

DECISION
of the
LIFE INSURANCE COUNCIL OF MANITOBA
(“Council”)
Respecting
MICHAEL WALKER
(“Licensee”)

INTRODUCTION

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*”).

Pursuant to sections 375(1) and 396.1(7)(e) of the *Act*, and section 7(2)(e) of the *Regulation*, Council undertook an investigation of the Licensee to determine whether he had violated the *Act* and/or the Life Insurance and Accident and Sickness Agent’s Code of Conduct (“the *Code*”). During the course of the investigation the Licensee was given the opportunity to furnish information in reply.

By its Intended Decision dated June 3, 2015, Council determined, on a preliminary basis, that the Licensee had committed the following violations:

As to the *Act*:

Section 375(1)(a) – Misrepresentation and dishonesty

Section 369(1) – Offering to act as an insurance agent without a licence

Section 391 – Holding out as an insurance agent and as being engaged in the insurance business while not being duly licensed.

As to the *Code*:

Section 4 – Professionalism (misleading advertising)

Section 7 – General Information Disclosure and Documentation (misleading as to agency, firm or employer)

Accordingly, Council's Intended Decision contemplated an Order that:

1. The Licensee be fined in the amount of \$2,000.00, and be assessed partial investigation costs in the amount of \$500.00.
2. The Licensee be under the direct supervision of a life agent, approved by Council, for a continuous two (2) year period.
3. The Licensee's Life and Accident and Sickness Insurance Agent licences be suspended for a period of two (2) weeks.
4. The Licensee successfully complete the Life Insurance and Accident and Sickness Agent's Code of Conduct Quiz, prior to any reinstatement of his Life and Accident and Sickness insurance agent licences.

The Licensee subsequently exercised his right to dispute Council's Intended Decision and to request a hearing before Council. This occurred on the date noted above. The Licensee was represented by legal counsel.

ISSUES

Has the Licensee provided sufficient particulars to show why the Intended Decision should not be implemented; either in relation to any of the violations which were determined on a preliminary basis to have occurred, or as regards the contemplated Order?

BACKGROUND

The Licensee submitted an Insurance Agent's Licence Application ("the Application") dated February 27, 2015. Among other things, the Application included the following declarations:

- I have read, understood and agree to abide by *The Insurance Act*, its Regulations, the applicable Licensing Rules and the applicable Agent's Code of Conduct.
- I will not act, or offer or undertake to act, as an insurance agent in this province without having first obtained a licence under *The Insurance Act*.

While the Application was pending – and prior to Life and Accident and Sickness licences being issued to the Licensee – the Licensee undertook public advertising and communication through a website and twitter account, both of which held out and promoted an agency called Winnipeg Coverage Insurance Group ("Winnipeg Coverage").

The website included a number of features and representations:

- Winnipeg Coverage had an office at 382 St. Mary's Road in Winnipeg.
- "We are one of the leading and fastest growing providers of insurance products and benefits in Winnipeg".
- "Our team is available 24 hours a day, seven days a week. Winnipeg Coverage advisors have the knowledge, resources and caring touch to resolve your situation quickly and with your best interests in mind".
- A testimonial from JT., stating that he "was able to confirm a great new policy for a much better deal".
- An email newsletter subscription could be requested.
- Winnipeg Coverage had the ability to carry on business for life insurance, critical illness insurance and employee benefits.

The Winnipeg Coverage twitter page included the following tweets, on the dates noted below:

- *"Do you need term, permanent or universal life insurance coverage? We can tell you."* – April 2
- *"Life insurance helps your family to continue enjoying the quality of life they deserve."* – March 29
- *"Consider the cost of post-secondary education for your children when buying life insurance."* – March 25
- *"Get a quote from Winnipeg Coverage. We guarantee better coverage at lower rates."* – March 23
- *"A good guideline is to purchase life insurance coverage equal to 8-10x your salary."* – March 23
- *Get an Insurance Quote from Winnipeg Coverage. We guarantee a greater policy at a lower rate."* – March 20

All of the tweets pre-date the issuance of Life and Accident and Sickness licences to the Licensee, which only occurred on April 15, 2015. The Licensee further confirmed that the website had been operational for approximately five (5) weeks – again prior to the Licensee being duly licensed – until it was removed and/or taken down on April 14, 2015, at Council's specific direction. The twitter account page was removed and/or taken down soon afterwards, following a formal cease and desist Order made by Council on April 17, 2015.

