

In the Matter of

The *FINANCIAL INSTITUTIONS ACT*

(RS 1996, c.141)

(the "Act")

and

INSURANCE COUNCIL OF BRITISH COLUMBIA

("Council")

and

LAMBERT JOHN SCHMID

(the "Licensee")

ORDER

Pursuant to section 237 of the Act, Council convened a Hearing at the request of the Licensee to dispute an Intended Decision pursuant to sections 231, 236 and 241.1 of the Act dated October 25, 2012.

The subject of the Hearing was set out in a Notice of Hearing dated January 5, 2012.


Council heard the matter on January 17, 2012, prepared its Report and, pursuant to sections 231, 236 and 241.1 of the Act, orders:

1. a condition imposed on the Licensee's life and accident and sickness insurance licence that requires he successfully complete all of the courses in Advocis' Best Practices program, or a similar program approved by Council, no later than **March 5, 2013**. If the Licensee does not successfully complete the errors and omissions course by this date, the Licensee's life and accident and sickness insurance licence is suspended as of **March 6, 2013**, without further action from Council and the Licensee will not be permitted to complete any annual filing until such time as the ordered course is successfully completed;
2. the Licensee is fined \$2,000.00;
3. the Licensee is assessed investigative costs of \$850.00; and

Order
Lambert John Schmid
59952-1978
March 5, 2012
Page 2 of 2

4. a condition imposed on the Licensee's life and accident and sickness insurance licence that requires the Licensee to pay the above ordered fine and investigative costs no later than **June 5, 2012**. If the Licensee does not pay the ordered fine and investigative costs by this date, the Licensee's life and accident and sickness insurance licence is suspended as of **June 5, 2012**, without further action from Council and the Licensee 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 **5th day of March, 2012**.


Dan Swanlund, B.Comm, CFP
Chairperson, Insurance Council of British Columbia

INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

REPORT OF COUNCIL

IN THE MATTER OF THE *FINANCIAL INSTITUTIONS ACT*
(the “Act”)
(S.B.C. 1996, c. 141)

AND

LAMBERT JOHN SCHMID
(the “Licensee”)

Date: January 17, 2012
11:00 a.m.

Before: Insurance Council of British Columbia

Location: Suite 1650, 885 West Georgia Street
Vancouver, British Columbia

Present: Lambert John Schmid Licensee
Gerald Matier Executive Director
Rob Tanaka Manager, Investigations

Background and Issues

On October 25, 2011, Council issued an Intended Decision pursuant to sections 231, 236 and 241.1 of the Act, after determining the Licensee failed to act in a competent manner and in good faith. The Licensee subsequently requested a hearing pursuant to section 237 of the Act.

As set out in the Notice of Hearing dated January 5, 2012, the purpose of the Hearing was to determine based on the facts and findings contained in Council’s October 25, 2011 Intended Decision:

- a) whether disciplinary or other actions are warranted; and
- b) if disciplinary action is warranted, which of the following should be considered:
 - i. suspend the Licensee’s licence for a determinate period;
 - ii. cancel the Licensee’s licence;

- iii. fine the Licensee;
- iv. reprimand the Licensee;
- v. attach conditions to the Licensee's licence;
- vi. require the Licensee to cease any specified activity related to the conduct of insurance business or to carry out any specified activity related to the conduct of insurance business; and
- vii. require the Licensee to pay the costs of Council's investigation and of this Hearing.

The Hearing was held before Council and this represents its report and decision.

Evidence

The Licensee accepted the facts and findings contained in Council's October 25, 2011 Intended Decision, which was set out in an Agreed Statement of Facts and Findings (Exhibit 1).

Facts

1. The Licensee had been a licensed life and accident and sickness insurance agent for approximately 24 years at the time of this matter.
2. Prior to October 15, 2010, an insurer (the "Insurer") referred two clients to the Licensee. The Licensee understood the clients to be married and believed the clients were shopping around for insurance rates as they wanted to increase their existing coverage, which consisted of separate term 10 policies of \$150,000.00.
3. A meeting occurred on October 15, 2010, however, only the male client attended. At the meeting, the Licensee provided the male client with quotes for insurance based on what he believed this client could afford over a particular term. Beyond that, the Licensee did not conduct any needs analysis for the male client.
4. The male client decided to proceed with a life insurance application for a \$500,000.00 term 20 policy with the same insurer of his existing policy.

