been assigned to the Client. The contact information of the new representative was forwarded to the Client via email.
- On February 26, 2021, subsequent e-mail communication was sent to the Client in response to her e-mail of February 23, 2021.
- March 17, 2021, representative, Harvey Graham Johnson, advised our department that the AIC opened a file regarding the Client's complaint and requested his statement regarding this matter.
- March 23, 2021, Harvey Graham Johnson provided a copy of his response to the AIC for our records. In his statement he admitted to the oversight / misunderstanding and the lack of follow up with the client but there was no malicious intent on his part.
- Upon review of her concerns, the Insurer agreed to reinstate the policy at no cost to the clients and without providing evidence of insurability. The policy was issued; a copy of which was mailed to the Client on March 29, 2021. Note: The policy must be reinstated first in order to proceed with any changes specifically, a separate policy for [redacted].
- April 1, 2021, review of the Client's concerns had been concluded and our substantive response was forwarded to the Client.
- [...]

Regarding CSF RSP account #777***** [redacted]

In the interest of promoting customer satisfaction and as a gesture of goodwill and on a completely without prejudice basis a refund cheque in the mount [sic] of [redacted] was prepared and mailed to the Client. This amount represents the DSC fees incurred during the transfer to a different financial institution of the Client's choice. [...]

Discussion

The Report alleges that the Agent misrepresented information or acted in a fraudulent, deceitful, dishonest or untrustworthy manner pursuant to s. 480(1)(a) of the Act. The applicable test to determine whether the Former Agent is guilty of this offence was set out in *Roy v. Alberta (Insurance Councils Appeal Board)*, 2008 ABQB 572 (hereinafter "*Roy*"). In *Roy*, the Life Insurance Council found that the agent committed a violation of s. 480(1)(a) of the Act when he attested to completing continuing education credits that he did not complete. The agent advanced the matter to appeal before the Insurance Councils Appeal Board. The Insurance Councils Appeal Board upheld the decision of the Life Insurance Council and concluded that the agent was guilty of violating s. 480(1)(a) the Act. 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 dismissing the appeal, Mr. Justice Marceau of the Court of Queen's Bench wrote, 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. (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)

In order to conclude that the Agent has committed a violation of s. 480(1)(a) of the Act, the Report before the Council 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. Section 480(1)(a) of the Act provides;

Sanctions affecting certificates

480(1) If the Minister is satisfied that the holder or a former holder of a certificate of authority

(a) has been guilty of misrepresentation, fraud, deceit, untrustworthiness or dishonesty,

[...]

the Minister may revoke, suspend or refuse to renew or reinstate one or more of the certificates of authority held by the holder, impose terms and conditions provided for in the regulations on one or more of the certificates of authority held by the holder and impose a penalty on the holder or former holder

Whilst the Agent's agency reinstated the Client's policy at no cost, this bears no weight on whether the Agent is guilty of an offence.

The Council considered the Agent's version of events. Whilst the Agent maintains his actions were not malicious, the Agent also stated "*my regret in this situation is my lack of follow up with the client and I should have been more diligent [...] I am entering my 26th year licensed in this industry and I take my responsibilities very seriously. This past year has been hard on everyone, [...] My follow up process needed to evolve, and changes have been implemented.*" The Council considered whether the Agent committed the act knowingly, willingly, or recklessly. In recognizing his mistake or oversight in ensuring that a correct policy was in place, the Council found that the Agent had committed the act knowingly, recklessly or willingly.

It is not unreasonable to expect that a high standard of due diligence be practiced by insurance agents when soliciting insurance products. Understandably, clients can experience severe difficulties when incorrect policies are put into force. Lapsed, erroneous, or inadequate placed insurance coverage exposes the clients to undue risk. Here, the Client reached out to the Agent on a number of separate occasions seeking clarification as to whether a policy change had

been undertaken and if a new policy was in place. Based on the evidence provided it is the Council's opinion that the Client believed that a policy change had taken place.

In conclusion, and on the whole of the evidence submitted, the Council finds that clear and cogent evidence was presented to satisfy the that the Agent's actions demonstrated misrepresentation, untrustworthiness, and dishonesty as alleged pursuant to s. 480(1)(a) of the Act. As a result of this finding, it is unnecessary for the Council to consider the alternative alleged offence pursuant to s. 509(1)(a) of the Act.

Pursuant to s. 13(1)(a) of the *Certificate Expiry, Penalties and Fees Regulation*, the Council has the jurisdiction to levy a civil penalty in an amount not exceeding \$5,000.00 in relation to each demonstrated violation of s. 480(1)(a). The Council agreed that a significant civil penalty was warranted in the circumstances. As such, the Council orders a civil penalty in the amount of \$5,000.00 to be levied against the Agent.

The civil penalty of \$5,000.00 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 Life Insurance Council. The motion was duly recorded in the minutes of that meeting.

Date: December 8, 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*