

**In the Matter of**

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

**and**

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

**and**

**ROBERTA MERLIN MCINTOSH**  
**(the "Former Licensee")**

## **ORDER**

Pursuant to section 237 of the Act, Council convened a Hearing at the request of the Former Licensee to dispute an order, pursuant to section 238 of the Act dated June 6, 2012.

The subject of the Hearing was set out in a Notice of Hearing dated August 7, 2012.

A Hearing Committee heard the matter on September 5 and 6, 2012, and presented a Report of the Hearing Committee to Council at its November 13, 2012 meeting.

Council considered the Report of the Hearing Committee and confirmed its order under sections 231 and 238 of the Act, cancelling the Former Licensee's life and accident and sickness insurance licence for five years, effective June 6, 2012.

Council also made the following order pursuant to section 241.1 of the Act:

1. the Former Licensee is assessed Council's investigative costs of \$2,700.00; and
2. as a condition of this order, the Former Licensee is required to pay the above-ordered investigative costs no later than **February 21<sup>st</sup>, 2012**.

This order takes effect on the **21<sup>st</sup> day of November, 2012**.



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C. David Porter, LL.B., FCIP, CRM  
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***  
(S.B.C. 1996, c. 141)  
(the "Act")

**AND**

**ROBERTA MERLIN MCINTOSH**  
(the "Former Licensee")

**Date:** September 5 and 6, 2012  
9:30 a.m.

**Before:** David Porter Chair  
Darlene Barker Member  
Chamkaur Cheema Member

**Location:** Suite 1650, 855 West Georgia Street  
Vancouver, British Columbia

**Present:** David McKnight Counsel for Council  
Thea Hoogstraten Counsel for Council  
Roberta Merlin McIntosh Former Licensee  
J.J. McIntyre Counsel for the Former Licensee

**Background and Issues**

On June 6, 2012, Council made a decision with respect to the Former Licensee (previously known as Roberta Merlin Mayer) and ordered the cancellation of her life and accident and sickness insurance agent ("life agent") licence, pursuant to sections 231 and 238 of the Act. Council's findings included that the Former Licensee failed to act in a trustworthy and competent manner, in good faith, and in accordance with the usual practice of the business of insurance. These findings stemmed from allegations the Former Licensee:

- (i) for personal benefit, facilitated an exempt market security investment by three former clients, knowing that the investment was not in the clients' best interests;
- (ii) used her past relationships with the clients to influence them to proceed with the investment; and

- (iii) engaged in certain actions to influence the clients to proceed with the investment, including: misrepresenting the safety and liquidity of the investment; reimbursing costs incurred by the clients to access funds for the investment; consulting with two of the clients about leveraging to invest; and assisting the clients with financial calculations related to the investment.

The purpose of the hearing was to determine if the Former 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.

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

### **Evidence**

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

- Exhibit 1 Council's Book of Documents
- Exhibit 2 D. Forbes Investment Corp Balance Sheet, as of December 1, 2003
- Exhibit 3 File folder containing material relating to a client ("Client B")
- Exhibit 4 Marketing materials titled "Insight" issued by Dexior Financial Inc. ("Dexior")
- Exhibit 5 Email dated May 21, 2003 from the Former Licensee to a member of Dexior's management team
- Exhibit 6 Dexior invitation to attend a presentation on Vancouver Island
- Exhibit 7 Questionnaire titled "Bowen Island Project"
- Exhibit 8 List of timelines for investments by a client ("Client A")
- Exhibit 9 Appendix 6 – Risk Acknowledgement, signed by Client A

The Hearing Committee also considered written closing arguments from both Counsel for Council and Counsel for the Former Licensee.

## **The Dexior Investment**

Dexior, previously named D. Forbes Investment Corp., was a private equity investment company that raised capital from investors, invested the capital into a portfolio of other companies and development projects, and issued shares as an exempt market securities issuer.

### ***Client A***

Client A is a married couple who were in their eighties when they became involved in the Dexior investment.

