

DECISION
of the
GENERAL INSURANCE COUNCIL OF MANITOBA
(“Council”)
respecting
Richard Roberts (“Licensee”)

INTRODUCTION

The General Insurance Council of Manitoba (“Council”) derives its authority from *The Insurance Act* C.C.S.M. c.140 (“*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* and/or the General Insurance Agent’s Code of Conduct (“Code of Conduct”). During the investigation the Licensee was notified of the information submitted to Council and given an opportunity to make submissions.

On February 28, 2018, during a meeting of Council, the information and evidence compiled during the investigation was presented. Upon assessment of the information and evidence, Council determined its Intended Decision. Pursuant to section 375(1) and 375(1.1) of the *Act* and *Regulation 227/91* the Council hereby renders its Intended Decision and corresponding reasons.

ISSUES

1. Did the Licensee make a material misrepresentation on his 2017 General Operating Agent Licence Renewal Application and falsely attest in the declaration, thereby violating Section 375(1)(a) of the *Act*?
2. Did the Licensee fail to advise the Council of a material change within fifteen (15) days as declared on the Agency Attestation form?

FACTS & EVIDENCE

1. During all relevant times, the Licensee was the Operating Agent in Manitoba and the Designated Representative (“DR”) in Alberta for Beacon Underwriting Ltd. o/a Can-Sure Underwriting (the “Agency”).
2. In Manitoba, agencies appoint an Operating Agent who holds a license and is responsible for the actions of the agency.
3. On March 16, 2017, the Licensee completed Council’s Agency Attestation Form and declared:

I understand that I am required:

- *To ensure compliance of The Insurance Act of Manitoba, its Regulations, its Rules and the Code of Conduct.*
 - *To report any material changes to the ICM within 15 days.*
4. Dated May 10, 2017, the Licensee applied for the renewal of his General Operating Agents license by way of his licensing renewal application. (“the Renewal Application”). Respecting that application:
 - *In response to screening question two, “Been subject to any disciplinary action by any regulatory authority or had any licence held by you suspended, cancelled or revoked?”, the Licensee answered “No”.*
 5. The Renewal Application contained a “Declaration” section. It included the following wording:
 - *“I declare that the foregoing information is true and I accept the responsibility for these answers and undertakings. I further understand that a false declaration on this application could lead to disciplinary action.”*
 6. The Licensee’s licence was renewed on the basis that his statements on the Renewal Application were true and accurate and that he had not been subject to any disciplinary action by any regulatory authority since his last renewal application.
 7. On November 20, 2017, Council became aware that the Licensee had been subject to disciplinary action through the Alberta Insurance Council (“AIC”) when the AIC Decision and Order dated March 1, 2017, was posted to the Canadian Insurance Regulators Disciplinary Actions (“CIRDA”) website.

8. The Licensee never disclosed the March 1, 2017, AIC Decision and Order to Council on Council's 2017 Agency Attestation Form or the 2017 Renewal Application.
9. According to an Agreed Statement of Facts and Joint Submission, forming part of the AIC Decision and Order dated March 1, 2017, AIC undertook a review of the Agency's sales records, based on information that indicated that the Agency had been compensating an unlicensed agent ("Agent A") through Agent A's Agency for sales made while both Agent A and the Agent A's Agency were unlicensed.
10. In response to Council's letter dated November 28, 2017, the President of the Agency responded by letter dated January 4, 2018, on behalf of the Licensee to advise:

"That renewal was completed in May 2017 but an internal miscommunication resulted in the company not being aware of the Alberta investigation and disciplinary action until June 2017."

11. The AIC's Agreed Statement of Facts and Joint Submission states that the Licensee was a signatory to that Agreed Statement of Facts and Joint Submission.
12. The AIC Agreed Statement of Facts and Joint Submission states that the Licensee had been contacted by the AIC's Investigator on September 28, 2016 and had firsthand knowledge of the Alberta 2017 disciplinary decision. In the Agreed Statement of Facts and Joint Submission, the decision reads:

NOW THEREFORE the DR and the Investigator agree as follows:

"The DR and the Investigator jointly recommend to the General Insurance Council ("Council") that the Council approve this Agreed Statement of Facts and Joint Submission and resolve, dispose of and finally conclude this matter involving the Agency by approving a decision in the form annexed hereto as Schedule 1, which provides for a civil penalty in the amount of \$300.00, in accordance with the penalties prescribed in section 13 (1) (b) of the Certificate Expiry, Penalties and Fees Regulation, A.R. 125/2001 based on a civil penalty of \$300 for compensating an unlicensed individual."

ANALYSIS

Pursuant to section 375(1)(a) of the Act, misrepresentation and dishonesty are prohibited – this includes false declarations on licensing applications and false declarations to Council during an investigation.

The Licensee was the Operating Agent in Manitoba and the Designated Representative in Alberta for the Agency during all relevant times.

The Licensee never disclosed AIC's disciplinary action to Council. To the contrary, the Licensee misrepresented on his 2017 Renewal Application that he had not been subject to any disciplinary action by any regulatory authority since his last renewal.

Council did not accept the President of the Agency's explanation that an internal miscommunication resulted in the company not being aware of the AIC investigation and disciplinary action until June 2017, as the Licensee had actual knowledge of the investigation and the AIC Order dated March 1, 2017 when completing both his 2017 Agency Attestation form and his 2017 Renewal Application.

On his 2017 Renewal Application the Licensee declared the foregoing information was true, accepted responsibility for his answers, and understood a false declaration could lead to disciplinary action.

Based on the information and evidence, Council concluded that the Licensee violated section 375(1)(a) of the *Act*, and that disciplinary action is warranted.

PENALTY AND FINAL DECISION

Council's Intended Decision, dated April 30, 2018, outlined the foregoing background, analysis and conclusions on a preliminary basis. Having regard to its initial determination that the foregoing violations had occurred, the Council imposed the following penalty and sanction pursuant to section 375(1.1)(c) and (d) of the *Act* and section 7(1) of *Regulation 227/91*:

1. That the Licensee be fined \$1,000.00 and assessed partial investigation costs of \$225.00.

As part of its Decision, Council further informed the Licensee of his right to request an Appeal to dispute Council's determinations and its penalty/sanction. The Licensee expressly declined his right, chose not to pursue a statutory Appeal, and accepted the Decision.

The Decision is therefore final. In accordance with Council's determination that publication of its Decisions is in the public interest, this will occur, in accordance with sections 7.1(1) and (2) of *Regulation 227/91*.

Dated in Winnipeg, Manitoba on the 27th day of June, 2018.