

INSURANCE COUNCILS APPEAL BOARD OF ALBERTA

In the Matter of the *Insurance Act*, R.S.A 2000, c. 1-3, as amended
and
In the Matter of the *Insurance Agents and Adjusters Regulation*, Alta. Reg. 122/2001,
as amended

BETWEEN:

MYRBEL SALVADOR

Appellant

- and -

GENERAL INSURANCE COUNCIL

Respondent

Heard via video conference on September 24, 2024

Before:

Gwen Harris
Morgan Anderson
Duncan Hecht

Appeal Panel Chair
Appeal Panel Member
Appeal Panel Member

Attending:

Myrbel Salvador
Zabeda Yaqoob

Appellant
Respondent – Counsel

Kristen Di Rocco

Court Reporter

DECISION AND ORDER

1. On September 24, 2024, the Insurance Councils Appeal Board heard the appeal of Myrbel Salvador (the “Appellant”) filed with the Superintendent of Insurance on April 19, 2024. The appeal concerned the March 20, 2024 decision of the General Insurance Council which found the Appellant to be in breach of section 480(1)(a) of the *Insurance Act* and imposed a civil penalty of \$9,000 and 30 day license suspension.

2. The appeal hearing on September 24, 2024 held via video conference was attended by the Appellant and Zabeda Yaqoob representing the General Insurance Council.
3. At the outset of the hearing, the Appeal Panel Chair reviewed the jurisdiction of the Appeal Panel and outlined the hearing procedure.
4. The parties confirmed they had no objection to the composition of the Appeal Panel and raised no objection to the Appeal Panel's jurisdiction to hear the appeal.
5. The appeal was filed on time in accordance with section 16(1) of the *Insurance Councils Regulation*.
6. The following documents were submitted to the Appeal Panel on July 8, 2024 and September 17, 2024 respectively:
 - The record considered by the General Insurance Council – submitted in accordance with section 20 of the *Insurance Councils Regulation*.
 - The written submissions of the Respondent.
7. The Appeal Panel Chair confirmed with the parties the issue to be determined by the Appeal Panel as:

Is the civil penalty of \$9,000 imposed by the General Insurance Council in respect of the Appellant's breaches of section 480(1)(a) of the *Insurance Act* appropriate in the circumstances?

Background

8. The documentary evidence submitted shows the Appellant has held a General Insurance Certificate of Authority since May 2013 and qualified as a Level 2 General Insurance Agent in 2018.
9. The Appellant's employer, AMA Agencies Ltd. (the "employer") filed a complaint with the Alberta Insurance Council on May 10, 2022 in respect of the findings from an audit of transactions involving home and vehicle insurance policies completed by the Appellant between September 17, 2021 and March 15, 2022.
10. The employer's complaint alleged that on 16 occasions, the Appellant provided false or misleading information to the insurer and insureds, failed to disclose material information, misled the insurer through false statements

and failed to conduct adequate fact finding and assessments of the client's insurance needs.

11. The Appellant resigned her position with the employer on March 23, 2023 and commenced work with another agency.
12. The documentary evidence shows the investigation of the complaint by the Alberta Insurance Council included review of the phone call recordings, screenshots of the Appellant's notes on the insureds' files and screenshots of responses entered by the Appellant on different screens. As well, in the interview with the Appellant on August 12, 2023, the investigator reviewed with her the information provided by the employer including the recordings of the phone conversations with clients.
13. The investigator provided the investigation report to the Appellant on December 4, 2023 for review and response. The Appellant responded on December 6, 2023.
14. The investigation report submitted to the General Insurance Council includes a review of each of the incidents noting discrepancies between the recorded conversations and the Appellant's notes. On the review of each transaction, the investigator notes that the "Agent admits to the above points". The investigation report also included the submissions of the Appellant, the employer and the investigator's recommendations.
15. In the decision dated March 20, 2024, the General Insurance Council held that the Appellant's conduct was intentional and was fraud, deceit dishonesty, untrustworthiness and /or misrepresentation as contemplated by s 480(1)(a) of the *Insurance Act*. The General Insurance Council ordered a civil penalty of \$750.00 for each of the 12 demonstrated offences and suspended the Appellant's certificate of authority for a period of 30 days.
16. In a letter dated April 17, 2024 to the Superintendent of Insurance, the Appellant requested "reconsideration of the penalty imposed by the Alberta Insurance Council".

