

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 Vishal Parihar
(the "Agent")

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

This matter involves an alleged violation of s. 480(1)(a) of the Act. It is specifically alleged that the Agent initiated twenty-nine (29) life insurance applications which contained falsified client addresses, phone numbers and banking information. As such, it is alleged that the Agent acted contrary to s. 480(1)(a) of the Act and is guilty of fraud, deceit, dishonesty, untrustworthiness, and/or misrepresentation.

Facts and Evidence

The matter proceeded to Council by way of a written Report to Council dated September 29, 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. In arriving at their conclusion, the Council carefully weighed all of the evidence presented.

The Agent held Life and Accident and Sickness (A&S) certificates of authority from October 3, 2013 to December 24, 2021, when the Agent was terminated by the Former Agency.

The AIC commenced an investigation in response to a termination notice received from [W.F.G.I.A.C.I.] [redacted] (hereinafter the "Former Agency") on December 23, 2021. The termination notice stated:

Names	License Number	Date of Termination	Reason for termination
VISHAL PARIHAR	[...]	December 23, 2021	Terminated for Cause – As advised by our insurance partner [C.P.P./F.F.] (hereinafter the "Insurer"), the individual initiated client insurance applications without proper authorization from clients. They also provided

			false contact and banking information on insurance applications for clients.
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[...]

On December 24, 2021, the AIC investigator requested the following information from the Former Agency:

[...]

I write to you further to your December 23, 2021 email regarding [...] Vishal Parihar, [...] whose employment was terminated for cause by [the Former Agency]. You indicated in this email that [...] the insurance agents were terminated due to [the Insurer] advising you that the agents initiated client insurance applications without proper authorization from clients, and that the agents also provided false contact and banking information on insurance applications for clients.

As such, in order to assist in our investigations into this matter, please provide the following:

- Any involved insurance policies and application documents;
- The complete and total email correspondence, and any other correspondence, that you had with the insurance agent and/or insurance brokerage that pertains to this matter;
- All other documentation that pertains to this matter; and,
- A detailed timeline of the events.

[...]

On January 14, 2022, [K.V.] [redacted], an Intermediate Compliance Analyst from the Former Agency provided a letter dated January 14, 2022 (the “Explanation Letter”), which stated:

[...]

In response to your inquiry dated December 24, 2021, please see below for the Agency’s response:

1. Please be advised that [the Former Agency’s] independently contracted agents submit client insurance applications directly to the carriers. As such, [the Former Agency] is not in possession of and does not maintain records of the involved insurance policies and application documents. These records and documents are in possession of and maintained by the insurance product provides. In this case [the Insurer].
2. Enclosed in **Appendix A** is the complete and total email correspondence, and any other correspondence, that the Agency had with the insurance agent and/or insurance brokerage that pertains to this matter.
3. A detailed timeline of events:

Date	Event/Action taken by [the Former Agency]
November 11, 2021	[The Former Agency] received a notification from [the Insurer] of their decision to terminate their Producer Agreement with the agent
November 19, 2021	[The Former Agency] requested a summary of the reasons for termination
November 29, 2021	[The Former Agency] received a copy of the agent’s Termination Letter from [the Insurer]
November 30, 2021	[The Former Agency] received a summary of the findings from [the Insurer] – Special Investigations Unit
December 6, 2021	[The Former Agency] requests a statement from the agent regarding findings from [the Insurer]
December 8, 2021	[The Former Agency] receives statement from the agent
December 22, 2021	The case was presented to the {Former Agency} Disciplinary Committee and [the Former Agency] made the decision to terminate the agent’s contractual agreement.

December 24, 2021	[The Former Agency] sends Notice of Termination of contractual agreement to agent
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[...]

