

DECISION
of the
LIFE INSURANCE COUNCIL OF MANITOBA
(“Council”)
Respecting
ME-DIAN CREDIT UNION OF MANITOBA LIMITED
(“Licensee”)

INTRODUCTION

Council derives its authority from *The Insurance Act* C.C.S.M. c. 140 (the “Act”) and the *Insurance Councils Regulation 227/91*.

Council’s responsibility is to protect the public through the enforcement of the regulations governing, among others, insurance agents. Agents, including Restricted Insurance Agents, are intermediaries between insurers and insureds. The agent owes duties of honesty and good faith to his or her clients, the insureds.

Though of course there are many businesses whose primary purpose is to act as an agency for the sale of insurance products, some commercial entities market insurance which is incidental to their main business. Financial institutions and automobile dealerships, for example, may coordinate the financing for their customers, whether it be a mortgage for the purchase of a home or a loan necessary to acquire a motor vehicle. The customer is in this circumstance both the buyer and the borrower. It may be in the interests of both the seller/lender and the buyer/borrower for the customer to purchase life and/or disability insurance in connection with the loan. This is referred to as incidental sale of insurance, in the sense that the insurance is sold incidental to the sale of another product or provision of another service to the customer. Despite its incidental nature, the seller of the insurance within the car dealership or the financial institution is acting as an insurance agent and accordingly is bound by all of the duties owed by insurance agents, including the requirement to be appropriately licensed.

Recognizing the need to ensure consumer protection in the incidental sale of insurance, as of September 1, 2014, the *Insurance Agents and Adjusters Regulation 389/87R* (the “Regulation”) was proclaimed, providing a regulatory framework for incidental sellers of

insurance in Manitoba that is similar to requirements that were then in place in Alberta and Saskatchewan.

Credit Unions such as the Licensee sell insurance products to their members and customers incidental to providing real property and chattel mortgages. They are bound by the *Regulation*, which includes the requirement that they be licensed in order to sell insurance. The licence is referred to as a “Restricted Insurance Agent” or RIA licence. To obtain a licence an application must be completed and filed. The application must be signed by a **Designated Official** under the licence, **who is responsible for receiving notices and other documents on behalf of the applicant, and for supervising the insurance activities of the applicant under the restricted licence**. An RIA applicant must be sponsored by an insurer who has entered into an agency contract with the applicant, and is licensed in Manitoba to undertake the class or classes of insurance for which the applicant has applied. An RIA applicant may have only one sponsoring insurer.

RIA licenses must be renewed prior to June 1st annually; if not renewed, the licence expires on May 31st. This case arose because the Licensee failed to renew its licence prior to June 1, 2018, despite receiving more than one email reminder.

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 had violated the *Act* and/or its *Regulations*.

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

FACTS AND EVIDENCE

In the course of its investigation, it was determined that:

1. In March 2018, Council emailed a notice to RIA entities that licence renewals would soon be available.
2. In May 2018, Council emailed four licensing renewal notices to RIA entities advising them that the licensing renewal process was open and specifying that an agent is prohibited from acting as an agent if they fail to renew their licence.
3. In June 2018, Council emailed notices to those who did not renew their licences that they were prohibited from transacting any insurance business.
4. The Licensee failed to renew its RIA licence (for creditor life, disability, and loss of employment insurance) by the May 31, 2018 licence renewal deadline.

5. The Licensee was without an RIA licence (for creditor life, disability, and loss of employment insurance) from June 1, 2018 to December 17, 2018. During this unlicensed period, the Licensee continued to hold itself out as an agent to members of the public and engaged in unlicensed activity by selling at least 152 creditor insurance certificates as confirmed by the Licensee's Sponsor.
6. Section 29(1) of the *Regulation* required the Licensee to inform Council, without delay, of a replacement designated official.
7. The Licensee had agreed on its licensing applications signed February 25, 2015, May 27, 2016, May 31, 2017, and June 1, 2017, to notify Council of any changes within 15 days. The Licensee failed to notify Council, without delay (or at all), of a replacement designated official.
8. The Licensee contacted their Sponsor on December 11, 2018 advising:

"It looks like we had an administrative oversight on our end and we didn't renew our Insurance license on time. We are working with the insurance council to fix this quickly."
9. In responding to Council's inquiry as to whether the Licensee conducted any insurance business as a Restricted Insurance Agent since June 1, 2018, the Licensee advised Council's Licensing Department on December 12, 2018:

"Yes we did. We issued... creditor disability, Life, and Loss of Employment."
10. Having corresponded with their Sponsor on December 11, 2018 and Council's Licensing Department on December 12, 2018, the Licensee clearly understood at that time that it was not duly licensed to sell creditor insurance yet continued to do so until December 17, 2018 when the life, disability, and loss of employment RIA licence was re-issued with a new Designated Official.
11. By letter dated January 15, 2019, the Licensee:
 - a. Acknowledged to Council that the licence was not renewed in May 2018 for the period of June 1 - December 17, 2018.
 - b. Stated the reason for not renewing the licence was a result of organization changes, including a new Branch Manager, and the licence renewal was missed upon the transition of duties.
 - c. Advised Council that their administrative team and Designated Official now have the Council's insurance licence renewal in their monthly administrative action plans.

