

DECISION
of the
LIFE INSURANCE COUNCIL OF MANITOBA
("Council")
Respecting
AIME EDMOND GRENIER
("Licensee")

INTRODUCTION

The Life Insurance Council of Manitoba ("Council") derives its authority from *The Insurance Act C.C.S.M. c. 140* (the "*Act*") and the *Insurance Councils Regulation 227/91*.

The Licensee has been licensed to sell life insurance since 1990 and has held an accident and sickness licence since 2016. Life and accident and sickness agents are bound by the Life and Accident and Sickness Agent's Code of Conduct (the "*Code*"). A copy of the *Code*, for convenience, is attached hereto.

The *Code* identifies the essential duties owed by a life and/or accident and sickness agent to his client arising from the relationship. In the context of this case, we highlight the following obligations, which are especially germane.

The agent must act in the best interests of the client and must not prefer the agent's interests over those of the client. It is antithetical to the essence of the fiduciary nature of the relationship for the agent to take advantage of, for example, the client's ill health or inexperience or disability.

One of the first duties of the agent is to honestly and competently assess the client's needs. The commentary in the *Code* (in Section 2) explicates what this involves.

The agent must act in good faith at all times. He must act with integrity and fairness and must not be actuated by any improper motive, especially personal gain at the expense of the client. He must be aware of the most economic means of creating or promoting the end desired by the client.

All of the foregoing supports what must be known to every agent, namely, that an "agent must avoid situations where the underlying circumstances could prejudice or compromise the advice that he or she provides." And if for some reason a conflict does arise, the client must be advised accordingly.

In October, 2017, Council was advised that the Licensee had borrowed money from a client who was alleged to be disabled by reason of a brain injury. Some documents supporting this assertion were provided to Council in the course of its investigation. However, the evidence Council received was in its view insufficient to justify it concluding that the client at any material time suffered from diminished mental or intellectual capacity.

This led to an investigation being conducted pursuant to section 375(1) of the *Act* and section 7(2)(e) of *Regulation 227/91*. The Licensee was notified of Council's concerns and given an opportunity to make submissions.

FACTS AND EVIDENCE

In the course of its investigation, it was learned that not only had the Licensee borrowed money from his client, but he had also facilitated the recurring placement and redemption of leveraged individual variable insurance contracts (known otherwise as "segregated funds") on a deferred sales charge basis.

As to the Loans:

- (a) The Licensee acknowledged that he took loans from the client in the amounts of \$17,000 and \$20,000 in 2012, and in the amount of \$200,000 in 2016; Council has copies of the cheques related to the loans and the Licensee's lawyer confirmed in writing that the 2016 loan was made to the Licensee.
- (b) The Licensee advised Council that he had been moderately successful in business but by 2012 when he had become friends with the client, he "was having trouble making ends meet."
- (c) There were no terms of re-payment or interest due for the 2012 loans.
- (d) At the time the loans (\$17,000, \$20,000) were taken in 2012, the Licensee had approximately tax debt of \$150,000 and credit card debt of \$20,000.
- (e) At the time the loan (\$200,000) was taken in 2016, the Licensee had approximately \$280,000 of tax debt and credit card debt of \$48,000.
- (f) At the time of the investigation, the Licensee remained approximately \$300,000 in debt to a government tax agency and \$30,000 in debt on credit cards.
- (g) The Licensee presently has approximately \$127,000 of the client's monies commingled with his own.
- (h) The Licensee advised Council that he used the loans from the client to contribute to a tax shelter to obtain a tax credit, to repay a government tax debt, and to pay credit card debt.

- (i) The Licensee acknowledged that he did not ask his client to seek legal advice or independent advice of any kind, and that:

“In reviewing all of these matters I have come to the conclusion that my friendship with [the client] and my borrowings have overlapped and clouded my professional judgment.”

As to Leveraging Using Deferred Sales Charge Funds:

- (a) The Licensee acted on behalf of the client to leverage segregated funds on several occasions (2008, 2011, 2013, 2014, 2015, 2017) through Insurers A and B ("the Insurers"); each policy loan was in the amount of \$100,000 and was invested on a deferred sales charge basis.
- (b) The Licensee invested the client's own monies into segregated funds (2008, 2011, 2013, 2014 - 2015) on a deferred sales charge basis.
- (c) The Licensee received commissions for repeated deferred sales charge segregated fund activity.
- (d) The Licensee facilitated an ongoing pattern of repeatedly investing in and then redeeming deferred sales charge funds for six leveraged policies and four policies using non-borrowed monies.
- (e) The repeated redemptions resulted in (\$39,667.21) of deferred sales charge fees in the years between 2011 - 2017.
- (f) The Insurers confirmed to Council that 0% front-end load funds were available for the client's insurance policies.
- (g) The Licensee advised Council that he was not aware until July, 2017 that segregated funds could be invested in a 0% front-end load option which he understood to have an up-front commission of 4% - 5%.
- (h) The Licensee further advised Council that while he is now aware several of the policies relating to the client had a 0% front-end load option, he would not have used front-end load funds when placing any applications.

