

ALBERTA INSURANCE COUNCIL
(the "AIC")

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

And

WEM Auto Ltd. o/a Mayfield Toyota
(the "Dealership")

And

As represented by
David Friesen,
(Designated Individual ("DI") of the Dealership)

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

This case involved an alleged violation of s. 452(1) of the Act. Specifically, that the Dealership acted as an insurance agent for the sale of GAP and equipment warranty insurance during a period of time in which the Dealership did not hold a valid and subsisting certificate of authority. In doing so, it is alleged that the Dealership 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 26, 2021 (the "Report"). The Report was forwarded to the DI for review, and to allow the Dealership to provide the Council with any further evidence or submissions by way of Addendum.

The Dealership was the holder of a GAP Restricted General certificate of authority from July 20, 2018 to June 30, 2020, inclusive, under different tradenames; and again, from June 15, 2021 through to present day. The Dealership was also the holder of an Equipment Warranty Restricted General certificate of authority from December 8, 1998 to June 30, 2020, inclusive, under different tradenames; and again, from June 15, 2021, through to present day.

The Dealership did not hold restricted certificates of authority, under its current tradename, permitting it to act in the capacity of a GAP and equipment warranty insurance agent from July 1, 2020 until June 14, 2021.

On June 8, 2021, the AIC received a renewal application from the Dealership, in which the DI disclosed the following information when answering question 4 on the licensing application which asks, “*Has the firm been compensated by way of commissions or any other form of payment, while unlicensed, for acting as an insurance agent in relation to new business (only in the Province of Alberta) for the same class of license that it is re-applying for since the date it last held an Alberta certificate?*”;

Apparently, I got mixed up with completing a name change last March and missed that i [sic] needed to complete a renewal as well. I thought I had completed both at the same time. I was unable to locate any communication that my license expired, so unfortunately I missed the renewal date. I never discovered this error until I tried to renew again this year. It is a good thing that the system sent me a renewal notice, even though I guess I didn't have a license to renew.

On July 30, 2021, the AIC investigator sent a request for information to the Dealership, for the attention of the DI, by priority mail and email. Specifically, the AIC investigator requested the following:

[...]

The AIC is reviewing the matter in which the auto dealership holds a restricted certificate of authority to sell equipment warranty, credit related, and GAP insurance and that the auto dealership failed to renew these restricted certificates and was therefore unlicensed for the period of June 30, 2020 to June 15, 2021. I am writing to request the following details from you, as the designated individual of WEM Auto Ltd. o/a Mayfield Toyota:

1. An explanation as to how the unlicensed activity described above happened.
2. A comprehensive list of all policies WEM Auto Ltd. o/a Mayfield Toyota sold during the unlicensed period, specifying the underwriting insurance company of each, the date on which each policy was sold, and each policy number.
3. Please confirm the amount of compensation WEM Auto Ltd. o/a Mayfield Toyota received, or will receive for each policy.
4. Any other information or documentation which you feel may assist in understating of the material facts.

[...]

On August 12, 2021, the DI, on behalf of the Dealership, responded to the AIC investigator with the following information:

[...]

As requested, I have attached all remittances in the time period specified.

As far as an explanation goes, I have attached some emails to show the chain of events that caused my confusion in the renewal process for 2020.

Firstly, I would like to apologize for this situation. I truly believed that I had renewed for 2020, no different than I had for many years previously. When I went to renew for 2021, I was shocked to discover that I had made such an error. I had no intention to do so and would have rectified it immediately had I known. I will do everything in my power to ensure that this never happens again.

On February 28,2020 I applied to renew my AIC license, or so I thought. As you can see from the email dated 2/28/2020 an application was submitted. On the email dated 3/2/2020 you can see that [J.J.] [redacted] from the AIC sent me an email that I had made and [sic] input error in the renewal. On the email dated 3/2/2020 you can see that I submitted a new application. On the email dated 3/3/2020 you can see that the application was received and under review, HOWEVER, what I neglected to notice was that it was reviewing a name change from Mayfield Toyota Ltd to WEM Auto Ltd. and not a renewal. On the email dated 3/3/2020 you can see that I received a successfully issued license. I thought this to be my renewal and neglected to understand that it was simply a name change approval. This is confirmed by the email dated 5/19/2020 showing the correspondence between [J.D.] [redacted], from [Underwriter 1] [redacted], and I

where I confirm that I believed that my license was fully renewed. I was obviously mistaken. Now, to my knowledge, I did not receive any other email notifying me that my license was not renewed. Obviously, the world was also distracted with Covid 19 issues at this time, so it is possible that I did not see some correspondence, but I rarely delete emails and can not [sic] find any others if they were sent. I have been very diligent in renewing this license for approximately the past 10 years or more. I have absolutely nothing to gain by not renewing this license. I hope that my good record and full and transparent cooperation all the way through this process is considered. Please let me know if you require any clarification or any other information.
[...]

The response also included spreadsheets, confirming that during the period of unlicensed activity, the Dealership engaged in a total of one hundred thirty-four (134) transactions, with a total associated commission of \$126,561.68.

On August 26, 2021, the AIC investigator sent a request for information to the underwriters of the General Insurance products, [Underwriter 1] [redacted] and [Underwriter 2] [redacted]. Specifically, the request was for the number of transactions and the remuneration for those transactions that the Dealership received during the unlicensed period.

On September 1, 2021, the Dealer Support Manager from [Underwriter 1] [redacted] responded to the request for information from the AIC investigator, attaching a spreadsheet. The [Underwriter 1] [redacted] spreadsheet showed a total of thirty-one (31) transactions completed by the Dealership, with a total compensation for those transactions of \$40,468.97.

