

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 Evelyn De Jesus
(the "Agent")

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

This case involves an allegation pursuant to s. 480(1)(a) or, in the alternative, s. 509(1)(a) of the Act. Specifically, it is alleged that the Agent misrepresented policies to clients as insurance through an employer when, in fact, the policies were personal policies. As such, it is alleged that the Agent acted contrary to s. 480(1)(a) and is guilty of fraud, deceit, dishonesty, untrustworthiness, and/or misrepresentation. In the alternative, it is alleged that the Agent made false or misleading statements, representations or advertisements in contravention of s. 509(1)(a) of the Act 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 January 13, 2023 (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. The Agent did not respond.

The Agent held Life and Accident and Sickness ("A&S") insurance certificates of authority, periodically, between September 9, 2008 and February 1, 2022, when the Agent was terminated. The Agent held Life and A&S Designated Representative certificates of authority, periodically, between March 2, 2012 and April 12, 2016.

On February 3, 2022, the AIC received a termination notice from [L.C.F.S.I.C.] [redacted] (hereinafter referred to as the "Former Agency"). The termination notice stated the following:

[...]
Please be advised that Evelyn has been **Terminated with Cause**.
[...]

In the same email, the Former Agency provided a copy of the termination letter, dated January 28, 2022, sent to the Agent, which provided in part:

[...]

This letter is to advise you that [Former Agency] and [...] are terminating both of your Agent Contracts, effective January 28, 2022.

As you are aware, an investigation was conducted into allegations related to your market conduct and specifically the relationship between our clients and the company [C.S.P.] [redacted] (hereinafter “Third-Party Employer”) [...]. During the course of the investigation, we have carefully analyzed all the information collected, including your responses during the teleconference meeting dated January 5, 2022, the information the [Former Agency] obtained from the clients as well as the [Former Agency]’s review of your production.

Based on the evidence we have collected, it is our conclusion that you mislead [sic] our clients regarding the circumstances of the payment for their insurance policies. In our investigation, it was noted that you made arrangements with our clients to reimburse the premiums they paid to the [Former Agency] as long as they were employed with [the Third-Party Employer]. It is our conclusion that you showed a clear pattern of misrepresentation to the [Former Agency] by failing to follow our processes in place to manage these types of payment arrangements and knowingly misled the client regarding the nature of these payment arrangements by providing, on the application, personal banking information from the client.

The conduct described above is in direct violation of [the Former Agency] guidelines, the Agent Agreement and/or Code of Conduct for agents. [...]

On February 16, 2022, the AIC investigator requested the following information from the Former Agency:

[...] Please provide the following information and documents so I can properly assess the matter:

- A copy of the findings of your organization’s internal investigation
- A list of affected clients with policy numbers
- Information about the compensation Ms. De Jesus received for the affected policies (for example, whether she was paid by salary or commission)
- Any other information you relied on to make the decision to terminate her employment. [...]

On February 23, 2022, the Former Agency provided the AIC investigator with the following information:

[...]

I have attached the requested information regarding the investigation and subsequent termination of Evelyn De Jesus.

- A copy of the findings of your organization’s internal investigation: A timeline document outlining the timing of the complaints and our investigation.
- A list of affected clients with policy numbers Attached in Zip file are a listing of policyholder complaints received by Client Services and also a listing provided by the agent of policies affected by the misrepresentation.
- Information about the compensation Ms. De Jesus received for the affected policies (for example, whether she was paid by salary or commission) [...]

In the same email of February 23, 2022, the Former Agency provided a client list document, which provided the following information:

Policy #	Client name	JIRA	Reported Date	Issue	Recording
*****828 [redacted]	[J.O.L] [redacted] (hereinafter “Client 1”)	[...]	17-Dec-21		[...]

