**DECISION**

**of the**

**GENERAL INSURANCE COUNCIL OF MANITOBA**

**("Council")**

**respecting**

**TONY (T.J.) McREDMOND ("Licensee")**

**as Operating Agent of**

**DONBAR AGENCY LIMITED O/A CROSSROADS INSURANCE ("Agency")**

## INTRODUCTION

The General Insurance Council of Manitoba (the "Council") derives its authority from *The Insurance Act* C.C.S.M. c. I40 (the "*Act*") and the *Insurance Councils Regulation 227/91*.

Council received a complaint from the Financial Institutions Regulation Branch ("FIRB") for investigation in the matter of possible violation of the *Act* by premium rebating. 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.* During the investigation, the Licensee was provided with opportunities to make a submission.

On November 8, 2018, 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 hereby renders its decision and corresponding reasons.

## ISSUES

1. Did the Agency rebate a portion of the policy premium on behalf of the Client as a means of dealing with poor advice and service in placing a policy by Letter of Brokerage?

## FACTS AND EVIDENCE

1. At all material times, the Licensee was the Operating Agent for the Agency.

2. The Client had an in-force policy with Insurer A effective January 4, 2017 - January 4, 2018 with Agency B. A 2018-2019 renewal was offered by Agency B for the insurer. The basis of the renewal was: Dwelling Building cover of $226,000.00, no ground water cover, no payment plan, and a premium payable of $798.00 plus tax.

3. The Client stated that he visited the Agency's office on December 15, 2017 and met with Licensee B who completed the homeowner questionnaire quote form. According to the Client, he received a quote of $550.00. The information was handed to Licensee C who made an adjustment for bi-level and determined that Insurer A provided the best price. The Client's current insurer and policy were not provided at that time but would be provided when the Client attended the office to review the quote.

4. Unsuccessful attempts to contact the Client were made by Licensee C on December 20, 2017, December 27, 2017, and December 29, 2017, asking for the current policy number and insurer.

5. On January 2, 2018, the Client visited the Agency's office where he met with Licensee C. She advised him that his existing policy did not have water damage coverage. The Client agreed to the addition of $5,000.00 in coverage, increasing the premium from $609.00 plus tax to $678.00 plus tax. The price was subject to a claims free discount and no break in coverage. This proposed policy provided Dwelling Building cover of $206,850.00, plus, ground water cover. The Client did not provide his current insurer information at that visit.

6. On January 3, 2018, when the Client returned to sign the application, homeowner check list and monthly pre-authorization payment form outlining the terms and conditions, Licensee C was presented with a copy of his current policy with Insurer A. She explained that the quote would be different as the quoting system provided unqualified discounts *(Note: the Client's mortgage was excluded from the quote, in addition to the new client discount.)* She explained that his rate would be his current rate plus the additional enhanced water coverage. The Client signed the application along with the monthly withdrawal authorization. The CSIO application had a handwritten notation with the current insurer details: Insurer A, policy number and expiry date. According to the Agency, the Client understood that the $678.00 quote was not guaranteed.

7. Licensee C confirmed that although the name of Insurer A could have been input into the quoting system, the premium would not be accurate in a broker takeover. The underwriter at Insurer A had advised her that there was no way to be accurate in the quote until processed by the insurer.

8. The Applied ezITV prepared by the Agency showed that there were four other insurers with pricing below the amount of the Insurer A's renewal: Insurer B at $712.00, Insurer C at $704.00, Insurer D with option A at $680.00 and option B at $718.00.

9. On January 10, 2018, Insurer A reviewed the Broker Takeover request and CSIO form received on January 8, 2018 from the Agency for an agency transfer effective January 4, 2018. The premium discrepancy between Agency B, the agency who formerly serviced

the policy, insurance renewal and the Agency quote was noted. The Agency was requested to confirm whether there was a mortgage and for a copy of the quote presented to the Client.

10. Insurer A received a request to amend to monthly pay from Agency billing with a signed Authorization Form and void cheque.

11. On January 17, 2018, Insurer A completed the Broker Takeover request. Based on the Broker of Record, as of January 17, 2018, the policy had a premium of $789.00, excluding taxes and the finance fee.

12. On January 18, 2018, Insurer A received the completed Water and Sewer Back-up Questionnaire. Based on the CSIO application, completed questionnaire, and confirmation from the Agency that the Client had a mortgage, Insurer A endorsed the policy effective renewal with a reduced building limit of $206,800.00 and addition of Ground Water cover. The subsequent endorsement with an additional premium of $41.00 was the net amount resulting from the addition of Ground Water coverage ($61.00) less the reduced dwelling building cover.

13. The new policy was downloaded to the Agency's BMS on January 21, 2018. Upon receipt of the policy, Licensee C reviewed the policy against the application and determined that the coverages were as requested, with a difference in the premium as expected. She did not contact the Client as there had been previous conversations with the Client outlining the fact that the premium would be higher than quoted.

