

DECISION
of the
GENERAL INSURANCE COUNCIL OF MANITOBA
(“Council”)
Respecting
HORACE SMACZYLO
(“Licensee”)

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 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 November 8, 2018, during a meeting of the Council, the evidence compiled during the investigation was presented and reviewed. Upon assessment of the evidence, Council determined its then Intended Decision. Pursuant to section 375(1) of the *Act* and *Regulation 227/91*, the Council hereby renders its Decision and corresponding reasons.

ISSUES

The issues for Council’s consideration were:

1. Did the Licensee fail to properly assess his client’s requirements and provide a policy that falls outside the insured’s needs thereby violating Section 375(e) incompetency of the *Act*, and Section 4 – Advising Clients, of the *Code of Conduct*?
2. Did the Licensee violate the Section 3 – Quality of Service, of the *Code of Conduct* by failing to properly communicate the increase in coverage to his client?

3. Did the Licensee violate the *Code of Conduct* by failing to properly document the file with the client's request for increased coverage, subsequent file notes and written communication?

FACTS AND EVIDENCE

1. The Licensee held a General insurance licence with Agency A from July 5, 1988 to February 12, 2015, and was the Agency's Operating Agent from June 5, 1998 to November 17, 1999, and December 6, 1999 to June 19, 2007.
2. From February 26, 2015 until January 1, 2018, the Licensee held a General Level 3 licence with Agency B. Agency B was sold effective January 1, 2018 to Agency C and the Licensee held a General Level 3 licence with Agency C from January 1, 2018 until January 16, 2018. The Licensee currently holds a General Level 3 licence with Agency D.
3. On February 20, 2018, Council received a complaint from Client A, which indicated that on January 28, 2014, the Licensee increased their commercial insurance coverage without their verbal or written authorization. Included with their complaint, Client A provided Council with a January 17, 2013 email from the Licensee to the Insurer requesting an increase in coverage, and an email dated February 15, 2013 from the Insurer to the Licensee requesting confirmation whether to proceed with the change due to the substantial increase. The Licensee had responded to the Insurer "*that is fine.*"

(Note: Contrary to Client A's statement, the increase in coverage took place on January 28, 2013 by way of an endorsement. It appears that on January 28, 2014, the Insurer applied the standard inflation factor of 5%.)

4. By email dated March 13, 2018, Agency A provided Council with copies of Client A's renewals and endorsements from 2008 to 2014, and a copy of the 2012 – 2013 renewal with hand-written notes which appear to be in the Licensee's handwriting; the handwritten notes are unclear, however, they do reflect numbers for office, payroll and gross sales. Their email also provided copies of email communication between the Licensee and the Insurer. The emails provided that are relevant to this complaint indicated that:
 - a. On December 12, 2011 the Insurer had requested renewal instructions from the Licensee and indicated that last year the Licensee had requested the contents amount stay the same.
 - b. The Licensee had made a handwritten note on the printed December 12, 2011 email indicating "*No changes from last year. Please renew as per last years [sic] figures. Thanks Horace*".

- c. On December 20, 2011, the Insurer followed up on their December 12, 2011 email to the Licensee.
 - d. On January 7, 2011 the Insurer requested updated gross receipts and inquired as to why Client A's contents were so high. The Licensee's handwritten note to the Insurer indicated "*Contents as is sales as per last year [sic]. Thanks Horace. January 12, 2011*".
 - e. On January 17, 2013, the Licensee requested the Insurer increase Client A's commercial property from \$2,100,000 to \$3,500,000 indicating "*as per insured request sales were 2,290 00 [sic] 2011 to 2012 and payroll was 365,000*".
 - f. On February 15, 2013 the Insurer requested confirmation from the Licensee whether to proceed with the increase in contents coverage from \$2,100,000 to \$3,500,000 due to the substantial increase.
 - g. On February 15, 2013 the Licensee indicated to the Insurer "*That is fine*".
5. In response to Council's March 28, 2018 letter requesting all written communication provided to Client A from Agency A and any file or system notes indicating dates coverage(s) were discussed, Council received a fax dated April 3, 2018, from Agency A which indicated that "*we have no more written communication or documentation on file, regarding the increase in coverage, referring to policy CP*****.*"
 6. By email dated April 17, 2018, the Agency indicated to Council that they have no knowledge of Client A's file being purged and that "dead files" including agency transfers, by insured or, broker leaving, are kept for 5 years in a separate file room.
 7. On March 15, 2018, Council received a package of information from the Insurer which included the following relevant information:
 - a. An explanation of what is insured under All Property or Property of Every Description ("POED") which included building, equipment and stock.
 - b. Email communication between the Licensee and Insurer including the emails dated January 17, 2013 and February 15, 2013 which had been provided by Agency A.
 - c. Agent/Broker Record of Appointment appointing Agency B effective January 28, [2015].
 - d. Insurer's system notes which indicate on December 9, 2015, "*AS PER TELEPHONE CONVO WITH HORACE [the Licensee] – LEAVE ALL LIMITS AND VALUES AS PER LAST YEAR. MET WITH THE INSURED,*

NO CHANGES TO REVENUE AND CONTENTS LIMIT OK AS PER LAST YEARS FIGURES.”

