

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

and the
INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

and
VLADIMIR PROKOPCHIK
(the “Former Licensee”)

ORDER

As Council made an intended decision on May 14, 2019, pursuant to sections 231, 236, and 241.1 of the Act; and

As Council, in accordance with section 237 of the Act, provided the Former Licensee with written reasons and notice of the intended decision dated August 14, 2019; and

As the Former 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 that:

1. Council will not consider an application for any insurance licence from the Former Licensee for a period of three years from the date of this order; and
2. the Former Licensee is assessed Council’s investigative costs of \$812.50, due and payable within 90 days of the date of this order.

This order takes effect on the **4th day of September, 2019.**



Lesley Maddison
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA

(“Council”)

respecting

VLADIMIR PROKOPCHIK

(the “Former Licensee”)

Pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council conducted an investigation to determine whether the Former Licensee acted in compliance with the requirements of the Act, Council Rules, and Code of Conduct, and particularly to determine whether the Former Licensee acted contrary to his duties regarding funds received on behalf of an insurer, as set out in Council Rule 7(2), or to his duties of trustworthiness, good faith, and financial reliability, as set out in sections 3.2, 4.2, and 6.2 of the Code of Conduct.

As part of Council’s investigation, on February 12, 2019, a Review Committee (the “Committee”) met with the Former Licensee to discuss allegations that the Former Licensee had misappropriated insurance funds.

Prior to the Committee’s meeting with the Former Licensee, an investigation report was distributed to the Committee and the Former Licensee for review. A discussion of this report took place at the meeting and the Former Licensee was provided an opportunity to make further submissions. Having reviewed the investigation materials and after discussing this matter with the Former Licensee, the Committee prepared a report for Council.

The Committee’s report, along with the aforementioned investigation report, were reviewed by Council at its May 14, 2019 meeting, where it was 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 Former Licensee of the action it intends to take under sections 231, 236, and 241.1 of the Act before taking any such action. The Former 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 Former Licensee.

FACTS

The Former Licensee has been licensed with Council as a level 1 general insurance salesperson since December 2015. His licence with Council was terminated effective August 7, 2019 for not completing his annual filing. Between approximately March 2018 and May 2018, the Former Licensee misappropriated an estimated \$2,484 in funds relating to five insurance transactions for mutual customers of an agency the Former Licensee was authorized to represent at the time (the "Agency") and a motor vehicle dealership (the "Dealership") where the Former Licensee conducted automobile insurance business.

The Agency and the Dealership have an arrangement whereby applicable Dealership customer insurance transactions can be billed directly to the Dealership. For a direct-bill Dealership customer, the Agency would pay the automobile insurance policy ("Autoplan") premium and any other payments owing to the Insurance Corporation of British Columbia ("ICBC") immediately as part of its daily transactions, and then include the amount in the Dealership's monthly bill for reimbursement.

The Former Licensee used this arrangement between the Agency and the Dealership in order to keep customer payments that were intended for ICBC Autoplan. The Agency billed the Dealership for the five relevant Autoplan transactions processed by the Former Licensee, while the Former Licensee kept the cash intended to pay for the Autoplan premiums for himself.

The Dealership discovered the discrepancies between the Dealership's customer financing records and the Agency's billing. After inquiries were made by the Dealership's general manager on June 15, 2018, the Former Licensee admitted to not remitting the funds to the Agency and voluntarily repaid the missing funds to the Dealership. His authority to represent the Agency was terminated the same day.

According to the Former Licensee, three of the transactions involved the willing participation of two Dealership employees and the girlfriend of a third employee (collectively, the "Dealership Participants"). Each of the Dealership Participants had purchased or leased vehicles from the Dealership and used the Former Licensee to process their ICBC Autoplan and other ICBC payments. The Dealership Participants paid the Former Licensee a portion of the total amounts they owed to ICBC. The Former Licensee collectively received \$1,150 while the Dealership was charged the full \$2,084. The Dealership Participants made the following payments to the Former Licensee:

1. one owed \$964 for ICBC Autoplan premium, but only paid the Former Licensee \$600;
2. one owed a total of \$608, which included the premium for a new ICBC Autoplan policy, the cancelation fee for an old ICBC Autoplan premium, and unpaid tickets, but only paid the Former Licensee \$300; and
3. one owed \$512 for his ICBC Autoplan premium, but only paid the Former Licensee \$250.

Former Licensee's Submission to the Committee

The Former Licensee advised the Committee that the Dealership Participants had come up with the scheme and pressured him into it. He explained that, in order to carry out the plan, he processed the Dealership Participants' Autoplan transactions but only collected partial payment from them, essentially facilitating insurance discounts. The Former Licensee then kept the money intended for the Agency, which direct-billed the Dealership for the full amounts.

The Former Licensee further advised the Committee that the transactions were supposed to be short-term loans intended to temporarily assist the Dealership Participants. He claimed there was no benefit to him for facilitating the scheme. He stated he did not view the conduct as theft because the participants were to eventually give him the remaining funds so he could remit the full amount to the Agency as required. The Former Licensee advised the Committee he repeatedly reminded the participants to pay him their remaining amounts. However, according to the Former Licensee, they eventually proposed that he keep the money he already had and that they, in turn, would not give him any further funds. He also claimed he intended to advise the Agency about the situation, but the Dealership found out before he could.

