

DECISION
of the
GENERAL INSURANCE COUNCIL OF MANITOBA
(“Council”)
Respecting
DOMINIC ANTHONY ALBANESE (“Licensee”)
As Operating Agent of
OPTIMA INSURANCE GROUP INC. (“Agency”)

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*. Council received a written complaint regarding the advertising through a trade name (the “Trade Name”) offering to provide points for the purchase of an insurance policy, and as there was only one licensed agent, whether there was unlicensed activity. During the investigation, additional areas of concern with respect to the Licensee came to the attention of Council. The 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*. In part, the purpose of the investigation was to determine whether the Licensee had violated the *Act* and/or its *Regulations* and/or the General Insurance Agents Licensing Rules (the “*Licensing Rules*”) and/or the General Insurance Agent Code of Conduct (the “*Code of Conduct*”). During the investigation, the Licensee was provided with opportunities to make a submission.

On January 9, 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 375(1) of the *Act* and *Regulation 227/91*, the Council hereby renders its Decision and corresponding reasons.

ISSUES

1. Did the Licensee violate the *Act*, its *Licensing Rules* and/or *Code of Conduct* by permitting an unlicensed individual(s) to act as an agent?

2. Did the Licensee permit licensees for the Agency he operated to violate the *Act* in carrying on business in the name of another agency (“Agency B”) and that agency’s Trade Name for which the licensees did not hold a valid licence?
3. Did the Licensee misrepresent on his 2017 licence application and 2018 licence renewal application that all individuals for whom he was responsible would be compliant?

FACTS AND EVIDENCE

1. At all material times, the Licensee was the Operating Agent responsible for the management of the Agency.
2. On September 18, 2017, the Licensee signed an application to act as the Operating Agent for the Agency. In this application were the following statements:

2. Trade Name(s) used by the Agency or Firm, (if applicable)” *[left blank and answer initialed by Licensee]*

The full Business name (as referenced in questions #1 and #2) will reflect the name(s) in which the licensees will present themselves to their prospective clients and hold out to the public... *[answer initialed by Licensee]*

20. I have read, understood and agree to abide by *The Insurance Act*, its Regulations, the applicable Licensing Rules and the applicable Agent or Adjuster Code of Conduct. *[answer initialed by Licensee]*

21. I will not act, or offer to undertake to act, as an insurance agent or adjuster in this province without having first obtained a licence under *The Insurance Act*.

I understand that:

- I am required to submit an application for a new employee and to ensure that a valid licence has been issued by the Insurance Council of Manitoba prior to that applicant acting as an agent or adjuster;
- I am required to ensure that licensing rules with respect to agency or adjuster licensing and activities are enforced;
- I am required to ensure that proper and adequate supervision of employees is provided at all times;
- I am required to report any material changes [e.g. change of legal and/or trade name(s)] to the ICM within 15 days...*[initialed by Licensee]*

3. On April 23, 2018, an Insurance Council of Manitoba (“ICM”) staff member (the “Applicant”) completed an on-line application for a tenant’s package quote; the Trade Name of Agency B was noted on the quote.
4. On April 23, 2018, at 1:03 p.m., an individual (“Individual A”), who contacted the Applicant by telephone, identified herself using the Trade Name of Agency B and discussed underwriting information for a tenant’s package in addition to that provided by the Applicant in the on-line quote format. This individual did not hold a general insurance agent licence in Manitoba on this date.
5. On April 24, 2018, another individual (“Individual B”) provided a quote via email for coverage based on the information provided by the Applicant and Individual A. Individual B did not further discuss the coverage or quote directly with the Applicant. He signed his correspondence Individual B – with the Trade Name of Agency B, and a text box at the base of his email indicated:

“[Agency B o/a Trade Name] available to residents of British Columbia, Alberta, Saskatchewan, and Manitoba only.”

