

DECISION
of the
GENERAL INSURANCE COUNCIL OF MANITOBA
(“Council”)
respecting
LINDSEY PENNER
(“Former Licensee”)

INTRODUCTION

The General Insurance Council of Manitoba (the “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 information with respect to the reasons for the termination of licence sponsorship by the Licensee’s Former Agency A, an investigation was conducted pursuant to s. 375(1) and s. 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 Former Licensee’s activity violated the *Act* and/or the General Insurance Agent Code of Conduct (“*Code of Conduct*”). During the investigation, the Former Licensee was provided with an opportunity to make submissions.

On July 21, 2016, during a meeting of Council, the evidence compiled during the investigation was reviewed. Upon assessment of the evidence, Council determined its intended decision. Pursuant to s. 375(1) of the *Act* and *Regulation 227/91*, the Council now confirms its decision and corresponding reasons.

ISSUES

1. Did the Licensee neglect her duty to clients habitually, resulting in a failure to meet deadlines to provide information to clients prior to their policy renewals or in the creation of a gap in coverage?
2. Did the Licensee falsify documents in the maintenance of client files?

FACTS AND EVIDENCE

1. The Former Licensee held a General Insurance Agent’s licence beginning October 23, 2009, until January 20, 2016, when she was terminated by Agency A. She held a valid insurance agent licence between February 26, 2016, and August 30, 2016, when Agency B terminated her sponsorship.

2. During all material times, the Former Licensee held a current and valid insurance agent licence - level 2. At present the Former Licensee does not hold a valid insurance agent licence in Manitoba.
3. Upon initial notice of termination from Agency A, advising that the Former Licensee had neglected her duties and had falsified documents, the investigator requested and received additional information from Agency A. This information outlined the actions of the Former Licensee in backdating renewal letters and computer postings with respect to client policy renewals. Policies which had not been renewed were deleted from Agency A's renewal list. The result was that Agency A's records indicated erroneous information that renewals had been sent to insureds.
4. With respect to falsifying documentation, it was noted by Agency A that the Former Licensee advised her employer that tasks or renewals had been completed and then backdated or removed them from lists to cover her tardiness.
5. On Friday November 30, 2014, the Agency A reviewed the Former Licensee's renewal list and discovered that a number of renewals on the list for November 24th and 27th were checked. There were no activities in the files confirming that the insureds had been called or renewal letters sent. Renewal suspenses were still in the files and closed. The closed suspense dates did not match the dates on the renewal list.
6. The Former Licensee was confronted on December 1, 2014, with additional similar findings. She stated that the renewals had been called out but she was waiting for clients to get back to her. On December 2, 2014, some of the renewals marked off the November 24th and 27th list had activities that she had called the clients. The Former Licensee admitted that she had deleted the suspenses and marked renewals as being sent out when that had not been done.
7. These matters had been brought to the Former Licensee's attention in a meeting with the Agency A's management on December 3, 2014. During this meeting the Former Licensee was provided with direction that if there were problems, she was to seek help. A plan of action was agreed upon including how to handle files that were slowing her down.
8. Additional discussions with respect to failure to meet timely renewals took place with the Former Licensee and Agency A's management on April 7, 2015. This meeting included the issue of E&O and allowing cover to go unbound.
9. This was followed by continued failure by the Former Licensee to correct her activity of changing the timelines of renewals or deleting records, up to her dismissal from Agency A.
10. In her written response dated February 25, 2016, the Former Licensee advised the Council that with respect to the allegations, she had completed work on previous days and wanted the date to reflect this. The paper work might be processed on following days.

11. Further, she noted that although she was offered assistance with her workload, there was pressure to complete it and not look incompetent. Assistance from other agents would be reflected on the monthly production reports and she would be seen as failing at renewal timeliness.
12. The Former Licensee said that she would try to contact clients in a reasonable time period to discuss changes or options prior to the renewal, but in some cases clients did not respond to her correspondence. She would keep those files on her desk rather than send the policy out in the mail. She was avoiding return of the policy by a client who was either unhappy with the premium or didn't want the policy; she was trying to save a step.
13. On March 14, 2016, Agency A provided the Council with three cases as examples of the allegations.

