



COUNCIL DECISIONS: GENERAL INSURANCE

CONVICTIONS

Janis Lorraine Naylor

("Licensee")

Dawson Creek, BC

(Former Level 3 General Insurance Agent)

On October 30, 2002, the Licensee plead guilty to 1 count each of theft over \$5,000 and fraud over \$5,000 and was sentenced as follows:

- incarceration of 2 years less a day to be served on the Electronic Monitoring Program with conditions;
- must not have signing authority of any financial accounts, except for personal bank accounts;
- must seek and maintain employment, and must advise her employer of the terms of this Conditional Sentence and the restraints it places her under; and,
- must pay restitution in the amount of \$76,145, to the insurance companies involved in covering the loss in this matter.

MATERIAL MISSTATEMENTS

Sammy Daniel

("Licensee")

Mississauga, ON

(Level 1 General Insurance Salesperson)

Council determined the Licensee made a material misstatement on his application for an insurance licence and ordered the Licensee:

- be fined \$200; and,
- be assessed the costs of Council's investigation.

Council found the Licensee knew, or ought to have known had he exercised reasonable diligence, that the information he provided on his application was not true.

REPRIMANDS

Jardine Lloyd Thompson Canada Inc.

("Licensee")

Vancouver, BC

(General Insurance Corporate Agency)

Council determined the Licensee failed to act in accordance with the usual practice of the business of insurance and ordered the Licensee:

- be reprimanded; and,
- be assessed the costs of Council's investigation.

In this matter, the Licensee requested or allowed the cancellation of a client's insurance policy for non-payment of premium, even though the premium had been paid, in order to apply the pro-rated return of premium against an outstanding debt owed by the client.

Directing an insurer to cancel a client's insurance coverage for non-payment of premium when the premium has been paid is improper. In addition to potentially causing undue prejudice to the client, such action may cause an insurer to contravene applicable policy conditions or statutory requirements, since, depending on the conditions and the particular jurisdiction, cancellation of a policy must be carried out in a set fashion and an insurer may be obligated to return any unearned premium to the client with notice of cancellation.

Robert Angus Whitlock

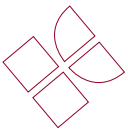
("Licensee")

Trail, BC

(Level 3 General Insurance Nominee)

Council determined the Licensee failed to act in a competent manner and in accordance with the usual practice of the business of insurance and ordered the Licensee:

- be reprimanded;
- be fined \$500;
- attend an errors and omissions seminar



within 12 months of Council's decision becoming final; and,

- be assessed the costs of Council's investigation.

Council found the Licensee:

- failed to disclose to clients, either verbally or in writing, policy fees charged by the Agency;
- obscured, or allowed to be obscured, the premium shown on the declaration page of policy; and,
- failed to provide disclosure statements to clients as required by section 90 of the Act.

Council did not identify any evidence of bad faith on the part of the Licensee, but concluded that the Licensee's lack of recent formal training may have contributed to the issues arising in this case.

SUSPENSIONS

Gary Donald Barnes

("Licensee")

Victoria, BC

(Level 2 General Insurance Agent)

Council imposed the following licence conditions in November 2001 after the Licensee was charged with 2 counts of fraud under \$5,000 and 2 counts of theft under \$5,000 in relation to his conduct as an insurance agent:

- the Licensee is prohibited from accepting any funds from the public in connection with his activities as a general insurance agent;
- the Licensee must disclose to his existing employer, and any future employers upon transferring his licence, these licence conditions and the circumstances leading to Council's investigation; and,
- the Licensee must be under the direct supervision of a "named" nominee of the agency.

On July 4, 2002 the Licensee was convicted of 2 counts of theft under \$5,000 for misappropriating \$600. He was ordered to pay a \$2,000 fine and to make restitution to his former employer.

The conviction arose after it was established that the Licensee had collected the full cash payment of \$2,504 from a client for its 2000 insurance premium but submitted receipts to his agency indicating the client had only paid \$1,904 – a shortfall of \$600.