In a written statement dated June 15, 2018, the Former Licensee stated that: *"As soon as the dealership noticed, my intentions were to instantly return the money to the dealership...I admit to keeping the funds hoping that they would go unnoticed."*

In regard to the remaining two Autoplan transactions where the Former Licensee did not remit the cash to the Agency, the Former Licensee was unable to recall the specific details, but stated that they were for customers who were unaware that the Former Licensee personally kept their payments. The two transactions are estimated to have involved a combined total of \$400 in misappropriated funds.

The Former Licensee expressed regret to the Committee, advising that he has learned from the experience and would like to continue to work in the insurance industry.

ANALYSIS

Council does not accept the Former Licensee's submission to the Committee that he intended to repay the misappropriated funds and advise the Agency of the situation. The Former Licensee admitted in the course of the investigation that he had been in a bad financial position during the period in which the misappropriations occurred and needed money to meet his obligations. In addition, the Former Licensee provided Council with a written statement in which he explained that he only intended to return the money after the misappropriations were noticed. As such, Council finds that, on a balance of probabilities, it is more likely that the Former Licensee had had no intention of remitting the funds to the Agency, and only did so after being confronted by the Dealership's general manager.

Council also considers the question as to whether it was the Former Licensee or the Dealership Participants who came up with the misappropriation scheme to be irrelevant. The Former Licensee was a willing participant in either scenario and ought to have known that his conduct was clearly wrong.

Of note, the Former Licensee was unable to offer Council an explanation in regard to the two transactions for customers who were unaware he had kept their payments.

Council finds the Former Licensee misappropriated funds for his own personal benefit and, in doing so, his conduct was a breach of Council Rule 7(2)(b) and (c), Rule 7(8), and sections 3.2, 4.2, and 6.2 of the Code of Conduct. Council considers the Former Licensee's conduct to have constituted a serious breach of the fundamental licensing requirements of trustworthiness and the intention to carry on the business of insurance in good faith.

In determining a disposition in this matter, four previous cases were taken into consideration by the Committee.

Kristy Lea Wagenaar (January 2010) concerned a level 1 general insurance salesperson who had misappropriated over \$28,000 from an agency, and who had intentionally manipulated the agency's receivables to conceal the theft. Council held that the licensee had failed to act in a trustworthy and financially reliable manner and in good faith. Council determined that the licensee should have her insurance licence suspended for a minimum of two years, and ordered that she pay Council's investigation costs.

Beata Stepniewski (October 2013) concerned a level 1 general insurance salesperson who had on several occasions accepted cash payments from clients but failed to remit funds to the agency. The licensee committed additional misconduct, including using the credit cards of

other agency clients to pay some of the premiums she did not remit, and processing several changes to a policy to either increase or decrease coverage and forging the client's signature to do so. Council held that the licensee had failed to act in a trustworthy and financially reliable manner and in good faith. She was prohibited from holding an insurance licence for a minimum period of two years and ordered to pay Council's investigation costs.

Sukhraj Singh Soos (May 2017) concerned a level 1 general insurance salesperson who had failed to remit Autoplan fees of over \$10,000 to ICBC. The licensee gave up his licence and repaid the fees when the failure to remit was discovered and was prohibited by ICBC from conducting Autoplan for a period of one year. Council took the ban into consideration, and decided that a fine and additional education requirements were appropriate. The licensee was ordered to pay a fine of \$2,500 and to complete a series of courses. Council further ordered that, in the event of the licensee became licensed again in the future, he would be required to be supervised for a year.

Sun Kyung Oh (August 2018) concerned a newly licensed level 1 general insurance salesperson who had misappropriated \$8,000 in premiums and \$500 in cash from an agency. On discovery, the licensee claimed that she needed the money for a relative's medical expenses and that she had always intended to repay, which she did in full. Council found that a lengthy disqualification period was appropriate in order to communicate to the industry and to the public that such misconduct would not be tolerated under any circumstances. Council cancelled the licensee's licence for three years and ordered her to pay Council's investigation costs.

In the present matter, Council found that a lengthy disqualification period was appropriate in order to communicate to the industry and to the public that such misconduct would not be tolerated under any circumstances.

INTENDED DECISION

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

1. Council will not consider an application for any insurance licence from the Former Licensee for a period of three years from the date of Council's order;
2. the Former Licensee is assessed Council's investigative costs of \$812.50, due and payable within 90 days of Council's order.

Intended Decision
Vladimir Prokopchik
LIC-203025C150387R1 / COM-2018-00196
August 14, 2019
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Subject to the Former Licensee's right to request a hearing before Council pursuant to section 237 of the Act, the intended decision will take effect after the expiry of the hearing period.

RIGHT TO A HEARING

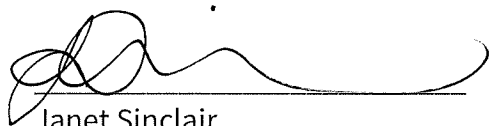
If the Former Licensee wishes to dispute Council's findings or its intended decision, the Former Licensee may have legal representation and present a case at a hearing before Council. Pursuant to section 237(3) of the Act, to require Council to hold a hearing, the Former Licensee must give notice to Council by delivering to its office written notice of this intention within fourteen (14) days of receiving this intended decision. 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 Former Licensee does not request a hearing within fourteen (14) days of receiving this intended decision, the intended decision of Council will take effect.

Even if this decision is accepted by the Former 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 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 **14th day of August, 2019.**

For the Insurance Council of British Columbia



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