

DECISION
of the
GENERAL INSURANCE COUNCIL OF MANITOBA
(“Council”)
respecting
CHRISTOPHER ASHTON
(“Licensee”)

INTRODUCTION

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

Following a report/statement by an individual (a “former licensee”) that he had acted as an agent while unlicensed, an investigation was undertaken pursuant to sections 375(1) and 396.1(7)(e) of the *Act* and section 7(2)(e) of *Regulation 227/91*. The purpose of the investigation was to determine whether the Licensee, and/or the Agency for which he was the Operating Agent, had violated the *Act* and/or the General Insurance Agent’s Code of Conduct (“*Code of Conduct*”). During the investigation the Licensee was provided with an opportunity to respond and provide input with respect to Council’s concerns.

During an October 21, 2014 meeting of Council, the evidence compiled during the investigation and the position of the Licensee was reviewed. Pursuant to section 375(1) of the *Act* and *Regulation 227/91*, Council now confirms its decision and corresponding reasons.

ISSUES

1. Did the Licensee, in his role as the Agency’s Operating Agent, violate the *Act* and *Code of Conduct* by permitting an individual to act as an agent without a valid licence?
2. Did the Licensee make a misrepresentation on his 2014 licence renewal application by answering “no” to this question: [Have you] “Had knowledge of any employees of the agency transacting insurance business without being duly licensed?”

FACTS AND EVIDENCE

1. At all material times, the Licensee was the Operating Agent responsible for managing and supervising the Agency. On March 25, 2013, the Licensee signed the required Agency Attestation Form – Operating Agent/Broker Level 3 (Designated Representative).
2. On May 31, 2013, the former licensee's licence lapsed due to non-renewal.
3. On June 19, 2013, Council received the former licensee's 2013/2014 Application for Late Renewal of Licence.
4. On June 25, 2013, an email was sent to the former licensee regarding outstanding issues raised by his application. At that time, he was reminded that he was not licensed and had not been licensed since May 31, 2013.
5. On October 23, 2013, the Agency requested a change in its business address, and a specific request was made to amend the address for the former licensee. On November 5, 2013, Council advised the Agency that the former licensee had not been licensed since May 31, 2013.
6. On March 17, 2014, notice of closure with respect to the former licensee's Application for Late Renewal of Licence, without the issuance of a licence, was sent to the former licensee. A copy was forwarded to the Licensee as Operating Agent.
7. On March 31, 2014, the Operating Agent signed the Agency Attestation Form – Operating Agent/Broker Level 3 (Designated Representative) – in relation to the 2014/2015 licence renewal. The Licensee/Operating Agent attested that: "To the best of my knowledge, information and belief, all employees who engage in licensed activity are properly licensed...".
8. On April 16, 2014, Council received an Application for Individual General Agent/Broker Licence from the former licensee. The application was signed by the former licensee on March 31, 2014, and by the Licensee on April 7, 2014.
9. In his 2014/2015 licence application dated May 13, 2014, the Licensee answered "no" to the question: [Have you] "Had knowledge of any employees of the agency transacting insurance business without being duly licensed?"
10. On May 30, 2014, the former licensee admitted to Council that he had been acting as an agent since June 1, 2013.
11. The Licensee supplied a list of eighteen Manitoba individual policy numbers, for which the former licensee acted as an agent, during the period in which he was unlicensed (between June 1, 2013 and August 12, 2014).

12. The Operating Agent subsequently apologized to Council; and advised that the individual within the company responsible for monitoring the agent licence renewals had not adequately performed his/her responsibilities and had been replaced.

ANALYSIS

The Licensee accepted overall responsibility, as the Operating Agent to manage and to be accountable for the operations of the Agency, by affixing his signature to the required Agency Attestation Form on March 25, 2013 and on March 31, 2014. The Licensee declared, through the Agency Attestation form, that “to the best of my knowledge, information and belief, all employees who engage in licensed activity are properly licensed...” Under that Agency Attestation Form the Licensee further acknowledged that he was required to:

- submit applications for new employees and ensure that a valid licence has been issued by Council prior to that applicant acting as an agent;
- ensure that licensing rules with respect to agency licensing and activities are enforced;
- ensure that proper and adequate supervision of employees is provided at all times; and
- report any changes to Council within 15 days.

These responsibilities and obligations, explicitly referenced in the Agency Attestation Form, reflect the management/oversight and supervisory function – and accountability – expected of the Licensee as an Operating Agent.

While employed by the Agency, the former licensee conducted insurance business without a licence. The Licensee acknowledged this by furnishing Council with a list of accounts for which the Former Licensee had acted as an agent during the period in which he did not hold a valid licence.

Section 369 (1) of the *Act* and section 9 of the *Code of Conduct* prohibit persons from acting without a licence. Although Council recognized that the Licensee delegated the activity regarding licensing of agents to an administrative assistant, he was not able to delegate his own obligations and responsibilities as the responsible Operating Agent. The former licensee’s unlicensed activity led Council to conclude that the Licensee failed to meet the obligations expected of him as an Operating Agent in the circumstances; and he thereby violated section 369 (1) of the *Act* and section 9 (Unlicensed Practices) of the *Code of Conduct*.

As regards the misrepresentation issue, the Licensee declared/acknowledged, by signing the Agency Attestation Form on March 31, 2014, that all employees engaged in licensed activity were properly licensed. Council therefore concluded that the Licensee/Operating Agent had also breached section 375 (1) of the *Act*.

PENALTY AND FINAL DECISION

Council's Intended Decision dated October 27, 2014 outlined the foregoing background, analysis and conclusions on a preliminary basis. Having regard to its initial determination that the foregoing violations had occurred, Council imposed the following penalty and sanction pursuant to section 375(1.1) (c) and (d) of the *Act* and section 7(1) of *Regulation 227/91*:

1. The Licensee be fined \$1,000.00 and assessed partial investigation costs of \$1,000.00.

As part of its Intended Decision, Council further informed the Licensee of his right to request a hearing to dispute Council's determinations and its penalty/sanction. The Licensee expressly declined his right to a Hearing and chose not to pursue a Statutory Appeal; he instead duly paid the levied fine and partial investigation costs.

This Decision is therefore final. In accordance with Council's determination that publication of its decisions are in the public interest, this will occur, as fully contemplated by section 7.1(1) of *Regulation 227/91*.

Dated in Winnipeg, Manitoba on the 20th day of January, 2015.