

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

**and the**

**INSURANCE COUNCIL OF BRITISH COLUMBIA**  
(“Council”)

**and**

**REY ORLANDO SUA CARRENO**  
(the “Licensee”)

**ORDER**

As Council made an intended decision on December 18, 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 February 13, 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 that:

1. a condition is imposed on the Licensee’s life and accident and sickness insurance agent (“Life Agent”) licence requiring him to successfully complete through Advocis the Council Rules Course and Part I and II of Making Choices: Ethics and Professional Responsibility in Practice;
2. a condition is imposed on the Licensee’s Life Agent licence requiring him to be supervised for a period of two years of active licensing by a Life Agent supervisor as approved by Council;
3. the Licensee is fined \$1,000 for breaching Council Rule 7(3)(a)(iii) for failing to notify Council of his bankruptcy within five business days;
4. the Licensee is further fined \$1,000 for making a material misstatement on his re-application for a licence; and

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5. a condition is imposed on the Licensee's Life Agent licence that failure to complete the above-ordered courses and/or pay the above-ordered fines on or before **June 3, 2019** will result in the automatic suspension of his Life Agent licence and he will not be permitted to complete his 2020 annual filing until the courses are successfully completed and the fines are paid in full.

This order takes effect on the **5<sup>th</sup> day of March, 2019.**



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Ken Kukkonen  
Chairperson, Insurance Council of British Columbia

## **INTENDED DECISION**

**of the**

### **INSURANCE COUNCIL OF BRITISH COLUMBIA**

(“Council”)

**respecting**

### **REY ORLANDO SUA CARRENO**

(the “Licensee”)

Pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council conducted an investigation to determine whether the Licensee:

1. failed to notify Council of a 2015 personal bankruptcy declaration within five business days, as required by Council Rule 7(3)(a)(iii);
2. made a material misstatement to Council when he failed to disclose the 2015 bankruptcy on a 2018 licence re-application, contrary to section 231(1)(c) of the Act; and
3. failed to demonstrate financial reliability, as per section 6.2 of Council’s Code of Conduct.

On October 22, 2018, as part of Council’s investigation, a Review Committee comprised of Council members met with the Licensee to discuss the allegations. A copy of an investigation report prepared by Council staff was forwarded to the Licensee in advance. 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 and 236 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 facts of this matter are as follows.

On July 18, 2014, the Licensee was first licenced as a life and accident and sickness insurance agent (“Life Agent”) with Council.

On March 26, 2015, while still holding an active Life Agent licence, the Licensee declared personal bankruptcy. However, he did not report the declaration to Council, as per Council Rule 7(3)(a)(iii) which requires reporting within five business days.

In August 2017, the Licence’s Life Agent licence was terminated for non-filing.

In April 2018, the Licensee submitted a re-application to Council for a Life Agent licence. At no time during his communications with staff about the re-application did the Licensee advise he had declared personal bankruptcy in 2015. Further, on the re-application form itself, the Licensee answered “**no**” to question #8, as follows:

8. **BANKRUPTCY, JUDGMENTS, CRIMINAL OR CIVIL PROCEEDINGS**

...

- (b) *Have you personally, or has any business of which you are or were an officer, director, or partner, ever been subject to bankruptcy proceedings?*

...

The Licensee then signed the re-application form thereby affirming the following declaration:

10. **APPLICANT DECLARATION**

- *I declare the information contained in this application, including attachments, is true and complete;*
- *I understand the information which I have provided will be used to investigate my suitability for licensing, including criminal record checks;*
- *I also understand it is an offence under the Financial Institutions Act to make a material misstatement to the Insurance Council of British Columbia.*

On July 3, 2018, a Life Agent licence was issued by Council to the Licensee.

On July 27, 2018, the Licensee attended Council's office and advised staff that he had declared personal bankruptcy in 2015 but had neither notified Council at the time, nor disclosed it on the re-application form submitted to Council in April 2018.

On August 2, 2018, Council received written notification from the compliance officer (the "CO") of the Licensee's new managing general agent ("MGA") advising that they had learned the Licensee failed to report his bankruptcy to Council in 2015 and on his April 2018 re-application. The CO advised that the Licensee was instructed by the MGA to notify Council immediately. The MGA then halted the contracting process with the Licensee.

When asked by Council staff why he did not report his personal bankruptcy in 2015, the Licensee explained he misunderstood the requirement and thought he had to notify Council when he was discharged from bankruptcy, not when the declaration was first made. However, if that was in fact the Licensee's belief, he still did not notify Council of his bankruptcy when he was granted an absolute discharge on January 18, 2017 while he continued to hold an active licence with Council.

When asked by Council staff why he further failed to disclose his personal bankruptcy on his April 2018 re-application form, the Licensee explained that he thought the question pertained only to business and corporate bankruptcies. However, although the question does ask about business bankruptcies, it also clearly pertains to personal bankruptcies.

