

DECISION
of the
LIFE INSURANCE COUNCIL OF MANITOBA
(“Council”)
Respecting
MARIO FRANCELLA
(“Former 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)(e) of the *Act* and Section 7(2)(e) of *Regulation 227/91*. The purpose of the investigation was to determine whether the Former Licensee’s activity violated the *Act*, its *Regulations* and/or the Life Insurance and Accident and Sickness Agent’s Code of Conduct (“*Code of Conduct*”).

During the investigation the Former Licensee was notified of the information submitted to Council and given an opportunity to make submissions.

On April 19, 2018, during a meeting of Council, the information and evidence compiled during the investigation was presented. Upon assessment of the information and evidence, Council determined its intended decision. Pursuant to Sections 375(1) and 375(1.1) of the *Act* and *Regulation 227/91* the Council hereby renders its Decision and corresponding reasons.

ISSUES

1. In his role as Regional Manager, did the Former Licensee violate Section 375(1)(a) and (e), misrepresentation, deceit or dishonesty, incompetence and untrustworthiness, of the *Act*, by encouraging an unlicensed individual (“Individual A”), to sell insurance products?
2. Did the Former Licensee, place his own interests ahead of the client’s interest by allowing Individual A to sell insurance products to increase sales within his region, thus violating the Section 4 – Professionalism - Fair Practices, of the *Code of Conduct*?

3. Did the Former Licensee breach prospective purchasers' privacy by allowing Individual A to go on sales calls with licensed agents and speak with clients to obtain information, thereby violating Section 5 – Confidentiality, of the *Code of Conduct*?

FACTS & EVIDENCE

1. The Former Licensee, who is a resident of Ontario, first applied for Life and Accident and Sickness licences by way of a licensing application dated June 29, 2017.
2. The Former Licensee's licenses were issued on August 29, 2017; he was sponsored at that time by Insurer A.
3. At the relevant times, the Former Licensee was a Regional Manager for Insurer A, and his Manitoba sales team included District Leader, Agent A, and a number of independent sales representatives.
4. On March 27, 2017, Individual A signed an Independent Sales Representative Agreement with Insurer A. Individual A was unsuccessful in his attempts to become licensed and Insurer A terminated their contract with Individual A on July 18, 2017.
5. On October 19, 2017, Council received a Notice of Termination with cause from Insurer A, terminating their contract with Agent A. Insurer A alleged that Agent A allowed Individual A to provide field training and in-office training to his sales team. An investigation was opened regarding Agent A, and documents were requested from Insurer A.
6. On January 11, 2018, Council received a copy of a termination letter from Insurer A to the Former Licensee, dated December 1, 2017 which indicated the Former Licensee:
 - a. Failed to comply with Insurer A's requirements regarding sales activity of unlicensed persons under your authority.
7. Included with the termination letter, Insurer A provided Council with copies of text messages between the Former Licensee and Individual A.
8. Text messages dated July 13, 2017 to and including September 29, 2017 between the Former Licensee and Individual A, whose contract with Insurer A was terminated on July 19, 2017, indicated:
 - a. Individual A was closing sales for licensed agents.
 - b. The Former Licensee encouraged Individual A to continue closing sales.

9. By letter dated January 30, 2018, Insurer A provided Council with transcribed telephone interviews with Individual A, four Sales Representatives, and a letter from a former agent, which together indicated:
 - a. The Former Licensee was aware that Individual A was unlicensed.
 - b. Individual A provided in-field training which included:
 - i. Sales presentations of Company products to potential clients.
 - ii. Answering questions regarding sales.
 - iii. Assisted in closing sales.
 - c. The Former Licensee encouraged Individual A to sell as the team's sales increased significantly while Individual A was in-field during the months of July and August 2017.
10. By email dated February 2, 2018, the Former Licensee provided Council his "*Statement of Accounts*". In his statement, the Former Licensee outlined that:
 - a. Individual A had advised him of his very large network needing insurance, and that they together devised a plan to keep Individual A engaged with activities until he could successfully write his licensing exam.
 - b. He had suggested to Individual A that Agent A could compensate him for acting as a referral source for licensed agents on Agent A's team by way of gift card as a referral fee, should Agent A choose to do so.
 - c. He had informed Individual A to be cautious of what he does and says on social media and to not mention that Individual A is closing clients in any way, and had also requested Agent A to remind Individual A of same.
 - d. He did not reside in Winnipeg, and was uninformed of how Agent A's appointments and team trainings were set up or conducted; he advised that Agent A had reassured him that Individual A was always accompanied by a licensed agent who communicated products and closed the deal on the appointments.
11. On April 9, 2018, Insurer A provided Council with a package of information containing the following: Insurer A's notes of an interview conducted with the Former Licensee on November 14, 2017, the Former Licensee's written statement he entitled "My Statement of Accounts" and a letter dated November 21, 2017 from their former Sales Representative Agent B.

