

DECISION
of the
LIFE INSURANCE COUNCIL OF MANITOBA
(“Council”)
Respecting
ROSANNA PANCOTTO-CLEMENTE,
(“Applicant”)

INTRODUCTION

The Life Insurance Council of Manitoba (“Council”) derives its authority from *The Insurance Act* C.C.S.M. c. 140 (the “Act”) and the *Insurance Councils Regulation* 227/91 (the “Regulation”).

The Applicant was a former holder of Life and Accident and Sickness licenses during the period commencing August 24, 2012 and ending May 31, 2014. The former licensee (“Licensee”) applied to reinstate her Life and Accident and Sickness licenses on August 25, 2014.

The Application engages the considerations set out in section 371(1) and 371(2) of the *Act*, which provide as follows:

Issue of licence

371(1) Upon receipt of an application for a licence accompanied by proof of the existence of a liability insurance policy as required under subsection (1.1) and upon payment of the prescribed fee, which shall be determined having regard to the proposed area of the operations of the applicant, the superintendent shall, if he is satisfied that the applicant is a suitable person to receive a licence and intends to hold himself out publicly and carry on business in good faith as an insurance agent, issue to the applicant a licence authorizing the holder, during the term of the licence, to carry on within the province the business of insurance of the class stipulated in his licence.

Refusal of licence

371(2) Where, for any reason, the superintendent is of the opinion that an applicant is not a suitable person to receive a licence, he may refuse him a licence.

Here, the involved considerations necessitate that Council re-visit the Applicant's licensing and disciplinary history.

BACKGROUND

In a Decision dated December 19, 2013, Council required that the Licensee's Life and Accident and Sickness licenses be subject to a number of conditions. This action was taken pursuant to s. 396(1) of the *Act* and s. 7(2)(b) of the *Regulation*, in light of Council's finding that the Licensee's concurrent additional occupation as an Immigration Consultant violated Council's Conflict of Interest Guidelines for Additional Occupations.

The Licensee appealed Council's decision to the Insurance Agents' and Adjusters' Licensing Appeal Board (the "Board"). The Appeal, which by virtue of the *Act* was conducted as a fresh hearing, was heard on March 25, 2014. By its own decision dated May 28, 2014, the Board dismissed the Appeal; confirmed that the Licensee's additional occupation as an Immigration Consultant violated the Conflict of Interest Guidelines; and similarly imposed a number of specific conditions on the Licensee's Life and Accident and Insurance licenses.

The nature of the Licensee's evidence before the Board – specifically in relation to her original July 31, 2012 Life and Accident and Sickness Insurance licensing application and her May 16, 2013 renewal application – triggered a further investigation as to whether misrepresentations to Council had occurred. This fresh investigation was undertaken pursuant to ss. 375(1) and 396.1(7) of the *Act* and s. 7(2)(e) of the *Regulation*. During the investigation the Licensee was given an opportunity to respond and provide input with respect to Council's concerns.

On October 10, 2014, Council considered the evidence compiled during the course of the investigation along with an August 25, 2014 Life and Accident and Sickness licensing application received by Council.

ISSUES

These are twofold:

1. Did the Licensee's original July 31, 2012, Life and Accident and Sickness Insurance License application, and/or her May 16, 2013 renewal application, amount to misrepresentations on the part of the Licensee?
2. If so, is the Applicant a suitable person to receive a license, or should her application be refused?

FACTS

1. From February, 2007, the Licensee was employed as Immigration Consultant with Prairie Sky Immigration Inc., a business in which the Licensee had an ownership interest.

2. The Licensee first applied for Life and Accident and Sickness Licenses on July 31, 2012 (the “Application”). Respecting the Application:

- The Licensee’s sponsor/employer was American Income Life Insurance Company (“AIL”).
- In response to question 15, “Are you currently or do you plan to engage in any business, occupation, or economic activity other than as an Insurance Agent?” – the Licensee answered “No”.
- In response to question 18, which seeks “Employment History” for the previous 5 years, “date of termination of such employment” and “Reason for Leaving”, the Licensee made reference to Prairie Sky Immigration, an end date of July 2012 and indicated, as a reason for leaving, “joined AIL”.