*****502 [redacted]	[P.J.R.L.] [redacted] (hereinafter "Client 2")	[...]	17-Dec-21	[Client 2] reported that the reason why [Client 2] is cancelling, is because the agent told [Client 2] to sign up	[...]
[...]	[...]	[...]	[...]	[...]	[...]
*****687 [redacted] *****906 [redacted]	[R.M.G.] [redacted] (hereinafter "Client 3")	[...]	06-Jan-22	[Client 3 Spouse] called to cancel the policies. [Client 3 Spouse] mentioned that agent Evelyn De Jesus signed [Client 3] as a snow plow truck driver, saying that [Agent] is the owner of that company. [Agent] paid in the beginning but stop paying in Nov. Received cancellation form on 2021/01/07 Comment: "The company tho [sic] applied in the insurance is no longer reimbursing [sic] us for the payment of the insurance."	[...]
[...]	[...]	[...]	[...]	[...]	[...]
*****981 [redacted]	[R.A.A.] [redacted] (hereinafter "Client 4")	[...]	07-Dec-21	Cancellation form received. Comment: We were told that company should be the one paying but payment it is taken out of my bank account. Reinst. form received	[...]
[...]	[...]	[...]	[...]	[...]	[...]
*****789	[A.N.T.] [redacted] (hereinafter "Client 5")	[...]	10-Jan-22	Received form on Jan 10, 2022 Comment: "the company who applied me for insurance is not reimbursing the payment."	[...]

[Emphasis added in original document]

In the same email, the Former Agency also provided a timeline of the internal investigation (hereinafter the "Internal Timeline"), which provided in part:

Evelyn De Jesus: Timeline

12/17/2021:

Received email from client services regarding a call from a client of Evelyn's.

[Client 2] *****502 [redacted] and [Client 1] *****828 [redacted]

Comments to Client Services: Clients had an arrangement with agent (Evelyn De Jesus) that they would pay the premium through bank account and Evelyn would reimburse the amount paid with e transfer from her to them. The e transfers have been late so they want to cancel their policies.

12/20/2021:

I contacted the client to discuss their request to cancel the policy. [Client 2] confirmed to me the same information and advised that they do not have enough money to cover the payments unless they are reimbursed by the agent. This has been the arrangement since the issue of the policy. I asked to client to confirm our conversation via email for my records.

12/20/2021:

Email sent to client to confirm conversation. To date, no response.

12/23/2021:

Called 8 clients who had all cancelled policies to confirm the reasons for the cancellations.

[...]			
*****981 [redacted]	[Client 4]	[Third-Party Company] will be paying the premiums	Copy of cancellation request that indicates agent reimbursing premium

12/23/2021:

[...]

Conversation with [Client 4]: Client advised that [Client 4] was speaking with Evelyn and [Client 4] no longer wishes to cancel [Client 4's] policy. Evelyn has assured [Client 4] that the premiums will be reimbursed in the new year. Client has submitted an application for reinstatement.

[...]

1/5/2022:

Video meeting with Evelyn and Sales Leaders. (Meeting was recorded)

1. Evelyn confirmed that [...] she did advise the clients that if they were employed with [the Third-Party Employer] they would receive insurance that would be paid for by the company.
2. She confirmed that the personal banking information would be recorded on the application and once the payments were withdrawn, the company would reimburse, through EFT, the payments made by the client.
3. She did not disclose this method of payment to the insurer and in fact knew about the internal business process in place to handle this type of payment situation but did not follow the guidelines.
4. [Third-Party Employer] was not able to provide jobs for the candidates and in fact there was no work [...]
5. Clients were not being reimbursed for the premiums being drafted and were calling into our company with complaints about how this was managed.
6. There was no mention of [Third-Party Employer] as the payor on any of the applications submitted for processing.
7. We requested a listing of all candidates who were sold policies in this manner.
8. Needed to complete our investigation so we suspended the agent from activity for 30 days while completing our investigation.

Investigation Findings:

1. Investigate 46 clients on listing provided by Evelyn De Jesus
2. Out of 46 clients, 45 clients had cancelled their policies.
3. [...]
4. Failure to follow the prescribed business practice for clients whose policy premiums are being paid by the company.
5. Clients were not aware that by providing the banking information on the application, they would be ultimately responsible for making the payments to the company.
6. The Company was unaware of these payment arrangements and would not condone an agent reimbursing our clients for payment of their insurance policies.
7. Agent misled both the client and the company which discredited the Company to the majority of the clients.