Preliminary Matters

17. The Appellant raised 4 preliminary issues which she characterized as: improper service of the General Insurance Council decision; a threatening conversation with Counsel for the General Insurance Council; delays in processing of the case; and malice.

18. In regards to service of the General Insurance Council decision, the Appellant argued that because the General Insurance Council failed to complete service of its decision on her that the Decision should be set aside.
19. The documents submitted to the Appeal Panel show that a process server was unsuccessful in attempting service and in accordance with the Alberta Insurance Council Publication Policy, the decision was then posted on its website.
20. The Appellant informed the Appeal Panel that a co-worker told her the decision was posted on the website.
21. In a letter dated April 17, 2024, the Appellant submitted her notice of appeal to the Superintendent of Insurance who acknowledged receipt as of April 19, 2024.
22. Procedural fairness demands that a person adversely affected by a decision has a right to know the case against them and to have an opportunity to respond to the decision before an impartial adjudicator.
23. Section 16 of the *Insurance Councils Regulation*, Alta. Reg. 126/2001 provides in part:
- 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 President of Treasury Board and Minister of Finance.
24. As it is clear on the evidence that the Appellant knew the decision of the General Insurance Council rendered on March 20, 2024 and that the Appellant submitted a notice of appeal to the Superintendent of Insurance as of April 19, 2024, the Appeal Panel finds that requirements for both procedural fairness and completion of the steps set out in section 16 have been satisfied and the matter is properly before the Insurance Councils Appeal Board.
25. The Appellant had a witness on hand in respect of this issue. She told the Appeal Panel that she knew of other agents who were never served with a

decision and that her witness could explain his similar experience and how the matter was resolved.

26. As the Appeal Panel determined that the Appellant had notice of the decision and had filed a notice of appeal with the Superintendent within the required time limit it determined it did not require the proposed submission of the witness.
27. On the second preliminary matter, the Appellant submitted that she felt threatened by a telephone conversation in which the representative of the General Insurance Council told her that if she proceeded with her appeal, she would ask for a higher penalty.
28. The authority of the Insurance Councils Appeal Board is limited to the decisions made by Councils. As set out above, a person adversely affected by a decision of a Council has a right to appeal that decision.
29. The authority of this Appeal Panel is limited to the penalty imposed by the General Insurance Council which the Appellant described as the relief requested in her notice of appeal.
30. An unsatisfactory or improper interaction between an agent and staff of the Alberta Insurance Council would be properly addressed by the management of the Alberta Insurance Council. It does not come within the purview of the Appeal Panel.
31. Thirdly the Appellant argued that the matter should be set aside because of the significant delays in the processing of the matter.
32. The alleged infractions of section 480(1) occurred in 2022, the investigation of the complaint was not completed until December 2023 and the Appeal Panel assigned to hear the matter did not set the date of the hearing within 30 days of assignment.
33. The Appeal Panel acknowledges the delays in finalizing this matter. However, as the Appellant's certificate of authority has remained active and the Appellant has not experienced any gap in her employment in the insurance industry, the Appeal Panel finds that the delay in the hearing of the appeal has not resulted in prejudice to the Appellant.
34. On the final preliminary matter - malice, the Appellant argues that by stating that the penalty should be at the maximum level of \$60,000 rather than the \$9,000 determined by the General Insurance Council, the representative of the General Insurance Council is now appealing the decision of the General Insurance Council.

35. On this matter, the Appeal Panel notes that the General Insurance Council has rendered its decision and is now functus. While the Appeal Panel views it as puzzling for a representative to disagree with the decision of a Council and effectively call on the Appeal Panel to vary the decision, the Appeal Panel considers those submissions as argument to be considered in the Appeal Panel's analysis of the matter.
36. The Appeal Panel determined that the preliminary issues raised by the Appellant do not establish a basis for setting aside the matter.

Legislative Framework

37. The *Insurance Act* establishes the Alberta Insurance Council and delegates to it the powers, duties and functions needed to regulate, oversee and discipline 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.
38. Section 480(1)(a) of the *Insurance Act* sets out the grounds for imposing sanctions on a certificate of authority.

