DECISION

of the

GENERAL INSURANCE COUNCIL OF MANITOBA

("Council")

respecting

ERLING HARRIS ("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* ("*Regulation 227/91*").

The Licensee has been licensed for more than 27 years. He is bound by the General Insurance Agent Code of Conduct (the "Code"). The Code identifies many of the essential duties owed by an agent to his client, the public, insurers and Council.

The agent must act with integrity, competently, diligently and conscientiously. He must be candid and honest when advising clients and must always act in good faith and fairly. (Code – sections 1, 2, 3, 4 and 10)

In September, 2017, Council received a complaint from a client of the Licensee. The complainant said that he had been told by the Licensee that the complainant had insurance coverage on his boat effective May 11, 2017. On May 19–20, 2017, the complainant's boat and motor were stolen. After presenting the associated insurance claim, he was told by an agent of the insurer that his property had not in fact been covered by insurance at the time of the loss. The complaint led to an investigation pursuant to sections 375(1) and 396.1(7)(e) of the *Act* and sections 7(2)(3) of *Regulation 227/91*.

BACKGROUND

1. The Licensee and the agency where the Licensee worked had no authority to bind coverage for the complainant's boat and motor with the insurer in question.

2. On May 11, 2017, the Licensee advised the complainant in writing (by email) that his property was covered ("coverage is in force immediately").

3. On May 19-20, 2017, the complainant's property was stolen from a gated storage facility.

4. On May 23, 2017, the complainant paid the premium associated with the policy that he thought he had.

5. On May 24, 2017, the Licensee sent the application for insurance to the complainant, who pointed out some changes that had to be made to it.

6. The application was signed on May 24, 2017 with a "requested effective date" of May 11, 2017.

7. By email dated June 1, 2017, the complainant advised the Licensee of the complainant's loss of May 19-20, 2017, referring to the RCMP file number regarding the police investigation. The complainant stated a claim would be submitted.

8. Not until June 2, 2017, did the Licensee send the application to the insurance carrier. A policy with a commencement date of June 2, 2017 was then issued by the insurer.

9. The Licensee said that with respect to the trailer, the complainant should deal directly with MPI and that for the boat and motor, the Licensee would submit the claim to the insurer for the complainant. This was not done by the Licensee until June 16, 2017. The date of loss was then stated to have been June 3, 2017.

10. In response to the complainant's question about when the "request" would be "processed", the Licensee responded that the complainant would receive a call from an adjuster and that he could "use the loss of use coverage".

11. On June 20, 2017, the complainant acknowledged receipt of the policy and indicated among other things that a mistake regarding the "dates [sic] of coverage" appeared on the policy and that in particular the coverage of the complainant's property started as of May 11, 2017, not June 2, as stated on the policy.

12. By June 20, 2017, the insurer had appointed an independent adjuster who had contacted the complainant.

13. Before and after June 20, 2017, the complainant made periodic inquiries regarding the status of his claim.

14. On July 19, 2017, the complainant emailed the Licensee to the effect that he had just received a call from the independent adjuster who had indicated that the Licensee had not had the authority to immediately bind coverage on May 11, 2017, or at all, and that since the Licensee had not filed the necessary "paperwork" until after the claim occurred, the insurer would be denying the claim.

15. On July 19, 2017, the Licensee responded to the complainant's email, saying:

"I just finished speaking with them also and received the same news which does not make sense. I'm calling the company and trying to find out why they will not accept the application and try and fix this if not I will advise our claims people and they will advise me how to proceed. . ."

16. On July 21, 2017, the complainant responded to the Licensee's email as follows:

"In your discussions with Premier Marine (and your claims department), you may want to remind them that Apparent Authority supersedes Binding Authority (the reason they have chosen to reject my claim). They claim that you did not have binding authority to authorize immediate coverage but this point is mute [sic] since it is reasonable for the average person (including myself) to assume that you did as he was acting on behalf of Premier Marine (Apparent Authority). I'm sure what I have just stated is nothing new to you or Premier Marine so I'm surprised that is the best excuse they have come up with to reject my claim. . ."