14. The Client should have received his copy of the policy in the amount of $921.30 *($830.00 premium plus interest for preauthorized payments plus tax)* in the mail during the week of January 22, 2018.

15. On February 12, 2018, Licensee C left a voicemail for the Client, advising him of the premium and confirming monthly payments. She reminded him that the original quote had been lower as she had not been advised of the carrier at the time of the quote.

16. He returned the call on February 13, 2018 and was informed that his previous policy and replacing policy were issued by the same company, Insurer A, and the new business discount had been removed. Insurer A was unable to reduce the premium for the Agency's policy because that would be unfair practice for the previous agent. Licensee C reviewed the monthly withdrawal amounts, and the policy with him. The Client noted that he should have been provided with the policy based on the quote provided, or the policy provided should have been cancelled without penalty.

17. *The Insurance Act,* section 136.1(1) provides that where a policy differs from the application, the insured may reject the policy within two weeks of receiving the notice, and pay the prorated premium, subject to the minimum retained premium.

18. In an email to the investigator, dated August 14, 2018, Insurer A's Ombudsman stated that the insurer would have processed a pro-rated cancellation if there had been a request by the agent and/or insured.

19. On February 21, 2018, the Client contacted the Agency with the grievance that the premium was more than the quote of $678.00. After reviewing the circumstances again, Licensee C suggested that she would speak with the Agency's General Manager and the Residential Insurance Manager. Options were discussed: remarket the coverage, cancel Insurer A's policy and the Agency pay the cancellation fee; pay a portion of the difference ($50.00); or allow the Client to shop with another broker and cover the cancellation fees.

20. Licensee C contacted Insurer A's underwriter but was advised there was nothing that could be done as it would be an unfair practice. A pro-rata cancellation was not offered by Insurer A.

21. On February 22, 2018, the Client contacted Licensee B, the original agent he had spoken to, at the Agency and requested the difference in premiums be credited to the monthly payment, or his policy be remarketed to another insurer and the Agency pay the extra costs. Licensee B messaged Licensee C to discuss the second option. Licensee C noted the second option, *"wouldn't be worth him leaving* Insurer A *mid-term"*.

22. Licensee C contacted the Client to advise that Insurer A could not provide further discounts and provided him with the option of the Agency paying $50.00, a portion of the *"error"*. The Client was unhappy with this but would consider remarketing on renewal.

23. On February 27, 2018, the Client attended the office and requested the difference in premium. Licensee C left the decision with the Residential Insurance Manager.

24. On March 2, 2018, the Residential Insurance Manager contacted the Client and explained that the insurer would not reduce the premium for an insured during a broker takeover unless the cover had changed, as this would be deemed an unfair practice to the prejudice of the other agent. With no conclusion, the Residential Insurance Manager spoke with the General Manager and suggested paying the difference between the quote and policy premium. The difference was paid directly to the Client's account.

25. On March 5, 2018, the General Manager of the Agency emailed the Client confirming the discussion between the Residential Insurance Manager of the Agency and the Client on March 2, 2018. She stated that upon writing the policy, it was discovered that the Client had been an Insurer A Client and the premium had been adjusted. The Residential Insurance Manager had tried to communicate with the Client that the premium was higher for this reason. Other changes had also been made to the policy. The Residential Insurance Manager had contacted the Client to advise him by phone of the premium and pre-authorized premium withdrawals. An accounting of the activity was provided with a final total of $921.30, including annual financing fees.

26. In this March 5, 2018, email from the General Manager to the Client was a statement that management had decided to refund the difference in premium. On March 2, 2018, she had used the company credit card in her name and paid the insurer $164.16 which was directly applied to the Client's account. A copy of this payment and resulting new balance, as reflected by the Account Balance Change Advice, was included.

27. The Client replied thanking her for resolving the grievance.

28. On June 7, 2018, the Residential Insurance Manager received a call from Insurer A's Ombudsman advising that a complaint had been sent to FIRB noting that service charges had not been explained at the time the authorization had been signed. Additionally, there was the issue of rebating the $164.16 which was against the *Insurance Act.* The Residential Insurance Manager explained that the decision was to make the payment because the Client had not disclosed the previous carrier until the last minute and had been told that the quote could not be guaranteed. It was outlined that they had not rebated the Client to obtain new business; instead the Client indicated this was the only remedy he would accept.

## ANALYSIS

Licensees were aware that quotes provided by the portal were subject to variation based on the information provided. An Insurer A quote was provided based on the Client having current, valid insurance, with another insurer. When the Client completed the application, he was advised that the quote was $609.00 and was offered an enhanced water package in the amount of $5,000.00 for a total of $689.00 plus taxes.

