

ALBERTA INSURANCE COUNCIL
(the "AIC")

In the Matter of the *Insurance Act*, R.S.A. 2000 Chapter I-3
(the "Insurance Act")

And

In the Matter of Alexander Wilson
(the "Agent")

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

This case involves allegations pursuant to s. 480(1)(a) of the Insurance Act or, in the alternative, s. 509(1)(a) of the Insurance Act. Specifically, it is alleged that the Agent falsely declared the completion of a continuing education course ("CE") when he, in fact, had not completed the course. In so doing, it is alleged that the Agent acted in a deceitful, dishonest or untrustworthy manner in violation of s. 480(1)(a) of the Insurance Act. In the alternative, it was alleged that the Agent made false or misleading statements as contemplated in s. 509(1)(a) of the Insurance Act when he reported that he had completed the required CE to renew his life and A&S certificates of authority for the 2019 certificate term when he, in fact, did not.

Facts and Evidence

This matter proceeded by way of a written Report to Council dated October 22, 2020 (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 provided an Addendum which was duly considered by the Council.

The Agent is the former holder of both life and A&S insurance agent certificates of authority. The Agent held these certificates between the period of August 5, 2015 to September 26, 2017, and again between the period of March 28, 2018 to April 3, 2020. On April 3, 2020 the Agent's certificates of authority were

suspended due to his failure to produce CE certificates pursuant to s. 31(3) of the *Insurance Agents and Adjusters Regulation*, AR 122/01 (the “Regulation”). As such, the Agent is not presently licensed.

As part of the AIC’s annual CE audits, an “Alberta Insurance Council Continuing Education (CE) Audit” request was sent to the Agent by way of email correspondence dated March 2, 2020 (the “Demand”). The formal Demand for information was provided in accordance with s.481(2) of the Insurance Act and required the Agent to produce CE certificates for both certificates of authority regarding all declared CE within the 2019 licensed period. The Demand provided a deadline for response of April 2, 2020.

The Agent responded and produced all but one CE certificate for the 2019 licensed period. As the Agent did not satisfy the audit requirements of the AIC and the Agent’s certificates of authority were suspended pursuant to s. 31(3) of the Regulation.

The CE declaration provided by the Agent attested that he had completed the course “*Taking Care of Business (ADV)*” with the course provider, [redacted] (hereinafter “D.F”). The Agent failed to produce the CE certificate for *Taking Care of Business (ADV)* before the Demand deadline of April 2, 2020. On April 2, 2020, the Agent advised:

I apologise [sic] for leaving this until the VERY last minute. I am unable to locate one of my CE certificates and have been searching everywhere for it.
Attached is a scan of the documents that I was able to find. As stated above, I cannot find one of my certificates despite looking everywhere. [...]

On April 2, 2020 the AIC responded and directed the Agent to contact, D.F., to obtain a copy of the CE certificate. The Agent did not respond. As such, the AIC Investigator contacted D.F. to obtain a copy of the CE certificate.

On April 30, 2020 D.F. advised the AIC “[...] the course 509**[redacted] – *Taking Care of Business (ADV)* was not completed June 7, 2019 [...].” To which the AIC Investigator replied “Was May 18, 2018, the only time that Alex completed 509**[redacted] – *Taking Care of Business (ADV)*? Did Alex ever complete 509** – [redacted] *Taking Care of Business (ADV)* between July 1, 2018, and June 30, 2019?”, to which D.F. responded “the course 509**[redacted] – *Taking Care of Business (ADV)* was not completed June 7,

2019. The course *Taking Care of Business* was completed on May 18, 2018.” and further clarified on May 7, 2020 that “The course was only taken once on May 18, 2018.”

The AIC investigator sent a further Demand to the Agent on May 11, 2020 which provided as follows:

As you are aware, you were recently selected for the AIC’s annual CE audit. During this audit, you indicated that you were unable to locate copies of your certificates due, in large part, to complications arising from the ongoing pandemic situation. Because of this, I reached out to the course provider on your behalf; however, the course provider was unable to confirm that you completed course 509** [redacted] – Taking Care of Business (ADV) on June 7, 2019, despite you having declared this on the AIC licensing website.

