

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 Marites Soriano
(the "Agent")

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

This case involved an alleged violation pursuant to s. 465(1) of the Act. Specifically, that the Agent failed to renew her Errors and Omissions (E&O) insurance coverage prior to the policy expiring on September 1, 2021. In so doing, it is alleged that the Agent subsequently violated s. 480(1)(b) of the Act.

Facts and Evidence

This matter proceeded by way of written Report to Council dated March 17, 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 AIC conducted a random audit in February 2022, which sought to verify that E&O coverage was in place, following the expiration date noted in the licensees' 2020/2021 renewal application.

The Agent held Life and Accident and Sickness (A&S) certificates of authority, periodically, during the period of January 15, 2018 to March 15, 2022, when the Agent's certificates of authority were suspended in accordance with s. 478(2) of the Act.

On February 1, 2022, the AIC emailed a Demand for Information (the "Demand") to the Agent, requesting the following information:

[...] According to your 2020/21 renewal application, you disclosed that your E&O insurance policy coverage had an expiration date between September 1 – October 31, 2021. As such, please provide E&O coverage details of your current E&O insurance policy. The following documents may be submitted by email to audits@abcouncil.ab.ca:

- A copy of an E&O insurance policy summary page(s) or certificate of insurance showing coverage was in place after the expiration date and is currently in place; [...]
- A copy of the issued E&O insurance policy(s) showing coverage was in place after the expiration date and is currently in place.

[...]

On February 15, February 22 and March 1, 2022, an email was sent by the AIC, reminding the Agent to respond to the Demand by the deadline provided, that being March 8, 2022.

On March 4, 2022, the Agent responded to the Demand with the following information:

[...]

Regarding this year's E&O, the reasons for not getting one are as follow:

- 1) I was not actively getting any clients this year due to personal reasons and current work-related issues. [sic]
- 2) I thought it help [sic] to save the expense for me this year due to my number 1 reason;
- 3) I intend to get the E&O this coming June when I renew my license.

[...]

On March 9, 2022, the AIC Compliance Department sent an email to the Agent's former E&O provider requesting the following:

[...]

I am looking for confirmation that E&O insurance coverage was in place with [Former E&O Provider] [redacted] from September 1, 2020 to September 1, 2021 and if the policy was renewed for the following individual:

Marites Soriano (CIPR# **18), [Former E&O Provider] [redacted] policy#
*****597/**/*******

[Emphasis added in original document]

On March 15, 2022, the former E&O provider requested the following from the AIC:

[...]

Do you know the name of the sponsor for this individual. [sic] The policy number provided is not in our system. Can you have another look at the policy to ensure it is correct in your email below. [sic]

[...]

By way of email dated the same, the AIC Compliance Department provided the following information to the former E&O provider:

[...] I looked up another policy number we have in our system and it is *****5097/**/*****, with the certificate number being *****627.

Could you confirm if Marites Soriano had E&O insurance coverage with [Former E&O Provider] [redacted] since January 15, 2018 and provide proof of any coverage from this date onwards?

[...]

On March 16, 2022, the Agent's former E&O provider stated the following:

[...]

The agent in question Marites Soriano, was on the [...] program from November 20 2018 [sic] to Sept 1, 2021 when the file was lapsed for non-renewal. This is also the policy/program noted by the policy number below.

[...]

On March 20, 2022, the Agent provided the following information:

[...]

As I mentioned in my letter, I did not renew my E & O [sic] due to the fact that I was not actively taking any clients and I was not aware that a penalty will be imposed. If I cannot pay E&O how would you expect me to \$1000 [sic] penalty? I am not in a position to pay any penalty, hence please advise if this will affect my license so I know and don't have to renew anymore. I am trying to keep my license but for the past 2 years I have not been active as Financial Advisor [sic] thus I was under the impression that while not being active I am not breaking any law as I am not putting any insurance company in jeopardy and I never thought I would get penalize [sic] for it.

[...]

On March 28, 2022, the Agent provided the following additional explanation:

[...]

I received the documents, I was not aware that my license is also now suspended.

