

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 Marites Bolisay Nakpil
(the "Agent")

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

This case involved an allegation pursuant to s. 480(1)(a) of the Act. Specifically, it is alleged that after a client "BB" sent a letter to cancel her policy, the Agent sent a letter of direction to the insurer ("TLC") to ignore BB's request and to instead put the policy on "premium holiday". It is alleged that this was done without BB's knowledge or consent. In so doing, it is alleged that the Agent acted in an untrustworthy manner and misrepresented BB's intentions to TLC such that the Agent committed an offence pursuant to s. 480(1)(a) of the Act.

Facts and Evidence

This matter proceeded by way of a written Report to Council dated June 17, 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 July 3, 2014 and submitted an addendum by way of a letter.

The Agent has held certificates of authority authorizing her to act in the capacity of a life and accident & sickness ("A&S") insurance agent since February 21, 2012. On January 18, 2014, the AIC received an e-mail with attachments from an individual ("AB") who asked the AIC to review the Agent's activities in and around a particular insurance policy held by her daughter BB. AB (herself a licensed insurance agent) indicated that BB cancelled her policy on September 26, 2013. Later, BB was "startled" that a premium payment was deducted from her bank account for this policy on January 7, 2014. AB further advised that it came to their attention that a letter reversing BB's instruction to cancel the policy was sent to TLC on or about October 4, 2013 and that this letter was sent without AB's or BB's knowledge or consent. AB further

alleged that BB did not sign this letter. AB obtained a copy of the letter and included it in the email to the AIC.

Also included with the e-mail from AB were the following attachments:

- A copy of “Attachment 1” as indicated in AB’s e-mail. AB advised it was BB’s original cancellation request with her signature. The letter was dated September 26, 2013 and instructed the immediate cancellation of her policy.
- A copy of the letter reversing BB’s cancellation and requesting that the policy be placed on “premium holiday”. AB advised that they were not aware of this letter until receiving it from the insurer on January 9, 2014. This letter was dated October 4, 2013, and addressed to “Policy Admin”. The letter requested, “Kindly ignore the cancellation request for this policy...and put this policy on a premium holiday from Sept – Dec 2013...premium payment will resume in January 2014” and it was signed by the Agent and contained a signature appearing to be that of BB. Given that BB was the client rather than AB, the investigator wrote to AB and requested that BB submit a complaint letter in relation to her concerns.

By letter to the AIC dated January 28, 2014, BB indicated that she had spoken to one of the insurer’s officials who indicated that the insurer proceeded on the basis of the premium holiday letter and that the additional premium for the policy was processed in accordance with those instructions. BB wrote that “[t]his was so frustrating to know as there was no way; I was going to do it. Maybe for the premium holiday but never to reinstate the policy.” (emphasis added). BB further advised that she did not write or sign the letter revoking her decision to cancel the policy and that she had had no contact with the Agent since June of 2013.

On February 19, 2014, the investigator wrote to TLC and requested information and documentation. The insurer responded by letter dated February 28, 2014. Accompanying this letter, among other things, were the following attachments:

- A copy of a fax cover page dated September 26, 2013 from BB to TLC with the letter of direction of the same date requesting, “I would like to cancel my policy effective immediately.”;
- A copy of a letter of direction dated October 18, 2013, with a fax transmission date of October 20, 2013. The letter contains a signature appearing to be that of BB that, in part, instructs the insurer to “[p]lease ignore my cancellation earlier. I would like to have the premium holiday from September 2013 to December 2013.” The letter contains a handwritten reference to the policy number;

