

DECISION
of the
GENERAL INSURANCE COUNCIL OF MANITOBA
(“Council”)
Respecting
BROKERFORCE INSURANCE INC. (“Agency”)
JOHN SCOTT FRASER (“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*.

Following receipt of Bureau de Décision et de Révision (“Decision”) from the Autorité Des Marchés Financiers (“AMF”) and review of the Licensee’s Licence Renewal Application, 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 the General Insurance Agent Code of Conduct (the “*Code of Conduct*”). During the investigation, the Licensee was provided an opportunity to make submissions.

On May 18, 2017, during a meeting of the Council, the evidence compiled during the investigation and the position of the Licensee were reviewed. Upon assessment of the evidence, Council determined its intended decision. Pursuant to sections 375(1) and 375 (1.1) of the *Act* and *Regulation 227/91*, the Council now confirms its decision and corresponding reasons.

ISSUES

1. Did the Licensee provide false information to the Council in completing his licence renewal application?
2. Did the Licensee fail to advise the Council of disciplinary action within 15 days as required by the Agency Attestation and the Licensee’s licence renewal application?
3. Did the Licensee, in his role as the Agency’s Operating Agent, violate *the Act* and *Code of Conduct* by permitting individuals to act as agents without holding a valid licence?

FACTS AND EVIDENCE

1. During all material times, the Licensee was the Operating Agent for the Agency.
2. Since May 30, 2005, the Licensee had been the only licensed agent with the Agency in Manitoba.
3. On March 9, 2016, the Licensee signed the Decision with the AMF on behalf of Brokerforce Insurance Inc., with respect to unlicensed agent activity in the province of Quebec.
4. On April 14, 2016, the Licensee affixed his signature to the Council's Agency Attestation Form. That form noted the following:

I understand that I am required:

- to ensure that licensing rules with respect to agency licensing and activities are enforced;
- to report any material changes [e.g. change of legal and/or trade name(s)] to the ICM within 15 days.

Confirmation:

I confirm that all licensed agents conduct business solely under the above listed name(s). I further confirm that prior to acting within the definition of an agent and/or conducting business under any other legal and/or trade name, the licence(s) must immediately be amended with the ICM.

5. On May 17, 2016, the Licensee in his capacity as the Operating Agent, completed the agent licence renewal application, answering "no" to the Additional Screening Questions: 3: "Had knowledge of any employees of the agency transacting insurance business without being duly licensed?" and 4: "Had knowledge of any conduct and/or regulatory violation by any licensed employee of the agency not previously reported to ICM?"
6. Further, the Licensee made the following declaration: "I declare that the foregoing information is true and I accept the responsibility for these answers and undertakings. I further understand that a false declaration on this application could lead to disciplinary action. I agree to notify Council within 15 days of any material change to the information contained in this application."
7. The investigator contacted Insurer A for a list of Manitoba policies. Insurer A had been named in the Quebec law suit as the provider of the insurance product. A list of twenty-one policies/certificates was provided by the insurer.
8. In his response to Council dated April 25, 2017, the Licensee noted that the Agency had been involved in offering specialized insurance to churches in Ontario since about 1975. The program had a master policy with certificates for each church.

9. In 2008, the Agency was required to give the Quebec book of business to a local broker. The clients called the Agency on a regular basis to see if they were “back in Quebec”.
10. The carrier was changed to another named insurance company. The insurance company was licensed in Quebec, but not the Agency. A Quebec corporation was established and an agreement with a Quebec brokerage became effective in 2013.
11. English speaking clients would call and communicate with the Agency regarding the coverage.
12. The Quebec broker who had taken over the business in Quebec filed a complaint with the AMF, referencing emails sent directly to the client. No complaints came from the churches.
13. The Agency received no initial notice or warning nor an opportunity to correct their practices, from the regulatory authority. The Agency’s lawyer negotiated the fine and it was paid.
14. The Licensee noted that it had not been his intention to mislead a licensing body when completing his renewal form but rather a case of carelessness.
15. In the telephone conversation of April 25, 2017, the Licensee noted that it had been his understanding that only one licence was required for an Agency in Manitoba. The investigator advised him that any individual acting as an agent in the province required a licence. The Licensee in response advised that a second licence for the Agency would be secured.

ANALYSIS

The Licensee failed to advise the Council that there had been a regulatory disciplinary decision in Quebec at the time of his licence renewal on May 17, 2016, although he had signed the disciplinary documentation in Quebec on March 9, 2016. The Licensee also signed an Agency Attestation Form on April 14, 2016, in which he had been reminded to ensure that licensing rules with respect to agency licensing and activities were enforced, and he was required to report any material changes to the Council within 15 days.

At the time of the investigation the insurance company provided a list of twenty-one policies/certificates for the insurance product sold by the Agency. The Licensee advised that he understood that only one Agency/Agent licence was required.

Council considered that during the investigation, the Agency licensed a second individual, the program manager.

Based on the representations by the Licensee, Council determined that he was in violation of s. 375 (1) and s. 369 (1) of *the Act* and s. 9 of the *Code of Conduct*.

PENALTY AND FINAL DECISION

Council's Decision dated September 13, 2017, was delivered by registered mail to the Licensee on September 14, 2017. The Decision outlined the foregoing background, analysis, and conclusions. Having regard to the determination of the violations aforesaid, and pursuant to sections 375(1.1) (c) and (d) of *the Act* and section 7(1) of *Regulation 227/91*, the following penalties are imposed on the Licensee, namely:

1. The Licensee be fined \$1,000.00 and assessed partial investigation costs of \$400.00.

As part of its Decision, Council further informed the Licensee of his right to request an Appeal to dispute Council's determinations and its penalty/sanction. The Licensee expressly declined his right, chose not to pursue a statutory Appeal, and accepted this Decision.

The Decision is therefore 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 (2) of *Regulation 227/91*.

Dated in Winnipeg, Manitoba on the 10th day of October, 2017.