8. Was compensated in good faith on the submission of the policies and as a result of misleading the clients, the agent has incurred a significant debt with the company which may never be recovered.

1/28/2022:

Notice of termination to Evelyn De Jesus effective immediately.

On April 13, 2022, the AIC investigator requested further information from the Former Agency as follows:

[...] If possible please provide the following additional documents/information on this matter:

- A copy of the January 5, 2022 video meeting (or transcript) with Evelyn de Jesus.
- Copies of the application forms, and the cancellation requests for each affected policy.
- Any additional written client correspondence about this matter. [...]

On April 28, 2022, the Former Agency provided the AIC investigator the following additional information:

[...]

- A copy of the January 5, 2022 video meeting (or transcript) with Evelyn de Jesus. Will be forwarded separately.
- Copies of the application forms, and the cancellation requests for each affected policy. Will be sent by email.
- Any additional written client correspondence about this matter. The majority of the written correspondence is the cancellation forms. In many cases, these forms were followed up with phone calls to the clients for additional information. [...]

By way of email, also dated April 28, 2022, the Former Agency provided the AIC investigator with client policy applications and cancellation forms. These application and cancellation forms provided the following information:

Client Name	Application Date	Banking Details Provided	Policy Number	Reason for Cancellation	Cancellation Date
[Client 4]	April 11, 2021	[Client 4] details provided	*****981 [redacted]	We were told that company should be the one paying but (payment) it is taken out of my bank account.	December 7, 2021
[R.M.] [redacted] (hereinafter "Client 6")	June 14, 2021	[Client 6] details provided	*****962 [redacted] *****963 [redacted]	Company no longer pay my insurance	January 12, 2022
[Client 3]	April 2, 2021	[Client 3] details provided	*****687 [redacted] *****906 [redacted]	The company who applied in the insurance is no longer reimbursing us for the payment of the insurance.	January 7, 2022
[V.S.S.] [redacted] (hereinafter "Client 7")	July 5, 2021	[Client 7] details provided	*****435 [redacted] *****406 [redacted]	We are policy holder of this company. Unfortunately wanted to cancelled [sic] it as we are scammed by our agent named Evelyn De Jesus and	January 20, 2022

				hoping our money will be back [...]	
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On May 5, 2022, the Former Agency provided the AIC investigator with additional client policy applications and cancellation forms. These policy applications and cancellation forms provided the following information:

Client Name	Application Date	Banking Details Provided	Policy Number	Reason for Cancellation	Cancellation Date
[A.R.D.] [redacted] (hereinafter "Client 8")	April 18, 2021	[Client 8] details provided	*****008	Cansel [sic] my policy asap was not hire [sic] by employer [sic] And [sic] was paying on my My [sic] own money since the day i [sic] signed. Was supposed to be my [Client 8 Spouse] policy But [sic] instead i [sic] have 2 policy and was never offered a job as Agreed [sic] upon.	January 6, 2022
[A.A.] [redacted] (hereinafter "Client 9")	April 11, 2021	[Client 9] details provided	*****983 [redacted]	It's (payment) being taken out of my account instead of the company's.	December 7, 2021
[Client 5]	March 26, 2021	[Client 5 Spouse] details provided	*****789 [redacted]	the [sic] company who applied me for insurance is not reimbursing the payment.	January 10, 2022
[F.S.P.] [redacted] (hereinafter "Client 10")	April 7, 2021	[Client 10] details provided	*****940 [redacted] *****941 [redacted]	No longer in the company	December 13, 2021
[G.B.] [redacted] (hereinafter "Client 11")	March 7, 2021	[Client 11] details provided	*****467 [redacted] *****464 [redacted]	[...] The company I work at [Third-Party Employer] Has shut down operations on December 2021. With this I'm requesting your dear company to please cancel my following insurance policies immediately. [...] In line with this, [Third-Party Employer] has stop [sic] paying back our insurance premium since December 2021.	January 18, 2022

