

DECISION
of the
GENERAL INSURANCE COUNCIL OF MANITOBA
(“Council”)
respecting
CATHERINE ENNS
(“Licensee”)

INTRODUCTION

The General 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*.

Following receipt of documentation from Manitoba Public Insurance (“MPI”) detailing insurance transactions performed by 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*. The purpose of the investigation was to determine whether the Licensee and/or the Agency had violated the *Act*, and/or the General Insurance Agent Code of Conduct (“*Code of Conduct*”). During the investigation the Licensee was provided an opportunity to make submissions.

On November 23, 2016, during a meeting of Council, the evidence compiled during the investigation and the position of the Licensee were reviewed. Pursuant to section 375(1) of the *Act* and *Regulation 227/91*, the Council now confirms its decision and corresponding reasons.

ISSUE

1. Did the Licensee violate *the Act* and *Code of Conduct* by acting as an agent without holding a valid insurance agent licence?

FACTS AND EVIDENCE

1. The Licensee had been employed by MPI between February 1987 and April 2, 2015, during which time she had access to the MPI computer system.
2. On March 30, 2016, the Licensee completed an Insurance Agent’s Licence Application, placing her initials beside Question 18. This question read, “I will not act, or offer to

undertake to act, as an insurance agent in this province without having first obtained a licence under *The Insurance Act*.”

3. On April 20, 2016, Council received and reviewed the Licensee’s licence application. As the application was incomplete, an email with required information, including the end date for her employment with MPI and a copy of government identification, was sent to the Licensee at the email address provided by her for Council correspondence. In this email it stated, “You are not licensed to act or offer to act as an agent. Specific notice will be sent to you by email if your application is approved and a licence issued. Until the licence is issued, you must not act as an agent.” Further the email noted that if the information was not received within 5 days, the file would be closed automatically.
4. The ICM received no response to this email.
5. Between May 2, 2016 and May 3, 2016, the Licensee performed 199 Autopac transactions under her IWS user ID. This access to the MPI computer system had not been terminated when she ceased employment with MPI. When MPI became aware that the Licensee had begun transacting as an agent, MPI looked into her access and took action to lock her out of its system.
6. On May 3, 2016, at 4:04 pm, MPI advised the Agency’s Regional Branch Operations Manager that the Licensee was transacting business. The Operations Manager confirmed in an email, at 4:09 pm, that he was aware that the Licensee was not licensed and advised MPI that he would check with the Grant Park office to ensure she discontinued her activity.
7. On May 3, 2016, Council followed up on the outstanding application. The Licensee advised that she did not respond earlier to Council’s email of April 20, 2016, as she had not been in the office for three weeks.
8. Council received the outstanding requirements from the Licensee by email on May 3, 2016 at 10:04 pm.
9. On May 4, 2016, the Licensee was advised that her licence had been approved for issue and she had the choice of having the licence issued at that time or waiting until June 1, 2016.
10. The Licensee selected the first option, and the licence was issued on May 5, 2016 with a confirming email from the ICM Licensing Officer on that date at 11:13 a.m.

Licensee’s response to Council – May 9, 2016

11. The Licensee advised that she had accepted a position with the Agency on March 15, 2016.

12. Between March 30, 2016, and April 8, 2016, she trained: observing and job shadowing.
13. On April 11, 2016, she wrote her Fundamentals of Insurance exam.
14. She was out of town during the week of April 17, 2016, and arranged to start work on May 2, 2016.
15. On May 2, 2016, the Licensee stated that as neither she nor her manager had heard that she wasn't licenced, she assumed she was licensed and was able to sign into IWS. She performed transactions on the 2nd and the 3rd. On May 3, 2016, during her break, she checked her home email and found an email from the Agency's Training and Compliance Coordinator advising her that there was a problem with her licence and she should do no further transactions. She ceased transacting.
16. That evening she responded to the outstanding requirements to complete her application and received an email from Council on the following day, May 4, 2016, indicating that she was licensed.
17. The Licensee noted that the ICM request had been sent on April 20, 2016, to her work address. She advised Council that she had not been in the office between April 8, 2016 and May 2, 2016 to check her email. On May 2, 2016, she was busy and did not check her email. She had been able to sign on the IWS.
18. She noted that although she initialed question 18 of her application with respect to unlicensed activity, she would not have acted as an agent if she had known she was not licensed.
19. She had retired from her position with MPI on April 2, 2015.
20. She stated that she immediately ceased doing transactions when she became aware that she was not licensed and had performed no other type of insurance other than MPI Auto.

Licensee's response to Council - September 13, 2016

21. The Licensee's recollection was that she asked someone in the office if she should sign on the system when she arrived at the office that first day and was told to give it a try. She was able to sign on and assumed that she was licensed as MPI monitors the licensing and does not allow access to an individual without a licence.

ANALYSIS

S. 369 (1) of *The Act* and s. 9 of the *Code of Conduct* make it an offence to act as an insurance agent without holding a valid licence.

ICM's licensing department received and reviewed the Licensee's licence application on April 20, 2016. Outstanding items required for the issue of the licence and notice that the applicant was not, and would not be, licensed until she received confirmation from the Council, were sent to the email address provided by her for Council correspondence on April 20, 2016. She was advised that she had five days to respond. She did not comply within the deadline.

On May 2, 2016, without first ensuring that her licence had been issued, the Licensee discovered that she could access the IWS and began transacting insurance. She continued until the issue was brought to the Agency's attention by MPI and she was locked out of the system.

With respect to the allegations, the MPI records show that the Licensee performed transactions prior to the issuance of a valid agent's licence. Thus Council met the onus of proof with respect to violation of the *Acts*. 369 (1) and s. 9 of the *Code of Conduct*.

The Licensee had been employed in the industry beginning in 1987. Based on her experience, education and initial application, Council noted that she was aware, or should have been aware, that a licence was required before transacting insurance. In addition, she used a password from her previous employer, MPI, to allow her access to the system, rather than having authorization for access through the Agency.

As a mitigating factor, the Council considered that the MPI lockout process may place a reliance on the system by agents.

It was noted that the Licensee ceased her actions as an agent upon notification via MPI that she did not hold a licence. However, as the Licensee knew or ought to have known that she was not licensed prior to May 4, 2016, she is ultimately responsible for the unlicensed activity she performed.

PENALTY AND FINAL DECISION

Council's Decision dated July 27, 2017, was delivered to the Licensee by registered mail. 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(1.1) (c) and (d) of *the Act* and section 7(1) of *Regulation 227/91*:

1. The Licensee be fined \$500.00 and assessed partial investigation costs of \$350.00.

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) and (2) of *Regulation 227/91*.

Dated in Winnipeg, Manitoba on the 28th day to August 2017.