

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 Garrett Agencies Ltd.
(the "Agency")

As represented by
Designated Representative John Garrett
(the "DR")

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

This case involved an allegation pursuant to s. 467(1)(c) of the Act. Specifically, it is alleged that the DR failed to disclose on the Agency's 2016/2017 Life and Accident and Sickness ("A&S") applications for the Agency's certificates of authority that the Agency was convicted of an offence by one of the Insurance Councils of Saskatchewan ("ICS"). In so doing, this violated s. 480(1)(b) of the Act.

Facts and Evidence

The Agency is the holder of a Life and A&S Insurance Certificates of Authority for the sale of Life and A&S insurance and was licensed since December 13, 2000 for Life and A&S. On August 18, 2015, the ICS and the Agency entered into a Consensual Agreement and Undertaking (the "Agreement") through which the Agency agreed to pay a fine amount of \$565.00 for violating ICS Bylaw 8, Section 2(g). The Agreement arose from the fact that the Agency allowed its errors and omissions insurance policy to lapse from November 22, 2013, through to January 8, 2014.

When completing the Agency's 2016/2017 renewal applications for its life and A&S certificates of authority in Alberta, the DR answered "No" in response to the following question: "[Has the applicant been] convicted of an offence under the Insurance Act, the Criminal Code or any other enactment?"

When asked to explain the discrepancy, the DR stated that he misinterpreted the question on the applications.

Discussion

Section 467 of the Act requires applicants to provide the information that is requested on application forms. One of the questions found on application forms asks whether the applicant has any convictions. The reason for this is that an applicant is not entitled to hold a license if he or she has been convicted of an offence that renders the applicant unsuitable to hold a license (see ss. 5(1)(d), 5(2)(e) and 6(1)(b) of the *Insurance Agents and Adjusters Regulation*, A.R. 122/2001 as amended, hereinafter referred to as the "Regulation"). Failing to provide this information impedes the AIC's ability to effectively determine an applicant's eligibility to act as an insurance Agent and it constitutes a breach of the Act pursuant to s. 480(1)(b). In our view, the term "conviction" should be read broadly as the underlying purpose of obtaining the information is that of public protection. The fact that the Agency was fined and that the fine and proceeding arose out of the provisions of the Saskatchewan Insurance Act also suggests that it is a conviction as contemplated in the Regulation. Therefore, it is our conclusion that the Agency committed the offence as alleged in the Report.

As to the appropriate sanction, we have jurisdiction to levy a civil penalty in an amount up to \$1,000.00 for these types of violations, to ss. 480(1)(b) of the Act and 13(1)(b) of the *Certificate Expiry, Penalties and Fees Regulation*, A.R. 125/2001. We can also suspend the Agency's certificates of authority or revoke them for a year. Neither the Agency nor the DR have previous disciplinary convictions with the AIC and cooperated throughout the course of the investigation. Given this, we order that a civil penalty in the amount of \$300.00 be levied against the Agency. We do not believe that any license suspension or revocation is appropriate in the circumstances.

The civil penalty must be paid within thirty (30) days of receiving this notice. If the civil penalty is not paid within thirty (30) days, the Agency's certificates 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: June 27, 2017

Ken 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