

DECISION

of the

GENERAL INSURANCE COUNCIL OF MANITOBA

(the “Council”)

Respecting

KENNETH WAYNE MUNROE (the “Former Licensee”)

as the former Designated Representative of

SWEETWATER CONSULTANTS INC. (the “Firm”)

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 385(7), and 375(1.1), of the *Act* and section 7(2)(e) of *Regulation 227/91*. The purpose of the investigation was to determine whether the Former Licensee’s activity violated the *Act*, its *Regulations*, the Insurance Adjusters Licensing Rules (the “*Licensing Rules*”), and/or the Insurance Adjusters Code of Conduct (the “*Code of Conduct*”).

During the investigation the Former Licensee was notified of relevant information and was given an opportunity to make submissions.

On June 23rd and September 15th, 2021, during meetings of the Council, the evidence compiled during the investigation was reviewed and upon assessment of the evidence Council determined its Intended Decision.

As part of its Intended Decision, Council informed the Former Licensee that he may request a Hearing to dispute Council’s determinations and its penalty/sanction.

On October 29, 2021, the Former Licensee filed a Notice to Council requesting a Hearing with the General Insurance Council of Manitoba. On March 7, 2022, the Former Licensee withdrew his request for a Hearing.

Pursuant to section 385(7) of the *Act* and *Regulation 227/91*, the Council hereby renders its Decision and corresponding reasons.

ISSUE

1. Did the Former Licensee violate the *Act* and/or the *Code of Conduct*, when he acted on behalf of the Complainants?

FACTS AND EVIDENCE

1. The Former Licensee was the Level 5 Designated Representative (“D/R”) for the Firm from December 4, 2006 until June 30, 2016.
2. Dated April 12, 2016, the Former Licensee affixed his signature to an *Adjusting Firm Attestation Form* which presented licensure requirements for the Firm; on April 13, 2016, the Former Licensee emailed his completed form to the Licensing Department of the Insurance Council of Manitoba (“ICM”).
3. On June 27, 2016, the Former Licensee had a discussion with ICM staff to the effect that he would not be renewing his adjuster’s licence.
4. Further to that discussion the ICM mailed the Former Licensee a June 27, 2016 letter which documented the conversation that he had notified the ICM that he would not renew his licence, effective June 30, 2016; the letter then reminded him that until such time a licence has been issued to him, he is prohibited from transacting the business of insurance.
5. Effective July 1, 2016, the Former Licensee was no longer licensed as an adjuster as his licence lapsed due to his non-renewal of his licence.
6. At all material times, the Former Licensee was not licensed as an adjuster when acting on behalf of the Complainants in 2019 for a matter arising from a claim under their policy with the Insurer.

7. In his response to Council's Investigator, the Former Licensee submitted extensive material which provided an overview of his activities where he acted on behalf of the Complainants.
8. Dated April 10, 2019, the Complainants signed the Former Licensee's *Authorization and Approval to Act Document* which gave the Firm:

"the authority to generally enter into direct discussions and entertain meaningful discussions with representatives of the underwriters at risk and their representatives and to request documentation and or any other document pertaining to this claimable loss and to make recommendations, offer suggestions, approve expenses and generally enter into negotiations and settlement discussions with representatives of the underwriters at risk and their representatives".

9. The Former Licensee was working on behalf of the Complainants for compensation and he had invoiced the Complainants for his services.
10. The Former Licensee's documentation indicates that he was negotiating a settlement with the Insurer on behalf of the Complainants, for example, by way of his April 26, 2019 letter to the Insurer, the Former Licensee stated:

"On the 16 April 2019 we held a meeting at your office to discuss the variables relating to the quantum of the loss... During this meeting the objective discussed was to find an agreeable settlement solution."

"It continues to be my hope the concept of a blended settlement can take place wherein all parties can agree with a settlement solution."

And by way of his June 13, 2019 email to the Insurer, the Former Licensee stated:

"On the 20 June 2019 we are eager to engage in a constructive discussions with you so as to arrive at a fair settlement."

11. Furthermore, by email dated May 6, 2021, the Former Licensee advised Council's Director, Compliance that:

"The majority, if not all work in this file was scene investigation..."

12. As per the Insurer's files notes, the Insurer understood the Former Licensee to be acting in the capacity as a "*public adjuster*".
13. The Former Licensee used the following adjuster designations in his email and letter correspondence to the Complainants and Insurer and use of these designations require licensure:
- a) Chartered Loss Adjuster ("CLA"); and,
 - b) Fellow of the Canadian Independent Adjusters' Association ("FCIAA").
14. In his May 6, 2021 response to ICM staff, the essence of the Former Licensee's perspective as to his activities was that he was operating under an exemption to licensure pursuant to section 385(9)(d) Persons to whom this section does not apply, of the *Act* which reads as follows:
- (d) a person who is employed as an appraiser, engineer, or other expert, solely for the purpose of giving expert advice or evidence;

ANALYSIS AND DETERMINATIONS

Section 385(7)(b) of the *Act* speaks to violating any provision of the *Act* or any rule or regulation under the *Act*. Section 385(8) of the *Act* states that any person who acts as an adjuster without a licence is guilty of an offence. Section 391 of the *Act* prohibits any person who, not being duly licensed as an adjuster from holding out to the public as an adjuster.