				Now I would like to request for a refund [...] – [Former Agency] has taken out this amount on Dec. 3,2021 [sic] on my bank account. [Third-Party Employer] has stopped paying back our insurance premium while [Former Agency] continues to take out money on my bank account.Hence [sic] the cancelation and refund. [...]	
[Client 2]	March 29, 2021	[Client 2] details provided	*****802 [redacted]	[...] I [Client 2] and [Client 1], would like to cancel our insurance policy. Effective today. Also, I would like to ask your good company to have a refund that was previously deducted from my account [...], last January 06,2022 [sic]. We were not fully inform [sic]/aware that there was another policy for both of us. [...] I am one of the victims of Evelyn De Jesus scam ([Third-Party employer]); [...]	January 13, 2022
[Client 1]	March 29, 2021	[Client 1 Spouse's] details provided	*****035	[...] I [Client 2] and [Client 1], would like to cancel our insurance policy. Effective today. Also, I would like to ask your good company to have a refund that was previously deducted from my account [...], last January 06,2022 [sic]. We were not fully inform [sic]/aware that there was another policy for both of us.	January 13, 2022

				[...] I am one of the victims of Evelyn De Jesus scam ([Third-Party employer]); [...]	
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On May 6, 2022, the Former Agency provided the AIC investigator a copy of the recorded investigation meeting (hereinafter referred to as the “Recording”) between the Former Agency and the Agent.

Subsequent to receiving the Recording from the Former Agency, the AIC investigator created a typed transcript of the Recording. The Recording stated in part:

[...]

Former Agency: [...] We uh, just to let you know that we have had some customers call and, uh, we have a couple of concerns that I just have to tape the conversation so we can make sure we help the client our [sic] quite a bit. Um. Were you aware that a lot of your clients are calling with a major concern?

Former Agent: Yes.

Former Agency: You do? You are aware?

Former Agent: Yup.

Former Agency: Ok, what are they telling you?

Former Agent: Cuz we – you know my [Third-Party Employer] – I...I helped my [Former Agent’s Child] [redacted] write for the company and we are having issue on the payroll. So, since I write them up on the policy and then making sure that they’re – they uh – they uh – you know they’re gonna get work from [Third-Party Employer] and then now they don’t get paid because of the payroll issue. So, they’re asking me to pay them for the payroll as well. So.

[...]

Former Agency: Ok, so you’re – so you’re – you’re with – so you’re helping [Third-Party Employer] that these, uh, clients are – they’re working for the [Third-Party Employer]?

Former Agent: Yeah. And they ran out of – we ran out of uh...What had happened was the service. They are not happy with the service. So, people got refund on whatever they paid on the – on the service. So, we – they ran out of the capital. Um...They ran out of the capital and then so they – they – we are unable to pay the payroll. So, now people we signed up for as a seasonal worker and subcontractors – um – subcontracts – uh – we are unable to pay, so they are cancelling. Also, it affects the insurance that I wrote for them.

Former Agency: Ok. And did you, uh – you were paying this through the – you were paying the insurance for these through the payroll of the company?

Former Agent: Yes. Yes.

Former Agency: Ok. Or reimbursing them?

Former Agent: Payroll of the company, yes. But right now, there’s no money. So, we are unable to pay the payroll. So, we are unable to pay the insurance – the together with the insurance as well as on the payroll. So.

[...]

Former Agent: So, we are able – unable to deduct things (inaudible) on their payroll so they're – of course they're gonna get mad.

Former Agency: Ok. So, you're deducting the premiums from the payroll? Or –

Former Agent: No. we're – we're adding payroll – payroll plus premium, on their payroll. Premium, plus pay. Ok? Premiums plus pay. That's the net pay. But, since there is no payment, they ended up not getting anything.

[...]

Former Agency: Ok. So, you – you are paying them like, to work for the [Third-Party Employer] and insuring them at the same time as part of their compensation?

Former Agent: Yeah.

Former Agency: Ok. So, we have – we have a couple of specific clients. I just want to make sure we run through all the clients, and you can verify if these are the people that are working with the company or not. [...]. We've heard from, uh, twelve so far. Ok?

[...]

Former Agency: Ok. So, um. Basically, it – we started with, um, with [Client 2] and [Client 1].

