

DECISION
of the
GENERAL INSURANCE COUNCIL OF MANITOBA
(“Council”)
respecting
COLUMBIA INSURANCE BROKERS LTD. (“Agency”)
BARBARA I. MCEACHERN – 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 AF and Agent TS 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 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 her role as the Agency’s Operating Agent, violate the *Act* and *Code of Conduct* by permitting individuals to act as agents without holding a valid licence?
2. Was the Licensee guilty of misrepresentation in her submissions to Council: (a) by signing the 2015 Agency Attestation Form 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 and (b) by providing false information in her April 2, 2015 letter to Council?

FACTS AND EVIDENCE

1. At all material times the Licensee was the Operating Agent responsible to manage the Agency. On March 27, 2014 and March 13, 2015, the Licensee signed the Agency Attestation Form – Operating Agent/Broker Level 3 (Designated Representative).
2. On March 13, 2015, the 2015 Agency Attestation Form, signed by the Licensee, 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 below. 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 recommend that these agent(s) be granted a renewal licence to act for the below noted agency.

I understand that I am required:

- to **immediately** notify the ICM in writing, at any time during the licensing year, if a licence holder leaves the agency, providing the reason and effective date of termination;
 - 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. The ICM website lists all active licenses in real time. To view licensed agents, please visit <https://lms.icm.mb.ca/LMSONLINE/LicenseeSearch.aspx>;
 - to ensure that licensing rules with respect to agency licensing and activities are enforced
3. Agent AF had held a general insurance agent's licence between 1999 and 2003, at which time the licence had lapsed.
 4. On November 17, 2014, Agent AF wrote the Council equivalency Level 1 exam.
 5. On November 18, 2014, Agent AF was emailed her passing results with respect to the Level 1 exam. This email included the following:

*Success in the examination is only one licensing requirement. **You are required to submit an application and have a valid licence issued in your name prior to acting as an insurance agent. (Emphasis added)***

6. No application for the licensing of Agent AF was received by the Council, nor were enquiries made with respect to licensing subsequent to this correspondence, until March 26, 2015.
7. On March 26, 2015, the Council's licensing clerk was advised by Agent AF that she believed she had been licensed since passing her exam in November 2014, and indicated that she wasn't aware that any further action was required following passing her exam.
8. On March 27, 2015, MPI provided the computer printout Autopac activity for Agent AF. On October 7, 2014 Agent AF had created her Autopac IWS user ID. Between October 27, 2014 and October 30, 2014 she performed 39 transactions. Between November 18, 2014 and March 26, 2015, Agent AF performed more than 2700 transactions with Autopac.

9. On April 2, 2015, the Licensee advised Council that she had assumed that Agent AF was licensed when she passed the exam, and Agent AF had performed no agent activity until she passed the exam on November 17, 2014. Manitoba Public Insurance (“MPI”) activities performed by Agent AF had been supervised by agents including the Licensee.
10. The Licensee confirmed that Agent AF worked with “Wawanesa, Red River and MPIC”. The correspondence between Agent AF and the property companies was for the purpose of obtaining customer information and relaying answers to the underwriters. Sample copies were provided to Council. No travel insurance was performed.
11. Agent TS had not previously held an insurance agent’s licence in Manitoba.
12. On March 6, 2015, Agent TS wrote the Fundamentals of Insurance (FOI) exam and passed; on March 19, 2015 she passed the MPI course.
13. No application for licensing was received by Council for Agent TS at this time.
14. On March 23, 2015, MPI computer records recorded the first of Agent TS’s Autopac transactions. Between March 23, 2015 and March 25, 2015 when her activity was discovered, she had performed 110 transactions.
15. According to the Licensee, it had been an application accompanying the confirmation that Agent TS had passed her FOI exam that prompted the questioning of Agent AF’s licence.
16. On April 2, 2015, the Licensee confirmed that Agent TS had worked exclusively with MPI products and had been supervised by agents including the Licensee.
17. The Licensee agent confirmed that both Agent AF and Agent TS ceased agent activity on March 27, 2015.

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. MPI computer reports confirmed that Agent AF began transacting Autopac transactions on October 27, 2014 without first obtaining a licence and Agent TS began transacting Autopac transactions on March 23, 2015 without obtaining a licence. These unlicensed actions continued until March 27, 2015 when it came to the attention of MPI. Agent AF, in addition, acted as an agent in transacting personal lines property activity.

Council concluded that the Licensee violated the *Act* and *Code of Conduct* by permitting the unlicensed agent activity of two individuals.

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 her signature to the Agency Attestation Form on March 13, 2015 declaring that she had personally reviewed the list of licensees on the website and all employees engaged in licensed activity were properly licensed. On that date Agent AF was, and had been, engaged in unlicensed activity under the supervision of licensed agents including the Licensee.

Council noted that there had been an opportunity for the Operating Agent to self-report or correct the issues of Agent AF acting without a licence when she received the Agency Attestation Form for signature. Instead she signed the Agency Attestation Form on March 13, 2015 and allowed the unlicensed activity of Agent AF to continue. Further the Operating Agent permitted a second individual, Agent TS, to act as an agent without first obtaining a licence subsequent to signing this Form. The Operating Agent advised Council that as well as other agents, she had supervised the (unlicensed) activity of Agent TS.

The Operating Agent in her April 2, 2015 letter to Council stated that Agent AF had not performed agent activity until after passing her Council exam in November 2014. However, records show that Agent AF had performed agent activity between October 27, 2014 and October 30, 2014.

Council concluded these actions of signing the 2015 Agency Attestation Form and providing a false statement to Council showed the Operating Agent's careless disregard for her responsibilities and violated the *Act* and *Code of Conduct*.

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 her right to request a hearing to dispute Council's determinations and its penalty/sanction. The Licensee expressly declined her right to a Hearing and chose not to pursue a Statutory Appeal; she 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 14th day of May, 2015.