

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 R. Brent Harker  
(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 the demand for information, or at all. In so doing, it is alleged that he contravened a section of the Act pursuant to s. 480(1)(b) of the Act.

**Facts and Evidence**

This matter proceeded by way of a written Report to Council dated February 6, 2013 (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 did not adduce any further evidence. As such, the facts are not in dispute and our reasons herein are largely a reproduction of the contents of the Report.

The Agent has been licensed for life and accident and sickness ("A&S") insurance since at least February 24, 1997. The Agent's Life and A&S certificates of authority expired on February 15, 2012 and have not been renewed or reinstated to date.

On April 12, 2012, the Alberta Insurance Council ("AIC") opened a complaint file against the Agent after receipt of a complaint from MG, which included a letter dated April 3, 2012. The complaint included allegations in relation to the sale of a Universal Life policy sold by the Agent.

On December 13, 2012, the Investigator spoke with the Agent and advised him that a complaint had been lodged against him by MG. During this telephone conversation, the Agent advised the investigator that he recalled MG and that he had spent a great deal of time with her so as to place universal life coverage. The investigator advised the Agent that he would write a formal Demand Letter to the Agent that requested a written response to MG's allegation that the Agent made misrepresentations in the sale of the policy to MG. The investigator asked the Agent to confirm his home mailing address. The Agent first indicated that the address was correct; however, he would not answer the same question when it was posed to him a second time. The investigator then requested the Agent's e-mail address and he confirmed his email address with the investigator.

On December 13, 2012, the investigator sent an e-mail to the Agent with an attached letter and copies of two policy illustrations obtained during the investigation. The letter requested information and documentation under a Formal Demand for information pursuant to section 481(1) and (2) of the Act, which requested a response by December 21, 2012. The Demand also indicated that failing to respond was an offence under the Act and could lead to disciplinary proceedings.

On January 14, 2013, the Investigator called the Agent and left a voice message advising that he was following-up on his letter dated December 13, 2012. The investigator requested that the Agent return the call to confirm the status of his response. The Agent has not returned the call to date.

On January 18, 2013, the Investigator sent an e-mail to the Agent advising that he was again following-up on his letter dated December 13, 2012 and the voice message left on January 14, 2013. The investigator once again requested that he immediately confirm the status of his response. The Agent has not responded to the letter or e-mail to date.

### **Discussion**

The AIC operates under a delegation from the Minister of Finance & Enterprise. Through this delegation, the AIC has authority to investigate complaints against holders and former holders of insurance agent certificates of authority. Pursuant to the Minister of Finance Directive No. 05/01, the Minister also delegated his 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 the direction who has the information must provide the information in accordance with the direction."

The evidence is clear that the AIC investigator was investigating a complaint filed by a client of the Agent in regard to an alleged misrepresentation. Given this, the investigation falls squarely within the bounds of s. 480(1). In furtherance of this investigation, the investigator sent the Demand to the Agent and it was successfully delivered. While the Agent had spoken once with the investigator regarding the matter and confirmed contact information, subsequent emails and letters received no response. As such, we are of the view that he did not respond to the Demand as required by s. 481 and he; thereby, contravened a section of the Act as contemplated in s. 480(1)(b).

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 in the event that agents simply ignore Demands like those made in this case. Given the facts in their entirety, 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 receiving this notice. In the event that the civil penalty is not paid within thirty (30) days, interest will begin to accrue and the Agent cannot hold a certificate of authority until payment of the penalty and any outstanding interest is made. 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.

April 19, 2013

Original Signed By Doug Curtis

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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