Client A – Renewal date of December 5, 2014

18. On January 15, 2015, the Former Licensee requested that the insurer consider a rate reduction, with attached quotes from other insurer(s). (*N.B. This was more than a month after renewal.*)
19. On or about February 15, 2015, the Agency A's Office Manager sent the Former Licensee an email noting there was a suspense in which it was suggested that the premium might be reduced; the premium had not been paid and was overdue.
20. The Office Manager followed up on March 17, 2015, and again on March 26, 2015, advising the Former Licensee that there had been no activity on the file since January 15, 2015.
21. On April 7, 2015, the Former Licensee contacted the client by email. The client attended the office to discuss the policy, resulting in changes to the policy: an increase in limit to \$403,000.00; increased deductible to \$1,000.00; and an additional premium of \$143.00 plus tax for a total balance of \$796.00. The endorsement was effective April 7, 2015.
22. The resulting endorsement was received by the agency on April 17, 2015, and an email was sent to the client with the outstanding amount on April 23, 2015. On April 28, 2015, the endorsement was forwarded to the client.

The Former Licensee's response (Client A) – April 28, 2016

23. The Former Licensee suggested that there had been several attempts to contact the client with no success. Due to distractions with other clients or files, she forgot to make notes or activities in the computer. She suggested that she might have provided written notes on the file. Client A was away in Toronto and that was why the client could not be contacted. The Former Licensee hoped to make changes to the policy. She advised the Council that she had been trained to keep the policy in her file, in case the insured had a claim and referred to the old document, or if the client was bad payer, the policy could

be returned for a lapse. No punitive action or disciplinary discussion was carried out by Agency A at the time.

Client B – March 1, 2015 Expiry of previous policy

24. On March 17, 2015, Client B met with the Former Licensee at the office for a quote. The Former Licensee believed that insurance was in place with another broker through Insurer X.
25. On March 21, 2015, Client B contacted the Former Licensee advising that he would wait to sign the application when his wood heat was fixed.
26. The application was signed on March 26, 2015, as the wood stove corrections were completed, as well as, a WETT inspection. The application dated March 1, 2015, was sent to Insurer Y on March 27, 2015 by email.
27. According to the Former Licensee, a memo to lapse the previous renewal was prepared. This memo received by the Council from Client B's previous Agency was dated March 26, 2015 and receipt date-stamped on April 9, 2015.
28. On March 31, 2015, Insurer Y's Commercial & Farm Underwriter emailed the Former Licensee with additional questions, generally relating to heating and electrical, to determine eligibility. The Underwriter stated that answers were required before the end of the following day. A later email of March 31, 2015, noted that the earliest the risk would be effective was March 26, 2015 - the date signed by the applicants, and not March 1, 2015.
29. On April 1, 2015, the Underwriter followed up in an email at 3:50 pm asking if the client had been reached in regard to his questions.
30. On April 2, 2015, the Former Licensee responded to the questions at 9:28 a.m. This was followed at 10:01 am with an email from the Underwriter advising that the risk for Client B had been returned unbound as it did not qualify due to the primary heat source being a woodstove, and the application had a back-dated effective date without underwriting approval. At 11:25 am, the Former Licensee, ignoring the declination, acknowledged that the application could not be written for March 1, but asked that the company allow a claims free discount if the insured signed a memo that there had been no claims. April 2, 2015, was the Thursday before the Easter long weekend, and the Former Licensee left the office without having contacted the client to advise that there was no coverage.
31. Insurer B's Underwriter clearly outlined in an April 2, 2015 email that the Former Licensee was outside her binding authority, noting in particular, the use of the woodstove as primary heat and the back-dating of the policy without underwriting approval. The Underwriter further laid out the requirements for the future, including the need to use the Farm application, personal inspection by the broker prior to binding, solid fuel questionnaire before binding, and the 30 day timeline allowing the agent time to submit the documents due to vacations or similar circumstances.

32. On April 6, 2015, Agency A's Personal Lines Manager was working from home when she noticed that the Former Licensee was not in the office due to illness. At the request of the Manager, another agent contacted the clients, obtained the underwriting information and forwarded it to the insurer. The Underwriter agreed to bind cover until the following Monday but wanted the number of cords of wood and barn details, i.e. age, heat and electrical. The other agent contacted the clients and sent the required information to the Underwriter.
33. In a letter dated April 13, 2016, from Insurer X's Underwriting Manager, the Council received confirmation that Client B's policy with Insurer X, had lapsed on March 1, 2015.
34. Further Client B's Previous Agency's records, supplied to the Council, confirmed that a renewal had not been issued for March 1, 2015 or coverage bound for Client B following the lapse of Insurer X's policy.

