

In the Matter of

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

and

The *INSURANCE COUNCIL OF BRITISH COLUMBIA*
("Council")

and

FAMILY INSURANCE SOLUTIONS INC.
(the "Agency")

ORDER

As Council made an intended decision on January 13, 2015, pursuant to sections 231, 236, and 241.1 of the Act; and

As Council, in accordance with section 237 of the Act, provided the Agency with written reasons and notice of the intended decision dated February 13, 2015; and

As the Agency 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. The Agency is fined \$5,000.00.
2. The Agency is assessed Council's investigative costs of \$1,950.00.
3. A condition is imposed on the Agency's general insurance licence that requires it to pay the above-ordered fine and investigative costs no later than **June 4, 2015**. If the Agency does not pay the ordered fine and investigative costs in full by this date, the Agency's general insurance licence is suspended as of **June 5, 2015**, without further action from Council and the Agency 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 **4th day of March, 2015**.



Ruth Hoyte
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

respecting

FAMILY INSURANCE SOLUTIONS INC.
(the “Agency”)

and

GRAHAM NELSON DOERR
(the “Nominee”)

INTRODUCTION

Pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council conducted an investigation to determine whether the Agency and the Nominee acted in compliance with the requirements of the Act.

As part of Council’s investigation, on December 15, 2014, a Review Committee (the “Committee”) met with the Agency and the Nominee to discuss allegations the Agency and the Nominee allowed Agency employees to engage in insurance activity on behalf of the Agency without being properly licensed.

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

The Committee’s report, along with the aforementioned investigation report, were reviewed by Council at its January 13, 2015 meeting, where it 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 Agency of the action it intends to take under sections 231, 236, and 241.1 of the Act before taking any such action. The Agency 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 Agency.

FACTS

The Agency has held a general insurance licence in British Columbia since July 1999. The Nominee was first licensed in British Columbia in November 1989, and became a Level 3 general insurance agent ("Level 3 agent") in October 1995. He has been employed with the Agency since 2001 and became its nominee in 2003.

On August 16, 2012, Council conducted an inspection of the Agency to look at how the Agency's claims department held itself out. The claims department was acting on behalf of an insurer (the "Insurer"), which was also the Agency's parent company.

As a result of Council's inspection, the Nominee received a letter dated January 21, 2013 recommending that the Agency review the activities of its unlicensed employees to determine whether they were engaging in insurance activities, and as a result, required to be licensed in accordance with the Act ("Council's Letter").

Around the time of Council's Letter, the Nominee reviewed the activities of the unlicensed staff, as well as the definition and duties of an insurance agent as set out in section 168 of the Act, and concluded that as staff were not speaking to policyholders about their insurance coverage, licences were not required. However, the Nominee noted that due to the nature of the staff's work, which included interaction with policyholders, the Agency would benefit by having more of its staff licensed.

A couple of months later, the Agency began a process to licence some of its employees. Between April 9, 2013 and March 4, 2014, Council received 15 applications – six were from employees in the finance department, and nine were from employees in the underwriting department. Throughout this period, the Agency continued to allow its unlicensed staff to engage in insurance activities, even while they were pursuing licence applications. The activities included assisting insurance agents at the point of sale, following up with renewals, speaking with policy holders regarding coverage in the context of discussing payment issues, and adjusting policy deductibles and premiums.

In March 2014, the Agency received a legal opinion from the Insurer stating it was unclear as to whether the unlicensed employees' duties and definitions required licensing. At this time, the Agency was still pursuing licence applications for its staff, but took steps at that time to ensure the remaining unlicensed staff did not engage in any insurance activities until licences were issued.

All employees engaged in insurance activities at the Agency are now licensed.

ANALYSIS

Council determined that the Agency allowed unlicensed employees to engage in insurance activities, contrary to the Act and Council Rules.

While Council accepts that the Agency had a differing view of the Act's definition of insurance agent and salesperson, it found that the Agency failed to take prudent steps to ensure it was acting in accordance with the Act. When its nominee recommended that more staff should be licensed, the Agency failed to act appropriately. Council found there was no evidence to suggest the Agency took any steps to ensure its staff understood (even to the level of its own interpretation of the legislation) what constituted licensed activity, so that they could govern their insurance activity accordingly.