Prior to becoming involved with Dexior, Client A had known the Former Licensee for more than 10 years, as she had provided them with investment and insurance services. At the time of their Dexior investment, Client A's net worth was approximately \$1 million.

Client A's first investment in Dexior occurred in 2003. Over the course of approximately two years, Client A invested approximately \$500,000.00 in Dexior. The Former Licensee understood Client A's investment objective was to generate income.

Client A was introduced to Dexior by the Former Licensee through an invitation to attend a seminar on Dexior, which had been sent to them by the Former Licensee. Client A was also taken by the Former Licensee to Bowen Island, British Columbia, to meet Dexior's Chief Executive Officer.

According to the Former Licensee, Client A (the husband) was a savvy investor who had owned businesses and had an extensive stock portfolio. The Former Licensee explained that although the husband's risk tolerance in the months prior to the first investment in Dexior was portrayed as "moderate" on a "Know Your Client" form, she felt he sufficiently understood the risks of Dexior and made his own decision to invest with the support of his wife.

Client A claimed to have relied on the Former Licensee to do what was best for them. Client A lost all of their principal investment in Dexior.

### ***Client B***

Client B is a widow who was in her early fifties at the time of her investment in Dexior. She had retired from her career as a window technician in Toronto. Her husband had passed away in 2001, leaving her with a \$150,000.00 life insurance policy death benefit and a government widow's pension.

Client B stated she had chosen the Former Licensee to be her financial advisor after interviewing three different candidates. Their relationship started in the fall of 2002. The Former Licensee, who subsequently prepared taxes for Client B, was familiar with Client B's financial situation and, in particular, that Client B's net worth was approximately \$350,000.00. The Former Licensee also understood Client B's Dexior investment objective was to generate an income.

Client B first learned of Dexior after receiving an invitation to attend a seminar on the investment, which had been sent by the Former Licensee. Client B advised she was encouraged to invest in Dexior by the Former Licensee, who portrayed Dexior as a safe and good investment. Client B said that she trusted the Former Licensee to act in her best interest.

Client B invested \$250,000.00 in Dexior and understood that she would receive \$750.00 per month in income from the investment. Client B said that she did not appreciate all of the risks that were involved with the investment, although she signed a subscription form which did indicate the associated risks. Client B did not portray herself as a sophisticated investor.

Client B received some dividends from her Dexior investment before it went bankrupt. She was also reimbursed fees by the Former Licensee, that were incurred when she redeemed mutual funds to fund her Dexior investment. Client B lost all of her principal investment when Dexior went bankrupt.

The Former Licensee had discussed leveraging with Client B as an option for making additional investments into Dexior. The Former Licensee even provided Client B with a contact at a bank who could help facilitate leveraging. Client B did not proceed with leveraging as she was not comfortable doing this.

### *Client C*

Client C is a widow and homemaker who was approximately 60 years old at the time she invested in Dexior. Her husband passed away in 1993, and left her with a \$500,000.00 life insurance policy death benefit, which she invested through a life insurance company.

Client C was referred to the Former Licensee by friends in 1996. At the time, Client C was looking for a financial advisor and her initial investment of the insurance policy death benefit was coming due. After engaging the Former Licensee as her financial advisor, Client C's death benefit investment was moved to a different investment with the Former Licensee becoming the advisor of record. Thereafter, Client C and the Former Licensee met on a regular basis and became friends.

Client C first learned of Dexior after receiving an invitation to attend a seminar on the investment, which had been sent by the Former Licensee. In total, Client C invested approximately \$450,000.00 in Dexior, some of which was enabled through taking out a loan against her home. The Former Licensee presented the leveraging concept to Client C, who also said that the Former Licensee characterized Dexior as a good investment. Client C trusted the Former Licensee to act in her best interest.

The Former Licensee was aware that Client C needed an income. The Former Licensee had prepared a financial summary for Client C, which illustrated that Client C would be unable to meet her day-to-day expenses without income from the Dexior investment.

