

DECISION
of the
LIFE INSURANCE COUNCIL OF MANITOBA
(“Council”)
Respecting
NARINDER SINGH KALKAT
(“Former Licensee”)

INTRODUCTION

Council derives its authority from *The Insurance Act C.C.S.M. c. I40 (“Act”)* and the *Insurance Councils Regulation 227/91*.

Council received information that the Former Licensee was offering bookkeeping and accounting services which resulted in an investigation being conducted pursuant to section 375(1) of the *Act* and section 7(2)(e) of *Regulation 227/91*. The purpose of the investigation was to ascertain whether the Former Licensee’s additional occupation resulted in him breaching the confidentiality or conflicts of interest provisions (paragraphs 5 and 6) of the Life Insurance and Accident and Sickness Agent’s Code of Conduct (“*Code*”) which would thereby preclude him from holding life and/or accident and sickness licences in the Province of Manitoba. The Former Licensee was notified of Council’s concerns and was given an opportunity to make representations.

The Former Licensee was a Licensee at the time of the investigation but he did not renew his licences which expired as of June 1, 2017.

By its Intended Decision of October 17, 2016, Council determined, on a preliminary basis, that the Former Licensee had committed the following violations, namely:

1. The Licensee’s (now a Former Licensee) additional occupation, of offering Bookkeeping and Accounting services, violated Council’s Conflict of Interest Guidelines for Additional Occupations.
2. Of section 369(1) and 391 of the *Act* in offering to act or holding himself out as being an agent without first having obtained a licence under the *Act*.

3. Of section 375(1)(a) of the *Act* and section 9 of the *Code* in failing to disclose at the time of his application for a licence that he was a director and officer of a corporation which performed bookkeeping/accounting services, which was broader than the role he had set out in his initial application.
4. Of section 391 of the *Act* in having obtained his licences held out as an agent for an entity which he had never been licensed to represent.
5. Of section 375(1)(a) of the *Act* and section 4 of the *Code* (Professionalism) and in falsely advertising that he had the authority to carry on business as an insurance agent when he did not.

Based on these findings, Council determined that the Former Licensee was unsuitable to be licensed and based on the violations, pursuant to sections 375(1.1)(b) and (d) of the *Act* and section 7(2)(c) of *Regulation 227/91*, Council's Intended Decision contemplated an order that:

1. The Licensee's (now a Former Licensee) life and/or accident and sickness licences in the Province of Manitoba be cancelled; and
2. The Former Licensee be assessed partial investigation costs of \$1,000.00.

The Former Licensee subsequently exercised his right to dispute Council's Intended Decision and to request a hearing before Council. The hearing occurred on April 26, 2017. At that time, the Former Licensee, who was represented by counsel, gave evidence and made representations. The hearing was adjourned to give Council the opportunity to carefully review the remarks made by and on behalf 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

On October 14, 2015, the Former Licensee was advised that he had successfully completed the Life Insurance Licence Qualification Program Accident and Sickness exam which he had written on October 13, 2015. In the same email in which he was so advised, it was explained to the Former Licensee that success in the examination was only one licensing requirement. He was still required to submit an application and have

a valid licence issued in his name before he could act as an insurance agent. Later, in the same email, in bold printing, the Former Licensee was advised as follows: “. . . Until the application has been approved by the ICM and a licence issued, the applicant is not licenced and cannot act as an agent. . .”

On October 21, 2015, the Former Licensee signed his application for life and accident and sickness insurance licences. Question 14 of the application was: “Do you have another occupation or employment other than as an insurance agent?”

The Former Licensee answered in the affirmative and provided the following details: “Bookkeeping and payroll administrator.” Immediately under the handwritten insertion by the Former Licensee was the following wording, namely: “I have read and understand that I must fulfill my professional and ethical obligations as outlined in the Conflict of Interest Guidelines for Additional Occupations and further that I will abide by the provisions of the Guidelines.”

The note of this other occupation on the application caused inquiries to be made by Council staff. The essence of the concern was that the then applicant’s position as an accountant, or information obtained by him in providing accounting services, might increase the risk of misuse of information (section 5 Confidentiality, of the *Code*) or of a conflict of interest (section 6 Conflicts of Interest, of the *Code*). In the exchange between Council staff and the Former Licensee, the Former Licensee minimized his access to information and failed to disclose that he was an officer and director of the corporation for which he worked when providing what he described this way:

I have been working with [an entity] as a bookkeeper and tax preparer of the Company.

My duties include: Record and maintain financial records,

Prepare T4 and T4A for clients,

Calculate, prepare payroll cheques and remit them to CRA

I am certified Bookkeeper and Sometimes I am authorized representative for clients to talk to CRA

I have very minimal access to personal information of clients.

