

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 Sherwin Gualvez
(the "Agent")

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

This case involved an allegation pursuant to Section 481(2) of the Act. Specifically, it is alleged that the Agent failed or refused to provide information and documentation requested by an AIC investigator within the time specified in a Demand for Information (the "Demand"). In so doing, it is alleged that he contravened s. 481 of the Act.

Facts and Evidence

This matter proceeded by way of a written Report to Council dated August 11, 2016 (the "Report"). The Report was forwarded to the Agent for review and to allow the Agent to provide the Council with any further evidence or submissions by way of Addendum. The Agent did not respond to the Report.

The Agent held certificates of authority to act as a life and accident & sickness insurance agent from February 27, 2013 until his certificates were terminated by his recommending insurer ("Sun Life") in June, 2015. By letter to the AIC dated January 22, 2016, Sun Life indicated that it investigated the Agent's conduct in relation to his activities with another agent ("MS") and his payment of referral fees. As a result of the Agent owing Sun Life significant commission chargebacks and other factors, Sun Life terminated the Agent's contract effective December 7, 2015.

On June 13, 2016 an AIC investigator sent the Demand to the Agent to gather further information and documents about his relationship with MS, their practices and his response to Sun Life's allegations. The investigator sent the Demand by registered mail pursuant to s. 481 of the Act. It required that the Agent respond by June 28, 2016. The Report contains evidence that the Agent retrieved the Demand on June 15, 2016. He refused or neglected to respond to the Demand as required.

Discussion

As noted in similar cases before, the AIC operates under a delegation from the Minister of Treasury Board and Finance (the “Minister”). Through this delegation, the AIC has authority to investigate complaints against holders and former holders of insurance agent certificates of authority. Pursuant to a delegation from the Minister, the AIC is authorized to exercise the Minister’s powers under s. 481 to the AIC. Section 481 states that “[t]he Minister may direct the holder or former holder of a certificate of authority to provide to the Minister within a reasonable period of time specified by the Minister relating to the matters in section 480(1).” Subsection 2 states that the “... person served with a direction under subsection (1) who has the information must provide the information in accordance with the direction.”

Regulatory offences such as these are strict liability offences. As such, the AIC has the onus to prove that the Demand was properly made upon the Agent (proper in the sense that they meet all of the requirements under the Act) and that the Agent did not comply. Once this occurs, the onus shifts to the Agent to establish that he exercised due diligence in meeting his statutory requirement to respond. In order to substantiate this due diligence defence, the Agent must demonstrate that he took all reasonable means to avoid the offence.

The evidence is clear that the AIC investigator was attempting to determine whether or not the Agent contravened sections of the Act or regulations. In furtherance of this investigation, the investigator sent the Demand to the Agent and the Agent did not respond. Given these facts, the onus shifts to the Agent to prove that he took all reasonable means to respond as required. As he did not reply to the Report or provide any additional evidence or submissions, the Agent has failed to prove that he acted with due diligence and we find him guilty failing to respond to the Demand.

In terms of the applicable sanction, the public relies on the AIC to investigate complaints and the Act requires that holders and even former holders, such as the Agent, provide information when called upon to do so. Therefore, the public is not well-served when agents simply ignore demands like those made in this case. In this case, the Agent has ignored the investigation and we are of the view that a substantial civil penalty is warranted. As such, we order that a civil penalty in the amount of \$1000.00 be levied against the Agent pursuant to s. 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 the mailing of this Decision. In the event that the civil penalty is not paid within thirty (30) days, interest will begin to accrue at the prescribed rate of 12% per annum. 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: October 28, 2016

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