Council's investigation determined that the Winnipeg Coverage website representations were false and misleading, in that:

- There was no licensed agency known as Winnipeg Coverage; neither was Winnipeg Coverage a registered business entity of any kind.
- No office was located at 382 St. Mary's Road; and neither were any operations conducted there. Indeed no such address exists.
- There was no team of advisors; and there were no licensed agents of any kind associated with Winnipeg Coverage.
- The website testimonial was untrue; JT was a complete fabrication.
- No email newsletters were available; as they did not exist.
- Neither the Licensee nor Winnipeg Coverage had any licensing/ability to carry-on business for life insurance, critical illness insurance and/or employee benefits coverage.

There were no factual contests about any of the foregoing matters. Indeed all of this was acknowledged by the Licensee, who was cooperative and forthcoming throughout the investigation stage. Nonetheless, the underlying conduct left Council with significant concerns; and gave rise to the violations and Order set out on a preliminary basis in the Intended Decision.

ADDITIONAL EVIDENCE

Oral testimony was given by the Licensee. No other witnesses were presented; and no other documentary evidence was submitted. While by no means an exhaustive summary, the evidence of the Licensee included the following.

The Licensee testified as to his own personal entrepreneurial background and him having studied at the ASB. He explained that with the website he was just trying to be "creative"; and that he did not intend to violate the *Act*. He noted that he had no prior legal experiences involving any transgressions. He also indicated that he had passed all of his qualification courses; but stated that these types of advertising issues were not part of either of his courses or his training. He emphasized that the website was only designed to get leads, part of his efforts to get a quick start or jump in his new career.

The Licensee said that he didn't initially understand that seeking leads in this fashion was a problem. His supervising agent was not aware of his website initiative, and he did not share his strategy with any co-workers. He compared the website content involved here to other marketing approaches in other businesses; and referred to his friends and acquaintances in other businesses operating their websites in a similar manner.

In response to specific questioning, the Licensee acknowledged that the insurance business involves relationships based on trust, integrity and honesty. While conceding that the representations made in the website were false and untrue, he maintained that he was simply trying to be “innovative” in generating leads.

POSITION OF THE LICENSEE

The submissions made by and on behalf of the Licensee can be summarized as follows:

- The Licensee disputed none of the underlying facts. He acknowledged that the statements and representations made in the website were untrue; but maintained that he did not intentionally mislead the public for a malicious purpose.
- These mistakes and misjudgments should not follow the Licensee in his chosen career; in the form of a “record” which may have negative career consequences.
- There were mitigating factors: the Licensee’s acknowledgement of his violations and cooperation during the investigation; no actual business was placed as a result of the advertising; only three (3) leads were generated, none of which were the subject of follow-up; none of these issues were raised in the Licensee’s prior course work or training; notwithstanding these developments, the Licensee’s employer remains supportive and generally attests to his good character (there was no direct evidence tendered on this last point, but Council accepts this assertion for these purposes).
- Certain of Council’s decisions in other cases did not support the severity of the intended penalty in the Licensee’s case.
- In all of the circumstances, the penalty contemplated in the Intended Decision should be reduced significantly; instead the Licensee should only receive a caution, a costs assessment and imposition of the requirement that he undertake the quiz (as originally contemplated).

ANALYSIS

There is no doubt about whether the violations set out in the Intended Decision occurred; all of them are acknowledged and conceded. Rather the sole issue for Council’s consideration is the appropriate penalty in the circumstances. Ultimately, however, Council’s view of the need for a significant penalty has not changed; indeed the concerns underlying this determination have only intensified.