The Former Licensee's response (Client B) – April 28, 2016

35. The Former Licensee advised that she thought that she was within her binding limits to send in a signed application within 30 days. She clarified that she understood that if she had notified the carrier there would be binding coverage, but agents were required to submit an application within the next 30 days.

Client C – Renewal date November 30, 2015

36. An Agency A note, dated December 4, 2015, indicated that Client C came to the office that day to discuss his renewal as he had not received it. The Former Licensee's renewal list showed that it had been sent out on November 24, 2015. There was no activity to back it up, and the renewal was found in the Former Licensee's office.
37. This memo further noted that the Manager reviewed the list of renewal reminders sent to the Former Licensee on November 25, 2015. Some of the suspenses had been deleted without the renewals being sent out. Also some of the names and three policies were missing from the renewal list. One said that p/c sent but there was no form letter issued and the policies had not been mailed out, but were marked as done. When approached, the Former Licensee did not deny what she had done, apologized, and said she would try to catch up. She was advised by management that if overwhelmed, she should ask for help rather than hide the matter.
38. With respect to work overload, Agency A's Principal provided proof with notes from meetings in 2014 and December 3, 2015. Responsibility was left with the Former Licensee to ask for assistance, if required. None was requested. It was noted that Agency A tracked the workload on a monthly basis and the Former Licensee's workload was similar to others.

The Former Licensee's response (Client C) – April 28, 2016

39. The Former Licensee advised that she must have mistaken "his line in the spreadsheet with a separate policy and forgot to correct it the next time I was in that spreadsheet."

She didn't realize that a few days after renewal would be a problem, and went on to explain that coverage was bound, regardless of when the client received a paper copy.

40. The Former Licensee noted that she was overwhelmed with work on occasion and the assistance provided by Agency A was to re-rate policies and return them to her. She found they were either incorrectly re-rated or missing options. As a result, she stopped providing these to the clients. She suggested to her superiors that some of the staff had about 1/3 of her workload. She advised that she fell behind due to being short-staffed or uneven work-loads. Reassignment would have avoided this.
41. The Former Licensee noted that everyone makes mistakes and she wished that she could correct the past matters. She believed that Agency B was a better fit and she will continue with her CAIB designation. While there was internal discussion of being behind in sending out renewals at Agency A, there was no discussion about mistakes. If so, she said things could have been turned around.

ANALYSIS

Neglecting duties to prospective clients or clients is a regulatory violation and noted in *the Act and Code of Conduct*. Accurate recording of correspondence and computer notices make up part of the client's record. The Former Licensee's explanation that she did not complete her tasks until after she had recorded them in Agency A's system is consistent with both her explanation and that of Agency A in that she failed to complete her work in a timely manner. This meant that the dates for the completion of activities not only appeared incorrect, but were incorrect. Because she was unable to complete her work, items were removed from her listings, providing an appearance that the tasks with respect to clients had been completed when they had not been. Although there appeared to have been a number of attempts to provide assistance by Agency A's management, as documented, the Former Licensee noted that she did not accept help as it would be an indication that she was failing in her duties; when she did receive help, it was inadequate. She further advised that the workload was unfairly distributed but did not appear to have brought this to the attention of management in any of the documented meeting notes.

Client A –December 5, 2014 renewal. The Former Licensee advised that she was sure she had made several attempts in contacting the client but the insured was in Toronto. As there were to be changes, the policy was kept in the agency file. On January 15, 2015, the Former Licensee approached an insurer about quoting on the renewal. On or about February 15, 2015; March 17, 2015; and March 26, 2015; Agency A staff brought the file to the Former Licensee's attention as it was still outstanding. On April 7, 2015, four months after the renewal date, the Former Licensee contacted the client by email resulting in the insured's attendance at the office to discuss the changes, including an increased limit and deductible. File activities occurred on the 17th and 23rd, with the endorsement forwarded to the client on April 28, 2015.

Although the Former Licensee noted that there was no issue as coverage was afforded by the policy during this period and there was no punitive action or disciplinary discussion carried out by Agency A regarding this file, she failed to point out that increased coverage which should have

been discussed and applied on renewal in December 2014 was not updated until April 2015. During the intervening months, insufficient coverage was available in the case of a claim.

