

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 Susan Armitstead  
(the "Agent")

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

This matter involves an alleged violation of s. 480(1)(a) of the Act. It is specifically alleged that the Agent falsified two policy documents with respect to policy number \*\*\*\*\*7164, presented those to the Client as a representation of the status of the Client's financial instruments and deposited payments into her personal bank account. As such, it is alleged that the Agent acted contrary to s. 480(1)(a) of the Act and is guilty of fraud, deceit, dishonesty, untrustworthiness, and/or misrepresentation. In the alternative it is alleged that the Agent made false or misleading statements, representations, or advertisements in contravention of s. 509(1)(a) of the Act and has consequently violated s. 480(1)(b) of the Act.

**Facts and Evidence**

The matter proceeded to Council by way of a written Report to Council dated February 18, 2022 (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 submitted an Addendum which was considered by the Council. In arriving at their conclusion, the Council carefully weighed all of the evidence presented.

The Agent is the former holder of Life and Accident and Sickness (A&S) certificates of authority, and was so licensed periodically from February 13, 1996 to August 17, 2021, when the Agent was

terminated by the Former Agency.

The AIC commenced an investigation in response to a termination notice and Life Agent Reporting Form received from [Agency] [redacted] (hereinafter the “Former Agency”) on August 18, 2021. The investigation by the Agency was as a result of a complaint made by a client of the Agent.

On August 19, 2021, the AIC investigator requested the following information from the Former Agency, in relation to the internal investigation:

[...]

Please include the following referencing our file number 70810 in your answer:

- Your letter indicates that Ms. Armitstead admitted to the misconduct. If the admission exists in a written statement by Ms. Armitstead, please provide that

[...]

On August 27, 2021, [K.H.] [redacted], the Associate Manager, Advisor Suitability, Advisor Compliance, Advisory Network from the Former Agency provided the following information to the AIC investigator:

[...] – The interview with the advisor was recorded. I have copied [A.K.] [redacted] whose area did the investigation. He will provide you with access to the recording.

On September 15, 2021, [A.K.] [redacted], Director, Corporate Investigations, Corporate Security & Investigations, for the Former Agency provided a copy of the recorded investigation interview (hereinafter referred to as the “Interview”), between the Agent and [P.Q.] [redacted], Senior Investigator (hereinafter the “Former Agency Investigator”), for the Former Agency conducted on July 30, 2021.

Subsequent to receiving the Interview from the Former Agency, the AIC investigator created a typed transcription of the Interview. The Interview stated in part:

[...]

Former Agency Investigator: So, [client] [redacted] has sent me a – a document – the statement – remember we were looking at the statement that we went over together, that you had sent [client] [redacted] from [Company] [redacted]?

Agent: The one I created for [client] [redacted], yes.

Former Agency Investigator: Yeah, we went over those. So, I sent that statement – a copy of that statement to our analyst team.

Agent: Mhmm.

[...]

Former Agency Investigator: [...] So when I, - when I sent the document that you had given [client] [redacted] to our team, this is what they had to say: “Thank you for providing the attached documents. As you can see the statements the client provided us with are modified.” See its also – “see below which was provided by our analyst team.” So, I had discussed with [M.B.] [redacted] this morning and he confirmed our thoughts that the first five pages that we were looking at before they – they were [inaudible] is not generated – a generated report from the investment centre. But a cut and paste. Page six gives a one-page document that shows the account values as of December thirty-first, twenty twenty. The document shows two accounts totalling ninety-seven thousand dollars; however, the true market value of [client] [redacted] account on December 31, twenty twenty was seventy-two thousand dollars. And then pages seven to ten, which we went over together shows the account value at eighty-two thousand four forty-seven oh-two as of December thirty-first, two thousand nineteen; however, the true market value of [client] [account] account on December thirty-first was thirty-five thousand. And not eighty-two thousand. And they sent me copies of what the real statements were. So, again you know, how do you explain this?

Agent: I can't. I put them together as best of my knowledge and there's definitely some discrepancies there. And [client] [redacted] and I will have to talk about that.

[...]

Former Agency Investigator: Yeah, I'm just – so at this point – all you can say about this is you don't – you made some mistakes? Or how do you explain giving [client] [redacted] a document that the first five pages were not generated by us? They're cut and paste plus all of the values on the statement that you gave [client] [redacted] were wrong. By quite a bit. I mean you – you've been working as an ana [sic] – as an advisor for over 25 years. Don't you think at this point that you may want to tell me what's happening? [...] We've seen that you're making false documents. This may be a good time for you to tell me what went on. What do you think?

Agent: [...] The values and then to the best of my knowledge I put them together best I could. They don't seem to be right, obviously. And I don't know what to say about that one, [...]

[...]

Former Agency Investigator: [...] we have a statement created by you which falsified all of the numbers. So again, I'm giving you the opportunity to perhaps tell me what went on.

