

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 Kishor Kumar Lalwani
(the "Agent")

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

This case involved an allegation pursuant to s. 481(2) of the Act. Specifically, it is alleged that the Agent failed or refused to provide information requested in a demand for information. In so doing, it is alleged that he contravened s. 481(2) of the Act.

Facts and Evidence

This matter proceeded by way of a written Report to Council dated August 12, 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.

At all material times the Agent was the holder of an insurance agent's certificate of authority that authorized him to act in the capacity of a general insurance agent. He first held this certificate in 2007 and has, for the most part, held this certificate since. The Agent is also the holder of accident & sickness ("A&S") and life agent's certificates of authority.

On May 9, 2013, an AIC investigator sent a letter to the Agent that requested that he provide information in regard to certain advertisements that were found on a website. These advertisements appeared to set out a business name for the Agent which differed from that found on his certificate of authority. The Act prohibits agents from holding themselves out through names not found on their certificate of authority.

As the Agent did not respond, on May 27, 2013 the investigator sent a formal demand letter to the Agent pursuant to s. 481 (1) of the Act. On June 10, 2013, the AIC received an email from the Agent, in which he

denied that he was using a name other than his own name. The Agent explained that the name that appeared in the advertisements, namely “Affordable Insurance” was not the name of the company but a description of the type of insurance he offered.

On June 20, 2013, the investigator sent the Agent an email that included copies of advertisements that appeared on the website. She requested that he confirm the name of the business he was representing in the advertisements.

As the Agent did not respond, the investigator sent another demand letter via registered mail to the Agent. This was delivered to the Agent’s home address on July 19, 2013. To date, the AIC has not received a response from the Agent to the questions posed in the email of June 20, 2013 as requested in the demand letter.

Decision of the Council

The AIC operates under a delegation from the Minister of Treasury Board & Finance. Through this delegation, the AIC has authority to investigate complaints against holders and former holders of insurance agent certificates of authority. Pursuant to the Ministerial 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 in the direction any information specified by the Minister relating to the matters in section 480(1).” Subsection 2 states that the “...person served with a direction ... who has the information must provide the information in accordance with the direction.”

The evidence is clear that the AIC investigator was investigating issues as to whether or not the Agent was operating under a business name in which he was not licensed. As such, the investigation is one that falls within s. 480(1). In furtherance of this investigation, the investigator sent the second demand letter to the Agent and he has not responded. Given this, we find that he failed to respond as required by s. 481 and 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 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 complete lack of cooperation on the Agent's part, we feel that a substantial civil penalty is warranted and we order that a civil penalty of \$1,000.00 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. If it is not paid within this period, the Agent's certificates of authority will be suspended pursuant to s. 480(4) of the Act and interest will begin to accrue. 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 General Insurance Council. The motion was duly recorded in the minutes of that meeting.

Date: November 20, 2013

Original Signed By
Amanda Sawatzky, Chair
General 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

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