

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 Martin Emery
(the "Agent")

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

This case involves matters related to alleged contraventions of the *Replacement of Life Insurance Contracts Regulation* (the "Regulation"). First, it is alleged that the Agent failed to complete a declaration statement as required by Section 5 of the Regulation. Additionally, it is alleged that the agent failed to state on the application that a replacement of the existing contract was intended as required by Section 6 of the Regulation. In both instances, it is therefore alleged that the Agent contravened a section of the Act or regulations as contemplated by s. 480(1)(b) of the Act.

Facts and Evidence

This matter proceeded by way of a written Report to Council dated January 28, 2013 (the "Report"). The Report was forwarded to the Agent for his review and to allow the Agent to provide the Council with any further evidence or submissions by way of Addendum. The Agent signed the Report on February 9, 2013 and submitted a one page addendum.

The Agent has been licensed since August 20, 2009 for Life and Accident and Sickness (A&S) insurance. On December 2, 2011, the AIC received an email with a number of attachments from an insurance agent ("WW") that complained about the Agent's conduct in relation to a universal life ("UL") insurance policy that he sold to a client - "KF". Specifically, WW advised of his concerns in relation to the alleged "replacement" of a life insurance contract that he had previously sold to KF, the suitability of the new policy, and the competency of the Agent. WW further indicated that Equitable Life agreed to reinstate the former policy and return all premiums that KF had paid. Included in the series of e-mails was an e-mail from KF to WW dated October 14, 2011. In this email, KF advised WW that she felt she was misled and

did not receive the proper information in relation to the transaction. KF further wrote that the Agent told her she could cancel the UL policy and get the money in the fund and get term insurance. KF advised she sent an e-mail requesting cancellation of the policy and that she would like to withdraw the funds and purchase term insurance. She wrote that the Agent called her and advised that it could not be done as the funds were locked-in. In one of the attached files that WW provided, was a copy of the Equitable Life application for proposed coverage signed and dated by KF on November 8, 2010. In section 16, question J – Will this contract, if issued, replace a Life Contract now in force, with this or any other company? – was initially answered yes, then crossed out and answered no. In the details area of section 16, it was initially completed indicating, “Replace existing term life @ \$300,000.00”, which had a line through it and a sentence written underneath it indicating, “client decided to keep her current plan until it expires”. In the other attached file, WW provided a copy of a letter from Equitable Life to KF dated November 28, 2011, which advised of their decision to reinstate her previous term policy and that the premiums were deducted from the UL policy to pay the outstanding term policy premiums and the balance refunded in the amount of \$6,075.75.

On January 5, 2012, the Investigator spoke with WW, who advised that he had additional e-mails from KF and asked if he could forward them. The Investigator confirmed he would like to obtain copies of the e-mails. WW provided these emails to the investigator on January 5, 2012. In one of these, dated October 13, 2010, KF wrote to WW and advised him that: “Just to let you know that the canceling (sic) of the insurance is nothing personal...I’m just getting my life on track and I have combined all my debt etc with one company...” In the other attached e-mail from KF to WW dated February 3, 2011, she advised, “...I also got an insurance policy with him and have put a cancellation in on my term insurance.”

On January 10, 2012, the Investigator wrote to “SJ” (an official with Equitable Life) and requested information and documentation.

On January 24, 2012, the Investigator received a letter with attachments, dated January 20, 2012, from SJ. In his letter, SJ advised that KF’s old term policy effectively lapsed/terminated on February 13, 2011 due to a stop payment of premiums. In the attachments, SJ provided a copy of the UL application signed and dated by KF on November 8, 2010 and other various documents on file with Equitable Life. Included was a copy of a point of sale illustration for the proposed UL coverage that was signed and dated by KF on November 8, 2010 with a preparation date of November 8, 2010. The illustration contains a planned premium schedule

of \$8,040.00 annually from policy year 1 to policy year 14 with no further premium deposits, and based on a total rate of return of 7%. The illustration also indicates, "Based on the alternate interest rate(s) scenario the policy would terminate in year 29." The alternate interest rate was set at 4%. Also included was a copy of the policy specifications pages for the proposed UL coverage that confirmed an effective date of coverage as December 6, 2010. Also included were copies of various communications in regard to the UL policy. One such example, is a letter to KF from Equitable Life dated October 27, 2011 that advised her that a premium payment in the amount of \$670.00 had been returned by KF's bank and as a result Equitable Life terminated the monthly pre-authorized debit plan. Also included were copies of two letters from Equitable Life to KF in relation to the term policy, which advised of the stop payment (February 9, 2011) and an offer to reinstate the term policy (March 18, 2011). Also included were copies of an e-mail request for information from WFG to the Agent and his response by letter dated November 27, 2011 with attached documents.