On September 3, 2021, the Vice President and Associate Ombudsperson of [Underwriter 2] [redacted] responded to the request for information from the AIC investigator, attaching a spreadsheet. The [Underwriter 2] [redacted] spreadsheet showed a total of one hundred three (103) transactions completed by the Dealership, with a total compensation for those transactions of \$81,270.99.

On September 27, 2021, the AIC investigator sent an email requesting further information from the DI, on behalf of the Dealership. Specifically, AIC the investigator requested a copy of the March 3, 2020, email referred to in the Dealership's previous answer and clarification regarding discrepancies between the spreadsheet provided by the Dealership and the spreadsheet provided from [Underwriter 2] [redacted].

On September 28, 2021, the Dealership responded in two emails, providing a copy of the March 3, 2020, email referred to in their previous answer and provided an explanation of the discrepancies between the spreadsheet from the Dealership and the spreadsheet from [Underwriter 2] [redacted]. The Dealership confirmed that the accurate remuneration received by them for the unlicensed transactions was \$121,739.96.

By way of email dated November 10, 2021, the Dealership provided a letter of support from [Underwriter 1] [redacted]. The letter provided in part:

[...]

[Underwriter 1] [redacted] and [Underwriter 3] have had a 12-year business relationship with Mayfield Toyota. In that time, we have found it to be conscientious about compliance and good market and good market conduct practices. We have no record of consumer complaints arising from its sales of insurance.

While a lapse in licensing did occur, we believe it was an honest error on the part of the Designated Individual, David Friesen. We have no concerns with any of the insurance sales transactions during the period in question and we are confident that it did not result in any negative impacts on consumers.

[...]

In the same email of November 10, 2021, the Dealership, through the DI, provided a further explanation as to how the unlicensed activity occurred. The Dealership stated the following:

Thank you for the opportunity to respond to the Summary and Recommendation that I received on October 27, 2021, in regards to the complaint against us. Although I fully comprehend the severity of the implications surrounding the sales of credit related products, equipment warranty or gap insurance without a valid restricted certificate of authority, I believe that I have shown that this situation to be one of an administrative misunderstanding and not one of malice or deceptive intentions. Mayfield Toyota has been operating for over 20 years and has always been in good standing in the business community. We have been and [sic] employer of over 200 Edmontonians and have contributed, in many positive ways, to our community and to this city. Other than one other licensing issued that occurred over 17 years previous to this one, that no one currently employed here was a part of, I do not believe we have had any issues with the AIC to speak of. I also believe that we have shown every piece of correspondence with the AIC regarding this matter, and up to this point, do not believe that any piece of correspondence shows that we received any notice that we intentionally or knowingly operated without a license. Although the AIC is not responsible for ensuring my compliance, I do not understand why there was not one piece of correspondence after the expiry of our license in 2020 that states that our license had expired, and products should no longer be sold. Other than receiving a renewal notice in 2021, there was nothing else to show that we were not in compliance. We truly believe that we were properly licensed and in full compliance. We also reported the situation immediately upon discovery of our mistake and have never denied any wrong doing on our party.

Please understand that we believe this to be an honest administrative error on our part. We take full responsibility for that, but we believe that the penalty recommended here is too severe when taking into consideration the information that we have provided. We are humbly asking for the Council's understanding and empathy at this challenging economic time. A fine of this size, puts undue hardship on a good Alberta business. [...]

The Council reviewed all information submitted by the Dealership, the AIC and the underwriters.

Discussion

Offences such as those considered under s. 452(1) of the Act are strict liability offences. As such, the AIC has the onus to prove that the Dealership acted in the capacity of an insurance agent, as defined in the Act, during a period in which they did not hold a valid and subsisting certificate of authority to do so. Once this occurs, the responsibility then shifts to the Dealership to demonstrate that due diligence was exercised to avoid acting as an insurance agent when they did not hold a valid and subsisting certificate of authority to do so.

The evidence in the Report established that the Dealership's certificates of authority automatically expired on June

30, 2020, as the Dealership did not renew the certificates of authority during the AIC certificate renewal period. The Dealership, through the DI, assumed the certificates of authority had been renewed when the legal name of the Dealership had been changed. However, it is clear that the Dealership's certificates of authority were not renewed prior to the automatic expiration on June 30, 2020. It is equally clear that the Dealership continued to act while unlicensed from July 1, 2020, to June 14, 2021.

The Dealership did not provide evidence that it took all reasonable efforts to avoid committing the offence of unlicensed activity. The Dealership simply assumed that the certificates of authority were renewed when an application to change the legal name of the Dealership was undertaken.

The Council did note that once the DI became aware of the unlicensed status, the DI reported this to the AIC and took steps to renew the certificates of authority. Whilst this can be viewed as a mitigating factor, it does not excuse the fact that the Dealership was unlicensed for almost a full year and sold one hundred and thirty-four (134) policies during the unlicensed period.

It is the responsibility of the Dealership to ensure that valid certificates of authority exist prior to conducting insurance business. The Council finds the Dealership guilty of violating s. 452(1) of the Act, and subsequently violated s. 480(1)(b) of the Act as alleged.

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 the amount of \$1,000.00 per demonstrated offence against a dealership. In light of all the circumstances, the Council is of the view that a significant civil penalty is warranted in this matter, while considering the mitigating circumstances. As such, the Council orders a civil penalty, in the amount of \$100.00 per policy sold during the unlicensed period, resulting in one hundred and thirty four (134) offences, equaling a total civil penalty of thirteen thousand four hundred dollars (\$13,400.00), be levied against the Dealership.

The civil penalty of \$13,400.00 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 Dealership 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 General Insurance Council. The motion was duly recorded in the minutes of that meeting.

Date: January 11, 2022

[Original Signed By]

Ross Bucsis, Vice-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*

