

DECISION
of the
LIFE INSURANCE COUNCIL OF MANITOBA
(“Council”)
Respecting
SHAUN GOOLCHARAN
(“Licensee”)

INTRODUCTION

The Life 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*.

In response to non-disclosure of a disciplinary action concerning the Licensee, 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*. Council undertook an investigation of the Licensee to determine whether he had violated the *Act*, its *Regulations*, and/or the Life Insurance and Accident and Sickness Agent’s Code of Conduct (“*Code of Conduct*”). During the investigation the Licensee was given an opportunity to make submissions with respect to Council’s concerns.

On October 12, 2016, during a meeting of Council, the evidence compiled during the investigation was presented; upon review Council determined its intended decision. Pursuant to sections 375(1) and 375(1.1) of the *Act* and *Regulation 227/91*, Council hereby renders its intended decision and corresponding reasons.

ISSUES

1. Did the Licensee fail to notify Council within 15 days of his disciplinary action in violation of the *Code of Conduct*?
2. Did the Licensee make a material misrepresentation to Council by attesting that he had not been subject to any disciplinary action by any regulatory authority since his last licensing renewal application, in violation of the *Act*, its *Regulations*, and/or the *Code of Conduct*?

3. Did the Licensee make misrepresents to Council during the investigation in violation of the *Act*, its *Regulations*, and/or the *Code of Conduct*?

FACTS

1. In completing his May 28, 2015 renewal application, the Licensee declared that he would notify Council within 15 days of any material change – this includes any disciplinary action through any regulatory authority.
2. Dated May 24, 2016, the Licensee applied for the renewal of his Life and Accident and Sickness licences by way of his licensing renewal application (“the Renewal Application”). Respecting that application:
 - In response to question 2, “Been subject to any disciplinary action by any regulatory authority or had any licence held by you suspended, cancelled or revoked?”, the Licensee answered “No”.
3. The Renewal Application contained a “Declaration” Section. It includes the following wording:
 - I declare that the foregoing information is true and I accept the responsibility for these answers and undertakings. I further understand that a false declaration on this application could lead to disciplinary action...
4. The Licensee’s licences were renewed on the basis that his statements on the Renewal Application were true and accurate and that he had not been subject to any disciplinary action by any regulatory authority since his last renewal application.
5. On May 27, 2016, Council became aware that the Licensee had been subject to disciplinary action dated November 26, 2015 through the Mutual Fund Dealers Association (“MFDA”).
6. The Licensee never disclosed his MFDA disciplinary action to Council.
7. The MFDA disciplined the Licensee for obtaining, maintaining and using blank or partially complete pre-signed forms between June 2012 and April 2014.
8. Council conducted an investigation to determine whether the Licensee obtained, maintained and/or used blank or partially complete pre-signed forms (“the Forms”) in the business of insurance.

9. In response to a letter from Council dated May 27, 2016, the Licensee responded by email dated May 31, 2016 to advise:
 - a. He didn't know he had to notify Council within 15 days of a disciplinary action.
 - b. His disciplinary action "slipped" his mind in answering question 2 of the Renewal Application.
 - c. He thought question 2 on the Renewal Application was in regard to criminal offences.
 - d. The Forms were in files he "inherited"; he did not purposefully do this.
 - e. He acknowledged that Order Tickets were partially complete.
 - f. He declared the Forms did not relate to any type of insurance product or allow him to trade on segregated fund policies.
 - g. He declared that he did not use any of the Forms to conduct insurance matters.
10. Contrary to the Licensee's response to Council, by emails dated June 8 and 21, 2016, the insurer sponsoring the Licensee ("the Sponsor") advised Council that:
 - a. "There were 5 forms for 4 segregated fund clients that fell into the category of 'pre-signed blank forms'."
 - b. "Here are his handwritten notes answering why the forms were obtained. The advisor section of the forms contains his name. There was no debate about whether he completed the insurance forms."
11. The Sponsor provided to Council copies of the Forms and a summary which detailed that:
 - a. The Licensee had the client sign a blank Order Ticket.
 - b. The Licensee used three (3) partially complete forms for three (3) clients which were missing contract numbers and the client's initialled consent.

