

DECISION
of the
LIFE INSURANCE COUNCIL OF MANITOBA
(“Council”)
Respecting
DOUGLAS BUSS
(“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 a complaint relating to the Licensee, an investigation was conducted pursuant to sections 375(1) and 396.1(7)(e) of the *Act*, and sections 7(2)(e) of *Regulation 227/91* to determine whether the Licensee had violated the *Act*, its *Regulations*, the Life Insurance Agents and Accident and Sickness Insurance Agents Licensing Rules (“*Licensing Rules*”), 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 March 29, 2017, 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), 375(1.1)(c)&(d), and 396.1(7)(d) of the *Act* and sections 7(1), and 7(5)(a)(i)(ii),(b)&(c) of *Regulation 227/91*, Council hereby renders its intended decision and corresponding reasons.

ISSUES

1. Did the Licensee fail to provide adequate supervision for the replacement of life insurance in violation of the *Act*, its *Regulations*, the *Licensing Rules*, and/or the *Code of Conduct*?

FACTS

1. On July 29, 2016, Council received a consumer complaint against the Licensee and Licensee B (a new agent who required supervision) relating to the replacement and cancellation of life insurance policies for Insureds A and B.
2. Dated February 5, 2016, two life insurance applications ("the Applications") were completed for replacement life insurance; the Licensee countersigned the Applications in a capacity acting in the place of the Supervising Agent.
3. On March 3, 2016, Council received a Supervision Certificate dated February 27, 2016 that the Licensee had formally assumed the role of Supervising Agent.
4. By emails dated December 7, 2016 and January 27, 2017, the Licensee confirmed that mandatory needs analyses had not been completed for the Applications.
5. By email dated December 7, 2016, the Licensee advised Council that:
 - a. No Written Comparative Analysis ("WCA") was prepared for Insured B.
 - b. He stepped in at Licensee B's request so his regular process for fact finding was not followed.
 - c. Although he assumed the supervisory responsibilities for Licensee B by signing the Applications, he did not formally become the Supervising Agent and familiar with the supervisory requirements until after signing the Supervision Certificate dated February 27, 2016.
 - d. Corporate ownership was a partial rationale for the intention to replace existing life insurance, and he understood ownership of the existing policies to be personal.
6. The Insurer provided to Council documentation substantiating that the existing policies had corporate ownership and beneficiaries, since 2014.
7. The Licensee along with Licensee B obtained a January 29, 2016 letter of direction appointing Licensee B as the agent of record on the existing policies.
8. By letter dated August 16, 2016, the Licensee advised Council that Licensee B met with Insureds A and B on July 15, 2016 to deliver the policies but the policies were not signed at this time.

9. By emails dated December 12, 2016 and January 17, 2017, the Insurer advised Council that:
 - a. The existing policies lapsed on May 18th and 21st, 2016 due to non-payment.
 - b. Replacement policies were not issued until June 17, 2016.
 - c. The existing policies were not reinstated until August 17, 2016.
10. By letter dated August 16, 2016, the Licensee advised Council that he and Licensee B advised Insured A that cancellation of the existing policies was not in his best interest, until alternative insurance could be put in place.
11. In proceeding with the Applications for replacement life insurance, the Licensee failed to countersign mandatory needs analyses; Written Comparative Analyses (“WCA”), and Life Insurance Replacement Declaration forms (“LIRD”).
12. Insured A did not sign the WCA; therefore, the Licensee was unable to substantiate that disclosure of existing and proposed policy benefits took place.
13. The WCA for Insured A was inaccurate and incomplete in the following respects:
 - The WCA incorrectly specified the existing policy as being personally owned, whereas ownership was held by a corporation.
 - The WCA did not specify the beneficiary, suicide and contestable periods for either the existing or proposed policies.

ANALYSIS

The Licensee failed to ensure that Licensee B completed mandatory needs analyses for the Applications as required by section 9(1)(a) of the *Licensing Rules*.

The Licensee failed to countersign mandatory needs analyses; WCAs, and LIRDs for the Applications as required by sections 9(1)(c)(i)&(ii) of the *Licensing Rules*.

The Licensee failed to ensure that Licensee B completed a mandatory WCA for Insured B as required by section 9(1)(b) of the *Licensing Rules*.

The aforementioned inadequacies of the WCA for Insured A, and failure to complete a WCA for Insured B, violated sections 113(1)(c),(d)&(e), and 113(2) of the *Act* which

prohibits any unfair or deceptive act in the business of insurance. This includes omissions, misrepresentations, misleading statements, and/or incomplete policy or contract comparisons as is further addressed by section 375(1)(a) of the *Act* which prohibits misrepresentations.

Sections 4 – Professionalism, and 7 – General Information Disclosure and Documentation of the *Code of Conduct*, are to help protect consumers who are entitled to accurate information pertaining to the benefits, or lack thereof, of a policy or contract for insurance and to understand their current benefits, and benefits that may be available to them. The Licensee failed to provide adequate supervision for the replacement of life insurance by failing to ensure all relevant information was obtained, including policy ownership, prior to recommending the replacement of life insurance, and by not acting with due diligence and skill to ensure that the consumers were fully informed of all relevant information before a decision to replace life insurance was made, and that disclosure of benefits was appropriately documented; therefore, he violated sections 4 and 7 of the *Code of Conduct*.

Council notes that even an isolated regulatory violation can be serious enough to warrant discipline.

Council concluded that the Licensee failed to comply with several sections of the *Act*, the *Licensing Rules*, and the *Code of Conduct* with respect to supervision requirements and the replacement of life insurance, and that disciplinary action is warranted.

PENALTY AND FINAL DECISION

Council's Decision dated July 19, 2017 was delivered to the Licensee by registered mail on July 31, 2017. The Decision outlined the foregoing background, analysis, and conclusions. Having regards to its initial determination that the foregoing violations had occurred, Council imposed the following penalty and sanction pursuant to sections 375(1), 375(1.1)(c)&(d), and 396.1(7)(d) of the *Act* and sections 7(1), and 7(5)(a)(i)(ii),(b)&(c) of *Regulation 227/91*:

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

Pursuant to section 389.0.1(1) of the *Act*, the Licensee had the right to appeal this Decision within twenty-one (21) days of receipt. The 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 28th day of August, 2017.