On October 22, 2018, during the Review Committee meeting, the Licensee advised the Committee that he was new to the insurance business in 2015 and confused about Council's rules. He advised that he believed he had 21 months to notify Council of his personal bankruptcy as that was how long it would take until an absolute discharge was granted. The Licensee further advised he believed he acted in good faith because he did not conduct insurance business while he was an undischarged bankrupt.

The Licensee further advised the Review Committee that he is an economist with a university degree in finance from his home country and a financial management diploma from the British Columbia Institute of Technology. He stated that, prior to attaining an insurance licence, he was employed as a staff accountant for a British Columbia company and later worked on a contract basis. The Licensee further advised that the tax liability referenced on his bankruptcy documents was from his employment as an accountant and not from his activities as a Life Agent.

## **LEGAL FRAMEWORK**

### **Council Rule 7(3)(a)(iii):**

7(3) A Licensee must notify Council within 5 business days:

(a) Where the licensee or any business the licensee owns or has participated in as a director, officer or partner:

...

(iii) declares bankruptcy;

...

### **Section 231(1)(c) of the Act**

231(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

...

(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,

...

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.

### **Section 6.2 of the Code of Conduct**

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.

## **ANALYSIS**

On the particular facts of this case, Council did not find the Licensee unsuitable to hold an insurance licence due to his personal bankruptcy. However, Council determined that by failing to notify Council of the bankruptcy in 2015 and also in 2018 on his re-application, the Licensee breached the notification requirement under Council Rule 7(3)(a)(iii) and made a material misstatement on his re-application contrary to section 231(1)(c) of the Act. Council concluded the Licensee ought to be penalized for these failures.

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.

### **Failure to Notify**

In a **March 2016** case, a licensee failed to notify Council of discipline by another regulator. Council fined the licensee \$1,000.

In a **February 2017** case, an agency failed to notify Council of discipline by another regulator. Council fined the agency \$1,000 and required the nominee to complete the Council Rules Course.

In a **June 2018** case, an agency twice failed to notify Council of discipline by other regulators. Council fined the agency \$2,000 and required the nominee to complete the Council Rules Course.

### **Material Misstatement**

In a **December 2004** case, a licensee failed to disclose a personal bankruptcy on her licence application. Council fined the licensee \$200 and assessed costs of \$125.

In an **April 2005** case, a former licensee failed to disclose previous business activities on his licence application because he had misappropriated funds from a former employer. Council fined the former licensee \$200 for making a material misstatement on his application.

In a **February 2015** case, a licensee failed to disclose on licence applications that she had been disciplined twice by another regulator. She also failed to disclose two personal bankruptcies that occurred prior to her applications. In October 2014, Council suspended the licensee under section 238 of the Act as the licensee's actions in the discipline matters were a furtherance of misrepresentation by the licensee and warranted interim action. In December 2014, Council terminated the licensee's licences for one year, fined her \$5,000, assessed investigative costs of \$1,000, and required her to pay Council's hearing costs.

In the present matter, Council considered the particular facts, the Licensee's submissions, and the sanctions imposed in the above-noted cases and determined that a monetary fine is appropriate for each breach and that the Licensee would benefit from additional education and supervision, particularly in light of his self-declared lack of insurance activity while an undischarged bankrupt. Council further held that the following penalty is warranted to reinforce to the Licensee, to industry and to the public that failures to report and material misstatements are serious matters deserving condemnation.

#### **INTENDED DECISION**

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

1. impose a condition on the Licensee's Life Agent licence requiring him to successfully complete the Council Rules Course and Part I and II of "Making Choices: Ethics and Professional Responsibility in Practice", a course offered through Advocis;
2. impose a condition on the Licensee's Life Agent licence requiring him to be supervised for a period of two years of active licensure by a Life Agent supervisor as approved by Council;
3. fine the Licensee \$1,000 for breaching Council Rule 7(3)(a)(iii), failure to notify Council of a bankruptcy within five business days;
4. fine the Licensee \$1,000 for making a material misstatement on his re-application for a licence; and
5. impose a condition on the Licensee's Life Agent licence that failure to complete the courses and/or pay the fines within 90 days of Council's order will result in the automatic suspension of the Licensee's Life Agent licence and he will not be permitted to complete his annual filing.



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## **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 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.

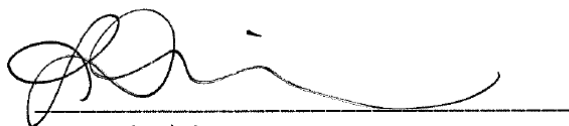
If the Licensee does not request a hearing within fourteen (14) days of receiving this intended decision, the intended decision of Council will take effect.

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](http://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](mailto:financialservicestribunal@gov.bc.ca)

Dated in Vancouver, British Columbia, on the 13<sup>th</sup> day of February, 2019.

For the Insurance Council of British Columbia



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