

DECISION
of the
GENERAL INSURANCE COUNCIL OF MANITOBA
(“Council”)
Respecting
JULIAN ANTHONY BURDENIUK
(“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 October 24, 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 Intended Decision. Pursuant to section 375(1) of the *Act* and *Regulation 227/91*, the Council hereby renders its Decision and corresponding reasons.

ISSUE

1. Did the Licensee fail to review the policy declaration to ensure the coverage requested by the Complainant was present?

FACTS AND EVIDENCE

1. On May 30, 2016, the Complainant attended the Agency to discuss insurance on a new property. The Complainant specifically requested the Single Limit Endorsement and increased Building By-laws coverage on their duplex which had been built in 1930.

2. On May 30, 2016, the Licensee completed the Habitational Insurance Application and requested the Single Limit Endorsement. The application along with the e2Value dwelling building replacement cost estimator had been sent to the managing general agent (the "MGA").
3. On June 1, 2016, the MGA issued a Binder Letter indicating coverage has been placed effective May 31, 2016. The policy was issued and sent to the Licensee on June 2, 2016.
4. On August 14, 2017, the property in question suffered a total loss. The adjuster informed the Complainant that based on the estimate to rebuild the home to pre-loss condition, it would exceed the limit of insurance. When questioned regarding the Single Limit Endorsement, the adjuster indicated to the Complainant that the policy did not have this coverage.
5. The Licensee did not follow up with the MGA regarding the Single Limit Endorsement until December 2017, at which time the MGA indicated to the Licensee that the Single Limit Endorsement was issued in conjunction with the Guaranteed Replacement Cost Endorsement, and that due to the age of the dwelling the property did not qualify for the coverage.
6. By letter emailed to Council on June 6, 2018, the Licensee provided his comments regarding the Complainant's allegations. The Licensee indicated to Council that the property qualified for the Single Limit Endorsement as it met all the eligibility requirements, and the manual did not indicate that the Single Limit Endorsement must be issued in conjunction with the Guaranteed Replacement Cost Endorsement. The Licensee further stated that he did not receive any communication from the MGA indicating that the property did not qualify for the Single Limit Endorsement.
7. By email on July 24, 2018, the Insurer, responded to Council and indicated that they typically do advise the broker if coverage is unavailable, however, in certain circumstances where they believe it is not warranted, there may not be such follow-up communication. In this specific circumstance, the Licensee had been dealing with their organization for over 15 years and is very familiar with their products and underwriting practices/criteria, and the Licensee would have had other risks insured with their organization over the years with this same situation.
8. On July 30, 2018, the Licensee's Agency conducted an internal audit of the Insurer's policies placed through the MGA between July 1, 2017 and June 30, 2018. The results of the audit indicated that 13 policies had been written by the Agency in which the Single Limit Endorsement had been requested but was not indicated on the policy. Of the 13 policies written, the Licensee wrote six policies, including his own.

ANALYSIS

Section 375(1)(e) of the *Act*, indicates that a holder or former holder of a license violates the *Act* if they have demonstrated incompetency or untrustworthiness.

The Code of Conduct sections 2 (Competence), 3 (Quality of Service) and 4 (Advising Clients) indicates 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 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. Agents or brokers shall be candid and honest when advising clients. You must indicate in detail, the facts and assumptions upon which your recommendations are based. You must study the risk in sufficient detail to provide the client with sufficient information with which to make an informed decision.

The Licensee knew that the property in question was a duplex built in 1930, and had known or ought to have known that a home of this era and type would have special consideration with regard to rebuilding values and availability of coverage. The Licensee used a program accepted by the Insurer to determine the rebuilding cost value, insured the residence for the full replacement value indicated on that calculator, and requested the Single Limit Endorsement.

The Licensee requested coverage based on underwriting criteria found in the Insurer's manual, however after receiving the policy, failed to review the policy declaration page to ensure the requested coverage was indicated and in place.

By failing to review the policy declaration to confirm the requested coverage was indicated, the Licensee left unreasonable gaps in the Complainant's coverage. By reviewing the policy upon receipt, the Licensee would have had the opportunity to discuss the missing coverage with the underwriter and would have been made aware of the unavailability of the Single Limit Endorsement. An opportunity would have been created for the Licensee to discuss with the client their options – to see if another company would offer the requested coverage, or to cancel the policy as it did not meet their needs.

Based on the information and evidence reviewed by Council, Council concluded that the Licensee violated Sections 375(1)(e) of the *Act* and sections 2, 3, and 4 the Code of Conduct and that disciplinary action is warranted.

PENALTY AND FINAL DECISION

Council's Decision dated February 27, 2019 was delivered to the Licensee by registered mail on February 28, 2019. The Decision outlined the foregoing background, analysis, and conclusion on a preliminary basis.

Pursuant to section 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 \$937.00.

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 **27th day of March, 2019**.