

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

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

and
ERNIE NGUYEN
(the “Licensee”)

ORDER

As Council made an intended decision on October 16, 2018 pursuant to sections 231 and 236 of the Act; and

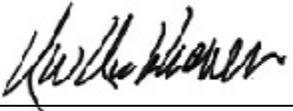
As Council, in accordance with section 237 of the Act, provided the Licensee with written reasons and notice of the intended decision dated January 14, 2019; and

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 and 236 of the Act, Council orders:

1. The Licensee’s general insurance licence is suspended for a period of five months commencing on February 6, 2019 and ending at midnight on July 5, 2019.

This order takes effect on the **6th day of February, 2019.**



Ken Kukkonen
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA (“Council”)

Respecting

ERNIE NGUYEN
(the “Licensee”)

INTRODUCTION

On April 11, 2017, pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council made an intended decision after an investigation into the Licensee’s conduct with respect to entering false information into the Insurance Corporation of British Columbia’s (“ICBC”) system for the purpose of overriding outstanding toll bridge debts (the “Intended Decision”).

The Intended Decision set out Council’s findings of fact with respect to the Licensee’s conduct and its intended penalty of a fine in the amount of \$5,000.00.

The Licensee accepted Council’s Intended Decision and did not request a hearing to contest either Council’s findings of fact or the \$5,000.00 penalty intended to be imposed by Council.

Council also issued intended decisions and intended penalties of \$5,000.00 with respect to six other licensees relating to overriding outstanding toll bridge debts. None of the six other licensees requested a hearing to contest either Council’s findings of fact or the penalty intended to be imposed by Council.

FICOM’S APPEAL

On August 11, 2017, the Financial Institutions Commission (“FICOM”) appealed the seven Council decisions to the Financial Services Tribunal (“FST”) pursuant to section 242(3) of the Act.

FICOM did not challenge Council’s findings of misconduct and the findings were not cross-appealed by any of the seven licensees. Rather, FICOM argued that the \$5,000.00 fines imposed by Council for each of the seven licensees were unreasonable in the circumstances.

On July 31, 2018, the FST allowed FICOM’s appeals of the seven intended decisions and set aside the \$5,000.00 fines for each of the licensees. At paragraph 123 of Decision No. 2017-FIA-002(a), 003(a), 004(a), 005(a), 009(a), 007(a), and 008(a) (the “FST Decision”), the presiding FST Chair concluded:

My core finding in this decision is that subject only to clear mitigating factors in a particular case, it is only licensing action in the form of a suspension, cancellation or conditions (in addition to whatever other remedial option the regulator may consider appropriate in a case) that can adequately protect the public, secure its confidence and express the denunciation that such conduct warrants. It is my further view that, subject only to mitigating factors, a suspension of six months and the requirement to take an ethics course acceptable to the Insurance Council represents the minimum or baseline reasonable penalty that the licensee's conduct must attract. Whether the ultimate penalty is higher or lower depends on a consideration of mitigating or aggravating factors in a given case.

At paragraph 125, the FST Chair issued these directions:

- (a) The Insurance Council is to issue a new intended decision limited to the issue of intended penalty in each of these cases in accordance with these reasons. To be clear, the new intended decisions may not alter the factual findings and characterizations of the conduct set out in each decision.
- (b) Each licensee will have up to 14 days to request a hearing on the issue of penalty only. If no hearing is requested, the Council's decision will be final, subject only to an appeal by FICOM. If a hearing is requested, the outcome will be subject to appeal in the usual fashion by the licensee or FICOM.
- (c) Any hearing requested by the licensee as described in paragraph (b) in the response to the new intended decision, is not to be an opportunity for the licensee or the Council to arrive at new or conflicting findings of fact regarding conduct, as those findings were not challenged before the Council or the Tribunal and are now final and binding.

[Emphasis in original]

MITIGATING OR AGGRAVATING FACTORS, IF ANY

On October 16, 2018, Council met to make a new intended decision in the Licensee's case in consideration of the FST's directions and any mitigating or aggravating factors. Pursuant to the FST, Council began with a baseline penalty of a suspension of six months and the requirement to take an ethics course. Council then considered whether there were any mitigating factors or aggravating factors specific to the Licensee that would justify a reduction or increase to the baseline.

Records show that the Licensee entered a total of 116 false receipt numbers in order to override toll bridge debts when he processed Autoplan transactions. The percentage this represents of his total Autoplan transactions is unknown.

With regard to mitigating factors, Council considered the following:

1. The Licensee was a Level 1 general insurance salesperson during the material 18-month period and therefore was at an entry-level licensing position at the time of his misconduct.
2. The Licensee admitted he entered false receipt numbers to override toll bridge debts.
3. ICBC suspended the Licensee from conducting Autoplan business for a period of 12 weeks as a result of Licensee's conduct. The Licensee also wrote a letter of apology to ICBC stating he failed to appreciate the severity of his actions at the time. The Licensee also subsequently completed the Ethics for Insurance Brokers online course.

With regard to aggravating factors, Council considered the following:

1. The Licensee has been licensed as a level 1 general insurance salesperson with Council since May 2004. Council held that the Licensee's lengthy time in the industry was an aggravating factor in his misconduct. By virtue of his experience, he should have known his conduct was wrong.
2. By entering false receipt numbers, the Licensee stood to benefit financially from related insurance transactions.

In consideration of the above, Council held that the baseline suspension is warranted. However, Council determined that the Licensee shall receive a one month reduction to the baseline in acknowledgement of the 12 weeks ICBC suspended him from conducting Autoplan business. Further, the Licensee completed an ethics course after his misconduct was investigated and so that component of the FST Decision has been satisfied.

NEW INTENDED DECISION ON PENALTY

Pursuant to sections 231 and 236 of the Act and in accordance with the directions and reasons set out in the FST Decision, Council made an intended decision to suspend the Licensee's general insurance licence for a period of five months commencing on the date Council's intended decision becomes final.

RIGHT TO A HEARING

If the Licensee wishes to dispute the new intended penalty in accordance with the directions set out in the FST Decision, the Licensee may have legal representation and may present a case relating to mitigating circumstances for Council's consideration. 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 within 14 days of receiving this decision. A hearing will then be scheduled for a date within a reasonable period of time from the receipt of

Intended Decision
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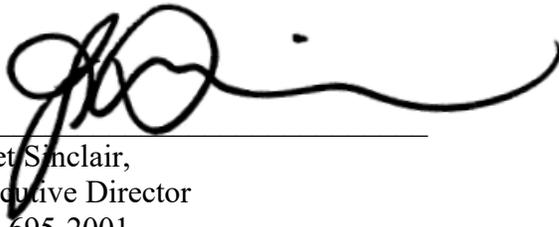
the notice. Please direct written notice to the attention of the Executive Director. If the Licensee does not request a hearing within 14 days, the new intended decision of Council will take effect.

Even if this new intended decision is accepted by the Licensee, pursuant to section 242(3) of the Act, FICOM still has a right to appeal this decision of Council to the FST. FICOM 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 January, 2019.

For the Insurance Council of British Columbia



Janet Sinclair,
Executive Director
604-695-2001
jsinclair@insurancecouncilofbc.com