6. Individual B held a licence to represent the Agency on April 24, 2018; he did not hold a licence in the name of Agency B.
7. In his ICM licence issuance email dated December 15, 2017, Individual B was advised:

*“You may only conduct insurance business under the name(s) that is referenced on your licence. Any other name, including shortened/altered versions of the name cannot be used. If you require the use of other names, your licence must be amended or a supplementary licence may be required. **Notification of such change must be reported to the ICM within 15 days.**”*

8. On May 11, 2018, at 2:52 p.m., the Applicant received a follow-up phone call regarding the Trade Name quote from a third individual (“Individual C”) who was licensed to represent the Agency; he did not hold a licence in the name of Agency B.
9. In his ICM licence issuance letter dated December 15, 2017, Individual C was advised:

“You may only conduct insurance business under the name(s) that is referenced on your licence. Any other name, including shortened/altered versions of the name cannot be used. If you require the use of other names,

*your licence must be amended or a supplementary licence may be required.
Notification of such change must be reported to the ICM within 15 days.*

10. In his May 22, 2018, ICM licence renewal application, the Licensee stated “No” to the following Questions for Operating Agent:

2 Since you last applied for a Licence or a Renewal to ICM have you, held out to the public in any other name than approved and licensed by the Insurance Council of Manitoba?

3 Since you last applied for a Licence or a Renewal to ICM have you, had knowledge of any employees of the agency transacting insurance business without being duly licensed?

4 Since you last applied for a Licence or a Renewal to ICM have you, had knowledge of any conduct and/or regulatory violation by any licensed employee of the agency not previously reported to ICM?

11. In this 2018 renewal application was the Declaration:

“I declare 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 of any material changes contained in this application within 15 days and advise immediately of termination of employment of licensed employees with full particulars.”

Letter from the Insurer (the “Insurer”) – May 10, 2018

12. A list of policies quoted and/or written by Agency B since June 1, 2017 was provided to Council. There were thirty-three quotes resulting in three policies sold during this period, one was an online travel (trip cancellation/interruption) sale and two homeowner’s sales.

13. The homeowner’s policies were sold by another individual (“Individual D”) on February 2, 2018, and yet another individual (“Individual E”) on April 26, 2018. While each of these individuals held a licence to represent the Agency, neither was licensed to represent Agency B. Like Individual B and Individual C, Individual D and Individual E had been advised in their ICM licence issuance communication (by emails dated January 15, 2018 and December 15, 2017, respectively), to limit conduct to the name of the business referenced on the licence.

14. According to this listing, the Insurer paid a commission through the Trade Name as well as a monthly flat fee to the Agency for sales services on behalf of Agency B. A third participant (“Agency C”), was paid for administrative services.

Letter to the Council from the Operating Agent of Agency B

15. On May 17, 2018, the Operating Agent for Agency B provided a May 15, 2018 letter to Council outlining the structure and activity of that firm; that letter stated:

“[The Insurer] (or its designee) shall be responsible for all aspects of program administration, including without limitation, providing for Customer service, collecting and reviewing application forms, billing and collection of premiums (including refunds) and claims handling. [The Insurer] shall be responsible for providing for the issuance of policies, certificates, bills, endorsements, renewal notices, non-renewal notices, cancellation notices, and any other act or notice under Applicable Law on all insurance policies written as a result of activities.

[The Insurer] has a separate agreement with [the Agency] to provide customer service, and licensed agent support for the sale and service of these insurance products.

Agents representing [the Trade Name], are employed and licensed under [the Agency].”

December 12, 2018 Response from Licensee to Council’s letter November 28, 2018

16. The Licensee provided a reply to the Council’s letter outlining the earlier findings of the investigation and requesting comments.
17. With respect to unlicensed activity, the Licensee noted his position that Individual A did not act as an insurance agent but was acting in an administrative capacity: collecting and confirming basic information. According to the Licensee, the individual did not act as an agent because she “*did not discuss coverage, did not provide a quote, and did not provide any information about insurance or give any advice or recommendations about insurance to the caller*”. Individual A had clearly noted that she was not a licensed agent, stating three times in the conversation that the quote would be provided by a licensed individual.
18. The Licensee indicated that a licensed agent, Individual B, reviewed the information and presented the quote. The cover letter stated that the quote would need to be verified by speaking directly with a licensed individual.

