

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 Dhaval Vakharia
(the "Agent")

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

This case involved allegations pursuant to ss. 480(1)(a) and 509(1)(a) of the Act. Specifically, it is alleged that the Agent prepared a letter and forged a client's signature ("SM"). The purpose of the forged letter was to redeem SM's segregated funds and transfer them to his own account. In so doing, it is alleged that he is guilty of misrepresentation, untrustworthiness or dishonesty pursuant to s. 480(1)(a) of the Act. In addition or in the alternative, it is alleged that the Agent signed a letter of direction to redeem his client's segregated funds and direct the proceeds to his bank account without his client's knowledge and/or consent. In so doing, it is alleged that he is guilty of making a false or misleading statement or representation to both his client and his employer and that this constitutes an offence pursuant to s 509(1)(a) of the Act.

Facts and Evidence

This matter proceeded by way of a written Report to Council dated June 8, 2015 (the "Report"). The Report was forwarded to the Agent for his 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 June 18, 2015 and did not adduce any further evidence.

The Agent is the holder of certificates of authority that permit him to act in the capacity of a life and accident & sickness insurance agent. He has held these certificates since August 8, 2012 and he is an agent of World Financial Group Insurance Agency ("WFGIA") and Transamerica Life ("TL").

In January, 2015, WFGIA wrote to the AIC to report certain facts that it discovered in the course of a compliance audit of the Agent's activities. Specifically, WFGIA indicated that the Agent prepared a letter directing the redemption of SM's segregated funds. Apart from preparing the letter, WFGIA indicated that the Agent also forged the client's signature. Once redeemed, the funds were to be deposited into the Agent's personal account. A letter accompanying the transaction contained instructions on how to redirect the money. Once again, the Agent forged SM's signature. Because of WFGIA's intervention the redemption and transfer did not occur.

A WFGIA compliance investigator subsequently contacted SM to determine if SM had signed the form. SM was not aware of this transaction. WFGIA wrote that the Agent subsequently admitted to the allegations and indicated that he forged these documents because he was experiencing significant financial hardship that affected the wellbeing of his immediate family.

The AIC investigator wrote to WFGIA's Chief Compliance Officer ("KN") on January 29, 2015. The investigator asked KN to provide information regarding WFGIA's investigation, a copy of the client application form and response provided by the Agent.

WFGIA's Compliance Manager, "AG", responded to the investigator's letter on February 12, 2015. AG outlined the list of actions taken against the Agent enclosed a copy of the segregated fund trade ticket and the letter of direction in question.

The investigator wrote to AG on February 13, 2015 to seek further information about the Agent's transactions. Among other things, the investigator asked whether or not it had uncovered similar conduct in regard to the Agent's other clients. By letter dated February 27, 2015, AG confirmed that WFGIA had not uncovered any additional instances where the Agent had moved client's funds without their knowledge or consent.

On March 2, 2015, the investigator emailed AG to find out about the status of the Agent's employment, and if the monies ever left the account of SM. The investigator also asked who was managing SM's account. In response, AG indicated that the Agent was on indefinite suspension, that no funds actually left SM's account and that another agent was managing SM's account.

On March 24, 2015 the investigator spoke with the Agent to discuss the transaction and the circumstances around his conduct. The Agent advised the investigator that he deeply regretted the entire incident and said that he would provide a written explanation. If given an opportunity he said that this would not occur again.

The investigator received a copy of the Agent's response on April 9, 2015. In essence, the Agent is a doctor and immigrant from India. Unfortunately, his immediate family were not able to join him as a result of certain immigration policies. His wife obtained a visa to study in the US and started her studies in Seattle. However, he needed to demonstrate that he had sufficient funds to allow her to continue her studies there. Because he was unable to obtain money from friends or family he decided to take the funds from a client to obtain his wife's visa extension. He stated that he planned on returning the money shortly thereafter. The agent wrote:

I thought I will saw the client funds as a balance and after I will transfer back. I become blind for my family and that was the bad time or days I did not knew what I was doing. I was totally out of my mind and I did this mistake and break the trust of my client and for that I really regret myself and I put myself down in my community and my family. This was the biggest mistake I ever did in my life and I realize the thing, immediately suspended from company and this is really sensitive matter and till date I never give forgiveness myself and this matter teach me a lot in my life....I understand my mistake and accept with bottom of heart and I will give 100% guarantee what happened in past it will not happen in future and I really appreciate if Alberta insurance council give me a chance to work with the financial industry.

Decision of the Council

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 were outlined 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 Insurance Councils Appeal Board dismissed the appeal and also found the agent guilty of the offence. The agent subsequently appealed to the Court of Queen's Bench. In his reasons for judgment dismissing the agent's appeal, Mr. Justice Marceau reviewed the requisite test and wrote 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)

In applying this test to the case before us, the Agent admits that he forged SM's signature and attempted to steal his funds. As such, it is clear to us that the Agent acted in a dishonest and untrustworthy manner pursuant to s. 480(1)(a) of the Act.

As to the appropriate sanction for this conduct, we typically have the ability to levy civil penalties in an amount up to \$5,000.00 for offences 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 order that certificates of authority be revoked for one year or suspended for a period of time. Based on the facts in this case, we believe that significant sanctions are warranted. Insurance consumers place great trust in their agents. The public rightfully expects that insurance agents will act in their clients' best interests rather than in their own best interests. They certainly should have confidence that an agent will not betray that trust by forging a client's signature so as to take that client's money.

We are mindful of the Agent's submissions, circumstances and assurances that he would never conduct himself like this again. However, our mandate is one of public protection and we believe that significant penalties are required. Therefore, we order that a civil penalty of \$2,500.00 be levied against the Agent. We also order that the Agent's certificates of authority be revoked. The revocation will commence on the eighth (8th) day after the mailing of this decision pursuant. The civil penalty is due within thirty (30) days of receiving this notice. In the event that the civil penalty is not paid within thirty (30) days, interest will begin to accrue. 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: August 28, 2015

Original Signed by _____

Kenneth 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
402 Terrace Building
9515-107 Street
Edmonton, Alberta T5K 2C3