

A
ALBERTA INSURANCE COUNCIL
(the “AIC”)

In the Matter of the *Insurance Act*, R.S.A. 2000 Chapter I-3
(the “Act”)

And

Think Insurance Services Inc.
(the “Agency”)

And

As represented by
Parminder Thind
(Designated Representative (“DR”))

DECISION
OF
The Life Insurance Council
(the “Council”)

This case involved an alleged violation of s. 481(2) of the Act. Specifically, that the Agency, through the DR, 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 Agency 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 18, 2023 (the “Report”). The Report was forwarded to the Agency for review, and to allow the Agency 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 November 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 Agency was selected as an auditee and, in this instance, was asked to provide proof of current E&O coverage.

The Agency held both Life and Accident and Sickness (“A&S”) certificates of authority during the period of December 3, 2014, to January 13, 2023, when the Agency’s certificates of authority were suspended due to the Agency’s failure to provide current E&O coverage in accordance with s. 478(2) of the Act.

On November 10, 2022, the AIC sent the Demand to the Agency, via registered mail and email, which provided a deadline of December 12, 2022, to produce the required proof of E&O coverage.

On November 28, 2022, the AIC sent a reminder to the Agency, via email to respond to the Demand by the deadline provided.

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

On January 23, 2023, and after receiving the Report, the Agency, provided the following information to the AIC:

[...]
We forgot to upload on portal E&O coverage . [sic]

I had never had any gap or interruption in my E&O coverage. [sic]
[...]

In the same email, the Agency, provided a Certificate of Insurance from the E&O Provider naming the DR as the insured.

On January 24, 2023, the AIC investigator sent an email to the Agency, with the following information:

[...]
Please note the E&O policy documents you have provided do not meet the regulatory requirements.

Think Insurance Services Inc. must be listed as a named insured. Please provide policy documents showing Think Insurance Services Inc [sic] as a named insured.
[...]

By way of email dated the same, the Agency, provided the AIC investigator with the following information:

[...]
This email is in regards to request [sic] regarding maintaining the status of [...] licenses for Think Insurance Services Inc. in Alberta due to the requirement of my 2022 Errors & Omissions (E&O) coverage. With due respect, I would like to share that my E&O coverage is always up to date and maintained. There is no any [sic] gap or interruption in my E&O coverage. I was unable to update it there because I didn’t receive any such requirement as my e-mail address used there was not working.

[...]

I am working full-time in insurance industry from long [sic] time for 11+ years, this is my first and last time of such scenario. Could you please accept my request of maintaining the status of my above-mentioned license? I'll do the needful.

Please accept my sincere apologies for this inconvenience. Regardless my e-mail was not working unfortunately, I want to take the responsibility for this.

[...]

In the same email, the Agency again provided the AIC with a Certificate of Insurance naming the DR as the insured.

On January 25, 2023, the AIC investigator responded to the Agency:

[...]

Please note we cannot lift the suspension as your E&O policy does not meet the regulatory requirements.

[...]

What is on the certificate(s) of authority must match the named insured on an effective errors & omissions insurance policy, to be considered in compliance with the regulation. You must have a policy that has Think Insurance Services Inc. as the named insured. The suspension will remain as is, until we receive documents showing Think Insurance Services Inc. meets the regulatory requirements.

[...]

[Emphasis added in original document]

On January 27, 2023, the Agency, provided the AIC investigator with a Corporate E&O Policy, with a policy coverage period of January 28, 2023 to January 28, 2025.

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 Agency, proper in the sense that they meet all the requirements under the Act, and that the Agency did not comply. Once this occurs, the responsibility then shifts to the Agency to establish that due diligence was exercised in meeting the statutory requirement to respond. To substantiate this due diligence defence, the Agency must prove that all reasonable means were taken to avoid making the offence. There is nothing that requires the AIC to prove that the Agency'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 Agency was given a reasonable opportunity to respond to the Demand. Given

the fact that the Agency failed to respond when called upon, the Agency has not met the burden of proof to establish the due diligence defence. As such, the Council finds the Agency guilty of violating s. 481(2) of the Act, and also finds that the Agency 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 an Agency fails 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 Agency did not satisfy the audit by the deadline provided, however, did provide a Corporate E&O policy. In consideration of all of the evidence, the Council orders that a penalty in the amount of \$500.00 be levied against the Agency.

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 Agency has active certificates of authority at the time that the civil penalty becomes due, and that civil penalty has not been duly satisfied, the Agency'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 Agency 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 22, 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*