

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

and

The INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

and

JIMMY ALBERT SCANTLAND
(the "Licensee")

ORDER

As Council made an intended decision on September 11, 2012, 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 September 27, 2012; 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:

1. The Licensee is reprimanded.
2. A condition is imposed on the Licensee's life and accident and sickness insurance licence requiring that, until such time as the Licensee accumulates 24 additional months of active licensing, he be directly supervised by a qualified life and accident and sickness insurance agent who has a minimum of five years' active licensed experience within the last seven years.
3. The Licensee is fined \$10,000.00.
4. The Licensee is assessed Council's investigative costs of \$2,437.50.

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5. A condition is imposed on the Licensee's life and accident and sickness insurance licence requiring that he pay the above-ordered fine and investigative costs in full no later than **January 16, 2013**. If the Licensee does not pay the ordered fine and investigative costs in full by this date, the Licensee's life and accident and sickness insurance licence is suspended as of **January 17, 2013**, 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 **16th day of October, 2012**.



C. David Porter, LL.B., FCIP, CRM
Chairperson, Insurance Council of British Columbia

INTENDED DECISION
of the
INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)
respecting
JIMMY ALBERT SCANTLAND
(the “Licensee”)

INTRODUCTION

Pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council conducted an investigation to determine whether the Licensee acted in compliance with the requirements of the Act. The Licensee is a life and accident and sickness insurance agent and has been licensed with Council since 2000.

As part of Council’s investigation, on July 23, 2012, an Investigative Review Committee (the “Committee”) met with the Licensee and his legal counsel via telephone conference to discuss allegations that, for personal financial benefit and to the detriment of clients, the Licensee facilitated the transfer of clients’ investments from mutual fund holdings to variable annuity contracts contrary to his employer’s prescribed internal transfer procedures.

The Committee was comprised of one voting member and three non-voting members of Council. Prior to the Committee’s meeting with the Licensee, an investigation report was distributed to the Committee and the Licensee for review. The Licensee’s legal counsel provided written submissions dated July 19, 2012, in response to the investigation report.

A discussion of the investigation report and the submissions took place at the Committee meeting and the Licensee was provided an opportunity to clarify the information contained therein and make further submissions. Having reviewed the investigation materials and after discussing this matter with the Licensee and his legal counsel, the Committee made a recommendation to Council as to the manner in which this matter should be disposed.

A report setting out the Committee’s findings and recommended disposition, along with the aforementioned investigation report, was reviewed by Council at its September 11, 2012 meeting. Council also considered further written submissions provided by the Licensee’s legal counsel to Council. At the conclusion of its meeting, Council 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/or 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 is a life and accident and sickness insurance agent, authorized to represent a life insurance agency (the "Agency"). He has been licensed with Council since 2000.

In or around 2009 and 2010, processes existed whereby the Agency and an affiliated mutual fund dealer (the "Mutual Fund Dealer") allowed clients to redeem mutual fund holdings and transfer the proceeds into variable annuity contracts held through the Agency, without incurring any fees.

One process ("Process 1"), where investments could be transferred from mutual fund holdings to variable annuities, would trigger taxable capital gains arising from the redemption of the mutual funds and clients being exposed to a new deferred sales charge schedule upon issuance of the variable annuity contract. In this process, however, deferred sales charges incurred from the redemption of the mutual funds would be waived.

The other process ("Process 2"), where investments could be transferred from mutual fund holdings to guaranteed income fund variable annuities ("GIF contract"), would likewise trigger taxable capital gains from the redemption of the mutual funds. However, unlike Process 1, any deferred sales charge schedule that existed for the mutual fund holdings could be carried over to the GIF contract. In other words, clients would not incur any fees upon redemption of their mutual fund holdings.

In May 2010, two of the Licensee's clients lodged formal complaints against him respecting the handling of their investment savings. The complaints arose after the Licensee facilitated the redemption of their mutual fund holdings with the Mutual Fund Dealer and directed it to deposit the proceeds into the clients' bank accounts. The clients then wrote cheques to the Agency to purchase GIF contracts. As a result of not following either process, the client's incurred taxable capital gains, deferred sales charges from the redemption of the mutual funds, and were exposed to new deferred sales charge schedules with the implementation of the GIF contracts. It also gave the appearance that the Licensee was generating new business.

According to the Agency, the Licensee had been trained to process such transactions internally using Process 2 described above, which would not have been viewed as new business and would not have triggered agent commissions. By not following the Agency's directions, the Licensee was able to earn commissions; however, as a result of his actions, the clients faced "reset" deferred sales charge schedules on their investments.

According to the clients, the Licensee did not advise them that changing their investments from mutual funds to variable annuities would result in tax implications or that the changes meant re-establishing new deferred sales charge schedules. The clients also advised that the Licensee did not inform them that options were available to internally transfer their investments between the Mutual Fund Dealer and the Agency in a manner that could avoid deferred sales charges.

After reviewing these concerns, the Agency determined the Licensee failed to follow its prescribed process when moving the clients' mutual fund holdings to the GIF contracts. The Agency also determined that the Licensee could not adequately demonstrate that the clients had been aware of the tax implications that could arise from the redemption of their mutual funds. As a result, the Agency charged back the commissions earned by the Licensee in the transactions and compensated the clients.

The Mutual Fund Dealer and the Agency subsequently audited the Licensee's trade activities and determined there were additional instances where the Licensee did not follow prescribed internal processes when facilitating the transfer of clients' mutual fund holdings to variable annuities. This involved clients assigned to or inherited by the Licensee over the last five to six years.

