



DECISION

IN THE MATTER OF THE LIFE INSURANCE COUNCIL OF SASKATCHEWAN ("Council")

MARKET PRACTICES COMMITTEE ("the Committee")

RESPECTING

BRIAN SCOTT MCGILLIVRAY ("the Licensee")

INTRODUCTION:

Pursuant to a Notice of Proposed Action dated August 31, 2020 issued by the Committee to the Licensee, a hearing was held at his request on November 25, 2020 at the Royal Executive Hotel, Regina, Saskatchewan. The hearing commenced at 1:00 pm and concluded at 3:30 pm.

Present at the hearing were: Brian Scott McGillivray

Market Practices Committee Members: Grant Laube
Stacy Hnatiuk (by conference call)
Sheila Hart
Som Houmphanh

Insurance Council: April Stadnek
Janice Dowhaniuk
Trisha Lunt
Dave Prociuk

The hearing was recorded.

EXHIBITS:

At the hearing the Committee was presented with 2 exhibits:

Exhibit A – Complainant 3 file

Exhibit B – Complainant 4 file

JURISDICTION:

The Committee is authorized under Bylaw 2, section 2-3, to investigate complaints and adjudicate or mediate disputes respecting alleged non-compliance with The Insurance Act (the "Act"), The Insurance Regulations (the "Regulations"), or the Council Bylaws by applicants, licensees or persons who are required to be licensees pursuant to subsection 5-31 (3)(i) of the Regulations, and to make decisions respecting penalties and other charges pursuant to subsection 5-31(3)(k) of the Regulations.

In exercising the aforesaid powers delegated by the Superintendent, Bylaw 2-3(3) states that the Committee is "subject to the procedures outlined in section 10-11 of the Act.

Section 10-11 of the Act is titled "Opportunity to be heard". Subsection 10-11(2) states that when imposing actions such as conditions, penalties or suspending a licence, the person affected has the "right to make representations....on why the action should not be taken". Subsection 10-11(10) directs the Committee that on holding a hearing it shall consider the submissions and make a decision.

The Committee, by virtue of the Notice of Proposed Action with its accompanying Investigation Report, was asked to consider the conduct of the Licensee. As a result of complaints received, an investigation was completed and 5 findings were made. The Compliance and Enforcement Branch recommended the Licensee be sanctioned in relation to the 5 findings.

The Investigation Report set out the alleged Bylaw violations, both under the Bylaws that were effective January 1, 2007 and the Bylaws that were effective January 1, 2020. By virtue of subsection 11-14(2) of the Act, we are basing our decision on the Bylaws effective January 1, 2020. The relevant Bylaw sections are: 4-1(1)(a) & (b), 4-1(2)(d), 4-1(2)(f), 4-1(2) (r), 4-1(2)(t) and 7-3-1 4) a) & b).

The Licensee requested an oral hearing to make submissions to the Committee on why the actions recommended in the Investigation Report should not be taken.

REASONS AND DECISION:

Investigation Finding #1:

"McGillivray requested *Complainant 1* complete, on his behalf, seven of his Continuing Education Credit courses online through Dynamic.ca in 2015 as well as 3 Oliver's Learning online courses in 2015."

At the hearing the Licensee denied that he had *Complainant 1* complete his Continuing Education ("CE") credits. He claimed that *Complainant 1*, as his executive assistant, had access to everything on his computer. He stated he never asked *Complainant 1* to do his CE credits. The Committee was not presented with any further evidence than what is contained in the Investigation Report to support *Complainant 1's* allegation. We find this allegation to be unsubstantiated.

Investigation Finding #2:

"McGillivray became financially involved with *Complainant 1* when he borrowed \$4,300 from her explaining that he had his identity stolen and his bank accounts frozen when this was not true. McGillivray subsequently convinced *Complainant 1* and her husband to co-sign a line of credit from their bank which he maxed out and subsequently defaulted on the payments causing the bank to require *Complainant 1* and her husband make the payments. Including *Complainant 1's* back pay owing to her and the line of credit, McGillivray at one time owed *Complainant 1* and her husband approximately \$30,000. As of July 16th, 2020, McGillivray still owes them \$2,500, which he anticipates will be paid off by the end August 2020."

