

In the Matter of
The *FINANCIAL INSTITUTIONS ACT*
(RSBC 1996, c.141)
(the “Act”)

and

The *INSURANCE COUNCIL OF BRITISH COLUMBIA*
(“Council”)

and

IAN ROSS MACFARLANE
(the “Licensee”)

ORDER

As Council made an intended decision on July 16, 2013, pursuant to sections 231, 236, and 241.1 of the Act; and

As Council, in accordance with section 237 of the Act, provided the Licensee with written reasons and notice of the intended decision dated August 6, 2013; and

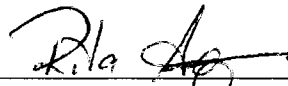
As the Licensee has not requested a hearing of Council’s intended decision within the time period provided by the Act;

Under authority of sections 231, 236, and 241.1 of the Act, Council orders:

1. A condition is imposed on the Licensee’s life and accident and sickness insurance licence that he must only conduct life and accident and sickness insurance business under the supervision of a qualified life and accident and sickness insurance agent approved by Council until he has accumulated an additional 24 months of active licensing.
2. A condition is imposed on the Licensee’s life and accident and sickness insurance licence that requires him to provide written notification to Council before engaging in any outside business activities.
3. A condition is imposed on the Licensee’s life and accident and sickness insurance licence that requires him to notify his supervisor, all managing general agents, and insurers he places insurance business with or through, of the Ontario Securities Commission Order and Council’s decision.

4. A condition is imposed on the Licensee's life and accident and sickness insurance licence that prohibits him from selling any non-insurance financial products.
5. The Licensee is fined \$500.00.
6. The Licensee is assessed Council's investigative costs of \$750.00.
7. A condition is imposed on the Licensee's life and accident and sickness insurance licence that requires him to pay the above-ordered fine and investigative costs no later than **November 27, 2013**. If the Licensee does not pay the ordered fine and investigative costs in full by this date, the Licensee's life and accident and sickness insurance licence is suspended as of **November 28, 2013**, without further action from Council and the Licensee will not be permitted to complete any annual filing until such time as the ordered fine and investigative costs are paid in full.

This order takes effect on the 27th day of August, 2013.



Rita Ager, CFP, CLU, RHU, CSA
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA

("Council")

respecting

IAN ROSS MACFARLANE

(the "Licensee")

INTRODUCTION

Pursuant to section 232 of the *Financial Institutions Act* (the "Act"), Council conducted an investigation to determine whether the Licensee acted in compliance with the requirements of the Act.

As part of Council's investigation, on June 17, 2013, an Investigative Review Committee (the "Committee") met with the Licensee to discuss allegations the Licensee failed to report he was under investigation by the Ontario Securities Commission (the "OSC") on his application to Council for a first licence and his subsequent failure, after obtaining an insurance licence, to report the disciplinary action taken against him by the OSC.

The Committee was comprised of one voting member and three non-voting members of Council. Prior to the Committee's meeting with the Licensee, an investigation report was distributed to the Committee and the Licensee for review. A discussion of this report took place at the meeting and the Licensee was provided an opportunity to clarify the information contained therein and make further submissions. Having reviewed the investigation materials and after discussing this matter with the Licensee, the Committee made a recommendation to Council as to the manner in which this matter should be disposed.

A report setting out the Committee's findings and recommended disposition, along with the aforementioned investigation report, was reviewed by Council at its July 16, 2013 meeting. At the conclusion of its meeting, Council accepted the Committee's recommended disposition and determined the matter should be disposed of in the manner set out below.

PROCESS

Pursuant to section 237 of the Act, Council must provide written notice to the Licensee of the action it intends to take under sections 231, 236, and 241.1 of the Act before taking any such action. The Licensee may then accept Council's decision or request a formal hearing. This intended decision operates as written notice of the action Council intends to take against the Licensee.

FACTS

Prior to becoming licensed with Council as a life and accident and sickness insurance agent in 2008, the OSC commenced an investigation into the Licensee regarding his involvement in the distribution of a guaranteed return investment certificate, a form of a prime bank investment scheme.

The OSC alleged the Licensee and several others engaged in a sales approach that included making representations to investors which were false, inaccurate, and misleading. The OSC also alleged the Licensee and others traded in securities without the required registration and participated in activities which they knew, or reasonably ought to have known, constituted fraud.

On April 29, 2011, the OSC issued an order (the "OSC Order") against the Licensee which reprimanded the Licensee; restricted him from trading in or acquiring certain securities; prohibited him from being a director or officer of any issuer; and required him to pay a \$2,500.00 fine. The OSC Order was issued at a time when the Licensee held a life and accident and sickness insurance licence with Council.

The Licensee did not report that he was under investigation by the OSC on his application for a first licence with Council, nor did he report the subsequent disciplinary action taken by the OSC.

In July 2012, the Licensee was placed under supervision for two years by his managing general agent ("MGA"), after it became aware of the OSC Order. Since the supervision has been imposed, the MGA has not identified any concerns with the Licensee's insurance business. An inspection of the Licensee's insurance practice in July 2012 did not identify any concerns. The Licensee has approximately 150 clients and has been doing business with the MGA since the inception of his insurance licence. He is no longer involved in exempt market securities.

