

DECISION
of the
GENERAL INSURANCE COUNCIL OF MANITOBA
(“Council”)
Respecting
MARSHA L. B. OSTERTAG
(“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 November 6, 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.

As part of its Intended Decision, Council informed the Licensee that she may request a Hearing to dispute Council’s determinations and its penalty/sanction. The Licensee expressly declined her right and chose not to pursue a Hearing; she 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 violate section 375(1)(e) Incompetency of the *Act* and sections 2 - Competence, 3 - Quality of Service and 4 - Advising Clients of the *Code of Conduct* when she failed to offer the Complainants Loss of Use coverage on their 2015 New Holland TS6.120 tractor (the “Tractor”)?

FACTS AND EVIDENCE

1. On November 12, 2018, the Complainants had a fire loss which destroyed their Tractor.
2. On November 13, 2018, the Complainants had rented a tractor for their immediate use, as they operated a cattle farm.
3. The Complainants submitted a Consumer Complaint Form, dated January 23, 2019, and indicated to Council that:
 - a. *“Adjuster called to notify us that our policy did not have loss of use.”*
 - b. *“We were not made aware of the Loss of Use coverage.”*
 - c. *“We racked up 2 months of tractor rentals – adding up to over \$10,000.”*
4. The Complainants provided Council with tractor rental receipts which substantiated that a tractor had been rented from November 13, 2018 to January 24, 2019 and the total amount spent on the rentals was \$14,415.00.
5. By letter dated April 9, 2019, the Licensee’s legal counsel confirmed to Council that:
 - a. The Licensee *“did not put to [the Complainants] the option of taking out a loss of use endorsement.”*

ANALYSIS

The Complainants paid \$14,415.00 in rental fees as a result of the Licensee’s failure to offer Loss of Use coverage.

By way of her own evidence provided through her legal counsel, it was acknowledged that the Licensee did not inform the Complainants that Loss of Use coverage was available, thereby leaving an unreasonable gap in the Complainants’ coverage.

Based on the information and evidence reviewed by Council, Council concluded that the Licensee violated sections 375(1)(e) Incompetence, of the *Act*, and sections 2 - Competence, 3 - Quality of Service and 4 - Advising Clients, of the *Code of Conduct*, and that disciplinary action is warranted.

PENALTY AND FINAL DECISION

Council's Decision dated February 14, 2020 was delivered to the Licensee by registered mail on February 18, 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 sections 375(1.1)(c) and (d), of the *Act* and section 7(1) of *Regulation 227/91*:

1. The Licensee was fined \$750.00 and assessed partial investigation costs of \$1,000.00.

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 24th day of March, 2020.