I never read nor was aware of the Insurance Act 465, all along my understanding is that we cannot solicit clients if we do not have E&O insurance that much I understand and so I never intended to solicit/enroll clients for 2021. Even during COVID 2019 and 2020 I was "stagnant".

I am contemplating not renewing my license this year as well and then this audit came.

I hope this case will be closed with no further ado as with clean conscience I never would have renewed my license if I knew it came hand-in-hand with E&O for this I do sincerely apologize.

[...]

In the same email of March 28, 2022, the Agent provided a further explanation, by way of letter, undated (the "Letter"). The Letter stated, in part:

[...]

I herewith request your understanding and consideration as to why I did not take Errors & Omission Insurance for 2021. Below are my reasons for not renewing E&O:

- 1) If a Financial Advisor is not active in recruiting clients there is no harm done to the sponsor or myself as it guaranteed no errors to be worried about, hence I opted not to take E&O to help a bit on my financial situation.
- 2) I was not active [sic] recruiting or soliciting clients since Covid as I know economy is hurting and most breadwinners of the family got laid-off, this is my way of showing my sympathy by being more considerate of the situation.
- 3) It is my fault that I did not read the emails sent to me via email requesting to renew E&O, I just read the subject line and as I did not want to renew for just one year, I did not read the content. That being said, no Representative from either E&O or AIC called to explain that I may be penalized if I don't hold E&O while my license is active. If I have [sic] known this, I would have not renewed my license, for this I ask leniency for not knowing this Act (465).
- 4) If I know [sic] that I would get penalized I would have opted to renew. All I know is that I was not "breaking" any law as I mentioned I intentionally did not seek any clients so as not to put myself, my sponsor nor the AGM in difficulty.
- 5) Further, I was not aware that by renewing the AIC licenses I also need to renew E&O insurance, I thought this is needed only if we actively seek to enroll clients so it would protect Financial Advisors, I didn't know that E&O should always be active even if we, Financial Advisors are not active. I consider myself not active as I have not enrolled any clients since 2020 although I renew my license every year with the

intention that once the economy picks-up I would again start to help friends and family insure their kids. Only this 2021 that I did not renew the E&O as I know I won't need it.

Only when AIC called me that I learned I had to submit a report why I didn't take E&O. I explained on my email dated March 22nd [sic] why I didn't take E&O solely because I was not active [...] I would have just paid E&O if I knew I would get penalized by not renewing the same. [...]

Discussion

The Council contemplated s. 465(1) of the Act, which provides that “*Every business and individual that holds a certificate of authority must meet the requirements respecting financial guarantees set out in the regulations.*” (emphasis added). This offence is strict liability in nature. Under a strict liability offence, the AIC has the onus to prove that the Agent failed to renew her E&O insurance coverage. Once this occurs, the onus then shifts to the Agent to establish a due diligence defence. The Agent must prove that all reasonable means were taken to avoid making the offence. There is no requirement on the AIC to prove the Agent's intent.

In consideration of the evidence before it, the Council is satisfied that the Agent failed to renew her E&O insurance coverage prior to its expiration. The Council considered the Agent's explanations that she was not actively recruiting or soliciting clients since the expiration of the E&O insurance coverage and that she did not know she needed to hold E&O insurance coverage if she had active certificates of authority but was not actively seeking clients. However, the Act specifically states, “*Every [...] individual that **holds** a certificate of authority [...]*”. Given that the Agent held certificates of authority at the time her E&O insurance coverage expired, it is the responsibility of the Agent to ensure that she held valid E&O insurance. Ignorance of the Act is not a defence to a strict liability offence. It is the responsibility of all insurance intermediaries to understand their obligations under the Act. The Agent has not met the burden of proof to establish a due diligence defence. As such, the Council finds the Agent guilty of violating s. 465(1) and subsequently violated s. 480(1)(b) of the Act.

In terms of the applicable sanction, the Act requires that all holders of certificates of authority have active E&O insurance coverage. 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 consideration of all the evidence, the Council orders that a civil penalty in the amount of \$1,000.00 be levied against the Agent.

The civil penalty of \$1,000.00 must be paid within thirty (30) days of the mailing of the 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 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.

Dated: June 10, 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*