

DECISION
of the
LIFE INSURANCE COUNCIL OF MANITOBA
(“Council”)
Respecting
AREKA CASSANDRIA HIBBERT
(“Licensee”)

INTRODUCTION

The Life 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*, and/or the Life Insurance and Accident and Sickness Agent’s Code of Conduct (the “*Code of Conduct*”).

On December 14, 2021, 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.

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 act within the definition of an agent, as defined by section 1 of the *Act*, while not holding a valid insurance licence, and if so, was the Licensee in violation of sections 369(1) Not to act without licence, and 391 Holding Out, of the

Act and section 4 (Professionalism), of the *Code of Conduct*, during the period of October 2, 2020 to May 30, 2021?

2. During the course of the investigation, did the Licensee respond to Council's Former Investigator in an evasive manner, in violation of section 375(1)(a) deceit of the *Act*, and section 9 (Dealing with the Insurance Council of Manitoba), of the *Code of Conduct*?

FACTS AND EVIDENCE

1. It was the Licensee's responsibility to ensure she updated the Insurance Council of Manitoba's ("ICM") Licensing Portal with:
 - a. Updated/new Professional Liability (Errors and Omissions "E&O") insurance policy information prior to the expiration of her existing E&O policy.
 - b. A correct email address.
2. On September 30, 2019, the Licensee entered ICM's Licensing Portal and updated her email address from [redacted] to [redacted].
3. On May 1, 2020, the Licensee re-entered ICM's Licensing Portal and updated her email address from [redacted] to [redacted].
4. On September 16, 2020, ICM emailed the Licensee a 15-day notice entitled "Online Portal Update Required by September 30, 2020 – LIA-22196-2020", which indicated that:
 - a. The Licensee's E&O insurance was due to expire October 1, 2020.
 - b. The Licensee was required to update her information on the Licensing Portal by September 30, 2020.
 - c. Failure to update/enter her new E&O information would result in the immediate disqualification of her licence as of the date her existing policy expired.
 - d. *"Existence and continual maintenance of Professional Liability/E&O insurance was a mandatory condition of licensing, as outlined under Section 371(1.1) of The Insurance Act of Manitoba. Professional Liability/E&O Requirements are outlined within Regulation 389/87."*
 - e. ***"If your licence is disqualified, you will not be permitted to carry on the activities of an Agent until your licence(s) is/are reinstated."*** [emphasis added]

5. On September 30, 2020, ICM emailed the Licensee a two-day notice entitled “PENDING LICENCE DISQUALIFICATION – Licence Number LIA-22196-2020”, which indicated that:
 - a. *“Failure to update/enter this information into the online portal by September 30, 2020 will result in the immediate disqualification of your licence without further notice.”*
 - b. *“If your licence is disqualified, you will not be permitted to carry on the activities of an agent/adjuster unless your licence is reinstated.”*
6. By email and in a separate letter dated October 2, 2020, the ICM issued a notice entitled “LICENCE DISQUALIFICATION NOTICE LIA-22196-2020”, which indicated that licence LIA-22196-2020 had been disqualified. The letter/email indicated that:
 - a. ***“As the information was not updated as required, your Insurance Agent Licence(s) has/have been disqualified as of October 01, 2020, the date your Errors & Omissions coverage expired.”***
 - b. ***“You are prohibited from transacting the business of insurance and are no longer licensed to carry on the activities of an insurance agent in Manitoba under licence number LIA-22196-2020. You must ensure that you are licensed prior to acting within the definition of an insurance agent and engaging in any insurance business.”***
7. By email dated April 13, 2021, the Sponsor indicated to ICM’s Licensing Department that during the period of October 2, 2020 to May 30, 2021, the Licensee:
 - a. Sold five (5) insurance policies to eight (8) Manitoba residents:
 - i. Three (3) were travel insurance policies; and
 - ii. Two (2) were health and dental insurance policies.
 - b. Provided insurance-related advice to 14 Manitoba prospects.
8. The Licensee’s Life Insurance Agent’s licence was reinstated on May 31, 2021; however, the Licensee failed to submit a renewal application to the ICM; therefore, the licence expired May 31, 2021 at midnight.
9. By emails dated June 4, 2021 and August 3, 2021, the then Former Licensee, whose email signature indicated that she was a *“Licensed Insurance Advisor”*, indicated to Council’s Investigator that:

