

DECISION
of the
GENERAL INSURANCE COUNCIL OF MANITOBA
(“Council”)
respecting
DAVIS GILBERT
(“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*.

Upon the Insurance Council of Manitoba’s (ICM) licensing department notice of a gap in mandatory liability (E&O) coverage when reviewing the amendment request for a change in the Designated Official for a Restricted Insurance Agent (RIA) licence, and similar gaps in the E&O coverage for two associated RIA license holders, 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 March 1, 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) and 375 (1.1) of the *Act* and *Regulation 227/91*, the Council now confirms its decision and corresponding reasons.

ISSUES

1. Was the Licensee competent in providing the coverage required to meet the clients’ regulatory requirements?
2. Did the Licensee provide required service levels with respect to client requests?

FACTS AND EVIDENCE

1. The Licensee was first licensed in June 2010, and at all material times, held a general insurance agent Level 2 licence.

2. *Insurance Agents and Adjusters Regulation 389/87R* of the Act requires the following liability coverage for RIAs:

Liability insurance — restricted insurance agent licence

16.1(1) For the purposes of subsection 371(1.1) of the Act, an applicant for a restricted insurance agent licence under section 380.1 of the Act must have, and an agent who holds such a licence must maintain, liability insurance of at least \$1,000,000 in respect of any one occurrence, with an overall policy aggregate of at least \$2,000,000.

3. RIA A, RIA B, and RIA C held licences in Manitoba, effective June 1, 2015.
4. On April 19, 2016, Council was advised that the Designated Official for RIA B would be amended. One of the requirements for the amendment was a copy of the current E&O. When the copy of the E&O was provided, the ICM licensing staff recognized there had been a gap in E&O.
5. On the licence renewal applications for RIA C, submitted May 3, 2016; RIA B, submitted May 3, 2016; and RIA A, submitted May 16, 2016; the Designated Officer declared that there had been continuously maintained professional liability insurance as required by *Regulation 389/87*. On each of these applications, the E & O policy provided to Council showed an effective date of April 12, 2016. The previous E&O for each of these entities had expired on April 1, 2016. There had been a gap in cover between the expiry date of April 1, 2016 and April 12, 2016. The material misstatements by the Designated Officials, as well as, the failure to maintain continuous cover as required by the *Regulation*, were regulatory violations.

Licensee's response to Council – January 24, 2017

6. In a response submitted on January 26, 2017, was a chronological outline of events for the files of RIA A, RIA B, and RIA C.
7. On March 4, 2016, the Licensee emailed RIA C and RIA A regarding the renewals and attached the required fillable forms. Instructions on the completion, return and payment were provided.
8. On March 24, 2016, the Licensee received an email from the Operations Manager of RIA A stating that he had completed the forms, but the Client would like to meet with the Licensee. A meeting day and time of Monday at 1:00 was suggested.
9. There were follow-ups for a meeting by email to the client on March 28, 2016; March 29, 2016; March 31, 2016; and April 5, 2016. Response emails came from the client on March 29, 2016; April 5, 2016; and April 6, 2016.
10. The Licensee responded on April 5, 2016, asking for the content of the meeting as he had a co-worker with more knowledge of the policy and he wanted to arrange for the co-worker to be available, if needed. The Licensee provided a phone number for a reply.

11. On April 11, 2016, a meeting was held between the Client and the Licensee. Receipts for E&O for the three entities were dated on April 12, 2016. Payment for RIA C was \$594.00; RIA B was \$594.00, and RIA A was \$270.00. Policy certificates were issued on April 12, 2016.
12. On April 12, 2016, a copy of the certificate for RIA C was forwarded to the insured.
13. On May 16, 2016, when the certificate was sent to the ICM, the Manager, Licensing & Administration noted that the cover was effective April 12, 2016, while the previous policy had expired on April 1, 2016.
14. On May 16, 2016, the Licensee requested assistance from the Assistant Vice President, Programs and Online Solutions of the Insurer, in the course of the action required. He noted that there had been renewals for the three accounts and there was a new manager for the insured(s) since the 2015 initial policy issue. The Licensee stated there had been days between responses and there had been a need to meet before renewal.
15. In her response to the Licensee, the Insurer's Assistant VP suggested that where there was only a matter of days, the insurer generally agrees to honour the original renewal date. In this case, the Insurer would charge an additional premium for the extra time on risk of \$50.00 per account.
16. On July 15, 2016, an email was sent from ICM to the Designated Official noting that there was no E&O coverage for RIA A as another name for the RIA had been used on renewal. An email was sent from the Designated Official to the Licensee on August 3, 2016, regarding this change to the legal name.
17. On August 4, 2016, the Licensee requested the assistance of Agent A with regard to amending the name on the certificate and updating the bordereau. On August 5, 2016, the documents were reissued. Certificates were backdated to April 1, 2016.
18. Contemporaneous notes dated July 26, 2016 between the ICM's Manager, Licensing & Administration and Agent A noted that according to Agent A his email communication started on March 24, 2016 with respect to the renewals. Agent A noted that all forms were completed as of March 24, 2016 but not dealt with appropriately by the brokerage.

