

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 Sarah White
(the "Agent")

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

This case involved an allegation pursuant to s. 481 of the Act. Specifically, it is alleged that the Agent failed or refused to provide information and documentation requested by the AIC through a formal Demand for Information (the "Demand"). In so doing, it is alleged that the Agent contravened a provision of the Act under s. 481(2) 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 May 5, 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.

This matter arose due to the Agent's failure to respond to a Demand made in the course of an investigation into a complaint against the Agent.

The Agent was the holder of a General – Level 1 certificate of authority and was licensed periodically, from March 23, 2016 to January 19, 2022 when the Agent resigned from her position.

On December 20, 2021, the AIC investigator sent a request for information to the Agent by way of priority mail and email, with a response deadline of January 10, 2022. Both the email and priority mail request sent to the Agent were returned as "undeliverable".

On December 23, 2021, the AIC investigator sent the request for information to the email address of the Agent, as it appeared on the Former Agency's website, with a response deadline of January 13, 2022.

On January 14, 2022, the AIC investigator sent a formal demand for information (the “Demand”) to the Agent at the Former Agency’s address, with a response deadline of February 1, 2022.

On January 19, 2022, the Former Agency advised the AIC investigator that the Agent had resigned from her position.

On January 20, 2022, the AIC investigator requested updated contact details for the Agent from the Former Agency.

On January 21, 2022, the Former Agency provided updated contact information for the Agent to the AIC investigator.

On January 21, 2022, the AIC sent the Demand to the Agent by priority mail and email, with a response deadline of February 8, 2022.

To date, the Agent has not responded to the Demand.

Discussion

The Minister of Treasury Board and Finance has delegated its authority the AIC to investigate complaints against holders and former holders of certificates of authority. Pursuant to the Minister of Finance 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 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 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, [...]

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, section [...] 481(2).

In this regard, the act of failing to provide a response to the Demand is a potential violation of s. 481(2) of the Act.

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 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, the appropriateness of the request to provide a response to the allegations against the Agent, and the number of attempts made by the AIC Investigator to reach the Agent through various avenues, the Council is satisfied that the Demand met the requirements of s. 481 of the Act. The Council agreed that the Agent was provided a reasonable opportunity to respond to the Demand. The Agent provided no response when called upon, therefore, the Agent does not meet the burden of proof to establish a due diligence defence. As such, the Council finds the Agent guilty of violating s. 481(2) of the Act as alleged, and also finds that the Agent has subsequently violated s. 480(1)(b) of the Act.

In terms of the applicable sanction, the public relies on the AIC to investigate complaints and the Act requires that current and former certificate holders produce information when called upon. The Council is of the view that the public is not well-served when an insurance intermediary simply ignores demands like those made in this situation. 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. Given the facts in their entirety, the Council is of the view that a significant civil penalty is warranted in the circumstances. In this case, the Agent did not respond to the Demand in any way. As such, the Council believes that a significant civil penalty must be assessed to send a strong message to, not only the Agent, but to all licensees. 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 this Decision. In the event 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 General Insurance Council. The motion was duly recorded in the minutes of that meeting.

Dated: July 19, 2022

[Original Signed By]
Janice Sabourin, Chair
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*