- A copy of a document dated September 30, 2013 from TLC to the Agent. The document indicated, "Important Information – Action Required" in relation to BB's policy, and advised, "We are returning the request received on 27 Sept/13 for a full cancellation of the policy. Please advise client that we are unable to complete the request as address marked 'Bad' on our system. Please have client to [sic] submit a current address to us. In addition, We [sic] are providing you the opportunity to advise our mutual client that \$955.50 surrender charge will be applied against the surrender. Therefore, no further transaction [sic] can be processed at this time."
- A copy of a faxed cover page dated January 31, 2014, with a letter dated January 28, 2014 from BB to TLC. In this letter, BB reiterated her previous allegations. BB also advised that, "I have not had any contact with the person of [the Agent] since last June of 2013."
- A copy of a fax cover sheet dated February 3, 2014 from TLC to World Financial Group ("WFG"). The fax cover sheet advised WFG of BB's complaint against the Agent and requested that WFG answer certain questions;
- Copies of WFG's and the Agent's responses to TLC. The Agent advised that "[BB] authorized and signed the holiday premium from Sep - Dec 2013 and the mother [AB] being a licensed agent has the full understanding of premium holiday, the policy has fund value that they can make use of instead and all of this has their full understanding. The plan is to discuss with the client by Jan. 2013 their options with the policy." The Agent also advised that BB did not attend the Las Vegas convention from July 30 – Aug 3, 2013; and
- A copy of a letter dated February 26, 2014 from TLC to BB. The letter advised, "Based on the following information our investigation has found no evidence to support your request for a refund of \$150.00 representing the January 2014 premium. I would like to confirm that your policy has been cancelled effective February 6, 2014 as per your fax dated January 20, 2014."

On March 27, 2014, BB sent an unsolicited email to the investigator that included a copy of an email (and attachment) that BB had also sent to TLC. In the email, BB expressed her disappointment over the outcome of TLC's investigation. BB also advised that she had a meeting at a WFG office with the Agent and a WFG official. She stated that during this meeting, the Agent admitted that she had fabricated the premium holiday letter using a photocopy of her signature that she found on other documents.

On March 27, 2014, the investigator spoke with the WFG official who allegedly attended the meeting to which BB referred. This person confirmed that she was present at the March 11, 2014 meeting with the Agent, AB and BB. The investigator specifically asked if the Agent admitted to fabricating the premium

holiday letter and sending it to TLC without BB's knowledge or consent. The WFG official denied that the Agent made any such admissions and told the investigator that BB signed the letter.

On April 2, 2014, the investigator spoke to the Agent and advised her of BB's complaint and he asked that she explain what occurred. The Agent said that the premium holiday letter was faxed to TLC from her WFG office. The Agent said that it was undated but signed by BB during a previous meeting they had in June of 2013 and that AB also knew and understood this. The Agent said that TLC called her about BB's cancellation letter and that she attempted to contact BB and AB but that neither returned her message. The Agent advised that she then submitted the premium holiday letter to TLC based on her understanding that BB and AB had previously agreed to request a premium vacation in accordance with the letter that BB signed.

On April 3, 2014, the investigator again spoke with one of the TLC officials involved in their investigation. In this call, the investigator recounted the Agent's version of the events and the TLC official confirmed receipt of a second statement from the Agent that made reference to the letter being signed by BB during a meeting in June of 2013. TLC later provided a copy of a statement from the Agent, dated April 1, 2014. The Agent wrote:

This response is to address the allegations forwarded by [AB] and [BB].

With due respect, I would just like to give a little background of why this matter had gotten out of proportion, a matter I believed can be resolved. [AB] and [BB] are not just simply my clients but they are my friends, colleagues, and most importantly teammates. [AB] is also a licensed agent of WFG with agent code [omitted]. [BB], her daughter is an associate as well. We had a good relationship then from February 2013 up to early part of August of the same year. I got [sic] in and out of their house so [sic] pretty often and we have discussed so many things about life not only about training and business building. Sometime around June 2013 she mentioned that they wanted a change of premium withdrawal date on her policy to ensure that there is an available fund when the deduction comes in. So I told them to take care of their policies coz [sic] they are building savings/fund value in it, and they fully understand. In fact, [AB] is the one who related me [sic] a story about a family in Toronto wherein the head of the family passed away without life insurance and the family was miserable. She also said that there were 4 Filipinos who died in a car crash all with families without protection. These were the conversation [sic] we used to have before. That's why [AB] and [BB] knew the importance of keeping an inforce [sic] life insurance. One night in June 2013, I told them to just inform me about their decision whether it is to change the date of premium or if they want to have a premium holiday because they were still uncertain by that time. I made them sign a letter and [AB] just said she will let me know and I will just go

with it and submit the request if they decide for it [sic]. It is a pre signed letter that they are [sic] fully acknowledged and an understanding between myself and them. They can honestly deny this but the truth is they acknowledged and pre signed the request for whatever purpose it may serve them.

