

DECISION
of the
GENERAL INSURANCE COUNCIL OF MANITOBA
and
LIFE INSURANCE COUNCIL OF MANITOBA
(“Councils”)
Respecting
LOYALTYONE TRAVEL SERVICES CO.
(“Licensee”)

INTRODUCTION

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

Following receipt of notice of a Consensual Agreement and Undertaking between the Insurance Councils of Saskatchewan (“ICS”) and the Licensee, 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*. During the investigation, the Licensee was provided an opportunity to make submissions.

On March 1, 2017, during a meeting of the General Insurance Council of Manitoba, and on March 29, 2017, during a meeting of the Life Insurance Council of Manitoba, the evidence compiled during the investigation and the position of the Licensee were presented and reviewed. Upon assessment of the evidence, the Councils determined its intended decision. Pursuant to sections 375(1) and 375 (1.1) of the *Act* and *Regulation 227/91*, the Councils now confirm its decision and corresponding reasons.

ISSUES

1. Did the Designated Official of the Licensee violate *the Act* by creating a material misrepresentation in answering “no” to a renewal licence question regarding a regulatory complaint?

2. Did the Designated Official of the Licensee fail to advise the Insurance Council of Manitoba ("ICM") of the disciplinary action within 15 days as required by the Licensee's renewal licence application?

FACTS AND EVIDENCE

1. In accepting the Consensual Agreement and Undertaking between the ICS and the Licensee, on September 21, 2016, the Licensee agreed to a fine of \$15,000.00 and reimbursement of the ICS's investigation costs of \$6,600.00 in Saskatchewan, due to unlicensed agents.
2. The Licensee's initial Restricted Insurance Agent (RIA) Application, signed and dated on June 30, 2015, did not ask questions with respect to disciplinary action, and as thus, there was no onus on the part of the entity to disclose disciplinary matters to the ICM prior to ICM's 2016 licence renewal application.
3. In the ICM licence renewal application, on May 10, 2016, the Licensee's Designated Official answered "no" to the Main Screening Questions 2: "Had any insurance or other licence(s) suspended or revoked, or been the subject of a regulatory complaint?"
4. Further, the Licensee's Designated Official 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."
5. The Licensee's Designated Official, who signed both the original application and the 2016 renewal licence application in Manitoba, was not the Designated Individual for the Licensee in Saskatchewan until June 15, 2016. However, she was listed as Senior Vice President of the Licensee at all material times, and as such, ought to have been aware of the investigation.

Response from Licensee's Designated Official - December 7, 2016

6. In a response to the ICM dated December 7, 2016, the Licensee's Designated Official provided the background of the Saskatchewan activities prior to the completion of the ICM's on-line licence renewal, on May 10, 2016.
7. On January 7, 2016, the Licensee received correspondence from the ICS's Compliance Administrative Officer indicating that a compliance file had been opened with respect to unlicensed agents and requesting a list of travel agents acting on behalf of the Licensee between October 1, 2012 and January 6, 2016. According to the Licensee, ICS did not advise that a - regulatory - compliance file had been opened. On January 28, 2016, a response was provided to the ICS.

8. On February 26, 2016, a request for additional information was sent by ICS based on the January 28, 2016 response. It did not indicate that the Licensee was the subject of a complaint, but rather that the Compliance Department was continuing its investigation. The ICS letter identified individuals, on the January 28, 2016 list, who were not licensed by the ICS and requested an explanation, as well as, commissions paid to each individual and to the Licensee, and dates of employment.
9. On March 15, 2016, the Licensee responded to this request.
10. On April 5, 2016, the ICS's Director of Licensing asked for additional information with respect to the listing of insurance agents previously supplied, as there were differences. There was no mention of a complaint – just clarification. On April 13, 2016, the Licensee replied.
11. On April 25, 2016, the ICS's Director of Licensing responded and indicated that "No further action is required regarding this matter. Thank you for taking the time to respond to my inquiry." The Licensee assumed that the matter had been resolved and no further action was required. There was no indication that the compliance investigation was continuing or that the Licensee should anticipate further communication regarding the issues raised.
12. There was no further communication from the ICS at the time the Licensee completed the ICM online form on May 10, 2016.
13. The ICM application reads: "Since last applied for a license or a renewal to the ICM, has the organization(s):... (2) had any insurance or other licenses(s) suspended or revoked or been the subject of a regulatory complaint." The Licensee responded "no" because at that time it had no correspondence from the ICS that it was the subject of a regulatory complaint, nor had any licence been suspended or revoked. Although there had been communication from the ICS that a compliance file had been opened, it was assumed that all the information had been requested and no further action was required. Therefore, the Licensee did not believe that it was the subject to a complaint, nor that there were any outstanding issues regarding the ICS file.
14. On July 11, 2016, the Licensee became aware of the fact that the Complaints and Investigations Committee of the ICS had received the investigation report and there were issues regarding unlicensed salespersons.
15. Negotiations ensued, and the matter resolved on October 7, 2016.
16. The ICM portal was limited in that once an application had been completed and filed, there was no ability to re-enter the website and update information.
17. Upon the ICM renewal in 2017, the question would have been considered, but timing was an issue.

18. The Licensee's Designated Official reassured the ICM that it had never been an intention to mislead. The responses were appropriate based on the knowledge in hand.

ANALYSIS

The Licensee's Designated Official was the Senior VP of the Licensee and was, or should have been, aware that the firm was under investigation at the time she signed ICM's 2016 licence renewal application.

While there was no requirement to provide notice to the ICM when the disciplinary action initially came to the attention of the Licensee's Designated Official, she was required to answer "yes" to the Main Screening Question 2 on the 2016 ICM renewal licence application that the Licensee had been the subject of a regulatory complaint.

The Councils considered the Licensee's Designated Official's response that no correspondence from the ICS stated that the Licensee was the subject of a "regulatory" complaint, nor had any licence been suspended or revoked. However, on January 7, 2016, correspondence from the ICS's Compliance Administrative Officer to the Licensee stated that there was a compliance file with respect to unlicensed agents transacting insurance on behalf of the Licensee, and a list of those individuals was required. The Licensee had responded to that letter.

Although the Licensee's Designated Official stated that she could not re-enter the ICM's portal after the renewal was issued to amend information, the Councils noted that was not the only means of providing advice to the ICM as other methods, such as letter or email, were available.

The Councils considered that the Licensee's Designated Official stated that she would have reassessed the Licensee's position in answering the 2017 renewal.

However, the answer provided on the 2016 licence renewal application was a violation under the Act s. 375 (1) (a), and the Licensee's Designated Official failed to report the ICS decision within 15 days as per the declaration in the renewal application.

PENALTY AND FINAL DECISION

Councils' Decision dated November 10, 2017, was delivered by registered mail to the Licensee on November 16, 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 \$500.00 and assessed partial investigation costs of \$500.00.

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

The Decision is therefore final. In accordance with the Councils' determination that publication of Decisions is 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 8th day of December, 2017.