

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 Lopaka & Cars Inc. / Lopaka Auto Clearance
(the "Dealership")

As represented by Robert Jusza
Designated Individual,
(the "DI")

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 Dealership failed or refused to provide information requested by the AIC in a demand for information sent by the AIC, contrary to ss. 481(1) and (2) of the Act.

Facts and Evidence

This matter proceeded by way of a written Report to Council dated July 19, 2013 (the "Report"). The Report was forwarded to the DI for review and to allow the Dealership to provide the Council with any further evidence or submissions by way of Addendum. The DI signed the Report on July 19, 2013 and submitted further evidence for review.

The Dealership is the holder of a restricted insurance agent's certificate of authority for the sale of equipment warranty insurance. Other than for the period of November 1, 2012 to May 1, 2013, it has held a certificate since March 1, 2012.

On April 26, 2013, the AIC received an application form from the Dealership to have an equipment warranty certificate issued. Because the Dealership had previously held a certificate, the AIC sent a letter to the DI that requested that he: **"Please provide a written confirmation with your signature indicating if**

the agency has or has not been compensated for the sale of Equipment Warranty Insurance since November 1, 2012.” (emphasis in original)

On May 2, 2013, the AIC received a letter from the DI which stated “Please be advised that I have sold and act (sic) as an insurance agent but I was not aware that my licence has (sic) expired on Oct/31/2012.”

On May 8, 2013, an AIC investigator sent a letter to the DI that requested details as to how many policies the Dealership wrote during the unlicensed period, how much compensation the Dealership received for those policies, and the reason that the Dealership acted in the capacity of an insurance agent when it did not have a certificate of authority.

The AIC did not receive a response to its May 8, 2013 letter. Given this, a formal demand letter was sent to the DI via registered mail on June 4, 2013. This demand required that the DI respond by June 11, 2013. The letter was successfully delivered on June 13, 2013. However, the DI did not respond and did not provide the required information until the Report was sent to him.

Discussion

The AIC operates under a delegation from the Minister of Treasury Board & Finance. Through its delegation, the AIC has authority to investigate complaints against holders and former holders of insurance agent certificates of authority. Pursuant to 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 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.”

In our view, it is clear that the AIC was investigating whether or not the Dealership had been compensated for selling equipment warranty insurance during a period in which the Dealership was not authorized to act as an insurance agent. As such, the investigation falls squarely within the bounds of s. 480(1) of the Act. In furtherance of this investigation, the investigator sent the demand to the DI at his place of business asking that he provide certain information. It is equally clear that he did not respond to

the demand. As such, we find that the Dealership 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. Acting as an insurance agent is a privilege that is afforded to individuals under the provisions of the Act. With that privilege come certain obligations and one of these is to provide the AIC with information when called upon. In this case, the DI simply ignored the demand and only responded when faced with a disciplinary proceeding. Given this, we are of the view that a civil penalty is warranted. However, it must be pointed out that the DI did ultimately provide the information. Pursuant to s. 13(1)(b) of the *Certificate Expiry, Penalties and Fees Regulation*, A.R. 125/2001, we have the ability to levy a civil penalty of up to \$1,000.00. We also have the jurisdiction to suspend the Dealership's certificate for up to one year or revoke it for a year. In light of all of the evidence, we order that a civil penalty of \$500.00 be levied against the Dealership. The civil penalty must be paid within thirty (30) days of receiving this notice. In the event that the penalty is not paid within thirty (30) days, the Dealership's certificate of authority will be automatically 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 Dealership 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 T5K 2C3