

DECISION
of the
GENERAL INSURANCE COUNCIL OF MANITOBA
(“Council”)
Respecting
DARCY DION BOGUSKI
(“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 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 investigation costs.

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

ISSUE

1. Did the Licensee violate sections 369(1) Not to act without licence, 375(1)(a) Misrepresentation, 375(1)(e) Untrustworthiness, and 391 Holding Out, of the *Act*, and sections 1 Integrity and 9 Unauthorized Practice of the Profession, of the *Code*, when on June 3, 2019 he negotiated insurance terms with Insurer A, presented revised renewal terms to Client A, and requested Insurer A bind coverage for Client A effective June 6, 2019, with actual knowledge that he did not hold a valid insurance licence?

FACTS AND EVIDENCE

1. On December 19, 2018, the Licensee completed ICM's online licence application to obtain a supplemental insurance licence with Agency A, and had verified on the Application Verification Consents that:

"I have not acted, and will not act, or offer or undertake to act, as an insurance agent in this province without having first obtained a licence under The Insurance Act."

2. When completing the Consent and Declaration portion of that application, the Licensee declared that:
 - I will not conduct business or advertise in any other name(s) other than those stated in the Agency and/or Sponsor section of this application.
 - I accept responsibility for all statements and declarations in this application, and recognize that any false declaration may lead to disciplinary action against me.
3. The Licensee obtained his supplemental Level 2 licence with Agency A on January 18, 2019.
4. On May 31, 2019, both the Licensee's Level 2 licences had lapsed due to non-renewal.
5. ICM's Licensing Portal notes indicated that on June 3, 2019 at 3:18 p.m., the Licensee called and indicated to ICM's Senior Licensing Officer (the "Officer") that he was still obtaining continuing education credit hours. The Officer reminded the Licensee that he was unlicensed.
6. By email dated September 12, 2019, Insurer A provided Council with a copy of the emails exchanged between Insurer A and the Licensee, a copy of the Broker of Record ("BOR") dated April 28, 2019, and indicated to Council that:

- a. May 22, 2019 – Insurer A received the BOR from the Licensee to transfer Client A’s policy to Agency A, effective June 6, 2019.
 - b. May 29, 2019 – The Licensee asked Insurer A if anything could be done regarding the mandatory 15% renewal premium increase.
 - c. June 3, 2019 at 12:18 p.m. – The Licensee sent a follow up email to Insurer A and inquired as to whether there was any word on the rate change.
 - d. June 3, 2019 at 1:43 p.m. – Insurer A provided the Licensee with a revised renewal premium for Client A; \$56,734.00 + \$500.00 fee.
 - e. June 3, 2019 at 2:45 p.m. – The Licensee had indicated to Insurer A that he had sent their revised renewal terms to Client A.
 - f. June 3, 2019 at 5:45 p.m. – The Licensee had indicated to Insurer A *“Ok to go ahead and bind coverage effective June 6, 2019 renewal date per the revised rating you sent me earlier today.”*
7. By email dated September 16, 2019, Council’s Investigator notified the Licensee that he was under investigation for Unlicensed Activity and Holding Out as an agent. The Licensee was provided with copies of the emails received from Insurer A, and asked for his written comments with regard to his actions that while not holding a valid insurance licence he acted in the negotiation of insurance on behalf of Client A and requested Insurer A bind coverage effective June 6, 2019.
8. By email dated September 19, 2019, the Licensee indicated to Council that:
- a. *“I did, unfortunately not renew my license on the renewal date because I was behind on my credit hours which I have now rectified.”*
 - b. *“I really don’t know what else to say regarding this matter, except it was wrong and I will not go out of character like this again. I’m sorry.”*

ANALYSIS

On December 19, 2018, the Licensee completed an online licence application and verified that he would not act, or offer or undertake to act, as an insurance agent without having first obtained a licence under the *Act*.

On June 3, 2019, the Licensee had actual knowledge that his licence(s) had lapsed as he had contacted ICM’s Licensing Department to advise that he did not have the required number of continuing education credit hours to renew his licence. The Licensing Department had reminded the Licensee that he was unlicensed.

On June 3, 2019, the Licensee held out to Insurer A and Client A as a licensed agent when he negotiated and solicited insurance between the parties, and requested coverage be bound, while not authorized nor licensed to do so, in violation of sections 369(1) Not to act without licence and 391 Holding Out, of the *Act*, and sections 1 Integrity and 9 Unauthorized Practice of the Profession, of the *Code of Conduct*.

By failing to disclose his unlicensed status, the Licensee misrepresented to Client A that he was a licensed agent, in violation of section 375(1)(a) Misrepresentation, of the *Act*.

As the Licensee's licence(s) had lapsed, he should have declined to act, or advised Client A to seek a licensed agent or broker. By not doing so, the Licensee acted in an untrustworthy manner in violation of section 375(1)(e) Untrustworthiness, of the *Act*, and section 1 Integrity of the *Code of Conduct*.

The Licensee had indicated to Council that his actions were wrong, out of character and would not happen again.

Based on the information and evidence reviewed by Council, Council concluded that the Licensee violated of sections 369(1) Not to act without licence, 375(1)(a) Misrepresentation, 375(1)(e) Untrustworthiness, and 391 Holding Out, of the *Act*, and sections 1 Integrity and 9 Unauthorized Practice of the Profession, of the *Code of Conduct*, and that disciplinary action is warranted.

PENALTY AND FINAL DECISION

Council's Decision dated May 29, 2020 was delivered to the Licensee by mail on June 2, 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 \$2,000.00 and assessed investigation costs of \$900.00.

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 8th day of July, 2020.