At the hearing the Licensee admitted that he had borrowed money from *Complainant 1*, his executive assistant. He admitted that *Complainant 1's* husband co-signed a line of credit. He claimed that he no longer owed these people money. He admitted this was a conflict of interest and that he would not do the same if he had the opportunity to do it over again. The conduct of the Licensee borrowing money from his employee is a breach of Bylaw 4-1(1)(a) & (b). Borrowing money from an employee is contrary to the best interests of all concerned, and could harm the standing of licensees in the industry. It truly is a conflict of interest.

Investigation Finding #3:

"McGillivray was *Complainant 3's* advisor. When he sold her segregated funds, *Complainant 3* specifically requested the 100/100 option. McGillivray had *Complainant 3* sign the Trade tickets and when he later filled in the boxes for the Plan type, he filled in the Pivotal Select Investment Class 75/75 option."

At the hearing the Licensee admitted he made a mistake regarding the fund code option on *Complainant 3's* paperwork, selecting 75/75 on the form rather than the 100/100 option, which was what had been requested. He said it was an administrative error and stated that there was no intention to harm the client. He stated he had offered to the insurance company three (3) ways to rectify the error. This is a breach of Bylaw 4-1(2)(f), as the Licensee did fail to reasonably carry out a consumer's lawful instructions. Due diligence in completing forms and ensuring that a client's directions are followed is an integral part of acting as a life agent. The Licensee acknowledged, through his comments at the hearing, the importance of taking care and ensuring clients' instructions are followed.

Investigation Finding #4:

"In 15 instances McGillivray had *Complainant 2* sign as the agent of record even though she didn't know the client, nor was she present for the sale. Upon receipt of the related commissions *Complainant 2* then split the commissions with McGillivray."

At the hearing, the Licensee admitted to having *Complainant 2* pre-sign forms as the agent of record for sales that *Complainant 2* was not present for. This is a breach of Bylaw 4-1(2)(t) in that he failed to exercise reasonable and prudent oversight and review when acting in a supervisory capacity. A supervisor is expected to educate the supervisee and set an example for proper business practices.

Investigation Finding #5:

"On McGillivray's advice, *Complainant 4* cancelled her *Insurer A* Life Insurance Policy before she had secured a new *Insurer B* product plan as promised by McGillivray. *Complainant 4* was subsequently denied the Life Insurance Plan McGillivray had suggested, leaving *Complainant 4* without any Life Insurance. McGillivray was unable to produce a Life Insurance Replacement Declaration ("LIRD") in this regard."

At the hearing the Licensee stated that *Complainant 4* had been having trouble paying the premiums on the *Insurer A* term life insurance policy she had in place. He explained that he was trying to obtain better rates for this client. He also stated that the fact-finding determined that *Complainant 4* needed more coverage. The Committee finds that with respect to *Complainant 4*, the Licensee's intention was to replace *Insurer A's* policy if she was insurable and able to obtain a favourable rating. A LIRD should have been completed. It was not. The Licensee strongly stated that he did not, and never would have, advised *Complainant 4* to replace her policy with *Insurer A* before she had secured new insurance coverage. The Licensee was unable to produce documentation to substantiate his claims. He suggested that files had been stolen out of his office. The Committee does not find the Licensee to be credible with respect to his suggestion that files were stolen. The Committee found the licensee's way of conducting his business affairs was inconsistent with having good record keeping practices in place. Proper

business practices would entail a licensee making and keeping detailed notes of discussions with clients especially when policy replacement was being considered. A LIRD would have informed this client of all relevant information.

The Committee finds that the Licensee breached Bylaw 4-1(2)(r) in failing to maintain proper records of his dealings with his clients. Care must be taken to ensure proper records and the security of those records is maintained.

The Committee also finds that a breach of Bylaw 4-1(2)(d) and Bylaw 7-3-1 4) a) & b) has been established in that the Licensee failed to:

- ensure that his client was fully informed of all relevant information which would allow the consumer to make an informed decision;
- complete a LIRD when it was required;
- provide a copy of such LIRD to the consumer; and
- retain a copy of the LIRD in his file.

