

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 Rory James Crockford
(the "Agent")

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

This case involved an allegation pursuant to 480(1)(a) of the Act. Specifically, it is alleged that the Agent was asked to complete a supplementary Respiratory Questionnaire (the "Form") by a colleague who was the original writing agent on a file. It is further alleged that the Agent completed and signed the Form without the authorization or consent of the client "RF" and submitted it to American Income Life Insurance Company ("AIL") for underwriting purposes. In so doing, it is alleged that he acted in a dishonest and untrustworthy manner and that this constitutes an offence pursuant to s. 480(1)(a) of the Act.

Facts and Evidence

The Agent has been licensed since January 26, 2006 and holds life insurance and accident & sickness insurance certificates of authority. The Agent's certificates of authority were terminated due to his resignation, effective December 4, 2012 and were reinstated on January 10, 2013.

On October 22, 2010, the AIC opened an investigation file after receiving a complaint letter from "SMF". SMF advised that she and her husband RF applied for AIL life insurance coverage on September 14, 2010 through an AIL representative ("Agent X"). SMF further advised, that "[o]n Tuesday, October 19th I received our policies in the mail. I was shocked to find attached a 'Respiratory Questionnaire' that was never seen, nor signed by my husband." SMF wrote that she contacted Agent X and that he explained that after selling the policy he was advised that he needed to get the Form completed and that as he was going to be out of town he asked the Agent to "look after it." SMF also advised that medical information disclosed on the form was false and that from September 14, 2010 to the date of her complaint letter her husband had

not been in contact with any representative from AIL. Additionally, she indicated that the Agent had never been to their home to have the Form signed.

On October 26, 2010, the Investigator spoke with SMF and confirmed receipt of her complaint letter. SMF restated the facts that were set out in her complaint letter. She also stated that they cancelled their coverage with AIL and expressed her concern that the incorrect medical information would be registered with the Medical Information Bureau and that their insurability would be at risk. She also undertook to provide the AIC with a copy of the Form. This was ultimately received on October 26, 2010 and included a copy of a two page application signed and dated by RF on September 14, 2010. The copy of the Form was dated September 17, 2010.

On October 26, 2010, the Investigator wrote to AIL and requested information and documentation in relation to this matter. An AIL official responded by letter and accompanying attachments dated November 12, 2010. The attached documents included the two page application signed and dated by RF on September 14, 2010, and a copy of the Form dated September 17, 2010. In the letter, the official provided a summary of a review that it conducted through statements made by Agent X and the Agent. According to AIL, the Agent confused the information written on the Form with that of a different client.

On January 17, 2011, the Investigator spoke with the Agent and advised him of the complaint. The Agent advised that he received the Form on his desk which was already signed. The Agent further advised that he met with another client who also required a Respiratory Questionnaire and when he spoke with that client on the phone he completed the information on RF's form in error and submitted it to head office. The Agent also advised that he submitted a written statement to AIL.

On January 17, 2011, the Investigator wrote to the Agent and requested a copy of his statement to AIL. The Agent responded by email on the same day as follows:

This statement is in regards to the incorrect respiratory questionnaire for [RF].

On Thursday, September 16th, we turned in our business and prepared to FedEx it out. [Agent X] had enrolled [SMF] and [RF] in a plan and I quickly checked the paper work before sending it. I had checked other agents (sic) business that morning and my desk had several pieces of paper and carbon copies of business (yellow and pink copies included).

Before we began our meeting I quickly gathered all the scrap paper and disposed of it in my garbage.

Friday afternoon, I was visiting policyholders [JE] and [ME]. During this appointment a friend of theirs was over, [EF] and he inquired about their plan. I showed them the plan and he wanted to enroll. He was in a rush so we proceeded to get the majority of his information before he had to leave and he told me to call him in the morning to get the rest of his information as he did not have his medication nor [sic] his doctors [sic] name for his asthma. Before he left he was given a folder and he was also given a TIA as he had given his first month premium at this time.

Saturday morning I dropped his business off at the office and proceeded to get ready for my first appointment. Before I left I got the held business report regarding the missing addendum for [RF]. I told [Agent X] that I would take care of it since he was out of town. Before I left for my appointments I removed the incomplete addendum for [RF] from my garbage. I then proceeded to go to my appointments.

After the appointments I returned and incorrectly called [EF] and filled out his information on the [RF] addendum believing it was [RF]. I then went off to my next appointments. On my return I then faxed the addendum off. I returned all the paperwork to my desk. Monday [EF] called and told me that he did not want the coverage and wished for me to return the cheques to him (his brother told him he had coverage through his work). Usually I would have done an ALT-xpl but he wanted the cheques returned to him so I dropped by his house and returned the cheques and showed him his ripped up personal information from the application and addendum.

It was not until [SMF] sent in her letter that I realized the information for [EF] was what I sent in on the wrong addendum.

Since this time we have removed all the old addendums from the office. We have implemented a 100% verification system for any new business and all business is checked at our home office before being processed.

The AIC investigator also spoke with Agent X in order to ascertain his recollection of the events surrounding the submission of the Form to AIL. Agent X advised that he completed the application on RF and submitted it to AIL. Agent X further advised that he subsequently received communication from AIL which requested that he submit the Form. He also indicated that he was driving to Fort McMurray when he received the communication that the Form would be required and that, as a result, he asked the Agent if he could assist with the requirement. The Agent advised Agent X that he could attend to the matter. Agent X subsequently became aware of the problem after SMF contacted him.