The Licensee admitted producing 2 receipts showing he had collected less money from the client than he actually had and that he kept the difference of \$600. However, the Licensee denied this conduct amounted to theft and/or fraud, arguing he produced the false receipts and kept the \$600 with the knowledge and consent of his employer.

Council subsequently reviewed the issue of the Licensee's suitability and fitness to hold an insurance licence and in particular, whether he constituted a continuing risk to the public.

Council determined the Licensee did not pose an ongoing risk to the public and with conditions, it would not be contrary to the public's interest to permit him to retain his insurance licence. Council based its decision on the following factors:

- the Licensee has been licensed in good standing since 1989;
- the Licensee's conduct was out of character and inconsistent with his lifestyle;
- the Licensee's conduct appears to be limited to this one occurrence;
- the Licensee has worked under the licence conditions imposed by Council since November 2001 without problem;
- the Licensee submitted numerous character references from well respected and experienced insurance industry representatives and members of the community;
- the Licensee's current employer continues to support the ongoing employment of the Licensee under the conditions previously imposed by Council; and,



- the Licensee’s current employer is a large insurance brokerage with demonstrated financial procedures and policies.

- be suspended for a period of 2 weeks; and,
- be assessed the costs of Council’s investigation.

Notwithstanding the above, the Licensee’s conduct in producing and submitting false receipts to his former insurance employer was serious and could have prejudiced the interests of his former employer and the insured, if proper receipts had not been issued by the Licensee to reflect that the insured had paid the full insurance premium.

The Licensee used his position as an insurance agent to avoid a legislated requirement for personal benefit. In particular, he improperly rated his own and his wife’s vehicles to avoid AirCare. In addition to the action imposed by Council, the Licensee paid the AirCare fees that would have been charged and forfeited the commission paid to the Licensee’s agency for the transactions.

Accordingly, Council found the Licensee did not handle the transaction in a competent, trustworthy, and financially reliable manner, in good faith and in accordance with the usual practice of the business of insurance, and ordered the Licensee:

Harjinder Singh Gill
 (“Licensee”)
 Surrey, BC
 (Level 3 General Insurance Nominee)

- be suspended for a period of 6 weeks;
- as a condition of his licence:
 - i) be under the direct supervision of a “named” level 3 general insurance agent approved by Council;
 - ii) be prohibited from accepting any funds from the public in connection with his activities as a general insurance agent;
 - iii) obtain prior approval from Council before a licence application will be considered if he seeks employment with any other insurance agency; and,
 - iv) disclose these licence conditions and the circumstances leading to his criminal conviction for theft under \$5,000 if he seeks employment with any other insurance agency; and,
- be assessed the costs of Council’s investigation.

Council determined the Licensee failed to act in good faith, in a trustworthy manner and in accordance with the usual practice of the business of insurance, and ordered the Licensee:

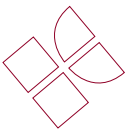
- be suspended for 3 months;
- have his Level 3 general insurance agent’s licence amended to a Level 2 general insurance agent’s licence for a minimum of 2 years; and,
- be assessed the costs of Council’s investigation.

Harjinder Singh Deol
 (“Licensee”)
 Mission, BC
 (Level 1 Grandfathered General Insurance Salesperson)

In 1996 the Licensee backdated a client’s automobile insurance at the client’s request and subsequently lied to an ICBC adjuster about when and how the transaction was processed. The Licensee later admitted to backdating the insurance and providing a false statement when questioned about it again in 2002.

Council determined the Licensee failed to act in a trustworthy manner and in accordance with the usual practice of the business of insurance, and ordered the Licensee:

The Licensee also used his position as an insurance agent for personal benefit. In particular, he improperly rated his own vehicle to avoid AirCare. In addition to the action imposed by Council, the Licensee paid the AirCare fees that would have been charged and forfeited the commission paid to the Licensee’s agency for the transactions.