Client C received some Dexior dividends; however, after Dexior's bankruptcy, she lost all of her principal investment in Dexior.

### **The Former Licensee**

The Former Licensee was first licensed as life agent in 1983. She was also registered to sell mutual funds at the time. Most of the training she received in the financial services industry was in-house through the insurance agency and mutual fund dealer she was licensed/registered to represent. The Former Licensee also completed five of the six courses offered by the Investment Funds Institute of Canada towards a financial planning designation. In February 2003, the Former Licensee ceased representing the insurance agency and mutual fund dealer, citing there were not enough product offerings for her clients. It was also her intention to return to school.

Upon her departure from the financial services industry, the Former Licensee had approximately 100 clients with a combined investment portfolio of \$19 million. It was her understanding she would continue to receive trailer commissions from this business; however, the commissions did not materialize to the extent she had expected. As such, the Former Licensee needed employment. A few months after leaving the financial services industry, she returned as an employee of Dexior.

The Former Licensee was initially paid \$10,000.00 per month by Dexior. This salary was similar to what she was earning prior to leaving the insurance agency and the mutual fund dealer. Her first job title at Dexior was Vice President of Vancouver Island, which was subsequently changed to Senior Private Client Manager. The Former Licensee advised that her role at Dexior included arranging seminars, booking catering, ordering supplies, accepting investment cheques, and completing investment subscription agreements. The Former Licensee was however aware that Dexior was interested in her potential client base and, when she was unable to attract a certain amount of capital, Dexior let her go.

The Former Licensee raised in excess of \$3 million for Dexior, approximately one third of which came from Clients A, B, and C. The Former Licensee acknowledged that she commenced all initial contact with these clients about the Dexior investment. She also acknowledged that she paid the fees incurred by clients when other investments were redeemed in order to fund investment in Dexior.

The Former Licensee trusted the Dexior management team and believed Dexior to be an investment that offered lower risk than the mutual fund investments that Clients A, B, and C were exposed to at the time. She learned about Dexior from in-house training provided by its management team.

The Former Licensee stated she was not part of Dexior's inner circle and was therefore not privy to how it used or distributed capital raised from investors. She was, however, aware of a number of business opportunities which Dexior was involved in, such as a catering company in Toronto, a night club in Vancouver, and a real estate project on Salt Spring Island.

Having acted as a regulated advisor for the three clients while working in the insurance and mutual fund industries, the Former Licensee was aware of their risk tolerances and objectives of generating income for their retirement living. The Former Licensee submits, however, she was not wearing her financial advisor hat when offering the Dexior investment. Rather, her role with Dexior was distinct and, in all cases, clients were advised of the risks associated with the Dexior investment and it was up to them to conduct their own due diligence on Dexior and determine the appropriateness of the investment in their circumstances. The Former Licensee repeatedly emphasized during her testimony that she did not advise clients to invest in Dexior, noting she was prohibited under securities law from doing so.

As part of her submission, the Former Licensee stated she did not intend to get involved in these types of investments again in the future. However, through cross-examination, she made it clear that she has already looked at offering other unregulated investment vehicles as well as charitable gift giving programs which have yet to be vetted by the Canada Revenue Agency.

### **Arguments of Counsel for the Former Licensee**

Counsel for the Former Licensee argued that this is not a case about the Former Licensee's insurance practice and generally her competence in the insurance business. It is about a securities investment that failed and went bankrupt, which the Former Licensee had introduced to former clients.

The Former Licensee was seduced by Dexior through job titles, glossy brochures and a seemingly professional staff of lawyers and accountants. Dexior saw the Former Licensee as someone with 20 years' experience in the financial services industry who had knowledge of potential investors.

The Former Licensee is someone who follows the instructions of her employers. This is what she did for Dexior in arranging seminars and following the letter of the law in attracting capital. She never made recommendations to invest in Dexior. The Former Licensee took potential investors to view projects so they could do their own due diligence, and she informed investors how they could invest by collapsing other investments.

