

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

Upon receipt of an agent licence termination letter from the Managing Partner of the Former Licensee’s sponsoring agency (“Former Agency”) advising the Council of issues of concern with respect to agent activity, 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 with opportunities to make submissions.

On March 1, 2017, during a meeting of the Council, the evidence compiled during the investigation was presented and 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 neglect her duty to clients resulting in gaps in coverage?
2. Did the Former Licensee make false statements to clients with respect to their coverage?
3. Did the Former Licensee fail to respond to the Council with respect to these allegations in points 1 and 2?
4. Is the Former Licensee suitable to hold a licence and/or governable?

FACTS AND EVIDENCE

1. On November 30, 2016, the Managing Partner of the Former Licensee's Former Agency submitted a letter outlining compliance concerns resulting from an internal investigation of client accounts handled by the Former Licensee. These events occurred in August 2016 and September 2016.

Insured A

2. Insured A had an August 12, 2016 expiring Insurer A insurance policy. On August 16, 2016, the insured signed an application for coverage with Insurer B. The application was submitted to Insurer B on or about October 21, 2016, with the underwriter binding cover as of that date.

Insurer B Information

3. On October 21, 2016, Insurer B received the application from the Former Licensee. The effective date of the application was August 12, 2016. Following the receipt of the application, the insurer tried to verify whether the wood heating unit met all underwriting requirements, and subsequently had been dealing with another of the Former Agency's agents. On November 18, 2016, the insurer requested the removal of the wood unit within 30 days. In its response to the Council, dated December 22, 2016, the insurer advised it would be issuing the policy with an effective date of August 12, 2016.
4. Insurer B's Regional Manager Branch Operations noted in his email of January 11, 2017, that the binding authority (of the Former Licensee) had been breached twice: once in not immediately submitting the application on completion, and second, by not submitting a WETT inspection with the application.
5. Insurer B chose to have the Former Licensee submit the application for review and not refuse it, and to allow the opportunity for a WETT inspection to be completed.

Insured B

6. Insured B had a policy expiring August 31, 2016 with Insurer C. The insured was provided with a quote for homeowner's insurance through Insurer D on August 18, 2016. Starting August 30, 2016, the Former Licensee worked with Insured B to obtain application details. On September 2, 2016, the Former Licensee advised that she had almost bound the policy and required the description from the Insurer C policy. On September 8, 2016, the client asked for confirmation that the other policy had been cancelled. The Former Licensee confirmed that the other policy had been cancelled on September 9, 2016, and that the new policy should arrive the following week. On September 22, 2016, the client emailed that the policy had not arrived and asked to add coverage for a bass clarinet. The Former Licensee advised that the Former Agency's policy had not arrived yet, but she would go to the portal and print a copy, if possible. On October 6, 2016, the client contacted the Former Licensee advising that the premium had not been deducted from the bank account and no policy had been received.

7. The Former Agency had no record of a signed application on file and no record that a request for insurance had been made by email, or on the portal with Insurer D. The Former Licensee emailed documentation to Insured B on October 7, 2016, advising that a policy was being issued. This was not so. The Former Agency contacted Insured B and bound coverage with Insurer D on November 4, 2016 – after the Former Licensee’s termination.

Insurer C cancellation

8. On September 9, 2016, the Former Licensee requested cancellation of the policy effective August 31, 2016, based on a Release of Interest form signed by the Insured B. The policy was cancelled flat by the insurer.

Insurer D Information

9. On November 4, 2016, coverage was bound including cover for two scheduled articles: an engagement ring and a clarinet, with the paper work for the new policy printed by Insurer D and mailed to the customer on November 5, 2016.

Insured C

10. Insured C signed an application on September 12, 2016, for an Insurer E policy to be effective September 12, 2016. The application showed that the previous policy with Insurer F had an expiry date of August 12, 2017.
11. Insured C signed a cancellation letter for the Insurer F policy, dated September 12, 2016, for an effective date of August 12, 2016. A letter was prepared by the Former Licensee and addressed To Whom It May Concern, noting that coverage had been placed through the Former Agency, the renewal documents were being returned for a flat cancellation, and if there was any outstanding premium due to the recipient brokerage, it should be communicated to the Former Agency.

