

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 Rosemary Emenim
(the "Agent")

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

This case involves allegations pursuant to s. 509(1)(a) of the Act. Specifically, it is alleged that the Agent falsely declared that she was not engaged in another occupation when, in fact, the Agent was engaged in an occupation other than as an insurance agent. In so doing, it is alleged that the Agent made false or misleading statements as contemplated in s. 509(1)(a) of the Act when the Agent reported no other business or occupation, and subsequently violated s. 480(1)(b).

Facts and Evidence

This case proceeded by way of written Report to Council dated June 30, 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 Agent is the holder of both life and accident and sickness (A&S) certificates of authority since April 27, 2021.

This matter arose in response to the Agent's licensing applications to renew life and A&S certificates of authority dated May 11, 2022. In completing the applications, the Agent disclosed an occupation other than as an insurance agent when responding to the question question, "*Since the date of your last application, have you engaged in or are you currently engaged in any business or occupation other than the insurance business?*"

On April 26, 2021, the Agent submitted licensing applications to obtain life and A&S certificates of authority. When completing the applications, the Agent answered "No" to the question "*Do you currently have any other occupation or employment other than as an insurance agent?*"

On May 3, 2022, the Agent submitted licensing applications to renew life and A&S certificates of authority. When

completing the applications, the Agent answered “No” to the question “*Since the date of your last application, have you engaged in or are you currently engaged in any business or occupation other than the insurance business?*”

On the applications dated April 26, 2021 and May 3, 2021, the Agent declared an occupation other than as an insurance agent in the *Employment History* section of the application.

When completing applications, all insurance intermediaries make the following declarations:

I certify that the foregoing information is true and I agree that by signing the application I accept the responsibility for these answers and undertakings

I understand that a false declaration in this application could lead to the suspension or revocation of the certificate and/or the levy of a civil penalty under the provisions of the applicable regulation

On June 17, 2022, the AIC investigator sent a request for information (the “Request”) to the Agent by way of email and priority mail. The Request stated in part:

[...]

This matter was referred to the Compliance Department for investigation. On your May 11, 2022 renewal applications for your Life and Accident and Sickness (“A&S”) certificates of authority, you declared involvement in an occupation or business other than insurance. Based on the information you provided to the Licensing Department, you have been engaged in this other occupation since September 4, 2018.

To assist in my investigation, please provide the following information [...]:

1. Provide an explanation as to why your other occupation was not disclosed on the following applications/renewals:

- Your original application for an A&S certificate of authority, dated April 23, 2021;
- Your original application for a Life certificate of authority, dated April 26, 2021;
- Your renewal application for your A&S certificate of authority, dated May 3, 2021; and
- Your renewal application for your Life certificate of authority, dated May 3, 2021.

[...]

On June 18, 2022, the Agent responded to the AIC investigator with the following information:

[...]

I do not remember be [sic] asked to provide the information about my outside business [...]

During this renewal when I clicked YES to the question about the outside business, the information was already there meaning the information was provided initially but I was not asked to submit any further information.

[...]

[Emphasis added in original document]

On July 5, 2022, the Agent provided the following additional information, by way of email:

[...]

I do not understand where I went wrong [...]. With my initial application, I do not remember seeing the question on outside business and with the renewal, I answered the question concerning outside business. [...]

By way of email dated the same, the Agent provided a further explanation:

[...] After going through your report, I apologize for answering NO to the questions in April 2021;

1. "Do you currently have any other occupation or employment other than as an insurance agent?"
 2. "Are you currently the holder of any other certificate, license or registration to deal with the public?"
- And in May 2021

3. "Since the date of your last application, have you engaged in or are you currently engaged in any business or occupation other than the insurance business?"

April 2021 was my first experience applying for insurance licenses and did not understand [sic] fully then and I am much better. I assumed filling in my employment history will answer the questions.

Under the employment history, I also indicated working with [other occupation] [redacted] from January 12, 2018 and the TO was empty because must [sic] forms I had come a crossed [sic] usually suggest leaving it blank if I am presently still working with the company, hence it was empty. This was an unintentional mistake and I apologize again.

[...]

[Emphasis added in original document]

Discussion

Section 509(1)(a) of the Act provides that "[n]o insurer, insurance agent or adjuster may make a false or misleading statement, representation or advertisement." Offences such as those considered under s. 509(1)(a) of the Act are strict liability offences. As such, the AIC only has the onus to prove that the Agent's statements relating to her other occupation were false. Once this occurs, the onus then shifts to the Agent to establish a defence of due diligence. To establish this, the Agent must prove that all reasonable measures were taken to avoid making the false statement.

The Council considered all the evidence before it, in particular the Agent's explanation that "*I assumed filling in my employment history will answer the questions.*" However, as insurance agents are working for and completing applications on behalf of clients, it is not unreasonable to expect that a high standard of due diligence be practiced by insurance agents when completing applications, be that their own applications or client applications. Understandably, clients can experience severe difficulties when applications are incorrectly completed on their behalf. Therefore, the Council finds that the Agent made a false or misleading statement as contemplated by s. 509(1)(a) of the Act and therefore has breached s. 480(1)(b) of the Act.

As to the appropriate sanction for this conduct, the Council has the discretion to levy a civil penalty in the amount of \$1,000.00 per demonstrated offence pursuant to s. 480(1)(b) of the Act and 13(1)(b) of the *Certificate Expiry, Penalties and Fees Regulation*, AR 125/2001. The Council considered that the Agent not only made false or misleading statements, but falsely made these statements on four (4) applications for certificates of authority. As such, the Council orders a civil penalty, in the amount of \$250.00 per application, resulting in a total civil penalty of one thousand dollars (\$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 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.

Date: October 5, 2022

[Original Signed By]
Andy Freeman, 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*