

Summary of Appeal Decision Respecting PALWINDER KAUR GILL (Licensee):

This is a Decision of The Insurance Agents' and Adjusters' Licensing Appeal Board (the "Panel"), which heard this case on January 27, 2020. It is an appeal from a decision of the General Insurance Council of Manitoba (the "Council") which was rendered on October 11, 2018.

In its 2018 decision, the General Council had found that the Licensee, Palwinder Kaur Gill, in her capacity at that time as Operating Agent for PTZ Insurance Services Ltd., had violated Section 375(1)(a) of The Insurance Act of Manitoba (the "Act") as well as Section 1 (Integrity), Section 7 (Manner of Service) and Section 10 (Conduct Towards Others) of the General Insurance Agent Code of Conduct (the "Code of Conduct"), and imposed a fine of \$250.00 and costs of \$625.00.

The Licensee appealed this decision of Council to The Insurance Agents' and Adjusters' Licensing Appeal Board on October 24, 2018.

In Manitoba, Operating Agents are responsible for management of the agency inclusive of implementing reasonable screening procedures to determine an applicant's suitability to receive an insurance agent licence, ensuring new employees are licensed prior to acting as an agent, ensuring adherence to the regulatory framework, including the Insurance Act, its regulations and rules (including the General Insurance Agents Licensing Rules), ensuring that employees are properly and adequately supervised, reporting to the Insurance Council of Manitoba ("ICM") if a licence holder leaves the agency; and, of particular relevance to this matter, required to report any material changes (e.g. change of legal and/or trade name) to the ICM within 15 days.

During the appeal, the Panel heard evidence from the Licensee and from Council outlining the facts of the case. In its decision, the Panel found the following:

- That the Licensee was not guilty of misrepresentation under Section 375(1)(a) of the Act; and*
- That the Licensee was guilty of a breach of Section 391 of the Act by holding out under a trade name that was not stated on their licence.*

The Panel found that a modest fine of \$250.00 was appropriate in this case, as there was no evidence of the public being harmed through this transaction and that the Licensee understood the importance of accuracy in the application process. Costs were also imposed in the amount of \$625.00.

The entirety of the written decision of the Panel rendered on February 2, 2021 is included below.

REASONS FOR DECISION OF THE INSURANCE AGENTS' AND ADJUSTERS'

LICENSING APPEAL BOARD

Respecting

PALWINDER KAUR GILL

(the "Licensee")

The Insurance Agents' and Adjusters' Licensing Appeal Board (the "Panel") heard this appeal on January 27, 2020. This appeal was from the decision of the General Insurance Council of Manitoba (the "Council") and the decision of Council was rendered on October 11, 2018.

The decision of the Council was under Section 375 of *The Insurance Act* (the "Act") and the Insurance *Regulation 227/91*. It was the decision of Council that the Licensee violated Section 375(1)(a) of the *Act* as well as Section 1 (Integrity), Section 7 (Manner of Service) and Section 10 (Conduct Towards Others) of The General Insurance Agent Code of Conduct (the "*Code of Conduct*").

Council made its finding on the basis of evidence presented that at the show cause hearing on September 26, 2018 at which counsel for the Licensee, testified under oath. Counsel for the Licensee indicated at that time that she was in-house counsel for PTZ Insurance Services Ltd. (the "PTZ" or the "Agency") and its parent corporation (the "Parent Corporation"). Pet insurance is only one component of Parent Corporation's business activities. Pets Plus Us and 24PetWatch are trade names of the Parent Corporation. Pets Plus Us was originally a division of an insurer ("Insurer A"). In or around June of 2016, the Parent Corporation decided to assume the assets and liabilities for Pets Plus Us. The Licensee had applied for the licence on behalf of PTZ on July 27, 2016. In that application, the Licensee confirmed that no trade names would be used by PTZ and acknowledged her duty to report any material changes, including the change of legal and/or trade names to ICM within 15 days.

It was the position of counsel for the Licensee that Pets Plus Us was an insurance product which the Agency was selling, and which did not require registration. It was her evidence that ICM had been advised of this fact, however, there were no materials presented at the show cause hearing to support this. The Agency was advised on November 14, 2016 that it was acting in violation of Section 391 of the *Act* by using a

trade name other than that listed on its licence and that it had 15 days to amend its application.

