

DECISION
of the
GENERAL INSURANCE COUNCIL OF MANITOBA
(“Council”)
Respecting
RAHAT SHARMA
(“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 Licensee’s activity violated the *Act*, its *Regulations*, the General Insurance Agents Licensing Rules (the “*Licensing Rules*”), and/or the General Insurance Agent’s Code of Conduct (the “*Code of Conduct*”). During the investigation the Licensee was notified of Council’s concerns and given an opportunity to make submissions.

On September 10, 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) of the *Act* and *Regulation 227/91*, the Council now renders its Decision and corresponding reasons.

ISSUES

1. Did the Licensee violate sections 375(1)(a) Misrepresentation, deceit or dishonesty, of the *Act* by failing to provide full disclosure on her 2019 licence renewal application that she had been terminated for cause?
2. Did the Licensee violate section 375(1)(e) Incompetency or untrustworthiness, of the *Act* and/or sections 1 (Integrity), of the *Code of Conduct* by entering into an individual’s account with the public insurer without verbal or written authorization?
3. Did the Licensee violate section 375(1)(a) Misrepresentation, deceit or dishonesty, of the *Act* and/or sections 1 (Integrity) and 10 (Conduct Towards Others) of the *Code of Conduct* by asking a colleague to make false statements on her behalf?

FACTS AND EVIDENCE

1. On February 1, 2019, the Licensee received a termination letter from Agency A, her employer at the time, dated January 31, 2019, which had indicated that she had been terminated with cause for accessing a public insurer data base without authorization, and asking another employee to make false statements on her behalf.
2. On February 12, 2019, the Licensee completed an online amendment application and requested the transfer of her licence from Agency A to Agency B, and indicated on the amendment application that she had been terminated from Agency A. The transfer was completed on February 21, 2019.
3. Dated May 7, 2019, the Licensee submitted her application for the renewal of her General Agent Level 1 licence (the "Renewal Application"). Respecting that application:
 - In response to question 6, "Since you last applied for a Licence or a Renewal to ICM have you been discharged for cause by an employer?", the Licensee answered "Yes".
 - The Licensee indicated in the details section that: "I was let go by my previous employer (Agency A) as we had a disagreement on changing my insurance use from pleasure to all purpose. Please let me know if further details are required."
4. The Renewal Application contained a "Declaration" section. It included the following wording:
 - I declare that the foregoing information is true and I accept the responsibility for these answers and undertakings. I further understand that a false declaration this this application could lead to disciplinary action.
5. On May 7, 2019, the Licensee had indicated to ICM's Licensing Department (the "Licensing Department") that:
 - "I actually misunderstood the question [Renewal Application question 6], the answer should have been a 'no'. As it was not based on any of [sic] work factors or dishonestly [sic] or any kind of misconduct. I misunderstood the word cause."
6. On May 8, 2019, Agency A's Operating Agent confirmed that the Licensee's employment had been terminated on January 31, 2019, and indicated to the Licensing Department that:

- The Licensee had advised an Agency A colleague that she only carried Pleasure Use coverage on her vehicle.
 - The Licensee drove to work every day, and if questioned by anyone, she asked the Agency A colleague to say that she didn't take her car to work.
 - The Agency A colleague reported the conversation to her Manager, who advised the Licensee to immediately correct her insurance to All Purpose since she was driving to work.
 - On or around the same day, the Licensee had advised her Agency A colleagues that she had been in an automobile accident and had entered an individual's account with the public insurer without authorization.
7. On May 9, 2019, the Licensee confirmed to the Licensing Department that the reason stated on her Renewal Application, "I was let go by my previous employer (Agency A) as we had a disagreement on changing my insurance use from pleasure to all purpose. Please let me know if further details are required.", was the only reason she was terminated from Agency A.
8. On May 15, 2019, the Licensing Department requested from the Licensee the full details of the disagreement with her employer, why the disagreement led to the termination of her employment, and if she had been advised that she had been terminated for cause.
9. On May 17, 2019, the Licensee provided the Licensing Department with the details of her disagreement with her employer and indicated that:
- On January 24, 2019 she was in an automobile accident.
 - After the accident, she drove to work as she did not have time to park her car and make arrangements for a ride.
 - She stated to her Agency A colleague *"please advise the adjuster I wasn't coming directly to work as the vehicle was registered as pleasure use."*
 - On January 28, 2019 she was placed on probation by Agency A and was given a stringent request to change her insurance use to All purpose.
 - She did not change her insurance use to All Purpose, and on February 1, 2019, the Agency A Manager verbally told her that the only reason Agency A was terminating her was because she didn't follow their directions.
 - Her termination letter had indicated that she had been terminated for: accessing a public insurer data base without authorization and asking another employee to make false statements on her behalf.

10. By her own evidence, dated July 19, 2019, the Licensee confirmed that she was aware that she could only enter an individual's account with the public insurer with verbal or written authorization, and indicated to Council that:

- "I did access the file of the person I was in an accident with, without authorization which was my fault, I was not in a right state of mind as how to handle the situation."
- "My intention was never to ask my co-worker to make a false statement on my behalf."
- "I stated that if need be, would you be able to tell [the public insurer] that I wasn't coming to work directly because I didn't think necessary at the time to tell her the details as to where I was going..."
- She did not contact the Licensing Department prior to submitting her Renewal Application to receive clarification on whether the termination reasons mentioned in the termination letter would be considered discharged for cause.

ANALYSIS

On February 1, 2019, the Licensee had received a termination letter dated January 31, 2019 from Agency A which indicated her employment had been terminated with cause for accessing a public insurer data base without authorization, and asking another employee to make false statements on her behalf.

When submitting the Renewal Application, dated May 7, 2019, the Licensee had indicated that her employment had been terminated due to a disagreement with her employer with regard to changing the insurance use on her personal vehicle.

When asked by the Licensing Department to confirm if the reason indicated in the Renewal Application was the only reason for termination, instead of disclosing the additional termination reasons, the Licensee confirmed to the Licensing Department that the disagreement regarding vehicle coverage was the only reason for the termination.

The Licensee did not disclose the additional termination reasons indicated in her termination letter until asked by the Licensing Department to provide details of the disagreement with her employer.

By her own evidence, the Licensee confirmed that she had entered an individual's account with the public insurer without authorization and was aware that verbal or written authorization to do so was required.

After the automobile accident, the Licensee drove her vehicle to work and asked an Agency A colleague, that if asked, to advise the public insurer that she was not coming directly to work.

The Licensee had indicated that she had made an honest mistake accessing the individual's account with the public insurer without authorization, and that she did not intend to ask a colleague to make false statements on her behalf.

Based on the information and evidence reviewed by Council, Council concluded that the Licensee violated of sections 375(1)(a) Misrepresentation and (e) Incompetence or untrustworthiness, of the *Act*, and sections 1 (Integrity) and 10 (Conduct Towards Others) of the *Code of Conduct*, and that disciplinary action is warranted.

PENALTY AND FINAL DECISION

Council's Decision dated January 2, 2020 was delivered to the Licensee by registered mail on January 3, 2020. 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), and 396.1(7)(b), (c), (d), and (e), of the *Act* and sections 7(1), 7(2)(b) and 7(4)(b), of *Regulation 227/91*:

1. The Licensee be fined \$1,000.00 and assessed partial investigation costs of \$950.00.
2. The Licensee must complete an Ethics course through an accredited course provider by January 14, 2020.

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 February 5, 2020.