

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 Efrosinia Martushev
(the "Adjuster")

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

This case involved an alleged violation of s. 481(2) of the Act. Specifically, that the Adjuster failed or refused to provide information requested by the Minister, through the AIC, by way of a formal demand for information (the "Demand"). In so doing, it is alleged that the Adjuster subsequently violated s. 480(1)(b) of the Act.

Facts and Evidence

This matter proceeded by way of a written Report to Council dated October 4, 2021 (the "Report"). The Report was forwarded to the Adjuster for review, and to allow the Adjuster to provide the Council with any further evidence or submissions by way of Addendum.

The AIC conducted an audit in August 2021, which sought to verify that the CE credits claimed on licensees' licensing applications for the 2020/2021 certificate term were correct. The auditees were selected at random and asked to provide proof of continuing education ("CE") credits, in accordance with the requirements of s. 31 of the *Insurance Agents and Adjusters Regulation*, AR 122/01 (the "Regulation"). The Adjuster was selected as an auditee and, in this instance, was asked to provide records relating to the 2020/2021 certificate term.

The Adjuster held an Adjuster – Level 1 certificate of authority during the period of October 24, 2016 to September 24, 2021, when the Adjuster's certificate of authority was suspended due to the failure to produce CE records in accordance with s. 31(3) of the Regulation.

Section 31 of the Regulation provides:

(3) If the individual does not provide the records **within 30 days after receiving a request from the Minister, the certificate of authority is suspended until the demand is complied with.**

On August 23, 2021, the AIC emailed the Demand to the Adjuster which provided a deadline of 30 days to respond and produce the required CE certificates. The deadline provided was September 21, 2021. On September 7 and September 13, 2021, an email was sent by the AIC reminding the Adjuster to respond to the Demand by the deadline provided. On September 17, 2021, the AIC contacted the Adjuster by way of telephone, however, the Adjuster did not answer the phone call, a voicemail message was left reminding the Adjuster to respond to the Demand by the deadline provided. A final reminder email was sent by the AIC on September 20, 2021.

On September 20, 2021, the Adjuster responded to the AIC Compliance Department by email requesting an extension of the Demand deadline be provided.

By email dated the same, the AIC Compliance Department responded to the Adjuster stating that no extension is able to be granted.

By the date the Report was provided to the Adjuster, the AIC still had not received a response to the Demand from the Adjuster. As such, the Adjuster's certificate was suspended in accordance with s. 31(3) of the Regulation.

The Adjuster has not provided a response to the Demand or the Report.

Discussion

The Minister of Treasury Board and Finance has delegated its authority to the AIC to investigate complaints against holders, and former holders, of certificates of authority. Pursuant to Ministerial Directive 01/11 to the AIC "*[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*" (emphasis added).

The Demand referenced compliance with s. 31 of the Regulation. Specifically, this section provides;

Records

- 31(1) An individual who holds a certificate of authority must keep a record issued by a continuing education provider respecting the continuing education courses completed by the individual during that certificate term.
- (2) The records must be kept for a period of 3 years following the expiry of the certificate term and **must be provided to the Minister upon request.**
- (3) If the individual **does not provide the records within 30 days after receiving a request from the Minister, the certificate of authority is suspended until the demand is complied with.**

The Demand itself is formed under s. 481(2) of the Act.

Section 481 of the Act provides, in part;

Demand for information

481(1) The 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 section 480(1).**

(2) A person served with a direction under subsection (1) who has the information must provide the information in accordance with the direction.

Section 480 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 [...] (b) **has contravened any provision of this Act or the regulations** or similar legislation in another jurisdiction or legislation that is a predecessor of this Act or the regulations, [...]

Section 780 of the Act stipulates:

Offences

780 A person who contravenes any of the following provisions is guilty of an offence: [...] (c) in Part 3, sections [...] 481(2)

In this regard, the act of failing to provide the CE certificates (or “credits”) in accordance with s. 31(3) of the Regulation, and the potential violation of s. 481(2) of the Act regarding the Demand prompted the AIC to commence an investigation.

Regulatory offences such as these are strict liability offences. As such, the AIC has the onus to prove that the Demand was properly made upon the Adjuster, proper in the sense that they meet all the requirements under the Act, and that the Adjuster did not comply. Once this occurs, the responsibility then shifts to the Adjuster to establish that due diligence was exercised in meeting the statutory requirement to respond. To substantiate this due diligence defence, the Adjuster must prove that all reasonable means were taken to

avoid making the offence. There is nothing that requires the AIC to prove that the Adjuster's failure to respond was intentional.

In consideration of the evidence before it, and the appropriateness of the request to confirm CE records under the Regulation, the Council is satisfied that the Demand met the requirements of s. 481 of the Act. The Council agreed that the Adjuster was given a reasonable opportunity to respond to the Demand. Given the fact that the Adjuster failed to respond when called upon, the Adjuster has not met the burden of proof to establish the due diligence defence. As such, the Council finds the Adjuster guilty of violating s. 481(2) of the Act, and also finds that the Adjuster has subsequently violated s. 480(1)(b) of the Act.

In terms of the applicable sanction, the Act requires that all holders, and former holders, of certificates of authority produce information when called upon. The public is not well-served when adjusters fail to comply with demands, like the Demand made in this case. Pursuant to s. 13(1)(b) of the *Certificate Expiry, Penalties and Fees Regulation*, A.R. 125/2001, the Council has the discretion to levy a civil penalty in an amount up to \$1,000.00. In this case, the Adjuster has not responded in any meaningful way and the Council believes that a significant civil penalty must be assessed to send a strong message to, not only the Adjuster, but to all licensees. In consideration of all of the evidence, the Council orders that a penalty in the amount of \$1,000.00 be levied against the Adjuster.

The civil penalty of \$1,000.00 must be paid within thirty (30) days of 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. Pursuant to s. 482 of the Act (excerpt enclosed), the Adjuster 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 Insurance Adjusters Council. The motion was duly recorded in the minutes of that meeting.

Dated: December 8, 2021

[Originally Signed By]
Michael Ilnycky, Chair
Insurance Adjusters 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*