17. By letter dated July 21, 2017, the independent adjuster formally advised the complainant that coverage was being denied because the loss occurred before the policy came into effect; the agency where the Licensee was employed received a copy of that letter.

18. On July 25, 2017, there was an email exchange between the complainant and the Licensee wherein the complainant inquired about the response to the denial letter and the Licensee indicated that he had pleaded his case to Premier and was waiting for their response.

19. On July 28, 2017, the complainant emailed the Licensee to ask how long would it take for the Licensee's "claims department" to process the complainant's cheque if the insurer did not respond that day. The same day, the Licensee indicated that he would try to get an answer to that question for the complainant.

20. On July 31, 2017, the complainant asked whether the Licensee had heard back from "your claims department on when I should be ready to pick up the cheque." That same day, the Licensee responded: "I will hear today as to the procedure how we obtain a payment for you."

21. The Licensee did have communications with the insurer and the insurer did indicate that the matter was being reviewed by its Complaints Committee and on August 16, 2017, the insurer advised that its position would be communicated to the Licensee by the end of that week.

22. By August 23, 2017, the Licensee had heard from the insurer that they would not alter their position and that the claim was being denied. He indicated to the complainant on that day that he would "start the process through our company".

23. By letter dated October 3, 2017, Council wrote to the Licensee to indicate that it was investigating a complaint from the complainant as outlined above.

INTENDED DECISION AND HEARING

On November 22, 2017, during a meeting of the Council, the evidence compiled during the investigation was presented and reviewed. Upon assessment of the evidence, Council determined its Intended Decision. Pursuant to section 375(1) of the *Act* and *Regulation 227/91* Council determined that the Licensee had violated sections 375(1)(a) and (e) of the *Act* and sections 1, 2, 3, 4 and 10 of the Code. It determined that the violations aforesaid, and sections 375(1) and 375(1.1)(c) and (d) of the *Act* and section 7(1) of *Regulation 227/91*, justified an order that:

1. The Licensee be fined $2,500.00 and assessed partial investigation costs of $850.00.

2. An Insurance Agent License Application from the Licensee would be reviewed by Council for suitability.

(With respect to the second aspect of the penalty, this was the subject of a separate and independent Intended Decision pursuant to which the Licensee was conditionally granted a level 1 license. That Intended Decision was the subject of a separate and independent hearing.)

The Licensee subsequently exercised his right to dispute Council's Intended Decision in this matter and requested a hearing before Council. The hearing occurred on April 3, 2018. At that time, the Licensee on his own behalf made representations to Council. The hearing was adjourned to afford Council the opportunity to consider the representations of the Licensee.

ISSUE

Has the Licensee provided sufficient particulars, through evidence or argument, to show why the Intended Decision should not be implemented, either in relation to any of the violations which were determined on a preliminary basis to have occurred, or with respect to the contemplated Order?

THE SHOW CAUSE HEARING

The Licensee testified. He confirmed he had received and read the Intended Decision. But his submission initially related to an issue of soliciting clients of his former employer and he said that he could not understand why he had been disciplined. He reminded Council of his 28 years as an agent, and said that he had been an agent in connection with 30,000 policies and had never before made a mistake.

The Licensee was referred to the Code. Initially he said that he may have read it once, long ago. But he then stated that he had referred to it in the context of the Intended Decision.

Questions of the Licensee led him to the actual concerns outlined in the Intended Decision. In this context, the Licensee acknowledged knowing on May 11, 2017, that neither he nor his employer had authority to bind coverage as he had purported to do. He stated that he had delayed submitting the application to the insurer because he was very busy and because of the confusion related to the recent change of ownership of the agency. He claimed there was in his mind a real chance the insurer would backdate coverage to May 11, 2017, before the loss which had already occurred. He said that he notified his manager of a potential errors and omissions claim. He had no real explanation for why he said the things he did to the complainant. He acknowledged he had erred in purporting to bind coverage and in not promptly submitting the application. He admitted he had violated sections 1, 2, 3, 4 and 10 of the Code. The essence of his position was that it was unfair to penalize him for this error after an unblemished 28 year record.