12. By email dated February 15, 2019, the Designated Official at that time confirmed that the former Designated Official transitioned from Branch Manager to another role.
13. According to the Sponsor:
 - a. The Licensee sold 152 certificates during the period that the Licensee did not have a licence.
 - b. The Licensee received approximately \$34,000.00 in commissions for that unlicensed activity.

THE INTENDED DECISION

On April 4, 2019, during a meeting of Council, the information and evidence compiled during the investigation was reviewed and considered by Council. In its Intended Decision of April 18, 2019, Council determined, subject to the Licensee showing cause why its determinations should not be made final, that:

1. The Licensee allowed its licence to lapse from June 1 to December 17, 2018; during this period the Licensee sold at least 152 insurance certificates.
2. The Licensee was aware as early as December 11, 2018 that it did not hold a valid licence but continued to hold itself out to the public as an RIA and sell insurance until December 17, 2018.
3. The RIA regulatory regime is not new. The licensing requirements have been in effect since June 1, 2015. The Licensee went through the initial licensing process (2015) and two prior licence renewals (2016, 2017). Therefore, the Licensee knew, or ought to have known, indeed was legally bound to know of the statutory requirement for a licence.
4. The Licensee failed to comply with section 29(1) of the *Regulation* to notify Council, without delay, of a replacement designated official and failed to fulfill its agreement with Council to inform Council of changes within 15 days.
5. The Licensee repeatedly violated sections 369(1) and 391 of the *Act* and on one occasion violated section 29(1) of the *Regulation*.
6. Accordingly, by reason of the aforesaid violations, and pursuant to sections 375(1.1)(c) and (d), of the *Act*; and, section 7(1), of *Regulation 227/91*:
 1. The Licensee was to be fined \$10,000.00 and assessed investigation costs of \$1,500.00.

REQUEST FOR A SHOW CAUSE HEARING

On receiving Council's Intended Decision, the Licensee was entitled either to accept the Intended Decision and waive its right to a show cause hearing. The Licensee requested a show cause hearing to permit it to present any new information which might demonstrate to Council that it should reverse or revise or not proceed with its Intended Decision. The Licensee was advised of its right to present any evidence and make any submissions upon which it intended to rely in support of its position, including the tendering of evidence through witnesses or documents. The Licensee was also advised of its right to be represented at the show cause hearing by legal counsel or another person or supporter.

THE SHOW CAUSE HEARING

The first date set for the show cause hearing was adjourned at the request of the Licensee.

The hearing actually proceeded on November 20, 2019. On behalf of the Licensee, two employees, Employee A and Employee B, attended and made submissions.

The essence of the Licensee's position as expressed by Employee A and Employee B was:

1. The Licensee is a small Credit Union with a small staff and therefore does not have the resources for a substantial administrative regime with specialists, for example, in insurance matters;
2. The failure to renew their RIA licence was the inadvertent result of changes in management and not deliberate or willful;
3. The Licensee has established procedures to ensure the problem will not repeat itself;
4. The fine intended to be imposed is extremely large compared to the amount of the renewal fee;
5. They have had difficulty integrating emails invoiced into their accounts payable system.

Council explained that there is no reason for a disciplinary penalty, such as the fine, to be related to the costs of renewal fees. Council further explained that the licence renewal notice provided to licensees is not an invoice.

Council was advised by the representatives at the hearing that a previous employee (the "Previous Employee") was no longer an employee of the Licensee as of October 2019. It was only when Employee A was going through the Previous Employee's office that the Intended Decision was discovered. The Previous Employee had been the Licensee's Designated Official under *Regulation 389/87R*. Contrary to that regulation, the Licensee did not promptly give notice to Council of the departure of its Designated Official and did not promptly request the appointment of a new Designated Official.

Council only discovered that the Licensee no longer had a Designated Official when a call was made on behalf of Council to inquire about the November 20th show cause hearing. When this was learned, Council then emailed Employee A explaining the Licensee's obligations and referring to the provisions of the *Act* and *Regulation* applicable as well as outlining the necessity of completing the application to change the Designated Official form, and referring him to the online application on Council's website.