Council determined that the Agency ought to have moved with all due dispatch in order to effect the necessary change, yet the licence was not amended to include the addition of Pets Plus Us and 24PetWatch as trade names until January 25, 2017. Counsel testified that when she was provided the intended decision, her view was that PTZ was working collaboratively with the Insurance Council of Manitoba's licensing officer ("ICM Licensing") in order to comply with their licensing requirement and that the 15 days in which PTZ was required to advise ICM of any additional trade names inadvertently lapsed due to the holidays and logistical issues related to the Agency's licensing and regulatory changes.

The Pets Plus Us name was not used when dealing with clients during this period. It was the position of the Agency that it did not need to register Pets Plus Us as a trade name. Counsel for the Licensee admitted at the show cause hearing that all other regulators ultimately required the Agency to register Pets Plus Us as a trade name. However, it was apparent that no other regulators had laid charges against the Licensee with regard to this issue. Counsel for the Licensee also advised at the show cause hearing that no business was transacted by the Agency between the initial application in July 2016 and the subsequent amendment to the licence in January 2017.

Given the Licensee had signed the application, Council found that she knew or ought to have known that the Agency was using trade names other than those listed in the licence application and, as such, she ought to have reported that fact to ICM at the time of her initial application. As the operating agent of the Agency, Council found it was the Licensee's duty to ensure the accuracy of information contained in the application and to ensure that licensing rules with respect to the Agency were enforced and to report any material changes to the ICM within 15 days. Knowledge of the Agency was imputed to the Licensee as its operating agent in Manitoba.

Council was satisfied that the Licensee did not deliberately misrepresent a material fact but found that she should take responsibility for representations made in the application to which she affixed her signature as the operating agent. The ICM relies on self-reporting and the honesty and integrity of its applicants and licensees in matters such as this and, on this basis, Council was satisfied the Licensee had violated Section 375(1)(a) of the *Act* as well as Sections 1, 7 and 10 of the *Code of Conduct*. Council issued a penalty of \$250.00 and partial investigation costs of \$625.00.

Evidence Before the Panel

Counsel for the Licensee appealed this matter and the hearing proceeded on January 27, 2020.

On behalf of the Council, an ICM Compliance staff member ("ICM Compliance"), appeared.

ICM Compliance reviewed the interactions with the Licensee and the other representatives of the Agency. He reviewed the application of the Licensee, which was signed on July 27, 2016. In the application, the Licensee confirmed under paragraph 9 that "I have attached full particulars, including name, position and contact information, of the owner(s), partner(s), director(s) and officer(s) of the corporation in order of control. I will report any changes in writing within 15 days to ICM".

Under paragraph 22, the Licensee initialed a box which stated "I understand that ... I am required to report any material changes [e.g. change of legal and/or trade name(s)] to the ICM within 15 days". The Pets Plus Us was not included under paragraph 2 "Trade Name(s) Used by the Agency or Firm".

Council became aware of the Pets Plus Us name through an application which it later received of another applicant (the "Applicant"), who applied for a licence on August 17, 2016. In that application, the Applicant indicated that the full name of the business he was applying under PTZ Insurance Services Ltd. Also, under this application he disclosed that he had been working for PTZ Insurance Services Ltd. from July 2016 to the present and that he worked for Pets Plus Us from August 2012 to June 2016. This application brought about an inquiry from ICM Licensing to counsel for the Agency, asking about the Applicant. On November 7, 2016, counsel to PTZ Insurance, wrote to a staff member of ICM Licensing and indicated to him that PTZ Insurance Services Ltd. was using the trade name Pets Plus Us in Manitoba.

On November 14, 2016, ICM Licensing sent correspondence to the Agency's legal counsel and copied the Licensee. He indicated in this e-mail that PTZ Insurance was only licensed to do business in Manitoba under PTZ Insurance Services Ltd. He advised that PTZ must hold out for business and/or be paid for business written in Manitoba using this Agency name only if it wished to remain in compliance with Section 391 of the *Act*.

