

DECISION

of the

GENERAL INSURANCE COUNCIL OF MANITOBA

(“Council”)

Respecting

LESLIE DAWN BERING (“Licensee”)

as Designated Representative of

CLAIMSPRO LP (the “Firm”)

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*.

In response to information received by Council, an investigation was conducted pursuant to Sections 385(7) 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’s activity violated the *Act*, its *Regulations* and/or the Insurance Adjusters Code of Conduct (“*Code of Conduct*”). During the investigation the Licensee was notified of the information submitted to Council and given an opportunity to make submissions.

On February 27, 2019, during a meeting of the Council, the evidence compiled during the investigation was presented and reviewed. Upon assessment of the evidence, Council determined its then Intended Decision. Pursuant to section 385(7) of the *Act* and *Regulation 227/91*, the Council now renders its Decision and corresponding reasons.

ISSUE

1. Did the Licensee, in her capacity as the Designated Representative, violate the *Act* when she made a material misrepresentation to ICM’s Licensing department when she indicated on the annual Firm Attestation form that on-site supervision was provided at all times?
2. In her capacity as the Designated Representative, did the Licensee fail to ensure adequate levels of supervision were provided at all times?

3. Did the Licensee fail to ensure prudent procedures and practices governing the operation of the Firm were in place?
4. Did the Licensee fail to ensure that all Level 2 assistant adjusters' correspondence was countersigned by a Level 4 adjuster, therefore violating section 3.2 of the *Licensing Rules*?
5. Did the Licensee fail to notify the appointed Level 4 supervising adjuster(s) of their duties to provide on-site supervision and the requirement to countersign all Level 2 correspondence and reports?
6. Did the Licensee fail to ensure proper on-site supervision was provided and due to the lack of supervision, and length of handling time, contribute to a delay in the mis-handling of the file?

FACTS AND EVIDENCE

1. During all material times the Licensee was the Designated Representative in Manitoba for the Firm, and held insurance licences in Alberta, Saskatchewan, and Ontario.
2. As the Designated Representative, it was the Licensee's responsibility to ensure that the *Licensing Rules* with respect to the Firm's licensing and activities were enforced, and that proper and adequate supervision of employees was provided at all times.
3. On April 23, 2014, March 19, 2015 and April 4, 2016, the Licensee completed the annual Adjusting Firm Attestation form and by affixing her signature, she declared that:

I understand that I am required:

- to ensure that licensing rules with respect to the Adjusting Firm licensing and activities are enforced.
 - to ensure that proper and adequate supervision of employees is provided at all times.
 - to report any changes (e.g. change of legal and/or trade name(s)) to the ICM within 15 days.
4. On March 21, 2017 ICM's Manager, Licensing & Administration, received a telephone call from the Licensee questioning the on-site supervision requirements. The Manager's file notes indicated that she advised the Licensee that *"there needs to be a specific supervision plan in place and provide 'on-site' supervision at some point."*
 5. By email dated March 22, 2017, the Licensee indicated to the Licensing department *"Please find attached attestation form as required including a list of offices indicating the level 4 or 5 licensee providing on site supervision at each office location."* The 2017 Firm Attestation form dated March 21, 2017 was included as an attachment to the March 22, 2017 email and indicated that ten (10) Level 4 licensed adjusters, including Adjuster A and Adjuster B, were providing on-site supervision at the Ontario office.

6. On April 30, 2018, Council received a Consumer Complaint form from the Complainant, a third-party claimant, which had indicated that on March 16, 2016 she had slipped on some clear ice and uneven cracked cement at Store A, located in Winnipeg, and had sustained multiple injuries. The Complainant provided Council with a time-line of events, and indicated her concerns regarding the failure to return telephone calls and the handling of the file by three adjusters of the Firm, Adjuster C, Adjuster D and Adjuster E from March 17, 2016 to November 9, 2017, at which time the file was referred to the contracted sand and gravel company.
 7. During Council's investigation, concerns arose with regard to the on-site supervision provided to the Firm's Level 2 assistant adjusters, Adjuster C and Adjuster D. Council requested the Firm's procedure for reassigning files when an adjuster leaves, confirmation on when the file was reassigned, what supervision was provided on the file, and to explain why it took until November 9, 2017 for the Complainant to be referred to the snow removal contractor. The Licensee addressed Council's concerns in multiple emails and provided supporting documentation which indicated that:
 - a. *"The Unit within the Ontario office is supervised by two level 4 adjuster license holders; Adjuster A and Adjuster B."*
 - b. The Account Supervisor is responsible for the proper file management, including assigning and transferring files as required and assigning the required Level 4 supervisors where necessary.
 - c. While Adjuster C was handling the file, Adjuster F was the Account Supervisor and held a Manitoba Level 3 Adjusters licence.
 - d. Adjuster C handled the file from March 17, 2016 until January 20, 2017.
 - e. *"When Adjuster C resigned [on or about January 20, 2017], the supervisor's position [previously held by Adjuster F] had been vacant since Oct 1, 2016"*.
 - f. On February 13, 2017, Adjuster G replaced Adjuster F as the Account Supervisor and was new to her role. Adjuster G reviewed the Complainant's file on March 10, 2017 and reassigned the file to Adjuster D on March 12, 2017. Adjuster G obtained a Manitoba licence on April 5, 2017 as a Level 4 adjuster.
 - g. *"There were regular one-on-one meetings between Adjuster G and Adjuster D regarding her handling of files; however, there are no records on file of discussion between Adjuster G and Adjuster D on this particular file. Adjuster G was new to her role and was not consistently entering supervisory notes on individual files at the beginning of her tenure as supervisor of the unit."*
- (Note:** Adjuster D's last system note was dated July 28, 2017.)
- h. Due to an approved leave of absence, the file was reassigned to Adjuster E, who held a Manitoba Level 3 licence, on October 23, 2017.