[Emphasis added in the original document]

Appendix A of the Explanation Letter, provided the following documents:

1. Email dated November 11, 2021 (the “November 11, 2021 Email”) between employees of the Insurer;
2. Email dated November 19, 2021 from the Former Agency to the Insurer (the “November 19, 2021 Email”);
3. Email date November 29, 2021 from the Insurer to the Former Agency (the “November 29, 2021 Email”);
4. Letter dated November 29, 2021 from the Insurer to the Agent (the “Decision Letter”);
5. Email dated November 30, 2021 from the Insurer to the Former Agency (the “November 30, 2021 Email”);
6. Email dated December 6, 2021 from the Former Agency to the Agent (the “December 6, 2021 Email”);
7. Email dated December 8, 2021 from the Agent to the Former Agency (the “December 8, 2021 Email”); and
8. Termination Letter dated December 24, 2021 from the Former Agency to the Agent (the “Termination Letter”).

The November 11, 2021 Email stated:

[...]

The ACC Committee has made the decision to terminate [...] Vishal Parihar [...] due to the attached SIU investigation report.

We will work with new business and request that we do not issue any further business written by these advisors to mitigate any additional risk.

[...]

The November 19, 2021 Email stated:

[...]

Could you give us a summary of the reasons for termination of these two contracts. [sic]

[...]

The November 29, 2021 Email stated:

[...]

The BQR team (at [the Insurer’s]) had spearheaded the investigation and SIU had been involved. [...]

The Decision Letter stated:

[...]

This letter is to advise you of the [Insurer's] decision concerning the above referenced investigation. The [Insurer] producer code of conduct requires the highest level of integrity and performance on the part of the producer. Our investigation has determined that these standards have not been met.

Your Producer Agreement and appointment with [the Insurer] is hereby terminated without cause, effective five days from the date of this letter.

[...]

The November 30, 2021 Email stated:

[...]

Below is an summary [sic] of the findings that were provided to the Agent Conduct Committee.

The Advisors knowingly used false address and phone numbers on applications for Proposed Insureds, which each Advisor should have realized was not permitted.

A review of the books of business for these [...] Advisors noted that there were multiple applications submitted where their office address [...] was stated as the Proposed Insured's home address. Additionally, there were phone numbers that were used across multiple applications for Proposed Insureds who did not appear related to each other or living at the same addresses.

For many of these Proposed Insureds, a new application would be submitted for them around the time their previous policy would lapse. Invalid banking information was provided on the new applications. [The Insurer] advised that when they would reach out to the Advisors regarding the banking information on these applications, they would not receive a response from them.

[...]

Advisor Vishal Parihar replied to the SIU, stating that he met 60% to 70% of the clients in person, at his office, and the rest by Zoom meetings. Vishal Parihar attempted to place the responsibility on [third party] [redacted], stating, "[third party] [redacted] was keep telling [sic] me clients dont [sic] want any corresponds [sic] or any papers at home address so please put [third party] [redacted] home address in application because they will get their policy at their email address. I wasn't sure about the banking information Right [sic] or Wrong [sic] Because [sic] all clients from [third party] [redacted], [Third party] [redacted] is the one who provided me all banking Information [sic] I submitted whatever [third party] [redacted] provided me."

[...]

The December 6, 2021 Email stated:

[...]

[The Former Agency] has been information by [the Insurer] that they have terminated their Producer Agreement with you for failing to meet the highest level of integrity and performance standards.

Specifically that:

- False addresses and phone numbers were knowingly used on applications for Proposed Insureds
- There were phone numbers that were used across multiple applications for Proposed Insureds who did not appear related to each other or living at the same addresses.
- You did not respond to [the Insurer] when they reached out to you regarding the banking information on these applications
- In your statement to [the Insurer], you indicated that [third party] [redacted] is the one who provided you all the information for applications and you submitted "whatever [third party] [redacted] provided" you. however, you indicated that you met "60% to 70%" of the clients in person at your office and via Zoom meetings. Please advise what methods you used to identify the clients and how

this information as noted on the applications. Furthermore, please confirm whether you reviewed the information [third party] [redacted] allegedly provided to you.
At this time, [the Former Agency] is requesting a detailed explanation from you regarding the events that led to your termination from [the Insurer]. [...]