DECISION AND ANALYSIS

The Licensee knew he had no authority to bind coverage. So it was wrong and a breach of duty to say to the complainant that coverage was immediately effective. The Licensee knew or ought to have known that the complainant would rely and was entitled to rely on the Licensee's representation that he was now covered, and that representation to the complainant was false.

Having said what he did to the complainant, it was incumbent on the Licensee to expeditiously submit the application to the insurer. Instead it was not submitted for more than a month, and only after an intervening loss.

When on June 1, 2017, the Licensee learned of the complainant's loss, the Licensee knew there was no policy in effect and that he had not submitted the application for a policy. When he did submit the application on June 2, 2017, with a requested effective date of May 11, 2017, he knew the insured had sustained a loss after the latter date and before the submission of the application. He did not however advise the insurer of this.

When he did submit a claim on behalf of the claimant on June 16, 2017, he asserted at that time that the loss had occurred on June 3, 2017, coincidentally one day after coverage came into effect. The sequence of events raises strong concerns with either full honesty or competence by the Licensee at a number of points in the process and communications.

Council believes it is not the usual practice of property insurers to backdate coverage. In his evidence, the Licensee expressed the notion that the insurer might have backdated coverage here, even when it knew that this would mean it had to indemnify the complainant for a loss which had occurred before the insurer had even received an application for coverage. In Council's view this was highly unlikely, and illustrated how misguided the Licensee's views were and how inappropriate were his communications with the complainant.

There was certainly nothing wrong with the Licensee attempting to persuade the insurer to cover the loss. But the Licensee should not have been surprised at the position taken by the insurer or that the initial denial of coverage was not reversed. And likewise he should not in any way have intimated surprise at these decisions to the complainant. Rather, he should have forewarned the complainant about the likely result.

Once the complainant's loss occurred, a denial of coverage, and a consequential errors and omissions claim were extremely likely. The duties of candor and good faith required that the Licensee be honest with the complainant about the course of events likely to follow. In the event of the denial of coverage by the insurer, it was not a matter of the Licensee's employer "processing the complainant's claim." Either the Licensee did not appreciate how an errors and omissions claim would be dealt with (an issue of competence and knowledge), or he did and created false expectations for the complainant.

Council recognizes that any agent may err. In the hurly-burly of a busy agency, mistakes, or less than ideal practices, are inevitable. This is one reason that errors and omissions coverage is mandatory for agents. Fortunately, in most cases no one sustains anything worse than inconvenience. But as, or more, important than the provision of competent and skilled and honest service, is what is done when an error is made by the agent. Here the Licensee's conduct and communications after his initial errors (purporting to bind coverage and not immediately submitting the application for coverage), compounded and magnified the problems.

Though as stated earlier the Licensee acknowledged in his evidence that he breached sections 1, 2, 3, 4 and 10 of the Code, Council was left with a strong and uncomfortable impression that the Licensee really did not truly appreciate the seriousness of what he had done. At almost every stage of his dealings in this matter, the Licensee failed in providing the standard of service expected of an insurance agent. Certainly, his conduct

and communications were far from what might reasonably be expected from a skilled and competent agent with 28 years of experience. It is beyond doubt that the Licensee violated sections 375(1)(a) and (e) of the *Act* and sections 1, 2, 3, 4 and 10 of the Code.

PENALTY AND FINAL DECISION

Council's Decision dated April 11, 2018, was delivered by registered mail to the Licensee on April 12, 2018. 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 (2) (e) of Regulation 227/91, the following penalties are imposed on the Licensee, namely:

1. The Licensee is hereby fined $2,500.00 and assessed partial investigation costs of $850.00.

2. Within one year of the date of this Decision, the Licensee shall satisfactorily complete and submit to Council proof of completion the following:

   (a) the General Insurance Agent "Code of Conduct" quiz; and

   (b) an ethics course approved in advance by Council.

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 did not to pursue a statutory Appeal, thus, accepting the Decision.

The Decision is therefore final. In accordance with Council's determination that publication of its Decisions is in the public interest, this will occur, in accordance with sections 7.1(1), (2) and (3) of *Regulation 227/91*.

Dated in Winnipeg, Manitoba on the 4th day of May, 2018.