

DECISION
of the
LIFE INSURANCE COUNCIL OF MANITOBA
(“Council”)
Respecting
NOEL MA-AO
(“Former 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 information received by Council an investigation was conducted pursuant to sections 375(1) and 396.1(7)(c) of the *Act*, and section 7(2)(e) of *Regulation 227/91* to determine whether the Former Licensee 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 Former Licensee was given an opportunity to make submissions with respect to Council’s concerns.

On September 21, 2016, during a meeting of Council, the evidence compiled during the investigation was presented; upon review Council determined its intended decision. Pursuant to section 375(1) of the *Act* and *Regulation 227/91*, Council hereby renders its intended decision and corresponding reasons.

ISSUES

1. Did the Former Licensee fail to maintain liability insurance (Errors and Omissions insurance (“E&O”)) in violation of section 371(1.1) of the *Act* and section 12(1) of the *Insurance Agents and Adjusters Regulation 389/87*?
2. Did the Former Licensee fail to notify Council, without delay, of the lapse of his liability insurance (E&O) in violation of section 372.1(2) of the *Act*?
3. Did the Former Licensee violate section 4 of the *Code of Conduct* – Professionalism – Financial Accountability, by failing to continually maintain liability insurance?

FACTS AND EVIDENCE

1. At all material times, the Former Licensee held Life and Accident and Sickness licences for the Province of Manitoba.
2. To hold/maintain a Life and/or Accident and Sickness licence(s) in the Province of Manitoba, liability insurance (E&O) is required pursuant to section 371(1.1) of the *Act* and in accordance with section 12(1) of *Regulation 389/87*.
3. The Former Licensee lapsed his E&O from January 22, 2016 to February 24, 2016 – this lapse was not disclosed to Council until the Former Licensee’s E&O Managing General Agency (“the E&O MGA”) notified Council on February 19, 2016.
4. On February 24, 2016, sponsorship was withdrawn and the Former Licensee’s licences were cancelled for failure to meet mandatory E&O requirements.
5. In response to Council requesting information on the circumstances of the lapse, on June 10, 2016 Council received an email from the Former Licensee which advised:
 - a. He is busy; he can’t find the time to sell insurance and will not renew his licences anymore – no further details were given.
6. Council found significance in:
 - a. The Former Licensee’s E&O broker (“the E&O Broker”) had emailed renewal notices dated December 7, 2015 and January 19, 2016 – the Former Licensee did not respond with a completed E&O renewal application.

ANALYSIS

It was the Former Licensee’s responsibility to ensure that he continually maintained liability insurance (E&O) while holding Life and Accident and Sickness licences and to notify Council without delay in the event his E&O lapsed or was cancelled.

On his licensing application dated October 21, 2013, the Former Licensee declared that he: i) would maintain liability insurance (E&O) as required under section 371(1.1) of the *Act* and section 12(1) of *Regulation 389/87*; and, ii) understood he was to notify Council without delay if his liability insurance (E&O) lapsed or was cancelled, pursuant to section 372.1(2) of the *Act*. Section 21 of the application contains a “Certification” section to

which the Former Licensee affixed his signature affirming that he would notify Council in writing of any material change within 15 days.

Upon initial licensing, by letter dated February 3, 2014, Council advised the Former Licensee that he must maintain E&O.

The Former Licensee further acknowledged his requirement to disclose material changes, within 15 days, on his May 13, 2015 licensing renewal application on which he confirmed his E&O expiry date as January 22, 2016.

Upon review of the facts and evidence before it, Council has determined that during the period of January 22, 2016 to February 24, 2016, the Former Licensee was in breach of section 371(1.1) of the *Act* and section 12(1) of *Regulation 389/87* by failing to continually maintain liability insurance (E&O) while holding Life and Accident and Sickness licences. The Former Licensee's failure to maintain liability insurance (E&O) also resulted in a breach of section 4 of the *Code of Conduct* – Professionalism – Financial Accountability. The Former Licensee further breached section 372.1(2) of the *Act*, by failing to notify Council without delay that his E&O had lapsed – notice of the lapse came from the E&O MGA, not from the Former Licensee.

Council noted that the Former Licensee's E&O Broker had emailed two (2) renewal notices to which the Former Licensee did not complete an E&O renewal application.

Council found the Former Licensee's response as failing to offer any accountability for the violations.

Council concluded that the Former Licensee's conduct demonstrates disregard for statutory compliance and that discipline is warranted.

DECISION AND PENALTY

Council's Intended Decision dated October 17, 2016 was delivered to the Former Licensee by registered mail on October 22, 2016. The Intended Decision 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 sections 375(1.1)(c)&(d) of the *Act* and section 7(1) of *Regulation 227/91*:

1. The Former Licensee be fined \$500.00 and assessed partial investigation costs of \$500.00.

As part of its Intended Decision, the Council informed the Former Licensee of his right to request a hearing to dispute Council's determinations and its penalty/sanction. The Former Licensee did not request a hearing.

The Former Licensee received Council's Decision on January 11, 2017, and was further advised of his right to request an Appeal. Pursuant to section 389.0.1(1), the Former Licensee had a further 21 days within which to file a Notice of Appeal from Council's Decision to the Coordinator of Licensing Appeals for The Insurance Agents' and Adjusters' Licensing Appeal Board. More than 21 days has now elapsed since the Former Licensee received Council's Decision, and no such Notice of Appeal has been filed.

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 February 2, 2017.