5. The Licensee had the male client complete portions of his application for insurance, including the identity of the beneficiary and the relationship between the two. The application reflected that the beneficiary was the female client, however, she was identified as a friend, with the word "spouse" crossed out.
6. The Licensee proceeded to complete an application for insurance for the female client in her absence, with the assistance of the male client.
7. While completing the female client's application, the male client made a telephone call and spoke in Vietnamese to a person. The Licensee assumed this was the female client because the female client's social insurance number and driver's licence number were obtained during the call and then recorded on the application for insurance.
8. The male client completed portions of the female client's application for insurance, including signing her name where required, and the Licensee signed as a witness to the female client's forged signature.
9. The Licensee then completed and signed the Agent's Section of the female client's application for insurance, confirming he and the female client had met personally and reviewed all the material information.
10. Even though he was present, assisted in the completion of, and signed both applications for insurance, the Licensee states he did not notice the two clients had different addresses or that they did not appear to be married according to the beneficiary designations. The clients were not married.
11. As the female client was replacing an existing policy, the Licensee completed a Basic Disclosure Statement ("BDS") as prescribed by regulation under the *Financial Institutions Act*. A BDS is intended to ensure a client understands the risks involved in replacing a life insurance policy prior to making a decision. The BDS was completed and signed by the Licensee in the female client's absence, with the male client signing the female client's name where required.
12. The applications for insurance, along with transactional documentation, were then remitted to the Insurer for underwriting without the Licensee ever meeting or communicating with the female client.

Findings

As set out in its October 25, 2011 Intended Decision and accepted by the Licensee, Council found the Licensee failed to demonstrate an adequate level of competence and had engaged in conduct that was contrary to the good faith requirement. In particular, while facilitating insurance transactions, the Licensee:

1. failed to conduct sufficient needs analysis;
2. allowed transactional documentation to be improperly executed;
3. proceeded with a transaction without a client's full awareness of its occurrence;
4. witnessed forged signatures; and
5. completed forms which misrepresented to an insurer that the female client was fully informed about the nature of her insurance transaction.

Council found the Licensee failed to complete the insurance transactions in a manner consistent with the knowledge and skill expected of someone with the Licensee's experience. In particular, prior to the meeting with the male client, the Licensee prepared a number of insurance quotes, however, once at the meeting, the Licensee failed to make adequate inquiries to determine why the male client was interested in increasing his coverage. Instead, he simply based his recommendations on what the male client could afford over a particular time. The Licensee's actions and his perspective demonstrated he did not appreciate the significant impact the initial application could have on the enforceability of a policy. This is reinforced by the fact the Licensee permitted the male client to complete portions of the female client's application without her being present at the meeting.

Council found the Licensee did not act with ill intent or for personal gain and was motivated by a genuinely held belief that the female client wanted the insurance which had been applied for by the male client. However, regardless of the Licensee's motivation, his improper execution of insurance documentation was inexcusable and directly contrary to the good faith requirement.

Determination of Penalty

In arguing penalty, the Licensee acknowledged his actions and assured Council this occurrence does not represent his usual practice and will not happen again. The Licensee explained he regularly attends meetings sponsored by his managing general agent and always exceeds his continuing education requirements.

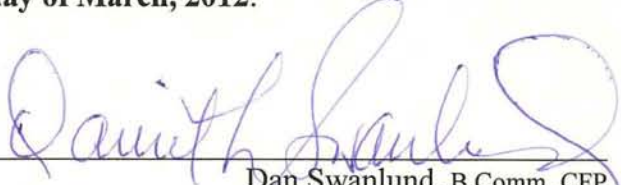
The Licensee identified the following Council decisions which he argued were similar to his case: *M. Pavicic*, *B. Novko*, *Z. Wang*, *Y. Lui*, and *M. Hunter*. In addition, staff identified two other decisions, *P. DeJong* and *C. Leung*, as relevant. The Licensee argued all these cases were similar to his infraction with particularly noted, *C. Leung*, which involves 25 separate cases of forgery for client convenience over seven years. Yet, in all these cases, the penalties had involved short licence suspensions and/or fines and investigation costs. Even though these cases represented similar or arguably worse conduct, none had resulted in mandatory supervision or retaking of the entry level education, which were proposed in Council's Intended Decision of October 25, 2011.

Council acknowledged the similarity to the above-mentioned cases and its findings with regard to the Licensee. Council determined its findings did not support placing the Licensee under direct supervision or requiring him to successfully complete the Life Licensing Qualification Program examination. While the Licensee's actions were inappropriate, subsequent reviews by an insurer and Council staff did not find any other occurrences.

Council accepted this represented a single occurrence and the penalty should reflect this. As a result, it concluded the Licensee should be fined \$2,000.00 and assessed Council's investigative costs of \$850.00.

Council found the Licensee's failure to conduct a proper needs analysis and failure to meet or talk to the female client before submitting an application reflected on his practice and determined additional education would be appropriate. Council concluded the Licensee would benefit from completing Advocis' Best Practices program or a similar program approved by Council within one year of the date of Council's Order.

Dated in Vancouver, British Columbia, on the 5th day of March, 2012.


Dan Swanlund, B.Comm, CFP
Chairperson, Insurance Council of British Columbia