ANALYSIS AND DETERMINATIONS

The Loans

The loans obtained by the Licensee from the client described above were breaches of duties which lie at the very root of the agent-client relationship. The circumstances of the client in this case were such that any loan of his should have been reasonably secured. These loans were not. The Licensee's duty was not to take advantage of his client. He did. The Licensee was bound to ensure his interests and his client's interests did not conflict. Instead, he created a situation where they are in fact diametrically opposed. The

client would desire the best return possible on his loan, provided it was relatively secure. The Licensee for his own benefit borrowed from the client on terms that no agent acting professionally could advise a client to accept. In this particular relationship, one desirable aspect of any loan for this client would be certainty as to the terms of return and/or redemption and/or repayment. But the Licensee has commingled his money with the money of the client.

In the course of the investigation it was suggested that there had been another loan by the Licensee to the client, for the sum of \$15,000 in 2009. Because the client could find no documentation whatever respecting that loan, Council determined that it should place no weight whatever on this allegation. However, a communication relating to this alleged transaction is revealing.

The Licensee's lawyer, who is presumed to speak for his client, wrote this on September 27, 2017:

The first loan in the amount of \$15,000.00 occurred in November/December 2009. My client says that the terms of this loan are such that this loan is interest free and is to be repaid when my client is in a more comfortable position, and that this loan is not a demand loan. My client tells me that he fully intends to honour his obligation to repay this loan.

The Licensee through his lawyer was stating with respect to the alleged 2009 transaction that: there were no terms of repayment agreed to; there was no time limit for repayment agreed to; no interest was agreed to be paid; but, the loan was not a demand loan. If all of those things had been true, then the loan would have been one which there was no obligation ever to repay. So, the Licensee, through his lawyer, as late as September, 2017, was asserting it would have been acceptable conduct for him as a fiduciary to retain indefinitely and interest-free, money he "owes" his client. This was and is an egregious view, revealing seriously defective ethical judgment.

Though the alleged 2009 loan has not been determined to have been made, the Licensee acknowledged in the course of Council's investigation that there were no terms of repayment and there was no interest payable for the indisputable and acknowledged 2012 loans.

Of course, the Licensee did not refer the client for independent advice. Had he done so, the loans would never have been made.

The Leveraging

The Licensee repeatedly invested into and then redeemed deferred sales charge-type funds with resultant fees in the aggregate amount of \$39,667.21. The Licensee received commissions for this repeated fund activity contrary to the client's best interests. Such fees would not have been immediately payable for the 0% front-end load commission basis funds. One interpretation of the Licensee's conduct in this respect was that he was deliberately churning the client's account to increase his income. Council in this case

prefers to conclude that the Licensee was incompetent in being unaware until 2017 that monies could be placed into segregated funds on a 0% commission front-end load basis. As to the Licensee's assertion that he would not have used the front-end load option for this client even had he known of it, this merely buttresses the conclusion that the Licensee acted in an unprofessional manner in dealing with this client.

It is beyond dispute that the Licensee violated:

- (a) section 1 of the *Code*, which required him to act in the best interests of his client;
- (b) section 2 of the *Code*, which required proper assessment of the client's needs and that the products and services provided would suit those needs;
- (c) section 4 of the *Code*, which required that the Licensee act professionally, with integrity and honesty;
- (d) section 6 of the *Code*, which required the Licensee to avoid conflicts of interest; and
- (e) section 375(1)(e) of the *Act*, which required the Licensee to conduct himself in a competent and trustworthy manner.

PENALTY AND FINAL DECISION

Council's Decision dated July 11, 2018 was delivered to the Licensee by registered mail on July 12, 2018. The Decision outlined the foregoing background, analysis, and conclusions on a preliminary basis.

The professional misconduct and ethical breaches in this matter are extremely serious. They manifest a potentially significant risk to the public.

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)(a)(c)(d), 396(1) and 396.1(7)(c)(d)(e), of the *Act*; and, sections 7(1), 7(2)(b)(c)(e) and 7(4)(b), of *Regulation 227/91*; and sections 4(a), 7(1)(a)(b)(c), 10(1)(a) of the *Life Insurance Agents and Accident and Sickness Insurance Agents Licensing Rules*, Council concludes:

1. The Licensee's Life and Accident and Sickness licences be suspended for a period of one year and one day;
2. The Licensee is to be fined \$5,000 and assessed investigation costs of \$3,500; and,
3. In conjunction with consideration of any future licensing application, the Licensee must complete an Ethics course

approved by Council, the Licensee must re-complete and successfully pass the Life Licence Qualification Program, and the Licensee must be under supervision for the mandatory one year period by a Supervising Agent approved by Council.

In accordance with the Insurance Agents and Adjusters Fees *Regulation 73/93*, the Licensee will be required to pay a \$250.00 reinstatement fee to reinstate his Life licence and a \$250.00 reinstatement fee to reinstate his Accident and Sickness licence following the suspension.

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 7th day of August, 2018.