The December 8, 2021 Email stated:

[...]
Ist of all mostly all clients came from [third party] [redacted] [...], I agree I blindly trust on [sic] [third party] [redacted] and never gone to [sic] further details, Because [sic] I was in rush for [sic] my next ring Whatever [sic] [third party] [redacted] was bringing Information [sic] I was keep believing [sic] it is right, When [sic] I asked about address [sic] [third party] [redacted] said client doesn't want any promotional mail at address so in few policies we put our office address, And [sic] the number I put in application and the banking information [third party] [redacted] provided I blindly trusted at [third party] [reacted] [sic] because they all were [third party] [reacted] co worker and friends.
I am working with [the Former Agency] more then 8 years but never happened ever this kind of incident in my entire carrier [sic] , The [sic] situation is created and which circumstances I am going thru [sic] can not explain [sic]. I feel so stupid the way I blindly trusted trusted [sic] on an Associate. [...] I didn't do any thing with wrong intention [sic] my mistake is I trusted an associate Blindly [sic].
[...]

The Termination Letter stated, in part:

[...]
[The Former Agency] is hereby notifying you that your affiliation with [the Former Agency] has been terminated for cause as of the date of this correspondence. This termination for cause is a result of [the Former Agency's] insurance partner, [the Insurer's] decision to termination your contractual agreement with them, due to unauthorized client insurance applications.

This termination for cause is also a result of your non-compliance with the [Former Agency's] Agent Agreement [...]

On January 24, 2022, the AIC investigator sent a request for information to the Insurer, seeking the following information:

[...]
The AIC is in the process of reviewing the allegations against Vishal Parihar, whose employment was terminated for cause by [the Former Agency]. It was indicated by [the Former Agency] that Mr. Parihar was terminated due to notification from [the Insurer] that the agent had initiated client insurance applications without proper authorization from clients, and that the agent had also provided false contact and banking information on insurance applications for clients.

As such, in order to assist in my investigation, please provide the following information:

1. Any documentation that pertains to this matter, including any involved insurance policies and application documents;
2. The complete and total email correspondence, and any other correspondence, that you had with [the Former Agency], Mr. Parihar, or any third parties that pertain to this matter;
3. A detailed timeline and explanation of the events that pertain to this matter; and

4. Any other information or documentation which you feel may assist in the understanding of the material facts.
[...]

On February 4, 2022, the Insurer provided a Life Agent Reporting Form, which provided the following information:

[...]

Evidence that suggests:

[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	x Misrepresentation/Disclosure	[...]
x Fraud	[...]	[...]
[...]		[...]
		[...]
		[...]
		x Other

Agent contract has been terminated: X Yes

[...]

On February 7, 2022, the Insurer provided the AIC investigator with the following documents:

1. Insurer's Timeline of Events;
2. Email dated October 5, 2021 from a Senior Manager for the Insurer to the Compliance Manager for the Insurer (the "October 5, 2021 Email");
3. Email dated October 6, 2021 from the Compliance Manager for the Insurer to the Assistant Vice-President, Special Investigations & Consumer Complaints for the Insurer (the "October 6, 2021 Email");
4. Email dated November 3, 2021 from the Insurer to the Agent (the "November 3, 2021 Email"); and
5. Email dated November 5, 2021 from the Agent to the Insurer (the "November 5, 2021 Email").

The Insurer's Timeline of Events stated:

[...]

- 2021-08-30 [The Insurer's] Business Quality Review Department notifies [the Insurer's] Special Investigations Unit (SIU) of [...] advisors in Alberta agents [sic] where there appeared to be multiple, seemingly unrelated, proposed insureds using the same address on their applications.
- 2021-09-02 SIU opens investigation SIU-****42 [redacted] regarding the address irregularities.
- 2021-09 Mid-month, additional applications were received. Attempts to reach the proposed insureds were unsuccessful due to incorrect contact information on the applications. [The Insurer] notices that some applications they are receiving show the Advisors' office address as the home address of the Proposed Insureds.
- 2021-10-06 [The Insurer] and informs [sic] [the Insurer's] SIU of the applications where the Advisors' office address was used as the proposed insureds' address; [the Insurer] places the Advisors' business on hold