480(1) If the Minister is satisfied that the holder or a former holder of a certificate of authority

- (a) has been guilty of misrepresentation, fraud, deceit, untrustworthiness or dishonesty,
- (b) has contravened any provision of this Act or the regulations or similar legislation in another jurisdiction or legislation that is a predecessor of this Act or the regulations,
- (c) has unreasonably failed to pay any premium collected by the holder within the time period stipulated in the holder's agency contract to an insurer or an insurance agent who is entitled to the premium,
- (d) has placed insurance with an insurer not licensed in Alberta under this Act without complying with the provisions of this Act relating to unlicensed insurers, or

- (e) has demonstrated incompetence to act as an insurance agent in the case of an insurance agent's certificate of authority or to act as an adjuster in the case of an adjuster's certificate of authority,

the Minister may revoke, suspend or refuse to renew or reinstate one or more of the certificates of authority held by the holder, impose terms and conditions provided for in the regulations on one or more of the certificates of authority held by the holder and impose a penalty on the holder or former holder.

(2) The amount of a penalty imposed under subsection (1) is governed by the regulations.

39. Section 36.1 of the *Insurance Agents and Adjusters Regulation* sets the range of penalties that may be imposed in respect of section 480 offences.

36.1(1) For the purposes of section 480(2) of the Act, the amount of the penalty that may be imposed may not exceed the following:

- (a) \$5000 for a matter referred to in section 480(1)(a) of the Act;
- (b) \$1000 for a matter referred to in section 480(1)(b), (c), (d) or (e) of the Act.

(2) The rate of interest prescribed for the purposes of section 480(7) of the Act is 12% per annum, prorated in respect of any part of a month, on the unpaid balance.

Position of the General Insurance Council

40. In support of the decision of the General Insurance Council, the representative submitted:

- a. The Appellant has accepted responsibility for the violations of section 480(1).
- b. The evidence shows that the violations were not minor infractions.
- c. The Appellant's reckless conduct in misrepresentation, false statements, inadequate investigation and failure to disclose and determine client needs could affect consumers and have an impact on the integrity of the insurance industry.
- d. The Appellant demonstrated a pattern of behaviour in 12 transactions and a clear disregard for requirements.

41. In regard to the civil penalty, the representative argued that while the \$9000.00 fine is significant, it is not in line with the decisions submitted as precedent. She submitted that the fine imposed is inadequate given the violations and that the maximum of \$5,000 per violation would be in line with previous cases.

Position of the Appellant

42. The Appellant testified in support of reconsideration of the penalty imposed:
- a. She disagrees with the decision of the General Insurance Council.
 - b. She may have made some mistakes but not to the extent of a \$9,000 penalty.
 - c. No one was hurt by her actions and she did not receive any financial benefit.
 - d. Unlike her situation, the cases submitted as precedent for the maximum penalty involve Life Insurance cases in which the agent benefitted.
 - e. Her case should have been considered under section 509(1) of the *Insurance Act* rather than section 480(1).
 - f. She provided good service for the employer and feels the employer did not provide her with due process.
 - g. She resigned her position with the employer because she got offer from another agency.

43. In response to questions, the Appellant provided the following information:

- a. She confirmed her appeal is limited to the civil penalty.
- b. She accepted responsibility for the infractions because that is what the employer thinks she did.
- c. She is unable to defend herself as she has no access to the information.
- d. As much as she can recall all clients were informed.
- e. The employer provided training on the Quality Review Program.
- f. She did not breach any Code of Conduct.
- g. On her claim that certain information from the interview was omitted from the investigation report, the Appellant could not identify any specifics to substantiate her claim.

Discussion and Reasons

44. The overarching obligation of regulatory bodies charged with the licensing, oversight and discipline of licensees is the protection of the public. In

authorizing the imposition of financial penalties and suspension of licenses, the *Insurance Act* speaks to the high standards demanded of licensees and provides for the enforcement of those standards.

