

INSURANCE COUNCILS APPEAL BOARD OF ALBERTA

In the Matter of the *Insurance Act*, R.S.A 2000, c. 1-3, as amended

BETWEEN:

ANTHONY BENTLEY

Appellant

- and -

GENERAL INSURANCE COUNCIL

Respondent

DECISION of the  
Insurance Councils Appeal Board of Alberta  
in respect of the decision of the Insurance Council Appeal Board of Alberta dated  
January 12, 2022

**Introduction**

1. This matter comes before the Insurance Councils Appeal Board of Alberta (the "Appeal Board") at the direction of the Court of King's Bench of Alberta (the "Court"). In its January 8, 2024 decision on the appeal of the General Insurance Council ("GIC") from the January 12, 2022 decision of the Appeal Board, the Court granted the appeal and returned the matter to the Appeal Board for a determination on whether Mr. Bentley (the "Appellant") contravened section 509(1) of the *Insurance Act* (the "Act").

**Background**

2. Between 1995 and 2019, the Appellant was licensed as a general insurance agent.
3. In 2019, the Appellant joined the brokerage firm InsureLine/VeriFive. With InsureLine/VeriFive, he operated as a "producer" earning commission rather than as a salaried employee. He had his own client book of business which

was to be gradually transferred to the brokerage as he moved toward retirement.

4. Ongoing conflicts between the Appellant and the Director of InsureLine/VeriFive resulted in a breakdown of their relationship. In November, 2019, the brokerage firm instructed the Appellant to stop writing policies with InsureLine/VeriFive.
5. The brokerage firm alleged that the Appellant continued to complete applications and provide temporary pink cards without coverage being bound.
6. InsureLine/VeriFive terminated the Appellant effective December 11, 2019 and as required by the *Act* advised the Alberta Insurance Council that he had been terminated for cause.
7. Subsequent to the termination, the brokerage firm reviewed all their files and with the assistance of the Appellant's office determined that 78 clients were given the impression by the Appellant that they had insurance coverage although no coverage was bound.
8. It is the conduct in respect of these 78 clients, that was the subject of the complaint to the Alberta Insurance Council and the subsequent decisions of the GIC, the Appeal Board and the Court.

### **Decision History**

9. The GIC considered the allegations under the offence sections 480(1)(a) and 509 (1)(a) of the *Act* finding that the Appellant's willingness to negate the brokerage process by issuing temporary pink cards without ensuring insurance coverage was bound for the 78 clients and his conduct in acting as an insurance agent under the *Act* by placing a call on January 7, 2020 to an insurer directly on behalf of a client after his employment was terminated were deliberate and intentional actions. The GIC held that the Appellant had breached s 480(1)(a) of the *Act* and imposed the maximum penalty of \$5,000.
10. The Appellant appealed the GIC decision to the Appeal Board. On the issue of the January 7, 2020 telephone call, the Appeal Board concluded no offence under s 509(1) was made out. On the allegation of the provision of temporary pink cards to clients without submitting the required paperwork to bind the insurance coverage, the Appeal Board held that the evidence was incomplete and as such did not show the necessary deliberate underlying act or omission required of s 480(1)(a). While Counsel for the GIC had argued in the alternative that the Appellant's conduct in relation to the 78 clients included making false or misleading statements to clients as contemplated by

s 509(1) of the *Act*, the Appeal Board did not consider whether an offence under s 509(1) was proven.

11. On appeal to the Court, the GIC did not seek to disturb the decision made by the Appeal Board in respect of section 408(1)(a) or the decision regarding the January 7, 2020 telephone call under s 509(1).
12. The Court determined that the Appeal Board was required to consider s 509 of the *Act* once it had decided that an offence under s 480(1) was not established. The Court noted that the Appeal Board never went on to consider whether an offence under s 509(1) of the *Act* was proven in relation to the uncontroverted evidence that the 78 clients obtained temporary pink cards from the Appellant without him providing the required documents or complete applications to the insurance company.
13. . The Court held that the Appeal Board erred in law by not considering s 509 of the *Act* as it related to the Appellant's conduct in issuing pink cards to 78 of his clients without their paperwork having been forwarded to the insurance company for binding of the policies.
14. In granting the appeal , the Court returned the matter to a properly constituted Appeal Board to reconsider the application of s 509(1) of the *Act* to the evidence of the Appellant's action in relation to the 78 clients in issue. The Court directed that the record is limited to the evidence received at the initial hearing on November 26, 2021 and December 17, 2021.

