

DECISION
of the
LIFE INSURANCE COUNCIL OF MANITOBA
("Council")
Respecting
ERIESOL DELA CRUZ FRANCISCO
("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 a complaint received by Council concerning the Former Licensee, an investigation was conducted pursuant to sections 375(1) and 396.1(7)(e) of the *Act* and section 7(2) of *Regulation 227/91*. The purpose of the investigation was to determine whether the Former Licensee violated the *Act*, its *Regulations*, and/or the Life Insurance and Accident and Sickness Agent's Code of Conduct (the "*Code*").

During the investigation the Former Licensee was notified of the complaint submitted to Council and given an opportunity to make submissions.

On November 22, 2018, during a meeting of Council, the information and evidence compiled during the investigation was reviewed. Upon assessment of the evidence, Council determined its then Intended Decision. The Council now hereby renders its Decision and corresponding reasons as set out below.

FACTS AND EVIDENCE

On June 14, 2018, the Former Licensee and an unlicensed individual (the "Unlicensed Individual") attended the offices of a prospective client to enrol employees into group insurance benefits. The Former Licensee was licensed on the date of the meeting.

Arising from this meeting, a complaint was submitted to Council wherein the Complainant alleged that the Former Licensee's careless conduct resulted in a breach of confidentiality.

The Complainant alleged that the Former Licensee and the Unlicensed Individual passed between themselves a document which listed employee salaries; their carelessness resulted in employees witnessing each others' salaries. The Complainant stated to Council:

"[The Unlicensed Individual] and [Former Licensee] had one sheet with everybody's salary listed. This document was passed back and forth between the two and was facing up. There were members of the [company] team who could see everybody's salary. This carelessness and breach of confidentiality has had a negative impact to our company."

By email dated June 22, 2018, an employee of the prospective client stated to the Complainant:

"When the people... came to process our new insurance application on Thursday, June 14th, I saw a list of... employees' salaries was left on the table and going back and forth between them. They were looking at the list in front of us to fill out the forms."

"I was surprised as well as shocked by how casually this was handled... this information should be treated and handled as confidential..."

"The salary part in the form could have been filled out later without exposing the list for anyone to see."

The Unlicensed Individual acknowledged to Council that a data sheet (which noted employee salaries) was passed back and forth and that he reminded the Former Licensee to keep the data sheet out of sight from employees; the Former Licensee did not remember this document being passed to him by the Unlicensed Individual.

The Unlicensed Individual advised Council that commissions were planned to be split only if and after he was re-licensed; whereas, the Former Licensee advised Council that there was no plan to split commissions.

ANALYSIS AND DETERMINATIONS

Council accepted the preponderance of evidence that the Former Licensee failed to protect the confidentiality of employee salaries when meeting with the Complainant's employees. The Former Licensee violated sections 4 – Professionalism, and 5 – Confidentiality of the Code with respect to the release of employee salary information. The Former Licensee should have been more vigilant to ensure that proper care was taken when handling documents that contain personal information.

Council noted that comments from the Former Licensee and the Unlicensed Individual were diametrically opposed in their intentions to split any potential commissions and made no finding on this matter. Council reminds the Former Licensee that sharing commissions with unlicensed persons is prohibited.

Council concluded that the professional misconduct and ethical breaches in this matter are serious and that discipline is warranted.

PENALTY AND FINAL DECISION

Council's Decision dated January 6, 2020 was delivered to the Former Licensee by registered mail on January 7, 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) & (d) of the *Act* and section 7(1) of *Regulation 227/91*:

1. The Former Licensee was fined \$350.00 and assessed partial investigation costs of \$500.00.

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 5th day of February 2020.