The Former Licensee believed Dexior to be bona fide. She was naive and honestly believed at the time that it was less risky than equity mutual funds.

There is no dispute that the Dexior investment was an unwise decision for Clients B and C. As for Client A, representations presented at the hearing are unreliable as Client A did not testify.

Unfortunately, in this matter, the clients interpreted the Former Licensee's involvement and enthusiasm with Dexior as an investment recommendation.

### **Arguments of Counsel for Council**

Counsel for Council stated that a common theme emerged from the evidence of the clients. The Former Licensee had intimate knowledge of the finances of the three clients, as she had provided them with financial advice for years, and prepared their taxes prior to the Dexior investments. She was the trusted financial advisor for these clients.

The Former Licensee was aware that the clients were retired people with fixed incomes and, certainly in the case of Clients B and C, were largely relying on their husbands' life insurance policies as their primary source of income. All of the clients were also seeking proper investments to secure a fixed income.

While Dexior may have generated income for some of the clients for a short period of time, it ultimately failed to achieve the clients' needs. It was a high-risk and illiquid investment, which was inappropriate for these clients who needed secure capital and an income. It was unreasonable for an experienced life agent to recommend a risky product to clients who did not have a high risk tolerance. By doing so, she put the clients at serious financial risk, while achieving personal financial gain through her compensation at Dexior. Ultimately, the Former Licensee had an improper influence on these clients' investment choices by virtue of their pre-existing relationships.

In addition, the Former Licensee testified that she is still involved in offshore banking and tax shelters. As a result, she presents an ongoing risk to the public and this is a factor that should be taken into account.

### **Findings of the Hearing Committee**

The Hearing Committee found the facts in this matter to be clear-cut. There were three clients, all of whom were retired and desired a regular income for their retirement living. Two of the clients had limited resources, and little or no prospect of adding to their net worth. The married couple had a higher net worth than the other two clients; however, they were in their eighties thereby limiting the types of investments that were appropriate for them. In all cases, the Former Licensee had been the clients' financial representative prior to joining Dexior and had a good understanding of their net worth as well as their investment expertise, objectives, and risk tolerances.

It was also clear to the Hearing Committee that the Former Licensee took a very active role in contacting the clients about the Dexior investment, assisting them with options on generating money for the investment (i.e., leveraging), and paying related sales charges incurred when the clients cashed in existing investments to fund the Dexior investment.

The Former Licensee testified that while she had signed up the clients for the Dexior investment, she told them about the risks of the investment and it was their responsibility to conduct their own due diligence on the investment to determine if it was appropriate for them. She was also adamant she did not and could not advise on or recommend the investment to any person, as this was prohibited under securities law. It was also presented that the Former Licensee was duped into believing Dexior to be a legitimate investment, and it was the clients who determined whether Dexior made sense in their situation.

While it is possible the Former Licensee may have genuinely believed Dexior to be a viable investment and one that was worth offering to her former clients, the Hearing Committee concluded this was not a case involving clients who were the authors of their own misfortune. It determined the Former Licensee was well aware of the clients' financial circumstances and, with her industry experience and education, she knew or ought to have known that the level of risk posed by the Dexior investment was far too great for each client. Moreover, the Former Licensee had been trained to make financial recommendations to clients that are in their best interests. For her to disregard the clients' financial circumstances when facilitating the Dexior investments, which in essence she claimed to have done, was neither prudent nor appropriate. In the Hearing Committee's opinion, had she exercised due care when dealing with the clients, the Dexior transactions in question would not have occurred.

Making matters worse were steps the Former Licensee took when facilitating the Dexior investments. In particular, the Hearing Committee found that she discussed leveraging as an option to finance the investment; paid mutual fund redemption fees incurred by clients; and reviewed with two of the clients how the investment fit into their overall financial situation. The Former Licensee preyed upon the trust earned from her previous relationships with the clients and took certain steps to influence the clients to invest in Dexior, regardless of their circumstances. Clearly, the more capital she could attract, the better it would reflect on her with Dexior.