Agent X provided the investigator with further information by email on January 27, 2011. This e-mail contained the email that AIL sent to him in regard to requiring the Form as well as the email that he sent to

the Agent on September 17, 2010 in which he asked for the Agent's assistance. Agent X advised that he received the e-mail from AIL while driving to Fort McMurray, and that he forwarded the e-mail request to the Agent asking the Agent to take care of the request. The e-mail from Agent X to the Agent was sent at 8:01:49 PM on Friday, September 17, 2010. Agent X advised that he did not complete the form at the time of completing the application, nor does he know who signed the form as he was not a witness.

On February 1, 2011, the Investigator spoke with the Agent. During this call the Agent indicated that he had sent a second written explanation to AIL in relation to this matter. The Investigator verbally requested a copy of the second written letter the Agent sent to AIL.

On February 1, 2011, the Investigator received an e-mail with attachment from the Agent. The attachment was an undated letter to AIL, signed by the Agent. The Agent provided an additional statement to AIL in relation to the completion and submission of the form. It read as follows:

This statement is in regards to the respiratory questionnaire for [RF].

On Friday evening I received the held business report which was emailed from our Redmond office. The following Saturday I went to the office to verify business. I recalled the mess on my desk had some addendums on them and I also checked my garbage. When I discovered the one page Respiratory addendum it was wrinkled, signed, and blank.

I contacted [Agent X] and inquired as to why it was not completed as it was signed, I assumed by the client, and was not submitted with the business. He stated it was an error.

It was from that point the wrong person [EF] was contacted by me and his asthma information was put on the addendum in error.

By letter dated February 23, 2011, the Investigator wrote the Agent to get further information and documentation. The Investigator asked the Agent if he signed the form and if not to provide answers to the questions as set out in the letter.

On March 1, 2011, the Investigator received an e-mail from the Agent, with an attached letter dated February 28, 2011. The Agent indicated "No" to the question if he had completed the signature of RF on the form. The Agent further advised, "As for an explanation, I could only speculate that with the amount of information needed to be verified by an individual to acquire coverage that the insured could have signed a form without recalling it."

Decision of the Council

In order to conclude that the Agent has committed an offence pursuant to s. 480(1)(a) of the Act, the Report must prove, 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 the fact that our findings can dramatically impact an insurance agent's ability to remain in the industry.

Additionally, the elements of s. 480(1)(a) offences have been discussed by the Alberta Court of Queen's Bench in *Roy v. Alberta (Insurance Councils Appeal Board)*, 2008 ABQB 572 (hereinafter "Roy"). In *Roy*, the Council found that an Agent committed an offence pursuant to s. 480(1)(a) of the Act when he attested to completing the applicable CE when he did not, in fact, have the required CE. The Agent also held a securities license and stated that he believed that the CE required to maintain his securities license was applicable to his insurance agent requirements. The Insurance Councils Appeal Board also found the Agent guilty of an offence and the Agent appealed to the Court of Queen's Bench. In his reasons for judgment, Mr. Justice Marceau reviewed the requisite test to find that an offence pursuant to s. 480(1)(a) of the Act has been made out and expressed it 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)

In applying this test to the case before us, a number of things are clear and beyond dispute. First, Agent X met with the clients and they signed applications for insurance. The clients and Agent X indicate that the Form was not presented or signed during this meeting. Indeed, it was not even requested by the insurer until after the applications were signed. The client indicated that he did not sign the Form.

It is equally clear that the Agent submitted the Form to the insurer. He candidly admits completing the Form with regard to the inaccurate health information; however, he states that he did not sign client's signature on the Form.

In our view and despite the Agent's assertion, we believe that it is more likely than not that it was the Agent that signed the client's signature on the Form prior to submitting it to the insurer. It is clear that Agent X received the request for the Form while he was travelling and he asked the Agent to facilitate this for him. The Agent's statement that the signature was on the Form when he completed it simply does not make sense. As noted above, both Agent X and the clients say that the Form was not presented to or signed by the client when the application was signed. Indeed, it was not even contemplated at the time that Agent X met with the clients. As to the Agent's intent, we believe that the clear and cogent evidence before indicates that the Agent signed the Form with the intention of assisting Agent X in closing the case. While his motives may have been to assist in this way, it clearly is unacceptable and exposed the clients, Agent X and the insurer to significant adverse risk. Therefore, we are satisfied that the evidence in the Report proves that the Agent acted in a dishonest and untrustworthy manner as contemplated in s. 480(1)(a) of the Act.

In terms of the appropriate sanctions, we have the ability to levy civil penalties in an amount not exceeding \$5,000.00. We also have the ability to suspend the Agent's certificate of authority for a period of time, up to an including, revoking the Agent's certificate of authority for a period of one year. In considering all of the aggravating and mitigating factors before us and considering factors such as public protection as well as specific and general deterrence, we are of the view that a substantial civil penalty and suspension is warranted.

While the Agent may have been motivated to assist Agent X and the clients, and was not doing so for personal gain, he did submit false information that could have created any number of problems for all concerned. Therefore, in relation to our findings we order that a civil penalty in the amount of \$3,000.00 be levied against the Agent in accordance with s. pursuant to ss. 480(1)(a) of the Act and 13(1)(a) of the *Certificate Expiry, Penalties and Fees Regulation*, A.R. 125/2001. We further order that the Agent's certificates of authority be suspended for a period of 30 days. This suspension shall commence on the eighth day after the mailing of this decision. The civil penalty must be paid within thirty (30) days of receiving this notice. In the event that the penalty is not paid within thirty (30) days the Agent's certificate of authority will be automatically suspended pursuant to s. 480(4) of the Act and cannot be reinstated or reissued before this amount is paid. 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.

April 19, 2013

Original Signed by Doug Curtis
Chair
Life Insurance Council

*Corriegnum

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.

Address for Superintendent of Insurance:

Superintendent of Insurance
Alberta Finance
402 Terrace Building
9515-107 Street
Edmonton, Alberta T5K 2C3