

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 Esmeralda Sangalang
(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) of the Act. Specifically, it is alleged that the Agent falsely declared the completion of continuing education ("CE") courses, when, in fact, the CE courses 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). In the alternative, it was alleged that the Agent made false or misleading statements as contemplated in s. 509(1)(a) of the Act when the Agent reported that the required CE courses had been completed to renew the general certificate of authority for the 2020/2021 certificate term (July 1, 2020 to June 30, 2021) when, in fact, they were not completed and subsequently violated s. 480(1)(b).

Facts and Evidence

This case proceeded by way of written Report to Council dated November 24, 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 holder of a General Insurance – Level 2 certificate of authority. The Agent has continuously held the certificate since October 15, 2008.

As part of the AIC's annual CE audit, an "Alberta Insurance Council Continuing Education (CE) Audit" request was sent to the Agent by way of email correspondence dated October 4, 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

regarding all declared CE within the 2020/2021 certificate term. The Demand provided for a response within 30 days of receiving the Demand, being November 4, 2021.

On October 18 and October 25, 2021, emails were sent by the AIC Compliance Department reminding the Agent to respond to the Demand by the deadline provided. On October 28, 2021, the AIC contacted the Agent by way of telephone, however, the line was busy and the AIC was unable to leave a voicemail.

On November 2, 2021, the Agent sent an email to the AIC Compliance Department that included four (4) CE certificates from [Course Provider 1] [redacted]:

[...]

I'm currently on maternity leave and was able to save these certificates that I completed online through [Course Provider 1] [redacted]. There were 3 certificates that I was not able to save, and I've contacted the instructors so that they can forward me the certificates of completion. The other certificates are through [Course Provider 2] [redacted] which I will also forward to you once I've received them.

[...]

On November 3, 2021, the AIC Compliance Department sent the Agent the following by way of email:

[...]

Two of the [Course Provider 1] [redacted] certificates provided do not match what you have reported. Also, course #574** [redacted] you reported completion on May 20, 2021. But your certificate says May 26, 2021. Please advise.

We still require the following certificates:

567** [redacted] – June 29, 2021

568** [redacted] – June 22, 2021

550** [redacted] – June 22, 2021

550** [redacted] – June 10, 2021

575** [redacted] – June 1, 2021

551** [redacted] – May 27, 2021

574** [redacted] – May 19, 2021

574** [redacted] – May 19, 2021

564** [redacted] – May 18, 2021

512** [redacted] – May 17, 2021

569** [redacted] – May 13, 2021

517** [redacted] – May 11, 2021

[...]

On the same date, the Agent sent the AIC Compliance Department a response by way of email:

[...]

My mistake, Course # 575** [redacted] was completed on May 26, 2021.

Course # 517** [redacted] - Leisure and Lifestyle completed on May 11, 2021, I have attached the certificate.

[...]

Please also find attached the certificates for the following as requested.

567** [redacted] - June 29, 2021
568** [redacted] – June 22, 2021 [Course Provider 1] [redacted] Certificate # 1
550** [redacted] – June 22, 2021
550** [redacted] – June 10, 2021
575** [redacted] – June 1, 2021
551** [redacted] – May 27, 2021
574** [redacted] – May 19, 2021
564** [redacted] – May 18, 2021
517** [redacted] – May 11, 2021 – [Course Provider 1] [redacted] Certificate # 5

The following 3 courses I'm just waiting for the certificates to be emailed to me:

574** [redacted] May 19,2021
512** [redacted] May 17, 2021
569** [redacted] May 13, 2021
[...]

By way of email dated the same, the Agent sent the AIC Compliance Department a further email:

[...]
Please find attached the certificates for the following:

512** [redacted] completed May 17, 2021
569** [redacted] completed May 13, 2021

I'm just waiting for the course # 574** [redacted] completed on May 19, 2021 from [Course Provider 3] [redacted].
[...]

By way of email dated November 3, 2021, the AIC Compliance Department requested the following:

[...]
Course #568** [redacted] – June 22, 2021, the [Course Provider 1] [redacted] certificate does not match with the course name. You provided two certificates dated Nov 2, 2021 for course #569** [redacted] (May 13, 2021) & 512** [redacted] (May 17, 2021). Do you have the certificates dated as such?
We still require the following:
574** [redacted] – May 19, 2021
568** [redacted]- June 22, 2021
574** [redacted] – May 20, 2021
574** [redacted] – May 19, 2021
[...]

By way of email dated the same, the Agent again responded to the AIC Compliance Department with the following information:

[...]
Course # 568** [redacted] - the course name states Lifestyle RVlife product training - attached with this email
Course # 575** [redacted] - certificate attached.

For the two certificates with the dates to Nov 2, 2021, course # 512** [redacted] and 569** [redacted] I have emailed [Course Provider 1] [redacted] to have the dates corrected.

Course # 574** [redacted] - still waiting for [Course Provider 3] [redacted] to call me to get the Certificate re-sent.

