

In the Matter of

The *FINANCIAL INSTITUTIONS ACT*
(RSBC 1996, c.141)
(the "Act")

and

The INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

and

NOEL FRANCINE SMITH
(the "Licensee")

ORDER

Pursuant to section 237 of the Act, Council convened a hearing at the request of the Licensee to dispute an intended decision, dated April 9, 2014, made pursuant to sections 231, 236, and 241.1 of the Act, and an order, dated October 23, 2014, made pursuant to section 238 of the Act.

The subject of the hearing was set out in a Notice of Hearing dated November 18, 2014.

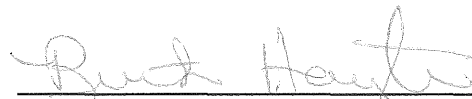
A Hearing Committee heard the matter on December 18, 2014 and presented its report to Council at its February 17, 2015 meeting.

Council considered the Hearing Committee's report and made the following order pursuant to sections 231, 236, and 241.1 of the Act:

1. The Licensee's life and accident and sickness insurance licence and general insurance licence are both terminated for one year, commencing on **October 24, 2014**, and ending on **October 23, 2015**.
2. The Licensee is fined \$5,000.00.
3. The Licensee is assessed Council's investigative costs of \$1,000.00.
4. The Licensee is assessed Council's hearing costs of \$3,283.08.
5. As a condition of this order, the Licensee is required to pay the above-ordered fine, investigative costs, and hearing costs no later than **May 18, 2015**. If the Licensee does not pay the above-ordered fine, investigative costs, and hearing costs in full by this date, the Licensee will not be permitted to apply for an insurance licence until such time as the fine, investigative costs, and hearing costs are paid in full.

Order
Noel Francine Smith
182798-11464
February 17, 2015
Page 2 of 2

This order takes effect on the 17th day of February, 2015.

A handwritten signature in cursive script, appearing to read "Ruth Hoyte", written over a horizontal line.

Ruth Hoyte
Chairperson, Insurance Council of British Columbia

INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

REPORT OF THE HEARING COMMITTEE

IN THE MATTER OF THE *FINANCIAL INSTITUTIONS ACT*
(the “Act”)
(S.B.C. 1996, c. 141)

AND

NOEL FRANCINE SMITH
(the “Licensee”)

Date: December 18, 2014
9:30 a.m.

Before: Susan Newham Chair
Tom Meier Member
Bob Scott Member

Location: Suite 300, 1040 West Georgia Street
Vancouver, British Columbia V6E 4H1

Present: David McKnight Counsel for Council
Clarke Burnett Counsel for Licensee
Noel Francine Smith Licensee

BACKGROUND AND ISSUES

On April 9, 2014, Council made an intended decision pursuant to sections 231, 236, and 241.1 of the Act regarding allegations the Licensee made material misstatements on her applications for a Level 2 general insurance agent (“Level 2 agent”) licence and a life and accident and sickness insurance agent (“life agent”) licence, contrary to sections 231(1)(a) and 231(1)(c) of the Act.

In response the Licensee requested a hearing, pursuant to section 237(3) of the Act.

Subsequent to the Licensee requesting a hearing, on October 23, 2014, Council suspended the Licensee’s licences, pursuant to sections 231 and 238 of the Act, after it learned the Licensee had been disciplined by another regulatory body for failing to properly complete her licence renewal application in 2013, and then failed to report this disciplinary action to Council as required by Council Rules. In response to this 238 order, the Licensee again exercised her rights to request a hearing.

The purpose of the hearing is to determine if the Licensee is able to carry on the business of insurance in a trustworthy and competent manner, in good faith and in accordance with the usual practice, as required under Council Rule 3(2), and pursuant to section 231(1)(a) of the Act. If the Hearing Committee determines that the Licensee acted in a manner that brings into question her suitability, it may recommend to Council appropriate disciplinary action under the circumstances.

The Hearing Committee is constituted pursuant to section 232 of the Act. This is a Report of the Hearing Committee, as required pursuant to section 223(4) of the Act.