Further, the course provider advised that you only completed this course once on May 18, 2018.

As such, without confirmation that you completed this course, you are left 7.25 credit hours short for the CE requirement for both of your licenses. Accordingly, please provide me with the following:

1. An explanation as to why you declared that you completed course 509** [redacted] – Taking Care of Business (ADV) with [D.F.][redacted] on June 7, 2019, despite appearing to have not completed this course after May 18, 2018.
2. Please advise whether or not you have completed any other CE courses which could satisfy the CE requirements. If so, please provide me with the certificates or the course names/numbers of the courses completed.

On May 25, 2020, the Agent responded;

To respond to your request for information (case #69958) regarding my reporting of taking and completing course #509** on the [redacted] [D.F.] website on June 07, 2019, I would like to provide the following explanation and documentation. I did take the course again for a second time on June 07, 2019 and re-took and passed the test associated with that course. I have a picture of the certificate that I took at the time of completing the course.

I do not know or understand why the [redacted] [D.F.] website/course provider does not have a record of my completing the course on June 7, 2019, but I did take the course and test on that day.

If more CE courses are required by me, I have completed 2 more on the [redacted] [D.F.] website today:[redacted]. I will send the certificates to you via email. I am hoping that the picture of my certificate of completion for course#509** will suffice and that I can use these 2 latest courses towards this years license renewal.

The Agent also provided a screenshot of the CE certificate for the course “Taking Care of Business (ADV)” dated June 7, 2019. The AIC Investigator required further clarity and on June 15, 2020, the Investigator emailed the Agent the following;

As you are aware, [D.F.][redacted] previously informed me that they did not have any records that you completed course 509** “Taking Care of Business (ADV)” at any time after May 18, 2018; however, since you provided me with a certificate showing your completion date as June 7, 2019, I reached out to [D.F.][redacted] to attempt to determine how you acquired a certificate showing a completion date as June 7, 2019. [D.F.][redacted] informed me that the June 7, 2019, certificate you provided contained a re-print date and that they do not see any activities on the course since May 18, 2018 (the date when you first declared that you completed the course).

As such, if you completed the course again on June 7, 2019, or any time after May 18, 2018, please reach out to the course provider to rectify this issue as their records continue to show that you did not complete the course in question a second time. If you did not complete the course a second time, please confirm this with me so we can discuss next steps.

Please provide me with your response on or before June 29, 2020.

To which the Agent responded on June 29, 2020;

I am currently waiting to hear back from [redacted][D.F.] still about the lack of record of my retaking the course in question. I did retake the course last year but [redacted][D.F.] is saying that it should not have been possible for me to take the course twice. As such it is sounding like it was a glitch with their system but I am hoping to know more when they respond to me.

I apologise [sic] for the delay and not being able to give you a complete response at this time. Please let me know if there is anything required of me while I await [redacted][D.F.] response.

Out of an abundance of caution, the AIC Investigator provided several extended deadlines for a response, these being August 7, 2020, August 21, 2020, and a further deadline of September 18, 2020 was provided.

On September 15, 2020 the Agent responded;

The course provider has verbally told me that this seemed to be a glitch with their system and should not have been possible. As such the credits I received/claimed are not considered valid by the course provider. They told me that they are unable to provide their response to me in writing via email or letter.

Please advise what the next course of action is.

In light of the Agent’s response the AIC Investigator sought clarity from D.F. on September 15, 2020, as follows;

[...]

Alex reached out to us today to inform us that he spoke with [D.F.][redacted] regarding course 509** – Taking Care of Business (ADV). Specifically, Alex stated that, “The course provider has verbally told me that this seemed to be a glitch with their system and should not have been possible. As such the credits I received/claimed are not considered valid by the course provider. They told me that they are unable to provide their response to me in writing via email or letter.