- 2021-10-07 SIU advises [the Insurer] that SIU will handle; SIU investigator [redacted] requests files and spreadsheets from [the Insurer].
- [...]
- 2021-11-03 Notice of Investigations sent out to the [...] Agents
- 2021-11-05 [...] Vishal Parihar provide responses to the SIU, [...]; Investigation closed as ‘substantiated’.
- 2021-11-08 Advisors’ responses forwarded to their uplines
- 2021-11-10 SIU investigation reports are reviewed by [the Insurer] Agent Conduct Committee, and a decision is made to terminate Vishal Parihar’s [...] appointments [...]
- 2021-11-19 [The Former Agency] requests information from [the Insurer] regarding termination of Vishal Parihar [...]
- [...]
- 2021-11-29 Notice sent to Vishal Parihar [...] that their appointments have been terminated. [The Insurer] reaches out to SIU regarding [the Former Agency’s] email from 2021-11-19.
- 2021-11-30 SIU responds to [the Insurer] and [the Former Agency] regarding the terminations.
- [...]
- 2021-12-17 [The Former Agency] emails [the Insurer] regarding SIU-****42 [redacted] asking why the agents were not terminated ‘for cause’.
- 2021-12-18 [The Insurer] forwards [the Former Agency’s] email from 2021-12-17 to [the Insurer’s] SIU.
- 2021-12-20 [The Insurer’s] SIU AVP responds that reports will be submitted to Alberta.
- [...]
- 2021-12-24 [The Former Agency] sends [the Insurer] copies of their termination letters to the agents. These are forwarded to the SIU.
- [...]

The October 5, 2021 Email stated:

[...]

Following our discussion yesterday, I have attached the spreadsheets with our findings for applications submitted by [the Former Agency] advisors [...]:

As you will notice from the reports:

1. Out of 424 policies that were settled, 172 policies are either in Overdue/Lapsed/Not Proceeded With/NOT TAKEN status [...]
 - a. Of those 172 policies, we collected ZERO premiums on 86 cases.
 - b. Recently, we’ve experienced the initial premiums being returned by the bank as Invalid Banking Information [...]
 - c. Instead we noticed a new application would be submitted for the same client around the time of the previous policy being lapsed [cut-off]
2. Applications for multiple clients are being submitted with the same phone number and/or address:
 - a. The spreadsheets attached “**Copy of [the Former Agency] business summary with address 2.xlsx**” has examples of cases where either the phone number or [cut off] same for multiple clients.
 - b. [...]
3. In connection with the point above, one of the addresses being used is the [Former Agency’s] office address [...]
[Emphasis added in original document]

The October 6, 2021 Email stated:

[...]

I wanted inform [sic] you about the follow [sic] case(s) – they all involve 1 [Former Agency] office and [...] agents within that office.

[...]

I just wanted to add a few more points:

1. I have circled in [the Former Agency] Compliance today and they confirm that [...] agents ([...] Vishal) had already been suspended [...]
2. [...]
5. Some of the issues with multiple inactive cases on same clients, and multiple clients at same address may have been flagged by BQR [...]

The November 3, 2021 Email stated:

[...]

We are reaching out to you today regarding applications you submitted for Proposed Insureds where the Proposed Insureds address was your agency office, [Former Agency Address] [redacted]. There are also applications you submitted where [third party's] [redacted] home address, [Third Party Address] [redacted] stated as the Proposed Insureds' residences. These Proposed Insured don't appear to be related to [third party] [redacted] or residing at [cut-off]

[...]

Many of these Proposed Insureds also have the same phone number stated on their applications, [phone number] [redacted]. This phone number [cut-off] applications for Proposed Insureds at the office address, and for others at [Third party's] [redacted] address.

For many of these cases a new application would be submitted for the same client around the time of the previous policy being lapsed [cut-off] information was provided on the new applications. [The Insurer] has advised that when they would reach out to you regarding the banking [cut-off] applications, they would never receive a response from you.

As I'm sure you can understand, [the Insurer] is concerned about this situation as you are submitting applications for multiple Proposed [cut-off] home address is your agency address or [third party's] [redacted] address. This combined with the phone number irregularities raises several [cut-off] why the Proposed Insured's correct contact information was not put on their applications, did the Proposed Insureds provide the [cut-off] and if the Proposed Insureds were aware of and a party to their applications.

