

DECISION
of the
LIFE INSURANCE COUNCIL OF MANITOBA
(“Council”)
Respecting
O’NEAL HARVEY
(“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 now 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.

By its Intended Decision dated October 17, 2016, Council determined on a preliminary basis that:

1. In breach of section 371(1.1) of the *Act* and of section 12(1) of *Regulation 389/87*, the Former Licensee on twelve (12) occasions, between May 25, 2005 and January 10, 2016, had permitted his errors and omissions coverage to lapse while continuing to hold or purporting to continue to hold life, accident and sickness licences.
2. The Former Licensee violated section 4, Professionalism, of the *Code of Conduct*, in eight (8) instances since 2009, by failing to maintain errors and omissions coverage.
3. In breach of his duty under section 372.1(2) of the *Act*, the Former Licensee had failed to notify Council of any of the aforesaid lapses in coverage.

4. In breach of his duty under section 372.1(1) of the *Act*, the Former Licensee carried on the activities of an agent without mandatory errors and omissions coverage in one (1) known instance in 2013.
5. On ten (10) licensing applications, in breach of section 375(1)(a), the Former Licensee had falsely declared that he had continually maintained his liability insurance coverage.
6. Of the aforesaid false declarations, seven (7) had occurred since 2009 in breach of section 9 of the *Code of Conduct* (dealing with the Insurance Council of Manitoba).

Accordingly, after hearing from the Former Licensee, based on the foregoing violations and pursuant to sections 375(1.1)(c) and (d) of the *Act* and section 7(1) of *Regulation 227/91*, Council's Intended Decision contemplated an Order that:

1. The Former Licensee be fined \$7,500.00 and assessed investigation costs of \$1,500.00.

The now Former Licensee subsequently exercised his right to dispute Council's Intended Decision and to request a hearing before Council. The hearing occurred on January 25, 2017. At that time the Former Licensee on his own behalf made representations to Council. The hearing was adjourned to afford Council the opportunity to consider the representations of the Former Licensee.

ISSUE

Has the Former Licensee provided sufficient particulars, through evidence or argument, to show why the Intended Decision should not be implemented, either in relation to any of the violations which were determined on a preliminary basis to have occurred, or with respect to the contemplated Order?

BACKGROUND

To hold or maintain a Life and/or Accident and Sickness licence(s) in the Province of Manitoba, liability insurance is required pursuant to section 371(1.1) of the *Act* and in accordance with section 12(1) of *Regulation 389/87*. The Former Licensee lapsed his errors and omissions coverage from January 1 – 10, 2016 and this lapse was not disclosed to Council until the Former Licensee's errors and omissions broker notified Council on February 2, 2016. Council subsequently learned that the Former Licensee remained a licensed agent without errors and omissions coverage during eleven (11) previous periods:

- January 1, 2015 – February 3, 2015

- January 1 – 13, 2014
- January 1 – 21, 2013
- July 17, 2012
- July 17, 2011 – August 16, 2011
- July 17 – 28, 2010
- July 17, 2009 – August 23, 2009
- July 17, 2008 – September 23, 2008
- July 17 – 26, 2007
- May 25 – 31, 2006
- May 25 – 31, 2005

The Former Licensee failed to notify Council of any of the aforesaid lapses. And the Former Licensee falsely declared on ten (10) Licensing Applications that he had continually maintained his errors and omissions liability coverage.

At the hearing of January 25, 2017, the Former Licensee did not dispute the facts stated in the Intended Decision. He advised that he first became aware that a lapse of his errors and omissions coverage was a regulatory issue in August 2012 and November, 2012, when he was contacted by the Licensing Department in connection with a lapse of coverage on July 17, 2012, which he acknowledged had occurred. The Former Licensee indicated to Council that he was unaware that he was required to have errors and omissions coverage while licensed and was under the misconception that he only required errors and omissions coverage if he was acting as an agent. That is, if he was inactive or not actively performing the functions of an agent, he thought he did not require such coverage. He also asserted that he was unaware of his obligation to notify Council of any lapse of coverage.

The Former Licensee also indicated to Council that he did not understand the meaning of a claims-made policy. He acknowledged that he was ignorant of the fact that consumers might not be protected if there was a lapse in coverage. Council in the course of the hearing explained the importance of maintaining that coverage.

The rationale for the requirement of continual maintenance by an agent of his liability insurance coverage is obvious. Everyone makes mistakes. The interests of the consuming public and of agents themselves are served if every agent at all times has errors and omissions coverage. Then, if a mistake which causes a loss to a client occurs, the claimant can recover his loss and the agent's personal assets are not exposed.

Having liability insurance is a necessary condition to possessing a licence. Without insurance one cannot obtain and maintain a licence(s). If an agent originally has and then for whatever reason later ceases to have liability insurance coverage, that agent is bound to inform the Council and the agent's licence(s) is cancelled.

Obviously, to permit a lapse in coverage is a failure to continually maintain errors and omissions coverage and is a violation of the *Act* of a serious nature. If an agent allows a lapse in his or her liability coverage, that agent thereby becomes disentitled to be

licenced. The specific requirements that every liability policy of a life, accident and sickness agent must have are defined in section 12 of *Manitoba Regulation 389/87*.