In his application for his licences, the Former Licensee also represented that the entity through which he provided taxation services was a corporation. In fact, there was no such corporation. It was only a business name.

On November 20, 2015, Council staff emailed the Former Licensee as follows:

The Insurance Council of Manitoba ("ICM") has completed its review of your current occupation as a Bookkeeping and Payroll Administrator... We are pleased to confirm that you may concurrently hold an insurance agent licence; however, you are prohibited from selling to clients or co-workers of this business as there is a possibility that the consumer would be subjected to a form of undue influence (i.e. you have independent access to information and data which would not otherwise be readily available).

An agent must not place himself/herself in a position where he/she is in a position to exploit or influence those in one occupation/employment for his/her own personal benefit as an agent. We ask that you please refer to the ICM's "Conflict of interest Guidelines for Additional Occupations" located on the website.

You are reminded that life insurance agents are required to act in accordance with the Life Insurance and Accident and Sickness Agent's Code of Conduct (which is available on our website). In particular, we would like to draw your attention to Sections 5 and 6 as follows:

Section 5: Confidentiality - Agents must protect clients' personal information by complying with applicable law and by taking all reasonable steps to ensure that personal information is not divulged and is only used for the purpose for which it is collected

Section 6: Conflicts of Interest - An agent must avoid situations where the underlying circumstances could prejudice or compromise the advice he or she provides. Conflicts of interest can be a matter of actual fact or perceptions and appearances. In the case of a conflict of interest, the client must be made aware of the nature of the conflict before the transaction takes place.

In addition, prior to commencing any other occupation or employment, or engaging in additional duties other than those previously reported to the ICM, you must report the other occupation, employment or duties to the ICM and receive approval.

The ICM requires your acknowledgement of this document, via reply email, indicating that you have read, understand and agree to abide by the above and more specifically, that you have read and understand that you must fulfill your professional and ethical obligations as outlined in the Conflict of Interest Guidelines for Additional Occupations, and further that you will abide by the provisions of the *Guidelines*. A licence will not be processed without receipt of your acknowledgement.

In response, the Former Licensee emailed Council staff on November 23, 2015, as follows:

I have read, understand and agree to abide by the above and more specifically, that you have read and understand that you must fulfill your professional and ethical obligations as outlined in the *Conflict of Interest Guidelines for Additional Occupations* and further that you will abide by the provisions of the *Guidelines*. [the grammatical errors are in the original from the Licensee]

In reliance upon the information received from the Former Licensee, he was granted his life and accident and sickness licences on November 23, 2015.

On April 21, 2016, Council received information that the Former Licensee was holding himself out as an agent and soliciting insurance to the public under a name for which neither he nor anyone else was licenced and that the Former Licensee was also offering bookkeeping and accounting services through what by its name would be considered a taxation services entity.

The investigation triggered by these assertions led to the discovery of the following information, namely:

1. The entity referred to in his application as a corporation through which he conducted tax return preparation services in fact was a business name only; there was no such corporation;
2. Through yet another entity, the Former Licensee had advised on a website that he could provide professional accounting, bookkeeping and tax preparation services in conjunction with insurance services for yet another entity;
3. Through the website for the last-mentioned entity, the following representations were made on behalf of the Former Licensee, namely that the entity was a full-service Winnipeg based accounting firm that provides accounting and insurance services to its clients;
4. On what is called a social media website, the Former Licensee represented himself as the owner, president and CEO of a taxation service business;
5. On another social media website, through an entity for which the Former Licensee had never been licenced, the Former Licensee represented himself as an agent and solicited insurance business;

6. On the second social media website, the Former Licensee made representations regarding life insurance policies and pre-existing conditions and solicited insurance business at a time when he had not yet been licenced;
7. In May, 2016, through two separate communications from the Former Licensee's former legal counsel, the Former Licensee advised that he was indeed an officer and director of the entity for which at the time of his application he had indicated to Council that he was only an employee and that that entity was an accounting and income tax return preparation corporation, that he did have access to client information from CRA when the clients sign a release form in the context of performing bookkeeping, accounting or payroll administration functions, and further that while he understood that his bookkeeping business might give rise to undue influence, he did not attempt to sell his bookkeeping, payroll, tax return preparation clients insurance products.

EVIDENCE AND SUBMISSIONS AT THE SHOW CAUSE HEARING

The Former Licensee indicated that the entity through which he initially provided tax and bookkeeping services was commenced in the year 2000 and never incorporated in that name. He advised the incorrect indication on his application for a licence that the entity was incorporated was purely an oversight. The name was changed in 2011 and a corporation was then created. It was intended at that time that the corporation would conduct not only bookkeeping and tax preparation matters but DJ services, photography and multimedia productions. The Former Licensee indicated that the alternative business he conducts is bookkeeping and payroll administration and this includes the preparation of T4's, T5's and tax returns. But he does not and the business does not provide services as an auditor, it does not seek information about the assets of clients. He said he understands and understood that he cannot sell or attempt to sell insurance to co-workers or customers of his accounting and tax preparation business. He did not understand that initially.

