

DECISION
of the
GENERAL INSURANCE COUNCIL OF MANITOBA (the “Council”)
Respecting
PAUL VACCARELLO (the “Former Licensee”)
as the former Operating Agent for
TRIPEMCO BURLINGTON INSURANCE GROUP LIMITED (the “Agency”)

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

On April 29th, September 28th and November 16th, 2020, during meetings 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 Former Licensee that he may request a Hearing to dispute Council’s determinations and its penalty/sanction.

On February 12, 2021, the Former Licensee filed a Notice to Council requesting a Hearing with the Council. On April 10, 2021, the Former Licensee, withdrew his request for a Hearing.

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

ISSUES

1. Did the Former Licensee violate sections 375(1)(a) Deceit or dishonesty, and 375(1)(e) Untrustworthiness of the *Act*, and sections 9 - Unauthorized Practice of the Profession and 10 - Conduct Towards Others, of the *Code of Conduct*, by facilitating unlicensed activity through an organization which operates self-storage facilities ("Self-Storage Facility") to sell insurance to Manitoba consumers respecting an insurance program administered by the Agency and underwritten by the Insurer?
2. Did the Former Licensee violate sections 375(1)(a) Deceit or dishonesty and 375(1)(e) Untrustworthiness, and section 4 - Advising Clients, of the *Code of Conduct*, by failing to provide sufficient clarity and transparency to Manitoba consumers regarding the insurance premium and to Council's Investigator regarding the compensation (administration fee) charged by the Self-Storage Facility?
3. Did the Former Licensee violate section 375(1)(a) Misrepresentation and section 10 - Conduct Towards Others of the *Code of Conduct*, by making a false statement Council's Investigator, during the course of the investigation, when he indicated that Certificates of Protection ("Certificates") were electronically signed by the Agency; whereas, the Certificates were signed by the Self-Storage Facility employees?

FACTS AND EVIDENCE

1. At all material times, the Former Licensee was the Agency's Operating Agent in Manitoba.
2. On July 22, 2015, the Former Licensee completed ICM's Licensing application to obtain a Manitoba Operating Agent's licence for the Agency. By affixing his signature to that application, the Former Licensee indicated that he had read and understood that:
 - a. *"Agent' means a person who, for compensation solicits insurance on behalf of any insurer or transmits for a person other than himself, an application for or a policy of insurance to or from such insurer or offers or acts or assumes to act in the negotiation of such insurance or in negotiating the continuance or renewal of other than life insurance contracts."*
 - b. *"No insurer licensed under the Insurance Act of Manitoba, shall, directly or indirectly, pay or allow, any commission or other compensation or anything of value to any person for acting or attempting or assuming to act as an insurance agent in respect of insurance in the province or for having or claiming or appearing to have any influence or control over the insured or*

prospect for insurance unless that person holds at the time a subsisting insurance agent's licence."

3. By email dated September 21, 2015, ICM's Licensing Department notified the Former Licensee that his licence had been processed and indicated that as the Operating Agent transacting General Insurance, he was required to *"Maintain compliance with The Insurance Act, the General Insurance Agent Code of Conduct, and the General Insurance Agents Licensing Rules;"*.
4. The Former Licensee affixed his signature on the March 10, 2017, February 28, 2018, and March 6, 2019 annual Agency Attestation forms and declared that he understood that he was required:
 - a. *"to ensure compliance with The Insurance Act of Manitoba, its Regulations, its Rules and the Code of Conduct."*
5. By email dated August 22, 2019, the Former Licensee indicated to Council's Investigator that:
 - a. Through their program, the Self-Storage Facility's customers were provided an automatic \$5,000.00 coverage on each insured locker upon move-in.
 - b. As coverage was automatic, no application and no individual underwriting was required, and no analysis was completed since there was only one coverage option.
 - c. That no commission or compensation was being paid to the Self-Storage Facility by the Agency or the Insurer - *"We charge a premium and collect the same premium, no commissions are being paid oor [sic] compensation paid to the sites by our office, it's related companies or the insurer."*
6. Throughout the investigation, Council's Investigator addressed or copied the Former Licensee, as Operating Agent for the Agency, on all email inquiries relating to the investigation. Responses to inquiries on behalf of the Agency were provided by Agent A.
7. By emails dated December 4th and 10th, 2019, the Former Licensee, through Agent A provided Council's Investigator with a Self-Storage Facility User Agreement (the "User Agreement"), a Self-Storage Facility Protection Plan Exemption Form (the "Exemption Form"), and indicated to Council's Investigator that:
 - a. The Self-Storage Facility *"...purchased the eight sites in Manitoba over the past three years. We inherited the tenants. That said we did have the sites continue to sell insurance under our program."*