Section 391 of the *Act* states:

Holding out

391 Any person who, not being duly licensed as an agent, a broker, or an adjuster, represents or holds himself out to the public as being an agent, broker, or adjuster, or as being engaged in the insurance business, by means of advertisements, cards, circulars, letterheads, signs or other methods, or being duly licensed as such an agent, broker, or adjuster, advertises as aforesaid or carries on such a business in any other name than that stated in the licence, is guilty of an offence.

ICM Licensing advised counsel for PTZ on November 17, 2016 that if PTZ wished to use Pets Plus Us as a trade name, it would need to provide notice from the Licensee that she wished to amend her licence to include this trade name, that business and registration documents for Pets Plus Us had to be provided and a cheque in the amount of \$3,360.00 based on the need to amend 48 current licenses held by PTZ Insurance Services Ltd. to include the Pets Plus Us trade name be paid. By holding out for business and/or being paid for business in Manitoba using PTZ Insurance Services Ltd. only, the Agency was not in compliance with the holding out section of Section 391 of the *Act*.

Counsel for the Agency responded on December 16, 2016 and further advised ICM Licensing on December 20, 2016 that the applications for amendment were being couriered to the Sponsoring Insurer for signature and that they were trying to have them sent to ICM by the end of the week. Although most of the documents needed to process the amendment were provided in December, 2016, it was not until January, 2017 that the revised E&O policy endorsement listing 24 Pet Watch and Pets Plus Us was received. Shortly thereafter, the PTZ Insurance Services Ltd. licence was amended.

The Licensee also testified at this hearing. She indicated that the application process for PTZ was prepared by other employees and legal counsel. She was not aware of the date that the Pets Plus Us transaction was completed. She confirmed that there was no business transacted in Manitoba from July 4th to August 2nd. Correspondence regarding the amendment of the trade name Pets Plus Us was between the ICM and legal counsel for the Agency. The Licensee was unaware an investigation into the trade name was occurring. By December 2016, the Licensee was aware of the necessity of amending the licence, and the issue was escalated by the Licensee to the President level. At this level, she assumed the issue was being addressed. The Licensee was unaware of the delay in the amendment process. At this time, she testified that all documents concerning regulatory issues go directly to her. The Licensee testified that at no point in time was she intending to misrepresent anything to ICM and that she was relying on the employees and counsel responsible for filling out these applications.

Counsel for ICM conceded during this hearing that the "Complaint Investigation and Disciplinary Process" was not followed by ICM.

Council raised an issue of disciplinary proceedings by another regulator ("Regulator B") against PTZ Insurance Services Ltd. as represented by the Licensee. This proceeding was relating to unauthorized agents of PTZ Insurance Services Ltd. in another province, and the Licensee was not personally found guilty and she was not the Designated Representative of PTZ at the time of these breaches. Based upon correspondence sent by General Counsel of PTZ, there is no evidence that the Licensee misrepresented facts related to Regulator B's proceedings. As such, this Panel does not find the Licensee made any misrepresentations with regard to her Manitoba application for renewal of her licence on May 24, 2017.

Hearing the evidence of the ICM and the Licensee, the Panel finds that the Licensee is not guilty of misrepresentation under Section 375 of the *Act*. At the date the application was signed by her on July 27, 2016, the evidence did not establish the Licensee knew the Pets Plus Us acquisition was completed. Further, there was no evidence that Pets Plus Us was operating at the time of the application. It was unclear exactly what date Pets Plus Us was acquired and there was no evidence presented at this hearing to establish that Pets Plus Us was operating or acquired by August 2, 2016.

With regard to holding out under Section 391 of the *Act* by use of the Pets Plus Us in November, 2017, the Panel finds that the Licensee was holding out as there is an admission in November, 2017 through legal counsel that the Pets Plus Us trade name was being used. On this basis, the Panel finds the Licensee guilty of holding out under Section 391.

With regard to penalty, as the Panel has found the Licensee guilty of a breach of Section 391 of the *Act*, it finds that a modest fine is appropriate. In this regard, it orders a fine of \$250.00. This modest fine is appropriate because there was no evidence of any member of the public being harmed through this transaction and the Licensee understands the importance of accuracy in completing the application process. ICM must be able to rely upon the representations being made by applicants in the application process.

With regard to costs, the Panel orders partial investigation costs in the amount of \$625.00 to be paid by the Licensee.

These Reasons for Decision may be signed in counterparts.