When it eventually decided to start licensing its staff, the Agency took almost 16 months to do so. Throughout most of this period, it allowed its unlicensed staff to continue to engage in insurance activities, even while it pursued licence applications for the same staff.

It was not until March 2014, after further direction from Council to cease allowing unlicensed staff to engage in insurance activity, that the unlicensed activity appeared to stop.

Council noted that the Nominee brought Council's concerns to the Agency's senior management in 2013, but the Agency's senior management failed to act upon it. Council considered the challenges faced by a nominee who is not an officer or director of an agency, and considered to what extent a nominee should have to go, if an agency will not follow his/her direction as it applies to an agency's insurance activities. In this case, Council accepted that the Nominee took sufficient steps to fulfill his duties as nominee, recognizing that the Agency eventually licensed its staff. Consequently, it determined he should not be disciplined.

Council was concerned that the Agency, and more particularly its president, demonstrated complete disregard for Council's concerns, as well as the recommendation of the Nominee. Council noted that the Agency had been disciplined in 2010 after it was found that it had accessed the Insurance Corporation of British Columbia database to obtain insurance rating information. While not directly relevant to the issues in this matter, Council found that in that case the Agency deliberately initiated a plan that it knew or ought to have known would involve improper access to competitor information in order to meet the business objectives of the Agency. Council determined this matter also demonstrated the Agency choosing to act in a manner that it knew or ought to have known was contrary to the Act.

On both occasions, the Agency had the same president and directing mind of the Agency. By the time this matter came before Council, the president was no longer with the Agency. Had he still been president, Council would have considered whether such a person brought into question the suitability of the Agency to continue to be licensed.

Council considered the prior decision *N.G. Williams & Associates Ltd.*, in which an agency and its former nominee failed to ensure that agency staff were properly licensed while acting as insurance agents or salespersons at the agency. In that case, in addition to the agency holding a mistaken belief that it was compliant with licensing requirements for several years, agency staff were permitted to continue to conduct insurance activities for at least six months after learning they were not in compliance with the Act. Council determined that the former nominee was willfully blind to his responsibilities as the agency's nominee. Council fined the agency \$10,000.00, fined the former nominee \$5,000.00, and prohibited the former nominee from holding a Level 3 agent licence until he could satisfy Council that he was competent to hold such a licence.

Council determined that the Agency's conduct in this case was less egregious than in *N.G. Williams & Associates Ltd.* Also, it noted that there had been a change at the senior management level of the Agency. As a result, Council determined that a fine of \$5,000.00 against the Agency was appropriate.

INTENDED DECISION

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

1. Fine the Agency \$5,000.00.
2. Assess the Agency Council's investigative costs of \$1,950.00.

Intended Decision
Family Insurance Solutions Inc. and Graham Nelson Doerr
9141343-I1587 and 83202-I1587
February 13, 2015
Page 5 of 6

The Agency 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.

The Agency is advised that failure to pay the fine and investigative costs within the 90 days will result in the automatic suspension of its general insurance licence and the Agency will not be permitted to complete any annual filing until such time as the fine is paid in full.

The intended decision will take effect on **March 4, 2015**, subject to the Agency's right to request a hearing before Council pursuant to section 237 of the Act.

RIGHT TO A HEARING

If the Agency wishes to dispute Council's findings or its intended decision, the Agency 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 Agency must give notice to Council by delivering to its office written notice of this intention by **March 3, 2015**. 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 Agency does not request a hearing by **March 3, 2015**, the intended decision of Council will take effect.

Even if this decision is accepted by the Agency, 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 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

Intended Decision
Family Insurance Solutions Inc. and Graham Nelson Doerr
9141343-I1587 and 83202-I1587
February 13, 2015
Page 6 of 6

Dated in Vancouver, British Columbia, on the 13th day of February, 2015.

For the Insurance Council of British Columbia



Gerald D. Matier
Executive Director
604-695-2001
gmatier@insurancecouncilofbc.com

GM/bk