#### **Record before the Appeal Board**

15. Appeal Package of the General Insurance Council pursuant to s. 20 of the *Insurance Councils Regulation*, A.R. 126/01, dated September 8, 2021.
16. Written Submissions of the General Insurance Council, dated November 19, 2021.
17. Submissions of Mr. L. Anthony Bentley dated September 20, 2021.
18. Hearing Transcripts for Insurance Council Appeal Board Hearings held on:
  - a. November 26, 2021, and
  - b. December 17, 2021.
19. Decision of the Court of King's Bench of Alberta Honourable Justice S.E. Richardson, rendered on January 8, 2024.
20. Notice of the Appointment of Appeal Panel Members from the Office of the Superintendent of Insurance.

21. Certification from the General Insurance Council pursuant to s. 20(c) of the *Insurance Councils Regulation*, A.R. 126/01.

### **Issue to be Determined**

**22. Did the Appellant's actions in relation to the 78 clients constitute an offence under section 509 (1) of the *Insurance Act*?**

### **Legislative Framework**

23. The *Insurance Act* establishes the Alberta Insurance Council and delegates to it the powers, duties and functions needed to regulate and oversee insurance agents and adjusters. Pursuant to Ministerial Directive 10/11 to the Alberta Insurance Council, regulatory powers, duties and functions are delegated to the Alberta Insurance Council including authority to issue or revoke certificates of authority, to investigate complaints regarding alleged contraventions of the *Insurance Act*, to come to a resolution or disposition of those complaints and to levy and collect penalties.

24. The matter before this Board involves s 509(1) of the *Act* which is an offence provision that provides:

509(1) No insurer, insurance agent or adjuster may

(a) make a false or misleading statement, representation or advertisement,

...

(c) engage in any unfair, coercive or deceptive act or practice

25. The offences under s 509 are public welfare offences that prohibit conduct that is against the public interest.

26. Public welfare offences attract strict liability which means that proof of intent is not required. Once it is shown that the impugned conduct occurred, liability is avoided only if the Appellant can establish on a balance of probabilities that he was diligent in taking all reasonable steps to avoid acting in a way that was an offence so as to prevent the adverse consequences of that conduct.

### **Discussion and Reasons**

27. The Appeal Board is established under the *Insurance Councils Regulation*, A.R. 126/01 which provides for the appointment of a panel to decide an appeal and directs that a panel may by order confirm, reverse or vary the decision of the council being appealed or make any decision that the council had the authority to make in the first instance.

28. In this case, the matter at issue comes to this panel of the Appeal Board from the Court which determined that the panel that heard the Appellant's appeal on November 26 and December 17, 2021 erred in not considering whether an offence under s 509(1) of the *Act* was proven in relation to the uncontroverted evidence that the 78 clients obtained temporary pink cards from the Appellant without him providing the required documents or complete applications to the insurance company.
29. Review of the documentary evidence before the original panel and the transcript of the hearing proceedings indicates that it is the position of the GIC that the Appellant created applications for insurance and issued pink cards without submitting the required documentation to InsureLine/VeriFive for binding thus not ensuring that insurance coverage was in place.
30. The Appellant denies any misconduct and asserts that he took the steps necessary to complete the transactions and that the information provided by InsureLine/VeriFive personnel in regards to not receiving the documents necessary for binding the policies is false. He claims that InsureLine/VeriFive disposed of the documents he sent without submitting them to the insurance company in order to discredit him.
31. In deciding whether the Appellant's conduct in respect of the 78 clients constitutes an offence under s 509(1) of the *Act*, the panel must determine the following:
- a) In providing pink cards and creating applications for insurance, did the Appellant mislead 78 clients by representing that insurance was in place?
  - b) If so, did the Appellant take all reasonable steps to avoid misleading the clients and ensure that insurance was bound?
32. It is undisputed that the Appellant issued pink cards and/or created applications for automobile and/or habitation insurance for the 78 clients that are the subject of the appeal.
33. In regards to whether those 78 clients had valid insurance policies, the Appellant testified they did not receive insurance policies but he maintains that because he issued pink cards and filled out the applications properly, the valid applications are valid policies until the insurance company says they are not valid.
34. However, in light of the uncontroverted evidence that the Appellant's office provided to InsureLine/VeriFive of the list of the 78 clients who did not have

insurance policies although pink cards had been issued or applications created and that InsureLine/VeriFive then confirmed with insurers and the clients that policies were not in place, the panel finds that the 78 clients did not have insurance policies.

