

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 Cam Clark Ford Sales (2012) Ltd.
(the "Dealership")

As represented by
Jodi Olstad, Designated Individual,
(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 an insurance agent for sales of equipment warranty ("EW") insurance during a period of time in which it did not hold a valid and subsisting certificate of authority to do so and that this constitutes an offence pursuant to s. 452(1) of the Act.

Facts and Evidence

This matter proceeded by way of a written Report to Council dated September 22, 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 October 7, 2014 and did not adduce any further evidence.

The Dealership is the holder of a restricted insurance agent's certificates of authority that authorizes it to sell credit related ("CR") and EW insurance. It first held a certificate on February 1, 2013. The DI has been the Designated Individual of the Dealership since February 1, 2013. Between November 1, 2013 and February 2, 2014, the Dealership did not hold a certificate authorizing it to act in the capacity of an EW insurance agent.

The Dealership submitted a 2013/2014 restricted agent application form (the "Application") and the AIC received it on January 31, 2014. The Application was dated November 8, 2013 and it was signed by the DI. The official recommending the certificate of authority on behalf of the insurer sponsoring the certificate appears to have signed the Application on January 29, 2014.

The AIC wrote to the DI on February 3, 2014 and asked that she confirm whether or not the Dealership had been compensated for the sale of EW insurance since November 1, 2013. On the same date, the AIC received a letter from the DI that confirmed the Dealership was compensated for the sale of EW insurance after November 1, 2013. The DI also advised that "[o]ur insurance company as well as our sponsor were aware as they held up the renewal process."

An AIC investigator wrote to the DI on February 28, 2014 and requested that the Dealership provide certain information and documents. The DI responded by way of letter dated March 10, 2014 as follows:

Please find attached the listing of the EW sales completed as well as the compensation received for each sale between Nov 1, 2013 and Feb 2 2014.

Cam Clark Ford Sales (2012) Ltd did not renew its certificate prior to Oct 31, 2013 because we received no notification that it was about to expire. In the past our sponsor contacted us in advance as a reminder that it was about to expire. We received no notification until Nov 8 when I, [JO] received an email from Tricor (via Industrial Alliance Insurance) that we had expired. I immediately called AIC as to what actions we needed to take to get this resolved immediately. AIC also said they had sent reminders, but none were received. We even confirmed the email address but nothing had been received.

So we immediately attempted to rectify this. We completed all the steps that AIC had advised up [sic] to, and couriered to paperwork to [deleted], as instructed by [deleted] at Tricor on Nov 13. We were assured that the paperwork had made it [sic] way to where it should be going. On Nov 22 I followed up with [deleted] that he had received it and he confirmed that he did forward it on to GAIC for signature. We still didn't receive a certificate, nor was our Cheque [sic] cashed. We followed up again and again only to never get a clear answer. Finally Jan 21, 2013 [deleted] from Tricor contacted me and she proceeded to follow everything up and get the paperwork to AIC and to resolve to issues of not receiving expiry reminders.

The attachment to the letter included a spreadsheet that indicated the Dealership sold 38 policies during the period in which it did not hold a valid and subsisting certificate of authority to sell EW insurance. This figure was ultimately confirmed by the insurer that underwrote the policies.

Discussion

In order to prove the allegations in the Report, the AIC must adduce sufficient evidence to demonstrate that the Dealership acted in the capacity of an insurance agent 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 was not renewed by October 31, 2013. When issued, the expiry date is clearly set out on the face of the certificate and no one should have been surprised by the fact that it would expire on October 31, 2013. It is equally clear that the Dealership did not obtain another certificate of authority until February 3, 2014. During this period, it sold 38 new insurance policies and was compensated for doing so. Given this, we are satisfied that the Dealership contravened s. 452(1) by acting as an insurance agent without a valid certificate of authority and; thereby, contravened a section of the Act as contemplated in s. 480(1)(b). While we could find that it committed 38 separate offences (one for each of the policies around which it acted as an agent), we choose instead to treat the period of unlicensed activity as one offence as this the first time that the Dealership has been sanctioned for unlicensed activity.

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). Due to length of time that the Dealership was unlicensed and the number of policies that were sold, we do not believe that a civil penalty at the high end of the spectrum would be appropriate. In light of all the evidence, we order that a civil penalty in the amount of \$300.00 be levied against the Dealership. The Dealership should, however, be aware that further instances of unlicensed activity could result in the imposition of civil penalties of \$1,000.00 for every policy that was sold when it did not hold a certificate. In this case, this would have resulted in civil penalties totaling \$38,000.00. A Council in the future could also additionally suspend the Dealership's certificate for a period of time or revoke it for one year.

Therefore, in relation to this finding we levy a civil penalty in the amount of \$300.00 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 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 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.

Date: November 5, 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