

Summary of Appeal Decision Respecting

Winnipeg Police Credit Union Limited (the “Licensee”):

This is a Decision of The Insurance Agents’ and Adjusters’ Licensing Appeal Board (the “Panel”), which heard this case on June 16, 2021. It is an appeal from a decision of the Life Insurance Council of Manitoba (the “Council”) which was rendered on April 18, 2019.

In its 2019 decision, the Council had found that the Licensee had repeatedly violated sections 369(1) and 391 of The Insurance Act of Manitoba (the “Act”) and imposed a fine of \$5,000 and costs of \$700. The decision of the Council was under sections 375(1) and 375(1.1), of The Insurance Act (the “Act”) and the Insurance Regulation 227/91.

The Licensee appealed this decision of Council to The Insurance Agents’ and Adjusters’ Licensing Appeal Board on April 25, 2019.

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 did breach section 369(1) Not to act without licence, of the Act, by acting as an insurance agent without a licence; and,*
- *That the Licensee breached section 391 Holding out, of the Act, by holding out, as being an agent, to the public while not being duly licensed as an agent.*

The Panel found that a fine of \$2,500 was appropriate in this case taking into account – the lack of intention on the part of the Licensee to perform unlicensed activity, its subsequent steps to rectify its processes to ensure unlicensed activity does not occur again, and the fact that the Licensee did suffer financial losses as a result of its conduct. Costs were also imposed in the amount of \$2,000.

The entirety of the written decision of the Panel rendered on October 14, 2021 is included below.

REASONS FOR DECISION OF THE INSURANCE AGENTS' AND ADJUSTERS'

LICENSING APPEAL BOARD

Respecting

WINNIPEG POLICE CREDIT UNION LIMITED

(the "Licensee")

This is an appeal by the Winnipeg Police Credit Union Limited (the "Licensee") from a decision of the Life Insurance Council of Manitoba ("Council") dated April 18, 2019. This appeal hearing by a panel of the Insurance Agents' and Adjusters' Licensing Appeal Panel (the "Panel") took place on June 16, 2021.

The decision of the Council was that the Appellant had violated sections 369(1) and 391 of the Act by failing to renew its licence under The Insurance Act and selling at least 89 creditor life and/or disability insurance policies while unlicensed to do so.

Council made its decision following a show-cause hearing that was held on April 4, 2019. It was determined by the Council that the Licensee had been without a licence from June 1, 2018 until November 20, 2018. Between those dates, the Licensee continued to hold itself out as an agent to members of the public, and it engaged in unlicensed activity by selling creditor life and disability insurance. It was determined by Council that the Licensee had breached sections 369(1) and 391, of the Act. Subsequent to the show-cause hearing, Council confirmed it's provisional fine of \$5,000 and the costs of \$700. It is from this decision the Licensee appeals.

An appeal under subsection 389.0.1(1) is a new hearing, and the appeal board may consider any material filed, or evidence submitted by the appellant or the superintendent touching on the subject of the appeal, and any other materials or evidence that it considers relevant.

The Panel first heard the evidence from Compliance staff on behalf of the Insurance Council. The Licensee, as a credit union, held a "restricted insurance agent licence." This license is for incidental sellers of insurance. Compliance staff testified that the Licensee has held its licence since June 1, 2015, and there were two renewals in 2016 and 2017. On May 31, 2018, the Licensee failed to renew its licence. Under section 373(1) of the Act, every licence expires on the 31st day of May. In addition, under section 26(2) of the Insurance Agents and Adjusters Regulation, 389/87R, a restricted insurance agent licensee is required to have a designated officer responsible for receiving notices. In the case of Licensee, this position was held by an employee who left employment with

the Licensee on April 5, 2018. Council was not notified of a replacement designated officer.

Section 369(1), of the Act provides:

Not to act without licence

369(1)

No person shall act, or offer or undertake to act, as an insurance agent in this province without having first obtained a licence under this Act.

Also relevant is section 391, of the Act, which provides:

Holding out

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.

