

In the Matter of the

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

and the

INSURANCE COUNCIL OF BRITISH COLUMBIA
 (“Council”)

and

MARK DANIEL NORRIS
(the “Licensee”)

ORDER

As Council made an intended decision on December 18, 2018, 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 February 5, 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, 236, and 241.1 of the Act, Council orders that:

1. the Licensee’s general insurance licence is suspended for a period of one year, commencing on March 1, 2019 and ending at midnight on February 29, 2020;
2. commencing immediately after the completion of the above-ordered one year suspension, the Licensee’s level 2 general insurance agent licence is downgraded to a level 1 general insurance salesperson licence for a period of two years of active licensing;
3. the Licensee is assessed Council’s investigative costs of \$1,750, payable on or before February 29, 2020; and
4. a condition is imposed on the Licensee’s general insurance licence that failure to pay the investigative costs as stipulated will result in the automatic continuation of his

Order
Mark Daniel Norris
LIC-92551C120299R1 / COM-2017-00482
March 1, 2019
Page 2 of 2

licence suspension and the Licensee will not be permitted to complete his 2020 annual filing until the investigative costs are paid in full.

This order takes effect on the **1st day of March, 2019.**



Ken Kukkonen
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA

(“Council”)

respecting

MARK DANIEL NORRIS

(the “Licensee”)

Pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council conducted an investigation to determine whether the Licensee acted contrary to his duties to be trustworthy, act in good faith, be financially reliable, and act in the usual practice of dealing with insurers, as respectively set out by sections 3.2, 4.2, 6.2, and 8.2 of Council’s Code of Conduct, and Council Rule 7(8) which requires him to comply with Council’s Code of Conduct. Council also considered whether the Licensee breached Council Rule 7(2)(b) and (c) with regard to collecting or receiving funds on behalf of an insurer.

On October 15, 2018, as part of Council’s investigation, a Review Committee comprised of Council members met with the Licensee to discuss an allegation that he misappropriated funds from two agencies he was authorized to represent. A copy of an investigation report prepared by Council staff was forwarded to the Licensee in advance of the meeting. A discussion of the report took place at the meeting and the Licensee was provided an opportunity to make further submissions. Having reviewed the investigation materials and after discussing this matter with the Licensee, the Review Committee prepared a report for Council.

The Review Committee’s report, along with the aforementioned investigation report, were reviewed by Council at its December 18, 2018 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 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

The Licensee was first licenced with Council as a level 1 general insurance salesperson in 1991. He attained a level 2 general insurance agent licence in August 2000. He has been concurrently authorized to represent various insurance agencies in British Columbia over his lengthy career but only two are material to matters at issue in Council's investigation, as follows:

1. from September 1995 to August 2017, the Licensee represented "Agency 1"; and
2. from May 2017 to October 2017, the Licensee represented "Agency 2".

In the Spring of 2017, Agency 2 took over Agency 1. In October 2017, Agency 2 identified inconsistencies with the Licensee's accounts receivable. It appeared funds were owing in the amount of \$6,928 pertaining to seven insurance transactions that took place between July 14, 2016 to June 16, 2017. Agency 2 subsequently discovered the various clients had in fact paid their insurance premiums to the Licensee who then failed to remit the funds.

Upon questioning by Agency 2's branch manager (the "Manager"), the Licensee admitted to misappropriation of funds. The Licensee advised the Manager he had retained cash paid to him by some clients for their insurance premiums and, in the case of other clients, cashed cheques made payable to him and then kept the money for his personal use.

An arrangement was made with Agency 2 where the Licensee repaid almost all of the funds (but for \$365.29 which was waived) by using his earned commissions and accrued vacation pay. His authority to represent was then terminated. The Licensee subsequently found a position with a different agency.

During the October 15, 2018 meeting, the Licensee advised the Review Committee he is very sorry for his behavior. He advised that, but for this instance of misconduct, he has always acted with integrity and good faith in his career. He stated he takes great pride in his work and advised this was the first time in all his years in the industry he made a mistake. He advised it was a lack of judgment and an error on his part. He stated it would never happen again and he expressed a strong desire to continue with his insurance career.

When asked by the Review Committee specifically why he misappropriated the funds, the Licensee explained that he was under financial stress in 2017 and that, as a result, made a mistake. The Licensee advised that 2018 was also difficult due to personal issues which have further affected his financial situation.

LEGAL FRAMEWORK

Council Rule 7(2)(b) and (c) state:

7(2) *Where a licensee collects or receives funds on behalf of an insurer, the licensee must:*

...

(b) not use or apply the funds for purposes other than as described in the agreement with the insurer; and

(c) pay to the insurer all funds collected or received less any deductions authorized by the insurer, including commissions.

Council Rule 7(8) requires a licensee to comply with Council's Code of Conduct, as amended from time to time.

Section 3.2 of Council's Code of Conduct states:

You must be trustworthy, conducting all professional activities with integrity, reliability and honesty. The principle of trustworthiness extends beyond insurance business activities. Your conduct in other areas may reflect on your trustworthiness and call into question your suitability to hold an insurance licence.

Section 4.2 of the Code of Conduct states:

You must carry on the business of insurance in good faith. Good faith is honesty and decency of purpose and a sincere intention on your part to act in a manner which is consistent with your client's or principal's best interests, remaining faithful to your duties and obligations as an insurance licensee.

You also owe a duty of good faith to insurers, insureds, fellow licensees, regulatory bodies and the public.

Section 6.2 of the Code of Conduct states:

You must be financially reliable. This means you can be relied upon to properly safeguard and account for money and property entrusted to you and to promptly deliver them in accordance with the circumstances.