Former Agent: Yes. That's [Third-Party Employer], yeah.

[...]

Former Agency: [Client 4]

Former Agent: Yes – yes, that has been paid. Reinstated.

[...]

Former Agency: When they – when they – if I can ask this, Evelyn – um – were they required to get insurance when they subcontracted with the [Third-Party Employer]?

Former Agent: Yes.

Former Agency: They were required?

Former Agent: Yes.

Former Agency: And was their only option our insurance?

Former Agent: Yes. Seasonal. Because they are seasonal.

Former Agency: Even though there was no information on the applications indicating that they were working as seasonal, their regular employment was listed on the applications, um, they were – if they worked with the [Third-Party Employer], they had to get insurance with [Former Agency]?

Former Agent: No.

Former Agency: Ok. That's contradicting – sorry – what you said before. But, so, if they – they um – cuz [sic] all of the people, um, that we – on all of the applications that we reviewed, there is not indication of [Third-Party Employer] anywhere on the application.

Former Agent: Because they're working – ok, they're working existing, um – they have existing employee at – their existing job at that time.

[...]

Former Agency: Is it offered as individual insurance to the client, or is it offered as a group insurance through the [Third-Party Employer]?

Former Agent: Individual.

Former Agency: And, umm – normally, our process for this, umm, type of activity would be to have a premium forwarding agreement. All of the information that we have on our application shows their own personal void cheques –

Former Agent: Mmhmm.

Former Agency: - that they're, that we're – so, and you say when they get paid you're adding the premium to it. So, basically they're being reimbursed for the premiums, from the [Third-Party Employer]. Not from you personally.

Former Agent: Yes.

[...]

Former Agency: One of the clients mentioned that you – umm – you offered a thousand dollars to – for [the client] to buy the policy. Is there any truth to that?

Former Agent: No. I – offer anything. Salary, I offer – there's a salary. There is a – there is a salary, and there is a guarantee contract per house on the – uh – snow removal. That's it. Salary. Flat, monthly salary for this. Those are offers.

Former Agency: [...] Oh, so, uh – so, when you have a subcontractor, you pay them a flat salary and then – the – in the flat salary you add the premium as part of the salary?

Former Agent: No. some – it's a flat salary – included. Included already.

Former Agency: Ok. So, if it was a thousand dollars –

Former Agent: It's their – it's their responsibility, per se. so, but we're giving them flat salary.

[...]

Former Agency: So, how does the – how does their premium get reimbursed for the insurance?

Former Agent: Well, premium is their primarily [sic] responsibility. so, basically, it's when you – when you work and we give you the project, we give you the job, it's – it's gonna be – it's gonna be in there already. Then you could take it out the premium from that salary. That's how it should work.

Former Agency: Ok. So, when you negotiate a salary of a thousand dollar for a job let's say, if the salary –

Former Agent: Yup.

Former Agency: - is a thousand.

Former Agent: Yup.

Former Agency: And they – so, you say to the – you know, if I was the – if I was the person, you’d say ‘I’m going to pay – [name] [redacted] I’m going to pay you a thousand dollars, and in there is a hundred dollars for your insurance.’

Former Agent: Yeah.

[...]

Former Agency: Ok. Umm. A lot of the times when I was talking to the clients, umm, there were mentioning that – that Evelyn was reimbursing them. They didn’t really mention the [Third-Party Employer] and it was being done through an e-transfer. Umm. Do you have any comments regarding that?

Former Agent: Um...

Former Agency: Are you doing any transfer for them? Or...

Former Agent: No, no, no. it’s uh – it’s for the payroll thing. Payroll, pay out, for them. It’s not for the – for the... premium.

[...]

Former Agency: Do you – um – in any way, like – um – I guess I’m trying to get – this is not normally how we do business. Um. Is there – uh – this is not – um – it would be – if we were doing business of this type, normally, we would be having some kind of an association or a relationship between the company and the head office, in terms of a – a premium – premium forwarding agreement. Um. The client would be fully aware that, umm, the premiums are being paid; there would be a – a – a contract formed between the client and the company; as well as the company and the – uh – and our company. Are – were you aware of any of those kinds of – that process prior to this? I’m wondering why this was done completely outside of our normal way of doing things.