We were in Mandalay Bay, Las Vegas for the Convention of Champions in 2013 when I had a talk with her. In fact, we had a picture together. That's when I realized that she will be cancelling her policy by the way our conversation went. I explained to her that there is a fund value in her plan and just make use of it instead. She knew what I was trying to tell her all [sic] this point. When we came back to Edmonton, things changed and she became indifferent. I tried few [sic] times to get hold of her but she's not [sic] responding or returning my calls. I learned then that she wanted to transfer to another team and that she started talking to people in the office about our issue mostly negative things. A personal concern and a trainer-trainee relationship that can be easily resolved but [AB] (mother) is so difficult to deal with...

... When I got the email from Transamerica that they are cancelling their policies, I sent her a message that I used her fund value to put them on a premium holiday. She did not answer but I'm holding to the understanding that we had before and the pre signed letter that they had acknowledged. When I got the second email [omitted] asking that request should come from the client themselves with their signature, I asked [omitted] to bring the letter of direction to both [AB] and [BB] to have them read and signed. They have [sic] no problem signing the second letter because they are fully aware that I have already put them on a premium holiday. The second letter submitted to Transamerica dated October 18, 2013 was faxed and received on October 20, 2013. They are claiming now that [omitted], another licensed agent forced them to sign the document. That was not TRUE [emphasis in original]. Nobody can force anyone to sign something. The request was left at their place and when [omitted] picked it up already fully signed by both [AB] and [BB]. I put premium resumes in 2014 for I believed that I can still conserve their policies and they are happy with their plan. I know when emotions are high, most decisions are low. I tried to resolve issues with them but they just don't have the heart to iron things out civilly. With the allegations they threw on me that I did that so as not to incur a charge back is not very true. Chargeback is chargeback and it's a part of the business, it did not come from me, and they are just putting words into my mouth. They can say things that they wanted to say but I was told to just deal with them professionally. I have done something in good faith and on [sic] their benefits, I want them to save some money at no cost for them, to make use of their fund value and get their lives protected coz [sic] I know that life is very uncertain. Like what I said, they are not just simply clients to me, they are my friends and colleagues and I just felt that I have to do my job because let's say worst case scenario happens on that span of 4 months that I have them covered and something happened to them, I'd like to think that it will be the other way around that the family will be at least grateful that I have done what's best for the client whatever circumstances we were in at that time...

On April 3, 2014, the investigator spoke with the Agent. In this conversation, the Agent said that she had obtained BB's signature on the letter in June. The Agent also advised that she had sent a text message on the same date she sent the letter to TLC, in order to advise that she had sent the letter to TLC requesting a

premium holiday. In further discussing the Agent's letter, the investigator referred to the Agent's comment, "we were in Mandalay Bay, Las Vegas for the Convention of Champions in 2013 when I had a talk with her. In fact, we had a picture together. That's when I realized that she will be cancelling her policy by the way our conversation went." In discussing "we" in relation to the Las Vegas convention, the Agent said that the discussion was with AB and that BB did not attend the Las Vegas convention and was not present in regard to that discussion.

On April 3, 2014, the investigator wrote to the Agent and requested information and documentation and she responded by way of letter dated April 22, 2014. The Agent wrote that :

[t]he exact date was unrecalled [sic] to me, it was sometime in June 2013, when I kept on coming back and forth at their place. It was not a blank letter, it is a pre-signed, premium holiday authorization letter with the content, 'Premium holiday from September [sic] to December 2013, premium payment resumes in January 2014, for your information and guidance. Thank you very much.' The content pertaining to the premium holiday was written in front of the client and duly signed by them. The letter was not dated in June because I was given an instruction to hold onto it until further notice and confirmation.

