

DECISION
of the
GENERAL INSURANCE COUNCIL OF MANITOBA ("Council")
Respecting
BARZIN ASSADI ("Licensee")

INTRODUCTION

The General 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 information received by Council, an 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*. The purpose of the investigation was to determine whether the Licensee's activity violated the *Act*, its *Regulations*, the General Insurance Agents Licensing Rules, and/or the General Insurance Agent Code of Conduct (the "*Code of Conduct*").

During the investigation the Licensee was notified of Council's concerns and given an opportunity to make submissions.

On September 8, 2022, during a meeting of the Council, the evidence compiled during the investigation was presented and reviewed. Council determined the issues to be considered as follows:

1. Did the Licensee violate the *Act* and/or the *Code of Conduct* by making a material misrepresentation on his May 5, 2020 and May 12, 2021 Insurance Council of Manitoba ("ICM") licensing renewal applications when he failed to disclose a June 21, 2019 investigation by another provincial regulatory body (the other "Regulator")?
2. Did the Licensee violate the *Act* and/or the *Code of Conduct* when he failed to disclose the Regulator's June 21, 2019 investigation on his July 28, 2021 ICM licence amendment application to transfer his licence to Agency A?

FACTS AND EVIDENCE:

1. The Licensee obtained a Manitoba General Level 2 licence on August 21, 2019.
2. In completing his May 5, 2020, and May 12, 2021 licensing renewal applications, the Licensee answered "No" to question #2 (Questions for Agent), in the context of having been under investigation since he last applied for a licence or renewal to the ICM. That question read:

"Since you last applied for a Licence or Renewal to ICM have you been under investigation, or the subject of a disciplinary decision, consensual agreement, administrative penalty, or any other form of disciplinary action by any regulatory or licensing authority?"

3. The Licensee's 2020 and 2021 licensing renewal applications contained a Declaration section which read:

"I declare that 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 within 15 days of any material changes to the information contained in this application."

4. On July 28, 2021, the Licensee completed ICM's licence amendment application to transfer his licence to Agency A. The Licensee falsely answered "No" to question #2 which read:

"In any jurisdiction, have you or any business in which you have been involved been subject to any disciplinary action/consensual agreement/administrative penalty by any Regulatory Authority or Regulatory Association, or are you or any business in which you are or have been involved currently under investigation?"

The amendment application included a Declaration section which indicated:

- *"I confirm that the information contained in this application is true and complete, including any attachments/additions that I provide to the ICM by email, fax, hard copy or other means."*
- *"I accept responsibility for statements and declarations in this application, and recognize that any false declaration may lead to disciplinary action against me."*

- *"I declare that 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."*
5. On September 22, 2021, ICM Staff became aware of the Regulator's Intended Decision, dated August 27, 2021 and the Regulator's Order, dated September 17, 2021, which had been posted to the Canadian Insurance Regulators Disciplinary Actions website on September 17, 2021.
 6. By email dated September 22, 2022, the Licensee stated to ICM Staff that he was informed by the Regulator of a complaint in March 2019 and in April 2021 was notified of a May 2021 hearing. He received the Regulator's Decision on September 17, 2022.
 7. By email dated October 10, 2021, the Licensee provided Council's Investigator with a copy of the June 21, 2019 email received from the Regulator notifying him of its investigation and indicated that he made a mistake as he was not paying the proper attention when completing ICM's application forms.
 8. By email dated December 2, 2021, the Licensee provided Council's Investigator with a copy of the Regulator's General Insurance Review Committee Investigation Report, dated May 4, 2021, which indicated that a meeting [the hearing] was held on May 4, 2021 and that the Licensee and his legal counsel were attending.
 9. By email dated July 4, 2022, the Licensee's legal counsel indicated to ICM's Director, Compliance that:
 - (a) *"... Mr. Assadi failed to disclose the [Regulator] investigation on four separate occasions: August 20, 2019, May 5, 2020, May 12, 2021 and July 28, 2021... and Mr. Assadi has acknowledged his obvious carelessness in his review and completion of the questions on those occasions and that he accepts responsibility for his errors."*
 - (b) *"Mr. Assadi unfortunately initially misread the question on August 20, 2019 as enquiring only as to past and completed investigations and disciplinary matters (rather than ongoing investigations) and then unfortunately compounded his initial mistake by providing the same answer on each subsequent occasion without re-reading the question given his relevant circumstances had not changed since August, 2019."*
 - (c) *"Mr. Assadi acknowledges that he ought to have more carefully reviewed the ICM renewal application questions on each occasion, particularly in light of the importance of the information sought, the declaration, his ethical*

duties and the material reliance that Council places on members providing accurate information."

INTENDED DECISION

Upon assessment of the evidence, Council determined its Intended Decision as follows:

1. That the Licensee violated sections 375(1)(a) (Misrepresentation), 375(1)(b) (Violation of any provision of the *Act* or any rule or regulation thereunder) and section 10 (Conduct Towards Others), of the *Code of Conduct* and that disciplinary action is warranted.
2. In consideration of the foregoing violations and pursuant to sections 375(1.1)(c) and (d) of the *Act* and section 7(1) of *Regulation 227/91*, Council intends to order the following:
 - (a) The Licensee be fined \$500.00 and assessed partial investigation costs of \$2,000.00.

In making the provisional determinations it did, Council reasoned as follows:

Section 375(1)(a) of the *Act* prohibits misrepresentation, including false declarations on licensing applications. Section 375(1)(b) prohibits any violation of any provision of the *Act* or any rule or regulation under the *Act*.