Former Agent: um... Yeah, I’m aware of that. Um... Just... I’m aware –

Former Agency: Cuz [sic] you understand, I think, that this would – this is really kind of incredibly misleading when we’re looking at a policy. We have no idea that any of this is happening, we’re talking to our clients, and – in – in all fairness to the client, he’s under a completely different understanding of how his policy is being paid than what is the standard for the other nine hundred – or ninety thousand clients that we have. Um. So, I’m just – I – I – again – I’m just a little concerned that there wasn’t more transparency about why, if you were handling a group of clients like this, why we weren’t included in this so that we would be able to service our clients appropriately. Cuz [sic] we don’t – we – we’re not concerned with [Third-Party Employer]; we’re concerned with our clients.

Former Agent: Yeah, I understand. So... I didn’t get what you mean; so, the – uh – ok. If there is a group like this, is that what you’re saying is I have to – I have to let the company know? Is that what you’re saying?

Former Agency: Well, the contract is with the company and the client. And the biggest part of the contract is the payment of it and according to our information, the payment is being done by the client, um, and if there is some kind of reimbursement going on – on – as you understand, our client services department fields tons and tons of calls. This is not an – a standard way of handling it. So, a lot of our clients are coming across people who have no idea what they are talking about. Um, and this is not, in my opinion, an appropriate handling of the information. There should have been more transparency between how you were processing this and how the company would be – as a matter of fact, we don’t do it very often for that very reason. Because of the ramifications of – of – what can happen to our clients.

Former Agent: Mmhmm.

[...]

On June 3, 2022, the AIC investigator sent the Agent a request for information seeking the following information:

[...]

The AIC has received a complaint from [the Former Agency] alleging that you misled a number of [Former Agency] clients by advising that their premiums would be reimbursed by either you personally, or a company “[Third-Party Employer]”. To assist in my investigation, I am writing to request you provide the following information or documents [...]:

1. A detailed account and explanation of your version of events related to this matter, including date(s) where relevant. Please include:
 - a. An explanation of your relationship to the company “[Third-Party Employer]”.
 - b. A list of all affected clients.
2. Copies of any documentation or correspondence you have relating to this matter.
3. Any other information or evidence you feel may assist in my understanding of the material facts.

[...]

On June 21, 2022, the Agent requested an extension to respond to the AIC’s request for information.

On June 22, 2022, the AIC investigator granted the Agent an extension to July 19, 2022 to respond to the request for information.

On July 20, 2022, the AIC investigator sent a Demand for Information (the “Demand”), by way of priority mail and email, providing a deadline of August 9, 2022 to respond. The Demand requested the following:

[...]

[The Former Agency] alleges that you misled a number of [Former Agency] clients by advising that their premiums would be reimbursed by either you personally, or a company “[Third-Party Employer]”. Please provide the information below [...]:

1. A detailed account and explanation of your version of events related to this matter, including date(s) where relevant. Please include:
 - a. An explanation of your relationship to the company “[Third-Party Employer]”.
 - b. A list of all affected clients.
2. Copies of any documentation or correspondence you have relating to this matter.
3. Any other information or evidence you feel may assist in my understanding of the material facts.

[...]

The Agent did not respond to the the Demand dated July 20, 2022 or the Report dated January 13, 2023.

Discussion

In order for the Council to conclude that the Agent has committed an offence pursuant to s. 480(1)(a) of the Act, the report must provide on the basis of clear and cogent evidence, that it is more likely than not that the Agent committed the Act as alleged. The requirement of clear and cogent evidence reflects that the Council’s findings can

dramatically impact an insurance agent's ability to remain in the industry. Therefore, the Council carefully weighs all evidence before it prior to reaching its decision.

