

DECISION
of the
GENERAL INSURANCE COUNCIL OF MANITOBA
(“Council”)
Respecting
MARY LOUISE CHARLES
(“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*, the General Insurance Agents Licensing Rules (the “*Licensing Rules*”), and/or the General Insurance Agent’s Code of Conduct (the “*Code of Conduct*”).

During the investigation the Licensee was notified of Council’s concerns and given an opportunity to make submissions.

On September 28, 2020, 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.

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 and investigation costs.

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

ISSUES

The issues for Council's consideration are:

1. Did the Licensee, in her role as the Operating Agent of the agency (the "Agency"), o/a Trade Name A; Trade Name B, violate the *Act* and/or the *Code of Conduct* by permitting an employee (the "Employee") to act as an agent without holding a valid licence?
2. Did the Licensee fail to implement adequate screening procedures to ensure unlicensed activity had not occurred prior to approving the Employee's insurance agent licence application for reinstatement (dated December 11, 2019), in violation of section 370(3.1), of the *Act*?

FACTS AND EVIDENCE

1. At all material times, the Licensee was the Operating Agent responsible to manage the Agency.
2. On December 20, 2019, in her capacity as the Operating Agent, the Licensee sent a letter to the Insurance Council of Manitoba ("ICM") reporting that the Employee acted as an agent without holding a valid insurance agent's licence.
3. By letter dated January 17, 2020, the Licensee indicated to Council's Investigator that:
 - a. The Employee's licence lapsed in May 2019 when she was on leave and she had not completed her required continuing education requirements to renew.
 - b. On November 13, 2019, the Employee returned to work from her leave and was able to transact Insurer A business on its system.
 - c. On December 10, 2019, the Agency's licensing department informed the Employee's manager, (the "Manager"), that the Employee's licence was not active and she could not be granted system access.
 - d. The Manager advised the Employee on December 11, 2019, to cease all activity and the Employee completed her licensing reinstatement application that morning.
 - e. The Licensee also indicated to Council's Investigator that:

“As the Operating Agent, I was not aware that [the Employee] had processed insurance since she had returned from her... leave when I authorized the renewal & reinstatement of her license...”

“The unlicensed activity was brought to my attention on December 18th and I immediately started gathering information to report to the council.”

4. Pursuant to section 370(3.1) of the Act, the Licensee approved Sponsorship of the Employee’s licence by signing the Employee’s licensing application dated December 11, 2019 – the Employee had been conducting unlicensed activity for which the Licensee was unaware.
5. The Licensee confirmed that the Employee completed a large number of Insurer A transactions and sold two Insurer B travel insurance policies in the period of November 13, 2019 until December 18, 2019, during the time when the Employee was unlicensed.
6. On February 20, 2019, the Licensee signed Agency Attestation Forms which included the following excerpts:

I understand that I am required:

- *to implement reasonable screening procedures to determine an applicant’s suitability to receive an insurance agent’s licence;*
- *to submit an application for a new employee and to ensure that a valid licence has been **issued by the Insurance Council of Manitoba** prior to that applicant acting as an agent;*
- *to ensure that no employee, director or partner who is not licensed acts as an insurance agent;*
- *to ensure that proper and adequate supervision of employees is provided at all times (refer to the Licensing Rules and Code of Conduct);*
- *to ensure compliance with The Insurance Act of Manitoba, its Regulations, its Rules and the Code of Conduct;*

The Licensee further confirmed and signed the below Recommendation on the Agency Attestation Forms:

RECOMMENDATION:

To the best of my knowledge, information and belief, all employees who engage in licensed activity are licensed, and are trustworthy and competent to receive a renewal licence.

7. By letter dated February 11, 2020, the Licensee indicated to Council's Investigator that:

"Unfortunately, we were not aware that individuals could access [Insurer B] and [Insurer A] systems without a valid licence and had not built that into our controls."

8. By letter dated August 14, 2020, the Licensee indicated to Council's Investigator that:

"As continuing due diligence to determine her suitability, I thoroughly reviewed [the Employee's] applications in their entirety before authorizing [the Employee's] signed reinstatement and renewal licence applications..."

"When I affixed my authorization, her supervisor had not advised me of the possible unlicensed activity and [the Employee] had answered "no" to the question regarding any unlicensed activity..."

"While our then-existing internal processes which were set up to prohibit an employee from engaging in unlicensed activity were reasonable, the processes were not properly understood by the employee and the supervisor."

ANALYSIS AND DETERMINATIONS

Pursuant to section 370(3.1), of the *Act*, No person or insurer who for the purposes of subsection (2) is authorized under this *Act* to approve a licence application shall recommend the applicant for an insurance agent licence unless the person or the insurer has implemented screening procedures to determine if the applicant is a suitable person to receive the licence.

Section 9 (Unauthorized Practice of the Profession), of the *Code of Conduct*, mandates that agents shall assist in preventing the unauthorized practice of the profession. Operating Agents are responsible for supervision over staff and assistants to whom they delegate particular tasks and functions. Activities falling within the definition of an "agent" of the Insurance Act must be performed by a person who is a licensed insurance agent.

As per the definition of an “agent” in the *Act*:

"agent" means a person who for compensation

- (a) solicits insurance on behalf of an insurer,
- (b) transmits for a person other than the agent an application for or a policy of insurance to or from an insurer, or
- (c) acts, or offers or assumes to act, in the negotiation of insurance or in negotiating the continuance or renewal of an insurance contract other than a life insurance contract;

At all material times, the Licensee was the Operating Agent responsible to manage the Agency including all the insurance activities of the agency and its employees, and the prohibition of unlicensed activity. As the Operating Agent, it was the Licensee’s duty to ensure that no unlicensed employee acted as an agent.

Though the unlicensed activity occurred due to a misunderstanding between the Manager and the Agency’s Licensing Team, as the Operating Agent, it was the Licensee’s responsibility to provide adequate supervision of the staff and assistants to whom she delegates particular tasks and functions.

The Licensee, in her response, stated that when she signed and approved the Employee’s insurance agent’s licensing application for reinstatement on December 11, 2019, she was not aware that the Employee had processed insurance transactions without being duly licensed.

Council determined that as the Operating Agent, the Licensee failed to comply with her attestations as per the Agency Attestation Forms that she would ensure that no employee who is not licensed acts as an insurance agent. The Licensee had acknowledged that the internal processes to prevent unlicensed activity were not properly understood by the Supervisor/Manager to whom she delegated that responsibility for which the Licensee, as the Operating Agent, was/is ultimately accountable.

The Licensee also acknowledged that she was not aware that there were no controls in place to ensure that Insurer A and Insurer B system platforms were not accessible by individuals who did not hold a valid insurance agent licence.

Based on the information and evidence reviewed, Council determined that disciplinary action is warranted as the Licensee violated section 370(3.1) of the *Act*, and section 9 (Unauthorized Practice of the Profession), of the *Code of Conduct*, by failing to implement reasonable screening procedures as she was unaware that an employee had engaged in unlicensed activity when giving approval to sponsor that employee’s licence as per the application dated December 11, 2019.

PENALTY AND FINAL DECISION

Council's Decision dated February 4, 2021 was delivered to the Licensee by mail on February 8, 2021.

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 sections 375(1.1)(c)&(d) of the *Act* and section 7(1) of *Regulation 227/91*:

1. The Licensee was fined \$1,000.00 and assessed with investigation costs of \$1,500.00.

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 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 15th day of March, 2021.