Because of concerns expressed by Council, he has ceased to be an officer and director of the tax preparation, bookkeeping and payroll firm. Though his wife and son continue to be involved in that business, one of the directors is unrelated to him. That person also works in the business.

Upon being advised of the concerns of Council, he removed the social media pages. With respect to the inaccurate information (as to the services provided) on the website, he explained that the information on the website was prepared by someone else, using a template of some kind. He acknowledged that he read the material on the website at the time the site was created, before Council expressed its concern about the misinformation or potential conflict reflected thereon. But his acceptance of responsibility for the contents of the website would best be described as grudging.

While he acknowledged the importance of separation between the insurance business and the bookkeeping and tax preparation business, he acknowledged that the two separate business cards were available side by side at his place of business. Until it was pointed out to him through communication with Council, he was unaware that the commingling of the advertising of the two businesses might be of concern in the light of the *Code*. He indicated that the two businesses are conducted in separate locations.

The essence of the Former Licensee's position is that his errors were the result of ignorance and misunderstanding and not deliberate misconduct. It is true that when concerns were expressed to him by Council, he acted promptly to attempt to remove the cause or mitigate the effect. The corporation was reorganized and the websites were taken down.

ANALYSIS

The Former Licensee disclosed his other occupation at the time of his application. He was then advised of the ethical concerns which exist in such circumstances. Despite this warning, the Former Licensee through his website and social media overstated his accounting services while blending the advertising or soliciting of accounting work with advertising for insurance clients. Council noted that the Former Licensee's claim, that tax and insurance business is conducted at separate locations, was contrary to his business cards which list the same address and to his acknowledgment that he had placed in his office the tax and insurance business cards side by side. He also appeared to understate his access to confidential information through the tax return preparation/payroll business when he appeared before Council. This is a concern.

The misdescription of an entity as incorporated may by itself be a minor matter. But to use a name for which one is unlicensed, to deflect responsibility for the contents of websites when they are yours, to exaggerate one's qualifications, even in one's "other" occupation, reflects a lack of professionalism.

Section 4 of the *Code* provides that an agent must act in good faith at all times, meet professional standards, and act with honesty, integrity, fairness, due diligence, and skill. It also provides commentary that an agent must inform the client of the types of activity he or she is licensed or registered for, as well as the business name of any firm under which he or she is authorized to operate.

Despite his various breaches of legislative, regulatory and ethical requirements, Council is of the view that cancellation of the Former Licensee's licence is not necessary to protect the public. There are less severe penalties which will accomplish this object and which are proportional to the facts of this case.

DECISION AND ORDER

Council concluded that the following violations have occurred:

As to section 375(1)(a) of the *Act* and section 9 of the *Code* – In his application for a licence he failed to disclose that he was an officer and director of the business through which he conducted his other occupation and misrepresented his level of access to client information.

As to section 375(1)(a) and 391 of the *Act* and section 4 of the *Code* – For engaging in misleading advertising and holding out under an entity name he had been never licensed to represent.

PENALTY AND FINAL DECISION

Council's Decision dated June 13, 2017 was delivered by registered mail to the Former Licensee on June 16, 2017. The Decision outlined the foregoing background, analysis, and conclusions. Having regard to the determination of the violations aforesaid, and pursuant to sections 375(1.1)(c)&(d), and 396(1) of the *Act* and section 7(1) and 7(2)(b) of *Regulation 227/91*, the following penalties are imposed on the Former Licensee, namely:

1. The Former Licensee is hereby fined the sum of \$1,000.00;
2. The Former Licensee is hereby assessed investigation costs of \$1,000.00;
3. The Former Licensee is hereby required for two years upon being re-licensed to work under the supervision of a Supervising Agent as Council may approve; and,
4. The Former Licensee and the Supervising Agent shall submit a joint proposal of the terms of supervision dealing with the concerns outlined in this Decision subject to Council's approval.

Pursuant to section 389.0.1(1) of the *Act*, the Former Licensee had the right to appeal this Decision within twenty-one (21) days of receipt. The Former Licensee was advised of this right in the Decision and was provided with the Notice of Appeal form, in accordance with section 389.0.1(2) of the *Act*. As an appeal was not requested in this matter, this Decision of Council is final.

In accordance with Council's determination that publication of its Decisions are in the public interest, this Decision is published, in accordance with sections 7.1(1)&(2) of *Regulation 227/91*.

Dated in Winnipeg, Manitoba on the 12th day of July, 2017.