

DECISION
of the
GENERAL INSURANCE COUNCIL OF MANITOBA
(“Council”)
Respecting
MARK ALLEN RISTOLA (“Licensee”)
As Operating Agent of
LL RENAISSANCE INSURANCE BROKERAGE CANADA LIMITED (“Agency”)

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 Licensee’s activity violated the *Act*, its *Regulations*, the General Insurance Agent’s Licensing Rules (“*Licensing Rules*”), and/or the General Insurance Agent’s Code of Conduct (“*Code of Conduct*”). During the investigation the Licensee was notified of the information submitted to Council and given an opportunity to make submissions.

On October 24, 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 then 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 Licensee in his role as the Agency’s Operating Agent, violate the *Act* and/or *Code of Conduct* by allowing an unlicensed individual to act as an agent in Manitoba?

2. Did the Licensee make a material misrepresentation on his renewal application and falsely attest in the declarations?

FACTS AND EVIDENCE

1. During all material times, the Licensee was the Operating Agent in Manitoba and was responsible for the actions of the Agency, including ensuring that any representative of Agency, acting as an agent in Manitoba, held a current and valid licence in Manitoba.
2. On February 12, 2018, the Licensee signed and submitted the Agency Attestation Form. The Licensee indicated that two agents were licensed in Manitoba for the Agency, Agent A and the Licensee.
3. The 2018 Agency Attestation Form included the following Attestation:

"I understand that I am required:

- *To submit an application for a new employee and to ensure that a valid licence has been issued by the Insurance Council of Manitoba prior to that applicant acting as an agent. The ICM website lists all active licenses in real time.*
 - *To ensure that no employee, director or partner who is not a licensed insurance agent acts as an insurance agent or broker.*
 - *To ensure that proper and adequate supervision of employees, as detailed within the Rules and in the Code of Conduct, is provided at all times.*
 - *To ensure compliance of The Insurance Act of Manitoba, its Regulations, its Rules and the Code of Conduct.*
4. By email dated April 3, 2018, Agent B of Agency B submitted a Consumer Complaint to Council alleging that Agent C, an Alberta Insurance Broker with the Agency, was acting as an agent in Manitoba while unlicensed. Agent B provided Council with the following documents:
 - a) March 27, 2018 email between Agent C and a Manitoba consumer which indicated *"I have discussed our proposal with the underwriter and have confirmed the following terms. In the interest of getting our quote into your hands as quickly as possible, I have attached our proposal however it is subject to the following changes..."*
 - b) A copy of the Insurance Program Proposal which indicated that the Agency would be the Sub-Broker.

5. Council's letter dated and emailed to the Licensee on May 11, 2018, notified the Licensee of the complaint against Agent C for unlicensed activity. Included with the email was a copy of the April 3, 2018 complaint, the March 27, 2018 email between Agent C and the Manitoba consumer, and the Proposal. As the Operating Agent, Council had requested the Licensee's comments regarding the allegation.
6. By email dated May 14, 2018, the Licensee acknowledged receipt of Council's May 11, 2018 email and attachments. The Licensee indicated to Council that *"we will be reviewing this situation immediately and will report back to you as soon as possible."*
7. On May 15, 2018, the Licensee signed and submitted his agent's licence renewal application. The additional Screening Questions to which he answered "No" were as follow:
 - *Since you last applied for a Licence or a Renewal to ICM have you, had knowledge of any employees of the agency transacting insurance business without being duly licensed?*
 - *Since you last applied for a Licence or a Renewal to ICM have you, had knowledge of any conduct and/or regulatory violation by any licensed employee of the agency not previously reported to ICM?*
8. As part of the May 15, 2018, licence renewal submission, the Licensee attested to this Declaration:

"I declare the foregoing information is true and I accept the responsibility for these answers and undertakings. I further understand that a false declaration on this application could lead to disciplinary action. I agree to notify Council of any material changes contained in this application within 15 days and advise immediately of termination of employment of licensed employees with full particulars."
9. Council received a letter dated and emailed on June 5, 2018, from the Licensee's legal counsel, who indicated to Council that:
 - a) The Agency's Manitoba business is handled by Agent A from the Winnipeg office.
 - b) Agent C is a Managing Partner of the Agency, operating in Alberta.
 - c) The Agency maintains full worldwide errors and omissions insurance in the amount of \$5,000,000 with an additional policy of excess insurance of a further \$5,000,000 and Agent C is fully covered by these policies.
 - d) *"The potential customer was not solicited, but was rather referred to the Agency. On February 21, 2018, the Agency was contacted and based on*

the relationship with the referral source, Agent C was asked to assist Agent A with a quote that was needed before a short deadline – March 31, 2018. This was the first and only time that Agent A required Agent C's assistance.”