EVIDENCE

Evidence reviewed by the Hearing Committee in consideration of this matter included:

- Exhibit 1 Agreed Statement of Facts
- Exhibit 2 Council's Book of Documents
- Exhibit 3 Licensee Reference Letters

FACTS

An agreed statement of facts was reached, and the pertinent details are contained below.

The Licensee has been licensed in British Columbia as a life agent and a Level 2 agent since December 6, 2010. The Licensee was continually licensed in British Columbia until October 23, 2014, when both licences were suspended by Council.

The Licensee is also currently licensed with the Registered Insurance Brokers of Ontario ("RIBO") as a general insurance broker. The Licensee has been licensed as a general insurance broker in Ontario since 1981. The Licensee is also licensed as a life agent in Ontario, and has been licensed as such since January 1994.

Prior to the Licensee applying for insurance agent licences in British Columbia, the Licensee was subject to two disciplinary actions by RIBO, one in 1992, and the other in 2006. In the first case in 1992, the Licensee admitted to misappropriating premiums received in trust from clients, and failing to remit those funds to her employer. This resulted in the Licensee being required to reimburse the funds, pay investigative costs of \$2,500.00, attend additional education, and be subject to a 60-day licence suspension, and a licence restriction requiring her to be supervised for five years.

In 2006, the Licensee accepted funds to be held in trust when she was not authorized to hold trust funds. This resulted in a 60-day licence suspension, and the payment of a \$1,000.00 penalty.

Also, before applying for insurance agent licences in British Columbia, the Licensee was twice subject to personal bankruptcies, one in 1993 and the other in 2008, both of which were subsequently discharged.

In November 2010, Council received two applications from the Licensee, one for a life agent licence, the other for a Level 2 agent licence. In completing both of these applications, the Licensee answered “No” to question 7(b), which states, “Have you ever been refused a licence or registration, or have you been subject to disciplinary action, or are you currently under investigation by any organization referred to in 7(a)?”

In addition, on both the licence applications, the Licensee responded “No” in response to question 8(b), which asks, “Have you personally, or has any business of which you are or were an officer, director, or partner, ever been subject to bankruptcy proceedings?”

In completing both the licence applications in November 2010, the Licensee made the following declaration: “I declare the information contained in this application, including attachments, is true and complete. I also understand it is an offence under the Financial Institutions Act to make a material misstatement to the Insurance Council of British Columbia.”

When Council subsequently became aware of this information and sought an explanation from the Licensee, the Licensee acknowledged that she should have disclosed on the applications to Council that she had been previously disciplined by RIBO. The Licensee stated that the reason she did not make the proper disclosure to Council was that she did not want to rehash what had occurred. The Licensee stated that she viewed the two previous RIBO disciplinary procedures as personal situations, and she did not want to revisit what had happened in the past.

With regard to the failure to disclose the bankruptcies, the Licensee explained that the personal bankruptcies were associated with marriage breakups. The Licensee stated that she did not make the disclosure because the incidents were difficult times for her, and she did not wish to rehash them. The Licensee acknowledged that when she was completing the licence application forms she had been the subject of personal bankruptcies in the past and that she knew she was not making the proper disclosure on the applications.

In 2013, the Licensee applied for a life agent licence in Saskatchewan. In completing the licence application in Saskatchewan, the Licensee failed to disclose her two personal bankruptcies, as well as the two RIBO disciplinary proceedings. When the Insurance Councils of Saskatchewan learned of her non-disclosure, it commenced a suitability hearing, but the Licensee withdrew her licence applications prior to the hearing, and the matter did not go forward.

In June 2014, the Licensee was disciplined by the Financial Services Commission of Ontario (“FSCO”) for furnishing false and misleading and incomplete information to it in her 2013 licence renewal application. More specifically, FSCO found the Licensee had failed to disclose her two previous licence suspensions with RIBO, that she was under investigation by the Insurance Councils of Saskatchewan, and that she has been subject to previous bankruptcy proceedings. Then, after being disciplined by FSCO, the Licensee failed to disclose this disciplinary action to Council in accordance with Council Rules.

