

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 Nathan Disenhouse
(the "Agent")

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 Agent failed to disclose information relating to a previous conviction under the Mutual Funds Dealership Association ("MFDA") during the renewal process. In so doing, it is alleged that the Agent contravened s. 467(1)(c) of the Act and, in doing so, breached a section of the Act or regulations as contemplated under s. 480(1)(b).

Facts and Evidence

This matter proceeded by way of a written Report to Council dated October 25, 2018 (the "Report"). The Report was forwarded to the Agent for review, and to allow him to provide additional evidence or submissions by way of addendum. The Agent signed the Report on November 5, 2018 and did not produce further evidence.

The Agent is the holder of life and accident and sickness ("A&S") certificates of authority. The Agent has held the life certificate of authority from June 17, 2006 to present; and held the A&S certificate of authority from the period of June 12, 2009 to February 15, 2010.

On May 10, 2018 the Agent renewed his life certificate of authority through the online renewal process. In response to the question [have you] "3. *Been convicted of an offence under the Insurance Act, the Criminal Code or any other enactment?*" the Agent responded "Yes. June 18th, 2010 Hearing by the MFDA. Resulted in a 10 year suspension." Although the MFDA ruling was dated 2010, the AIC found that the Agent did not disclose the conviction on his previous renewal applications (years 2011 – 2017).

The AIC contacted the Agent on June 22, 2018 requesting an explanation, and on June 25, 2018 the Agent expressed his remorse failing to respond accordingly to the renewal questions, and advised that this was an oversight:

[...] I sincerely apologize for not disclosing the issue with the MFDA back in 2011. It was not a matter of hiding or even an oversight. I truthfully do not recall a question asking about any previous convictions with the Regulators other than Criminal convictions. [...] If the question was there, then it was an oversight. I only noticed it this year and therefore answered the question.

The Agent subsequently provided the MFDA Settlement Agreement, dated June 16, 2010, and Order dated June 18, 2010, to the AIC. The findings were as follows:

AND WHEREAS the Hearing Panel is of the opinion that:

- i. Between October 2004 and October 2005, the Respondent engaged in securities related business that was not carried on for the account of the Member and through the facilities of the Member by selling, referring, or facilitating the sale of \$730,000 of an investment product to 18 individuals, 11 of whom were clients, when that investment product had not been approved for sale by the Member, contrary to MFDA Rules 1.1.1, 2.1.1, and 2.4.2;
- ii. The Respondent did not disclose to investors in the above-noted investment product that he was a shareholder in the company which was, in turn, the sole shareholder of the company offering the investment product, thereby placing his own interests above those of the investors and giving rise to an actual or potential conflict of interest which he failed to address by the exercise of responsible business judgment influenced only by the best interests of the investors, contrary to MFDA Rules 2.1.1 and 2.1.4;
- iii. Between 2005 and 2007, the Respondent engaged in a dual occupation that was not disclosed to and approved by the Member by entering into a referral agreement and referring clients to a third party that administered pension plans, contrary to MFDA Rules 1.2.1(d), 2.1.1, and 2.4.2; and
- iv. Between February 2006 and 2007, the Respondent obtained and maintained blank, pre-signed trading forms in client files and used such forms to process a trade in at least one client account [...]

IT IS HEREBY ORDERED THAT the Settlement Agreement is accepted, as a consequence of which:

1. **The Respondent shall be suspended for a period of 10 years**, commencing from the date the Settlement Agreement is accepted by the Hearing Panel, from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member effective from the date of this Order, pursuant to section 24.1.1(e) of MFDA By-law No. 1;
 2. **The Respondent shall pay a fine in the amount of \$15,000.00**, pursuant to section 24.1.1(b) of MFDA By-law No. 1;
 3. **The Respondent shall pay costs in the amount of \$5,000.00**, pursuant to section 24.2 of MFDA By-law No. 1 [...]
- [emphasis added]

Discussion

Section 467 of the Act requires that applicants provide the information that is requested of them on renewal applications. One of the questions asks whether or not the applicant has been convicted of an offence “[...] *under the Insurance Act, Criminal Code, or any other enactment.*” The reason for this is that an applicant is not entitled to hold a certificate of authority if he or she has been convicted of an offence that renders him or her unsuitable to hold a license (pursuant to ss. 5(1)(d) and 5(2)(e) of the *Insurance Agents and Adjusters Regulation*, A.R. 122/2001 as amended). 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 ss. 467(1)(c) and 480(1)(b).

The Agent indicated that he had been convicted of an offence, however he failed to properly disclose that offence on prior renewal applications. It is questionable whether the Agent's actions were intentional, given the evidence however, this is a matter of strict liability. In other words, where it is proven that the Agent gave a statement that was not correct, the essential elements of contravention of s. 467(1)(c) of the Act are proven, and the onus shifts to the Agent to prove that he took all reasonable steps to avoid providing inaccurate information. In consideration of all of the evidence presented, the Council finds the Agent did not exercise due diligence, and finds him guilty of violating s. 467(1)(c) of the Act.

In regard to the applicable sanctions, we have the ability to levy civil penalties in an amount not exceeding \$1,000.00 pursuant to s. 480(1)(b) of the Act and s. 13(1)(b) of the *Certificate Expiry, Penalties and Fees Regulation*, A.R. 125/2001. Insurance agents work in a profession that relies on the accurate completion of forms and insurance papers, and clients can experience severe difficulty in the event that forms are incorrectly completed. It is not unreasonable to expect the same standard from the Agent when he completes his AIC renewal application forms. On this basis, the Council orders that a civil penalty of \$700.00 be levied.

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 Agent's certificates of authority will be suspended, and interest will begin to accrue at the prescribed rate. Pursuant to s. 482 of the Act (excerpt 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.

Dated: January 9, 2019

[Original signed by]
Michael Bibby, 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
Email: tbf.insurance@gov.ab.ca