One of the Licensee’s core contentions – that there was no intention to mislead – illustrates Council’s ongoing reservations. There was of course nothing accidental about the nature of the website content and the representations. For they were of the Licensee’s own deliberate making and choosing. He alone determined the approach, and saw to and directed its implementation. Given the numerous wilful falsehoods the website

advanced – and was based upon – misleading any reader/viewer of it could be the only possible intention. There could be no other consequence.

This tendency to acknowledge certain facts – while avoiding the obvious conclusions to be drawn from those facts – raised significant doubt as to whether the Licensee fully appreciated the importance of trust, integrity and honesty in conducting the business of insurance. The underlying client relationships and dynamics are fiduciary in nature. Consumer protection is therefore a paramount consideration; fostered through a system based on mandatory licensing, threshold qualifications and an expected level of conduct by Licensees. The need for basic honesty requires no nuanced training. And neither can dishonesty be easily excused or explained away; whether through resort to “creativity” or “innovation”, or references to what other forms of advertising may occur in other businesses and industries.

The Licensee’s references to two (2) of Council’s earlier decisions, along with a decision of the General Insurance Council, have also been considered. Obviously these cases turn on their own facts; and Council is satisfied that they are distinguishable and unpersuasive. None of them, it should be noted, involve the (non-disciplinary) leniency of a caution; as now urged in the Licensee’s case. Notwithstanding their differences in degree and severity, all of them were in fact disciplinary; they involved fines, and thus created a transparent record. They all gave effect to both the requirements of the *Regulation*, and the consumer protection objectives generally advanced through the public interest nature of the statutory framework as a whole.

Application of these considerations to the circumstances of this case reinforces the necessity of an appropriate but real penalty here. This serves the importance of both a specific and general deterrence. As it relates to the Licensee, this message also underlines the absolute necessity of an acceptable level of conduct moving forward; in the hope and expectation that his significant talents and energies will be employed productively over the longer term in the service of his clients.

DECISION AND ORDER

Council confirms that the following violations have occurred:

As to the Act:

Section 375(1)(a) – Misrepresentation and dishonesty

Section 369(1) – Offering to act as an insurance agent without a licence

Section 391 – Holding out as an insurance agent and as being engaged in the insurance business while not being duly licensed.

As to the Code:

Section 4 – Professionalism (misleading advertising)

Section 7 – General Information Disclosure and Documentation (misleading agency, firm or employer).

PENALTY AND FINAL DECISION

Council's Decision dated October 2, 2015 outlined the foregoing background, analysis and conclusions. Having regard to its determination that the foregoing violations had occurred, Council imposed the following penalty and sanction pursuant to sections 375(1), 375(1.1) and 396(1) of the *Act*; and sections 7(2), (3) and (4) of the *Regulation*:

1. The Licensee be fined in the amount of \$2,000.00, and be assessed partial investigation costs in the amount of \$500.00.
2. The Licensee be under the direct supervision of a life agent, approved by Council, for a continuous two (2) year period, calculated from April 15, 2015.
3. The Licensee's Life and Accident and Sickness insurance agent licences be suspended for period of two (2) weeks.
4. Reinstatement of the Licensee's Life and Accident and Sickness insurance agent licences is conditional on his successful (passing) completion of the Life Insurance and Accident and Sickness Agent's Code of Conduct Quiz and payment of a reinstatement fee of \$250.00 in accordance with the Insurance Agents and Adjusters Fees *Regulation 73/93 (amendment 67/2004)*.
5. Maintenance of the Licensee's Life and Accident and Sickness insurance agent licences is further conditional on his successful completion of an ethics course, the form and content of which is to be approved by the Council in advance, within a period of six (6) months.

As part of its Decision, Council further informed the Licensee of his right to request an Appeal to dispute Council's determinations and its penalty/sanction. The Licensee expressly declined his right and chose not to pursue a statutory Appeal; he instead expressly accepted the terms of the Decision and 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, in accordance with sections 7.1(1) and (2) of *Regulation 227/91*.

Dated in Winnipeg, Manitoba on October 16, 2015.