

In the Matter of

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

and

The INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

and

KARISHMA CHRISTINA JETHA BEHARRY
(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, dated December 22, 2014, pursuant to sections 231, 236, and 241.1 of the Act.

The subject of the hearing was set out in a Notice of Hearing dated February 22, 2016.

A Hearing Committee heard the matter on March 16, 2016, and presented a Report of the Hearing Committee to Council at its April 12, 2016 meeting.

Council considered the Report of the Hearing Committee and made the following order pursuant to sections 231, 236, and 241.1 of the Act:

1. The Licensee’s general insurance licence is suspended for a period of one year, commencing on **May 2, 2016** and ending on **May 1, 2017** at midnight.
2. A condition is imposed on the Licensee’s general insurance licence that she be subject to supervision for 24-months of active licensing after she has completed the licence suspension.
3. A condition is imposed on the Licensee’s general insurance licence that requires her to successfully complete the Insurance Corporation of British Columbia’s Autoplan Basics for Brokers course and an ethics course acceptable to Council (the “Courses”) prior to the completion of her suspension.

4. A condition is imposed on the Licensee's general insurance licence that if the Licensee does not successfully complete the Courses on or before **May 1, 2017**, the Licensee's general insurance licence will remain suspended and the Licensee will not be permitted to complete any subsequent annual filing until such time as the ordered Courses are successfully completed.
5. The Licensee is fined \$500.00.
6. The Licensee is assessed Council's investigative costs of \$831.25.
7. The Licensee is assessed Council's hearing costs of \$1,368.00.
8. A condition is imposed on the Licensee's general insurance licence that requires her to pay the above-ordered fine, investigative costs, and hearing costs no later than **July 18, 2016**. If the Licensee has not paid the ordered fine and investigative costs in full when the licence suspension is complete, the Licensee's general insurance licence will remain suspended and the Licensee will not be permitted to complete any subsequent annual filing until such time as the ordered fine and investigative costs are paid in full.

This order takes effect on the **18th day of April, 2016**.



Brett Thibault
Chairperson, Insurance Council of British Columbia

INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

REPORT OF THE HEARING COMMITTEE

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

AND

KARISHMA CHRISTINA JETHA BEHARRY
(the “Licensee”)

Date: March 10, 2016 and March 16, 2016
9:30 a.m.

Before: Vince Muto Chair
Linda Lee Member
Nanette Bennett Member

Location: Suite 300, 1040 West Georgia Street
Vancouver, British Columbia V6E 4H1

Present: David McKnight Counsel for Council
Karishma Christina Jetha Beharry Licensee

BACKGROUND AND ISSUES

As set out in the Notice of Hearing, the purpose of the Hearing was to determine whether the Licensee failed to act in a trustworthy manner and in good faith, in accordance with the usual practice of the business of insurance when she processed an Insurance Corporation of British Columbia (“ICBC”) insurance transaction for a friend in a manner that attempted to circumvent the friend’s debt to ICBC, and subsequently attempted to mislead Council about her actions in processing the friend’s ICBC transaction.

Council initially considered the allegations against the Licensee at its meeting on November 18, 2014, and provided the Licensee with written reasons for its intended decision on December 22, 2014.

In response to the intended decision, the Licensee requested a hearing, pursuant to section 237(3)(b) of the Act. The Hearing Committee has the authority to determine if the allegations against the Licensee bring into question her suitability to continue to hold a licence, or warranted disciplinary action.

The Hearing Committee was constituted pursuant to section 223 of the Act and this is a Report of the Hearing Committee, as required, pursuant to section 223(4) of the Act.

EXHIBITS

- Exhibit 1 Medical Note from the Licensee's Doctor
- Exhibit 2 Agreed Statement of Facts
- Exhibit 3 Council's Book of Documents
- Exhibit 4 Reference Letter from Joanne Goertz
- Exhibit 5 Reference Email from Paul Sangha

The hearing commenced on March 10, 2016, but due to illness, the Licensee requested an adjournment, which was granted by the Hearing Committee. The hearing was then rescheduled to resume on March 16, 2016.

EVIDENCE

By way of an Agreed Statement of Facts, the following information was submitted as evidence.