Course # 574** [redacted] - contacted [Course Provider 1] [redacted] as well for this certificate [...]

On November 4, 2021, the AIC Compliance Department sent the Agent a final reminder to provide the outstanding CE Certificates:

[...]
We still require the following certificates by end of day:
569** [redacted] -May 13, 2021
512** [redacted] -May 17, 2021
574** [redacted] -May 19, 2021
574** [redacted] -May 19, 2021
[...]

By way of email dated the same, the Agent responded to the AIC Compliance Department providing the following:

[...]
Please find attached the following certificates:
569** [redacted]
512** [redacted]
574** [redacted]

Course # 574** [redacted] it seems I did not complete with [Course Provider 1], which I thought I did. Please advise what I would need to do to ensure that my license remains active.
[...]

By way of email dated the same, the AIC Compliance Department responded to the Agent stating that they do not have “*course certificate #574** [redacted] dated May 19, 2021*” and were therefore “*short 1 credit*” for the general license.

In an email of the same date, the Agent responded to the AIC Compliance Department, indicating that they had now completed the outstanding CE course requirement:

[...]
I was able to complete a webinar with [Course Provider 2] [redacted] called Water Water Everywhere, however, [Course Provider 2] [redacted] emails the certificate with the course # after a few days. Are you able to extend my deadline until next week?
[...]

On November 8, 2021, the Agent provided the AIC Compliance Department with the CE certificate for the CE course completed with [Course Provider 2] on November 4, 2021.

By way of email dated the same, the AIC Compliance Department sent an email to the Broker Training Consultant for Western Canada Region for [Course Provider 1] [redacted], in order to confirm that the Agent did not complete CE course #574** dated May 19, 2021.

On November 9, 2021, the Broker Training Consultant for Western Canada Region for [Course Provider 1] [redacted] responded to the AIC Compliance Department via email and advised that the Agent did not complete CE course #574** dated May 19, 2021, and “*status shows as withdrawn.*”

On December 7, 2021, the Agent sent the AIC investigator the following explanation, which stated:

[...]

I have also just included other materials in order to support my position that I did not intentionally misrepresent, acted fraudulently, be deceitful or/and dishonest about not completing the required CE Credit hours [...]. I tried my best in order to complete the requirements so that I can renew my license.

[...]

In the same email, the Agent attached documentation pertaining to circumstances that were beyond the control of the Agent, along with an explanation as to why they did not have the required CE certificates for the renewal of their license. The explanation stated in part:

[...]

I have received the Investigation Report regarding my incompleteness of my CE Credits.

In all of my years that I've worked as an insurance broker, I have always completed the necessary requirements in order to keep my license active and in good standing. I understand that it is my negligence for missing the 1 CE credit that was required, and please know that it was unintentional. [...] [redacted] [...] that's when I took the opportunity to take all of the necessary courses/webinars in order to complete the required CE credit hours in order to renew my license in June. It was not intentional, nor would I ever misrepresent, be deceitful or be dishonest that I missed the 1 CE Credit. I have been an insurance broker with [redacted] for 10 years, and I wouldn't intentionally do [sic] any harm for my license to be jeopardized as this is my career that I love. I love what I do and I am very passionate about my work.

[...] [redacted] I am requesting for AIC to reinstate my license so that I can continue doing the work that I love.

[...]

Discussion

In order for the Council to conclude that the Agent has committed an offence pursuant to 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 that the findings of the Council can dramatically 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 applicable legal test to determine the Agent's guilt in violating s. 480(1)(a) of the Act is set out in the Court of Queen's Bench of Alberta Decision, *Roy v. Alberta (Insurance Councils Appeal Board)*, 2008 ABQB 572 (hereinafter "*Roy*"). In *Roy*, the Life Insurance Council found that an agent violated s. 480(1)(a) of the Act by attesting to completing the required continuing education hours when they did not, in fact, complete the required continuing education hours. The *Insurance Councils Appeal Board* also found the agent guilty on appeal. The agent advanced the decision to the Court of Queen's Bench of Alberta.

In his reasons for judgment dismissing the appeal, Mr. Justice Marceau wrote 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 CE certificates 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.” Offences such as those considered under s. 509(1)(a) of the Act are strict liability offences. As such, the AIC only has the onus to prove that the Agent’s statement that the required CE certificates had been completed was false. Once this occurs, the onus then 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 showed circumstances that were beyond their control. Once the Agent realized the mistake, the Agent enrolled in a course to complete the CE certificate required. However, with insurance agents working for clients and completing their applications, it is the responsibility of the insurance agent to ensure a high level of due diligence and accuracy when completing their own applications. 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*, AR 125/2001. The Council considered that this was the Agent’s first offence in an unblemished record and that there were circumstances in the Agent’s life beyond their control. Based on these factors and the evidence before the Council, the Council orders that a civil penalty not be levied against the Agent.

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: February 1, 2022

[Original Signed By]

Janice Sabourin,
Chairperson, 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.

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*