Decision

The Committee considered the penalties recommended in the proposed consensual agreement and undertaking presented with the Investigation Report. We have not accepted the recommendations as set out, and the recommended fines have been reduced and the suspension has been removed.

The reduction in fines is made for the following reasons:

1. Other than the information contained in the Investigation Report, the Committee was not presented with any further evidence to support *Complainant 1's* allegation that the Licensee asked her to complete CE Credits in 2015 and 2016. This allegation was therefore found to be unsubstantiated; and
2. The Licensee denied that he instructed Complainant 4 to replace her life insurance policy prior to a new insurance policy being issued.

The suspension was removed as not all the allegations were substantiated and it was felt that the imposition of a suspension would result in excessive hardship for the Licensee to continue to earn a living as an insurance agent.

THE COMMITTEE HEREBY ORDERS THAT:

- 1. The Licensee shall not act in the transaction of insurance for a period of **three months unless he is supervised by a licensee having met the Supervision Requirements** as outlined in Table 7-3-1 of Council Bylaws;
 - a. The Licensee’s supervision must be undertaken by an individual that meets the Supervision Requirements as outlined in Table 7-3-1 of the Council Bylaws;
 - b. The Licensee shall:
 - i. **Identify his supervisor in a signed written communication** to the Committee;
 - ii. Within ten days of taking an application for insurance the Licensee must have a supervision certificate completed and signed by the authorized supervising licensee; if replacing a life insurance policy, he must attach a copy of the completed LIRD to the supervision certificate;
 - iii. The Licensee shall not act as a supervisor until the three month supervision restriction has been met and he meets the Supervisor Requirements as outlined in Table 7-3-1 of the Council Bylaws;
 - iv. The Licensee will be responsible to provide to the Committee Supervision Certificates and all supporting documents at the end of the three month supervision restriction;
 - v. The Licensee must immediately notify Council in the event the supervising licensee is unable to continue for any reason; and
 - vi. The Licensee’s licence will be suspended until such time as a new Supervising Licensee has been named and approved by the Committee.

- 2. The Licensee must complete an Ethics course approved by the Council within three months from the date of this Decision. This Ethics course is in addition to the Licensee’s regular Ethics requirement due October 21, 2021;

3. The Licensee must pay the following fines:

Breach:	Penalty:
Bylaw 4-1(1)(a) & (b)	Fine of \$1,000.00
Bylaw 4-1(2) (t)	Fine of \$ 500.00
Bylaw 4-1 (2)(d) & Bylaw 7-3-1 4) a) & b)	Fine of \$ 500.00

Total Fines: **\$2,000.00**

4. The Licensee pay the costs of initial investigation: 25 hours at \$110/hour = \$2,750.00;
5. The Licensee pay the hearing costs calculated at 50% of the Council costs of \$1,538.00 = \$769.00 (the hearing room rental cost is not included);
6.

Cost of Investigation	\$ 2,750.00
Cost of Hearing	\$ 769.00
Total Costs	\$3,519.00
7. Total fines and costs equaling **\$5,519.00** to be paid within 30 days of this Decision.

If a penalty imposed against a holder of an insurance intermediary's licence pursuant to subsection (2) is not paid within 30 days after the holder is served with the written notice of the penalty and the decision of the Superintendent is not appealed, the licence is automatically suspended immediately following the last date for paying the penalty or appealing the decision, whichever is later, and remains suspended until the penalty is paid or the licence expires.

Dated at Regina, in the Province of Saskatchewan, this 24 day of December, 2020.

Originally signed by:

Grant Laube, Chair
Market Practices Committee

The Licensee has the right under Section 10-34 of the Act to appeal the Decision of the Committee.

Any notice of appeal must be in writing and is to be served on the Council and the Superintendent of Insurance and filed with the chairperson of the Financial and Consumer Affairs Authority within 30 days after the date of the Council's decision.

Address for service to the Superintendent of Insurance:

Superintendent of Insurance
Financial and Consumer Affairs Authority
6th Floor, 1919 Saskatchewan Drive
REGINA SK S4P 4N1