- a. Insurer A's notes of the November 14, 2017 interview with the Former Licensee indicated:
 - i. The Former Licensee was not concerned with Individual A attending sales calls with licensed agents.
 - ii. The Former Licensee was aware that Individual A did not have a contractual role with Insurer A.
 - iii. It hadn't crossed the Former Licensee's mind that Individual A would be exposed to confidential client information and acknowledged this may have been the Former Licensee's error of overlooking the privacy issue.
 - iv. The Former Licensee did not consult with compliance, the Former Licensee's manager or administration regarding Individual A attending sales calls and the possible privacy breach.
 - v. The Former Licensee had no clue about compensation for Individual A for helping the region with sales as he never had a talk about it.
 - vi. As compensation, the Former Licensee *"mentioned to Agent A that it's up to Agent A if he chooses to give Individual A a gift card for his help. No amounts were discussed an no other specifics were discussed either. He [the Former Licensee] left it up to Agent A."*
- b. The Former Licensee's written statement to Insurer A entitled "My Statement of Accounts" and dated November 14, 2017 by the interviewer. This statement was identical to the statement the Former Licensee provided to Council in his email of February 2, 2018.
- c. A letter dated November 21, 2017, from a former Sales Representative, Agent B, indicating to Insurer A that the Former Licensee had told Agent B that he was okay with Individual A making sales from his warm market and getting agents to sign the paperwork. Further the letter indicated that Agent B had formed the impression that the Former Licensee wished Agent B to lie for him in discussions with Insurer A's compliance.

ANALYSIS

Section 375(1)(a) of *the Act*, prohibits misrepresentation, deceit or dishonesty, and Section 375(1)(e) indicates that a holder or former holder of a license violates the *Act* if they have demonstrated incompetency or untrustworthiness.

Section 4 – Professionalism – Fair Practice, of the Code of Conduct, states an agent must act in good faith at all times. He or she must acquire an appropriate level of knowledge relating to his or her particular business and meet professional ethical standards. He or she must act with honesty, integrity and must not engage in practices that mislead the client or place the interest of others ahead of the client's interests.

Section 5 – Confidentiality, of the Code of Conduct, indicates that agents must protect clients' personal information by complying with applicable law and by taking all reasonable steps to ensure that personal information is not divulged and is only used for the purpose for which it is collected. The damage to the client is the same regardless of whether personal information is divulged to someone willfully or as a result of careless handling of files.

The Former Licensee was aware that Individual A was unlicensed and was attending sales calls with licensed agents and that Individual A would be privy to confidential client information. The Former Licensee approved and encouraged Individual A to speak with clients to obtain personal information and to assist with closing sales to increase the region's sales. Individual A was an unlicensed individual who has never held a licence, and was not subject to the *Act*, Rules, Regulations or *Code of Conduct* provisions to protect clients' privacy. As Individual A's Sales Agreement with Insurer A was terminated in July 2017, Individual A was not subject to Insurer A's confidentiality agreements. By allowing Individual A to attend sales calls with licensed agents, the Former Licensee did not protect the prospective purchasers' interests and privacy, and confidential information.

In the course of an agent's work, extensive information concerning the personal and financial affairs of policyowners and prospective purchasers must be obtained. This places an agent in a position of trust and responsibility. It is unethical to betray this trust in any respect and by doing so, the Former Licensee violated Section 375(1)(a) and (e) misrepresentation, deceit and/or dishonesty and untrustworthiness of the *Act* and Section 4 – Professionalism and Section 5 – Confidentiality, in the *Code of Conduct*.

Pursuant to Section 375(e), incompetency and untrustworthiness of *the Act*, Council found that the Former Licensee provided conflicting statements and determined that the Former Licensee was not forthcoming in his response. The Former Licensee indicated that he did not live in Winnipeg and he was uninformed of how the appointments were being set up, however he approved the request to send Individual A on sales calls with licensed agents. The Former Licensee demonstrated incompetence when he did not consult or disclose to Insurer A's compliance department, his manager or administration prior to approving the request to allow Individual A to accompany a licensed sales agent on sales calls and did not question or investigate the substantial growth in sales during the months of July and August.

Based on the information and evidence, Council concluded that the Licensee violated Sections 375(1)(a) and (e) of the *Act* and Sections 4 and 5 of the *Code of Conduct* and that disciplinary action is warranted.

PENALTY AND FINAL DECISION

Council's Decision dated July 4, 2018 was delivered to the Former Licensee by registered mail on July 9, 2018. The Decision outlined the foregoing background, analysis, and conclusions on a preliminary basis.

Pursuant to section 375(1.1)(c)(d), 396.1(7)(c)(d)(e), of the *Act* and section 7(1), 7(2)(a)(b)(e) and 7(4)(b), of *Regulation 227/91*; and sections 4(a) and 10(1)(a) of the *Life Insurance Agents and Accident and Sickness Insurance Agents Licensing Rules*, Council concludes:

1. That the Former Licensee be fined \$1,000.00 and assessed partial investigation costs of \$1000.00.
2. That any application for a new licence be brought to Council for a review as to Suitability.
3. That if a licence would be issued in the future, that the Former Licensee would be required as follows:
 - a. To complete the Life License Qualification Program (LLQP) Ethics and Professional Practice module and successfully pass the written exam.
 - b. To be under supervision for a continuous one-year period with a supervisor who must be approved by Council and;
 - c. That Council be provided with written confirmation from a new Sponsor that they have been provided a copy of this Decision and wish to continue Sponsorship.

Pursuant to section 389.0.1(1) of the *Act*, the Former Licensee had the right to appeal this Decision within twenty-one (21) days of receipt. The Former Licensee was advised of this right in the Decision and was provided with the Notice of Appeal form, in accordance with section 389.0.1(2) of the *Act*. As an appeal was not requested in this matter, this Decision of Council is final.

In accordance with Council's determination that publication of its Decisions are in the public interest, this Decision is published, in accordance with sections 7.1(1) and 7.1(2) of *Regulation 227/91*.

Dated in Winnipeg, Manitoba on the 21st day of August, 2018.