Client B – March 1, 2015. There was no policy in place on March 1, 2015: the Previous Agency had not secured cover for this lapsed policy. The Former Licensee failed to ensure there was cover in place at the time (e.g. a copy of the renewal), or to point out to the client that there was no cover in place and the immediacy of the need for insurance on Client B's visit of March 17, 2015. The Former Licensee failed to understand the application or binding requirements for Insurer Y. Agents are required to adhere to binding agreements or they place their clients in peril. On March 27, 2015, the Former Licensee submitted an application signed on March 26, 2015, with a requested binding date of March 1, 2015. Insurer Y agreed to write the cover effective March 26, 2015, provided the Former Licensee obtain information from the applicants. As she did not contact the applicants to secure information, Insurer Y rescinded this agreement, leaving the applicants without insurance for a further period until it was discovered by Agency A the following week. It was due to the action of another agent at Agency A that the client received cover. In her correspondence with the insurer, the Former Licensee clearly was unfamiliar with the application and binding requirements, and appeared to be more concerned about the insureds losing their discount due to the gap than the potential of an uninsured claim (i.e. unreported liability claim) during the gap period, or unfavourable insurance history for the insured.

The Former Licensee demonstrated incompetence when failing to ensure the insurance was in place, either in the form of an existing renewal or coverage bound on the client's behalf, and to deal with the matter when Insurer Y requested information. According to the documents provided, the client did not approach the Former Licensee for cover until March 17, 2015 more than two weeks after the March 1 renewal date. The Former Licensee did not contact the insurer to discuss the effective date of March 1, 2015, although the information including a signed application was not secured until March 26, 2015. Regardless of binding authority, agents are not permitted to backdate policies without permission of the insurer. Her failure to act as required left Client B with a gap in coverage, during which time the client was exposed to an uninsured claim.

The activity of sending a notice to the Previous Agency noting cancellation of its Insurer X's policy was moot as there was no policy to cancel. Further there appeared to be a delay in the date between the preparation of the notice on March 26, 2015 by the Former Licensee, and two weeks later on April 9, 2015 when the Previous Agency received it.

Client C – November 30, 2015 renewal. The Former Licensee failed to place the renewal with the client prior to the renewal date. Although the Former Licensee's records showed it had been handled, it was found in her office. It was through the client's initiative that the renewal was finalized.

All three examples of specific files note the Former Licensee's lack of competence or trustworthiness in violation of 375(1) (e) of the *Act*; s. 1, s. 2, s. 3, and s.10 of *the Code of Conduct*. The Former Licensee was an experienced, level 2 agent who blatantly failed to accept that she must provide renewal information to her clients in a timely manner and before the renewal date, and that there was no peril to underinsured or uninsured clients as a result of her failure to handle their files on time. By hiding the fact that she was not contacting Agency A clients as she

had documented in her file entries, she was responsible for placing Agency A in a position where an errors and omissions claim was a probability.

PENALTY AND FINAL DECISION

Council's Intended Decision dated August 16, 2016 outlined the foregoing background, analysis and conclusions on a preliminary basis. Having regards to its initial determination that the foregoing violations had occurred, Council imposed the following penalty and sanction pursuant to s. 375(1.1) of the *Act* and s. 7(1), 7(2)(b)(c), and 7(4)(b) of *Regulation 227/91*:

1. The Former Licensee's General Insurance Agent licence be subject to a suspension for a period of thirty (30 days);
2. The Former Licensee be assessed partial investigation costs of \$ 1,275.00;
3. The Former Licensee's General Insurance Agent licence be amended from a Level 2 to a Level 1 for a minimum period of one year. Reinstatement to a Level 2 licence be subject to the successful passing of a written Level 2 examination set by the Council;
4. The Former Licensee must complete an Ethics course, pre-approved by the Council, and submit proof of the completion to the Council; and
5. Council pre-approve a written plan of supervision and oversight for the Former Licensee for which the Operating Agent will be held responsible. At the conclusion of one year following the Decision (and Licence Reinstatement), the Former Licensee's Operating Agent be required to submit a written report to the Council, detailing the supervision of, and the performance record of, the Former Licensee.

As part of its Intended Decision, the Council further informed the Former Licensee of her right to request a hearing to dispute Council's determinations and its penalty/sanction. The Former Licensee failed to invoke her right to a hearing or chose to pursue a Statutory Appeal.

The 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 16th day of September, 2016.