

DECISION
of the
GENERAL INSURANCE COUNCIL OF MANITOBA
(“Council”)
Respecting
TODD P. LINDSAY
(“Licensee”)

INTRODUCTION

The General Insurance Council of Manitoba (“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, and/or the General Insurance Agent Code of Conduct (the “Code of Conduct”).

During the investigation, the Licensee was notified of relevant information and was given an opportunity to make submissions.

On September 13, 2023, 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, and as part of its Intended Decision, Council informed the Licensee that he may request a Hearing to dispute its determinations and penalty/sanction. The Licensee failed to provide a response to Council within the allotted time period.

Pursuant to section 375(1) of the *Act* and section 7(2)(e) of *Regulation 227/91*, the Council hereby renders its Decision and corresponding reasons.

ISSUES

1. Did the Licensee fail to remit an amended payment to the Insurer, which resulted in the cancellation of the Complainants’ policy for non-payment of premium, in violation of sections 375(1)(b) Violation of any provision of the *Act* or any rule or regulation under the *Act* and 375(1)(e) Incompetency or Untrustworthiness, of the

Act and/or sections 2 (Competence), 3 (Quality of Service), and/or 10 (Conduct Towards Others), of the *Code of Conduct*?

2. After being provided with a Personal Property Policy Renewal Expiry Notice by the Complainant at the end of July 2022, which indicated that payment had not been received, did the Licensee fail to confirm the status of the Complainants' policy with the Insurer, and send in a replacement payment, in violation of sections 375(1)(b) Violation of any provision of the *Act* or any rule or regulation under the *Act* and 375(1)(e) Incompetency, of the *Act*, and sections 2 (Competence), and/or 3 (Quality of Service), of the *Code of Conduct*?
3. The Licensee was aware on October 25, 2022, that the policy was cancelled by the Insurer for non-payment of premium effective July 11, 2022. By failing to issue a refund to the Complainant until February 27, 2023, did the Licensee violate sections 3 (Quality of Service) and 10 (Conduct Towards Others), of the *Code of Conduct*?
4. By failing to remit the Complainants' payment, is the Licensee responsible for the Complainants' cancellation for non-payment of premium and gap in insurance from July 11, 2022 to October 27, 2022?

FACTS AND EVIDENCE

1. On April 11, 2022, the Licensee completed ICM's online licensing application to reinstate his General Insurance Agent's Level 3 licence with [Agency A] (the "Agency").
2. At all material times, the Licensee held a General Insurance Agent's Level 3 licence.
3. The Insurance Council of Manitoba (ICM) investigation commenced in response to a complaint received on January 10, 2023, from the Licensee's former clients, [Consumer A and Consumer B] (the "Complainant(s)"). The complaint alleged that the Licensee failed to remit insurance premiums to the insurer while advising the Complainants that the premiums were duly paid and "*everything was fine*". The complaint indicated that:
 - a. On July 12, 2022, the Complainant attended the Agency and made a debit payment of [redacted] for their home insurance policy with [Insurer A] (the "Insurer"). A bank statement was provided as supporting documentation.
 - b. At the end of July 2022, the Complainant received a Personal Property Renewal Expiry Notice, and were concerned that their policy had been cancelled.

- c. The Complainants re-attended the Agency and requested that the Licensee contact the Insurer to confirm the status of their policy; the Licensee refused to contact the Insurer, indicated that *“everything was fine”* and that the next installment payment was due November 2022.
 - d. The Complainant attended a different agency in October 2022 and requested a change in brokerage. They were informed by the Insurer that their policy was cancelled effective July 11, 2022, for non-payment of premiums.
 - e. At the time of their complaint to the ICM, they had not received a refund of their July 12, 2022 payment of [redacted] paid to the Agency.
4. By emails dated August 14, 2023, August 24, 2023, August 31, 2023, and September 6, 2023, the Licensee indicated to Council’s Investigator that:
- a. On July 13, 2022, he attached a remittance slip to the broker cheque and submitted the payment to the Insurer.
 - b. He made an error when issuing the broker cheque, by placing an incorrect date. The date was amended but was not initialed prior to forwarding it to the Insurer. Due to this error, the Insurer returned the cheque to the Complainants.
 - c. The Complainants returned to the Agency and advised him of the error. The Licensee stated, *“We corrected the mistake on our cheque and re-submitted the cheque to [Insurer A]”*.
 - i. He had standard handling procedures for Reminder and Cancellation notices; however, he did not follow those procedures in this instance and stated that: *“I did not confirm with [Insurer A] if the cheque had been received and paid to the correct policy.”*
 - ii. *“...after the insured’s second visit I filed their file away and did not put into [sic] our follow up abeyance area so no follow [sic] was completed with [Insurer A]”*.
 - iii. *“We normally keep the policies out in our follow up abeyance file area and make sure the policies don’t get cancelled, as stated above in this case a simple human error of filling [sic] the file away prevented that from happening.”*
 - d. The Complainants’ policy was cancelled flat effective July 11, 2022. He had not contacted the Complainants to advise of the cancellation.