We are reaching out to you as the Adviser of record for these applications to explain the situation. With your explanation, please [cut off] following questions:

1. Did you personally met with each Proposed Insured to complete each of their applications? If not, why not?
2. Did the go [sic] through each of the questions of the application with the Proposed Insured for each application and record the [cut-off] Proposed Insured? If not, why not?
3. Why weren't the Proposed Insured's correct addresses and phone numbers disclosed on their applications?
4. Why were applications submitted with invalid banking information, and why did you not respond to [the Insurer] when they asked [cut-off]

[...]

The November 5, 2021 Email stated:

[...]

Ist of all like to tell you These [sic] all clients [sic] came from [third party agent] [redacted] [...]

I met 60% to 70% clients personally in my office and rest on zoom,
I personally asked all applications questions [sic] based on clients respond . [sic]
[Third Party Agent] [redacted] was keep [sic] telling me clients dont [sic] want any corresponds [sic] or any
papers at home address so please put [Third Party Agent's] [redacted] home address in application because
they will get their policy at their [sic] email address.
I wasn't sure about the banking information Right [sic] or Wrong [sic] Because [sic] all clients from [Third
Party Agent] [redacted], [Third Party Agent] [redacted] is the one who provided me all banking Information
[sic] I submitted whatever [Third Party Agent] [redacted] provided me.
I responded most of [sic] [the Insurer's] enquiry regarding banking Information [sic], But [sic] I really
apologies [sic] if I do not Responded [sic] of few Because [sic] I was busy in other activities.
[...]

On March 7, 2022, the AIC investigator sent a request for information to the Agent, seeking the following information:

[...]
The AIC is in the process of reviewing a notification from [the Former Agency], whereby [the Former Agency] has alerted the AIC of your termination from [the Former Agency] for cause. [The Former Agency] was advised by [the Insurer] that you had initiated client insurance applications without proper authorization from clients, and that you had provided false contact and banking information on insurance applications for clients.

In order to assist in my investigation, please provide the following information:

1. A detailed timeline and explanation of the events that pertain to this matter;
2. Any correspondence, through email or otherwise, that pertains to this matter; and,
3. Any other information or documentation which you feel may assist in the understanding of the material facts.

[...]

On July 31, 2023, the AIC investigator resent the March 7, 2022 request for information to the Agent.

On August 30, 2023, the AIC investigator sent a demand for information (the "Demand") to the Agent, with a response deadline of September 14, 2023. The Demand requested the following information:

[...]
On March 7, 2022, as part of a compliance investigation, a request for information was sent to you (attached). We have yet to receive your response as required by date. As a result, you are receiving a formal demand.

[...] We require the following information and/or documents to complete our investigation. [...]

1. A detailed timeline and explanation of the events that pertain to this matter;
2. Any correspondence, through email or otherwise, pertains to this matter; and,
3. Any other information or documentation you feel may assist in understanding the material facts.

[...]

On September 12, 2023, the Agent provided the AIC investigator with the following information:

[...]

I think last year I already explained all the incidents to the previous gentleman . [sic] i Had [sic] been working in [the Former Agency] since 2011 and I got my License [sic] in 2013, Working Almost [sic] 10 Year [sic] plus I do understand my due diligence & my responsibilities . [sic] This Incident Started [sic] when a new associate came to my team and introduced [associate] [redacted] to lots of friends and relatives, [...]. During this time [associate] [redacted] didn't had [sic] life license so as [associate's] [redacted] upline i [sic] start writing [associate's] [redacted] clients policies .Due [sic] to covid we had lots of meetings on zoom & we wrote [associate's] [redacted] clients policies . [sic] [Associate's] [redacted] clients said they will provide all banking information to [associate] [redacted]. But when I started getting letters from [the Insurer] premiums not going through I started asking questions and queries to [associate] [redacted] regarding [associate's] [redacted] clients . [sic] I found out the banking information was wrong . [sic] My fault is that I trusted an associate blindly and failed to show my leadership. [...]