3. Section 21 of the Application contains a “Certification” section which includes the following paragraph:

The undersigned individual hereby certifies that the foregoing statements are true and correct to the best of my knowledge, information and belief and hereby undertakes to notify the Insurance Council of Manitoba in writing of any material change therein, within 15 days of such change.

4. Section 22 of the Application is a “Declaration” section. It includes the following wording:

(IV) I declare:

(a) that I have read carefully and understood all information within this application

...

(c) that this application is made in good faith upon my own behalf and not on behalf of any person who is not competent to receive a license, and upon receipt of a license pursuant hereto, I intend to hold myself out publicly and carry on business in good faith as an insurance agent.

(d) that I, the undersigned, hereby say that all statements and answers in the foregoing application are true and correct and I hereby authorize the Insurance Council of Manitoba to undertake a criminal record check, or conduct other investigations in connection with this or any other application.

5. Section 23 of the Application also includes a “Caution”. It provides that:

It is an offence under *The Insurance Act* of Manitoba to procure or attempt to procure registration by knowingly making any false or fraudulent representation or declaration. Filing of any false information required by or on this application may result in its rejection or in disciplinary or other actions or proceedings being taken against the applicant and/or ICM within the provisions of *The Insurance Act* of Manitoba, the Regulations, or Code of Conduct, or may result in a refusal to register the applicant.

6. The Licensee’s dual employment as an Immigration Consultant did not, however, actually end in July, 2012. Rather it continued through the Licensee’s business, Prairie Sky Immigration Inc., for the balance of 2012; all of 2013 and into 2014.
7. On May 16, 2013, the Licensee signed her 2013/2014 Application for Renewal of her Life and Accident and Sickness Insurance Licenses (the “Renewal”).
8. The Renewal includes introductory wording and an initial question as follows:

Since you last applied for a License or a Renewal to the ICM have you: (“yes” answers should only be given for changes that have not been previously disclosed)

- 1) Engaged in any business or occupation that has not been disclosed to and approved by the ICM, other than the insurance or mutual funds business?

In response to this question the Licensee answered “No”.

9. Section 12 of the Renewal is a “Declaration” section. It contains the following wording:

I declare that the foregoing information is true and I agree that by signing this application I accept the responsibility for these answers and undertakings. I further understand that a false declaration in this application could lead to disciplinary action. I agree to notify Council within 15 days of any material changes to the information contained in this application and I further agree to maintain proof of professional liability insurance and completion of continuing education for a period of two years.

10. The Licensee's dual employment as an Immigration Consultant triggered Council's Decision of December 19, 2013. However this dual employment continued into 2014, on an uninterrupted basis, while that Decision was appealed to the Board.
11. By letter from Council's investigator dated April 4, 2014, it was suggested to the Licensee that during the appeal hearing before the Board (on March 25, 2014) the Licensee testified that she had not personally completed or read her Application. Written comments were requested from the Licensee.
12. By letter dated April 10, 2014, the Licensee provided reply comments. These included the following statements:

I believe that my words have been misinterpreted and restated inaccurately and what I did say has been misrepresented.

To clarify at the Appeal Hearing I stated how the office manager,... assisted me with completing my application. There are many forms to be completed, and to avoid mistakenly overlooking an important detail, [the office manager] helped me complete the necessary paperwork. If there was a question incomplete, he interviewed me for the answers. Then I signed stating that I had read carefully and understood all information within the application, the application was made in good faith upon my own behalf, and my statements and answers in the application were true and correct to the best of my recollection. I personally hand delivered the application to the council.
13. The Licensee did not subsequently apply to renew her insurance licensing for the 2014/2015 year. Accordingly, her Life and Accident and Sickness Insurance licenses expired on June 1, 2014.
14. The Applicant subsequently submitted a Life and Accident and Sickness licensing application dated August 25, 2014 to Council. This application was considered in the context of suitability.

