

DECISION

of the

GENERAL INSURANCE COUNCIL OF MANITOBA

(“Council”)

Respecting

HUGH ROSS SUTHERLAND

(“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 385(7) 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 27, 2019, 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 385(7) of the *Act* and *Regulation 227/91*, the Council now renders its Decision and corresponding reasons.

ISSUE

1. Did the Licensee violate the *Act* and/or *Code of Conduct* by failing to obtain the statement of the claimant as requested by his Principal?
2. Did the Licensee make a material misrepresentation to Council’s Investigator when he indicated that formal instructions were not received from the Principal prior to the two year limitation period?

FACTS AND EVIDENCE

1. At all material times, the Licensee held a Level 4 Adjuster's Licence for Adjusting Firm A, which was acquired by Adjusting Firm B on August 31, 2018.
2. On April 30, 2018, Council had received a Consumer Complaint form from the Complainant, a third-party claimant, which indicated that on March 16, 2016 she had slipped on some clear ice and uneven cracked cement at the Store which had caused her extensive injuries. The Complainant had provided Council with a time-line of events which included the following:
 - a. Receipt of a November 9, 2017 letter from Adjuster A of Adjusting Firm C, representing the Store, advising that the Store had contracted Company A in order to provide services of ice and snow removal.
 - b. December 20, 2017 Adjuster B of Adjusting Firm B, attended the Complainant's residence to interview her and obtained photos of her injuries and footwear. *"She [Adjuster B] also told me that their company had not received any information about the accident from the original claims adjuster. She [Adjuster B] said she would follow up,"*
 - c. February 27, 2018 *"I then spoke to Hugh Sutherland [the Licensee] and was told he would follow up on my claim and told me he had my claim right there from Adjuster B. I didn't hear from him again, but after calling many times, finally reached him and was told he was waiting to hear from the insurance company."*
 - d. March 8, 2018 *"Called Hugh Sutherland [the Licensee]. He was extremely rude to me on the phone. He said he had nothing to tell me about my claim, but if I wanted we could talk about the weather. I was very upset and shocked at the treatment I was receiving when the time for my claim was quickly running out! Clearly this was all a big joke to him!"*
 - e. March 16, 2018 (Proscription Date) *"Tried to call Hugh [the Licensee] again, no answer, no reply Left messages."*
 - f. March 26, 2018 *"Hugh Sutherland [the Licensee] finally returned my calls! He advised me he had nothing to tell me as my file is now closed. My two years is up. He told me to do whatever I want."*
3. A letter dated and emailed to Council on May 31, 2018 by the Licensee indicated that:
 - a. *"Our office did meet with the Complainant December 18, 2017, however, she would not provide a statement outlining her reported slip and fall of March 16, 2016. She said she had already did this with the Store and would not do so again."*

- b. *"Although requested, the Store would not release their incident report or any information about the Complainant's allegations."*
- c. *"As I conducted our investigation on behalf of our principal, the Insurer, our main contact at Company A, Contractor A, passed away in December 2017."*

(Note: Contractor A passed away January 15, 2018)

- d. *"We were able to obtain required information as it related to any liability exposure from Contractor A's widow in January and February 2018."*
 - e. *"There was winter weather conditions prevailing on the date of incident the Complainant reports to have fallen. There was no negligence on behalf of the Store or Company A. Weather conditions were discussed with the Complainant as outlined in her complaint when she suggested that I wanted to speak about the weather."*
 - f. *"Formal instructions were not received from the Insurer prior to the two year limitation period which was March 16, 2018."*
4. By email dated August 8, 2018, the Licensee indicated to Council that *"Recommendation to the Insurer was made March 9, 2018 to deny this third party claim to the Complainant. Instructions were not provided to me."* As an attachment to his August 8, 2018 email, the Licensee provided Council with the Government of Canada Hourly Data Report for March 16, 2016 which indicated Winnipeg hourly weather conditions. The Licensee highlighted the hours: 15:00, 16:00 and 17:00 which noted that it was snowing.
5. By email dated October 22, 2018, the Assistant Vice President & Controller for the Insurer provided Council with Adjuster Reports 1, 2, 3, & 4, the Insurer's Notes, and a letter entitled Letter to Claimant from Adjusting Firm C regarding Limitation Period. The Assistant Vice President & Controller for the Insurer indicated to Council that the Insurer was made aware of the loss on November 27, 2017, and that the letter from Adjusting Firm C addressed to the Complainant had provided the date the limitation period for this claim would expire (March 16, 2018). The Adjuster Reports and the Insurer's Adjuster Notes indicated that:
- a. Adjuster Report #2 dated January 18, 2018, the Licensee indicated that:
 - i. *"we have not yet received the insured's contract in place between the Property Owner – Management Company for the loss location for the term in which the alleged incident took place."*
 - ii. *"We have met with the claimant on December 20, 2017. The claimant advises that she would not provide us with a statement as she has given*

this information to the adjuster at Adjusting Firm C representing the Property Management Company. We will attempt to obtain this statement.”