Agent: I have not much to say.

[...]

On October 6, 2021, the AIC investigator received a copy of the Former Agency's Internal Investigation Report (hereinafter referred to as the "Investigation"). The Investigation stated, in part:

[...]

[Client] [redacted] provided Former Agency with copies of investment account statements that Susan had given him late January 2020. The account statements were allegedly produced by [Company] [redacted]. Exhibit #22. Copies of these statements were provided by [T.R.] [redacted], Owner of [Company] [redacted], to validate their authenticity. [T.R.] [redacted] replied in an email that the documents were fabricated. Exhibit #23.

These investment account statements were examined by the Former Agency, and it was determined that each one was fabricated and contained false account balances. Exhibit #24.

[...]

She confirmed that she gave [client] [redacted] the investment account statements from [Company] [redacted]. Susan explained that she made up these documents to help her customers better understand their statements because the original statements are not logical for them to understand. She couldn't explain the incorrect balances, and she said she puts these statements together to the best of her knowledge. She mentioned that there were some discrepancies there, and that she and [client] [redacted] would have to talk about that.

[...]

The Investigation also contained copies of void cheques, which showed that the Agent deposited the client's funds into her personal bank account.

By way of email dated November 2, 2021, the AIC investigator requested the following information from the from the Former Agency Investigator:

[...]

I wonder if there is any chance I could get copies of the following Exhibits referred to in your Investigation Report on Susan Armitstead? [...]

- Exh 22 – Fabricated [Company] [redacted] Documents;
- Exh 23 – [T.R.] [redacted] email; and
- Exh 24 – Excerpt from [B.J.] [redacted] email June 16, 2021.

[...]

By way of email dated November 9, 2021, the Former Agency Investigator provided the following documents:

1. TR statement (hereinafter "TR Statement"); and
2. Exhibit #24 Excerpt from [B.J.] [redacted] email June 16, 2021 (hereinafter "Excerpt from BJ Email").

The TR Statement is an email from [T.R.] [redacted], Investment Representative from [Q.I.S] [redacted], dated August 10, 2021. The TR Statement provided:

[...]

I have reviewed the attached statement in detail. I can assure you that this is a fabricated statement, but it's fabrication was not known or approved in any way by [Company] [redacted]. At no time did I give approval to use [Company] [redacted] name in the creation of this or any other investment statement.

I do not have any idea how this statement was created. It appears to be fabricated from a [QI] [redacted] statement with [Company] [redacted] name and address added in. [Company] [redacted] does not create statements. We only provide copies of statements that are created by the companies that hold the assets.

[...]

No [Company] [redacted] advisor has ever or will ever have the authority to create statements.

[...]

The Excerpt from the B.J. Email stated:

[...] Thank you for providing the attached documents. As you can see the statements the client provided us with are modified.

Please also see below which was provided by our analyst team:

**I had a discussion with [M.B.] [redacted] this morning and he confirmed our thoughts that the first 5 pages of the attachment is not a generated report from[...], but a 'cut & paste'.**

Page 6 gives us a 1 page document that shows the account values as of December 31, 2020. The document shows two accounts, totalling \$97,497.67, however the true market value of [client] [redacted] accounts on December 31, 2020 was \$72,533.76.

Page 7-10 shows the account value at \$82,447.02 as of December 31, 2019, however the true market value of [client] [redacted] accounts on December 31, 2019 was \$35,082.22.

[...]

[Emphasis added in original document]

On November 15, 2021, the AIC investigator sent a request for information to the Agent, by way of registered mail. The AIC Investigator requested the following information:

[...]

The AIC has received a complaint from [Former Agency] in relation to your activities as an advisor. Specifically, [Former Agency] alleges that after you redeemed funds from your client [L.A.] [redacted] accounts without [client] [redacted] knowledge or consent, you created the following series of false documents. You then provided these documents to the client:

- A chart dated December 31, 2019 showing Plan \*\*\*\*\*7164 had a market value of \$82,447.02 as of December 31, 2019, when this was not the actual market value on that date.
- [...]
- [...]
- A chart dated December 31, 2020 showing Plan \*\*\*\*\*7164 had a market value of \$84,689.33 as of December 31, 2020, when this was not the actual market value on that date.
- [...]
- A [Company] [redacted] statement printed on January 15, 2020 showing Plan \*\*\*\*\*7164 had a market value of \$84,689.33 as of December 31, 2021; [...]. These were not the actual market values on that date.
- A [Company] [redacted] printed on January 15, 2020 showing Plan \*\*\*\*\*7164 had a market value of \$82,447.02 as of December 31, 2019, when this was not the actual market value on that date.

To assist in my investigation, I am writing to request you provide the following information and/or documents [...]

1. A detailed account and explanation of your version of events related to the creation and provision of these documents.
2. Any other information or evidence you feel may assist in my understanding of the material facts.

