

In the Matter of

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

and

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

and

TRINA ANN KNIGHT
(the "Former Licensee")

ORDER

As Council made an intended decision on October 19, 2010, pursuant to sections 231, 236 and 241.1 of the Act; and

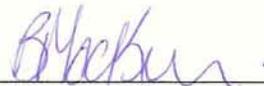
As Council, in accordance with section 237 of the Act, provided the Former Licensee with written reasons and notice of the intended decision dated November 24, 2010; and

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:

1. the Former Licensee is not eligible to hold an insurance licence for a minimum period of two years from the date she completes all of the conditions of the restorative justice agreement with her former employer;
2. the Former Licensee is assessed Council's investigative costs of \$637.50; and
3. as a condition of this Order, the Former Licensee is required to pay the investigative costs no later than **March 21, 2011**.

This Order takes effect on the **21st day of December, 2010**.



Barbara MacKinnon, CAIB
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

respecting

TRINA ANN KNIGHT
(the “Former Licensee”)

INTRODUCTION

Pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council conducted an investigation to determine whether there was compliance by the Former Licensee with the requirements of the Act.

In particular, the investigation related to allegations the Former Licensee misappropriated funds belonging to her employer at the material time, for her own personal benefit in the amount of \$17,712.84.

An investigation report was presented to Council at its October 19, 2010 meeting. At the conclusion of its meeting, Council determined the matter should be disposed of in the manner set out below.

INTENDED DECISION 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/or 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

Based on the information contained in the investigation report, Council made the following findings of fact:

1. The Former Licensee was first licensed with Council on September 14, 1995, as a Level 1 general insurance salesperson.

INTENDED DECISION

Trina Ann Knight

File Number: 116327-1614

November 24, 2010

Page 2 of 8

2. On February 25, 2009, the nominee of Envision Insurance Services Ltd. (the "Agency") advised Council that the Former Licensee's employment was terminated for cause and explained that the Former Licensee admitted to misappropriating funds from the Agency.
3. On February 26, 2009, the Former Licensee's general insurance agent licence with Council was terminated after she ceased to have authority to represent the Agency.
4. The matter was detected by the Agency as a result of a discrepancy between the amount in the Agency deposit register for insurance premiums paid and the value of in-house payment plans ("Smart Pay Plans") completed in a single day.
5. The Former Licensee was identified on the payment plans but not on the insurance plans.
6. On or around February 25, 2009, Agency staff questioned the Former Licensee about the discrepancy. The Former Licensee initially denied any involvement but subsequently admitted that she had misappropriated Agency funds.
7. On or around March 19, 2009, the Agency completed an internal audit and investigation into the matter and determined that the Former Licensee had misappropriated \$17,712.84.
8. The Agency discovered that starting in 2008, the Former Licensee:
 - a) took cash payments from clients and substituted the cash with cheques drawn on the Agency's account;
 - b) created Smart Pay Plans in her own name or the names of family members for fictitious transactions, to arrange for pre-authorized debits from the Former Licensee's personal bank account to repay the cash she had taken from clients; and
 - c) utilized various methods of payments from other clients to pay debits that remained outstanding.
9. The Agency chose to pursue a restorative justice initiative rather than proceeding with criminal charges. Thus, the Former Licensee agreed to bear responsibility for her misconduct by:
 - a) paying the Agency financial restitution for the full amount of \$17,712.84;

- b) providing an apology letter addressed to the staff at the Agency;
 - c) completing 80 hours of community service;
 - d) attending counselling sessions; and
 - e) closing all of her personal bank accounts with a credit union that is affiliated with the Agency by February 28, 2010.
10. A report has been filed with the Royal Canadian Mounted Police, in the event the Former Licensee does not comply with all of the foregoing conditions.
11. The Former Licensee has completed a) through d) of the foregoing conditions. The last condition, e), was extended because the Former Licensee has a line of credit with the credit union which must remain open until it has been paid.
12. The Former Licensee provided a written submission to Council acknowledging her responsibility for the misappropriated funds and expressing remorse for her actions.
13. The Former Licensee advised Council she did not intend to work in the insurance industry again and hopes that her former employers and co-workers are not detrimentally affected by Council's decision.