The applicable legal test to determine the Agent's guilt in violating s. 480(1)(a) of the Act is set out in the Court of Queen's Bench of Alberta Decision, *Roy v. Alberta (Insurance Councils Appeal Board)*, 2008 ABQB 572 (hereinafter referred to as "*Roy*"). In *Roy*, the Life Insurance Council found that an agent violated s. 480(1)(a) of the Act by attesting to completing the required continuing education hours when he did not, in fact, complete the required continuing education hours. The *Insurance Councils Appeal Board* also found the agent guilty on appeal. The agent advanced the decision to the Court of Queen's Bench of Alberta.

In his reasons for judgment dismissing the appeal, Mr. Justice Marceau wrote as follows at paragraphs 24 to 26:

[24] The *Long* case, albeit a charge under the Criminal Code of Canada where the onus of proof is beyond a reasonable doubt (not on a preponderance of evidence as in this case), correctly sets out the two step approach, namely the court or tribunal must first decide whether objectively one or more of the disjunctive elements have been proven. If so, the tribunal should then consider whether the mental element required has been proved. While the Appeal Board said it was applying the *Long* decision, it did not make a finding as to whether step 1 had been proved with respect to each of the disjunctive elements. Rather it immediately went into a step 2 analysis and found that the mental element required for untrustworthiness might be less than the mental element required for fraud (as a given example).

[25] I am of the view that statement was in error if it was made to convey a sliding scale of *mens rea* or intent depending on which of the constituent elements was being considered. In my view, **the difference between the disjunctive elements may be found in an objective analysis of the definition of each** and certainly, as demonstrated by the *Long* case, what constitutes fraud objectively may be somewhat different from untrustworthiness. However **once the objective test has been met, one must turn to the mental element.** Here to decide the mental element the Appeal Board was entitled, as it did, to find the mental element was satisfied **by the recklessness of the Applicant.**

[26] While the language used by the Appeal Board may be characterized as unfortunate, on this review on the motion of the Applicant I need not decide whether the Appeal Board reasonably could acquit the Applicant on four of the disjunctive elements. Rather, the only matter I must decide is whether the Appeal Board **acting reasonably could conclude, as they did, that the Applicant's false answer together with his recklessness justified a finding of "untrustworthiness".**

[Emphasis added]

The Decision of the *Insurance Council's Appeal Board* (of Alberta) was subsequently upheld, its' findings confirmed, and the agent was found guilty of an offence pursuant to s. 480(1)(a) of the Act.

The evidence in these types of cases is based on the concept of "*clear and cogent*" evidence. In *The Matter of the Appeal of Arney Falconer*, Chairperson Hopkins dealt with this principal of clear and cogent evidence and provided as follows;

The Life Insurance Council stated in the Decision that there is a requirement "for 'clear and cogent evidence' because our findings can dramatically impact an insurance agent's ability to remain in the industry". However, the requirement for clear and cogent evidence does not mean that the evidence is to be scrutinized any differently than it should be in any other civil case. **In all civil cases evidence must be sufficiently**

clear, convincing and cogent to satisfy the balance of probabilities. In *F.H. v. McDougall* 2008 SCC) (sic); [2008] 3 S.C.R. 41 the Supreme Court of Canada states:

[45] To suggest that depending upon the seriousness, the evidence in the civil case must be scrutinized with greater care implies that in less serious cases the evidence need not be scrutinized with such care. I think it is inappropriate to say that there are legally recognized different levels of scrutiny of the evidence depending upon the seriousness of the case. There is only one legal rule and that is that in all cases, evidence must be scrutinized with care by the trial judge.

[46] Similarly, evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test. But again, there is no objective standard to measure sufficiency. In serious cases, like the present, judges may be faced with evidence of events that are alleged to have occurred many years before, where there is little other evidence than that of the plaintiff and defendant. As difficult as the task may be, the judge must make a decision. If a responsible judge finds for the plaintiff, it must be accepted that the evidence was sufficiently clear, convincing and cogent to that judge that the plaintiff satisfied the balance of probabilities test.

Contraventions of s. 480(1)(a) are *mens rea* offences that require proof of intent, knowledge, or recklessness on a balance of probabilities. Section 480(1)(a) of the Act reads:

If the Minister is satisfied that the holder or a former holder of a certificate of authority has been guilty of misrepresentation, fraud, deceit, untrustworthiness or dishonesty, [...] 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.