- a. *“I was not aware I had lost my license [sic] in Manitoba.”;*
 - b. She was not provided with any communication that she had not entered her E&O information into the Manitoba website;
 - c. She performed a needs analysis, recommended a plan, provided a quote and ultimately sold the five (5) policies;
 - d. *“I performed the regular activities of a Licensed Advisor, as I was were [sic] under the impression that I was licensed in Manitoba this whole time and was not advised that my license [sic] had lapsed.”;*
 - e. She had carried in force E&O coverage throughout the period in question;
 - f. She did not receive any notifications as they were all sent to an incorrect email address;
 - g. She confirmed her mailing address was correct; however, did not receive the licence disqualification letter;
 - h. *“...To my knowledge, the email that I would have provided to ICM would have been [redacted]”; and*
 - i. *“...My email never changed and yes I’m a were [sic] if it does change that it is my responsibility to change it on ICM portal.”*
10. On September 1, 2021, the Licensee was provided with evidence which indicated that she entered ICM’s Licensing Portal on September 30, 2019 and May 1, 2020 and amended her email address. In response to that evidence, on September 1, 2021, the Licensee indicated to Council’s Investigator that:
- a. *“...I have no recollection of and I do not know why I would change my email.”*
 - b. *“I never knowingly changed my email so I am assuming, since ICM’s records shows that I did, that I did it in human error in which I do apologize and take responsibility for.”*
11. By email dated October 12, 2021, the Sponsor indicated to Council’s Investigator that as a licensed employee the Licensee did not earn a regular commission; rather, was on a Sales Incentive Plan which paid a bonus based on the number of policies sold per month. The Licensee earned \$66.36 as a bonus on three (3) of the five (5) policies, as two (2) policies were cancelled.

ANALYSIS AND DETERMINATIONS

Any activities falling within the definition of an “agent” as defined in section 1 of the *Act*, must be performed by a person who is a licensed insurance agent, as unlicensed activity is prohibited by section 369(1) Not to act without licence, of the *Act*.

An “agent” is defined in the *Act* 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;

Section 369(1) Not to act without licence, of the *Act* indicates that:

No person shall act, or offer or undertake to act, as an insurance agent in this province without having first obtained a licence under this Act.

Section 375(1)(a) of the *Act* states that:

If, after due investigation by the superintendent and after a discipline hearing, if a hearing is required under the regulations, the superintendent determines that the holder or former holder of an insurance agent licence

(a) has been guilty of misrepresentation, fraud, deceit or dishonesty;

The superintendent may take one or more of the actions set out in section 375(1.1), which includes suspend the licence, cancel the licence, impose a fine, and/or require the licence holder to pay some or all of the investigation costs.

Section 391 Holding Out, of the *Act* indicates that:

Any person who, not being duly licensed as an agent, a broker, or an adjuster, represents or holds himself out to the public as being an agent, broker, or adjuster, or as being engaged in the insurance business, by means of advertisements, cards, circulars, letterheads, signs or other methods, or being duly licensed as such an agent, broker, or adjuster, advertises as aforesaid or carries on such a business in any other name than that stated in the licence, is guilty of an offence.

In accordance with sections 4 (Professionalism) and 9 (Dealing with the Insurance Council of Manitoba), of the *Code of Conduct*, an agent will adhere to all standards required under law and by and through regulation, and an agent must respond promptly and honestly, with full disclosure, to inquiries from the Insurance Council of Manitoba.