SUITABILITY

("Licensee") Kamloops, BC

(Level 1 General Insurance Salesperson)

On his 2002 renewal application, the Licensee disclosed he had been convicted a year earlier of fraud under \$5,000. Based on Council's policies, a conviction for fraud is a relevant offence, as it applies to an individual's suitability. A review of the matter resulted in the Licensee's renewal application being denied.

At a hearing, Council considered the circumstances and actions of the Licensee, noting his age at the time of the offence and the fact he had been licensed for 10 years without a complaint. In addition, they took into account the incident was non-insurance related, the monies had been repaid and all other requirements of his conviction had been addressed with the Court having recently ended the probation period approximately four months earlier than originally set.

While not wanting to take away from the seriousness of the conviction, Council noted the Licensee was requesting only a Level 1 salesperson licence, which carries significant restrictions. Council concluded the Licensee did not represent a significant risk to the public and, as he wanted a Level 1 salesperson licence, believed there were adequate provisions in place for an agency to monitor his activities.

Council agreed the Licensee could apply for a Level 1 salesperson licence on the condition he advise his employer, in advance, of his existing conviction and the reasons for it. If the Licensee decides to seek a general insurance agent's licence, Council will first have to consider whether his conviction for fraud makes him suitable to hold the licence.

COUNCIL DECISIONS: ADJUSTER

REPRIMANDS

James Douglas Smart ("Licensee") Richmond, BC

(Level 3 Adjuster Nominee)

Council determined the Licensee failed to act in accordance with the usual practice of the business of insurance and ordered the Licensee:

- be reprimanded; and,
- be assessed the costs of Council's investigation.

Council found the Licensee, who was retained by an insured to represent them in a property damage claim, did not identify a provision in the insured's property insurance policy which required them to repair or replace the damaged property within 180 days from the date of the loss in order to receive replacement cost.

An insurance adjuster has a duty to fully and promptly inform an insured of material information regarding policy coverage, limitation periods and the insured's rights and obligations in the claims process.

COUNCIL DECISIONS: LIFE INSURANCE

CONTINUING EDUCATION AUDIT

Michael Anthony Gatto ("Licensee") Coquitlam, BC

(Level 1 Life Insurance Agent)

An audit of the Licensee's continuing education credits revealed a material misstatement on his 2002 licence renewal application. Council found he was in breach of a licence condition by having only 58 of the required 60 hours of qualified education, and ordered the Licensee:



- be fined \$1,000 for a material misstatement.

The Licensee stated he had enrolled in an on-line course but had not been aware he had to complete the tutorial exam for the course to qualify for education credits. Council determined the Licensee failed to demonstrate he was ever enrolled in the on-line course and determined he knowingly made a material misstatement on his application by claiming continuing education credits for a course he did not take. As the Licensee subsequently earned the required credits, no further action regarding his licence was deemed necessary.

LICENCE CONDITIONS

(“Licensee”)

Pemberton, BC

(Level 1 Life Insurance Agent)

The Licensee disclosed on her first application for life insurance that she had a criminal conviction for forgery. As it was considered a relevant, indictable offence, her suitability to hold a licence was brought

into question. Council reviewed the circumstances leading up to the conviction and took into account the Licensee’s conduct since the conviction almost 5 years ago. Council agreed to grant a Level 1 life insurance licence with the following conditions:

- i) the Licensee be under the direct supervision of a named Level 2 life insurance agent for a period of 2 years, or until she upgrades to a Level 2 life insurance agent’s licence, whichever is longer; and,
- ii) should the Licensee elect to change her supervising Level 2 life insurance agent, she must first advise that individual of her criminal conviction, until either a pardon is obtained or condition (i) is removed.



CAUTION

Warning: *The use of any information in this Bulletin to discredit another licensee, or any other person, is not permitted and may result in disciplinary action against a licensee using the information in such a manner.*