The Report alleged that the Agent was guilty of fraud, deceit, dishonesty, untrustworthiness and/or misrepresentation as contemplated by s. 480(1)(a) of the Act when she misrepresented policies to clients as insurance through an employer when, in fact, the policies were personal policies.

Collectively, the Council is comprised of both industry and public members who are well equipped to assess consumer risk and industry competence. The Council weighed the effects of the alleged actions, the evidence presented, and the accounts of all parties involved when arriving at their conclusion.

The Council specifically viewed the following documents to be of important when making their determination:

1. The policy cancellation forms
2. The policy applications; and
3. The Recording.

When reviewing the policy cancellation forms, the Council took note that all former clients involved made mention of “the company” no longer paying the insurance premiums. In addition, Client 3 and Client 11 made additional comments as follows:

Client 3: [...] [Agent] paid in the beginning but stop paying in Nov.

Client 11: In line with this, [Third-Party Employer] has stop [sic] paying back our insurance premium since December 2021.

In light of the responses given by all former clients, the Council is of the view that all former clients were under the impression that the Third-Party Employer was to be paying the insurance premiums.

The Recording provided by the Former Agency was also of significance to the Council. While reviewing the transcript, the Council found the Agent to be evasive and vague when responding to the Former Agency’s questions. This specifically occurred:

Former Agency: Ok. And did you, uh – you were paying this through – you were paying the insurance for these through the payroll of the company?

Former Agent: Yes. Yes.

Former Agency: Ok. Or reimbursing them?

Former Agent: Payroll of the company, yes. [...]

Former Agency: Ok. So, you’re deducting the premiums from the payroll? Or –

Former Agent: No. We’re – we’re adding payroll – payroll plus premium, on their payroll. Premium, plus pay. Ok? Premiums plus pay. That’s the net pay. But, since there is no payment, they ended up not getting anything. [...]

The Agent indicated in the Recording that the Third-Party Employer was supposed to be paying the insurance premiums through the wages of the former clients. In the view of the Council, this is corroboration for all the comments made by the former clients that “the company” was no longer paying the insurance premiums.

The Council was also concerned by potential affordability issues of the insurance products sold to the former clients in light of the occupations that were listed on their respective policy applications. The Council is of the view that the relationship between the agent and the client is such that the client relies on the agent’s expertise, competency and integrity to make recommendations appropriate to the client’s financial and personal situation. The Agent owes a fiduciary obligation to the former clients to act in their best interest. It is, therefore, not unreasonable to expect that a high standard of due diligence is practiced by insurance agents when soliciting insurance products. In this case, the Agent failed in their fiduciary obligations to the former clients, and, in fact the evidence confirms that the Third-Party employer was related to the Agent. The Agent placed her personal needs for financial gain over and above the needs of the former clients.

In light of all the evidence, the Council is satisfied that the objective and subjective elements of the applicable legal test under s. 480(1)(a) are met. This was intentional conduct and it is fraud, deceit, dishonesty, untrustworthiness and/or misrepresentation as contemplated pursuant to s. 480(1)(a) of the Act. As a result of this finding, it was unnecessary for the Council to consider the alternative alleged offence pursuant to s. 509(1)(a) of the Act.

The Council agrees that a substantial civil penalty is warranted in this circumstance. Honesty and transparency are the hallmarks of a trustworthy agent, especially when advising and presenting insurance products to their clients. In terms of the available sanction, the Council may impose a civil penalty for a violation of s. 480(1)(a) of the Act not exceeding \$5,000.00, per demonstrated offence against an agent, and may choose to suspend or revoke the Agent's certificates of authority in accordance with s. 36.1(1)(a) of the *Insurance Agents and Adjusters Regulations*, AR 122/2001. Given the seriousness of the offence, the Council orders a civil penalty, in the amount of \$5,000.00, per offence, resulting in eleven (11) offences, equaling a total civil penalty of \$55,000.00, be levied against the Agent.

The civil penalty of \$55,000.00 must be paid within thirty (30) days of receiving this Decision. In the event that the 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: June 8, 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*