

This disciplinary Decision consists of the Decision of the Life Insurance Council of Manitoba ("Council") dated March 21, 2017, and a summary of the subsequent Appeal to The Insurance Agents' and Adjusters' Licensing Appeal Board (the "Appeal Board"), where the Appeal Board dismissed the Appellant Steve Cancilla's appeal on October 11, 2017.

DECISION of the LIFE INSURANCE COUNCIL OF MANITOBA ("Council")

Respecting

STEVE CANCELLA

("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 information received by Council an investigation was conducted pursuant to sections 375(1) and 396.1(7)(c) of the *Act*, and sections 7(2)(e) and 7(4)(b) 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 (the "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.

By its Intended Decision dated November 9, 2016, Council determined, on a preliminary basis, that the Licensee had committed the following violations, namely:

1. Of section 13(1)(a) of the *Licensing Rules* by failing to complete his annual continuing education requirements;
2. He breached section 375(1)(a) of the *Act* and section 9 of the *Code of Conduct* in misrepresenting to Council that he had completed his mandatory continuing education requirements; and
3. The Licensee violated section 4 of the *Code of Conduct* in failing to complete his mandatory continuing education.

Accordingly, based on these violations and pursuant to sections 375(1.1)(c) and (d) of the *Act* and section 7(1) of *Regulation 227/91*, Council's Intended Decision contemplated an Order that:

1. The Licensee be fined \$3,500.00 and assessed partial investigation costs of \$1,000.00.

The Licensee subsequently exercised his right to dispute Council's Intended Decision and to request a hearing before Council. The hearing occurred on January 25, 2017. At that time, the Licensee, who was not represented by counsel, made representations. After the hearing was adjourned, Council carefully reviewed the remarks made by the Licensee.

ISSUE

Has the Licensee provided sufficient particulars, through evidence or argument, to show why the Intended Decision should not be implemented, either in relation to any of the violations which were determined on a preliminary basis to have occurred, or with respect to the contemplated Order?

BACKGROUND

To renew his life, and accident and sickness licences, and in accordance with section 13(a) of the *Licensing Rules*, the Licensee was required to have annually completed fifteen (15) life and/or accident and sickness continuing education credits ("CECs") within the period of June 1 – May 31 that were accredited by Council.

In completing his renewal applications dated May 29, 2015 and May 31, 2016, the Licensee falsely declared that he had met Council's continuing education requirements. In reliance on these representations by the Licensee, his licences were renewed.

On a subsequent audit and on further investigation it was revealed that the Licensee had completed only three (3) of his mandated 15 CECs for the 2015 renewal and no CECs for his 2016 renewal. The result was a deficit of 27 CECs over the two year period.

The Licensee further misrepresented that he had completed nine (9) courses through two separate providers over that two year period.

The investigation revealed that there was in fact no record of the Licensee registering for, accessing or completing eight (8) of the courses that he reported to have completed in the 2015 and 2016 renewals. Two of the courses he claimed to have completed in 2016 had not been available since 2009. And in fact, despite claiming otherwise, there had been no technical issues in the Licensee being able to view his online CEC information. The Licensee's licences would not have been renewed in 2015 or 2016 but for his

misrepresentation to Council that he had completed his necessary continuing education requirements.

By email dated July 15, 2016, Council provided the Licensee with a summary of his false reporting regarding his CECs in 2015 and 2016. In his email response of August 18, 2016, the Licensee advised Council:

- (a) regarding some of the course work he claimed to have completed, that he had in fact never re-scheduled the exam due to personal and legal reasons and that he had erred in thinking that completion of the course material was sufficient; and
- (b) with respect to course work through another course provider, he acknowledged misrepresenting that he had completed some of it, he asserted that he was not able to log into the provider website. He in effect acknowledged guessing about courses that he had “taken” in the past and that he could not prove that he was right in connection with the dispute with the course provider about the missing courses.

The compilation of excuses given by the Licensee is revealing. He left his renewal to the last minute. He looked for emails which he said confirmed he had registered for courses. He said he erred in thinking he completed the course work. He said he studied for one course but never did the exam.

