

DECISION
of the
LIFE INSURANCE COUNCIL OF MANITOBA
(“Council”)
Respecting
DAVID JAMES TOBAC
(“Licensee”)

INTRODUCTION

The Life Insurance Council of Manitoba (“Council”) derives its authority from *The Insurance Act* C.C.S.M. c. 140 (“Act”) and the *Insurance Councils Regulation 227/91*.

In response to regulatory action through another regulatory body concerning the Licensee, 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*. Council undertook an investigation of the Licensee to determine whether he had violated the *Act*, its *Regulations*, and/or the Life Insurance and Accident and Sickness Agent’s Code of Conduct (“Code”) by failing to comply with his reporting requirements to the Insurance Council of Manitoba (“ICM”).

During the investigation the Licensee was given an opportunity to make submissions with respect to Council’s concerns.

On October 23, 2019, during a meeting of Council, the evidence compiled during the investigation was presented. Upon assessment of the evidence, Council determined its Intended Decision.

As part of its Intended Decision, Council informed the Licensee that he may request a Hearing to dispute Council’s determinations and its penalty/sanction. The Licensee expressly declined his right and chose not to pursue a Hearing; he instead expressly accepted the terms of the Intended Decision and duly paid the levied fine and partial investigation costs.

Pursuant to section 375(1) of the *Act* and *Regulation 227/91*, the Council now renders its Decision and corresponding reasons.

ISSUE

1. Did the Licensee make false declarations on his licensing renewal applications in violation of the *Act* and/or *Code*?

FACTS AND EVIDENCE

1. By way of email dated March 1, 2017, the Licensee had been informed by his firm's compliance department that another regulatory authority ("Regulatory Authority A") had completed their initial review of a compliance matter, involving the Licensee, and had escalated the file to Investigations.
2. In completing his May 31, 2018 licensing renewal application, the Licensee answered "No" to question #2 (Questions for Agent), in the context of having been under investigation since he last applied for a licence or renewal to the ICM; that question read:

Since you last applied for a Licence or Renewal to ICM have you been under investigation, or the subject of a disciplinary decision, consensual agreement, administrative penalty, or any other form of disciplinary action by any regulatory or licensing authority, or had any licence held by you suspended, cancelled or revoked?

3. As per its Reasons for Decision dated August 13, 2018, Regulatory Authority A fined and assessed costs against the Licensee; the Licensee appealed this decision to yet another regulatory authority ("Regulatory Authority B").
4. Dated December 21, 2018, Regulatory Authority B issued its Reasons for Decision and by way of email the Licensee's legal counsel informed the Licensee of Regulatory Authority B's decision.
5. In completing his May 31, 2019 licensing renewal application, the Licensee answered "No" to question #1 (Questions for Agent), in the context of having been under investigation or the subject of a disciplinary decision since he last applied for a licence or renewal to the ICM; that question read:

Since you last applied for a Licence or Renewal to ICM have you been under investigation, or the subject of a disciplinary decision, consensual agreement, administrative penalty, or any other form of disciplinary action by any

regulatory or licensing authority, or had any licence held by you suspended, cancelled or revoked?

6. The Licensee's 2018 and 2019 licensing renewal applications contained a Declaration section which read:

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 on this application could lead to disciplinary action. I agree to notify Council within 15 days of any material changes to the information contained in this application. (the "Declaration")

7. By email dated July 2, 2019, the Licensee advised Council that:

I am not clear on the specific date that [Regulatory Authority A] placed me under investigation. [Regulatory Authority A] was in direct communication with our Compliance Department. I was only advised of correspondence between our HO and [Regulatory Authority A].

My understanding/belief was that our HO Compliance Department reported this to each regulatory body that I am licensed with.

In reviewing this correspondence, answering "no" to question #2 on my May 31st, 2018 and "no" to question #1 on my May 31st, 2019 application was an error. I was not under investigation to insurance matters, and my belief/understanding was our HO Compliance Department notified each regulatory body that I am licensed with.

Similar answer to the previous question. In reviewing this correspondence, yes, I should have answered "yes" to question #1 on my 2019 license renewal.

8. By letter dated September 4, 2019, the Licensee's legal counsel advised Council:

...Mr. Tobac understands and acknowledges that he ought to have answered "yes" to the question confirming [Regulatory Authority A's] investigation and decision.

ANALYSIS AND DETERMINATIONS

Pursuant to section 375(1)(a) of the *Act* misrepresentations and dishonesty are prohibited – this includes false declarations on licensing applications. Section 9 of the *Code*, mandates an agent to respond promptly and honestly, with full disclosure, to inquiries from the Insurance Council of Manitoba.

In partial discharge of its responsibility to protect the public, the ICM requires the Licensee to answer certain questions for every application or renewal of the licence. Among them is whether the applicant/Licensee has “been under investigation, or the subject of a disciplinary decision, consensual agreement, administrative penalty, or any other form of disciplinary action by any regulatory or licensing authority.” And on every licensing renewal application is the following declaration, namely:

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 on this application could lead to disciplinary action. I agree to notify Council within 15 days of any material changes to the information contained in this application. (the “Declaration”)

This is a very important disclosure obligation. Disclosure of material changes (such as being under investigation, or being the subject of a disciplinary decision) on licensing renewal applications permits Council to assess whether the change suggests the public may be at risk and to conduct any necessary inquiries or investigation to aid in that assessment. The nature of the material change would be considered to determine if it is critical to the person’s trustworthiness, competence or intention to carry on the business of insurance in good faith, and whether the person is fit to be licensed.

The applicable application questions explicitly sought disclosure regarding having been under investigation or the subject of a disciplinary decision by any regulatory or licensing authority and were not exclusive to insurance regulators.

The Licensee acknowledged to Council that he erred by answering “No” to questions #2 and #1 on his 2018 and 2019 licensing renewal applications, respectively.

The Licensee was aware, or reasonably ought to have been aware, as early as March 1, 2017, that Regulatory Authority A had placed him under investigation having received written notice from his compliance department as such.

Furthermore, the Licensee was aware, or reasonably ought to have been aware, as early as December 21, 2018, that he had been the subject of a disciplinary decision based upon notification of Regulatory Authority B’s decision from his legal counsel.

Having reviewed the evidence, Council has determined that the Licensee falsely declared on his:

- 2018 licensing renewal application that he had not been under investigation since he had last applied for a licence to the ICM; and,
- 2019 licensing renewal application that he had not been under investigation or the subject of a disciplinary action since he had last applied for a licence to the ICM.

Based on the information and evidence, Council concluded that the Licensee violated section 375(1)(a) Misrepresentation, dishonesty, of the *Act* and section 9 – Dealing with the Insurance Council of Manitoba, of the *Code* and that disciplinary action is warranted.

PENALTY AND FINAL DECISION

Council's Decision dated January 30, 2020 was delivered to the Licensee by registered mail on January 31, 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 Licensee was fined \$500.00 and assessed partial investigation costs of \$500.00.

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 27th day of February 2020.