

In the Matter of

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

and

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

and

DERRICK STEPHEN DAR
(the "Licensee")

ORDER

As Council made an intended decision on February 9, 2016, 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 March 11, 2016; 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:

1. The Licensee is reprimanded.
2. A condition is imposed on the Licensee's general insurance licence that requires him to successfully complete an errors and omissions insurance course, acceptable to Council, on or before **September 30, 2016**. If the Licensee does not successfully complete the errors and omissions course by this date, his general insurance licence is suspended as of **October 3, 2016**, without further action from Council and the Licensee will not be permitted to complete any annual filing until such time as the ordered errors and omissions insurance course is successfully completed.

This order takes effect on the **30th day of March, 2016**.



Brett Thibault
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

respecting

DERRICK STEPHEN DAR
(the “Licensee”)

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.

As part of Council’s investigation, on January 11, 2016, a Review Committee (the “Committee”) met with the Licensee and the nominee of the insurance agency where the concerns in this matter arose, to discuss allegations that the Licensee failed to place adequate insurance on a client’s rental dwelling.

The Committee was comprised of one voting member and two 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. A discussion of this 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 Committee prepared a report of its meeting for Council.

The Committee’s report, along with the aforementioned investigation report, were reviewed by Council at its February 9, 2016 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 Licensee is a Level 2 general insurance agent and joined Perpetual Insurance Services Ltd. (the "Agency") in this capacity in 1994. He has an authority to represent the Agency, as well as one other insurance agency.

In 2007, the Licensee was approached by a realtor to provide insurance coverage on a rental dwelling owned by the realtor's clients. The Licensee prepared a quote for the coverage based on information provided to him by the realtor and a previous real estate listing on the dwelling. A rental dwelling insurance policy was issued, effective the beginning of 2008, at the request of the realtor, who was the property manager for the dwelling. The Licensee submitted that the realtor was conscious of the cost of the coverage for his clients and the realtor did not want any extra coverage on the dwelling.

In 2012, after having facilitated the renewal of the coverage on the rental dwelling over multiple years with the same insurer, the Licensee moved the insurance coverage to a different insurer (the "Insurer"). Approximately four months later, a fire occurred at the rental dwelling. After a news report of the fire suggested ten people had been living at the dwelling, the Licensee asked the realtor to complete and sign a rental dwelling questionnaire. The realtor did this and declared that six people lived in the dwelling, some of whom were not related. The Licensee submitted he was not aware of these facts.

The Insurer voided the policy on the rental dwelling, on the basis that the risk was misrepresented as being occupied by a single-family. Just under one year later, a lawsuit was commenced against the Insurer, the Agency, and the Licensee by the dwelling's owners. The lawsuit was eventually settled out of court based on an agreement between the dwelling's owners and the Agency's errors and omissions ("E&O") insurance provider.

The Licensee stated that it is his normal practice to speak directly with a property's owner to ensure sufficient underwriting information about the property is obtained before facilitating insurance coverage. In this case, he dealt directly with the realtor since the realtor managed all aspects of the rental dwelling, including the insurance coverage.

The Licensee did not recall if he took any photographs of the rental dwelling at any time, and he was not able to produce any file notes summarizing what information he had gathered from the realtor.

The Licensee advised it was an oversight on his part not to have a rental dwelling questionnaire completed on the dwelling when he was first approached by the realtor, and when he moved coverage on the dwelling to the Insurer approximately four years later. The Licensee indicated that he may have cut some corners in placing coverage on the dwelling by not following Agency procedures, which included a requirement to have a rental dwelling questionnaire completed in these situations.

ANALYSIS

Council found that the Licensee's inability to produce file notes, his failure to complete a rental dwelling questionnaire as was required by the Agency, and his lack of meaningful follow-up on the risk over multiple years, demonstrated that he did not exercise an appropriate level of care and diligence when facilitating coverage on the rental dwelling.

Council accepted this situation was not necessarily indicative of how the Licensee normally handles personal lines insurance transactions. It also accepted that he placed too much emphasis on being able to offer affordable insurance coverage, rather than spending the time required to make sure there was an adequate assessment of the risk.

Council concluded that the Licensee's conduct in this instance was not in keeping with the usual practice of the business of insurance, particularly for someone who has been licensed with Council for more than 20 years.

As Council did not identify any aggravating factors in this matter, and noted the Licensee had been forthright throughout the investigative process, it determined that reprimanding the Licensee, and requiring that he complete education on E&O would be an appropriate outcome.

Council found the *D. Shindelka* case to be instructive in this regard as it involved a Level 3 general insurance agent who was reprimanded for acting contrary to the usual practice of the business of insurance by failing to properly document an insurance transaction with a client. In this matter, Council took into consideration that the licensee had a lengthy career as an insurance licensee without previous regulatory incident.

INTENDED DECISION

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

1. Reprimand the Licensee.
2. Impose a condition on the Licensee's general insurance licence that he must complete an E&O course, acceptable to Council.

The Licensee is advised that should the intended decision become final, the Licensee will be required to successfully complete the E&O course within six months of the date of the order. In addition, failure to successfully complete the E&O course within six months, will result in the automatic suspension of the Licensee's general insurance licence, and the Licensee will not be permitted to complete any annual filing until the E&O course is successfully completed as required.

Intended Decision
Derrick Stephen Dar
89981-11775
March 11, 2016
Page 4 of 4

The intended decision will take effect on **March 30, 2016**, 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 **March 29, 2016**. 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 **March 29, 2016**, the intended decision of Council will take effect.

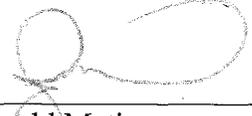
Even if this decision is accepted by the Licensee, pursuant to section 242(3) of the Act, the Financial Institutions Commission still has a right to appeal this decision of Council to the Financial Services Tribunal ("FST"). The Financial Institutions Commission has 30 days to file a Notice of Appeal, once Council's decision takes effect. For more information respecting appeals to the FST, please visit their website at fst.gov.bc.ca 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 **11th day of March, 2016**.

For the Insurance Council of British Columbia



Gerald Matier
Executive Director
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gmatier@insurancecouncilofbc.com

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