- e. On October 24, 2022, he contacted the Insurer who confirmed that the policy was cancelled, and that the Insurer would not pursue reinstatement until they received confirmation that the Complainants intended to remain with the Agency.
 - f. He indicated that he did not know why the refund cheque of [redacted] was not issued to the Complainants in October of 2022, when he received confirmation that the policy would not be reinstated.
 - g. A refund was issued on February 27, 2023.
 - h. The Licensee was unable to provide Council's Investigator with any record or evidence showing an amended cheque had been forwarded to the Insurer.
5. By emails dated August 28, 2023, and September 6, 2023, the Insurer indicated to Council's Investigator that:
- a. On August 18, 2022, the Insurer issued a Personal Property Insurance Cancellation Memo to the Agency. This notice indicated that the policy was cancelled flat effective July 11, 2022 and the unearned premium was [redacted].
 - b. On October 24, 2022, when the Complainant requested a Broker Transfer, the Insurer informed the Complainant that their policy had been cancelled due to non-payment of premiums.
 - c. On October 25, 2022, the Insurer noted that the Licensee called to inquire about reinstating the policy and indicated that it *"fell through the cracks."*
 - d. The Insurer indicated that they would have required the Complainants' policy be rewritten regardless of whether they had stayed with the Agency or had moved to a new brokerage due to the amount of time that elapsed between the cancellation and request for reinstatement, which spanned from July 11, 2022 to October 24, 2022.
 - e. *"[Insurer A] did not receive any correspondence from the Agency indicating that payment of [redacted] was received nor did [Insurer A] receive notice that a cheque was on the way."*
 - f. *"...[Insurer A] did not receive an updated cheque."*

ANALYSIS AND DETERMINATIONS

Sections 375(1)(b) and 375(1)(e) of the *Act* states as follows:

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

(b) has violated any provision of this Act or any rule or regulation under this Act;

(e) has demonstrated his or her incompetency or untrustworthiness to transact the business of insurance agency for which the licence was granted;

the superintendent may take one or more of the actions set out in subsection (1.1).

Section 375(1.1) Disciplinary actions by the superintendent, of the *Act* states that:

For the purposes of subsection (1), the superintendent may do one or more of the following after giving a notice of decision in writing to the licence holder or former licence holder:

(c) subject to the regulations, impose a fine on the licence holder or former licence holder and fix a date for the payment of the fine;

(d) subject to the regulations, require that the licence holder or former licence holder pay some or all of the costs of the investigation and, where applicable, of the hearing and fix a date for the payment of the costs assessed.

In accordance with sections 2 (Competence), 3 (Quality of Service), and 10 (Conduct Towards Others), of the *Code of Conduct*, agents owe a duty to their clients to be competent to perform the services which they undertake on a client's behalf, shall provide a quality of service at least equal to that which agents or brokers would regularly expect of a Licensee in a like situation, and they should make sure that the conduct towards the public be characterized by courtesy and good faith.

Upon receiving a Personal Property Renewal Expiry Notice, the Complainants re-attended the Agency at the end of July 2022 and requested that the Licensee check on their payment. The Licensee refused to do so and stated that “*everything was fine*”. However, the Insurer was unable to apply the Complainant’s payment to their policy due to an error made on the Agency’s broker cheque.

During the course of the investigation, the Licensee indicated to Council’s Investigator that an amended cheque had been forwarded to the Insurer; however, the Licensee was unable to provide any documentation to support his statement, and the Insurer never received an amended payment or notice that a replacement had been sent to them.

The Agency had standard operating procedures for the handling of Reminder and Cancellation notices; however, the Licensee did not follow them in this instance, and did

not notify the Complainants that their policy had been cancelled for non-payment of premium.

The Licensee was in a fiduciary relationship with the Complainant whereby the Complainant relied on the Licensee's expertise, competency, and integrity to remit insurance premiums to the Insurer. The Complainant further relied on the Licensee to ensure the payment was received by the Insurer and applied to the Complainant's policy, and by failing to do so, the Licensee exposed his former clients to serious risk when the policy was cancelled for non-payment of insurance premiums.

As a result of the Licensee's failures to protect the insurable interests of the Complainant, the Complainant was uninsured from July 11, 2022 to October 27, 2022.

Lastly, the Licensee had been made aware that the policy would not be reinstated in October 2022; however, failed to refund the Complainant's payment of [redacted] until February 2023.

Based on the information and evidence reviewed, Council concluded that the Licensee violated section 375(1)(b) any violation of any provision of the Act or any rule or regulation under the Act, and 375(1)(e) has demonstrated his or her incompetency or untrustworthiness to transact the business of insurance agency for which the licence was granted, of the Act; and sections 2 (Competence), 3 (Quality of Service), and 10 (Conduct Towards Others), of the *Code of Conduct*, and that disciplinary action was warranted.

PENALTY AND FINAL DECISION

Council's Decision dated February 23, 2024, was delivered to the Licensee by registered mail on February 26, 2024. The Decision outlined the foregoing background, analysis and conclusions 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)(d) of the Act and section 7(1) and 7(2) of Regulation 227/91:

1. The Licensee be assessed partial 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 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 20th day of March, 2024.