The Licensee originally obtained a Level 1 general insurance salesperson ("Salesperson") licence in October 2012, and currently holds an active Salesperson licence.

Between July 4, 2013 and October 4, 2013, the Licensee represented a general insurance agency (the "Agency").

On the morning of September 21, 2013, while the Licensee was working alone at the Agency, she processed two ICBC transactions for a friend (the "Friend"). These transactions involved a new plate transaction, effective September 21, 2013 to December 20, 2013, identifying the lessor as Honda Canada Financing, and the lessee as the Friend. The documentation relating to the insurance transaction indicates the premium was \$387.00 and was paid in cash.

The second transaction involved an ICBC debt and motor vehicle fine in the amount of \$1,239.98. A receipt was printed and appeared to be signed by the Licensee, indicating that the payment had been received. However, the method of payment was not noted on the supporting documentation.

After completing the transactions, the Licensee processed batches for the Agency on September 23, September 26, September 30, and October 2, 2013. The new plate transaction for the Friend was not included in any of these batches.

On October 2, 2013, ICBC notified the Agency of a discrepancy in the deposit summary, noting that the Agency's deposit was short by \$1,240.00, which was the approximate amount of the Friend's outstanding debt.

On October 5, 2013, the Agency performed an audit and found that the two ICBC transactions completed by the Licensee for the Friend had not been batched. As well, the premium and the debt funds appeared to be missing.

When contacted by the Agency about the discrepancies, the Licensee stated she would look for the money. The Licensee subsequently advised the Agency that she had located the money and would deposit it right away.

On October 10, 2013, the Agency sent a text to the Licensee insisting a certified cheque in the amount of \$1,626.98 be provided to the Agency by 5:00 p.m. that day, or the Agency would report the matter to the police and Council. A certified cheque in the amount of \$1,626.98 was received by the Agency that day and the plate transaction for the Friend was batched on October 11, 2013.

When questioned by Council, the Licensee stated that on the day of the ICBC transaction, the Friend gave her a cheque. However, the Friend later told her there would be no money in his account until the following Monday. The Licensee stated she was planning to complete the batching on Monday, so she put the cheque in her wallet and then forgot about it. The Licensee stated she did not remember the cheque until she was contacted by the Agency in October.

The Licensee acknowledged that at the time of the transaction, she was aware that the Friend had a debt, but claims that the debt screen did not appear when completing the new plate transaction. The Licensee stated that she called the ICBC broker inquiry unit to confirm the debt still existed and to seek direction on how to proceed.

A review of the ICBC database demonstrated the Licensee processed a new plate transaction and the debt payment for the Friend between 8:30 a.m. and 9:00 a.m. on September 21, 2013. The ICBC database indicated the Licensee made numerous attempts to process the transaction. In one attempt, she entered the Friend's name as the lessee and the screen came up showing the principal operator information. The debt screen also appeared, indicating the Friend was on a cash-only status. The Licensee did not enter anything on the debt screen.

In such transactions, a licensee must confirm the debt has been paid before a licensee is permitted to move forward and complete the ICBC transaction. This can be done by either calling ICBC to get an authorization number, or by indicating on the debt screen that the full amount of the debt has been collected, and that the client has paid by cash, or cash equivalent.

The Licensee aborted the transaction when the debt screen indicating the Friend was on a cash-only status came up. The ICBC database showed the Licensee commenced the transaction again, and this time entered that the full amount of the debt had been paid by cash, or cash equivalent.

As a result, the Licensee was not required to obtain authorization from ICBC before proceeding. The Licensee then proceeded to complete the Friend's new plate transaction, indicating that the premium was paid in cash.

The Licensee acknowledged that the Friend paid her by cheque, even though she knew the Friend was on a cash-only status.

The Licensee subsequently acknowledged that she lied to her manager when she was questioned about the transaction. The Licensee acknowledged that she was asked on more than one occasion about the transaction and the missing funds, and it was not until almost three weeks had passed, coupled with a threat of going to the police and Council, that the Licensee provided a certified cheque for the outstanding amount.

The Licensee stated that the certified cheque came from her account, and that the Friend reimbursed her for those funds the same day.