[Emphasis added in original document]

On December 1, 2021, the Agent responded to the request for information with the following:

[...] Even though I deeply regret my actions, and know that it was very wrong [...]

### **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 provide 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 Council's finding 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 Queens'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 he 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)

The evidence in these types of cases is based on the concept of "*clear and cogent*" evidence. In *The Matter of the Appeal of Arney Falconer*, Chairperson Hopkins dealt with this principal of clear and cogent evidence and provided as follows;

The Life Insurance Council stated in the Decision that there is a requirement “for ‘clear and cogent evidence’ because our findings can dramatically impact an insurance agent’s ability to remain in the industry”. However, the requirement for clear and cogent evidence does not mean that the evidence is to be scrutinized any differently than it should be in any other civil case. **In all civil cases evidence must be sufficiently clear, convincing and cogent to satisfy the balance of probabilities.** In *F.H.v. McDougall* 2008 SCC (sic); [2008] 3 S.C.R. 41 the Supreme Court of Canada states:

[45] To suggest that depending upon the seriousness, the evidence in the civil case must be scrutinized with greater care implies that in less serious cases the evidence need not be scrutinized with such care. I think it is inappropriate to say that there are legally recognized different levels of scrutiny of the evidence depending upon the seriousness of the case. There is only one legal rule and that is that in all cases, evidence must be scrutinized with care by the trial judge.

[46] Similarly, evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test. But again, there is no objective standard to measure sufficiency. In serious cases, like the present, judges may be faced with evidence of events that are alleged to have occurred many years before, where there is little other evidence than that of the plaintiff and defendant. As difficult as the task may be, the judge must make a decision. If a responsible judge finds for the plaintiff, it must be accepted that the evidence was sufficiently clear, convincing and cogent to that judge that the plaintiff satisfied the balance of probabilities test.

Contraventions of s. 480(1)(a) are *mens rea* offences that require proof of intent, knowledge, or recklessness on a balance of probabilities. Section 480(1)(a) of the Act reads:

If the Minister is satisfied that the holder or a former holder of a certificate of authority 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.

The Report alleged that the Agent was guilty of fraud, deceit, dishonesty, untrustworthiness and/or misrepresentation as contemplated by s. 480(1)(a) of the Act when she provided to falsified document to her client as a representation of the status of the client’s financial instruments and deposited payments into her personal bank account.



Collectively, the Council is comprised of both industry and public members who are well-equipped to assess consumer risk and industry competence. The Council weighed the effects of the alleged actions, the evidence presented, and the accounts of all parties involved when arriving at their conclusion.

The TR Statement, the Interview, the Investigation, and the excerpt from BJ email were of significance to the Council's Decision. In addition, the Former Agency provided evidence in the form of void cheques to corroborate the claim that the Agent deposited the client's funds into her own personal bank account that the Council took into consideration. In the Council's opinion, these materials demonstrated that the Agent acted in a dishonest, deceitful, fraudulent, and untrustworthily matter as contemplated by the Act.

The Agent disclosed the details of personal hardships that were endured throughout the period in which her actions occurred. The Agent provided this as the primary reason behind her conduct. The Agent expressed limited remorse.

Consumers who purchase insurance products expect that insurance agents will act with the utmost good faith while carrying out their work. Honesty and integrity are the hallmarks of a good insurance agent, especially when client funds are involved. It is not unreasonable to expect that a high standard of due diligence be practiced by insurance agents. Understandably, clients can experience severe difficulties when insurance policies are erroneous or inadequate, as they expose clients to undue risk.

In light of the information provided by the Agent, the evidence submitted by the Former Agency confirms that the Agent provided falsified documents to her client, the objective and subjective elements of the applicable legal test under s. 480(1)(a) are met. This was intentional conduct, and it is fraud, deceit, dishonesty, untrustworthiness and/or misrepresentation as contemplated pursuant to s. 480(1)(a) of the Act. The Council did not need to consider the alternative allegation under s. 509(1)(a) of the Act.

The *Insurance Act* and its Regulations act as a mechanism of public protection. It is the view of the Council that the Agent's deception was self-serving, as it was deliberate and without any consideration to the risk that she was subjecting her former client to. Accordingly, a significant civil penalty is warranted under the circumstances. As such, the Council orders a civil penalty per demonstrated offence in the amount of \$5,000.00 resulting in two (2) offences, equaling a total civil penalty of ten thousand dollars (\$10,000.00 total). If the Agent was presently licensed, the Council would have exercised their authority to revoke the Agent's certificate of authority.

The civil penalty must be paid within thirty (30) days of receiving this notice. If the penalty is not paid within thirty (30) days, interest will begin to accrue at the rate of 12% per annum as prescribed by s. 13(2) of the *Certificate Expiry, Penalties and Fees Regulation*, A.R. 125/2001.

Pursuant to s. 482 of the Act (copy 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: May 3, 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](mailto: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*