

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 John Elstone
(the "Former 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 Former 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, he contravened a provision of the Act pursuant to section 480(1)(b).

Facts and Evidence

This matter proceeded by way of a written Report to Council dated May 3, 2017, (the "Report"). The Former Agent was first licensed for life and accident and sickness ("A&S") in 1996. After allowing his license to lapse for a time, he again obtained certificates of authority that were ultimately suspended on November 15, 2016 as a result of the AIC's continuing when the AIC conducted a continuing education ("CE") audit.

In conducting its continuing education ("CE") audit, the AIC randomly selected the Former Agent and, by letter dated October 11, 2016, requested that he provide his CE completion certificates to the AIC. The Former Agent visited the Calgary Office on October 31, 2016. At this time, he indicated that his CE documents were unavailable for personal reasons. To assist, the AIC generated a printout of all the CE courses the Former Agent inputted on the AIC's online systems to enable him to obtain duplicate certificates from the CE providers.

As the Former Agent refused or neglected to provide his CE documentation, an AIC investigator sent the Former Agent a formal Demand for Information pursuant to s. 481 of the Act by email on February 9, 2017. The Former Agent was required to respond by March 3, 2017. The Former Agent did not respond.

Discussion

The AIC operates under a delegation from the Minister of Treasury Board and Finance (the “Minister”). Through this delegation, the AIC has authority over matters relating to current and former holders of insurance agent certificates of authority. 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 Former Agent (proper in the sense that it met the requirements under the Act) and that the Former Agent did not comply. Once this occurs, the onus shifts to the Former Agent to establish that he exercised due diligence in meeting his statutory requirement to respond. In order to substantiate this due diligence defence, the Former 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 the Former Agent had complied with his continuing education requirements. In furtherance of this investigation, the investigator sent the Demand to the Former Agent and he did not respond. Given these facts, the onus shifts to the Former Agent to prove that he took all reasonable means to respond as required. As the Former Agent failed to respond to the Report, he cannot meet the burden of establishing that he acted in a manner characterized by due diligence. Therefore, we find him guilty failing to respond to the demand for documents and information as alleged in the Report.

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. Here, the Former Agent seemed to be ready to respond, but then simply ignored the investigation. Under s. 480(1)(b), we can impose a civil penalty in an amount up to \$1,000. Given the circumstances in their entirety, we order that a civil penalty of \$1,000.00 be levied against the Former 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. If the civil penalty is not paid within thirty (30) days, interest will begin to accrue at the prescribed rate.

Pursuant to s. 482 of the Act, the Former 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: July 12, 2017

Kenneth Doll
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