Insurer E Information

12. The application was received by Insurer E on September 12, 2016 at 15:46 pm. The standard premium was charged. There was no mention of back-dating the policy on the application or any correspondence from the Former Licensee regarding back-dating. The request to bind coverage was effective September 12, 2016.
13. While it is not the policy of Insurer E to backdate cover, the ability to bind is available in the underwriting guidelines where the risk is habitational and rates for the coverage are available, subject to eligibility and underwriting guidelines. However, the insurer must be notified within 5 working days after binding, and written evidence of the binder must be submitted.
14. With respect to contents at the Insured C's second location, there was no request on the application for contents, nor a charge made. Therefore, there was no cover for contents, although it would have been available.

Insurer F Information – Policy expiring August 12, 2017

15. On December 19, 2016, Insurer F advised the Council that the policy remained in force with another agency, not the Former Licensee's Agency, and there was no correspondence on file from the Former Agency. Monthly automatic payments were being drawn from the Insured C.

Failure to respond to Council's requests

16. A letter was mailed to the Former Licensee on January 6, 2017, outlining the issues brought to the attention of the Council by the Former Agency. When there was no response in the required timeframe, a second letter was mailed on January 27, 2017. This second letter provided a deadline to respond to the Council by February 10, 2017. The Council received no reply to this letter.

ANALYSIS

Insured A – Insured A had an Insurer A policy renewing August 12, 2016. On August 12, 2016, Insured A signed the application for a policy with Insurer B. It was not received by Insurer B, until October 21, 2016. The Former Licensee's binding authority did not cover that period and no binder was issued.

Insured B – Insured B had an Insurer C policy expiring on August 31, 2016. Insurer C cancelled the renewal flat on the basis of a submitted release form sent to the carrier on September 9, 2016. On September 9, 2016, the Former Licensee confirmed that this policy had been cancelled and a new policy would arrive for Insured B the following week. Following an enquiry on October 6, 2016, from Insured B, the Former Licensee confirmed on October 7, 2016 that the policy was being issued. It was not until November 4, 2016 that an application was submitted via the Insurer D portal and the policy issued.

Insured C – Insured C had, and continued to have, an Insurer F policy in place with automatic monthly payments for the premium. The renewal date was August 12, 2016. On September 12, 2016, Insured C signed a cancellation showing a cancellation date of August 12, 2016. On September 16, 2016, a new application was signed for Insurer E with an effective date of September 12, 2016. When submitted to Insurer E there was no arrangement with regard to backdating the cover to avoid a gap. Cover for contents at a second location was not requested.

In the cases of Insured A and Insured B, the Former Licensee failed to secure coverage for clients, thereby leaving gaps in coverage, and exceeding her binding authority. The possibility of future uninsured claims (e.g. liability) continues to exist. With respect to the Insured C file, two concurrent policies were in place effective September 12, 2016.

Council concluded that the Former Licensee was unsuitable to hold an agent licence based on her failure to provide advice and coverage as requested by clients. Failure to provide the coverage as required in time, or to secure backdated coverage, placed the clients in jeopardy during the periods when gaps existed and for possible future claims. She provided assurances that coverage had been placed and that documents would follow when she had not placed policies, and she

failed to forward cancellation documents when signed by the client to cancel previous policies, resulting in concurrent policies and payments for one client.

The Former Agent in her actions violated section 375(1) (e) of *the Act*, and s. 1 Integrity, s. 2 Competence, s. 3 Quality of Service, and s. 10 Conduct Towards Others of the *Code of Conduct*. Thus, the Council concluded that the Former Agent was unsuitable to hold a licence. As the Former Agent failed to respond to the Council's requests, it expressed concerns with governability.

PENALTY AND FINAL DECISION

Council's Decision dated November 10, 2017, was delivered by registered mail to the Former Licensee on November 28, 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 penalties are imposed on the 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 that she may request an Appeal to dispute Council's determinations and its penalty/sanction. The Former Licensee expressly declined that 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 21st day of December, 2017.