

DECISION
of the
GENERAL INSURANCE COUNCIL OF MANITOBA
(“Council”)
respecting
P.V. ESAU INSURANCE BROKERS INC. (“Agency”)
MARGARET ESAU – 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 an enquiry regarding whether a renewal licence for an Agency employee (“HL”) was required, 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 Agency employee (“HL”) and/or the Agency had violated the *Act*, and/or the General Insurance Agent 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 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, in her role as the Agency’s Operating Agent, violate the *Act* and *Code of Conduct* by permitting HL to act as an agent 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 June 8, 2015 letter to Council?

FACTS AND EVIDENCE

1. At all material times the Licensee was the Operating Agent responsible to manage the Agency.
2. On February 12, 2015, at approximately 4:50 pm HL began transacting Autopac transactions.
3. On February 20, 2015, HL completed the Manitoba Public Insurance (“MPI”) courses: *Introduction to Autopac and Driver Licensing*, and *Insurance Workstation System - Computer Assisted Instruction Training*.
4. On March 13, 2015, when the 2015 Agency Attestation Form was signed by the Licensee - Operating Agent, and on March 24, 2015, when it was submitted to the Council by email, the agency had three active licences. HL was not on this list.

The Agency Attestation Form included the following:

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...

5. On March 26, 2015, a Criminal Record Check with negative results was issued by the RCMP St. Pierre-Jolys Detachment for HL.
6. On the morning of May 22, 2015, the Council’s Supervisor of Licensing received an enquiry about whether HL was required to renew her licence. Neither did HL have a valid licence on that date, nor had an application been received by the Council.
7. MPI produced a list of approximately 2440 Autopac transactions performed by HL between February 12, 2015, when the unlicensed activity began, and May 20, 2015. MPI locked HL out of its system when it was brought to its attention that HL did not have a valid licence.

8. On May 22, 2015, at approximately 3:17p.m., the Council received an email from the Agency with a licence application attached for HL. As part of the application were Certificates of Completion for *Introduction to Autopac and Driver Licensing*, Date: February 17 – 20, 2015; and *Insurance Workstation System - Computer Assisted Instruction Training*, Date: February 20, 2015; and a Criminal Record Check dated March 26, 2015.
9. Based on this submitted application, HL did not meet the educational requirement for a licence.
10. In a letter dated June 8, 2015, the Licensee confirmed that HL had been hired in February to perform Autopac and other non-insurance office duties. According to the Licensee, it was believed that completion of *Introduction to Autopac and Driver Licensing* was all that was required.
11. The Licensee advised that **after** (*emphasis added*) HL had completed her courses, received her criminal check and had received her passwords, she began to sell Autopac under supervision. This included regular contact with broker enquiries at MPI to obtain overrides and answers to her customer enquiries.
12. When the agency began processing the agent licence renewals, it was discovered that HL's name was missing.
13. In her letter of June 8, 2015, the Licensee provided assurances that HL would not serve any customers before she was authorized to do so.

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 HL, without first obtaining a licence, began transacting Autopac transactions on or about February 12, 2015. These unlicensed actions continued until it was brought to the attention of MPI which locked HL out of its system on May 22, 2015.

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

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 HL was, and had been for a month, engaged in unlicensed activity.

Council noted that there had been an opportunity for the Operating Agent to self-report or correct the issues of HL acting without a licence when she completed the Agency Attestation Form. Instead she signed the Agency Attestation Form on March 13, 2015, and allowed the unlicensed activity to continue.

Council expressed concern that while the Licensee stated that the MPI courses and Criminal Record Check were secured prior to HL commencing agent activity, Council reviewed evidence of agent activity predating the completion of compulsory education or criminal record screening, both of which are mandatory licensing requirements for public protection.

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

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 \$2,000.00 and assessed partial investigation costs of \$350.00.

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 29th day of October, 2015.