Licensee Response to Council – February 17, 2017

19. The Licensee's Agency ("Agency") had developed a RIA E&O program with claims made coverage. In the spring of 2015, Agent A met with the client(s) to review the program including the coverage and a discussion of claims made.
20. On March 3, 2016, an initial email was sent to the RIAs with a fillable form for the renewal. The email included comments with respect to the fact that the master policy had no changes and a summary of the 2015 – 2016 coverage was provided. About 40 other clients completed the fillable form, provided their credit cards, and received their policy documents immediately.

21. The next email provided to the RIAs included a copy of their previous year's certificates to assist the client who was looking for copies.
22. On March 24, 2016, the Client requested a meeting. The Licensee asked for clarification for the purpose of the meeting as he would request Agent A to be present.
23. Agent A was not brought into the discussion with the insured.
24. The Licensee met with Client B of RIA A first and then with her manager. The questions involved why the cover was needed and the history of the Agency.
25. The renewal documents were signed by Client C on April 11, 2016.
26. According to the Agency, the program is self-explanatory, and no other clients required additional clarification of the coverage or the program or the renewal process. The Licensee believed that if additional coverage was required outside of this program, he wanted to be certain that he had the best resources and expertise available for the client.
27. The premiums charged were for the full term with no additional amounts charged to backdate.

Insurer's correspondence to the Council

28. On February 8, 2017, Senior Vice President, Specialty Insurance Solutions advised the premium for each of the three RIAs, confirming that the premium between April 12, 2016, and April 1, 2017, was the full premium as if the certificates had been bound on April 1, 2016. He noted there were up to 60 days after expiration of the policy to report a claim provided the claim was made against the insured prior to the expiration of the policy period. No additional fee had been charged to backdate the cover.
29. In an additional email, he confirmed that if the certificates had not been renewed and the policy certificates had expired on April 1, 2016, there would be no cover for wrongful acts that occurred starting April 1, 2016, nor any extended reporting period cover except for incidents that occurred before the policy expired on April 1, 2016.

ANALYSIS

The Agency established a program to provide E&O cover for Restricted Insurance Agents (RIA).

The Agency and Licensee should have been knowledgeable of the requirement for continuously maintained E&O for all licences in Manitoba, and the limitations if the insured certificate holders did not renew prior to the renewal/expiration date. The Licensee should have been aware of the consequences to his clients of not renewing coverage by the expiration date of the policy, both from a coverage and a regulatory position.

On or about March 4, 2016, emails were provided regarding the upcoming E&O policy renewals to RIA A, RIA B, and RIA C. On March 24, 2016, Client B advised that the forms had been completed but Client A wanted a meeting. A succession of emails followed regarding the meeting. The Licensee questioned the reasons for the meeting as he wanted to have expertise available, if required.

Council noted that the Licensee held a Level 2 general insurance agent licence which permits him to meet with clients away from the office and without supervision. Council questioned his ability to handle files of this nature. Further it noted that this gap in coverage had been avoidable.

The Licensee did not arrange for another agent to accompany him to the meeting prior to the renewal date or make the clients aware of the immediacy of the meeting to maintain insurance either from an insurance protection basis or a regulatory basis. Therefore, the three RIAs were left without cover for their activities starting April 1, 2016.

On April 11, 2016, the Licensee met with the client, eleven days after the renewal date, and processed the renewals on April 12, 2016, twelve days after the renewal date. This left a gap in the three clients' coverages between April 1, 2016 and April 12, 2016.

Council noted that only after a change was required in one of the licences and the ICM staff noted the date of April 12, 2016, did the Licensee try to backdate the coverage to April 1, 2016. This did not fix the RIA's regulatory violation or continuous coverage issues.

Council concluded that the Licensee had violated s. 2 Competence, s. 3 Quality of Service, s. 4 Advising Clients, and s. 7 Manner of Service of the General Insurance Agent Code of Conduct.

PENALTY AND FINAL DECISION

Council's Decision dated November 10, 2017, was delivered by registered mail to the Licensee on November 14, 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) and (d) of *the Act* and section 7 (1) of Regulation 227/91, the following penalties are imposed on the Licensee, namely:

1. The Licensee be fined \$1,000.00 and assessed partial investigation costs of \$600.00.

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

The Decision is therefore final. In accordance with Council's determination that publication of its Decisions is 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 the 8th day of December, 2017.