Licensee C placed the policy knowing that the Client had a policy with Insurer A. At that time, Licensee C knew, or should have known, that the terms upon which the replacing policy would be issued would be similar to the expiring policy, in other words, she should have advised the Client of the consequences of signing a change of brokerage letter. With that knowledge, Licensee C should have confirmed the renewal pricing with the Client. As noted there was a $100.00 difference between her amended quote with reduced coverage and enhanced water coverage, and the 2018 renewal which the Client had received. The Client could have made a decision to proceed with the change of brokerage and remain with Insurer A, or there were four other quotes which Licensee C might have pursued at that time rather than place it with Insurer A if the only reason for the Client to move his business to the Agency was due to the reduced price. This information and options were not offered to the Client.

When Insurer A received and approved the application based on the previously offered renewal, including the mortgage, the premium was $789.00 plus tax. The insurer accepted the transfer of the policy to the Agency on that basis.

On or about January 21, 2018, the policy with a new premium of $830.00 plus tax was received by the Agency. This included Ground Water cover for which the Client had applied, and a reduction in the building based on the calculator and application submitted by the Agency. Licensee C advised that she compared the application with the policy and the coverage was as requested.

According to the Licensee and Licensee C, because the Client had been advised that the premium would not be that quoted, Licensee C did not contact him when the discrepancy was confirmed. This discrepancy of $141.00 ($830.00 - $689.00) warranted a discussion at that point to determine if the Client was prepared to accept the policy.

Between the date that the policy was issued and February 12, 2018, there was a period in which a prorated cancellation could have been requested by the Client or Licensee C, Insurer A said it could have been applied if either the agent or insured had requested the cancellation. Although Licensee C stated that Insurer A did not offer a prorated cancellation, it was not Insurer A's responsibility to make that proposal. Besides, the time in which this prorate cancellation might have been applied had already expired when Licensee C attempted to contact the Client.

The *Insurance Act* section 136.1, addresses when there are differences between the application and final policy, but the Client was not advised that he or the agency could reject the policy with a prorated premium for the time on risk within the allowable time.

In a discussion on or about February 21, 2018, the Agency offered the Client a different insurance policy or to remarket the policy on renewal to avoid a short rate penalty. The advice was to wait until renewal when the Agency could remarket his policy. A third option was to seek cover with another agent. Offers were made by the Agency to pay a portion of the premium.

On March 2, 2018, a credit of $164.16 was paid directly to the Client's Insurer A account by the Agency due to the difference in the quoted and actual policy premiums. Council considered in its review that according to the Licensee, this was the only time the Agency has taken this action.

Council considered whether providing quotes without obtaining all relevant underwriting information is in the best interest of the public, even if this is the expectation of the customer. Based on the complaint, it was the favourable price offered by the Agency that attracted the Client to move his business to the Agency. At the time of application, he was advised it would be $689.00 with the addition of ground water cover, $100.00 less than his current renewal.

Council discussed whether the means by which the Agency attempted to handle the discrepancy in the quote and premiums might be considered inducements if there had been an attempt to underquote new business for the purpose of obtaining the business, or as a rebate if the Agency paid the premiums after the policy was issued. While it could not make a determination in this file, it strongly cautioned the Agency against making future premium payments on behalf of the insureds, either directly to insureds or directly to insurers as both of these actions are violations of the *Insurance Act.*

A secondary issue with respect to the application of service charges and payment withdrawals was dismissed by the Council as the Client signed the application and authorization form, plus the withdrawals were out of the hands of the Agency with possible delays in this case due to the time required by the insurer to handle the transfer.

In his capacity as the Operating Agent, the Licensee is accountable for the actions of the Agency, and for insurance activities under his supervision and management. As the Operating Agent,

the Licensee is responsible ensure prudent procedures and practices governing the operation of the Agency are in force and followed. These procedures include the placement, maintenance and renewal of insurance coverage, and ensuring compliance with the *Act*, its Regulations, its Rules and the *Code of Conduct*.

Council determined that there were violations of the *Code of Conduct*: section 3 (Quality of Service) and section 4 (Advising Clients). Council believed that throughout the process of handling of this file, the service standards required of an agent/agency were not met. In covering the errors made during the quoting and placing of the Client's policy, the Agency attempted to fix the issue by providing the Client with a reduced premium to which the Client was not entitled.

## PENALTY AND DECISION

Council's Decision dated April 2, 2019, was delivered to the Licensee by registered mail on April 3, 2019. The Decision outlined the foregoing background, analysis and conclusions on a preliminary basis. Having regard to its initial determination that the foregoing violations had occurred, Council imposed the following penalty and sanction pursuant to section 375(1.1)(c) and (d) of *the Act* and section 7(1) and 7(2) of *Regulation 227/91*:

1. The Licensee be fined $750.00 and assessed partial investigation costs of $400.00.

Pursuant to section 389.0.1(1) of the *Act,* the Licensee had the right to appeal this Decision within twenty-one (21) days of receipt. The 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 **6th day of May, 2019**.