LEGISLATION

Rule 3 of the Council Rules Licence Applications

Applicants to Satisfy Council

- (2) If an applicant satisfies Council that the applicant:
- (a) has met all of the requirements set out in the Act and Council Rules;
 - (b) is trustworthy, competent and financially reliable;
 - (c) intends to publicly carry on business as an insurance agent, salesperson or adjuster in good faith and in accordance with the usual practice of the business of insurance;
 - (d) has not in any jurisdiction:
 - (i) been refused, or had suspended or cancelled, an insurance licence or registration;
 - (ii) been convicted of an offence; or
 - (iii) been refused or had suspended or cancelled a licence or registration in any other financial services sector or professional fieldfor a reason that reveals the applicant unfit to be an insurance agent, salesperson or adjuster;

and

- (e) does not hold other business interests or activities which would be in conflict to the duties and responsibilities of a licensee, or give rise to the reasonable possibility of undue influence.

then the Council may consent to issuing a licence.

Section 231 of the Act
Part 7 – Administration of the Regulation of Financial Institutions
Division 2 – Insurance Council of British Columbia

Council may suspend, cancel or restrict licences and impose fines

- (1) If, after due investigation, the council determines that the licensee or former licensee or any officer, director, employee, controlling shareholder, partner or nominee of the licensee or former licensee
 - (a) no longer meets a licensing requirement established by a rule made by the council or did not meet that requirement at the time the licence was issued, or at a later time,
 - (b) has breached or is in breach of a term, condition or restriction of the licence of the licensee,
 - (c) has made a material misstatement in the application for the licence of the licensee or in reply to an inquiry addressed under this Act to the licensee,
 - (d) has refused or neglected to make a prompt reply to an inquiry addressed to the licensee under this Act,
 - (e) has contravened section 79, 94 or 177, or
 - (e.1) has contravened a prescribed provision of the regulations,

then the council by order may do one or more of the following:

- (f) reprimand the licensee or former licensee;
 - (g) suspend or cancel the licence of the licensee;
 - (h) attach conditions to the licence of the licensee or amend any conditions attached to the licence;
 - (i) in appropriate circumstances, amend the licence of the licensee by deleting the name of a nominee;
 - (j) require the licensee or former 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;
 - (k) in respect of conduct described in paragraph (a), (b), (c), (d), (e), or (e.1), fine the licensee or former licensee an amount
 - (i) not more than \$20 000 in the case of a corporation, or
 - (ii) not more than \$10 000 in the case of an individual.
- (2) A person whose licence is suspended or cancelled under this section must surrender the licence to the council immediately.
 - (3) If the council makes an order under subsection (1)(g) to suspend or cancel the licence of an insurance agent, or insurance adjuster, then the licences of any insurance salesperson employed by the insurance agent, and of any employees of the insurance adjuster are suspended without the necessity of the council taking any action.
 - (3.1) On application of the person whose licence is suspended under subsection (1)(g), the council may reinstate the licence if the deficiency that resulted in the suspension is remedied.
 - (4) If an insurance agent's licence or an insurance adjuster's licence is reinstated, the licences of any insurance salespersons or employees of the insurance adjuster who
 - (a) were employed by that agent or adjuster at the time of the suspension, and
 - (b) remain employees of that agent or adjuster at the time of reinstatement,

are also reinstated without the necessity of the council taking any action.

Section 236 of the Act
Part 7 – Administration of the Regulation of Financial Institutions
Division 2 – Insurance Council of British Columbia

Power to impose conditions

- (1) The commission, superintendent or council, depending on which of them has the power to make the order, give the consent or issue the business authorization permit or licence may
 - (a) impose conditions that the person considers necessary or desirable in respect of
 - (i) an order referred to in section 235(1),
 - (ii) a consent referred to in section 235(2),
 - (iii) a business authorization,
 - (iv) a permit issued under section 187(1), or
 - (v) a licence issued under Division 2 of Part 6, and
 - (b) remove or vary the conditions by own motion or on the application of a person affected by the order or consent, or of the holder of the business authorization, permit or licence.
- (2) A condition imposed under subsection (1) is conclusively deemed to be part of the order, consent, business authorization, permit or licence in respect of which it is imposed, whether contained in or attached to it or contained in a separate document.
- (3) Except
 - (a) on the written application or with the written permission of the holder, or
 - (b) in the circumstances described in section 164, 231 or 249(1),a power of the commission, superintendent or council under this Act to impose or vary conditions in respect of
 - (c) a business authorization is exercisable only on or before its issue date, or
 - (d) a permit under section 187(1) or a licence under Division 2 of Part 6 is exercisable only on or before its issue datewith effect on and after that date.

