

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 Joseph F Murdoch Matheson
(the "Agent")

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

This case involved an alleged violation pursuant to s. 465(1) of the Act. Specifically, that the Agent failed to maintain his Errors and Omissions ("E&O") insurance coverage. 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 January 30, 2023 (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 has been the holder of Life and Accident and Sickness ("A&S") certificates of authority since October 18, 2017.

On September 29, 2022, the AIC received an email from [E.L.I.C.] [redacted] (hereinafter the "Complainant"). The Complainant provided a Life Agent Reporting Form and a letter dated September 29, 2022, which stated in part:

[...]

In June 2022, [the Complainant] was informed [...] that the advisor did not have errors & omission (E&O) insurance coverage from April 2021 to March 2022. [...]

The advisor had previously provided [the Complainant] with confirmation of E&O insurance coverage for the period April 2021 to April 2022, however, Mr. Matheson later informed [...] that his E&O coverage was terminated in error by his sponsor on April 7, 2021, which he was not made aware of until April 2022. Mr. Matheson has since obtained E&O coverage for the period of April 2022 to April 2023.

[...]

In the same email, the Complainant provided an email correspondence dated May 27, 2022, from the Agent to an MGA representative, which stated:

[...]

- Confirmed, I did not have E&O Coverage [sic] from April 2021 to March 2022 [sic]
-E&O coverage was terminated in error by my sponsor company [...] on April 7th 2021, as I was in process [sic] of being contracted with [C.L.] [redacted] (the “Sponsoring Company”) at the time. I was not made aware of this change, as I never received the mailed letter, nor did I receive the email documentation, as I had lost access to my on-file email address that they had- ([Email Address] [redacted]). I was therefore not made aware of the issue until April 2022. At that point, I began working with a service support associate ([...]) to communicate with contracts &licensing [sic] at [the Sponsoring Company]. I ended up communicating with [...], the assistant manager of contracts& [sic] licensing at [the Sponsoring Company] to request from [M.C.L.] [redacted] (the “E&O Provider”) to reinstate this coverage. [The E&O Provider] has one carrier for [the Sponsoring Company] sponsored advisors- [W.I.C.] [redacted] (the “E&O Underwriter”), who declined the request to reinstate coverage after lengthy discussion [sic]. [...]

[Emphasis added in original document]

On October 3, 2022, the AIC investigator sent a Request for Information via email to the Agent, for the following information:

[...]

The AIC has received notification from [the Complainant] that you did not have Errors & Omissions (E&O) insurance coverage between April 2021 to April 2022. To assist in my investigation, please provide the following information [...]:

1. A detailed timeline of events, copies of correspondence/documentation that made you believe you had the appropriate coverage;
2. A copy of your current E&O policy documents;
3. Any other information or documents you feel may be relevant.

[...]

On October 12, 2022, the AIC investigator sent an email to the Agent, reminding him to respond to the Request for information by the deadline provided, that being October 18, 2022.

On October 14, 2022, the Agent provided the AIC investigator with the following information:

[...]

From May 2021 to April 202 [sic], I was without E&O coverage, due to a faulty error by [the Sponsoring Company], [...].

E&O coverage was terminated in error by my sponsor company [...] on April 7th 2021, as I was in process [sic] of being contracted with [the Sponsoring Company] at the time. I was not made aware of this change, as I never received the mailed letter, nor did I receive the email documentation, as I had lost access to my on-file email address that they had-

[Email Address?] [redacted]. I was therefore not made aware of the issue until April 2022. At that point, I began working with a service support associate from [the Sponsoring Company] ([...]) to communicate with contracts &licensing [sic] at [the Sponsoring Company]. I ended up communicating with [...], the assistant manager of contracts& [sic] licensing at [the Sponsoring Company] to request from [the E&O Provider] to reinstate this coverage. [The E&O Provider] has one carrier for [the Sponsoring Company] sponsored advisors- [the E&O Underwriter], who declined the request to reinstate coverage after lengthy discussion [sic]. [...]

From: [The Sponsoring Company]
Sent: May 4, 2022 8:04 AM
To: [Agent]

[...], I was able to obtain some additional information regarding the termination of your E&O coverage in April 2021.

When your contract through [redacted] was terminated in 2021, your E&O coverage through the [Sponsoring Company] E&O Program was terminated. It would appear that when [the E&O Provider] was notified of the termination of your coverage, you were in the process of obtaining a contract with [the Sponsoring Company] through the MGA, [redacted]. At the time of termination of your coverage, [the E&O Provider] sent you a letter [...] and you were refunded the applicable premium paid.

As advised, I contacted [the E&O Provider] and inquired about the possibility of reinstating your E&O coverage from April 1st 2021. Unfortunately, [the E&O Underwriter] declined the request to reinstate your coverage. [...]