Based on the above, the Hearing Committee concluded that the Former Licensee's actions brought into question her competency, as well as her ability to act in good faith and in accordance with the usual practice of the business of insurance.

In considering the extent to which the matter reflected on her suitability to hold an insurance licence, the Hearing Committee noted varying versions of the Former Licensee's future intentions. In particular, at the beginning of her testimony, she stated that after leaving Dexior she did not want to get involved in this type of investment activity again. However, later in her testimony, the Former Licensee discussed the fact that she was looking at other exempt securities as well as a charitable tax scheme and other similar types of products. She even discussed being involved in offshore investments and offshore banking for clients. Such activities concerned the Hearing Committee, and it found the Former Licensee was prepared to say whatever she thought would be considered appropriate to be able to continue her financial career.

The Hearing Committee considered whether the Former Licensee was suitable to hold a licence subject to a restriction that she be prohibited from selling non-insurance financial products. However, the Hearing Committee felt that if Council had to take such a step, it was doing so for the wrong reason. The Hearing Committee did not believe the Former Licensee has a good grasp of the responsibilities of a person in the financial services industry and to grant her an insurance licence would give her the credibility that would allow her to solicit other non-insurance financial products in a manner that could lead to a repeat of what occurred in this matter.

### **Recommendations of the Hearing Committee**

The authority of Council in this matter is to confirm, revoke, or vary Council's order which cancelled the Former Licensee's licence for five years.

The Hearing Committee recommends that Council's order be confirmed. It also recommends that, as part of any review of a future application for a licence from the Former Licensee, she ought to be required to meet with a Review Committee of Council to assess her suitability.

In arriving at this recommendation, the Hearing Committee gave consideration to previous cases where licensees have jeopardized consumers when they knew or ought to have known better. In *A. Farey*, the licensee recommended that a retired client of modest resources and limited income redeem a portion of a variable annuity contract to invest in an unregulated, risky, and inappropriate investment for a short period of time. Council found the licensee acted irresponsibly because, had he done due diligence on the investment, it would have been obvious to him that the investment was not suitable for the client. This reflected on his competency, and his actions were also found to be somewhat self-serving since he stood to benefit financially from his actions. His licence was cancelled for two years, and he was fined \$10,000.00.

In *J. Milligen*, the licensee's licence was cancelled for five years after Council found that he was involved in what was obviously a financial scam which he promoted to clients; he preyed upon clients who trusted him, to their financial detriment and his personal benefit; he made misleading representations to clients; he continued his involvement in the scam despite being questioned by Council; and he lied to Council about his actions.

In *S. Matthews*, the licensee failed to act in the best interest of her clients and made unsuitable insurance recommendations when she had them invest in similar insurance policies, regardless of their individual needs and financial circumstances. She was found unsuitable to hold a licence for a minimum period of three years, fined \$10,000.00, and ordered to complete the courses in the Certified Financial Planner curriculum.

While the Hearing Committee found the Former Licensee's situation shared some similarities to each of these cases in that there was a lack of care exhibited by the licensees to the detriment of their clients, it determined that precluding the Former Licensee from licensing for a lengthy period was necessary given that she demonstrated a complete lack of regard for the clients causing significant harm. In addition, as mentioned above, allowing her to hold an insurance licence would give her the credibility to solicit other non-insurance financial products in a manner that could lead to a repeat of what occurred in this matter.

On the matter of costs, the Hearing Committee recommends that the Licensee pay Council's investigative costs; however, with respect to hearing costs, it did not feel that these should be assessed to the Former Licensee. The Hearing Committee reasoned that this hearing arose from the immediate cancellation of her licence. As a result, she essentially had no alternative but to appear before the Hearing Committee and, for this, she should not be additionally penalized.

Dated in Vancouver, British Columbia, on the 20<sup>th</sup> day of November, 2012.



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C. David Porter, LL.B., FCIP, CRM  
Chair of Hearing Committee