ANALYSIS

But for the Licensee concealing her true intention to maintain her status and business as an Immigration Consultant, while she was also employed as an insurance agent, her initial Life and Accident and Sickness and Insurance licenses would not have been issued. They were procured/obtained on a false foundation. On July 31, 2012 – the day the Licensee signed the Application – she obviously knew that her Immigration Consulting activity was ongoing. She had ongoing immigration case files. Both she and Prairie Sky Immigration Inc. were continuing to advertise and hold out as being in business, and no steps were being taken to wind down business operations.

Even if it could be said that ongoing business activity as an Immigration Consultant was unforeseen on July 31, 2012 – that immigration case files open as of July 31, 2012 would somehow not still be open on August 1, 2012 and thereafter – the Licensee’s disclosure obligations were ongoing. The “Certification” section of the Application (cited in full above) clearly included an undertaking on the part of the Licensee that any material changes were to be provided in writing to Council within 15 days of such changes. Obviously, this did not occur. To the contrary, the Licensee’s misrepresentations were continued in the Renewal, some 10 months later, when a direct and specific question concerning additional occupations was answered in the negative. The licensing originally procured on the basis of false and erroneous information was thus maintained on the basis of ongoing concealment.

The Decision of the Insurance Agents’ and Adjusters Licensing Appeal Board dated May 28, 2014 likewise concluded that the Licensee did not accurately represent her status as an Immigration Consultant in her 2012 application and that she failed to provide information regarding her immigration consulting business to Council in 2013.

The Licensee’s written reply of April 10, 2014, while it did suggest an ongoing evasiveness and defiance on the part of the Licensee that Council found very troubling, changes none of the forgoing conclusions. The Licensee had an inherent obligation to review and answer application questions honestly. Whether the Licensee verbally relayed answers and information respecting the Application for completion by a co-worker – accurately or not – and then didn’t read the Application herself; or whether the Licensee did actually read the Application afterwards; the statements and answers contained therein were still not true and correct.

The Licensee both deliberately and willfully made false statements and a false certification – and then deliberately breached her undertaking thereafter – or she recklessly and carelessly did these things. Either way misrepresentations clearly occurred. And these were subsequently repeated and reinforced in the Renewal.

All of this history, along with the Applicant’s generally defiant attitude during the course of her relatively short licensing history, give rise to significant governability concerns moving forward. Coupled with the nature and severity of the earlier material misrepresentations, Council is not satisfied that the Applicant is a suitable person for insurance licensing purposes.

FINAL DECISION

By its Intended Decision dated October 24, 2014, Council outlined the foregoing background, analysis and conclusions on a preliminary basis. Specifically, pursuant to section 371(2) of the *Act* and section 7(2)(a) of *Regulation 227/91*, Council determined that:

1. The Applicant is unsuitable to hold a Life and/or Accident and Sickness license(s) in the Province of Manitoba and accordingly her application for licensing is refused.

The Applicant received Council's Intended Decision on October 28, 2014, and was further advised of her right to request a Hearing to dispute the Intended Decision, failing which it would take final effect on November 25, 2014.

Pursuant to section 389.0.1(1), the Applicant had a further 21 days within which to file a Notice of Appeal from Council's decision to the Coordinator of Appeals for The Insurance Agents' and Adjusters' Licensing Appeal Board. More than 21 days has now elapsed since the effective date of Council's Intended Decision, being November 25, 2014, and no such Notice of Appeal has been filed.

This decision is therefore final. In accordance with Council's determination that publication of its decisions are in the public interest, this will occur, in accordance with sections 7.1(1) and (2) of *Regulation 227/91*.

Dated in Winnipeg, Manitoba on December 19, 2014.