- b. The Self-Storage Facility customers had two options to decline the \$5,000.00 automatic storage insurance policy, which was free for the first month. Customers could:
- *“Bring in their home policy within the first 4 weeks and confirm coverage.”*
 - *“If client refuses or items are un-insurable (collectibles, antiques, licensed vehicles etc.) they may sign the insurance addendum [Exemption Form] declining coverage and assume all liability.”*
- c. The Self-Storage Facility employees entered customer information into their operating system which generated a Certificate of Protection (“Certificate”). The Certificate would be electronically signed by the Agency and was provided immediately upon move-in to the customer, by the Self-Storage Facility employees.
8. Bullet 11 of the User Agreement had indicated that the user’s contents were insured up to \$5,000.00 under the facility Protection Plan (the “Protection Plan”) for a fee of \$16.00 plus tax, excluding commercial and/or vehicle storage users, and in order to be exempt from the protection plan, the user must provide written proof of contents coverage through an independent provider **and** [emphasis added] sign the cancellation form [Exemption Form].
9. During the course of the investigation, Council’s Investigator obtained a copy of a Certificate dated January 18, 2019 which did not contain the Agency’s electronic signature as previously advised by Agent A; rather, it had been signed by an individual as the Facility Representative.
10. By email dated February 12, 2020, Agent A provided Council’s Investigator with copies of Certificates and Exemption forms and indicated to Council’s Investigator that:
- “The sites notified us they were signing the documents in error; they were to be signed electronically. I communicated what it was supposed to be, unfortunately it was wrong.”*
11. Of the eight Exemption Forms provided to Council’s Investigator by Agent A, two were prior to 2016 when the Self-Storage Facility purchased their Manitoba sites, five were for vehicles insured by a public insurer and which were excluded from coverage, and one Exemption Form was not fully completed.
12. By emails dated April 20th and 21st, and October 14th, 2020, Agent A indicated to Council’s Investigator that:

- a. The \$16.00 premium indicated in the User Agreement consisted of the insurance premium and a Self-Storage Facility administration fee.
 - b. Using the \$16.00 model, the insurance premium would be \$2.00, the administration fee would be \$14.00 plus tax.
 - c. “[The] Self-Storage Facility *does not charge the administration fee if the consumer purchases their storage insurance through another provider.*”
 - d. It is a requirement of the User Agreement that the user must carry insurance.
13. By emails dated January 8th, March 6th and April 21st, 2020, the Former Licensee specifically indicated to Council’s Investigator that he had reviewed the answers provided to Council’s Investigator by Agent A and was in agreement with the answers provided.
14. By emails dated December 4, 2019 and March 5, 2020, the Insurer indicated to Council’s Investigator that the annual premiums collected from customers of the Self-Storage Facility group of companies in Manitoba and the amount of commissions paid to the Agency were as follows:

<u>Year</u>	<u>Premiums</u>	<u>Commissions</u>
2016	\$7,464.00	\$1,492.80
2017	\$14,288.00	\$2,857.60
2018	\$33,894.00	\$6,778.80
2019 (Projected)	\$38,838.00	\$7,767.60

ANALYSIS AND DETERMINATIONS

Sections 375(1)(a) of the *Act*, prohibits misrepresentation, deceit or dishonesty, and 375(1)(b) of the *Act* is applicable to any violation of any provision of the *Act* or any rule or regulation under the *Act*, and section 375(1)(e), of the *Act* indicates that a holder or former holder of a licence violates the *Act* if they have demonstrated incompetency or untrustworthiness.

