

DECISION
of the
LIFE INSURANCE COUNCIL OF MANITOBA
("Council")
Respecting
GEORGE COLEMAN
("Former Licensee")

INTRODUCTION

The Life Insurance Council of Manitoba ("Council") derives its authority from *The Insurance Act C.C.S.M. c. 140* (the "*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 complaint submitted to Council and given an opportunity to make submissions.

On March 21, 2018, during a meeting of Council, the evidence compiled during the investigation was presented. Upon review Council determined its intended decision. Pursuant to Sections 375(1) and 375(1.1) of the *Act* and *Regulation 227/91*, Council rendered its Intended Decision and corresponding reasons on May 1, 2018.

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

1. Of Sections 2, 3 and 7 of the Code of Conduct, by signing an application for insurance when he had not met the client (applicant), nor confirmed the identify of the client, nor ensured that the client had been fully informed prior to making a decision to apply for the policy in question.
2. Of Section 4 of the Code of Conduct, by failing to act professionally, in particular, that he had not acted honestly, fairly, and diligently when he had purported to have witnessed signatures he had not witnessed, and had purported to witness declarations when he had not done so.
3. Of Section 9 of the Code of Conduct, by responding to inquiries of Council in an evasive and misleading manner, thus failing to act with honesty and openness in the circumstances.

Accordingly, based on these violations and pursuant to Section 375(1.1)(c) and (d) of the Act, and Section 7(1) of *Regulation 227/91*, Council determined:

1. That the Former Licensee be fined \$250.00 and assessed partial investigation costs of \$250.00.

The Former Licensee subsequently exercised his right to dispute Council's intended decision and to request a hearing before Council. The hearing occurred on November 22, 2018. At that time, the Former Licensee, who was not represented by counsel, made representations. The hearing was adjourned to afford Council the opportunity to carefully consider the remarks made by the Former Licensee.

ISSUE

Has the Former 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

The Former Licensee obtained his Accident and Sickness license on April 6, 2016, and at all relevant times was sponsored by the Insurer.

On April 19, 2018, Council received a notice from the Insurer that the Former Licensee's sponsorship was terminated without cause. In the course of an investigation, on November 7, 2017 and November 21, 2017, the Insurer provided Council with the following information and documents:

- (a) A completed Accident and Sickness application ("the Application") they stated was signed by the policyholder and Former Licensee dated May 21, 2016.
- (b) A Completed Sales Representative Disclosure Customer Consent form dated May 21, 2016, which they indicated was signed by both the policyholder and the Former Licensee indicating that the Former Licensee had informed the policyholder of all conflicts of interest and that the Former Licensee had witnessed the signatures of the proposed insured on the application.
- (c) A statement dated July 27, 2017, written and signed by the policyholder, indicating that he had purchased the [Accident and Sickness] coverage from Agent Z, the Former Licensee's District Leader, and that Agent Z was the only agent present at the time of the sale.
- (d) Two signed statements provided by Agent Y, a former team member of the Former Licensee at the Insurer, dated June 16, 2017 and October 20,

2017, that indicated that Agent Y completed seven (7) Accident and Sickness applications with information provided by his District Leader without meeting or speaking with the clients.

In response to Council's inquiry regarding the Insurer's information as outlined above, the Former Licensee advised Council's Investigator by emails of November 11, 2017, December 1, 2017 and December 4, 2017, that:

- (a) *"At no time can I recall that Agent Z gave me this policy to sign."* (November 9, 2017)
- (b) *"The signature looks like mine. I cannot verify that the other writings on the document is [sic] mine however neither can I remember completing this form."* (December 1, 2017)
- (c) *"I cannot verify that all the writings on the form is [sic] my hand writing."* (December 4, 2017)
- (d) *"No I do not know whose writing it is."*(December 4, 2017)

By email of December 6, 2017, the Former Licensee responded to Council's inquiries whether: he was present at the signing of the Application; he had witnessed the policyholder sign the Application; there were any other agents present at the time of the sale. The Former Licensee responded that he could not recall.

By email dated December 8, 2017, Agent Y advised Council that the handwriting on the Application with the Former Licensee's signature does look like Agent Y's handwriting.

The Insurer provided Council with copies of applications completed and submitted by Agent Y and separate applications completed and submitted by the Former Licensee. There were notable differences in the handwriting within the customer information on the two sets of applications. Council concluded that the client information section of the application in question was not completed by the Former Licensee and that Agent Y was most likely the agent who completed that client information portion.

By emails dated November 23, 2017 and December 1, 2017, the Former Licensee's District Leader, Agent Z, responded to Council advising:

- (a) *"I had never given out a list of prospects, or potential clients to any of my agents to go and sign up."*
- (b) *"I have never given the Former Licensee a sale."*

DISCUSSION AND ANALYSIS

The essential purpose of an agent is to assist the client. To do that the agent must assess the needs and interests of the client and determine what product is suitable for the client's needs and interests. These fundamental and obvious principles are stated within the Code of Conduct in Sections 1 and 2.