An unlicensed person must not present themselves (hold out) as an agent to members of the public.

By way of her own evidence, the Licensee was aware that she was required to update her email address on ICM's Licensing Portal.

On two separate occurrences, September 30, 2019 and May 1, 2020, the Licensee entered ICM's Licensing Portal and amended her email address.

The Licensee was required to update her E&O insurance policy information prior to the expiration of her existing E&O policy, and the ICM emailed a 15-day and a two-day reminder notice to the email address on file.

The 15-day and two-day reminder notices informed the Licensee that should her licence become disqualified, she would not be permitted to carry on the activities of an agent until her licence was reinstated.

As the Licensee failed to update her E&O insurance policy information prior to the expiry date, her Life Insurance Agent's licence was disqualified on October 1, 2020. On October 2, 2020, the ICM issued a disqualification letter, and a separate disqualification email was sent to the email address on file.

Both the disqualification letter and email dated October 2, 2020, informed the then former Licensee that she could no longer carry on the activities of an insurance agent in Manitoba as she was no longer licensed.

The Licensee's sponsor indicated to Council's Investigator that while the Licensee was unlicensed, the Licensee sold five (5) insurance policies, received a bonus of \$66.36 for three of those policies (two were cancelled), and provided insurance related advice to 14 Manitoba prospects.

While unlicensed, the Licensee performed the regular activities of a Licensed Advisor, in contravention of sections 369(1) and 391 of the *Act* and section 4 (Professionalism) of the *Code of Conduct*.

Council deliberated as to whether sections 378(7) Salaried officials, etc., acting without licence, or section 378(10) Head office employees, of the *Act* would apply in the Licensee's scenario; however, determined that as the Licensee had received a bonus for the sale of insurance policies, which Council considered to be a form of compensation dependant on the sale of insurance, Council determined the Licensee was acting as an agent and a licence was required.

The Licensee had indicated to Council's Former Investigator that she was not aware that she had lost her licence and that she had not received notification of her failure to enter her E&O information on the ICM Licensing Portal.

Council did not accept the Licensee's position that she was not aware that she had lost her licence and that she had not received notification as it is every licence holder's responsibility to ensure they hold a licence in Manitoba prior to acting as an agent, and it was the Licensee's responsibility, which she acknowledged, to ensure her email address was accurate.

Council concluded that the Licensee should be aware or ought to have been aware that she was not licensed when she sold five (5) insurance policies, and provided advice to 14 prospects who were Manitoba residents.

Further, the evidence obtained by Council does not support the assertion that the Licensee was not aware which email address she had provided to Council and that her email address never changed when she herself updated her email address twice on the ICM's Licensing Portal. Council noted that during the investigation the Licensee was not forthcoming and was being evasive in her responses to the Council. Only when the Licensee was provided with the evidence, she admitted her mistake.

Based on the information and evidence reviewed by Council, Council concluded that the Licensee's actions fell within the definition of an agent, as defined by section 1 of the *Act*, and that the Licensee was in violation of sections 369(1) Not to act without licence, and 391 Holding Out, of the *Act* and section 4 (Professionalism), of the *Code of Conduct*, with regard to unlicensed activity. In addition, Council determined that the Licensee was in violation of section 375(1)(a) deceit or dishonesty, of the *Act* and section 9 (Dealing with the Insurance Council of Manitoba), of the *Code of Conduct* with regard to deceitful communications with ICM's Former Investigator, and that disciplinary action is warranted.

PENALTY AND FINAL DECISION

Council's Decision, dated December 8, 2022, was delivered to the Licensee by registered mail on December 21, 2022. The Decision outlined the foregoing background, analysis, and conclusion on a preliminary basis.

Having regard 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*, Council hereby orders that:

1. The Licensee will be fined \$200.00 and assessed partial investigation costs of \$500.00.

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 26th day of January, 2023.