

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 Justin Ground
(the "Agent")

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

This case involved an alleged violation of s. 481(2) of the Act. Specifically, that the Agent failed or refused to provide information requested by the Minister, through the AIC, by way of a formal demand for information (the "Demand"). 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 a written Report to Council dated March 31, 2022 (the "Report"). The Report was forwarded to the Agent for review, and to allow the Agent an opportunity to provide the Council with any further evidence or submissions by way of Addendum.

The AIC conducted an Errors and Omissions ("E&O") 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 auditees were selected at random and asked to provide proof of current E&O coverage, in compliance with s. 465 of the Act and s. 33 and s. 35 of the *Insurance Agents and Adjusters Regulation*, AR 122/01 (the "Regulation"). The Agent was selected as an auditee and, in this instance, was asked to provide proof of current E&O coverage.

The Agent held Life and Accident and Sickness ("A&S") certificates of authority, intermittently, during the period of June 21, 2017, to March 29, 2022, when the Agent's certificates of authority were suspended due to the Agent's failure to provide current E&O coverage in accordance with s. 478(2) of the Act.

On February 1, 2022, the AIC emailed the Demand to the Agent which provided a deadline of March 8, 2022, to produce the required proof of E&O coverage.

On February 15, February 22, and March 1, 2022, an email was sent by the AIC reminding the Agent to reply to the Demand by the deadline provided. On March 4, 2022, the AIC contacted the Agent by way of telephone, the Agent did not answer, a voicemail message was left reminding the Agent to respond to the Demand by the deadline provided. A fourth reminder email was sent by the AIC on March 7, 2022, reminding the Agent to respond by the deadline provide.

On March 9, 2022, the AIC sent the Demand to the Agent via registered mail, with a deadline of March 23, 2022 to respond.

On March 22, 2022, the AIC contacted the Agent by way of telephone, again, however, the Agent did not answer, a voicemail message was left reminding the Agent to respond to the Demand by the deadline provided.

By the date the Report was sent to the Agent, the AIC still had not received a response from the Agent. As such, the Agent's certificates were suspended in accordance with s. 478(2) of the Act.

On April 7, 2022, after receiving the Report, the Agent provided the following response, by way of email:

[...]

I just received a notice in the mail about my case report for my failure to show proof of e&o [sic] insurance coverage. I am so sorry about this! I want to make sure this is straightened out immediately and does not go any further.

I may need to do more, but I have attached my copy of my e and o insurance coverage.

Although I do not want to give you an excuse, I have missed so much mail lately since I have moved two times in the past year and I am only seeing this now. I have not been very active in the industry the past few months as well as I am not going to be renewing my licenses.

I have had e and o coverage all year though. Please don't think I wrote any business without proper coverage.

[...]

In the same email dated April 7, 2022, the Agent provided a copy of current E&O coverage from [P.C.] [redacted].

The licensing profile of the Agent confirms an entry from the Compliance Department to the Director of Licensing advising that the Agent had, as of April 7, 2022, met the requirements of the E&O audit. The Agent did respond, but it was outside of the period set out in the Demand.

On April 18, 2022, the Agent provided the following additional information:

[...]

In terms of my not responding in a timely manner to this is primarily because I have actually moved two times in the past year and I honestly missed the mail. The reason that I did not get the emails provided in the report is because it was actually sent to the email used at an employer I worked for up until February last year. The email that we are corresponding on now has been the email I used for insurance related topics.

I was not planning on renewing my license this year because I have not been very active in the industry the past few months.

I have since submitted my E&O insurance to the council and it has been verified.

I apologize for the inconvenience which I caused.

[...]

Discussion

The Minister of Treasury Board and Finance has delegated its authority to the AIC to investigate complaints against holders, and former holders, of certificates of authority. Pursuant to Ministerial Directive 01/11 to the AIC “[t]he Minister may direct the holder or former holder of a certificate of authority to provide to the Minister within a reasonable period of time specified in the direction any information specified by the Minister relating to the matters in s. 480(1).” Subsection 2 states that “... A person served with a direction ... who has the information **must** provide the information in accordance with the direction” (emphasis added).

The Demand itself is formed under s. 481(2) of the Act.

Section 481 of the Act provides, in part;

Demand for information

481(1) The Minister may direct the holder or former holder of a certificate of authority to provide to the Minister within a reasonable period of time specified in the direction **any information specified by the Minister relating to the matters in section 480(1).**

(2) A person served with a direction under subsection (1) who has the information must provide the information in accordance with the direction.

Section 480 of the Act provides:

Sanctions affecting certificates

480(1) If the Minister is satisfied that the holder or a former holder of a certificate of authority [...]

(b) **has contravened any provision** of this Act **or the regulations** or similar legislation in another jurisdiction or legislation that is a predecessor of this Act or the regulations, [...]

[...] 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.

[...]

[Emphasis added]

Section 780 of the Act stipulates:

Offences

780 A person who contravenes any of the following provisions is guilty of an offence:

[...] (c) in Part 3, sections [...] 481(2)

In this regard, the act of failing to provide information in accordance with s. 481(2) of the Regulation, and the potential violation of s. 481(2) of the Act regarding the Demand prompted the AIC to commence an investigation.

Regulatory offences such as these are strict liability offences. As such, the AIC has the onus to prove that the Demand was properly made upon the Agent, proper in the sense that they meet all the requirements under the Act, and that the Agent did not comply. Once this occurs, the responsibility then shifts to the Agent to establish that due diligence was exercised in meeting the statutory requirement to respond. To substantiate this due diligence defence, the Agent must prove that all reasonable means were taken to avoid making the offence. There is nothing that requires the AIC to prove that the Agent's failure to respond was intentional.

In consideration of the evidence before it, and the appropriateness of the request to provide information under the Regulation, the Council is satisfied that the Demand met the requirements of s. 481(2) of the Act. The Council agreed that the Agent was given a reasonable opportunity to respond to the Demand. Given the fact that the Agent failed to respond when called upon, the Agent has not met the burden of proof to establish the due diligence defence. As such, the Council finds the Agent guilty of violating s. 481(2) of the Act, and also finds that the Agent has subsequently violated s. 480(1)(b) of the Act.

In terms of the applicable sanction, the Act requires that all holders, and former holders, of certificates of authority produce information when called upon. The Council is of the view that the public is not well-served when agents fail to comply with demands, like the Demand made in this case. 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 this case, the Agent did not satisfy the audit by the deadline provided, however, the Agent subsequently satisfied the audit after receiving the Report. In

consideration of all of the evidence, the Council orders that a penalty in the amount of \$500.00 be levied against the Agent.

The civil penalty of \$500.00 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. 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 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: July 20, 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*