

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 Harwin Aseron
(the "Agent")

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

This case involves an allegation pursuant to s. 480(1)(a) of the Act or, in the alternative, s. 509(1)(a) and subsequently s. 480(1)(b) of the Act. Specifically, it is alleged that the Agent falsified a liability card. In so doing, it is alleged that the Agent is guilty of misrepresentation, fraud, deceit untrustworthiness or dishonesty as contemplated by s. 480(1)(a) of the Act. In the alternative, it is alleged that the Agent made false or misleading statements, as contemplated by s. 509(1)(a) and has subsequently violated s. 480(1)(b) of the Act.

Facts and Evidence

This matter proceeded by way of a written Report to Council dated April 4, 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. In arriving at its conclusion, the Council carefully reviewed all evidence presented.

The Agent is the holder of a General Level 1 insurance agent certificate of authority and has been licensed, intermittently, since February 29, 2016.

On August 24, 2021, the AIC received a termination notice (the "Termination Notice") from [W.F.G.N.I.] [redacted] (hereinafter referred to as the "Former Agency"). The Termination Notice stated:

[...]

Please terminate the following license effective August 23, 2021, for the following reason:

Dismissal with cause

Harwin Aseron, General # [License Number] [redacted]

Reason:

The manager of our office reviewed an activity in our BMS and discovered that Harwin made changes to his personal auto policy which is against [Former Agency's] policies (staff are not allowed to make changes to their own policy). In addition, he did not truthfully complete the transaction and created false documents. The offer to purchase attached to the file showed the vehicle was in the name of Harwin Aseron and [L.A.] [redacted] (hereinafter referred to as the "Co-Signer") [...], however the policy was in the name of Harwin Aseron and [C.C.] [redacted]. He issued a Pink Card in his name with [C.C.] [redacted] and then did another one in his and [the Co-Signer's] name. At no time was [the Co-Signer] added to the auto policy as a named insured. This behavior is against our policies and code of conduct.

[...]

[Emphasis added in original document]

On August 31, 2021, the AIC investigator sent a request for information to the Former Agency. The request for information stated:

[...] I write you to request a copy of all documentation and information that [Former Agency] relied upon to determine that Harwin Aseron failed to meet company policies and the code of conduct. [...]

On September 9, 2021, the Former Agency provided the following documents to the AIC investigator:

[...] I have attached the following documents:

- Bill of Sale
- Email sending the change adding the vehicle to the Auto policy
- Notes from activity for change to Auto policy
- Notes from activity for change to Auto glass policy
- Pink card issued in [C.C.] [redacted] & Harwin's name
- Revised pink card issued in Harwin & [the Co-Signer's] name
- Proof of who issued these documents
- Issued Auto glass policy endorsement
- Issued Auto policy endorsement

You will note that the issued documents do not include [the Co-Signer] as a named insured. [...]

On September 29, 2021, the AIC investigator sent a request for information to the Agent. The request for information stated:

[...]

The AIC has received notification of your August 23, 2021 termination from [Former Agency]. In the notification, [Former Agency] alleges that on and [sic] August 4, 2021 you created false documents in relation to an insurance policy on which you are a named insured. Specifically, [Former Agency] alleges:

- That you submitted an offer to purchase dated August 3, 2021 in your name and [Co-Signer], while the policy was actually in your name and [C.C.] [redacted], and

- That on August 4, 2021 you issued a pink card in your name and [C.C.] [redacted] name, and then issued a pink card in your name and [Co-Signer's] name, even though the policy was actually in your name and [C.C.] [redacted] name.

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

1. A detailed account and explanation of your version of events related to this matter.
2. Copies of any documentation or correspondence you believe supports your version of events.
3. Any other information or evidence you feel may assist in my understanding of the material facts.
[...]

On October 8, 2021, the Agent provided a letter in response to the request for information (the "Letter").

The Letter stated in part:

[...]

In response to the allegations from [Former Agency]. I first want to say that there was no intention of creating false documents, or no ill-will to benefit myself from the changes made. I can honestly say it was a mistake, and an error on my part that I was not aware of.

The purchase of the new vehicle, [redacted], was dated for August 3, 2021 and the original bill of sale had myself, Harwin Aseron, [Co-Signer], [redacted], listed as co-buyers.