The Agent further wrote, "When both [BB] and [AB] submitted the cancellation request to TLC dated September 26, 2013 and I was notified on September 30, 2013, I tried to call them but they were not returning my call so I sent them a text message last October 3, 2013, informing them that I am putting them on a premium holiday (as we agreed upon in Vegas)."

Included with the letter from the Agent were the following attachments:

- A copy of a text message with a date of "Thu, Oct 3, 11:55 AM". The message indicates, "Hi [AB]....I put you and [BB] on a premium holiday..."
- A copy of a document dated October 8, 2013 from TLC to the Agent. The document relates to Policy No. [omitted] and insured, BB. The document instructed that if the client decides to rescind the cancellation request, they would require a revised letter of direction in order to not continue.
- A copy of a letter of direction dated October 18, 2013 to TLC which advised, "Please ignore my cancellation earlier. I would like to have the premium holiday from September 2013 to December 2013." The letter was in relation to BB's policy and bore what appeared to be BB's signature.
- A copy of a letter of direction dated October 18, 2013 to TLC which advised, "Please ignore my cancellation earlier. I would like to have the premium holiday from September 2013 to December 2013." The letter was in relation to AB's policy and it appeared to have been signed by AB.

In her addendum, the Agent wrote:

I would like to acknowledge this regulating body for hearing both sides of the story. On my part, I believe that I did something in good faith and on my client's best interest. I do now understand the point that I should have exerted more effort in contacting them, even though we have made an agreement and understanding beforehand.

Being one year in the business then, I know there are a lot of important things that are needed to be learned and applied.

I would like to acknowledge this shortfall of not having a more proper authorization from the client's [sic] and this will never happen again in the future."

Discussion

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 he 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)

Based on the evidence in the Report, we believe that the Agent and AB spoke about placing BB's policy on premium holiday. We also believe that at some point in time it was BB's intention to do this. However, it was never her intention to rescind her decision to cancel the policy. Moreover, we believe, for a number of reasons, that it is more likely than not that the Agent manufactured the letters of instruction that were submitted to accomplish this. First and foremost, the October 4, 2013 letter that was purportedly signed in June asked the insurer to "ignore the cancellation request for this policy." The difficulty with this is that no cancellation request had been sent when this letter was allegedly written and then signed by the client. The Agent states that her understanding was that BB and AB agreed to proceed on the basis of the premium holiday. If this was the case, it makes no sense for the letters to reference a cancellation letter that had not been written.

Secondly, the October 4, 2013 letter was not processed by the insurer and the Agent had to submit another letter. This second letter was dated October 18, 2013. Unlike the first letter, this document is typewritten (other than the reference to the policy number) and is again purportedly signed by BB. It does not make sense that BB signed multiple copies of letters that were of different formats. Once again, this second letter makes reference to ignoring BB's previous cancellation letter.

Based on the evidence in its entirety, we are satisfied that the Agent manufactured the documents in question and somehow inserted BB's signature on them. While she may have thought that she was carrying out the wishes of her client or acting in the client's best interests, her actions in this regard are

unacceptable and constitute misrepresentations and untrustworthy conduct as contemplated in s. 480(1)(a) of the Act.

As to the appropriate sanction, we have the ability to levy civil penalties in an amount not exceeding \$5,000.00 pursuant to s. 480(1)(a) and 13(1)(a) of the *Certificate Expiry, Penalties and Fees Regulation*, A.R. 125/2001. We also have the ability to revoke the Agent's certificates of authority for one year or suspend them for a period of time. Given the circumstances, including the fact that we believe that AB had led the Agent to believe that they were going to place the policy on a premium holiday and the fact that the Agent does not have any previous disciplinary history with the AIC and is a relatively new agent, we believe that a \$500.00 civil penalty would be appropriate. However, we further order that the Agent's certificates of authority be suspended for a period of two weeks. We order that the suspension commence on the eighth (8) day after the mailing of this decision. Payment of the civil penalty is due within thirty days. In the event that it is not paid within this time, the Agent's certificate(s) 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 Life Insurance Council. The motion was duly recorded in the minutes of that meeting.

Date: September 25, 2014

Original signed by _____

Ken Doll, Chair
Life 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
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Edmonton, Alberta T5K 2C3