

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 Rama Warnes
(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 a continuing education ("CE") Certificate when, in fact, the CE Certificate 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 Act when the Agent reported that the required CE hours had been completed to renew the accident & sickness ("A&S") certificate 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 December 8, 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 both life and A&S insurance agent certificates of authority. The Agent has held these certificates since February 28, 2017.

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 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 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 November 4, 2021.

On October 19, 2021, the Agent provided the AIC with seven CE Certificates.

By way of email dated the same, the AIC requested the following from the Agent:

[...]

We will require your prior carry forward certificates as follows:

47*** [redacted] – May 12, 2020

54*** [redacted] – April 20, 2020

50*** [redacted] – April 6, 2020

[...]

On October 22, 2021, the Agent sent an email to the AIC providing three CE Certificates. The Agent explained the following:

Hi, unfortunately I must have made a mistake with Inputting [sic] the course 50*** [redacted] in the system. I could not find the certificate and when I contacted [Course Provider] [redacted] for a replacement they said they did not put the course on. I'm not sure why it's in the system. Is there anything I can do to make up for those credits?

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

[...]

After review of the provided CE certificates, you were unable to provide certificate # 50*** [redacted] dated April 6, 2020 (prior year carry forward). The course provider, [Course Provider] [redacted], also confirmed that they did not hold the course.

Without this course, you are short 2 credits for the 2019-2020 renewal period and 5 credits short for the 2020-2021 renewal period on your A&S license.

Please provide additional continuing education certificates to meet the CE requirement shortfall.

As such, please note you have not satisfied the audit. The deadline is end of day, November 4, 2021.

We also require course certificate #47*** [redacted] dated May 12, 2020. The certificate you provided is dated June 4, 2018.

[...]

On October 27, 2021, the Agent provided the AIC with ten CE Certificates, along with an explanation, which stated the following:

Hi here are all my ce [sic] certificates. I found a couple of courses from last year that I didn't put in the system. I also add [sic] the one with the correct date. Please advise how I replace CE credits from Last [sic] year. And do I just put them in the system like normal or do I send the certificates that I need directly to you in an email.

Also, I understand that I need to replace 2 life credits from Last [sic] year and 5 A and S credits for this year?

[...]

On October 29, 2021, the AIC responded to the Agent with the following information:

[...]

After review of the provided CE certificates, you were unable to provide certificate # 50*** [redacted] dated April 6, 2020 (prior year carry forward). The course provider, [Course Provider] [redacted], also confirmed that they did not hold the course.

Without this course, you are short 4 credits for your A&S license.

Please provide additional continuing education certificates to meet the CE requirement shortfall.

As such, please note you have not satisfied the audit. The deadline is end of day, November 4, 2021.

We also require course certificate #57*** [redacted] dated June 28, 2021.
[...]

On November 2, 2021, the Agent sent an email to the AIC, which included four CE Certificates, including certificate #57*** [redacted] which was dated June 29, 2021, as well as a CE Certificate dated November 2, 2021, to cover the outstanding CE Certificate hours.

On November 16, 2021, the AIC sent an email to the [Course Provider] [redacted], in order to confirm if the Agent attended course #50*** [redacted] dated April 6, 2020.

On November 24, 2021, the AIC sent a reminder email to the [Course Provider] [redacted], requesting a reply to the November 16, 2021 email.

The [Course Provider] [redacted] responded to the AIC on November 24, 2021 providing all CE certificates in their records for the Agent and advising that the Agent did not complete CE course #50*** [redacted] dated April 6, 2020.

On January 17, 2022, in response to the Report, the Agent stated:

Hi, I did manage to open the attachment. I'm not sure what I am supposed to do, its [sic] very confusing. I did make a mistake with the ce [sic] credits. Apparently there is a fine I have to pay. Then what happens?

On January 18, 2022, the Agent provided the following explanation to the AIC:

[...]

I am writing a response to the email received January 4, 2022, regarding Continuing Education Certificates submitted required for renewal of licenses in June of last year.

I used the AIC website to input the courses I had taken throughout the year and with all courses accepted I received the green light to proceed, I paid for the Licenses as required.

In no way did I intend to falsify or misrepresent courses taken. Please understand the [sic] I fully believed the report was in good order and wish I could make the corrections needed however [sic] cannot change the past, after the fact. It is a mystery to me how the error happened, and the system seemed to accept the courses, so no flags were raised in my mind at the time for renewal.

It is my desire to make this right.

[...]

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)

In applying the test of clear and cogent evidence, the Council concluded it was clear that the Agent did not complete the CE hours that were required and subsequently reported on Agent's renewal applications. It was equally clear to the Council that the representations were more than a mere inadvertent error. As CE Course Providers are required

to keep detailed records with respect to individuals who attend and complete their CE courses, the Agent could have simply contacted the Course Provider prior to inputting the CE courses for the renewal period to obtain all CE certificates, to verify the correct CE courses taken and avoid making an error. The acceptance of the CE credits in the AIC system does not mitigate the Agent's responsibility to accurately input the CE information.

In light of all the evidence, the Council is satisfied that there is sufficient, clear and cogent evidence that the requisite elements of an offence under s.4801(1)(a) have been met, and that the Agent recklessly misrepresented the CE hours obtained to renew the certificates of authority, and is therefore untrustworthy as contemplated by s.480(1)(a) of the Act. In light of the above, the Council did not consider the alternative alleged offence under s. 509(1)(a) of the Act.

As to the appropriate sanction for this conduct, the Council has the jurisdiction to levy a civil penalty in an amount not exceeding \$5,000.00, pursuant to s. 13(1)(a) of the *Certificate Expiry, Penalties and Fees Regulation*, A.R. 125/2001. Insurance agents work in a profession which necessitates the accurate completion of forms and insurance documents. Clients can experience severe difficulties when documents are inaccurately and improperly completed. Based on these factors and the evidence before the Council, the Council orders that a civil penalty of \$1,500.00 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: February 22, 2022

[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*