

DECISION
of the
LIFE INSURANCE COUNCIL OF MANITOBA
("Council")
Respecting
GREGORY JOHN MORAN
("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 response to a complaint received by Council concerning the Former Licensee, an investigation was conducted pursuant to sections 375(1) and 396.1(7)(e) of the *Act* and section 7(2) of *Regulation 227/91*. The purpose of the investigation was to determine whether the Former Licensee violated the *Act*, its *Regulations*, and/or the Life Insurance and Accident and Sickness Agent's Code of Conduct (the "*Code*").

During the investigation the Former Licensee was notified of the complaint submitted to Council and given an opportunity to make submissions.

On November 22, 2018, during a meeting of Council, the information and evidence compiled during the investigation was reviewed; the Council hereby renders its Intended Decision and corresponding reasons as set out below.

FACTS AND EVIDENCE

The former sponsor (the "Former Sponsor") had emailed (March 27, 2018, April 27, 2018, May 29, 2018, May 31, 2018) the Former Licensee reminding him that his licences were coming up for renewal and that he could not sell to or advise any clients until he renews his licences.

On May 31, 2018, the Former Licensee responded to his Former Sponsor confirming that he understood that he cannot sell or advise until he completes his relicensing; he did not renew his licences by the May 31, 2018 deadline.

On June 1, 2018, the Former Sponsor's Financial Centre Manager spoke with the Former Licensee on the phone and followed up with an email to let him know that his contract was terminated effective immediately.

On June 14, 2018, the Former Licensee and a licensed colleague (the "Licensed Colleague") attended the offices of a prospective client to enrol employees into group insurance benefits; the Former Licensee was not licensed on this date.

Arising from this meeting, a complaint was submitted to Council wherein the Complainant alleged that the Former Licensee's careless conduct resulted in a breach of confidentiality.

During the June 14, 2018 meeting, the Former Licensee and the Licensed Colleague allegedly passed between themselves a document which listed employee salaries; their carelessness resulted in employees witnessing each others' salaries. The Complainant stated to Council:

"[The Former Licensee] and [Licensed Colleague] had one sheet with everybody's salary listed. This document was passed back and forth between the two and was facing up. There were members of the [company] team who could see everybody's salary. This carelessness and breach of confidentiality has had a negative impact to our company."

By email dated June 22, 2018, an employee of the prospective client stated to the Complainant:

"When the people... came to process our new insurance application on Thursday, June 14th, I saw a list of... employees' salaries was left on the table and going back and forth between them. They were looking at the list in front of us to fill out the forms."

"I was surprised as well as shocked by how casually this was handled... this information should be treated and handled as confidential..."

"The salary part in the form could have been filled out later without exposing the list for anyone to see."

By email dated September 11, 2018, an employee of the Complainant advised Council that in meeting with the employees on June 14, 2018, the Former Licensee did not disclose that he was not a licensed insurance agent and he was not accompanied by the Licensed Colleague for the entire meeting.

"In interviewing our employees, we have come to find out that [the Licensed Colleague] was not careful with employee information. While assisting one employee, he used another employee's application to copy company information. This employee said he was able to see that employee's information, and had advised him of such."

“They both arrived at the same time, but [the Licensed Colleague] left early. There were 11 applications completed. [The Former Licensee] assisted with 7 and [the Licensed Colleague] assisted with 4. [The Former Licensee] was left alone to complete 3 once [the Licensed Colleague] departed...”

“[The Former Licensee] introduced [the Licensed Colleague], and advised that [the Licensed Colleague] was present as he was training [the Licensed Colleague]. [The Former Licensee] was the leader of the two. In speaking with our employees, everyone was under the impression that [the Licensed Colleague] was the “Apprentice” and that [The Former Licensee] was training [the Licensed Colleague]. This is what was told to us by [The Former Licensee]. Both [The Former Licensee] and [the Licensed Colleague] were in our boardroom, but one was at one end of the table, the other was at the other end. They both helped our employees fill out the paperwork individually. They both had their stack of forms that they were responsible for. That said, [The Former Licensee] oversaw the applications.”