On October 14, 2023, the Agent provided the AIC investigator with the following additional information:

[...] as i [sic] was keep saying [sic] all the clients from the associate who worked with me without [associate's] [redacted] license , [sic] [Associate's] [redacted] policy, [associate's] [redacted] kids [associate's] [redacted] parents [associate's] [redacted] in laws and [associate's] [redacted] friends .Please [sic] trust me i [sic] have no intention to do anything wrong its all was [sic] just trust issue I can't tell you anything else , [sic] [...]

The Insurer provided the AIC investigator with the applications in question which provided the following information that was falsified:

Client Name	Policy Number	Falsified Information
[J.J.] [redacted] (hereinafter "Client 1")	DH****1380 [redacted] DH****1240 [redacted] DH****2890 [redacted]	<ul style="list-style-type: none"> - The mailing address provided does not exist - The phone number provided was used on multiple applications alongside different addresses (Clients 2, 3, 4) - The banking information was found by the Insurer not to exist
[R.J.] [redacted] (hereinafter "Client 2")	DH****0640 [redacted] DH****3550 [redacted] DH****0210 [redacted]	<ul style="list-style-type: none"> - The mailing address provided does not exist - The phone number provided was used on multiple applications alongside different addresses (Clients 1, 3, 4) - The banking information was found by the Insurer not to exist
[H.J.] [redacted] (hereinafter "Client 3")	DH****4080 [redacted] DH****6580 [redacted]	<ul style="list-style-type: none"> - The mailing address provided was used on multiple applications (Clients 4, 5, 7) - The phone number provided was used on multiple applications alongside different addresses (Clients 1, 2, 4) - The banking information was found by the Insurer not to exist
[M.H.J.] [redacted] (hereinafter "Client 4")	DH****9590 [redacted] DH****9540 [redacted] DH****8570 [redacted]	<ul style="list-style-type: none"> - The mailing address provided was used on multiple applications (Clients 3, 5, 7) - The phone number provided was used on multiple applications

		<p>alongside different addresses (Clients 1, 2, 3)</p> <ul style="list-style-type: none"> - The banking information was found by the Insurer not to exist
[S.A.L.] [redacted] (hereinafter "Client 5")	DH****4890 [redacted]	<ul style="list-style-type: none"> - The mailing address provided was used on multiple addresses (Clients 3, 4, 7) - The phone number provided was used on multiple applications alongside different addresses (Clients 6, 7, 11, 12) - The banking information was found by the Insurer not to exist
[S.L.] [redacted] (hereinafter "Client 6")	DH****4910 [redacted]	<ul style="list-style-type: none"> - The mailing address provided belonged to a convenience store - The phone number provided was used on multiple applications alongside different addresses (Clients 5, 7, 11, 12) - The banking information was found by the Insurer not to exist
[J.Z.L.] [redacted] (hereinafter "Client 7")	DH****6070 [redacted]	<ul style="list-style-type: none"> - The mailing address provided was used on multiple applications (Clients 3, 4, 5) - The phone number provided was used on multiple applications alongside different addresses (Clients 5, 6, 11, 12) - The banking information was found by the Insurer not to exist
[N.T.] [redacted] (hereinafter "Client 8")	DH****7970 [redacted]	<ul style="list-style-type: none"> - The mailing address provided does not exist - The banking information provided was found by the Insurer not to exist
[R.B.T.] [redacted] (hereinafter "Client 9")	DH****7850 [redacted] DH****4800 [redacted] DH****1920 [redacted]	<ul style="list-style-type: none"> - The mailing address provided does not exist - The phone number provided was used on multiple applications alongside different addresses (Client 10) - The banking information provided was found by the Insurer not to exist
[S.T.] [redacted] (hereinafter "Client 10")	DH****7910 [redacted] DH****4950 [redacted]	<ul style="list-style-type: none"> - The phone number provided was used on multiple applications alongside different addresses (Client 9) - The banking information provided was found by the Insurer not to exist
[D.S.] [redacted] (hereinafter "Client 11")	DH****7160 [redacted] DH****2380 [redacted]	<ul style="list-style-type: none"> - The mailing address provided was the office address of the Former Agency

