

DECISION
of the
GENERAL INSURANCE COUNCIL OF MANITOBA
(“Council”)
Respecting
CYNTHIA PATRICIA DUKE
(“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 violated the *Act*, its *Regulations*, the General Insurance Agents Licensing Rules (“Licensing Rules”), and/or the General Insurance Agent’s Code of Conduct (“*Code of Conduct*”) by failing to comply with her reporting requirements to the Insurance Council of Manitoba (“ICM”).

During the investigation the Licensee was given an opportunity to make submissions with respect to Council’s concerns.

On March 18, 2020, during a meeting of Council, the evidence compiled during the investigation was presented and reviewed. Upon assessment of the evidence, Council determined its Intended Decision.

As part of its Intended Decision, Council informed the Licensee that she may request a Hearing to dispute Council’s determinations and its penalty/sanction. The Licensee expressly declined her right and chose not to pursue a Hearing; she instead expressly accepted the terms of the Intended Decision and duly paid the levied fine.

Pursuant to section 375(1) of the *Act* and *Regulation 227/91*, Council now renders its Decision and corresponding reasons.

ISSUE

1. Did the Licensee make false declarations on her licensing applications in violation of the *Act* and/or *Code of Conduct*?

FACTS AND EVIDENCE

1. Dated May 23, 2019, the Licensee declared on her licensing renewal application: “March 2018 filed for bankruptcy (personal) and discharged scheduled for May 28, 2019”.
2. Upon further investigation it was identified that the Licensee had multiple past bankruptcies as follows:
 - 1st Bankruptcy filed – May 8, 1997 in British Columbia
 - 2nd Bankruptcy filed – April 13, 2010 in Ontario
 - 3rd Bankruptcy filed – January 13, 2015 in Alberta
 - 4th Bankruptcy filed – March 22, 2018 in Manitoba
3. In completing her licensing applications dated May 24, 2016 and August 22, 2016, the Licensee answered “No” to having been subject to proceedings in personal bankruptcy; the questions read as follows:

15.) In any jurisdiction:

(f) Have you at any time been subject to proceedings in personal bankruptcy, or has any business in which you are/were a Director, Officer, Individual Owner, or Partner been subject to proceedings in bankruptcy? If yes, provide a copy of the bankruptcy discharge.

4. In completing her licensing applications dated March 10, 2017, November 9, 2017, May 30, 2018, and June 8, 2018, the Licensee answered “No” to having been subject to proceedings in bankruptcy; the questions read as follows:

16.) In any jurisdiction, at any time, have you, or any business with which you were/are involved been:

(f) Subject to proceedings in bankruptcy? Copy of bankruptcy discharged is required.

5. In completing her licensing application dated May 26, 2017, the Licensee answered “No” to having been subject to personal bankruptcy; the question read as follows:

6.) Engaged in any business which has been subject to proceedings in bankruptcy or subject to personal bankruptcy?

6. In completing her licensing application dated May 1, 2018, the Licensee answered “No” to having been subject to personal bankruptcy; the question read as follows:

6.) Since you last applied for a Licence or a Renewal to ICM have you engaged in any business which has been subject to proceedings in bankruptcy or subject to personal bankruptcy?

7. By email dated December 1, 2019, the Licensee advised Council’s Investigator that:

“I will admit to my negligence in not reading the application renewal. As I have done this application numerous times since 1993, I will own the fact that I no longer read the questions.”

8. By email dated December 4, 2019, the Licensee advised Council’s Investigator that:

“As for my applications, all I can say is I did not read it. It was just automatic to skip through it and answer no to all as I have always done from the beginning of my insurance career starting in 1992. The only reason why I read the renewal application for 2019 was because it was online so larger and that question caught my eye about bankruptcy. If I wanted to be deceitful, I would have answered no as I always have.”

9. By email dated February 6, 2020, the Licensee advised Council’s Investigator that:

“I have been in the industry since 1992 and probably have only actually read the renewal application once or twice over the years.”

ANALYSIS AND DETERMINATIONS

Pursuant to section 375(1)(a) of the *Act*, prohibits misrepresentation and dishonesty – this includes false declarations on licensing applications and section 375(1)(b) prohibits violation of any provision of the *Act*.

Section 10 of the *Code of Conduct* mandates agents or brokers to conduct themselves with courtesy and good faith toward the Council.

In discharge of its responsibility to protect the public, the ICM requires the Applicant/Licensee to answer certain questions for every application or renewal of the licence. Among them is whether the Applicant/Licensee has - in any jurisdiction and at any time - been subject to proceedings in bankruptcy and/or subject to personal bankruptcy.

This is a very important disclosure obligation. Disclosure of information (such as being subject to any proceedings in bankruptcy and/or being subject to personal bankruptcy) on licensing renewal applications permits Council to assess whether the conduct or information disclosed could jeopardize public interest in any way and whether Council should conduct any necessary inquiries or investigation to aid in that assessment. The nature of the disclosure would be considered to determine if it is critical to the person's trustworthiness, competence or intention to carry on the business of insurance in good faith, and whether the person is fit to be licensed.

The Licensee's licensing applications contained declaration sections to the effect that the information contained in the application(s) was true and complete, that she understood that it was an offence under *The Insurance Act* to make a material misstatement to the ICM, and/or that a false declaration could lead to disciplinary action.

The Licensee falsely declared on her licensing applications (dated May 24, 2016, August 22, 2016, March 10, 2017, November 9, 2017, May 30, 2018, and June 8, 2018) and on her licensing renewal applications (dated May 26, 2017 and May 1, 2018) that she had not been subject to proceedings in bankruptcy and/or subject to personal bankruptcy.

The applicable application questions explicitly sought disclosure regarding having been subject to any proceedings in bankruptcy and/or subject to personal bankruptcy.

The Licensee acknowledged to Council's Investigator that she no longer reads the application questions and that it was just automatic to skip through the applications and

that she answers no to all questions as she has always done from the beginning of her insurance career starting in 1992.

Based on the information and evidence, Council concluded that the Licensee violated sections 375(1)(a) Misrepresentation, dishonesty, and 375(1)(b) violation of any provision, of the *Act*, and section 10 – Conduct towards Others of the *Code of Conduct* by failing to act in good faith towards Council, and that disciplinary action is warranted.

PENALTY AND FINAL DECISION

Council's Decision dated June 4, 2020 was delivered to the Licensee by mail on June 5, 2020.

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) & (d) of the *Act* and section 7(1) of *Regulation 227/91*:

1. The Licensee was fined \$250.00 but not assessed with investigation costs.

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 is 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 8th day of July, 2020.