The Former Licensee acknowledged that a data sheet (which noted employee salaries) had been passed back and forth and that he reminded his Licensed Colleague to keep the data sheet out of sight from employees, that it was his handwriting on the data sheet, and that he accidentally said in a “normal voice”, while filling out an enrolment form, the amount of the Complainant’s salary while another employee was in the room.

The Former Licensee’s comments that his Licensed Colleague attended the entire meeting and that he did not complete a single form without his Licensed Colleague present was contradicted by the Licensed Colleague, who advised Council that he did not attend the entire meeting, by the Former Sponsor who confirmed that the Licensed Colleague exited the meeting early, leaving the Former Licensee to manage the remainder of the enrolments, and by an employee of the Complainant who advised the Former Licensee was left alone to complete three enrolment forms. The Former Licensee subsequently admitted through further questioning that his Licensed Colleague was not present when he completed the last enrolment form.

The Former Licensee’s comments that he sent no documents to his Former Sponsor were contradicted by his Licensed Colleague and the group benefits Account Executive who advised Council that it was the Former Licensee who facilitated this transaction up to submission to the group benefits department and that it was the Former Licensee who submitted/transmitted the master application and enrolment forms to the Former Sponsor. The Former Licensee subsequently admitted through further questioning that he met with the group benefits Account Executive to deliver the paperwork.

The Former Licensee advised Council that commissions were planned to be split only if and after he was re-licensed; whereas, his Licensed Colleague advised Council that there was no plan to split commissions.

ANALYSIS AND DETERMINATIONS

The Former Licensee had been coordinating solicitation of group insurance benefits to the Complainant in the months prior to the expiry of his licences. The Former Licensee failed to act upon his Former Sponsor's reminder that his licences were coming up for renewal and that he could not sell to or advise any clients until he renews his licences.

Council determined that the Former Licensee violated section 391 Holding out, of the *Act* by presenting himself as an agent in the June 14, 2018 meeting with the Complainant's employees who were led to believe that he was the lead agent; the nature of the relationship had changed as he was no longer licensed and there was no disclosure to the employees that he did not hold a licence.

Council juxtaposed the Former Licensee's responses to those of his Licensed Colleague. The Former Licensee violated section 375(1)(a) Misrepresentation, of the *Act* and section 9 – Dealing with the Insurance Council of Manitoba, of the *Code* when he advised Council that he did not complete a single form without his Licensed Colleague present and that his Licensed Colleague was present for the entire meeting. His Licensed Colleague was not present for the entire meeting and, by the Former Licensee's own admission, he completed at least one enrolment form during the meeting after his Licensed Colleague left the meeting. Furthermore, the Former Licensee misrepresented to Council that he sent no documents to the Former Sponsor, whereas he did. Council relies upon the honesty of its licensees and former licensees, and takes misrepresentations made in the course of an investigation very seriously.

Council accepted the preponderance of evidence that the Former Licensee failed to protect the confidentiality of employee salaries when meeting with the Complainant's employees. The Former Licensee should have been more vigilant to ensure that proper care was taken when handling documents that contain personal information.

Based upon the above, Council determined that the Former Licensee violated sections 1 – Interests of the Client, 4 – Professionalism, and 5 – Confidentiality of the *Code*.

Council noted that comments from the Former Licensee and his Licensed Colleague were diametrically opposed in their intentions to split any potential commissions but made no findings on this matter. Council reminds the Former Licensee that receipt of commissions is prohibited for unlicensed persons.

Council concluded that the professional misconduct and ethical breaches in this matter are serious and that discipline is warranted.

PENALTY AND FINAL DECISION

Council's Decision dated February 12, 2019 was delivered to the Former Licensee on March 13, 2019. 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), of the *Act*; and, sections 7(1), 7(2)(b), and 7(4)(b), of *Regulation 227/91*, Council concludes:

1. The Former Licensee is to be fined \$500 and assessed partial investigation costs of \$500; and,
2. In consideration of any future licensing application, the Former Licensee must successfully pass an Ethics course approved by Council.

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 8th day of April, 2019.