The Agent then stated:

The fault they committed, was due to the fact that my E&O coverage could be maintained as long as I either a. Had a contract with [the Sponsoring Company], or b. Was in process [sic] of gaining a contract with [the Sponsoring Company]. During that window, I never failed those two obligations. The correspondence they sent was never received, either by mail (due to my old work email being deleted), or by letter, having never been received at my old address.

[...]

In the same email, the Agent provided the AIC investigator with an E&O policy with a policy coverage period of April 1, 2022 to April 1, 2023.

On October 21, 2022, the Agent provided the AIC investigator the following documents, by way of email:

1. A letter from the E&O Provider dated April 7, 2021, confirming the cancellation of the Agent's E&O insurance;
2. A Certificate Cancellation Endorsement from the E&O Underwriter, effective April 1, 2021; and
3. A Certificate of E&O Insurance from the E&O Underwriter, with a policy coverage period of April 1, 2022 to April 1, 2023.

On November 29, 2022, the AIC investigator sent a Request for Information to the Sponsoring Company, for the following information:

[...]

1. Notice to insurer of cancellation;
2. Notice to advisor of cancellation, (including how, when and any delivery issues);
3. A copy of E&O policy documents issued prior to cancellation;
4. Any other information or documents you feel may be relevant.

[...]

On December 13, 2022, the Sponsoring Company provided the AIC investigator with the following documents:

1. A letter to the Agent from the E&O Provider, dated March 30, 2020, providing confirmation of E&O insurance with a policy coverage period of April 1, 2020 to April 1, 2021;
2. A Certificate of Insurance from the E&O Underwriter for the Sponsoring Company's E&O Insurance Program; and
3. A letter to the Agent from the E&O Provider, dated April 7, 2021, notifying the Agent of the cancellation of his E&O insurance as of April 1, 2021;
4. A Certificate Cancellation Endorsement from the E&O Underwriter; and
5. A letter to the Agent from the Sponsoring Company (the "Sponsor Cancellation Letter"), dated April 14, 2021.

The Sponsor Cancellation Letter stated, in part:

[...]

We have been made aware that you have terminated your Sales Agreement, [...]. Your Sales Agreement terminated officially on March 31, 2021. All licenses sponsored by [the Sponsoring Company] [...] have been terminated as of your termination date. Your errors and omissions insurance provided through [the Sponsoring Company] sponsored errors and omissions plan is also terminated.

[...]

On January 4, 2022, the AIC investigator sent a Request for Information to the E&O Provider, requesting the following information:

[...]

1. Notice to insurer of cancellation;
2. Notice to advisor of cancellation, (including how, when and any delivery issues);
3. A copy of E&O policy documents issued prior to cancellation;
4. Any other information or documents you feel may be relevant.

[...]

On January 11, 2023, the E&O Provider provided the AIC investigator with the following documents:

1. A list naming the Agent as a terminated advisor with an effective date of March 31, 2021;
2. A copy of the E&O Cancellation Letter dated April 7, 2021;
3. A copy of the Certificate Cancellation Endorsement, effective April 1, 2021;
4. An email from the Sponsoring Company, dated April 4, 2022 confirming the Agent's resignation; and

5. An email from the E&O Provider to the Sponsoring Company (the “E&O Sponsor Email”), dated April 1, 2022.

Discussion

The Council contemplated s. 465(1) of the Act, which provides that “*Every business and individual that holds a certificate of authority must meet the requirements respecting financial guarantees set out in the regulations.*” (emphasis added). This offence is strict liability in nature. Under a strict liability offence, the AIC has the onus to prove that the Agent failed to maintain his E&O insurance coverage. Once this occurs, the onus then shifts to the Agent to establish a due diligence defence. The Agent must prove that all reasonable means were taken to avoid making the offence. There is no requirement on the AIC to prove the Agent’s intent.

In consideration of the evidence before it, the Council is satisfied that the Agent failed to maintain his E&O insurance coverage once it was terminated. The Council considered the circumstances in which the termination of his E&O insurance occurred and the Agent’s explanation in which he stated, “*I was not made aware of this change, as I never received the mailed letter, nor did I receive the email documentation, as I had lost access to my on-file email address that they had [...]*”. However, the Act specifically states, “*Every [...] individual that **holds** a certificate of authority [...]*”. Given that the Agent held both Life and A&S certificates of authority, it is the responsibility of the Agent to ensure that he held valid and proper E&O insurance. The Agent has not met the burden of proof to establish a due diligence defence, specifically because the Agent received a reimbursement once the policy had been terminated which is a clear indication that a policy is no longer in place. As such, the Council finds the Agent guilty of violating s. 465(1) and has subsequently violated s. 480(1)(b) of the Act.

In terms of the applicable sanction, the Act requires that all holders of certificates of authority have active E&O insurance coverage. 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 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 the 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.

Dated: March 17, 2023

[Original Signed By]
Wilma Slenders, Vice-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*