On or around November 14, 2018, the new designated officer (the "Designated Officer") for the Licensee contacted Council to inquire as to how to get the Licensee relicensed. The Designated Officer started in the position on June 18, 2018 as Chief Operating Officer, which was the position held by the former designated officer.

The Designated Officer received a response by email from Licensing staff of the Insurance Council, advising the steps needed for re-licencing. Licensing staff also reminded The Designated Officer that the Licensee was not authorized to carry out the activities of an insurance agent in Manitoba without having obtained a license. Licensing staff advised the Licensee in her November 14, 2018 email that the Licensee was required to cease and desist offering insurance until the licensing was completed with Council and a confirmation of licensing had been provided.

Between June 1, 2018, and the time that Licensee was reinstated on November 21, 2018, the Licensee made 89 sales of insurance. Under section 378(1) of the Act, a party cannot receive a commission unless a licence is held.

Compliance staff noted that the failure of the Licensee to renew was a result of inadvertent negligence, and there was no dishonesty or bad faith involved. As a result, Council fined the Licensee \$5,000 and ordered investigation costs of \$700. Under the Act, a body corporate can be fined up to \$50,000. At this appeal, Council sought the same fine of \$5,000, and costs of \$3,600 calculated at 48 hours at \$75 per hour.

On cross-examination, Compliance staff confirmed that notices are sent exclusively by email to licensees. Council's automated system would indicate that a license had not been renewed after May 31. When asked about Council not monitoring license renewal statuses, Compliance staff indicated that in Manitoba, there are approximately 17,000 licensees. The Licensee did not receive notice from Council prior to November 2, 2018 that its license was not renewed, however it appears that an email was sent by Council on June 4, 2018, again via email, to those licensees who had not renewed by that time.

Compliance staff agreed that on November 14, 2018, Council first became aware that Licensee in particular had not renewed its license when it was communicated to Council by the Licensee itself.

Council determined over the course of this hearing day that email reminders were sent to the Licensee prior to and once post-renewal deadline, however these were not located when the Licensee carried out a search of its emails received after it became aware of its failure to renew.

After the Licensee did renew its license in November 2018, Council attempted to send a renewal notice email to The Designated Officer in 2019 which was not received by the Licensee. It was determined that the Licensee server had blocked Council emails. It was Compliance staff's view that the difficulty was with the Licensee's computer system firewall.

On redirect, ICM's Compliance staff testified that Council relies upon licensees to self-report, and that the licensing system relies upon good faith and self-reporting. The onus is on the licensee to report on their licensing status. He also indicated that the Council does not send a "read receipt" when sending renewal notices to licensees because of the large number of licensees, and a licensee could decline a "read receipt". Council does not have an obligation to send renewal notices, but this is done as a courtesy. All licenses in Manitoba must be renewed prior to June 1. Under section s. 373(1) of the Act licences expire on May 31 annually.

The Designated Officer of Licensee testified on behalf of Licensee. She began employment as Chief Operating Officer of the Licensee on June 18, 2018. On November 2, 2018, the Managing General Agency contacted Licensee to see if its license had been renewed. The Designated Officer inquired with the finance manager, who indicated that the Designated Officer should contact Council. When she made this inquiry on or about

November 14, 2018, she was advised that the Licensee's license had not been renewed. The Licensee did take steps to renew its license, by paying the appropriate fee, and confirming it has no material changes.

The Licensee's Managing General Agency notified its members to advise the Licensee had been unlicensed for this period of time. They gave members the option to obtain a full refund of their premiums or to continue their policies. Out of the 89 policies sold while unlicensed, 15 policy holders requested refunds. Of \$30,000 in commissions collected, \$11,000 in commissions was refunded to members.

Although the former designated officer's emails were redirected to the CEO of Licensee subsequent to her departure, no notifications from Council had been received. No one at the Licensee's office was able to find a 2018 renewal notice. It was not until November 2, 2018, when the Managing Agency contacted the Licensee that it became aware that its license had not be renewed.