SUBMISSIONS

The Licensee submitted he was not aware he was under investigation by the OSC at the time of his licence application in June 2008. The OSC advised that it provided the Licensee with the Notice of Hearing and Amended Statement of Allegations on May 27, 2008, via email. The Licensee maintains he did not receive this email. It is the Licensee's position that he did not become aware of the OSC investigation until a few days before the OSC commenced its proceedings in early 2011, after being contacted by another person who was named in the proceedings.

The Licensee stated he was also unaware of the subsequent OSC Order as it was sent to an out-of-date address. The Licensee had not updated his address for service with either Council or the OSC. The Licensee advised he was unaware of his duty to report the OSC Order to Council and the requirement to update his address. The Licensee submitted it was not his intention to mislead Council, and he is now familiar with his notification obligations and Council Rules generally.

With respect to the subject of the OSC investigation and OSC Order, the Licensee submitted that he mistakenly relied on the misrepresentations of the other parties involved in the scheme and was unaware that investors were being misled. He also explained that the main parties in the investigation were sanctioned more severely by the OSC.

ANALYSIS

Council considered the evidence and the Licensee's submissions. Council further considered issues of suitability in light of the OSC Order.

With respect to the issues of notification, Council was unable to identify any direct evidence to contradict the Licensee's position that he was unaware of the OSC investigation. Council determined, however, that the Licensee demonstrated a pattern of lack of attention to detail with respect to his notification obligations. In particular, Council determined the Licensee had an obligation, once he became aware of the OSC investigation in early 2011, to become informed of the investigation and subsequent proceedings. Council held that the Licensee should have taken appropriate steps to determine the outcome of the OSC investigation and subsequent proceedings. By failing to notify Council of his current address for service and the OSC Order, Council determined the Licensee was in breach of his obligations pursuant to Council Rules 7(3) and 7(4).

With respect to the suitability concerns raised by the OSC Order, Council noted the events subject to the OSC Order occurred over five years ago and prior to the Licensee obtaining a licence with Council. Council found the Licensee acted carelessly in light of the Licensee's submission that he relied heavily on others and did not conduct his own investigations before becoming involved in an unfamiliar business. Council determined that, as there have been no concerns raised with respect to the Licensee's insurance practice other than his breach of Council's notification requirements, the Licensee was suitable to be a licensee, but would benefit from formal supervision.

INTENDED DECISION

Pursuant to sections 231, 236, and 241.1 of the Act, Council made an intended decision to:

1. Impose a condition on the Licensee's life and accident and sickness insurance licence that he must only conduct life and accident and sickness insurance business under the supervision of a qualified life and accident and sickness insurance agent approved by Council until he has accumulated an additional 24 months of active licensing.
2. Impose a condition on the Licensee's life and accident and sickness insurance licence that requires him to provide written notification to Council before engaging in any outside business activities.
3. Impose a condition on the Licensee's life and accident and sickness insurance licence that requires him to notify his supervisor, all MGAs, and insurers he places insurance business with or through, of the OSC Order and Council's decision.
4. Impose a condition on the Licensee's life and accident and sickness insurance licence that prohibits him from selling any non-insurance financial products.
5. Fine the Licensee \$500.00.
6. Assess the Licensee Council's investigative costs of \$750.00.

The Licensee is advised that should the intended decision become final, the fine and investigative costs will be due and payable within 90 days of the date of the order. Failure to pay the fine and investigative costs within the 90 days will result in the automatic suspension of the Licensee's life and accident and sickness insurance licence. In addition, the Licensee will not be permitted to complete any annual filing until such time as the fine and investigative costs are paid in full.

Intended Decision
Ian Ross MacFarlane
173945-11166
August 6, 2013
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The intended decision will take effect on **August 27, 2013**, subject to the Licensee's right to request a hearing before Council pursuant to section 237 of the Act.

RIGHT TO A HEARING

If the Licensee wishes to dispute Council's findings or its intended decision, the Licensee may have legal representation and present a case at a hearing before Council. Pursuant to section 237(3) of the Act, to require Council to hold a hearing, the Licensee must give notice to Council by delivering to its office written notice of this intention by **August 26, 2013**. A hearing will then be scheduled for a date within a reasonable period of time from receipt of the notice. Please direct written notice to the attention of the Executive Director.

If the Licensee does not request a hearing by **August 26, 2013**, the intended decision of Council will take effect.

Even if this decision is accepted by the Licensee, pursuant to section 242(3) of the Act, the Financial Institutions Commission still has a right to appeal this decision of Council to the Financial Services Tribunal ("FST"). The Financial Institutions Commission has 30 days to file a Notice of Appeal, once Council's decision takes effect. For more information respecting appeals to the FST, please visit their website at www.fst.gov.bc.ca or contact them directly at:

Financial Services Tribunal
PO Box 9425 Stn Prov Govt
Victoria, British Columbia
V8W 9V1

Reception: 250-387-3464
Fax: 250-356-9923

Email: FinancialServicesTribunal@gov.bc.ca

Dated in Vancouver, British Columbia, on the **6th day of August, 2013**.

For the Insurance Council of British Columbia



Gerald D. Matier
Executive Director

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