The Licensee acknowledged that, in her original submissions to Council, she made misstatements about what had transpired. The Licensee confirmed that she had made multiple misstatements to both her employer and Council.

FINDINGS OF THE HEARING COMMITTEE

The Hearing Committee found that the Licensee had, in 2013, set about to conduct an ICBC transaction contrary to ICBC procedures. The Hearing Committee found that the Licensee undertook to complete an ICBC transaction for the Friend, which she knew, or ought to have known, could not be completed unless the Friend paid with cash, or cash equivalent.

The Hearing Committee noted that the Licensee still contended that a cheque had been provided by the Friend, which she kept in her possession. The Licensee never produced the cheque, or evidence to support that the Friend had given her a cheque on September 21, 2013.

The Hearing Committee was at a loss to understand why the Licensee would not have attached the cheque to the documentation at the time of the transaction, and noted the Licensee never provided a satisfactory response as to why she did not do so.

The Hearing Committee found the Licensee's actions in completing the ICBC transaction for the Friend to be inappropriate and brought into question her competency.

Further, the Hearing Committee found the Licensee, after improperly completing the ICBC transaction, took steps to cover up the transaction by providing false and misleading information to her Agency. The Hearing Committee also noted that the Licensee continued to provide false or misleading information when originally questioned by Council.

The Hearing Committee noted that the Licensee did not dispute the statement of facts and evidence as presented by counsel during the hearing. However, the Hearing Committee found that the Licensee had been less than truthful, and it was not until the hearing that the Licensee acknowledged that most of her statements regarding the transaction were false.

Although the Hearing Committee was concerned by the transaction itself, it found the Licensee's attempt in covering up her actions, after processing the transaction, reflected more seriously on her suitability to be an insurance licensee.

In considering the Licensee's actions, the Hearing Committee noted that the Licensee was young and inexperienced at the time of the transaction, having been licensed for less than one year. However, the Licensee was provided numerous opportunities to come clean with regard to the transaction, but instead provided numerous false or misleading statements regarding her actions.

While the Hearing Committee might have considered the Licensee's youth and inexperience as a mitigating factor in regard to the actual transaction, it found that her failure to be honest and forthright once confronted with it made her youth and inexperience irrelevant in the situation.

The Hearing Committee concluded that the Licensee's actions, both at the time of the transaction and subsequently, brought into question her competency, her trustworthiness, and her ability to act in good faith, and in accordance with the usual practice of the business of insurance.

The Hearing Committee considered the reference letters provided by the Licensee, but found them to be weak in that they provided no reference to the issues before it and, as a consequence, were not given any weight.

The Licensee's attendance at the hearing was solely to argue the suspension, proposing that a six to eight-month suspension was appropriate. Based on past Council decisions, there was a wide range of suspension length precedents to consider. The Hearing Committee was of the view that a 12-month suspension was appropriate, based on the Licensee's actions.

PENALTY

The Hearing Committee recommends Council consider the following recommendations:

1. The Licensee be fined \$500.00 for the improper manner in which she completed the ICBC insurance transaction.
2. The Licensee receive a minimum 12-month licence suspension for her failure to be honest and forthright when confronted about the ICBC transaction.
3. The Licensee be subject to supervision for a minimum 24-month period after she has completed the licence suspension. In making this recommendation, the Hearing Committee acknowledges that, as a Salesperson, the Licensee would already be under supervision, but in case the Licensee obtains a Level 2 general insurance agent licence during that 24-month period, the requirement for supervision would remain in place.
4. The Licensee be required to complete an ethics course approved by Council.

5. The Licensee be required to complete the ICBC Autoplan Essentials course, or its equivalent, prior to the completion of her licence suspension.
6. The Licensee be assessed Council's investigation costs of \$831.25.

With regard to hearing costs, the Hearing Committee concluded the hearing costs should also be assessed against the Licensee. The Licensee brought very little to the hearing, other than proposing that her suspension be reduced from 12 months to eight months and finally acknowledging that she had not been truthful about her actions in processing the Friend's ICBC transaction. The Hearing Committee feels that the assessment of hearing costs against the Licensee would be appropriate in these circumstances.

Dated in Vancouver, British Columbia, on the 6th day of April, 2016.



Vince Muto, CIP
Chair of Hearing Committee