35. What is in dispute is whether the Appellant forwarded the applications to InsureLine/VeriFive for binding as per the agreed process and if the applications had been forwarded to InsureLine/VeriFive by the Appellant whether InsureLine/VeriFive completed the steps needed to bind the policies.
36. The representatives of InsureLine/VeriFive testified that the arrangement with the Appellant was that he would complete applications for insurance with his clients and submit the applications to the InsureLine/VeriFive office. If the applications were complete and acceptable, InsureLine/VeriFive would transmit them to the insurance company and then notify the Appellant that he was authorized to issue proof of insurance.
37. The InsureLine/VeriFive representative testified that the arrangement worked for about eight weeks. He also acknowledges that the Appellant periodically used the representative's login credentials for his Royal & Sun Alliance portal to quote business.
38. The InsureLine/VeriFive representative testified that the applications for the 78 clients were never transmitted to his office for binding. He testified that the Brokerage Management System tracks applications as they come in with a date and timestamp and it is also able to track through email and fax logs.
39. As to the documents presented by the Appellant for 14 of the 78 clients that are the subject of the appeal, the InsureLine/VeriFive representative testified that he had never seen them and they had not been received in the office. He also pointed out that they would not have been sent to the insurance company because important information was missing on the documents and because there was no date or timestamp, you could not tell if it was issued in the portal.
40. The Appellant admitted that at the beginning of his relationship with InsureLine/VeriFive, he submitted applications and had policies issued without delay. In cross examining the InsureLine/VeriFive representative, the Appellant challenged the description of the process. However, in cross examination by GIC Counsel, the Appellant admitted that he understood the process and knew that the documents had to be sent to InsureLine/VeriFive in order to be bound.

41. The Appellant described the process he followed as: he would meet with clients; fill in the application according to what the AutoPlus indicates for a quote; have client sign the application; figure out the form of payment; and then scan the paperwork and send it to the InsureLine/VeriFive representative. He testified that the documents for the 78 clients were scanned and emailed to the InsureLine/VeriFive representative or if they were completed on the portal, they were bound and a policy was generated. The panel notes that AutoPlus would not have been used for those clients on the list of 78 who were applying for habitation insurance.
42. On cross examination, the Appellant testified he knew the policies he submitted were tracked in the InsureLine/VeriFive system. He testified that for the applications he entered on the Royal and Sun Alliance portal, he printed the application and kept a hard copy and did not send the application to InsureLine/VeriFive.
43. The Appellant admits that he continued to issue temporary pink cards when clients contacted him about not having received permanent pink cards or policies.
44. On cross examination as to proof that he sent the required documents to InsureLine/VeriFive, the Appellant testified that he did not produce the email records of transmittal to InsureLine/VeriFive because he disposed of the computers he used to transmit the applications when he closed his office at the end of February 2020. On cross examination, he testified that the records of transmitting the 78 applications was on the computers he no longer had and that he had not pursued obtaining proof of the transmittals from his email provider. He also indicated that he has hard copies of all business in boxes in a storage locker.
45. In consideration of the evidence submitted and the testimony given, the panel finds the Appellant did not transmit the documents necessary to secure insurance coverage for the 78 clients to InsureLine/VeriFive for the following reasons:
- a) The Appellant was well aware of and had successfully employed the process to be followed in order to have the policies bound.
  - b) There are significant inconsistencies in the Appellant's testimony in relation to the steps he took in completing the insurance transactions for the 78 clients. While he testified that he sent the applications for the 78 clients to InsureLine/VeriFive for binding, he also testified that for the applications he entered on the portal he took a hard copy and did not send it to InsureLine/VeriFive.

