

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 Deepinder Dhillon
(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 September 19, 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 August 2022, which sought to verify that E&O coverage was in place, following the expiration date noted in the licensees' 2021/2022 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 both Life and Accident and Sickness ("A&S") certificates of authority during the period of May 14, 1996, to September 13, 2022, when the Agent's certificates of authority were suspended due the failure to provide current E&O coverage in accordance with s. 478(2) of the Act.

On August 9, 2022, the AIC emailed the Demand to the Agent which provided a deadline of September 9, 2022, to produce the required proof of E&O coverage.

On August 23, 2022, an email was sent by the AIC reminding the Agent to reply to the Demand by the deadline provided.

On August 23, 2022, the Agent provided the following information to the AIC, by way of email:

Hi I [sic] am taking retirement and in the process of transferring my business to another advisor which will be completed in a week or two [sic]
[...]

By way of email dated the same, the AIC responded to the Agent with the following information:

[...]
Please note you are still required to respond to the Demand with a copy of your E&O policy documents.

Please provide by the deadline indicated in the original Demand sent to you.
[...]

On September 2, 2022, an email was sent by the AIC reminding the Agent to reply to the Demand by the deadline provided.

On September 8, 2022, the AIC sent a final reminder email to the Agent to respond to the Demand by the deadline provided.

By way of email dated the same, the Agent responded to the AIC with the following information:

I am retired and has [sic] transferred my book of business to another advisor [sic]
[...]

On September 9, 2022, the AIC responded to the Agent with the following request, by way of email:

[...]
As previously disclosed, you were licensed at the time the Demand was sent and still hold current licenses.

You are required to respond to the Demand. Please send a copy of your E&O policy documents by end of day today.
[...]

By way of email dated the same, the Agent provided the following information:

Request has gone to IA to terminate license three weeks ago might [sic] be done this week [sic]
[...]

By way of email dated the same, September 9, 2022, the AIC reminded the Agent of the following:

That does not remove your requirement to respond to the Demand.

Failing to provide your E&O policy documents may lead to disciplinary action.
[...]

By way of email dated the same, the Agent provided the AIC with a copy of an email correspondence, dated August 19, 2022, (the "Email Correspondence"). The Email Correspondence stated, in part:

[...]
Transfers can take up to 2 to 3 weeks sometimes more. All the forms were sent to the transfer team yesterday to send to each carrier.
[...]

By way of email dated September 9, 2022, the AIC responded to the Agent with the following information:

Please refer back to the previous emails.

You are still required to respond to the Demand and provide your E&O policy documents.
[...]

By the date the Report was sent to the Agent, the AIC still had not received proof of E&O coverage as requested in the original Demand. As such, the Agent's certificates of authority were suspended in accordance with s. 478(2) of the Act.

On September 20, 2022, after receiving the Report, the Agent responded with the following:

[...] I am little [sic] confused I [sic] am sending you the copy of E&O is [sic] this what you are looking for [sic]
[...]

In the same email dated September 20, 2022, the Agent provided an *Insurance Certificate* from [I.I.C.] [redacted] for *Professional Liability Insurance (Errors and Omissions)*, with a policy period dated September 6, 2021 to September 6, 2022.

On September 21, 2022, the AIC requested the Agent provide the following information, by way of email:

[...]
Please provide your current in force E&O policy documents from Sept 6, 2022 to present as requested in the original Demand.
[...]

By way of email dated the same, the Agent responded to the AIC with the following information:

[...] business transfer forms and license cancellation was sent HO [sic] on the 24 of Aug I [sic] am not licensed any more [sic] and business has been transferred to another advisor I [sic] am not in business anymore and I didn't renew E & O as I don't have any business [sic]
[...]

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 and failed to secure proper E&O coverage whilst holding active certificates of authority. In consideration of all of the evidence, the Council orders that a penalty in the amount of \$750.00 be levied against the Agent.

The civil penalty of \$750.00 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: January 11, 2023

[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*