

DECISION
of the
GENERAL INSURANCE COUNCIL OF MANITOBA
(“Council”)
respecting
J.K. AGENCIES (ERICKSON) LTD. (“Agency”)
KENNETH R. GREAVETT – OPERATING AGENT
(“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 receipt of documentation from Manitoba Public Insurance (“MPI”) detailing Autopac transactions that Agent CC had performed, an investigation was conducted 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 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 make submissions with respect to the Council’s concerns.

On April 23, 2015, during a 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 false attestation declaring that all employees acting as an agent had been licensed and that all employees would obtain a licence prior to acting as an agent?
3. Did the Licensee fail to procure and maintain professional liability insurance for the Agency named in the licence as required by the *Act*?

FACTS AND EVIDENCE

1. At all material times the Licensee was the Operating Agent responsible to manage the Agency. On March 25, 2013 and on April 7, 2014, the Licensee signed the Agency Attestation Form – Operating Agent/Broker Level 3 (Designated Representative).
2. On November 28, 2013, Agent CC completed the MPI *Introduction to Autopac* course.
3. No application for licensing for Agent CC was received by the Council.
4. Between December 19, 2013, and January 3, 2015, Agent CC performed 5785 transactions under her MPI - IWS user ID.
5. On April 7, 2014, the Licensee signed and submitted the Council's Agency Attestation Form. This form included the following declaration:

I attest to the fact that I have personally reviewed the list of licensees as listed on the ICM website – <https://lms.icm.mb.ca/LMSONLINE/AgencySearch.aspx> - for the specific agency listed above. To the best of my knowledge, information and belief, all employees who engage in licensed activity are properly licensed, and are trustworthy and competent to receive a renewal licence.

I understand that I am required: to submit an application for a new employee and to ensure that a valid licence has been **issued by the Insurance Council of Manitoba prior to** that applicant acting as an agent...

6. On April 21, 2014, the Licensee provided a cheque for \$925.00 for the Agency's 2014-2015 agent licence renewals and a list of individuals for whom the cheque should be applied. On that list was the name of Agent CC, incorrectly spelled.
7. In an email dated May 3, 2014, Council's Supervisor, Licensing & Administration, advised the Licensee that Agent CC was not a licensed agent and asked if she were acting as one.
8. A reply on May 5, 2014, from the Licensee stated "I (sic) was my error, Agent CC has just got her basic Autopac course. She is starting her CAIB soon.This will be for the 4 other agents."
9. The Licensee was advised that the allocation of the overpayment could be applied to the account for the next licence renewal or for Agent CC when she made application. The money was left with Council on the Agency account.
10. On October 8, 2014, the Licensee was reminded of this overpayment and he confirmed that the money should be used for next year's renewal.
11. On January 7, 2015, MPI discovered Agent CC's activity and questioned whether she held an agent's licence; Agent CC was locked out of the MPI system when it had been confirmed that she was not licensed.

12. On January 13, 2015, Council's licensing department received an application for Agent CC. Included were certificates of completion for CAIB 1 in May 2014 and CAIB 2 in December 2014. The application could not be processed as there were issues with the Agency's registered business name and Agency licence, as well as, with the corresponding professional liability insurance policy: specifically the application and professional liability were submitted as 5188751 Manitoba Ltd. o/a Parkway Insurance. Council's records reflected J. K. Agencies (Erickson) Ltd. o/a Parkway Insurance Agencies. Manitoba's business registration office confirmed that the Council's records reflected the correct names. [5188751 Manitoba Ltd. was a shareholder of J.K. Agencies (Erickson) Ltd.] A review of Council's licence file documents resulted in the discovery that the professional liability policy had been amended, between 2008 and 2009, from J.K. Erickson Ltd. to 5188751 Manitoba Ltd.
13. In a letter, dated January 29, 2015, the Licensee advised the investigator that Agent CC had ceased to act as an agent until the matter was cleared up. The Licensee stated that he had understood that Agent CC was licensed as she had completed her CAIB 1 and 2, plus her Autopac course; however, her application had not been sent to Council. He noted that this had been rectified as the application had been submitted including confirmation of Agent CC's education and criminal record but there were issues with the Agency's registration and professional liability, which he was working to correct.
14. Agent CC's licence was issued on February 6, 2015 following receipt of confirmation that coverage had been provided by the professional liability insurance carrier.

ANALYSIS

The Licensee accepted responsibility as the Operating Agent to manage and to be accountable for the operations of the Agency.

S. 369 (1) of the *Act* makes it an offence to act as an agent without holding a licence, and s. 9 of the *Code of Conduct* requires a licensee to assist in preventing unauthorized practices.

Council concluded that the Licensee violated the *Act* and *Code of Conduct* by failing to license an agent and continuing to allow an unlicensed individual to act as an agent from December 19, 2013 until January 2015, a period of more than twelve months.

S. 375 (1) of the *Act* makes it an offence for a Licensee to be guilty of misrepresentation, ... , and s. 1 of the *Code of Conduct* requires Licensees to discharge their duty with integrity.

The Licensee affixed his signature to the Agency Attestation Form on April 7, 2014 declaring that he had personally reviewed the list of licensees on the website and all employees engaged in licensed activity were properly licensed. On that date Agent CC had been engaged in unlicensed activity for more than three months. This was known or should have been known to the Operating Agent.

Council noted that there had been an opportunity for the Operating Agent to self-report or correct the issues of Agent CC acting without a licence when he received the Agency Attestation Form for signature. Instead the Licensee affixed his signature to the Agency Attestation Form declaring that he had personally reviewed the list of licensees on the website and all employees engaged in licensed activity were properly licensed.

Council noted that the Operating Agent specifically stated that Agent CC was not to be licensed and failed to licence Agent CC when he received and confirmed notices that money remained on the Council account for agent licensing.

Council concluded these actions of signing the 2014 Agency Attestation Form showed the Operating Agent's careless disregard for his responsibilities and violated the *Act* and *Code of Conduct*.

S. 371 (1.1) of the *Act* requires the existence of, and continual maintenance of, liability insurance by the agent as a requirement of licensing. The professional liability policy did not reflect the legal name of the Agency: J.K. Agencies (Erickson) Ltd. for multiple licence terms.

Council concluded that the Licensee failed to obtain and maintain the required professional liability to meet the requirement of the *Act*.

PENALTY AND FINAL DECISION

Council's Intended Decision dated May 4, 2015 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 sections 375(1.1) (c) and (d) of the *Act* and section 7(1) of *Regulation 227/91*, Council:

1. The Licensee be fined \$2,000.00 and assessed partial investigation costs of \$500.00.

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 this 8th day of May, 2015.