

DECISION
of the
GENERAL INSURANCE COUNCIL OF MANITOBA
(“Council”)
respecting
TRACEY KIMPINSKI
(“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 the Licensee answering “yes” to a Main Screening question on her 2015 licence renewal indicating a suspension from Manitoba Public Insurance (“MPI”), an investigation was conducted pursuant to sections 375(1) and 396.1(7)(e) of the *Act* and s. 7(2)(e) of *Regulation 227/91*. The purpose of the investigation was to determine whether the Licensee’s activity violated the *Act* and/or the General Insurance Agent Code of Conduct (the “*Code of Conduct*”). 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 use a bill of sale (“bos”) which she knew was altered to register a vehicle with Autopac?
2. Did the Licensee make a false statement regarding the altered bill of sale to Council?

FACTS AND EVIDENCE

1. On August 12, 2014, a father and son attended the Agency and requested the Autopac transfer of a 2010 Ford F150 crew cab (the “Vehicle”).
2. The bill of sale was in the name of a limited company (the “Limited Company”).
3. The Licensee advised the customers that if it were a corporation, the bill of sale would have to be changed and all the required papers submitted for the Vehicle to be set up.

4. According to the August 21, 2014, letter from MPI's Broker Services Administrator, the Limited Company did not have an IWS number, and the Licensee could not complete the transfer. In the Licensee's presence the purchaser's name was amended on the Bill of Sale to reflect the individual owner of the Limited Company. The customer continued to sign the registration and other Autopac documents as the purchaser to register the Vehicle in his name.
5. According to the Licensee, she insured the Vehicle under an individual name based on the customer's word that it was not a corporation. No notes were left by her in the IWS comments section when setting up the Vehicle ownership and insurance.
6. The bill of sale, forwarded and received by MPI at the time of application, was altered with whiteout. (*Agents are not permitted to accept documents with whiteout as they may have been altered. These documents must be referred to the seller for a clear, corrected document.*)
7. On August 13, 2014, the transaction came to the attention of MPI's Broker Services Administrator.
8. On August 15, 2014, the Licensee advised the MPI Broker Services Administrator that she was aware that the bill of sale was in the company name and discussed that with the customer. She was aware that the Vehicle could not be registered as noted on the bill of sale as the company was not set up in IWS and could not be registered in the company name until that was completed.
9. It was alleged that in the conversation with the Broker Services Administrator the Licensee stated that she knew what she was doing was incorrect and made the comment, "I knew this would come back to bite me."
10. The Licensee advised Council that the customers left the office after she had processed the transaction; obtained the documents needed to set up the corporation; altered the bill of sale; and went into a different office where they blamed the problem on the Licensee.
11. On June 30, 2015, she confirmed by email to Council that "The bos was not altered in her presence nor was it altered when they came into our office."
12. MPI suspended the Licensee from processing Autopac transactions and counselling customers for a period of seven days effective August 25, 2014, through August 31, 2014. In addition she was required to, and did, complete the LMS module, Ownership-Vehicle Set Up.

ANALYSIS

Council found that the above-mentioned facts constituted violations of the Act Section 375 (1) (a) ...been guilty of misrepresentation by stating that the bill of sale was not altered when the

customer arrived at the office or in her presence, yet the altered document was accepted by the Licensee and scanned to MPI as part of the transaction.

Further Council determined that the Licensee violated s. (1) (e) incompetency or untrustworthiness, and s. 2 of the *Code of Conduct* by failing to provide just and fair dealings with the customer in the absence of advising the customer of the documentation required to register the Vehicle in the name of a limited company as requested by the customer, and subsequently registering and insuring the vehicle in an individual name with an altered bill of sale.

Council concluded that the Licensee violated the *Code of Conduct* s.1 by acting dishonestly using unauthorized certificates and failing to be frank with MPI in her dealings. This further showed a lack of good faith to MPI, thus she violated s.10 of the *Code of Conduct*.

Rather than considering the legal consequences of her actions to the customer, the Licensee was concerned about the possible repercussions to her when the transaction came to MPI's attention.

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 \$500.00 and assessed partial investigation costs of \$350.00;
2. The Licensee's general insurance agent's licence be suspended for a period of one (1) week; and
3. Reinstatement of the Licensee's General insurance agent licence would be conditional on the payment of a reinstatement fee of \$250.00 in accordance with the *Insurance Agents and Adjusters Fees Regulation 73/93 (amendment 218/2014)*.

As part of its Decision, Council further informed the Licensee of her right to request an Appeal to dispute Council's determinations and its penalty/sanction. The Licensee expressly declined her right and chose not to pursue a Statutory Appeal. Further she expressly accepted the terms of the Intended Decision and duly paid the levied fine and partial investigation costs. Her licence was suspended for a period of one week commencing November 5, 2015 and ending November 12, 2015.

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 3rd day of November, 2015.