

DECISION
of the
GENERAL INSURANCE COUNCIL OF MANITOBA
("Council")
respecting
JUSTIN MARX ("Former Licensee")

INTRODUCTION

The General Insurance Council of Manitoba (the "Council") derives its authority from *The Insurance Act* C.C.S.M. c. 140 (the "Act") and the *Insurance Councils Regulation 227/91*.

Following receipt of information from the Former Licensee's employer in conjunction with the licence sponsorship withdrawal, effective February 27, 2017, 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 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 May 18, 2017, during a meeting of the Council, the evidence compiled during the investigation and the position of the Licensee were reviewed. Upon assessment of the evidence, Council determined its intended decision. Pursuant to section 375(1) of the *Act* and *Regulation 227/91*, the Council now confirms its decision and corresponding reasons.

ISSUES

1. Did the Former Licensee fail to explain coverages to the clients?
2. Did the Former Licensee falsify documented notes of the content of conversations between clients or potential clients, and himself, thus exposing the client and potential clients to an uninsured loss and the Former Agency to an E&O exposure?
3. Did the Former Licensee fail to respond to the Council's requests?
4. Is the Former Licensee suitable to hold a licence?

FACTS AND EVIDENCE

1. In an email dated March 7, 2017, Council was advised that the Former Licensee's licence was terminated as "he failed to explain coverages to the client and falsified documentation to the contrary exposing the client to unnecessary risk and the company to an E&O exposure."
2. Council requested additional information and was advised that on February 15, 2017, the Former Licensee's employment was suspended; further investigation of his files was completed.
3. A list of eight files was provided to the Council, outlining the discrepancies between the Former Licensee's notes and conversations/activities.
4. When the Former Licensee was suspended from his employment, he requested a reason. He was provided with examples. When asked what his thought process was, he admitted and advised that this had occurred a couple of times, when clients were angry.
5. According to the Former Agency's Contact Centre Supervisor, she concluded that he appeared to be confident and comfortable during the calls and that the examples were not when the clients were angry.
6. File review by the employer produced the following results with respect to the Former Licensee's activities:
 - a. 01740672 – Notes were detailed about the Former Licensee offering abopt6, jewellery and 2 million liability. Also offered were AB6 and 2 million liability for auto, and he confirmed other licensed drivers. The notes stated that the insured declined as he was trying to save money. According to the recorded call, this discussion did not occur.
 - b. 03109093 – Notes were detailed about offering upsells which the Former Licensee did not complete. He noted declined attempts in his offer of 2 million liability, collision/comprehensive, and that snow tires were on all cars. While he indicated that he inquired about other licensed drivers, the recording did not support this.
 - c. 01557184 – He noted that he called the client to ask about snow tires and offer AB6, but the client did not have snow tires and declined AB6. The call recorded a discussion about snow tires only.
 - d. 15137909 - The Former Licensee documented that coverage and upselling were discussed in two calls and declined. Recordings did not include discussion of underwriting usage of the vehicle nor review of coverage.
 - e. 15161618 - Documented upsells were offered and declined, but they were not offered.
 - f. 01736460 - The Former Licensee had an abeyance set for February 14, 2017, which he closed on the 15th. The requirement was to remove a combined discount that had been made in error. The Former Licensee's notes stated that he removed

the discount, sent GPIQ, and advised client. He was in training that day and there were no calls to confirm this conversation.

- g. 030350939 - On February 6, 2017, a client advised that she was buying a car and requested coverage to start on February 8, 2017. The Former Licensee provided explanation for comprehensive as if for home coverage (i.e. best coverage available, unless it is excluded). Client did not have time to complete transaction. On February 7, 2017, the Former Licensee called to confirm vehicle added but no information was confirmed regarding details or coverages. He did not offer 43 for the 2017 vehicle.
- h. 01639783 - Client's daughter called for a quote on property insurance. The Former Licensee confirmed address, 5 year address experience and contact information. At end of call he asked if caller would give a call back due to telephone audio problems and the line disconnected. No quote file was set up or notes on file from that conversation. (13 minutes 45 seconds call)

ANALYSIS

The Former Licensee documented conversations with insureds and potential insureds which reflected his providing advice and service with respect to general insurance policies. However, review of those recorded conversations showed that he failed to offer or explain the coverage to clients which he had documented. Thus his notes were falsified. Failing to provide advice left these people vulnerable to losses which would not be covered by the policy, but might have if the Former Licensee had offered the coverage. As well, by not offering the coverage but noting that he had, the Former Agency was vulnerable to E&O claims.

The Former Licensee was provided with an opportunity to respond to the allegations but failed to respond to the Council's request for his comments.

Therefore, with the report from the Former Agency and no counter comments from the Former Licensee, the Council relied on the Former Agency's submission.

The Former Agent in his actions violated section 375(1) (a) of *the Act* and s. 1 Integrity, s. 2 Competence, s. 3 Quality of Service, and s. 4 Advising Clients of the *Code of Conduct*. Thus the Council concluded that the Former Agent is unsuitable to hold a licence.

PENALTY AND FINAL DECISION

Council's Decision dated September 13, 2017, was delivered by registered mail to the Former Licensee on September 15, 2017. The Decision outlined the foregoing background, analysis, and conclusions. Having regard to the determination of the violations aforesaid, and pursuant to section 375 (1.1) (c) of *the Act* and section 7(2) (c) of *Regulation 227/91*, the following penalty be imposed on the Former Licensee, namely:

1. The Former Licensee be found unsuitable to hold a general insurance Agent's licence in the province of Manitoba.

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, chose not to pursue a statutory Appeal, and accepted this Decision.

The 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),(2), and (3) of *Regulation 227/91*.

Dated in Winnipeg, Manitoba on the 10th day of October, 2017.