45. In providing for a civil penalty of up to \$5,000 per offence under section 480(1), the legislation conveys to offenders that they will be penalized for such offences. It signals to others that these are not trivial matters and that standards will be enforced to ensure protection of consumers, insurers, the trust of the public and integrity of the industry.
46. As the issue before the Appeal Panel is limited to whether the civil penalty of \$9,000 is appropriate in the circumstances, the particulars about the 12 infractions identified by the General Insurance Council were reviewed only to the extent that they helped to inform the Appeal Panel's assessment of the penalty.
47. It is clear from the documentary evidence and the oral testimony of the Appellant that the Appellant knew the requirements of the Quality Review Program. The record shows that of the 106 Policies Audits conducted in regards to the Appellant's work, there were 58 total errors with 12 cases of verified premium impact and 5 cases in which policies did not meet the underwriting criteria and were ineligible for the coverage.
48. It is uncontroverted that the notes recorded by the Appellant on the 12 cases at issue did not align with the recordings of her conversations with the clients.
49. These discrepancies between the Appellant's recorded conversations with clients and the Appellant's notes to the file had impact on the premiums charged, eligibility for the coverage and the client's understanding of the coverage provided. In many of the cases, the discrepancy was to detriment of the insurer as the rating information needed to determine risk was not made available. In other cases, clients were not provided the opportunity to opt for a higher level of coverage which may have been to their advantage. In one instance, the Appellant represented herself to the Insurance Corporation of British Columbia as her client rather than as an agent.
50. In light of the nature of the offences and the impact of those offences on insurers and insured, the Appeal Panel is satisfied that a civil penalty on each of the proven offences is warranted.
51. In its determination of the civil penalty for the Appellant's violation of section 480(1)(a) of the *Insurance Act*, the General Insurance Council reasoned:

Given the evidence that the Agent admitted to her conduct, and it appears no consumers were impacted, the Council orders that a civil penalty of \$750.00, per demonstrated offence, resulting in twelve (12) offences, equaling a total civil penalty of \$9,000.00 be levied against the Agent.

52. The Appeal Panel acknowledges that in her notice of appeal the Appellant cites her personal financial circumstances as reason for reconsidering the civil penalty imposed by the General Insurance Council.
53. The Appeal Panel does not accept that those circumstances play a role in determining the quantum of the penalty.
54. The Appeal Panel also acknowledges the submission of the representative of the General Insurance Council that the civil penalty imposed by the General Insurance Council is not in line with the maximum penalties imposed in the cases submitted and that this case warrants the maximum penalty.
55. The Appeal Panel is not persuaded in this case that the maximum penalty per proven infraction is warranted. Review of the cases submitted as precedential shows that the present case is clearly distinguishable from those submitted which for the most part involved initiating insurance applications containing falsified information and without the consent of the client.
56. While the Appellant's offences do not rise to the flagrant level of those cited in the decisions submitted, the Appeal Panel finds that the nature of the Appellant's repeated offences does warrant a civil penalty as censure for the offences.
57. The Appeal Panel considered the aggravating and mitigating circumstances presented to the General Insurance Council. No additional aggravating or mitigating circumstances were raised by the parties.
58. The Appellant did not establish grounds for reducing the penalty.
59. In consideration of the evidence presented and the submissions made, the Appeal Panel accepts the reasoning of the General Insurance Council that a civil penalty of \$750.00 per each of the 12 proven offences is appropriate in the circumstances.

Conclusion

60. The Appeal Panel confirms the decision of the General Insurance Council.

61. Given the delays in the processing of the matter, the Appeal Panel directs that the interest prescribed in section 36.1(2) of the *Insurance Agents and Adjusters Regulation* take effect from the date of service by registered mail of this decision.

Appeal Fee

62. 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 both the results of the appeal and the conduct of the parties. Given the result of the appeal, the Appeal Panel is of the view that the appeal fee paid should be awarded to the Alberta Insurance Council. The conduct of the parties provides no reason to do otherwise.

Order

63. For the reasons set out above, it is ordered that:

- a. The appeal is denied.
- b. The decision of the General Insurance Council is confirmed.
- c. The appeal fee is awarded to the Alberta Insurance Council.
- d. Interest on the unpaid balance of the penalty shall take effect from the date of service by registered mail of this decision. Interest accrued prior to the date of this decision is waived.

DATED at Edmonton, Alberta this 23th day of October 2024.

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Per: 

Gwen Harris – Appeal Panel Chair

Per: _____
Morgan Anderson – Appeal Panel Member

Per: _____
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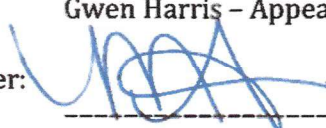
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