As the Agency’s Operating Agent, the Former Licensee was/is responsible for the management of the Agency and all its insurance activities, including the prohibited use of unlicensed individuals. Any activities falling within the definition of an agent as outlined in section 1 of the *Act*, must be performed by a person who is a licensed insurance agent.

Section 1 of the *Act* defines an agent as:

"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; (« agent »)

Council has a mandate to protect the public from unlicensed individuals selling insurance.

The Agency developed a program which allowed their client, a Self-Storage Facility, to insure a user's contents for up to \$5,000.00 under the Protection Plan. The Protection Plan extended coverage to each unit at their eight Manitoba self-storage facilities, upon move-in. The User Agreement indicated that the Protection Plan fee was \$16.00; however, the User Agreement failed to clearly identify for consumers that the fee included an insurance premium and a Self-Storage Facility administration fee and failed to specify the amount of each respectively. The Self-Storage Facility is not an entity eligible to hold an insurance agent licence in Manitoba.

The Former Licensee had indicated to Council's Investigator that no commissions or compensation were being paid to the Self-Storage Facility by the Agency, its related companies or the insurer, for customer business regarding the Protection Plan; however, the Former Licensee was aware that the Self-Storage Facility was charging an administration fee correlating with the sale of insurance, as it was included in the Protection Plan premium.

Council determined that by charging an administration fee dependent upon the sale of insurance, the Self-Storage Facility was receiving a form of compensation; therefore, the Self-Storage Facility's activity of selling insurance to customers fell within the activities of an agent as defined by the *Act* and would need to be completed by a licensed insurance agent.

Although Agent A had indicated to Council's Investigator that there were two options for consumers to decline the coverage and provided signed Exemption Forms as supporting documentation, the User Agreement stipulated that the user would be required to provide proof of contents coverage through an independent provider **and** [emphasis added] sign the Self-Storage Facility's cancellation form in order to decline the coverage provided by the Protection Plan. Council determined that this was a form of tied-selling which is contrary to the professional standards expected by Council.

Council further determined that the Former Licensee's responses to Council's Investigator with regard to compensation obtained by Self-Storage Facility lacked clarity and transparency.

On behalf of the Agency, Agent A indicated to Council's Investigator that a Certificate of Protection was equivalent to a Certificate of Insurance, and that the Self-Storage Facility's employees issued Certificates at the time of move-in, which were electronically signed by the Agency. In fact, on a number of occasions, the Certificates were signed by the Self-Storage Facility employees as a Facility Representative and not by a licensed agent. Council found that the Former Licensee, as the Operating Agent of the Agency, had failed to take appropriate steps to ensure processes were being accurately followed by the Storage Facility to ensure that they did not act as an agent.

Throughout the investigation, the Former Licensee was provided with the statements made and attachments provided by Agent A to Council's Investigator, and the Former Licensee agreed with and did not dispute the responses provided by Agent A.

Based on the information and evidence reviewed by Council, Council concluded that the Former Licensee's actions were in violation of sections 375(1)(a), 375(1)(b) and 375(1)(e) of the *Act* and sections 4 – Advising Clients, 9 – Unauthorized Practice of the Profession and 10 – Conduct Towards Others, of the *Code of Conduct*, and that disciplinary action is warranted.

PENALTY AND FINAL DECISION

Council's Decision dated May 26, 2022 was delivered to the Former Licensee by registered letter on May 28, 2022. The Decision outlined the foregoing violations background, analysis and conclusion on a preliminary basis.

In consideration of the foregoing violations and pursuant to sections 375(1.1)(c) and (d) of the *Act* and section 7(1) of *Regulation 227/91*, Council hereby orders that:

1. The Former Licensee be fined \$2,000.00 and assessed partial investigation costs of \$3,000.00.

Pursuant to section 389.0.1(1) of the *Act*, the Former Licensee had the right to appeal this Decision within twenty-one (21) days of receipt. The Former 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 will occur, in accordance with sections 7.1(1) and 7.1(2) of *Regulation 227/91*.

Dated in Winnipeg, Manitoba on the 22nd day of June, 2022.