Section 8.2 of the Code of Conduct states:

You have a duty to insurers with whom you are transacting business to:

- *make reasonable inquiries into the risk;*
- *provide full and accurate information;*
- *promptly deliver all insurance documents and monies due;*
- *represent the insurer's products fairly and accurately;*
- *adhere to the authority granted by the insurer; and*
- *promptly report all potential claims.*

You must not defame or discredit insurers.

ANALYSIS

Council accepted the facts as set out in the investigation report and further accepted the Licensee's submission that he was under financial stress at the time of his misconduct and that he is extremely remorseful. Council also recognized and accepted that the Licensee has had difficulties due to personal issues. However, Council held that, as the Licensee has been in the insurance business for well over two decades, he knew or ought to have known his behavior was clearly wrong.

Council found that the Licensee misappropriated funds for his own personal benefit and that his collective behavior breached Council Rules 7(2)(b) and (c) and 7(8) and sections 3.2, 4.2, 6.2, and 8.2 of the Code of Conduct, as reproduced above. Further, Council held that the Licensee's conduct constituted a serious breach of the fundamental licensing requirements of trustworthiness and the intention to carry on the business of insurance in good faith. Council determined that a sanction is warranted.

Where Council concludes there has been a breach of conduct warranting a sanction, it must determine the appropriate penalty keeping in mind that the fundamental purpose of sanctioning misconduct is to ensure the public is protected from further acts of misconduct by a licensee and to deter and prevent other licensees from committing similar acts. Council is not bound by precedent to follow the outcomes from prior decisions, but similar conduct should result in similar outcomes within a reasonable range.

In this case, Council considered the following previous decisions in determining an appropriate sanction for the Licensee.

In a **January 2010** case, a level 1 general insurance salesperson misappropriated \$28,340 from an agency. Further, she intentionally manipulated the agency's receivables to conceal the theft. Council held that the licensee failed to act in a trustworthy and financially reliable manner and in good faith and found she was not suitable to hold an insurance licence for a minimum of two years from the date she completed certain restorative justice conditions. Council also ordered the licensee to pay investigation costs of \$706.25 within three months of Council's order.

In an **October 2013** case, a level 1 general insurance salesperson:

1. accepted approximately \$3,000 in cash from three clients but failed to remit the funds to the agency; then used other agency clients' credit cards to pay some of the premiums she did not remit;
2. collected \$460 cash from a client but failed to remit funds to the agency; the cash was subsequently discovered in her cabinet at the agency six weeks later;
3. collected \$1,149 in cash from a client but failed to remit the funds to the agency; then, unbeknownst to the client, arranged for monthly financing of a premium with payments being withdrawn from the licensee's personal bank account; and
4. collected cash from a client but arranged for monthly financing with the client's knowledge; then processed several changes to the policy to either increase or decrease coverage and forged the client's signature to do so.

Council held that the licensee 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 assessed investigation costs of \$2,312.50.

In a **May 2017** case, a level 1 general insurance salesperson failed to remit Autoplan fees of \$10,321 to the Insurance Corporation of British Columbia ("ICBC"). On discovery, the licensee gave up his licence and repaid the fees. ICBC prohibited him from conducting Autoplan for a period of one year. Council took the ban into consideration and decided that a fine and additional education were warranted. The licensee was ordered to pay a fine of \$2,500 and complete the Council Rules course, an errors and omissions course, and ICBC's Special Risk Own Damage Policy course. Further, Council ordered that, should the licensee be granted another licence by Council, a condition will be imposed that he be supervised for 12 months.

In an **August 2018** case, a newly licenced level 1 general insurance salesperson misappropriated \$8,000 in premiums and \$500 in cash from an agency. On discovery, she advised 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, despite her admission and repayment, a lengthy disqualification period was required to send a clear message to industry and reinforce to the public that Council will not tolerate this conduct under any circumstances. Council cancelled the licensee's licence for three years and ordered her to pay investigation costs of \$1,000.

In the present matter, Council noted that the Licensee has no previous record of misconduct with Council. It considered the particular facts, the Licensee's submissions, and the sanctions imposed in the above-noted similar cases and determined that the following penalty is warranted to reinforce to the Licensee, to industry and to the public that Council will not tolerate this conduct under any circumstances.

INTENDED DECISION

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

1. the Licensee's general insurance licence is suspended for a period of one year from the date of Council's order;
2. commencing immediately after the completion of the above-noted one year suspension, the Licensee's level 2 general insurance agent licence is downgraded to a level 1 general insurance salesperson licence for a period of two years of active licensure;
3. the Licensee is assessed Council's investigative costs of \$1,750, payable on or before the completion of the above-noted one year suspension; and
4. a condition is imposed on the Licensee's general insurance licence that failure to pay the investigative costs as stipulated will result in the automatic continuation of his licence suspension and the Licensee will not be permitted to complete his 2020 annual filing until the investigative costs are paid in full.

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

Intended Decision
Mark Daniel Norris
LIC-92551C120299R1 / COM-2017-00482
February 5, 2019
Page 7 of 7

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 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.

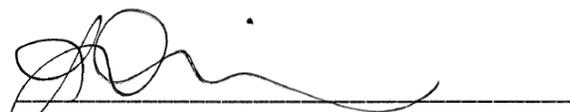
If the Licensee does not request a hearing within fourteen (14) days of receiving this intended decision, the intended decision of Council will take effect.

Even if this decision is accepted by the 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 5th day of February, 2019.

For the Insurance Council of British Columbia



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