Sections 4 – Advising Clients, 8 – Unauthorized Practice of the Profession, and 9 – Conduct Towards Others, of the *Code of Conduct* addresses advising clients, the prohibition of an unauthorized practice of the profession (unlicensed activity) and conduct towards others including the ICM.

The Former Licensee had been the Firm's Designated Representative from December 4, 2006 until June 30, 2016. He also had extensive years of experience in the industry at a senior level and ought to have been accustomed to regulatory requirements inclusive of the requirement for licensure to act and/or hold out as an adjuster. The Former Licensee had affixed his signature to an *Adjusting Firm Attestation Form* dated April 12, 2016 (shortly prior to the lapse of his licence in June 2016) which addressed licensure requirements prior to acting as an adjuster.

The Former Licensee had not been licensed as an adjuster since 2016 and was not licensed when acting on behalf of the Complainants in 2019.

Negotiation, settlement, or investigation of a loss or claim under a contract by an insurer are activities of an adjuster under the definition of an Adjuster as per the *Act*.

"adjuster" means a person who

- (a) for or on behalf of an insurer or an insured and for compensation, reward or the hope or expectation of compensation or reward,
 - (i) solicits the right to negotiate the settlement of or to investigate a loss or claim under a contract, or under a fidelity, surety or guaranty bond issued by an insurer, or
 - (ii) directly or indirectly negotiates, investigates, adjusts or settles such loss or claim, or
- (b) holds himself or herself out as an adjuster, investigator, consultant or adviser with respect to the adjustment, negotiation or settlement of such losses or claims,

but does not include a member of The Law Society of Manitoba, entitled to practise as a solicitor in Manitoba, acting for or on behalf of a client in the course of and as part of that practice;

By his own evidence, the Former Licensee's activities encompassed negotiation, settlement, and investigation of the Complainant's loss and claim under the contract of insurance they had with the Insurer.

Council reviewed the totality of the evidence and the definition of an Adjuster, and on this basis concluded that the Former Licensee was carrying on the activities of and was holding out as an adjuster when acting on behalf of the Complainants. Particular consideration was given to the activities of negotiating, settling, and investigating losses or claims under the definition; and, to the Former Licensee's own evidence, namely the *"Authorization and Approval to Act Document"* which contained wording to the effect that the Firm had the authority to enter into direct discussions and into negotiations and settlement discussions with representatives of the underwriters at risk and their representatives.

The Former Licensee was in direct communications (email and letter correspondence) with the Insurer which was under the impression that he was a public adjuster as specified in the Insurer's file notes.

The Complainants likewise understood the Former Licensee to be an adjuster as further supported by his use of adjuster designations (CLA and FCIAA) which are contingent upon licensure, more specifically, as per the Canadian Independent Adjusters' Association website, to qualify for the class of membership of Chartered Loss Adjuster, the candidate must be employed by a licensed and practicing member firm; and, membership as Fellow of the Canadian Independent Adjusters' Association is open to licensed individuals who are owners, partners, officers or senior employees of a Member Firm.

Council considered but did not accept the Former Licensee's perspective that he was acting through an exemption under section 385(9) of the *Act*.

The Former Licensee was working on behalf of the Complainants for compensation and his activities (negotiation, settlement, or investigation of a loss or claim under a contract) were as an adjuster when assessed in the light of the definition of an "Adjuster" under the *Act*.

He had prior communications in 2016 with ICM's Licensing Department and therefore had actual knowledge that he was not licensed and was unable to act as an adjuster without a licence. Council held that the Former Licensee demonstrated a lack of good faith towards the regulatory requirements for licensure and, in turn, a lack of good faith towards the ICM and its earlier communications expressing the requirement for licensure. Council held that the Former Licensee knew or ought to have known of the need to have a licence for adjuster activities given his professional background as a former Designated Representative and extensive years of experience in industry at a senior level.

Based on the information and evidence reviewed, Council concluded that the Former Licensee engaged in unlicensed activity and held out as an adjuster without a licence in violation of sections 385(7)(b), 385(8), and 391, of the *Act*; and, sections 4, 8, and 9 of the *Code of Conduct* and that disciplinary action is warranted.

PENALTY AND FINAL DECISION

Council's Decision dated March 30, 2022 was delivered to the Former Licensee by mail on April 5, 2022. The Decision outlined the foregoing background, analysis, and conclusion on a preliminary basis.

In consideration of the foregoing violations and pursuant to sections 385(7) and 375(1.1)(c) and (d) of the *Act* and section 7(1) of *Regulation 227/91*, Council hereby orders that:

1. The Former Licensee be fined \$500.00 and assessed partial investigation costs of \$2,500.00.

Pursuant to section 389.0.1(1) of the *Act*, the Former Licensee had the right to appeal this Decision within twenty-one (21) days of receipt. The Former 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 will occur, in accordance with sections 7.1(1) and 7.1(2) of *Regulation 227/91*.

Dated in Winnipeg, Manitoba on the 2nd day of May, 2022.