There is no question and the Licensee acknowledged at the hearing of January 25, 2017, that he did not complete his mandatory continuing education requirements, that he was dishonest about this, both in communications with staff and in his renewal applications, and that he was wrong to act as he did in these respects. This was exacerbated by his rudeness to staff during the investigation. These were all serious matters. There is no issue that the Licensee has breached statutory and ethical duties. The only issue is the appropriate sanction.

For 12 years, after first obtaining his licences, the Licensee had complied with all regulatory requirements until 2012. Then, that year the Licensee experienced a terrible personal loss. To protect the privacy of the Licensee, this Decision will not further expand on that matter. The difficulty that Council has is that while naturally sympathetic to the Licensee by reason of his circumstances, rules and regulations must be followed, even by those in distress, to ensure the public is protected. And the loss occurred a substantial period of time before the infractions which are before us.

Further complicating matters is the Licensee’s financial situation, arising in part at least from the loss previously alluded to and its aftermath. The penalty stated in the Intended Decision would, he submitted (with documentation which supported his assertion), cause him real financial hardship. The Licensee did appear to Council to be genuinely remorseful. The Licensee did appear to appreciate the seriousness of what he did and the precariousness of his situation.

Though what the Licensee did is serious, and though a serious penalty is called for, Council does not want by reason of the amount of the fine it imposes to be the cause of the Licensee being unable to recover from his situation. Council in that context was encouraged to learn that the Licensee is now with a significant and reputable business. It is for these reasons and not because its view of the gravity of the matter has altered that Council has determined that the fine payable by the Licensee shall be in the sum of \$1,500.00 and that he shall also pay costs of \$1,000.00.

COUNCIL'S DECISION AND ORDER

Council concluded that the following violations have occurred:

As to the Act:

Section 375(1)(a) – Misrepresentation and dishonesty in connection with mandatory continuing education requirements.

As to *Licencing Rule* 13(1)(a) – Failing to accumulate the required number of continuing education credit hours.

As to the Code:

Section 4 – Professionalism – Education – Failing to complete annual continuing education requirements and in particular act with honesty and integrity.

Section 9 – Dealing with the Insurance Council of Manitoba – Failing to act honestly, with integrity toward, and actually misleading Council.

COUNCIL'S PENALTY AND FINAL DECISION

Having regard to the determination of the violations listed above, and pursuant to Council's power to impose disciplinary action pursuant to sections 375(1.1)(c) and (d) of the *Act* and section 7(1) of *Regulation 227/91*, Council imposed the following penalty on the Licensee, namely:

1. The Licensee is hereby fined the sum of \$1,500.00; and
2. The Licensee is hereby assessed investigation costs of \$1,000.00.

SUMMARY OF THE DECISION OF THE INSURANCE AGENTS' AND ADJUSTERS' LICENSING APPEAL BOARD, OCTOBER 11, 2017

The Licensee/Appellant appealed Council's Decision to the Insurance Agents' and Adjusters' Licensing Appeal Board (the "Appeal Board").

The Appeal, which by virtue of the *Act* was conducted as a fresh hearing, was heard by the Appeal Board on June 26, 2017. The Appellant was not licensed on the date of the Appeal.

The Appellant did not appear at the hearing on June 26, 2017. He had sent a letter to the Coordinator for the Appeal Board at 8:45 a.m. on the morning of June 26, 2017 indicating he would not be attending the Appeal hearing and that he would forfeit his insurance licences and would not be practicing anymore.

The Decision of the Appeal Board of October 11, 2017 states that upon hearing submissions of counsel for the Insurance Council, the Appeal Board dismissed the Appeal, ordered a fine of \$1,500.00 be maintained, and increased the investigation costs to \$2,850.00.

Council's Decision and the summary of the Appeal Board's Decision in this case are published in accordance with sections 7.2(1) and 7.2(2) of *Regulation 227/91*.

Dated in Winnipeg, Manitoba on the 13th day of February 2018.