

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 The Gallery of Fine Cars Inc. / The Gallery
(the "Dealership")

As represented by
Designated Individual, Adrian Aprile
(the "DI")

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

This case involved an allegation pursuant to s. 452(1) of the Act. Specifically, it is alleged that the Dealership acted as a restricted insurance agent during a period of time the Dealership did not hold a valid and subsisting Certificate of Authority and that this constitutes an offence pursuant to s. 480(1)(b) of the Act.

Facts and Evidence

This matter proceeded by way of a written Report to Council dated July 4, 2014 (the "Report"). The Report was forwarded to the DI for review and to allow the Dealership to provide the Council with any further evidence or submissions by way of Addendum. The DI signed the Report on July 21, 2014 and did not adduce any further evidence.

The Dealership is currently the holder of a certificate of authority for the sale of credit related ("CR") and equipment warranty ("EW") insurance. It first held an EW certificate on November 22, 2011. This certificate expired on October 31, 2012. The Dealership did not hold another EW certificate of authority until September 9, 2013.

On September 5, 2013, the AIC received the 2013/2014 Form 5 Application for Restricted Agents Certificate of Authority (the "Application") for EW insurance, signed by the DI and dated August 21, 2013. Enclosed with the Application was a letter from the DI dated August 23, 2013. In the enclosed letter, the DI advised, "...I was unaware that my [EW] License had not been renewed. My partner at the time Justin Klee had informed me that all licensing was up to date and valid. We have since dissolved our partnership and the necessary documentation to renew was forwarded to my former partner and I was unaware that the renewal had not taken place as it should have. I have been compensated for the [EW] from November 1, 2012 to present date, but have since ceased all sales until this renewal is active."

An AIC investigator wrote to the DI on October 24, 2013 and asked that the DI provide information as to the Dealership's EW insurance agent activity. The DI responded on behalf of the Dealership by way of letter dated November 14, 2013. In this letter the DI advised:

The information you are requesting for the total number of EW Insurance sales completed during November 1, 2012 to Septmeber [sic] 8, 2013

I will need some additional time to go through every single file that is now in storage. I have contacted Global Warranty to also help me with this as they will have a report of all the contracts that were sold within the time line in question ...

The Insurer Underwriting the EW Insurance Contract is Global Warranty. As well as the compensation received for each sale.

Again Global Warranty compensated me for all the EW Insurance sales during the period in question.

I would also like to explain the course of events with respect to the licensing and renewal for the period in question [sic], by business partner at the time Justin Klee was the designated individual, as well as the email contact for all license renewals, during the period of November 1, 2012 to September 8, 2013.) [sic]

It was when the partnership dissolved that I was made aware that the license was not active, I know that there

was an error it was the (CR) license that was renewed and not (EW), we at The Gallery of Fine Cars have never sold any (CR) creditors insurance ever, which leads me to believe that the wrong license was renewed October is the time that (EW) is up for renewal, not (CR).

Justin Klee was also compensated as we both owned the business in this time period.

I would also like to mention that there were many EW contracts sold that we included at no cost and made no profit in the period that is in question. I will forward that information once I have had the chance to review all files .. [sic]

The investigator also obtained evidence from the third party administrator that processed applications that the Dealership submitted as well as from the insurer. This evidence indicates that the Dealership sold 192 policies during the period in which it did not hold a valid and subsisting certificate of authority. Further, the evidence indicated that 14 of these sales took place after August 23, 2013. This contradicts the DI's assertion that all sales ceased while a certificate of authority was not active. The evidence further indicates that the Dealership was compensated more than \$165,000.00 during the unlicensed period in question.

Decision of the Council

In order to prove the allegation in the Report, the AIC must adduce sufficient evidence to demonstrate that the Dealership acted in the capacity of an insurance agent as defined in the Act during a period in which it did not hold a valid and subsisting certificate of authority. In our view, the evidence is clear that the Dealership's certificate of authority expired on October 31, 2012 when it was not renewed. It is equally clear that the Dealership did not obtain another certificate of authority until September 9, 2013. During this period, it sold at least 192 new insurance policies and received significant compensation in this regard. Additionally, 14 of the policies were sold after the DI became aware that there was no license in place and after he assured the AIC that its activity had ceased.

Traditionally, where a restricted agent has no disciplinary history the Council has taken an approach that treats the unlicensed activity as one offence even though multiple policies might have been sold. This approach has worked in the past and repeated non-compliance by restricted certificate holders is rare. Despite the level of compensation the Dealership has received in this case we are prepared to consider the Dealership's unlicensed activity in a similar manner and find it guilty of one offence of acting as an insurance agent while not holding a certificate of authority. However, the Dealership should note that had the Council found it guilty of one offence for every policy sold it could have been subject to civil penalties totaling \$192,000.00.

In terms of the applicable sanction, we have the ability to levy civil penalties in an amount not exceeding \$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). In this case, we note that the Dealership sold a large

number of policies and continued its activity knowing that it did not hold a license. Given the facts in their totality, we believe that a civil penalty at the high end of the spectrum would be appropriate and we order that a civil penalty in the amount of \$1000.00 be levied against the Dealership. The civil penalty must be paid within thirty (30) days of receiving this notice. In the event that the civil penalty is not paid within thirty (30) days, the Dealership's certificate of authority will be automatically suspended pursuant to s. 480(4) of the Act. Pursuant to s. 482 of the Act (copy enclosed), the Dealership 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.

Date: September 9, 2014

Original signed by

Thom Young, Member
General 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.

Address for Superintendent of Insurance:

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