DECISION

of the

GENERAL INSURANCE COUNCIL OF MANITOBA

("Council")

Respecting

ROSS ARISS

("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 the receipt of a written complaint from an Insurer in which it was alleged that the Licensee had failed to submit the collected premiums for a hail insurance policy after several requests by the Insurer, an investigation was conducted pursuant to section 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*. During the investigation, the Licensee was provided an opportunity to make submissions.

On January 18, 2017, during a meeting of Council, the evidence compiled during the investigation was presented and reviewed. By its Intended Decision dated July 27, 2017, Council determined, on a preliminary basis, that the Licensee had violated section 375(1)(c) and section 393 of the *Act*.

Accordingly, based on these violations and pursuant to sections 375(1) and 375(1.1)(c)(d) of the *Act*, and section 7(2)(e) of *Regulation 227/91*, Council's Intended Decision contemplated an Order that:

1. The Licensee be fined $500.00 and assessed partial investigation costs of $400.00.

The Licensee subsequently exercised his right to dispute Council's Intended Decision and to request a hearing before Council. The hearing occurred on February 28, 2018. 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, as well as, the material that it had previously reviewed in coming to its Intended Decision.

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

On June 8, 2016, the Licensee assisted an Insured in submitting a crop hail insurance application to the Insurer. The policy took effect June 9, 2016. The total premium amount was $4,591.00.

The Insured presented two hail claims that year under the Insurer's policy, on July 4, 2016 and on August 15, 2016. Both claims were paid.

The Licensee was contractually bound by his arrangements with the Insurer to pay its premium on or before August 15, 2016. He did not do so. Despite the Insurer sending him an agency statement before August 15, 2016, and despite several requests by phone beginning in September, 2016, the Licensee did not pay the Insurer until he arranged for delivery of a cheque in the sum of $4,242.08 on or about December 19, 2016. This was within a few days of the Licensee having received notice from the Insurer by registered mail. The Insurer letter was delivered on December 14, 2016. It demanded the sum of $4,040.08, being the amount of the premium less the Licensee's commission. The Insurer threatened to hand the matter over to a collection agency if the net premium was not paid.

During the hearing of February 28, 2018, the Licensee testified that the amount he sent ($4,242.08) included interest at the rate of 5% per annum from the date the cheque was due, which interest rate he said was industry practice. By that measure, he included an entire year's interest rather than interest for four months. The demand by the Insurer in its letter of December 14, 2016, specified that it would be assessing interest at the rate of 1.5% per month beginning November 1, 2016.

The amount of the cheque the Licensee caused to be delivered, and his explanation of how he arrived at its amount, make plain that he was still keeping the commission, despite by his late payment having forfeited his right to receive one.

The Licensee also testified that in 2016 he assisted approximately 30 farmers in applications for hail crop insurance. Only the Insured's policy was with the Insurer. Other underwriters required their premiums to be paid by October 1. The Insurer was thus an outlier in this respect. But, as stated earlier, the Licensee was sent a statement by the Insurer before August 15, 2016, which should have prompted payment by him.

The Licensee did not have a separate bank account for trust funds, such as the premiums for hail insurance policies. He explained that he had been very busy in the summer of 2016, for various reasons, and he had and has no colleagues or assistants in his office. He works alone.

He persisted in his testimony with his previous statement that he had sent a cheque, using Canada Post, at the prescribed time (presumably before August 15, 2016) and that it must have gone astray.

He asserted that he regretted his error in not sending a substitute cheque more promptly; that it would not happen again; that he had improved his diary system; that having a segregated account for trust funds was for him perhaps "do-able"; and that he never acted with fraudulent intent.

DISCUSSION AND ANALYSIS

It must be said at the outset that though the complainant did use the word "fraudulent" in its letter of complaint, Council never considered that the Licensee had acted fraudulently. In its Intended Decision it never suggested fraud of any kind on the part of the Licensee.

But the money the Licensee received from the Insured in payment of the premium for the Insured's hail crop insurance policy was subject to a trust. The Licensee owed a fiduciary duty to the Insurer in respect of that money. It is indisputable that the Licensee breached that duty. Council accepts that the Licensee was busy. But trust obligations must receive priority. It was unclear to Council that the Licensee appreciated this.

The Licensee presented no ledger or cheque stub or any evidence whatsoever that he had issued a cheque on or before the due date of August 15, 2016. If he had sent a cheque before that date, the fact that the Licensee was very busy would not be material. Canada Post's efficiency would be unaffected by the Licensee's activities. But Council makes no finding of dishonesty on this point.

However, once the Insurer advised the Licensee – the first of several occasions was in September, 2016 – that it had not received the premium payment, the Licensee's responsibility was to ensure payment forthwith, no matter what his other pursuits. That he disregarded several reminders, requests and demands was irresponsible. Likewise, with respect to his late responses to Council during the course of its investigation.

In summary, the Licensee's evidence at the Show Cause Hearing of February 28, 2018, only reinforced the irrefutable evidence that the Licensee was guilty of professional misconduct in this matter.

DECISION AND ORDER

Council concluded that the Licensee violated section 375(1)(c) and section 393 of the *Act*.

PENALTY AND FINAL DECISION

Council's Decision dated March 7, 2018, was delivered by registered mail to the Licensee on March 8, 2018. 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 (2) (e) of Regulation 227/91, the following penalties are imposed on the Licensee, namely:

1. The Licensee is hereby fined the sum of $500.00; and
2. The Licensee is hereby assessed investigation costs of $400.00.

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 did not to pursue a statutory Appeal, thus, accepting 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), (2) and (3) of *Regulation 227/91*.

Dated in Winnipeg, Manitoba on the 30th day of March, 2018.