- i. November 6, 2017 Adjuster E had a telephone conversation with the Complainant who had indicated that she had slipped on ice. Adjuster E obtained a copy of the snow removal contract.
 - j. On November 9, 2017, a Notice of Loss was sent to the snow removal company, and the contractor's information and the proscriptio date were provided to the Complainant.
 - k. The adjusters handling the file encountered considerable delays in obtaining information needed to determine liability including:
 - i. *"Photos were received from Store A on May 2, 2016. Unfortunately, those photos were not helpful to determine liability as the curb was covered in snow and its condition could not be readily assessed."*
 - ii. *"The claimant did not know what she tripped on."*
 - iii. *"There were attempts to contact managers that were working at the time, as management had changed in the interim."*
 - iv. *"Delay in obtaining Master Service Agreement to confirm responsibility for winter maintenance rested with SRC."*
8. By email dated October 17, 2018, the Licensee provided Council with the system notes from the handling adjusters and email and written correspondence. The Licensee had indicated that:
- a. *"This specific file was a 'Non-Reporting' file and as such did not require reporting to an insurer."*
 - b. *"As a 'Non-Reporting' file, the co-signature licensing requirement was not triggered."*

Upon review of the system notes and correspondence, Council noted that the written correspondence by the assistant adjusters Adjuster C and Adjuster D had not been counter-signed, the emails had not been carbon copied, to or by a holder of a Level 4 adjuster's licence, as required by section 3(2) of the *Licensing Rules*, and that there appeared to be no supervisory system notes or direction provided by either Adjuster B or Adjuster A.

9. In response to Council's request for information regarding the supervision plan by the Level 4 supervisors, Adjuster B and Adjuster A, Council received a letter by email on December 13, 2018 from the Licensee which indicated that:
- a. *"They [Adjuster B and Adjuster A] were available to respond if and when the Account Supervisor requested their supervisory assistance."*
 - b. *"[...] neither the handling adjuster, Adjuster C nor the Account Supervisor, Adjuster F requested the supervisory assistance of a Level 4 licenced adjuster."*

- c. The Complainant's file was not reassigned when Adjuster C left the Firm as neither Adjuster B nor Adjuster A were informed, nor consulted at the time.
- d. *"She [Adjuster C] may not have realized that the Account Supervisor [Adjuster F] was not a Level 4 Adjuster and wasn't aware to consult Adjuster B or Adjuster A."*
- e. *"All adjusters assigned to the [redacted] unit have been made aware of licensing requirements. This was also communicated at a staff meeting."*

ANALYSIS

Section 385(7)(a) of *the Act*, prohibits misrepresentation, fraud, deceit or dishonesty and section 385(7)(c) indicates that a holder or former holder of a license violates the *Act* if they have demonstrated incompetency or untrustworthiness. This includes material misrepresentations on the annual Firm Attestation forms.

While it is the responsibility of each adjuster to comply with the *Licensing Rules*, the Licensee in her capacity as the Designated Representative for the Firm has the overall responsibility to ensure that all adjusters in the Firm comply with the *Licensing Rules*. The Licensee in her capacity as the Designated Representative confirmed by signing the annual Firm Attestation form that she would ensure the *Licensing Rules* would be enforced and supervision provided at all times.

The *Licensing Rules* section 3(2), Restrictions – Levels 1 and 2 indicates that *"The holder of a Level 1 or Level 2 assistant insurance adjuster's licence shall not sign reports or correspondence unless countersigned by the holder of a Level 4 insurance adjuster's licence"*, and section 5(2)(c)(iii) indicates that the corporation must *"employ at least one insurance adjuster holding a Level 4 insurance adjuster's licence to provide on-site supervision at each office of the corporation other than the office supervised by the designated representative,"*. Section 8 of the *Code of Conduct* makes the Designated Representative responsible for that supervision.

The Licensee had indicated that it was the role of the Account Supervisor to request assistance from the Level 4 supervising adjuster(s), however, this position was vacant from October 1, 2016 until February 13, 2017. The Licensee also indicated that the handling adjuster, Adjuster C, may not have been aware that the Account Supervisor did not hold a Level 4 adjuster's licence and did not know that Adjuster B or Adjuster A were available to provide assistance. The two Level 4 Adjusters appointed to provide on-site supervision for the office, specifically for Manitoba files, were unaware of Manitoba files being handled by Level 1 and Level 2 assistant adjusters, and did not provide any oversight on files not assigned to them. It is the Designated Representative's responsibility to ensure that the Firm has policies and procedures in place to ensure regulatory compliance, and that these procedures are followed.

Based on the information and evidence reviewed by Council, Council concluded that there was an apparent lack of supervision and oversight provided by the Firm and as such, the Licensee in her capacity as the Designated Representative violated Sections 385(7)(a) and (c) of the *Act* and sections 3 (Quality of Service), 8 (Unauthorized Practice of the Profession) and 9 (Conduct Towards Others) of the *Code of Conduct* and that disciplinary action is warranted.

PENALTY AND FINAL DECISION

Council's Decision dated June 6, 2019 was delivered to the Licensee by registered mail on June 7, 2019. The Decision outlined the foregoing background, analysis, and conclusion on a preliminary basis. Having regards to its initial determination that the foregoing violations had occurred, Council imposed the following penalty and sanction pursuant to section 375(1.1)(c) and (d) of the *Act* and section 7(1) of *Regulation 227/91*:

1. The Licensee be fined \$5,000.00 and assessed investigation costs of \$3,188.00.

Pursuant to section 389.0.1(1) of the *Act*, the Licensee had the right to appeal this Decision within twenty-one (21) days of receipt. The 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 10th day of July, 2019.