In this case, the Former Licensee over about twelve (12) years was without insurance for a total of about 253 days (8 months). For every year between 2005 and 2016, the Former Licensee was uninsured for at least one day. From the documentation provided it is clear and the Former Licensee admits that in 2012 he was notified of the risks of permitting a lapse in coverage by his former E&O broker. The Former Licensee clearly did not appreciate the significance of what was occurring. The Former Licensee advised Council in the course of the hearing that he did not really pay attention to the specific questions on his licensing applications when he answered, falsely year after year, that he had maintained his errors and omissions coverage. Council indicated to him that he should have been aware of the requirement to maintain errors and omissions coverage and of his reporting requirements when his attention was drawn to the matter in 2012 by Council on the occasion of the lapse that year.

The entire insurance industry is based in part on trust. It is imperative that licensees advise Council of any lapse in coverage. As indicated above there is a statutory duty to do so. The Former Licensee breached that trust and that duty in failing to report his lapses. Similarly, Council trusts that licensees will complete renewal applications diligently and honestly. On ten successive occasions, the Former Licensee was dishonest when he indicated on his renewal application that he had continually maintained his liability insurance coverage. His explanation was that he did not really reflect on the questions, that he just checked all of the boxes. That is lamentable, but the Former Licensee assured Council that he would not be so cavalier in the future.

Thus, there is no question that the Former Licensee committed the violations itemized in the Intended Decision as alluded to above and that they are serious ones.

There were two matters that have caused Council to reconsider and reduce the amount of the original fine.

First, to some extent the Intended Decision was the result of the number of years over which the Former Licensee had committed the breaches. But though it is not inappropriate to consider this, it is clear that the more recent conduct was merely a continuation of an earlier acquired bad practice which arose from a significant lack of knowledge.

Second was the specific case referred to earlier where Council learned of a lapse of coverage on the part of this Former Licensee and the manner in which Council reacted to it.

In 2012, Council received notice from an insurer that the Former Licensee had not renewed his errors and omissions coverage with them. Council had received nothing from the Former Licensee and thus inferred that his coverage had lapsed. Council accordingly notified the Former Licensee that his licence(s) had been cancelled. The

Former Licensee advised that within one day of the previous errors and omissions coverage expiring he had obtained coverage from another insurer. So, he was “only” without coverage for one day and in due course he did provide evidence of the new policy. Council did inform the Former Licensee by letter dated October 1, 2012, of the importance of maintaining his errors and omissions coverage. Certainly from this point forward, the Former Licensee knew or ought to have known of this requirement and its importance. In the course of the hearing, the Former Licensee appeared to suggest that in some way Council’s reaction to the lapse in 2012 had misled him as to the seriousness of the matter. Though this is not a reasonable view to have taken, Council in the context of the Former Licensee’s overall lack of knowledge, accepts that its warning and reaction to the Former Licensee at that time might have been more severe.

However unjustified his thinking may have been, Council accepts that despite the earlier encounter of 2012 with Council in the context of a lapse of errors and omissions coverage, the Former Licensee did not fully appreciate the seriousness of the matter.

Given the personal and financial circumstances of the Former Licensee, Council concluded that a lesser fine is warranted and for these reasons it determined that the Former Licensee shall pay a fine of \$2,000.00 and costs of \$1,500.00

DECISION AND ORDER

Council concluded that the following violations have occurred:

As to the Act:

Section 371(1.1) – Failure to continually maintain liability insurance coverage (on 12 occasions).

Section 372.1(1) – Carrying on the activities of an insurance agent while not insured under a policy of liability insurance (one occasion).

Section 372.1(2) – Failing to notify the Superintendent (the Council) without delay that his liability insurance coverage had lapsed.

Section 375(1)(a) – For misrepresenting that liability insurance coverage was maintained.

Regulation 389/87:

Section 12(1) – Liability Insurance – Life, Accident and Sickness – failing to have liability insurance coverage.

As to the Code:

Section 4 – Professionalism – in failing to act with integrity, due diligence, and skill to comply with requirements for errors and omissions insurance.

Section 9 – Dealing with Council - misrepresentations to Council in his renewal forms and regarding his continual maintenance of liability insurance coverage.

PENALTY AND FINAL DECISION

Having regard to the determination of the violations listed above, and pursuant to Council's power to impose disciplinary action pursuant to sections 375(1.1)(c) and (d) of the *Act* and section 7(1) of *Regulation 227/91*, Council hereby imposes the following penalty on the Former Licensee, namely:

1. The Former Licensee is hereby fined the sum of \$2,000.00; and
2. The Former Licensee is hereby assessed investigation costs of \$1,500.00.

As part of its Decision, Council further informed the Former Licensee of his right to request an Appeal to dispute Council's determinations and its penalty/sanction. The Former Licensee expressly declined his right and chose not to pursue a statutory Appeal.

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 May 9, 2017.