If the agent never meets with or communicates in any way with the client, then the agent manifestly could never assess the client's needs or interests.

When an insurer or Council reviews an application for insurance and the associated documentation, and sees there the name of a particular agent, it is reasonable for the insurer or Council to infer that the agent who signed as witness had communicated with the client and had discussed with the client, among other things, the client's needs and interests. For an agent to sign an application for insurance and other associated documents as witness to the client's signature when the agent has never communicated with or met with the client is presumptively a breach by the agent of Sections 1 and 2 of the Code of Conduct. That is exactly what occurred here. The culpability of the Former Licensee was magnified in this case by his subsequent conduct, in particular his dealings with Council's investigator. Because, as explicitly stated in the Code of Conduct in Section 9: "And an agent must respond promptly and honestly, with full disclosure, to inquiries from the Insurance Council of Manitoba."

At the show cause hearing that he requested, the Former Licensee testified. He read to Council his letter of May 17, 2018 to the ICM investigator, and added a few other comments. The essence of his position was and is that while he may have been careless in signing the documents as he did, he did not intend to deceive anyone. Rather he relied on the direction and guidance of the person to whom he reported (Agent Y). That person asked him to sign. He trusted that person. So he signed.

It was wrong of the Former Licensee to sign the application and associated documents relating to the client. As indicated above, by doing so, anyone reading them would have believed that the Former Licensee had met with the client, assessed the needs of the client and been involved in the sale of the policies purchased by the client. None of these things occurred.

As a newly licenced agent, still in training, Council can understand how the Former Licensee came to sign the documents as he did. Council accepts the Former Licensee's explanation, though that explanation does not and could not be justification for him having done what he did.

Council also accepts that when the Former Licensee signed the forms he did not intend that anyone would be deceived. The Former Licensee's conduct was negligent rather than fraudulent. This of course is still a violation of Sections 1, 2 and 4 of the Code of Conduct.

The Former's Licensee's subsequent conduct is of even greater concern. Every Licensee has a duty to cooperate with an investigation by Council. So, when an investigator asks

questions of a Licensee, the Licensee's responses must be candid and clear, rather than evasive.

In this case, Council's investigator asked questions which were clearly aimed at discovering how it was that the Former Licensee's signature appeared on documents pertaining to the client's application. The Former Licensee's responses were unhelpful if not misleading.

The Former Licensee received a commission or a share of commission arising from the sale to the client of several policies. He testified at the Show Cause Hearing that at no point did he believe someone might have forged his signature on the associated applications and other documents connected to the sales. Indeed, it is difficult to discern a motive for anyone having done so. The Former Licensee's signature appeared on at least 15 pages related to this particular client's application. When first questioned about whether the signature on the client's application was that of the Former Licensee, the Former Licensee said that it "appeared to be". At the show cause hearing, the Former Licensee still appeared unable to acknowledge unequivocally that the signatures were his. This is problematic. It is one thing to sign a form in the circumstances outlined above through carelessness and mistaken reliance on a supervisor's direction. It is another to persist in suggesting that there is uncertainty about whether the signatures on the documents were in fact his when there can be no such uncertainty.

Thus, the Former Licensee's lack of candour in communications with Council's investigator continued to and through the Show Cause hearing itself.

DECISION AND ORDER

Council concluded that the following violations of the Code of Conduct had occurred, namely:

1. Of Sections 2, 3 and 7 of the Code of Conduct, by signing an application for insurance when he had not met the client (applicant), nor confirmed the identify of the client, nor ensured that the client had been fully informed prior to making a decision to apply for the policy in question.
2. Of Section 4 of the Code of Conduct, by failing to act professionally, in particular, that he had not acted honestly, fairly, and diligently when he had purported to have witnessed signatures he had not witnessed, and had purported to witness declarations when he had not done so.
3. Of Section 9 of the Code of Conduct, by responding to inquiries of Council in an evasive and misleading manner, thus failing to act with honesty and openness in the circumstances.

PENALTY AND FINAL DECISION

Council's Decision dated January 8, 2019 was delivered to the Former Licensee by registered mail on January 9, 2019. The Decision outlined the foregoing background, analysis, and conclusions on a preliminary basis.

Pursuant to sections 375(1.1)(c) and (d) of the *Act*, and Section 7(1) of *Regulation 227/91*, Council concludes:

1. The Former Licensee be and is hereby fined \$250.00 and assessed partial investigation costs of \$250.00.

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 will occur, in accordance with sections 7.1(1) and 7.1(2) of *Regulation 227/91*.

Dated in Winnipeg, Manitoba on the 21st day of February, 2019.