I know you previously advised me that you did not see any activities on the course in question since May 18, 2018; however, I am just looking to do my due diligence through my investigation. Accordingly, could you please confirm whether or not Alex was in touch with [D.F.][redacted] regarding a second completion

of course 509** – Taking Care of Business (ADV). If he was, could you please advise me as to what he was told?

To which D.F. responded;

This is to confirm that there were no inquiry in 2019 in Alexander Wilson's profile.

In 2020, from the advisor:

June 29, 2020 SR*****7740

Created for call by advisor who said he did a course in 2018 Taking care of Business and he did the same course in 2019 and he said he got the certificate with the date 2019 on in . As per previous sR *****_*****0975 advised him he can't get the credit for the same courses so he ask for something in written saying he actually did the course in 2018 and 2019 but now on DAS historical the course is not showing

Advisor wanted something in written for him as he is being audited.

Our specialist left a detailed voicemail for the advisor:

"Alex complete the course on May 18 2018 as our per our record. The certificate is showing when he re-printed the certificate. June 7, 2019 was a re-print date. The re-print was incidental and we no longer have that function on our site. For your auditing purposes, we don't see any activities on the course since May 18, 2018. Thank you."

Discussion

In order to conclude that the Agent has committed a violation of s. 480(1)(a) of the Insurance 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 the findings of the Council can dramatically impact an insurance agent's ability to remain in the industry. Additionally, the elements of s. 480(1)(a) offences were discussed 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 insurance agent committed an offence pursuant to s. 480(1)(a) of the Act when he attested to completing the applicable CE when he, in fact, did not have the required CE.

The agent in *Roy* concurrently held a securities license and believed that the CE required to maintain his securities license was also applicable to his insurance agent CE requirements. The Insurance Councils Appeal Board also found the Agent guilty of s. 480(1)(a) violation. The Agent appealed the decision of the Insurance Councils Appeal Board to the Court of Queen's Bench of Alberta.

In his reasons for judgment, Mr. Justice Marceau reviewed the requisite test to find that a violation pursuant to s. 480(1)(a) of the Act has been made out and expressed it as follows 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)

With respect to the Report, the Council was satisfied that the Agent did not possess the required CE credits required by the Regulation for the 2019 licensed period. However, the Council did not conclude that the Agent made deliberate misrepresentations with the intent to deceive the AIC during this audit process. To do so, the Council would need to prove on the balance of probabilities that it is more likely than not that the Agent provided the information to the AIC intentionally, knowing that the information was false. The Council did not find the Agent guilty of such a violation and, as such, the Council turned to the alternative allegation of a s. 509(1)(a) offence under the Insurance Act.

Section 509(1)(a) of the Insurance Act provides that “[n]o insurer, insurance agent or adjuster may make a false or misleading statement, representation or advertisement.” A s.509(1)(a) offence falls into a category called strict liability offences. As such, the AIC only has the onus to prove that the Agent’s statement that he had completed the required CE was false. Once this occurs, the onus shifts to the Agent to establish a defence of due diligence. To establish this, the Agent must prove that he took all reasonable measures to avoid making the false statement.

The Council considered all the evidence before it, in particular the information shared by the course provider under cover of email dated September 16, 2020 whereby a specialist with the course provider had advised that the certificate showing a completion date of June 7, 2019 was showing a re-print date only and that there were no activities on the particular course in question since May 18, 2018. Therefore, the Council finds that the Agent made a false or misleading statement as contemplated by s. 509 of the Insurance Act and therefore has breached s. 480(1)(b) of the Insurance Act.

As to the appropriate sanction for this conduct, the Council may levy civil penalties in an amount up to \$1,000.00 for an offence pursuant to s. 480(1)(b) and 13(1)(b) of the *Certificate Expiry, Penalties and Fees Regulation*, A.R. 125/2001. Based on these factors and the evidence before the Council, the Council orders that a civil penalty of \$1,000.00 be levied against the Agent.

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 Insurance 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.

Dated: December 30, 2020

[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