Subsequent to the reinstatement of its license in November 2018, steps were taken by the Licensee to ensure this did not occur again. The renewal date was diarized, and the Licensee changed its email coordinates. Despite this, in 2019, the Licensee did not receive its renewal. As a result of the diarization, the Licensee was aware that it should have received a renewal notice, and contacted Council to advise of this. It was ultimately determined that both Council and the Licensee had to take steps in their computer systems to ensure it did receive its notifications. The Licensee did renew its 2019 license prior to June 1, 2019 as is required.

On cross examination, The Designated Officer testified that the Licensee did lose loans and interest on these loans as a consequence of the policies being cancelled by members in November 2018. Although the Licensee first had the issue raised by its Managing Agent regarding whether its renewal had occurred, the Designated Officer acknowledged that she did not contact Council for eight business days thereafter on November 14. This delay was based upon the Designated Officer taking steps to determine internally if the license renewal fee had been paid.

It is acknowledged by the Designated Officer that after the Licensee received its first notification from Council that it should not sell policies while unlicensed, three policies were sold after November 14. The Designated Officer indicates she did have discussions with her staff that they should not sell further policies after receiving the cease and desist email from Council. She indicates that she understood they should cease and desist from selling new policies, and not that they should not complete any pending sales.

During a break, Council obtained further records and it was determined that three reminders were sent to the former designated officer's email in May 2018. Although her email had been rerouted, these emails appear not to have been received by the Licensee.

POSITIONS OF THE PARTIES

It is the position of Council that the Licensee is required to renew its license by May 31 each year. A failure to do so is a breach of Section 369(1). For five months and two days, the Licensee held itself out as licensed and able to sell insurance. In its view, the Licensee has failed to recognize the seriousness of this. At the time this occurred, the Licensee had gone through two renewal cycles previously. Every year, the renewal deadline is May 31. The Licensee, as a financial institution, familiar with regulatory requirements should not have needed to wait for a reminder, and it should have had proper measures in place to ensure a lapse of its license did not happen. Although technology may have contributed to the lapsed license, it should have had proper measures in place and should have advised Council that its designated officer had left.

Further Council argued that the Licensee waited 12 days to contact Council to take steps to renew its license, and it also continued to sell after receiving a cease-and-desist notification from Council on November 14.

Council has a mandate to protect the public. Council seeks a \$5,000 fine, and increased costs in the amount of \$3,600. This is determined by the assessment of 48 hours of investigation at an hourly rate of \$75.

By way of explanation of the reasons for the lapse, counsel for the Licensee argued that multiple employees, being both the CEO and the COO (who was also the former designated officer) left the Licensee's employment at the same time. There was some loss of corporate knowledge when this occurred. There was also a technological breakdown between Council and the Licensee which caused the Licensee to not receive the email notifications from Council regarding renewal. This was confirmed in 2019, when again the Licensee did not receive a renewal notice from Council. Counsel for the Licensee argued that where no notice was received, there is a low level or lesser level of morale blameworthiness.

The Panel does find that the Licensee did breach sections 369 and 391 of the Insurance Act. This was based on it not receiving its renewal notifications from Council. This lapse occurred due to a technology issue and a change in employees. It was not intentional on the part of the Licensee. It did take steps to rectify its processes to ensure this did not happen again.

Taking all of these circumstances into account – the lack of intention on the part of the Licensee, its subsequent steps to rectify this, and the fact that the Licensee did suffer financial losses as a result of this conduct, the Panel determines that a fine of \$2,500 is appropriate.

Council sought costs of \$3,600. The Panel has decided taking into account the factors of lack of intention, steps taken to rectify these so lapses would not occur again, and the financial losses of the Licensee that an order of costs of \$2,000 is appropriate. The fine and costs should be paid within 60 days of the signing of this order.

The fine is payable to the Minister of Finance, and costs are payable to the Insurance Council of Manitoba. Two separate cheques should be provided to Council's office within 60 days of the signing of this decision.

These Reasons for Decision may be signed in counterparts.