8. The Licensee’s written statement dated March 26, 2018 was forwarded to Council by email on March 27, 2018 and indicated to Council that Agency B and the Licensee’s book of business was sold to Agency C effective January 1, 2018. Following the purchase, the Licensee and the new owner of Agency C visited Client A so that introductions could be made. While there, Agency C’s owner requested updated gross receipts and inventory amounts. As this would take a few days to compile, Client A requested that they come back. The Licensee returned a second time and met with Client A, Client A’s accountant and Client A’s employee. It was during this meeting that Client A stated that there were no changes to sales, inventory and operations for the past few years. The Licensee requested a current inventory, and when he returned to the office he requested the last figures of inventory and sales from the Insurer. The Licensee advised Council’s Investigator that he returned to Client A’s office a third time to see if changes were required and met with Client A, Client A’s accountant and Client A’s employee. The Licensee indicated that they previously advised him of sales of \$2.2 million and inventory of just under \$4 million. The Licensee indicated that:
- a. Client A advised him that the limits were incorrect and accused him of coming up with them himself.
 - b. Client A’s account suggested that maybe the sales and inventory were added together in error, as that would put the figure close to the \$4 million.
 - c. He asked Client A to provide the inventory list for the last six (6) years and he would discuss the matter with the Insurer.
 - d. *“I asked Client A’s accountant and Client A when they received the policy renewals in previous years, who reviewed them to make sure everything was correct? She said it gets filed and nobody reviews it.”*
 - e. The changes were requested based on the figures they provided to him, the policy was sent to Client A and they paid the premium. *“So to say I changed it without permission, is not correct, as the client acknowledged the changed policy and paid the premiums accordingly and every year to this date.”*
 - f. Shortly after this, he no longer held a licence through Agency C, and advised Client A that he would have someone from Agency C follow up with the Insurer.
 - g. *“I believe that if I was able to go back to the Insurer and explain that the numbers provided in 2014 were combined of sales and inventory that we could have rectified the situation.”*

9. In separate emails dated March 27, 2018, when asked about correspondence provided to Client A, the Licensee indicated that the file was with Agency A and that he no longer had access to the file. The Licensee indicated that Client A had contacted him to do the increase in coverage.
10. By email on April 2, 2018, when asked to confirm if at any time, he verified the numbers with the insured prior to asking the Insurer to proceed with the increase, the Licensee responded by email with a typed statement and indicated that:
- a. *“I based my response by the figures I was given by the client at the time, which were provided to me and then further sent to the Insurer. The client received the revised policy directly from the Insurer, and subsequently paid for it.”*
 - b. *“There would be documentation in the file at Agency A from 2013 when I visited the client at renewal. I don’t have access to their files to provide documentation as I have not worked there for many years now.”*
 - c. *“I contacted the client every year on renewal to visit them and discuss and review the renewal. When the new figures were provided to me I explained that they would receive a new policy with the changes, which they did, as they subsequently paid for the policy, and years after that as well.”*
11. By email dated April 2, 2018, Client A indicated to Council “The Licensee *did not inform us of any price increase other than [sic] a 5% inflation increase. He was told to leave it the same. Because there was no signature required for the increase [in coverage], it was not noticed until the Licensee tried again this year to raise it even higher.*”
12. By email dated April 5, 2018, the Insurer indicated to Council that:
- a. *“Gross receipts are not included in POED.”*
 - b. *“Combining the inventory limits and sales amounts is not a common error.”*
 - c. *“As we were following the broker’s direction, and we followed up confirming the request, we would not be in a position to return premium.”*

ANALYSIS

The *Code of Conduct* sections 2 (Competence), 3 (Quality of Service), and 4 (Advising Clients) state that agents or brokers owe a duty to the client to be competent to perform the services which the agents or brokers undertake on the client’s behalf, be both candid and honest when advising clients, shall serve their clients in a conscientious, diligent and efficient manner and shall provide a quality of service at least equal to that which agents or brokers would generally expect of a licensee in a like situation. This includes informing

a client of alterations to their coverage, such as changes in policy conditions or premium amounts, or any matter or fact which may materially affect the policy or prejudice the client's interests.

The Licensee indicated to Council that he contacted Client A every year to visit, discuss and review the renewal, and Client A had always indicated that it was the same as last year and did not want any changes. The Licensee indicated that Client A had contacted him and requested the increase in coverage and that he forwarded this request to the Insurer. As the Licensee was no longer at Agency A, he was unable to produce any file information to Council and indicated that there was evidence in the file that would support his statement.

Agency A provided Council with the documentation from Client A's file, which included a copy of the 2012-2013 renewal with unclear handwritten notes, and copies of emails between the Insurer and the Licensee. There were no system or file notes indicating conversations with Client A or any written communication, including renewal letters or endorsement letters to Client A regarding the increase in coverage.

It was unclear where the POED amount of \$3,500,000 came from and was suggested by Client A's accountant to the Licensee that *"maybe the sales and inventory had been added together in error"*.

Council determined based on the evidence reviewed that the Licensee failed to properly review coverage with Client A as Client A appeared to be uncertain as to what was included in POED. There was no file or written documentation provided to Council which indicated a review of coverage had occurred, or that a proper Statement of Values had been obtained. Furthermore, Council did not accept the Licensee's response *"So to say I changed it without permission, is not correct, as the client acknowledged the changed policy and paid the premiums accordingly and every year to this date."*, the remittance of a payment does not alleviate the Licensee of their requirement to provide notice to Client A regarding alterations to their coverage.

Based on the information and evidence reviewed by Council, Council concluded that the Licensee violated sections 2 (Competence), 3 (Quality of Service) and 4 (Advising Clients) of the *Code of Conduct* and that disciplinary action is warranted.

PENALTY AND FINAL DECISION

Council's Decision dated January 9, 2019 was delivered to the Licensee by registered mail on January 14, 2019. The Decision outlined the foregoing background, analysis, and conclusions on a preliminary basis.

Pursuant to sections 375(1.1) (c) and (d) of the *Act* and section 7(1) of *Regulation 227/91*, Council concludes:

1. The Licensee be fined \$1,000.00 and assessed partial investigation costs of \$725.00.

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 25th day of February, 2019.