In evidence to the Hearing Committee, the Licensee acknowledged that in addition to not disclosing the bankruptcies and past disciplinary actions on her licence applications, she also did not disclose them to her employers. In advising that she did not make disclosure to her employers, she stated that she was not asked by them about such issues. The Licensee acknowledges that her actions were wrong, and regardless of her reasons, she realizes her mistake.

The Licensee stated that her non-disclosures to regulators should not reflect on her work as an insurance agent. She stated that she always puts the client’s interests first. The Licensee stated that she knew at the time when she was completing the applications that it was wrong not to be providing the information, but proceeded to do it anyway.

HEARING COMMITTEE’S FINDINGS

The Hearing Committee found that the Licensee had failed to make proper disclosure to Council when completing her licence applications in 2010. Further, it was noted that a similar non-disclosure was made by the Licensee when seeking an insurance licence in Saskatchewan, and that she was recently disciplined by FSCO for again failing to make proper disclosure when completing a licence application.

The Hearing Committee found the Licensee has a history of failing to make proper disclosure to regulators when completing licence applications. In reviewing these non-disclosures, the Committee felt that the Licensee’s actions were tantamount to fraud.

The Licensee explained her actions by saying that she did not want to revisit any of these events as they represented difficult personal issues. The Hearing Committee noted that as a one-off occurrence, this might have been believable, but noted that the Licensee made similar non-disclosures in Saskatchewan and Ontario.

The Hearing Committee noted that the Licensee acknowledged that she knew that what she was doing was wrong at the time, but proceeded to do it anyway. The Hearing Committee found this conduct to be very concerning, as one of the principles of an insurance agent is utmost good faith in conducting an insurance transaction. While the Hearing Committee acknowledges that there is no evidence to indicate the Licensee has not exercised utmost good faith when conducting an insurance transaction, it finds it hard to believe that her insurance activities could somehow be separated from her regulatory responsibilities.

While the Hearing Committee heard that the Licensee now understands her errors, it noted that only six months ago the Licensee was disciplined in Ontario for failing to make proper disclosure, and that she then failed to make proper disclosure to Council of the disciplinary action taken by FSCO, even though she was currently awaiting a hearing in British Columbia for similar non-disclosure.

The Hearing Committee noted that had the Licensee disclosed her past bankruptcies and disciplinary actions, it is most likely that it would not have had a bearing on her suitability to hold a licence. The Licensee's failure to make these disclosures on her application caused the Hearing Committee to wonder whether the Licensee was making non-disclosures solely for the purposes of her regulatory obligations, or to keep the information from any current or prospective employers.

The Hearing Committee concluded that the Licensee's conduct brought into question her ability to act in a trustworthy manner, in good faith and in accordance with the usual practice of the business of insurance. The Hearing Committee felt that her conduct, and her continued non-disclosures over the last four-and-a-half years, raised serious questions about her suitability to be an insurance agent.

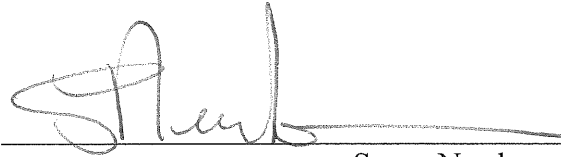
RECOMMENDATIONS OF THE HEARING COMMITTEE

In determining that the Licensee was not suitable to be an insurance agent, the Hearing Committee determined the following recommendations on penalty should be made to Council.

1. The Licensee's licence be terminated for one year, with the licence termination period commencing from October 24, 2014, when her licence was suspended by Council. In recommending a licence termination, the Committee concluded that the Licensee should be required to reapply to Council for an insurance agent licence (something that would not be required if the licence was only suspended).

2. The Licensee be fined \$5,000.00.
3. The Licensee be assessed the investigative costs totaling \$1,000.00.
4. The Licensee be assessed all or part of the hearing costs. This hearing came about solely due to the Licensee's failure to make proper disclosure on a repeated basis. The Hearing Committee determined the costs incurred in holding this hearing rested solely with the Licensee.

Dated in Vancouver, British Columbia, on the 27th day of January, 2015.

A handwritten signature in black ink, appearing to read 'S Newham', is written over a horizontal line.

Susan Newham, CAIB, CIP
Chair of Hearing Committee