

DECISION
of the
GENERAL INSURANCE COUNCIL OF MANITOBA
(“Council”)
respecting
SHAYNE SKEOCH (“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 an application for a hail agent licence and an enquiry by the sponsoring company in June 2015, 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 had violated the *Act*. During the investigation, the Licensee was provided an opportunity to make submissions with respect to the Council’s concerns.

On September 16, 2015, during a meeting of Council, the evidence compiled during the investigation and the position of the Licensee were reviewed. Pursuant to section 375(1) of the *Act* and *Regulation 227/91*, the Council now confirms its decision and corresponding reasons.

ISSUES

1. Did the Licensee act as a hail agent without having a valid agent’s licence?
2. Did the Licensee falsely advise his sponsor that Council had permitted him to write policies although he did not have a valid licence?

FACTS AND EVIDENCE

1. The authority for issuing hail agent licences was transferred to the Council with the responsibility for issuing hail agent licence renewals effective June 1, 2015.

2. On June 1, 2015, Co-operative Hail Insurance Company Limited ("Co-op") was advised by the Council that the 2015 licence renewal was complete and that the insurer should check to ensure its agents were licensed. If a licensee's name did not appear on the Licence Search, the individual was not licensed and could not act as an agent. The insurer could not pay for new business written.
3. The Licensee's name was not on that list.
4. The Licensee stated that he became aware that he was not licensed on June 2, 2015; he filled out the application and sent it in.
5. According to the Licensee, on June 5, 2015, he checked on the application status and was advised that the bottom portion was not filled in by the sponsor. The application was being mailed back. The Licensee noted that his contact at the Co-op stated that the application would be signed and forwarded.
6. According to Council records, on or about June 9, 2015, the Council's Supervisor, Licensing & Administration reviewed an incomplete application submitted by the Licensee. Part 2 of the application was not completed and the incorrect licence fee had been received.
7. On June 10, 2015, the entire application and attachment(s) were returned to the Licensee for completion. In the letter from the Council's Licensing Officer, was the statement, "An applicant for a Manitoba licence is prohibited from transacting the business of insurance and/or acting within the definition of an agent until such time as the Manitoba licence has been processed."
8. In an email from the Co-op's CEO dated June 15, 2015, the Council was advised that the Licensee told the insurer that he had permission from the Council to write policies although he did not have a licence.
9. On June 16, 2015, the Council received the completed application dated by the Licensee on June 10, 2015 and sponsored by the Co-op on June 15, 2015.
10. A hail insurance agent's licence was issued to the Licensee on June 16, 2015.
11. On June 22, 2015, Department of Finance – Financial Institutions Regulatory Branch's ("FINFIRB") Administrative Assistant confirmed that the Licensee had held a hail insurance agent's licence from May 30, 2005 until May 31, 2011. No licence had been issued subsequent to that date by FINFIRB.
12. Council was advised by Co-op's Chief Executive Officer that hail insurance applications for policy numbers 1365, 1366, and 1367 for 2015 were completed by the Licensee, but not issued, during the 2015 licensing period (June 1, 2015 – May 31, 2016) in which the Licensee did not hold a valid licence.

13. The investigator obtained a listing of policies written by the Licensee since May 31, 2011 from the Co-op. In the listing were two additional hail insurance applications that had effective dates prior to the Licensee obtaining a licence in 2015: 1438 on June 12, 2015, and 1439 on June 12, 2015. Between 2011 and June 16, 2015, a total of 21 policies were written for a total commission of \$14,426.00.
14. The Licensee provided a list of other policies by premium. This list was in addition to the Co-op list and indicated that between June 1, 2011 and June 16, 2015, a total of 109 policies were written for a total earned premium of \$647,737.48.
15. In his response to Council, dated July 13, 2015, the Licensee apologized for not having a valid licence, stating that his family moved in August 2010 from Pierson, Manitoba to Killarney, Manitoba, where he is the marketing manager with a local business. He noted that it appeared as though he failed to advise the licensing department of that change in address. The Licensee said it was an honest mistake failing to advise the change of address. He was not trying to save the licence fee (\$50.00) and the hail business season has a 3 – 4 week window.
16. With respect to the comments made in June 2015 to the Co-op about proceeding with applications while he was not licensed, the Licensee advised that it was a Co-op employee who advised, “you’re (sic) application is being processed so this is a grey area” when he asked, “I have few guys (sic) policies on my computer waiting to send in. what can I do?” He stated that he obviously took this the wrong way.

ANALYSIS

S. 369 (1) of the *Act* makes it an offence to act as an agent without holding a licence. Having held a licence from at least 2005 until 2011, and having valid Errors & Omissions Liability Insurance, the requirements for a valid licence were known by the Licensee. Council considered that the Licensee had obtained a hail agent licence for at least six years (2005 – 2010) and then failed to obtain a valid licence over multiple licensing terms (2011 – 2015 June), yet continued to act as an agent during that period. This could not be explained as an honest mistake and did not relieve the Licensee of his responsibility to obtain a licence before acting as an agent.

S. 375 (1) of the *Act* makes it an offence for a Licensee to be guilty of misrepresentation. Council weighed the evidence in the Licensee’s explanation as to why he continued to write policies after submitting an application on June 2, 2015, and confirming on June 5, 2015, with the Council that his application was being mailed back as incomplete. The Co-op was clearly advised by the Council on June 1, 2015, that an individual could not act as an agent without holding a valid licence. Further its CEO contacted the Council on June 15, 2015, to confirm whether the Council had permitted the Licensee to continue writing policies although the Council was aware the Licensee did not have a licence. This is inconsistent with the Licensee’s statement that Co-op advised the Licensee that because his licence application was being processed, writing policies was a grey area. The Licensee had continued to write policies between June 2, 2015 when he

first completed the application for a licence and the conversation with the Co-op, on or about June 15, 2015. Council found the Licensee's representation to be a factor in its decision and concluded that the Licensee's statement was a misrepresentation to Council, thereby violating the *Act*.

PENALTY AND FINAL DECISION

Council's Intended Decision dated September 29, 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*:

1. The Licensee be fined \$250.00 and assessed partial investigation costs of \$150.00.

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 26th day of October, 2015.