In particular, the Agency concluded that on 33 occasions between 2009 and 2010, the Licensee moved client funds amounting to \$3.4 million using the approach he had taken with the two clients described above. This caused deferred sales charge schedules to be unnecessarily re-established on clients' investments and, in some cases, the unnecessary occurrence of mutual fund deferred sales charges totalling approximately \$30,107.00. The Licensee earned approximately \$142,497.00 in commissions from these transactions. Had he followed the internal processes described above, no commissions would have been paid to him. Since it was the Agency's position that the Licensee had attended product training sessions on the GIF contract that explicitly explained the internal transfer procedures, it charged back all commissions earned by the Licensee on the GIF contract transactions in question. The Agency also issued a cautionary letter to the Licensee with respect to the two client complaints, and placed him under close supervision.

The Licensee provided several explanations for his conduct. He advised he wanted to control the timing of the exchange from mutual funds to variable annuities so that the clients would be exposed to as little market risk as possible. The Licensee claimed to have consulted his Regional Director at the Agency many times regarding the process, and he received full support to carry out these transactions in the manner that he did; however, he was remiss in not obtaining the Regional Director's written approval.

The Licensee also advised that he found the process of exchanging investment contracts internally to be unpredictable and inefficient. He understood the internal transfer of funds was only available when a variable annuity investment similar to the mutual fund investment did not exist. The Licensee felt he was acting in good faith and had received the clients' consent to carry out the transactions in question.

ANALYSIS

Council found that this was not a case of a licensee helping clients avoid market risk in transferring their investments from one financial vehicle to another. It was also not a case that arose because of inefficiencies or the unpredictable nature of an internal process. Rather, it was about a licensee who inherited clients and wanted to find a way to generate income for himself without causing harm to clients.

Unfortunately, by circumventing a prescribed process instituted by his employer and which he had been trained on, the Licensee harmed clients by causing them to incur unnecessary fees. His actions also harmed his employer, as it paid commissions that were not legitimately earned, and the employer further had to compensate clients in the matter.

In support of its view that the Licensee knowingly circumvented a prescribed process, Council pointed to a transaction during the material time where the Licensee had facilitated a partial transfer of the clients' mutual fund holdings to the GIF contract using Process 2. To Council, this demonstrated that the Licensee knew of the internal process, which did not generate any commissions, and chose to ignore it.

Council also concluded that the Licensee acted contrary to the usual practice of the business of insurance by not adequately discussing with clients the tax implications arising from the transactions, or that deferred sales charges would result from what was in essence a restructuring of their financial assets. This conclusion was based on the fact that the Licensee's client records, which were inadequate, did not demonstrate otherwise.

In determining an appropriate disposition, Council considered that some of the commissions earned by the Licensee in the matter were charged back, and that he has been placed under close supervision by the Agency. It also considered the Licensee's comments that the events occurred over two years ago and he has since changed his practices. Council further considered the precedents of *S. Matthews*, *C. Leung*, *P. De Jong*, and *R. Jones*.

Council also reviewed the Licensee's additional submissions, which included his position that the \$10,000.00 fine recommended by the Committee was inappropriate in the circumstances. The Licensee reasoned that he has already paid a significant financial penalty through the chargeback of commissions and he also lost the privilege of attending a retreat hosted by the Agency which was worth more than \$10,000.00.

While Council acknowledged the Licensee has experienced some financial consequences already in the matter and it did not appear to be his intention to harm others, his conduct was nonetheless self-serving as he knowingly circumvented a prescribed process for his own financial benefit. To Council, this was clearly contrary to the good faith requirement in the Code of Conduct and deserving of a significant financial penalty to demonstrate that Council does not tolerate such self-serving behaviour, particularly at the expense of clients. Given issues of good faith, as well as concerns that arose with the inadequate level of disclosure to clients regarding capital gains taxes and deferred sales charges, Council further concluded the Licensee ought to be directly supervised for a period of time.

Council noted that, while it is fortunate the Agency reimbursed the clients who filed a complaint against the Licensee, this compensation does not mitigate the nature of the Licensee's conduct. Council also noted it is limited to imposing a maximum fine of \$10,000.00; however, it was of the position that this case warranted a much higher financial penalty.

INTENDED DECISION

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

1. Reprimand the Licensee;
2. Impose a condition on the Licensee's life and accident and sickness insurance licence requiring that he be directly supervised by a qualified life and accident and sickness insurance agent that has a minimum of five years' active licensed experience within the last seven years, until such time as he has accumulated 24 additional months of active licensing;
3. Fine the Licensee \$10,000.00; and
4. Assess the Licensee Council's investigative costs of \$2,437.50.

Intended Decision
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The Licensee is advised that should the intended decision become final, the fine and costs will be due and payable in full within 90 days of the date of the order.

The intended decision will take effect on **October 16, 2012**, subject to the Licensee's right to request a hearing before Council pursuant to section 237 of the Act.

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 by **October 15, 2012**. 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 by **October 15, 2012**, 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 www.fst.gov.bc.ca or contact them directly at:

Financial Services Tribunal
PO Box 9425 Stn Prov Govt
Victoria, British Columbia
V8W 9V1

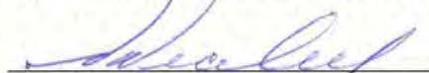
Reception: 250-387-3464

Fax: 250-356-9923

Email: FinancialServicesTribunal@gov.bc.ca

Dated in Vancouver, British Columbia, on the 27th day of September, 2012.

For the Insurance Council of British Columbia



Agnes Healey
Deputy Executive Director

AH/cc