

DECISION
of the
GENERAL INSURANCE COUNCIL OF MANITOBA
(“Council”)
Respecting
VERNETTE RAE MCINTOSH
(“Former 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*.

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*, its *Licensing Rules* and/or the General Insurance 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 January 9, 2019, 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) and 375(1.1) of the *Act* and *Regulation 227/91*, the Council now renders its Decision and corresponding reasons.

ISSUES

1. Did the Former Licensee violate the *Act* and *Code of Conduct* by misappropriating, dealing dishonestly, or otherwise converting the Agency’s and/or the client(s) funds for her own purpose?

FACTS AND EVIDENCE

1. The Former Licensee was first licensed from October 18, 2007 to May 27, 2013.
2. The Former Licensee completed a new Individual General Agent Licence Application for a General Agent Level 2 licence on August 7, 2014.

3. On February 4, 2015, ICM's Licensing Department notified the Former Licensee that her General Insurance Agent Licence had been processed, authorizing her to act in Manitoba as a Level 2 Agent to transact the business of General Insurance and reminded her of the requirement to:
 - a. *"Maintain compliance with The Insurance Act, the General Insurance Agent Code of Conduct and the General Insurance Agents Licensing Rules."*
4. On February 22, 2017, the Licensing Department notified the Former Licensee that her Level 2 licence had been reclassified to Level 3 pursuant to section 5 of the *Licensing Rules*.
5. On October 25, 2018, the Operating Agent of the Agency completed and submitted to ICM's Licensing Department, the document entitled Termination Notice to the ICM. On the termination notice, the Operating Agent of the Agency had indicated the effective date of licence termination was October 6, 2018 and the reason for the termination was indicated as *"Misappropriation of the Agency's funds."* The Operating Agent of the Agency further stated on the termination notice that the *"Former Licensee's letter of resignation was accepted October 10, 2018."*
6. On November 15, 2018, the Operating Agent of the Agency provided Council with a copy of an email dated October 5, 2018 received by the Operating Agent of the Agency from the Former Licensee which indicated that the Former Licensee had used \$4,520.00 of the Agency's funds for her own purposes and would be resigning from her position.
7. On November 20, 2018, the Former Licensee indicated to Council that she had no desire to continue as an Insurance Broker and will not be seeking licensing approval now or in the future.
8. On November 21, 2018, the Former Licensee indicated to Council that:
 - a. *"My resignation email explains everything."*
 - b. *"All the monies were paid back to the Operating Agent of the Agency on October 29, 2018."*
 - c. *"My actions did not affect any of the clients or disrupt or alter any of their insurance coverage."*
9. On December 13, 2018, the Operating Agent of the Agency confirmed to Council that the Former Licensee's actions with regard to the Agency's funds, which were characterized at that time as delayed deposits, did not cause any defaulted payments to insurers, or any disruption of coverage for their clients.
10. No criminal charges were laid by the Agency.

ANALYSIS

Section 375(1)(a) of the *Act*, prohibits misrepresentation, fraud, 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 1 (Integrity) of the *Code of Conduct* states that agents or brokers shall discharge their duties to their clients, members of the public, fellow agents or brokers, and insurers with integrity. Misappropriation or dealing dishonestly with your client's money or other monies deemed to be held in trust by you is an example of conduct which does not meet this requirement.

The Former Licensee had admitted to not dealing honestly with the Agency's funds and used those funds for her own purpose, which is a violation of sections 375(1)(a) and (e) of the *Act* and section 1 (Integrity) of the *Code of Conduct*.

In determining the appropriate penalty, Council considered the mitigating factors that the Former Licensee had made full restitution to the Agency and that the Former Licensee would not be pursuing a Manitoba insurance licence in the future.

PENALTY AND FINAL DECISION

Council's Decision dated June 6, 2019 was delivered to the Former Licensee by registered mail on June 18, 2019. The Decision outlined the foregoing background, analysis, and conclusion on a preliminary basis. Having regards 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) of *Regulation 227/91*:

1. The Former Licensee be fined \$250.00 and assessed 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 Decision is published, in accordance with sections 7.1(1) and 7.1(2) of *Regulation 227/91*.

Dated in Winnipeg, Manitoba on the 11th day of July, 2019.