- c. The Licensee added spousal information on a partially complete Individual Variable Annuity Contract application for a spousal RRSP but did not obtain the client's initialled consent.

12. The Sponsor provided to Council:

- a. The Licensee's handwritten notes confirming that he obtained and used the Forms.
- b. Statements of Account substantiating the Licensee used partially complete forms to transact insurance.
- c. A letter from the Sponsor to the Licensee dated August 18, 2014 letter, noting the Licensee "explained that the blank forms and altered documents were accepted for administrative expediency...". Dated September 25, 2014, the Licensee acknowledged the requirements of the letter, including being placed under supervision for 12 months, commencing September 1, 2014.

13. By emails dated June 7 and 22, 2016, Council further questioned the Licensee regarding his May 31, 2016 statements that the Forms were in files he "inherited" and that the Forms did not relate to and were not used for insurance.

14. By email dated June 22, 2016, the Licensee acknowledged to Council:

- a. "I should have gone back to the original questions you sent me and updated my answer. The answer should have originally included yes to seg funds."

ANALYSIS

Pursuant to section 375(1)(a) of the *Act*, misrepresentation and dishonesty is prohibited – this includes false declarations on licensing applications and false declarations to Council during an investigation. Section 4 Professionalism – Business Operations, of the *Code of Conduct*, mandates agents to adhere to sound business practices. Section 9 of the *Code of Conduct*, mandates an agent to respond promptly and honestly, with full disclosure, to inquiries from the Insurance Council of Manitoba.

The Licensee explicitly agreed to notify Council within 15 days of any material change by completing his 2015 licensing renewal application and therefore knew or ought to have known of his reporting requirements.

The Licensee failed to notify Council of his MFDA disciplinary action within 15 days.

The Licensee declared that the information on his 2016 Renewal Application was true; he accepted responsibility for his answers and declared that he understood a false declaration could lead to disciplinary action.

The Licensee never disclosed his MFDA disciplinary action to Council. To the contrary, the Licensee misrepresented on his 2016 Renewal Application that he had not been subject to any disciplinary action by any regulatory authority since his last renewal.

Council did not accept the Licensee's explanation that his disciplinary action "slipped" his mind and that he simply misread application question 2 as relating to criminal offences. Council noted that question 4 of the Renewal Application addresses criminal charges and convictions, not question 2.

Council concluded the Licensee intentionally concealed his disciplinary action; his renewal misrepresentation was purposeful.

Council noted the Sponsor's comments that during their investigation there was no debate about whether it was the Licensee who completed the Forms. Council further noted the Licensee's signature affixed to the Forms and his handwritten comments to the Sponsor outlining the circumstances under which he obtained and used the Forms. Council concluded that the Licensee misrepresented to Council that he had "inherited" files which contained the Forms and that he did not obtain the Forms with purpose.

Council assessed the Licensee's May 2016 response and the abundance of evidence to conclude that the Licensee misrepresented to Council that the Forms did not relate to insurance products (including segregated funds) and that he did not use the Forms to conduct insurance matters.

Only through further questioning did the Licensee recognize that he should have disclosed to Council that he had used the Forms for segregated funds.

Based on the information and evidence, Council concluded that the Licensee repeatedly violated section 375(1)(a) of the *Act* and sections 4 and 9 of the *Code of Conduct* and that disciplinary action is warranted.

DECISION AND PENALTY

Council's Intended Decision dated November 17, 2016 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 section 375(1.1)(c)&(d) of the *Act* and section 7(1) of *Regulation 227/91*:

1. The Licensee be fined \$2,500.00 and assessed partial investigation costs of \$1,000.00.

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 expressly accepted the Intended Decision and duly paid the levied fine and 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 November 24, 2016.