- b. The Insurer's Adjuster Notes compiled by the Insurer's Casualty Adjuster, Adjuster C, dated February 23, 2018 indicated:

- i. *“Report from IA in
He has attended scene and met with claimant
Claimant would not provide statement has [sic] he [sic] has provided it to
Prop management insurer – IA to obtain.
Claimants injuries documented and appears multiple bruising and swelling.
Claims tripped on concrete break in parking lot that was covered in black
ice.
IA pursuing doc's from insd [sic] in regards to contracts and Duties.”*
- ii. *“Hi Hugh,
Thank you for your report.
When you have the insureds documents and statement of the claimant
from the property management company please forward to the Insurer's
Adjuster D. She will be assuming conduct of this file on Monday.”*

- c. Adjuster Report #3 dated March 9, 2018, the Licensee indicated that:

- i. *“We have obtained the contract in place between Company A and the Store.”*
- ii. The description of snow removal services and specifications states that the insured must attend to the property and clear snow after each 2.5 cms of accumulation. *“It is the policy of the RRM to have our lots and sidewalks, medians and parking areas reasonably accessible and safe for customer and staff use during snow storms; and completely accessible and safe within 4 hours after a snow storm.”*
- iii. There was recorded .76 centimeters of snow which would not trigger the insureds to attend to complete snow removal.
- iv. Based on the information that is available and lack of statement from the claimant for which she will not provide further we would suggest that no liability is owing on behalf of Company A.
- v. We are inclined to recommend that a denial of liability be extended. *“Of note, the 2 year limitation period is quickly approaching as of March 16, 2018.”*

- d. Adjuster Report #4 dated March 23, 2018, the Licensee indicated that:
 - i. The two year limitation period has passed.
 - ii. On March 23, 2018 we completed a Manitoba Court Search Criteria and have established that there have been no Statement of Claims filed in the Court of Queen's Bench.
- e. The Insurer's Adjuster Notes compiled by Adjuster D dated March 26, 2018 indicated *"I will forego a coverage review as the claimant's claim is statute barred – the file can be closed accordingly."*
- 6. By email date February 13, 2019, Council provided the Licensee with a copy of the Insurer's Adjuster Notes received from the Insurer's Assistant Vice President & Controller on October 22, 2018 and asked the Licensee to indicate what actions he had taken to obtain the statement of claimant as requested by the Principal on February 23, 2018. The Licensee responded by email on February 15, 2019 and indicated to Council that *"On March 9, 2018 a detailed report with Company A's contract with the property owner, meteorological reports, and Company A's attendance records were forwarded to Adjuster D, including a recommendation that a denial of liability be extended"*. The Licensee indicated that *"The Complainant was aware that I had to wait for instructions from the Insurer. No instructions came prior to the limitation period."*
- 7. By emails dated February 15, 2019, Council asked the Licensee to confirm whether he had received the February 23, 2018 communication from Adjuster C, and if so, what actions he had taken to obtain the statement of claimant. The Licensee had indicated *"Yes I have the email. However as reported when Adjuster B met with her [the Complainant] December 18/17, she would not provide a statement as she had already provided one to the Store."*

ANALYSIS

Sections 385(7)(a) and (c) of the *Act* prohibits misrepresentation and indicates that a holder or former holder of a license violates the *Act* if they have demonstrated incompetency or untrustworthiness.

In accordance with the *Code of Conduct* sections 1 (Integrity), 2 (Competence), and 9 (Conduct Towards Others), adjusters shall discharge their duties to their clients, members of the public, fellow adjusters and insurers with integrity, and owe a duty to their Principal or policy holder to be competent to perform the services which the adjusters undertake on their behalf. Adjusters conduct towards other licensees, members of the public, insurers and the Council shall be characterized by courtesy and good faith.

During the course of the investigation, the Licensee had indicated to Council's Investigator that he did not receive formal instructions from the Principal prior to the two year limitation period of March 16, 2018. In fact, the Licensee had received instructions from the Principal on February 23, 2018 to obtain a copy of the claimant's statement as well as a copy of the contract and logs from Company A. The Licensee obtained a copy of the contract between Company A and the Store and provided this document to his Principal with his March 9, 2018 report. Furthermore, the Licensee had two opportunities to discuss the need for the statement of the claimant with the Complainant, however he had indicated to the Complainant that he was awaiting instructions from the insurance company. When asked by Council what actions he had taken to obtain the statement of the claimant, he had indicated that Adjuster B had tried to obtain the statement when she had met with the Complainant on December 18, 2017 and that the Complainant would not provide a statement as she had already provided one to the Store/Adjusting Firm C. No further effort had been made by the Licensee to obtain this document as requested by the Principal.

Based on the information and evidence reviewed by Council, Council concluded that the Licensee violated Sections 385(7)(a) and (c) of the *Act* and sections 1 (Integrity) and 2 (Competence) and 9 (Conduct Towards Others) of the *Code of Conduct* and that disciplinary action is warranted.

PENALTY AND FINAL DECISION

Council's Decision dated June 6, 2019 was delivered to the Licensee by registered mail on June 7, 2019. The Decision outlined the foregoing background, analysis, and conclusion on a preliminary basis. Having regards to its initial determination that the foregoing violations had occurred, 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. The Licensee be fined \$500.00 and assessed partial investigation costs of \$550.00.

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 10th day of July, 2019.