		<ul style="list-style-type: none"> - The phone number provided was used on multiple applications alongside different addresses (Clients 5, 6, 7, 12) - The banking information was found by the Insurer not to exist
[R.T.] [redacted] (hereinafter "Client 12")	DH****9150 [redacted] DH****2420 [redacted]	<ul style="list-style-type: none"> - The mailing address provided was the office address of the Former Agency - The phone number provided was used on multiple applications alongside different addresses (Clients 5, 6, 7, 11) - The banking information provided was found by the Insurer to not exist
[N.S.] [redacted] (hereinafter "Client 13")	DH****9560 [redacted]	<ul style="list-style-type: none"> - The mailing address provided was the office address of the Former Agency
[I.V.] [redacted] (hereinafter "Client 14")	DH****2900 [redacted] DH****6120 [redacted]	<ul style="list-style-type: none"> - The mailing address provided was the office address of the Former Agency - The phone number provided was used on multiple applications (Client 15) - The banking information provided was found by the Insurer not to exist
[I.P.] [redacted] (hereinafter "Client 15")	Dh****6700 [redacted]	<ul style="list-style-type: none"> - The mailing address provided was the office address of the Former Agency - The phone number provided was used on multiple applications (Client 14)

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 finding 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 Queens's Bench of Alberta Decision, *Roy v. Alberta (Insurance Councils Appeal Board)*, 2008 ABQB 572 (hereinafter "*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 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 the Agent initiated twenty-nine (29) life insurance applications which included falsified client addresses, phone numbers and banking information.

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 insurance applications, the November 30, 2021 Email, the December 8, 2021 Email, the Insurer's Timeline of Events, the November 5, 2021 Email and the September 12, 2023 Email were of significant to the Council's decision. In the Council's opinion, these materials demonstrated that the Agent acted in a dishonest, deceitful, fraudulent, and untrustworthily matter as contemplated by the Act.

The Council took specific issue with the explanations provided on multiple occasions including December 8, 2021 Email, November 5, 2021 Email and September 12, 2023 Email stating that another insurance agent provided the contact information and banking information for the applications in question. Despite this explanation, it is the opinion of the Council that the Agent knowingly and intentionally provided the false information on the insurance applications for a self-serving purpose as the Agent stated in the November 5, 2021 Email:

*[...] I met 60% to 70% clients personally in my office and rest on zoom,
I personally asked all applications questions [...] based on clients respond [sic] [...]*

Consumers who purchase insurance products expect that insurance agents will act with the utmost good faith while carrying out their work. Honesty and integrity are the hallmarks of a good insurance agent. An insurance agent owes a fiduciary obligation to act in the best interest of their clients. It is, therefore, not unreasonable to expect that a high standard of due diligence be practiced by insurance agents.

In light of the information provided by the Agent, the evidence submitted by the Former Agency and the Insurer confirms that the Agent initiated twenty-nine (29) insurance applications containing falsified client information, 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.

The *Insurance Act* and its Regulations act as a mechanism of public protection. It is the view of the Council that the Agent's deception was self-serving, as it was deliberate and without any consideration to the risk that they were subjecting the former clients and the Insurer to. Accordingly, a significant civil penalty is warranted under the circumstances. In terms of the Applicant sanction, the Council may impose a penalty for a violation of s. 480(1)(a) of the Act, not exceeding \$5,000.00 per demonstrated offence against an agent, in accordance with s. 36.1(1)(a) of the *Insurance Agents and Adjusters Regulation*, AR 122/2001. Given the seriousness of the offence, the Council ordered a civil penalty per demonstrated offence in the amount of \$5,000.00 resulting in twenty-nine (29) offences, equaling \$145,000.00 be levied against the Agent.

The civil penalty must be paid within thirty (30) days of receiving this notice. If the penalty is not paid within thirty (30) days, interest will begin to accrue at the rate of 12% per annum as prescribed by s. 36.1(2) of the *Insurance Agents and Adjusters Regulation*, A.R. 122/2001.

Pursuant to s. 482 of the Act (copy 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: November 30, 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*