- c) The Appellant provides no proof that the documents which he claims he transmitted by email to InsureLine/VeriFive were transmitted although the record of such electronic transmittal would be available on the computers used or through the email provider.
  - d) While the Appellant claims that the record of transmitting the documents to InsureLine/VeriFive would be on the computers he disposed of at the end of February 2020 and that he retains hard copies of all transactions in a storage locker, he presented no evidence to prove his claim that they were transmitted. The panel finds it reasonable to draw an adverse inference from the Appellant's lack of effort in retaining or trying to retrieve the evidence that would prove his assertion that he emailed the documents to InsureLine/VeriFive for binding.
  - e) In regards to the 14 sample documents referenced by the Appellant, there is no transmittal information on the documents to support his claim that he sent them to InsureLine/VeriFive
  - f) The panel acknowledges the Appellant's assertions about the truthfulness of the InsureLine/VeriFive representatives. However, given the many inconsistencies in his testimony and the complete absence of evidence that would undermine the evidence of the representatives that there is no record in their tracking system of the documents, the panel accepts the representatives' evidence that the necessary documents were not received by the brokerage firm.
  - g) The Appellant's defence against fraud is that he did not stand to gain in any way from providing proof of insurance to customers for which he did not intend to secure a policy but InsureLine/VeriFive stood to gain by obtaining his book of business without providing him with a buyout contract. However, as no evidence was advanced that would indicate InsureLine/VeriFive gained by not binding policies, the panel is of the view that this defence is without merit.
46. On the key question of whether the Appellant mislead 78 clients by representing that insurance was in place, there is no evidence that the Appellant advised the 78 clients that there was another step to completing the transaction or that their insurance was not bound until that final step was taken. Rather, when notified by various clients that they had not received a policy or that the temporary pink card was about to expire, the Appellant provided them with another temporary pink card.
47. The panel finds it reasonable to conclude that as the 78 clients who obtained pink cards and/or applications for automobile or habitation insurance from

the Appellant were not informed of the final step that had to be taken in order to bind the policy, they believed they had secured an insurance policy.

48. The panel concludes that by issuing paperwork in the form of applications and/or pink cards to the 78 clients without alerting them to the fact that the insurance would not be in place until he submitted the application to InsureLine/VeriFive to be bound, the Appellant misled them to believe they had a valid insurance policy.
49. As to whether the Appellant took reasonable steps to avoid misleading the 78 clients and to ensure their insurance policies were bound, the panel finds the Appellant did not exercise the diligence required to avoid committing the offence which resulted in the clients not having the insurance coverage they believed they had.
50. It is the Appellant's own evidence that when contacted by clients about the expiration of their temporary pink card or not having received their policy from the insurance company that he issued another temporary pink card and did not follow up with InsureLine/VeriFive or the insurers to ensure the processing was underway.
51. The Appellant relies on notice he received from one of the insurance companies indicating a backlog of cases delaying processing for the delay in the clients receiving their policies. However, as the delay with this particular insurer was not applicable to all of the 78 clients, the panel is of the view that it is not a reasonable excuse for not following up on client concerns about delay in receiving documentation.
52. The Appellant neither assisted with compiling the list of clients for whom he had provided pink cards and/or prepared applications once it was apparent they did not have insurance policies in place nor did he assist in contacting the clients on the list prepared by his office.

## **Conclusion**

53. The panel concludes that the Appellant mislead and deceived the 78 clients by representing that they had insurance policies when he had not completed the steps needed to ensure their policies were bound. His deceptive conduct was to the detriment of those clients as they conducted themselves for many months without the insurance coverage they believed they had.
54. As he did not take reasonable steps to avoid committing the offence of misleading and deceiving the 78 clients or to ensure that the clients were insured, the panel concludes the Appellant is guilty of an offence pursuant to s 509(1) of the *Act*.

## Appeal Fee and Penalty

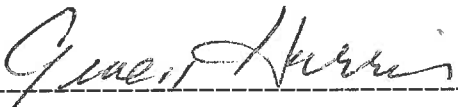
55. Section 24 of the *Insurance Councils Regulation* provides that, in determining an appeal, a panel shall also determine the disposal of the appeal fee paid by the Appellant to commence the appeal to one or both of the parties taking into consideration the results of the appeal and the conduct of the parties. The *Insurance Councils Regulation* also provides that the panel may levy a penalty.
56. As a result of the decision of the original panel, the penalty levied on the Appellant by the GIC was eliminated and the appeal fee returned to the Appellant.
57. Given the amount of time that has elapsed since the offence was committed, the fact that the matter of the penalty and appeal fee was dispatched by the original panel and as the Appellant has retired and no longer holds a certificate of authority, the decision of this panel of the Board is limited to the determination of guilt under s 509(1).

## Order

58. For the reasons set out above, it is ordered that:
- The Appellant's actions in relation to the 78 clients constitutes an offence under section 509(1) of the *Insurance Act*.
  - The panel takes no position on the matters of the appeal fee or penalty.

DATED at Edmonton, Alberta this 19<sup>th</sup> day of August, 2024.

INSURANCE COUNCILS APPEAL BOARD OF ALBERTA

Per:   
Gwen Harris – Appeal Panel Chair

Authorized to sign for:

Per:   
Morgan Anderson – Appeal Panel Member

Per:   
Duncan Hecht – Appeal Panel Member