On February 22, 2012, the Investigator spoke with KF and confirmed receipt of a complaint from WW. KF advised that she does not earn a large income and that it became difficult to continue with the program she started with the Agent. KF advised that she was not investing into an RRSP but she did start a TFSA for which she had to reduce her contributions as she could not afford it. The Investigator advised KF he would write to her to request additional information and documentation.

On February 24, 2012, the Investigator wrote to KF and requested additional information and documentation. In a response, KF advised that "I didn't really want to change my insurance but according to him it was an essential part of 'the' plan. Also I certainly had no need for \$800,000 of life insurance and had no intention of keeping both. In fact [the Agent] told me that all I had to do once my UL policy was issued was to put a stop payment on my term policy." KF further advised, "It's not even so much that I advised him that I would not be keeping my policy...he was the one that recommended that I eventually cancel it, this was the intent even before I applied for the UL contract." KF also provided a number of emails from the Agent and the Agent's wife where they attempt to deal with KF's concerns and options open to her.

On June 5, 2012, the Investigator wrote to the Agent and requested information and documentation.

On June 27, 2012, the Investigator received a letter dated June 22, 2012 with various attached documents from the Agent. In his letter, the Agent advised, among other things, that “The purpose of the life insurance plan was to provide life insurance and an investment for her retirement goals.” The Agent further advised, “[KF] informed me that instead of replacing it outright, she was going to keep the insurance plan till she felt comfortable to let it lapse.” The Agent further advised, “When it was to lapse I was then going to do a replacement of insurance documentation. I was not informed (nor did I follow-up with [KF]) when the current term insurance lapsed; hence no form was completed. This, I recognize as a failure on my part, one of which I will not repeat.” The Agent also advised that it was the first UL policy he had sold and that he believed he met compliance standards as all paperwork was reviewed by senior advisors with WFG.

As the Agent mentioned the fact that another agent reviewed this transaction, the investigator sought further information from that agent (“BB”). The investigator asked BB whether or not he had made any changes to KF’s application and the answers to the questions regarding whether a replacement was intended and whether or not he witnessed the completion of the application on November 10, 2010. In response he indicated, among other things, that he did not alter the application and did not witness its completion.

Discussion

From the evidence in the Report, we believe that KF’s intention throughout was to replace her existing term life insurance and that the Agent knew of this intention and probably counseled her to cancel the policy. Part of the reason for this conclusion is that KF sent an email to the WW explaining why she was going to cancel her existing insurance before she even completed the application for new policy. As such, pursuant to s. 5 of the Regulation, the Agent was required to complete a declaration statement for the client prior to taking the application and he failed to do so in contravention of the Regulation. Therefore, he contravened a section of the regulations as contemplated in s. 480(1)(b) of the Act.

As to the applicable sanctions, we have the ability to levy civil penalties in an amount not exceeding \$1,000.00 pursuant to s. 13(1)(b) of the *Certificate Expiry, Penalties and Fees Regulation*, A.R. 125/2001. We also have the ability to suspend or revoke the Agent’s certificate of authority to act as an insurance agent. As to this contravention, we are of the view that a penalty at the high end of the range is appropriate. In this circumstance, the Agent either recommended the replacement of the existing policy or had instruction from the client to replace it. We are of the view that he explicitly acted in a manner so as to avoid completing the Replacement forms as required. We are also concerned that the

Agent seems to have delegated a great deal of his duties to his wife despite the fact that she does not hold an insurance agent's certificate of authority. Given these facts, we order that a civil penalty in the amount of \$1,000.00 be levied against the Agent and that his certificates of authority be suspended for a period of 30 days.

As to the second allegation (that the Agent falsely completed the applications so as to state that they were not replacements when, in fact, they were), we likewise find the Agent guilty for the same reasons as set out above. It is the Agent's responsibility under the Regulation to ensure that the applications are completed properly and truthfully. Once again, we are of the view that an additional civil penalty in the amount of \$1,000.00 is appropriate and we order that this be levied against the Agent. We also order that his certificates of authority be suspended for a period of 30 days with this suspension running concurrently with that ordered in the previous count.

The civil penalties (totaling \$2,000.00) must be paid within thirty (30) days of receiving this notice. In the event that the penalties are not paid within thirty (30) days, the Agent's certificates of authority cannot be reinstated pursuant to s. 480(4) of the Act until they, and any outstanding interest, are paid. The suspensions of the Agent's certificates of authority will commence on the eighth day after the mailing of this decision. 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

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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