

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 967871 Alberta Ltd. / Buttar & Associates Insurance Network
(the "Agency")

As represented by
Designated Representative, Buttar, Sharnpreet (201795)
(the "DR")

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

This case involved an allegation pursuant to s. 504(1) & (2) of the Act. Specifically, it is alleged that the Agency collected the full amount of premiums from a client but failed to remit the premiums to the insurance company as required by the Act and that this constitutes an offence pursuant to s. 504 (1) & (2) and, thereby, 480(1)(b) of the Act.

Facts and Evidence

This matter proceeded by way of a written Report to Council dated November 1, 2012 (the "Report"). The Report was forwarded to the DR for review and to allow the Agency to provide the Council with any further evidence or submissions by way of Addendum. The DR did not adduce any further evidence.

The Agency was the holder of a General Insurance Certificate of Authority, and was licensed from November 24, 2008 to April 30, 2012.

The DR is the holder of a General Insurance Certificate of Authority, and has been licensed since August 6, 2003 and as the Designated Representative of the Agency from February 15, 2012 to April 11, 2012.

On March 23, 2012, the Alberta Insurance Council (the “AIC”) received a letter from JK, which included 27 pages of attachments that showed that JK made two payments to the Agency for an insurance policy through Intact and a copy of a signed Premium Finance contract she entered into through IFS for the remaining balance of that policy. In the above-noted letter, JK advised that as of the date on the above-noted letter she had not received any documents or refund from the insurance company or Agency. On March 14, 2012, the AIC received an email from JK attaching information that the investigator requested in a prior telephone conversation. Attached was a copy of that letter and attachments including a copy of that email the investigator sent JK requesting information.

On March 26, 2012, the AIC sent an email to “CK” with Intact requesting information and documentation in relation to the automobile insurance policy that the Agency put in place through Intact for JK and in particular requested confirmation that Intact received the premiums that the Agency collected from the JK and IFS.

On April 11, 2012, the AIC received an email from “DO”, Manager, Personal Insurance with Intact confirming that Intact did not receive any funds from the Agency or directly from JK. DO advised that “If IFS paid the premium, they would have paid [the Agency].”

On April 30, 2012, the AIC sent an email to “JP”, Accountant with IFS, requesting information regarding the Premium Finance contract that was put in place through IFS for an automobile insurance policy for JK, and in particular requested confirmation of the amounts that IFS paid under that contract and the name of the individual they released those funds to.

On May 1, 2012, the AIC sent a letter to the DR, requesting information and documentation regarding an insurance policy that was put in place through Intact for JK, and in particular requesting confirmation that the Agency collected premiums and additional fees from JK and requested a copy of the various documents relating to that policy.

On May 15, 2012, the AIC received a email from JP, which confirmed that IFS forwarded to the Agency the amount of \$3557.25 by direct deposit to pay for the insurance policy the Agency put in place for JK and advised that the Agency received these funds on November 25, 2011. JP explained that the Premium Finance contract had an outstanding balance in the amount of \$3028.55, and stated that “It is technically the

loan balance owing by the customer, however we have not received the cancellation credit from the broker and this amount should be enough to clear the balance.”

On May 16, 2012, the AIC received a fax from the DR explaining that the insurance policy was placed through the Agency for JK was on agency bill and therefore the insurance company received the funds. The DR advised that the insurance policy placed through Intact “The monies to Intact were owed on a monthly basis for all Agency Bill policies and were paid through deductions in the Commissions payable accordingly.” The DR advised that a refund in the amount of \$600.00 was paid to JK as the insurance policies were canceled.

Discussion

As noted above, this case relates to sections 504(1) and (2) of the Act. These sections read as follows:

Agent trustee of premiums

504(1) An insurance agent who acts in negotiating, renewing or continuing a contract of insurance with an insurer and who receives a payment from the insured for a premium for the contract is deemed to hold the premium in trust for the insurer.

(2) If the insurance agent fails to pay the premium, less the agent’s commission and any deductions to which, by the written consent of the insurer, the agent is entitled, over to the insurer within 30 days after the agent receives a written demand for payment of the premium, the agent’s failure is proof, in the absence of evidence to the contrary, that the agent has used or applied the premium for a purpose other than paying it over to the insurer.

1999 cI-5.1 s504

From the wording of these sections is clear that each single premium payment that an agent receives is explicitly held in trust for the insurer and that to the extent that an agent refuses or neglects to pay these funds to an insurer following a written demand, it is presumed that the agent has used these funds for a purpose other than paying them over to the insurer. In our view, it is clear that the Agency received premiums funds from the client at issue and did not pay these over to the insurer by way of the pre-authorized withdrawal that the insurer processed. In our view, the pre-authorized withdrawal that the insurer attempted to process was a written demand for the premium funds as contemplated in s. 504 and

the Agency's failure to pay over the premium constitutes a breach of the section as alleged in the Report. As such, we find that the Agency contravened the Act as alleged.

In terms of the applicable sanctions, we have the jurisdiction to order civil penalties in an amount not exceeding \$1,000.00. As the Agency no longer holds a certificate of authority we cannot suspend or revoke any certificate.

The Agency was sanctioned for violating the same sections of the Act on three previous occasions. In the November 2011 finding, a civil penalty was levied and GB's certificate of authority was suspended. In case November 2012, the Agency was found to have committed 3 separate offences and was sanctioned \$1,000.00 for each. Also in November 2012, the Agency was sanctioned \$1000.00 on the second matter. In this case, we similarly order that a civil penalty of \$1,000.00 be levied against the Agency.

Therefore, in relation to this finding we levy a civil penalty in the amount of \$1,000.00 pursuant to ss. 480(1)(b) of the Act and 13(1)(b) of the *Certificate Expiry, Penalties and Fees Regulation*, A.R. 125/2001. The 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, interest will begin to accrue. Pursuant to s. 482 of the Act (copy enclosed), the Agency has thirty (30) days in which to appeal this decision by filing a notice of appeal with the Office of the Superintendent of Insurance.

This Decision was made by way of a motion made and carried at a properly conducted meeting of the General Insurance Council. The motion was duly recorded in the minutes of that meeting.

May 1, 2013

Original Signed by Jim Harris
Chair
General Insurance Council

*Edited to Remove Third Party Names

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