- e) Had the Manitoba consumer elected to obtain a policy through the Agency, all work would have been completed through its licensed brokers, the Licensee and Agent A.
- f) Agent C and the Agency believed that these actions were consistent with having proper licensing in place that would allow such assistance to Agent A. They noted:
 - i. This was a limited single incident;
 - ii. Agent C did not travel to Winnipeg to solicit insurance;
 - iii. Ultimately, no policy or coverage was ever bound, but had any policy been written, the Agency maintains full and complete errors and omissions insurance necessary; and,
 - iv. To insure full compliance, Agent C is applying for a Licence from the Insurance Council of Manitoba.

10. Agent C obtained a Manitoba licence on July 27, 2018.

ANALYSIS

The Act defines an “agent” as a person who for compensation, (a) solicits insurance on behalf of an insurer, (b) transmits for a person other than the agent an application for or a policy of insurance to or from an insurer, or (c) acts, or offers or assumes to act, in the negotiation of insurance or in negotiating the continuance or renewal of an insurance contract other than a life insurance contract; (« agent »).

The Operating Agent is responsible for the management of the agency which includes all of the insurance activities of the agency, including unlicensed activity. As the Operating Agent, it was the Licensee's duty to ensure that no employee, director or partner who is not a licensed insurance agent in Manitoba acts as an insurance agent or broker in Manitoba or for Manitoba clients.

On February 12, 2018, the Licensee completed the Agency Attestation form and declared that he would ensure that *“no employee, director or partner who is not a licensed insurance agent acts as an insurance agent or broker, that proper and adequate supervision of employees, as detailed within the Rules and in the Code of Conduct, is provided at all times, and to ensure compliance of The Insurance Act of Manitoba, its Regulations, its Rules and the Code of Conduct.”*

During the course of the investigation, Agent C had never held a Manitoba insurance licence. Agent C was asked to assist Agent A with a quote for a Manitoba consumer. By email dated March 27, 2018, Agent C communicated directly with the Manitoba consumer and provided the consumer with the revised terms of the policy proposal including the deductible structure, policy limitations and optional coverages. Section 369(1) of *the Act*, states that no person shall act, or offer or undertake to act, as an insurance agent in this province without having first obtained a licence under this *Act*.

On May 11, 2019 the Licensee was made aware of the investigation for unlicensed activity, and was provided with the complaint, emails, and the proposal. The Licensee acknowledged Council's request for his comments on May 14, 2018. When the Licensee completed his annual licence renewal application on May 15, 2018, he made a material misrepresentation on the application when he answered "No" to the screening question: "*Since you last applied for a Licence or Renewal to ICM have you, had knowledge of any employees of the agency transacting insurance business without being duly licensed?*" Section 375(1)(a) of *the Act*, prohibits misrepresentation, deceit or dishonesty, this includes misrepresentation of the screening questions of the licence renewal application, and/or Agency Attestation form.

By his actions, the Licensee violated section 375(1)(a) of the *Act*, and section 9 (Unauthorized Practice of the Profession) of the *Code of Conduct*. The Licensee also permitted Agent C to violate section 369(1) of the *Act*.

Council has considered the mitigating factor, that Agent C has now obtained a Manitoba insurance licence.

Based on the information and evidence reviewed by Council, Council concluded that the Licensee violated Sections 375(1)(a) of the *Act* and section 9 of the *Code of Conduct* and that disciplinary action is warranted.

PENALTY AND FINAL DECISION

Council's Decision dated June 28, 2019 was delivered to the Licensee by registered mail on July 2, 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 Licensee be fined \$2,000.00 and assessed partial investigation costs of \$562.00.

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 12th day of August, 2019.