

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 Naomi Hong
(the "Agent")

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

This case involved an allegation pursuant to ss. 452(2)(a) and 480(1)(b) of the Act. Specifically, it is alleged that the Agent acted as an insurance agent while not holding a valid and subsisting certificate of authority as required by s. 452 of the Act. In so doing, it is alleged that she violated a section of the Act 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 May 2, 2014 (the "Report"). The Report was forwarded to the Agent for her 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 May 12, 2014 and did not adduce any further evidence.

The Agent is the holder of a valid certificate of authority to transact business as a general insurance agent and, other than for the period December 12, 2012 to December 4, 2013, has been so licensed since at least June 27, 2008. On November 27, 2013, the AIC received an Application for a general insurance agent certificate of authority from the Agent. The application disclosed, under the employment history section, that the Agent had been employed as an "Insurance Advisor" by an insurance agency (the "Agency") from November 26, 2012 to November 15, 2013. On December 3, 2013, the AIC sent a letter to the Agent that asked her to confirm whether she had been compensated for acting as a general insurance agent since December 12, 2012 in light of the fact that her certificate of authority had been suspended on December 11, 2012. On December 4, 2013, the AIC received a letter, via e-mail, from the Agent that confirmed that she

had acted as a general insurance agent during the period when she did not hold a valid and subsisting certificate of authority to do so.

On December 31, 2013, the AIC sent a letter to the Agent which requested details as to the number of general insurance policies she had sold during the period when she was not licensed, as well as the compensation she had received during that same period of time. On March 10, 2014, the AIC received a letter from the Agent which stated, in part, as follows:

My position at [the Agency] included assisting clients to obtain the right insurance product and adequate coverage, completing endorsement requests, processing payments, and contacting underwriters for approval. I was compensated by annual salary with bonus commissions in campaign periods.

I did not learn that my license was not transferred to [the Agency] until I joined AWI and since I am no longer at [the Agency], I have no way of compiling a list of policies and files that I worked on.

The Agent also provided proof of her annual salary during the period of time in issue.

On March 11, 2014, the AIC sent a letter to the designated representative of the Agency (the "DR") that requested details in relation to the Agent's employment by the Agency, including the period of her employment, her duties and responsibilities, a listing of all policies which she had sold and details in relation to the compensation which she had received.

On April 3, 2014, the AIC received a fax from the DR wherein she confirmed that the Agent did not complete "...the paper work..." in relation to her certificate of authority when she commenced her employment with the Agency. The DR also confirmed that the Agent was employed by the Agency from November 26, 2012 to November 15, 2013, and confirmed the annual salary the Agent received as an employee of the Agency. She attached a 6 page computer printout which she described as "...a complete listing of the new business policies [the Agent] wrote during the time she was employed by [the Agency]."

On April 4, 2014, the AIC sent an e-mail to the DR, asking if she could provide the AIC with the total number of new policies sold by the Agent during the period of time in issue based on the 6 page computer printout. On April 7, 2014, the DR responded by e-mail, advising as follows: "Broker Transfers – 8, New – 111, Total – 119."

Discussion

From the evidence in the Report, it is clear that the Agent acted in the capacity of an insurance agent at a time during which she did not hold a valid and subsisting certificate of authority. The Agent freely admits this. As such, we do find that she breached s. 452(2)(a) of the Act and; therefore, contravened a section of the Act as contemplated by s. 480(1)(b).

As to the applicable sanction, we have the jurisdiction 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 light of the Agent's cooperation and the fact that she has not been previously sanctioned, we are of the view that a civil penalty at the high end of the range would not be appropriate in the circumstances. We likewise are of the view that a license suspension or revocation is not warranted. Therefore, we order that a civil penalty in the amount of \$300.00 be levied against the Agent. 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. 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 General Insurance Council. The motion was duly recorded in the minutes of that meeting.

Date: July 22, 2014

Original signed by

Amanda Sawatzky, Chair
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