The form is not complicated. It must be signed by the proposed Designated Official. In the Declaration and Certification, it states, among other things:

I am designated to receive notices and other documents on behalf of the applicant person or entity ("applicant") to be licensed, and I am responsible to supervise the applicant's insurance activities under the restricted licence. I understand that the Insurance Council of Manitoba may require additional information to determine if the applicant is suitable to hold a licence and/or that the applicant and insurance product qualifies for a Restricted Insurance Agent licence.

I certify that the applicant has reasonable and demonstrative policies and procedures to ensure that anyone who solicits, negotiates or transacts insurance on behalf of the applicant is knowledgeable, competent and suitable. I understand that the Insurance Council of Manitoba may require evidence of such policies and procedures for the issue or renewal of a Restricted Insurance Agent licence.

By email on November 4, 2019, the Licensee submitted the aforementioned application form. The proposed new Designated Official was Employee A and accordingly the declaration was signed by him. But the form submitted was incomplete and inaccurate. The sponsoring insurer was unnamed and did not sign the application as clearly required.

By return email the same day, a representative of Council explained to Employee A how the application was deficient and what needed to be done. A completed but still slightly deficient application was received by Council on November 19, 2019. By email the morning of November 20, 2019, the outstanding items were explained by a representative of Council to the Licensee. Note that Employee A was still the proposed Designated Official in this re-revised application form.

In the course of the show cause hearing, it was learned through exchanges with Employee A and Employee B that:

1. The Licensee could not explain how or why the Licensee had continued to sell insurance between December 11 and December 17, 2018 when it certainly knew it was not authorized to sell insurance;
2. The Licensee admitted all of the facts (1 through 13, both inclusive) delineated above in the Facts and Evidence part of this Decision;
3. Though the Licensee had said it would implement processes and procedures to ensure that the same mistake could not occur again, neither Employee A nor Employee B were able at the show cause hearing to explain or demonstrate these new procedures and processes;
4. Employee A was unsure he had the knowledge to be a Designated Official and had never contacted Council to inquire what might be done to educate himself in this respect; and,
5. Though Employee A is named on the recently submitted application as the intended Designated Official, it is contemplated that actually Employee B would be assuming responsibility for the Designated Official's duties; accordingly, the representatives advised Council that the Licensee would be submitting a new application.

DISCUSSION AND ANALYSIS

In the Intended Decision the issues were stated to be whether the Licensee had violated sections 369(1) and 391 of the *Act*, which prohibit unlicensed activity in holding out as an agent when not duly licensed; and whether the Licensee violated section 29(1) of *Regulation 389/87R* which requires an RIA to inform Council without delay of a replacement Designated Official. Given the admissions made by the Licensee in the course of the show cause hearing, there is no doubt that the Licensee committed these violations. Indeed, the Licensee did not contend otherwise. The submissions made on its behalf were clearly aimed not at the question of liability, but rather at the penalty. During the course of the show cause hearing, Council continued to be concerned regarding the Licensee's representatives' understanding of their obligations as the licence holder. The person who initially signed as the proposed Designated Official (Employee A) in the applications had no knowledge of the responsibilities of a Designated Official, and stated it was not he but someone else who would in fact be assuming the associated responsibility. The person who said he would now be proposed

as the Designated Official (Employee B) in the new forthcoming application also acknowledged that he had little knowledge of what that responsibility entailed.

For all of these reasons, Council rejected the submission of the Licensee that the penalty specified in the Intended Decision should be reduced. Indeed, in the circumstances, there appeared to be no reasonable basis for seeking a show cause hearing. The hearing served only to magnify the seriousness of Council's concerns and to demonstrate forcefully that a significant penalty must be imposed. Council has determined that the Licensee violated sections 369(1) and 391 of the *Act* and section 29(1) of the *Regulation*.

PENALTY

Council's Decision dated January 23, 2020 was delivered to the Licensee by registered mail on January 24, 2020. The Decision outlined the foregoing background, analysis, and conclusion on a preliminary basis.

Having regard to the determination of the violations listed above, and for the reasons outlined above, pursuant to sections 375(1.1)(c) and (d) of the *Act* and section 7(1) of *Regulation 227/91*, Council ordered the following:

1. The Licensee was fined \$10,000.00 and assessed investigation costs of \$3,000.00.

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*.

The Licensee appealed Council's Decision to The Insurance Agents' and Adjusters' Licensing Appeal Board but subsequently withdrew their Notice of Appeal. The Licensee duly paid the levied fine and investigation costs and as the Licensee withdrew its Notice of Appeal 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 September, 2021.