Section 241.1 of the Act
Part 7 – Administration of the Regulation of Financial Institutions
Division 2 – Insurance Council of British Columbia

Assessment of Costs

- (1) If an order results from an investigation or hearing, the commission, the superintendent or the council may by order require the financial institution, licensee, former licensee or other person subject to the order to pay the costs, or part of the costs, or either or both of the following in accordance with the regulations:
 - (a) an investigation;
 - (b) a hearing.

INTENDED DECISION

Trina Ann Knight

File Number: 116327-I614

November 24, 2010

Page 6 of 8

- (2) Costs assessed under subsection (1)
 - (a) must no exceed the actual costs incurred by the commission, superintendent or council for the investigation and hearing, and
 - (b) may include the costs of remuneration for employees, officers or agents of the commission, superintendent or council who are engaged in the investigation or hearing.

- (3) If a person fails to pay costs as ordered by the date specified in the order or by the date specified in the order made on appeal, if any, whichever is later, the commission, superintendent or council, as the case may be, may file with the court a certified copy of the order assessing the costs and, on being filed, the order has the same force and effect and all proceedings may be taken on the order as if it were a judgment of the court.

ANALYSIS

Council found, based on the above mentioned facts, the Former Licensee no longer meets the requirements for licensing in that she failed to act in a trustworthy manner and had demonstrated by her actions that she does not intend to carry on the business of insurance in good faith, as required under Council Rules. In particular, Council concluded that the Former Licensee misappropriated Agency funds for her own personal benefit.

Trustworthiness is a fundamental element of each of the professional requirements defined in Council's Code of Conduct (the "Code"). Licensees must adhere to a strict standard of personal integrity, reliability and honesty. The Code also describes good faith as honesty and decency of purpose and a sincere intention to act in a manner which is consistent with a client's or principal's best interests, and remaining faithful to the duties and obligations of an insurance licensee. The Former Licensee did not meet either of these requirements in this matter.

In particular, the Former Licensee took cash payments from the Agency's clients and failed to deposit them as required. She also created fictitious transactions and misused Agency funds, as well as other methods of payments from clients, to conceal her illicit activities.

Council determined the Former Licensee's misappropriation of insurance monies received from the Agency's clients in the amount of \$17,712.84 was tantamount to an indictable offence, notwithstanding the Agency's election to pursue a restorative justice initiative. As a result, Council's policies relating to criminal convictions was deemed to be applicable to the present circumstances. On this basis, Council concluded that the Former Licensee was unsuitable to hold an insurance licence for a minimum period of two years commencing from the date she completes all of the conditions of her restorative justice agreement.

In determining an appropriate disposition in this matter, Council referred to its previous decision regarding Kristy Lea Wagenaar, who as a Level 1 general insurance salesperson, collected insurance premiums from clients in cash and substituted the payment with a cheque drawn on the agency's operating account; misappropriated cash payments made by clients and created a journal entry for the amount owing on another account; and issued and entered gift certificate credits to the amount owing to reduce the ongoing total. The total amount of funds misappropriated by Ms. Wagenaar was \$28,340.00 and she agreed to participate in a restorative justice initiative to avoid criminal charges, much like what occurred in the present case with the Former Licensee. Council found Ms. Wagenaar unsuitable to hold an insurance licence for a minimum period of two years commencing from the date she completed all of the conditions of the restorative justice agreement with the Agency.

INTENDED DECISION

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

1. the Former Licensee is not suitable to hold an insurance licence for a minimum period of two years from the date she completes all of the conditions of the restorative justice agreement with the Agency; and
2. the Former Licensee is assessed Council's investigative costs of \$637.50.

The Licensee is advised that should the intended decision become final, the above costs which form part of the order, will be due and payable within 90 days of the date of the order.

The intended decision will take effect on **December 21, 2010**, subject to the Former Licensee's right to request a hearing before Council pursuant to section 237 of the Act.

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 by **December 20, 2010**. 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 by **December 20, 2010**, the intended decision of Council will take effect.

INTENDED DECISION

Trina Ann Knight

File Number: 116327-1614

November 24, 2010

Page 8 of 8

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 www.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 **24th day of November, 2010.**

For the Insurance Council of British Columbia



Gerald D. Matier
Executive Director

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