It is correct that my auto policy with [Insurer] [redacted] has myself, Harwin Aseron, [...], [C.C.] [redacted], as the named insureds.

I had issued a liability card first under myself, and [C.C.] [redacted] name as policy holders. I then realized that [Co-Signer] was a co-signer for the vehicle, so I had to issue a new card with myself and [Co-Signer] due to the bill of sale being in both names. Again, it was an honest error and confusion on my part because of the following:

When I had purchased the vehicle and all the documents were signed, my [Co-Signer], had signed off on the registration, leaving me the sole name so that I was able to get registration just under my name, as [Co-Signer] was a co-signer on the loan. The confusion came when I realized that if he was not listed on the registration, that it wouldn't affect the Named Insureds on the policy.

The change was submitted to [Insurer] [redacted] to review and approve, and was not bound solely by myself alone.

The registries did take the copy of the signed off Registration for their files, so I don't have the hard copy or it, however, if needed, I can see if I can get a copy from the registries. [...]

I just want to say in no way I was trying to be deceitful, benefit, or create any personal gain in this error. It was an oversight on my part, and does not reflect my integrity, accountability, or honesty. I hold myself to the highest standard, and I am truly disappointed and embarrassed in myself and my error in actions. I can promise that this will never happen again.

[...]

Discussion

In order for the Council to conclude that an 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 Council is cognizant that findings of guilt under s. 480(1)(a) can dramatically impact an insurance agent's ability to remain in the industry. Therefore, the Council carefully weighs all evidence before it before reaching its' Decision.

Misconduct considered in s. 480(1)(a) 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 Agent committed an offence pursuant to s. 480(1)(a) of the Act when he attested to completing his required continuing education when he did not, in fact, do so. The Insurance Councils Appeal Board also found the Agent guilty of an offence and the Agent appealed to the Court of Queen's Bench. In his reasons for judgment, Mr. Justice Marceau reviewed the requisite test to find that an offence 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]

Violations of this nature are decided on the civil balance of probabilities, meaning that the Council must prove that it is more likely than not that the prohibited act occurred as alleged.

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 he created a false liability card.

The Council acknowledged that the Agent created the false liability card for his own policy, therefore not exposing any of his clients to risk. However, the Council held issue with the Agent creating the liability card on his own policy and the fact that the Agent is an experienced general insurance agent. As the Agent has been in the insurance industry for some time, the Council is of the view that the Agent ought to know who has an insurable interest and who does not, prior to issuing a liability card. Further, the Council concluded that, as this was the Agent's personal insurance policy, the Agent knew that the Co-Signer was not a named insured on the policy, and therefore a liability card should not have been issued with the Co-Signer's name on it.

The Council acknowledged that the Agent was under stress during the period of time that the issuing of the false liability card occurred. However, this stress does not negate the Agent's responsibility to know and verify who has an insurance interest under a policy, and to properly complete liability cards on behalf of the insured individuals.

In light of the Agent's admission in the Letter, the evidence submitted by the Former Agency confirms that the Agent created a false liability card in the name of an individual who was not a named insured on his policy, 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 by s. 480(1)(a) of the Act. As a result of this finding, it was unnecessary for the Council to consider the alternative alleged offence pursuant to s. 509(1)(a) of the Act.

As to the appropriate sanction for this conduct, the Council has the ability to levy civil penalties in an amount up to \$5,000.00 for offences pursuant to s. 480(1)(a) and 13(1)(a) of the *Certificate Expiry*,

Penalties and Fees Regulation, A.R. 125/2001. The Council also has the ability to order that any active certificates of authority be revoked for one year or suspended for a period of time. Given that the Agent has no prior convictions the Council did not believe a suspension or revocation was warranted. As such, we order that a civil penalty in the amount of \$5,000.00 be levied against the Agent.

The civil penalty must be paid within thirty (30) days of the date the decision is mailed. In the event that the civil penalty is not paid within thirty (30) days, interest will begin to accrue. 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 General Insurance Council. The motion was duly recorded in the minutes of that meeting.

Date: July 19, 2022

[Original Signed By]

Janice Sabourin,
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.

Address for Superintendent of Insurance:

Superintendent of Insurance
Alberta Finance
402 Terrace Building
9515-107 Street
Edmonton, Alberta T5K 2C3