19. Follow up on the quote was provided by licensed agent, Individual C. According to the Licensee, this would include confirming details and collecting any further information to identify exposures, make coverage recommendations, confirm the quote, and proceed to bind coverage, if coverage was required. In this case the Applicant asked for the agent's licence details, advised that the coverage was not required, and ended the call.
20. The Licensee stated that he did not believe there was a violation for unlicensed activity, section 369(1) of the *Act*.
21. With respect to section 391 of the *Act*, Holding Out, the Licensee provided a letter, dated December 10, 2018 signed by a representative of Agency B. o/a the Trade Name and by the Licensee representing the Agency; this letter appointed the Agency as the sub-agent of the Trade Name for the arrangement of home and travel insurance. The letter stated that this appointment took effect November 2017.
22. Following the receipt of the Council's letter of November 28, 2018, the Agency amended its protocols to include changes to inbound and outbound telephone communications identifying staff as representatives of the Agency acting on behalf of the Trade Name, and in their email correspondence showing the signature as "[The Trade Name] *As administered by* [the Agency]".
23. On December 19, 2018, the Applicant (ICM staff member) accessed the Trade Name's website and a popup appeared from Individual F indicating that she was a Support Agent along with a logo for the Trade Name. Individual F was licensed with the Agency, effective December 12, 2018, but she was not licensed with Agency B.

ANALYSIS

The Licensee signed an application on September 18, 2017, to act as the Agency's Operating Agent responsible for compliance in Manitoba. The Licensee confirmed and declared to the truth of the answers provided at the time of his initial application and again at licence renewal on May 22, 2018. On both occasions the Licensee agreed to abide by the *Act*, its *Regulations*, the *Licensing Rules*, and *Code of Conduct* ensuring appropriate licensing and holding out in the name(s) registered on the licence.

Individual A, an unlicensed individual employed by the Agency, spoke with the Applicant over the telephone to ask additional application questions resulting from the Applicant's completion of an on-line tenant's package application. Regardless of verbal disclaimers

that she was not a licensed agent, Council determined that Individual A acted as an agent by engaging in asking underwriting questions which are fundamental in the negotiation of insurance. Applicants discussing the details of their property would have an expectation that the individual met the legal requirements of the jurisdiction in which the business was being conducted. Individual A acted as an agent and as such a valid insurance licence was required. Use of individuals who are not licensed is a violation of section 369(1) of the *Act* and section 9 of the *Code of Conduct*.

The Agency had an arrangement with the Insurer whereby the Insurer paid a monthly flat fee to the Agency for sales and services performed under the Trade Name. The Agency's licensees held themselves out to the public as representatives of the Trade Name which is a tradename registered to Agency B, for which they did not hold a valid licence. Each of these individuals, including the Licensee, had received letters advising them that to hold out in a name other than that on the licence was a violation of the *Act*.

Section 391 of *The Insurance Act* makes it an offence to advertise or carry on a business in any name other than that stated in the licence. The licence issued to the Licensee was solely in the name of the Agency, not Agency B or its Trade Name. Yet the website, advertising, quotes, and emails used in the solicitation and sale of the insurance, that was facilitated by the Agency, read the Trade Name.

While Council understood that licensees often engage in business relations with other licensees for the sale and service of insurance products, the law protects consumers by providing transparency under section 391 Holding Out, of the *Act*, by stating:

Holding out

391 Any person who, not being duly licensed as an agent, a broker, or an adjuster, represents or holds himself out to the public as being an agent, broker, or adjuster, or as being engaged in the insurance business, by means of advertisements, cards, circulars, letterheads, signs or other methods, or being duly licensed as such an agent, broker, or adjuster, advertises as aforesaid or carries on such a business in any other name than that stated in the licence, is guilty of an offence.

The overt and repetitive use of the Trade Name, when activity was carried out by the Agency, was misleading and a violation of public policy; consumers are entitled to understand the entity with whom they are transacting business.

The Licensee as the Operating Agent was responsible to ensure that the Agency was compliant with the laws of Manitoba regardless of its business arrangement. The fact that Agency B and the Agency were separate legal entities with no financial interest in each other, and that this was disclosed on the website, did not relieve the Licensee of the

responsibility to ensure that their business relationship was more transparent to the public.

Council determined that the Licensee violated sections 369 (1) Not to act without licence and 391 Holding Out, of *The Insurance Act*; section 5(1)(d) Additional activities of authorized – Level 3, to manage the office of a general insurance agency, of the General Insurance Agents Licensing Rules (the “*Licensing Rules*”); and section 9 – Unauthorized Practice of the Profession, of the General Insurance Agent Code of Conduct (the “*Code of Conduct*”).

PENALTY AND FINAL DECISION

Council’s Decision dated September 6, 2019 was delivered to the Licensee by registered mail on September 9, 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 \$6,000.00 and assessed partial investigation costs of \$750.00.

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 October, 2019.