Section 10 (Conduct Towards Others) of the *Code of Conduct* mandates agents or brokers to conduct themselves with courtesy and good faith toward Council.

In discharge of its responsibility to protect the public, the ICM requires the Licensee to answer certain questions for every application or renewal of a licence. Among them is whether the Licensee has been under investigation, or the subject of a disciplinary action by any regulatory or licensing authority.

This is a very important disclosure obligation. Disclosure of information (such as being under investigation) on licensing renewal applications permits Council to assess whether the conduct or information disclosed could jeopardize the public interest in any way and whether Council should conduct any necessary inquiries or investigation to aid in that assessment. The nature of the disclosure would be considered to determine if it is critical to the person's trustworthiness, competence or intention to carry on the business of insurance in good faith, and whether the person is fit to be licensed.

The Licensee's licensing applications contained declaration sections to the effect that the information contained in the application(s) was true and complete, that he understood that it was an offence under the *Act* to make a material misstatement to the ICM, and/or that a false declaration could lead to disciplinary action.

The Licensee falsely declared on his licensing applications, dated May 5, 2020, May 12, 2021, and July 28, 2021, that he had not been under investigation by any regulatory or licensing authority; when in fact he had received notice from the Regulator on June 21, 2019 that he was under investigation, and in April 2021 he was aware of the Regulator's hearing on May 4, 2021.

The Licensee, through his legal counsel, acknowledged "*his [the Licensee's] obvious carelessness in his review and completion of the questions*" to ICM's Director, Compliance. The Licensee's legal counsel further stated that the Licensee initially misread the question as inquiring only as to "*past and completed investigations and disciplinary matters*" rather than ongoing investigations and then unfortunately compounded his initial mistake by providing the same answer on each subsequent occasion without re-reading the question given his relevant circumstances had not changed since August 2019.

Based on the information and evidence reviewed, Council concluded that the Licensee violated sections 375(1)(a) (Misrepresentation), 375(1)(b) (Violation of any provision of the *Act* or any rule or regulation thereunder) and section 10 (Conduct Towards Others), of the *Code of Conduct* and that disciplinary action is warranted.

The Licensee was advised of his right to request a show cause hearing. He exercised that right but only with respect to the amount of costs which had been assessed as part of the intended decision. No appeal was taken in connection with the determination that the Licensee had violated sections 375(1)(a) (Misrepresentation), 375(1)(b) (Violation of any provision of the *Act* or any rule or regulation thereunder) and section 10 (Conduct Towards Others), of the *Code of Conduct*.

SHOW-CAUSE HEARING

The Licensee, through his legal counsel, subsequently exercised his right to dispute Council's Intended Decision and requested a hearing before Council. The Licensee's legal counsel who, like the Licensee, appeared virtually, essentially made two points.

The first was that the costs award was disproportionate given the amount of the fine. The second, perhaps connected to the first to some extent, was that the costs award was not consistent with previous such awards. Several decisions were filed by the Licensee's counsel for the benefit of Council and these were referred to by counsel

for the Licensee in support of the contention that the amount of costs should be reduced.

The submission made on behalf of the Licensee did not suggest that there was any regulation, legislation or common law principle which the intended costs award breached. Indeed, it was not contended that the intended costs award was inconsistent with any regulation, legislation, or common law principle.

ANALYSIS

The purpose of a fine is punitive. Costs are compensatory. Section 10 of the *Insurance Agents and Adjusters Regulation 389/87R* specifically stipulate the hourly rate which may be charged by Council (\$75 per hour).

Every case is different. So the details of every investigation are different. The number of witnesses and their nature, the volume of documentary material and its character, are never the same. In this case, the time spent by the investigator multiplied by the prescribed hourly rate exceeded \$2,000.00. Council in its discretion determined to round the assessment of costs down to \$2,000.00.

The significance of the last point cannot be overstated here. Council has the discretion to impose costs in whatever amount it deems fair and reasonable. Depending on the circumstances of the case, Council's view as to the amount of costs assessed may vary. Among the factors considered by Council, again depending on the situation, are the following: the nature and seriousness of the conduct of the Licensee; the degree to which the Licensee was cooperative; the amount of the fine; the complexity of the issues; the means of the Licensee; and the time spent on the investigation. This list is not exhaustive.

Council does consider its previous decisions when evaluating what penalty is appropriate. However, generally it does not give significant weight, if any, to earlier decisions on the question of costs, for the reasons previously outlined.

The cases referred to in the submission of the Licensee's counsel are not in Council's view of any assistance in this case.

Here, the material which had to be reviewed by the investigator was voluminous. The review and the resulting investigation report were thorough and detailed. Given these factors, there was nothing disproportionate about the time and effort spent in the course of the investigation.

There was nothing about the facts underlying the violations by the Licensee or his personal circumstances which might cause Council to seriously consider a substantial reduction from the costs actually incurred (at the regulated hourly rate).

In sum, there was nothing in the evidence or argument of the Licensee which has persuaded Council that its Intended Decision should not be made final.

PENALTY AND FINAL DECISION

Council's Decision, dated May 19, 2023, was delivered to the Licensee by registered letter on May 26, 2023. The Decision outlined the foregoing background, analysis, and conclusion on a preliminary basis.

Having regard 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*, Council hereby orders that:

1. The Licensee be fined \$500.00; and
2. The Licensee be assessed partial investigation costs of \$2,000.00.

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 will occur, in accordance with sections 7.1(1) and 7.1(2) of *Regulation 227/91*.

Dated in Winnipeg, Manitoba on the 28th day of June, 2023.