

DECISION
of the
LIFE INSURANCE COUNCIL OF MANITOBA
("Council")
Respecting
RAYMOND JOHN ZAMRYKUT
("Former Licensee")

INTRODUCTION

The Life 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 February 2018, the Former Licensee was terminated by his Former Sponsor for having allegedly engaged in personal financial dealings with clients.

The termination notice led to an investigation being conducted pursuant to sections 375(1) and 396.1(7)(e), of the *Act* and section 7(2)(e) of *Regulation 227/91*. The Former Licensee was notified of Council's concerns and given an opportunity to make submissions.

FACTS AND EVIDENCE

In the course of its investigation, it was learned that the Former Licensee borrowed and attempted to borrow money from his clients.

Clients A and B:

- (a) The Former Licensee helped Clients A and B consolidate their debt and knew they had access to money.
- (b) The Former Licensee acknowledged to his Former Sponsor that he received \$3,000 from Clients A and B. To make up this \$3,000, Council has evidence on file confirming \$1,900 was e-transferred to the Former Licensee from Client A in 2014; the remaining \$1,100 was a cash payment.
- (c) Clients A and B felt the Former Licensee took advantage of their kindness, used his position as a co-worker at his other occupation to gain their trust, and pressed them into lending him monies.

- (d) The Former Licensee acknowledged to Council that a debt existed to Clients A and B and advised Council that he has full intentions to repay the monies but has not done so.
- (e) Clients A and B advised Council that the Former Licensee repaid only \$200 of the \$3,000.
- (f) The Former Licensee acknowledged to his Former Sponsor that he knows what he did was “wrong”.
- (g) The Former Licensee furnished no evidence to suggest that he advised Clients A and B to seek independent legal and/or tax advice prior to loaning him \$3,000.

Client C:

- (a) The Former Licensee acknowledged to his Former Sponsor that he asked Client C for monies a few times but that she declined.
- (b) Client C advised Council that it was awkward for her to be the Former Licensee’s co-worker at his other occupation.
- (c) Client C advised Council that she felt uncomfortable with the Former Licensee’s persistent requests for monies which prompted her to cancel her life insurance as it became a conflict for the Former Licensee to be her agent.

ANALYSIS AND DETERMINATIONS

Life and Accident and Sickness agents are bound by a code of conduct (the “Code”) which identifies the essential duties owed by a life agent to his client arising from the relationship. In the context of this case, we highlight the following obligations, which are especially germane.

The agent must act in the best interests of the client and must not prefer the agent’s interests over those of the client. It is antithetical to the essence of the fiduciary nature of the relationship for the agent to prejudice the interests of a consumer for personal gain.

The agent must act in good faith at all times. He must act with integrity and fairness and must not be driven by any improper motive, especially personal gain at the expense of the client.

All of the foregoing supports what must be known to every agent, namely, that an “agent must avoid situations where the underlying circumstances could prejudice or compromise the advice that he or she provides.” And if for some reason a conflict does arise, the client must be advised accordingly.

The loan by the Former Licensee from Clients A and B obtained as described above was a breach of duty which lies at the very root of the agent-client relationship. The Former Licensee for his own benefit borrowed from Clients A and B and the clients did not have the benefit of receiving independent legal and/or tax advice. The Former Licensee's duty was to not take advantage of his clients. He did. The Former Licensee was bound to ensure his interests and his clients' interests did not conflict. Instead, he created a situation where they are in fact diametrically opposed. One desirable aspect of any loan for the clients would be certainty as to the terms of return and repayment. Repayment of the loan in full has not transpired. By the Former Licensee's own evidence, he knows what he did was wrong but is unable to repay the loan.

While no monies were exchanged with Client C, the Former Licensee's requests for monies prompted Client C to cancel her life insurance.

Clients A, B, and C expressed that the Former Licensee exerted undue influence through his additional occupation and his concurrent agent role to obtain and attempt to obtain monies from them.

Having not fully repaid the monies received from Clients A and B, Council did not accept the Former Licensee's statement that: "I never attempted to seek any profit from my relationships."

Based on the information and evidence, Council concluded that the Former Licensee violated:

- (a) section 1 of the *Code*, which required the Former Licensee to act in the best interests of his clients;
- (b) section 4 of the *Code*, which required that the Former Licensee act professionally, with integrity and honesty;
- (c) section 6 of the *Code*, which required the Former Licensee to avoid conflicts of interest; and
- (d) section 375(1)(e) of the *Act*, which required the Former Licensee to conduct himself in a trustworthy manner.

PENALTY AND FINAL DECISION

Council's Decision dated July 24, 2018 was delivered to the Former Licensee by registered mail on July 26, 2018. The Decision outlined the foregoing background, analysis, and conclusions on a preliminary basis.

Pursuant to sections 375(1.1)(c)(d), 396(1) and 396.1(7)(c)(d)(e), of the *Act*; and, sections 7(1), 7(2)(b)(e) and 7(4)(b), of *Regulation 227/91*; and sections 4(a) and 10(1)(a) of the *Life Insurance Agents and Accident and Sickness Insurance Agents Licensing Rules*, Council concludes:

1. The Former Licensee is fined \$1,000 and assessed investigation costs of \$1,500; and,
2. In conjunction with consideration of any future licensing application, the Former Licensee must successfully pass the Ethics and Professional Practice (Common Law) module of the Life Licence Qualification Program.

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 Decision is published, in accordance with sections 7.1(1) and 7.1(2) of *Regulation 227/91*.

Dated in Winnipeg, Manitoba on the 20th day of August, 2018.