

In the Matter of

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

and

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

and

**COLLEEN THERESA BUSTILLO
(the "Licensee")**

ORDER

As Council made an intended decision on September 13, 2011, 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 October 25, 2011; 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. a condition imposed on the Licensee's general insurance licence that restricts her from upgrading her general insurance licence until such time as she has been actively licensed as a Level 1 general insurance salesperson for 12 continuous months;
2. a condition imposed on the Licensee's general insurance licence that, until such time as she has been actively licensed for 12 continuous months, she cannot represent more than one insurance agency and she must provide confirmation to Council that the agency's nominee has been made aware of this decision;
3. a condition imposed on the Licensee's general insurance licence that requires her to successfully complete an errors and omissions course approved by Council, within six months of the date of the order;
4. the Licensee is fined \$2,000.00;

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5. the Licensee is assessed Council's investigative costs of \$1,775.00; and
6. as a condition of this order, the Licensee is required to pay the above ordered fine and investigative costs no later than **February 22, 2012**. If the Licensee does not pay the ordered fine and investigative costs in full by this date, the Licensee's general insurance licence is suspended as of **February 23, 2012**, 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 **22nd day of November, 2011**.



Dan Swanlund, B.Comm, CFP
Chairperson, Insurance Council of British Columbia

INTENDED DECISION
of the
INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)
respecting
COLLEEN THERESA BUSTILLO
(the “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 Licensee with the requirements of the Act. In particular, it was alleged the Licensee had created a false insurance document purporting to confirm insurance coverage, when, in fact, coverage did not exist. Further, the Licensee appeared to have collected premium payments from clients without properly facilitating the placement of coverage.

As part of Council’s investigation, on August 15, 2011, an Investigative Review Committee (the “Committee”) met with the Licensee and her legal counsel to discuss the matter. The Committee was comprised of four Council members: one voting and two non-voting members of Council, all of whom have significant experience in the insurance business; and one non-voting member who is a layperson. Prior to the Committee’s meeting with the Licensee, an investigation report was distributed to the Committee, the Licensee, and her legal counsel, for review. A discussion of this report took place at the 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, 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 presented to Council at its September 13, 2011 meeting. At the conclusion of its meeting, Council determined that 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 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

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

Licensing History

1. the Licensee was first licensed as a Level 1 general insurance salesperson ("Salesperson") on June 13, 2004;
2. the Licensee is currently licensed as a Salesperson;
3. the Licensee has not been subject to any discipline by Council in the past;

Property Insurance Transaction

4. in September 2009, a mother and daughter (collectively known as the "Clients") attended an insurance agency (the "Agency") which the Licensee was authorized to represent, and met with the Licensee to obtain property insurance for a residential rental unit;
5. the Licensee completed an application on behalf of the Clients for a policy with a property insurance company ("Insurer A");
6. the Licensee calculated the premium for the policy based on Insurer A's rating book and collected a cheque from the Clients for the premium payment;
7. an underwriter for Insurer A reviewed the application and requested additional information from the Licensee;
8. during the same period of time, a lawyer retained by the Clients had his office contact the Licensee and request information about the policy; the lawyer's office also asked the Licensee to forward a copy of the policy, once received, to their office;
9. approximately two weeks after the Clients visited the Agency, an immediate relative of the Clients, the son/brother respectively ("Client X"), attended the office of the Agency and informed the Licensee that he co-owned the rental unit with the Clients and that the property already had insurance with Insurer A, which he had purchased through a different insurance agency;

10. the Licensee contacted Insurer A and requested that it return the application. She did not make any inquiries about the existing policy purchased by Client X;
11. the Licensee advised the Clients that she could not get insurance on their rental unit as it was already insured;
12. subsequently, in October 2009, the Licensee contacted the Clients to tell them that she would be refunding their premium. At this time, the Clients told the Licensee that the previous insurance policy obtained by Client X on the rental unit, had lapsed. The Licensee advised the Clients that she would re-submit the application to Insurer A;
13. on October 30, 2009, Insurer A received the application. A representative of Insurer A contacted the Licensee and requested further information about the rental unit, as well as a signature from the co-owner, Client X;
14. the Licensee did not obtain the signature of Client X or the additional information requested by Insurer A;
15. on December 1, 2009, Insurer A returned the application to the Licensee, and informed her that it would hold coverage on the rental unit for 15 days in order to enable the Licensee to place coverage elsewhere;
16. the Licensee submitted to Council staff that following her receipt of the above noted correspondence from Insurer A, she reused the application and made some changes to it, such as amending the coverage effective date; and she then submitted it to another insurer ("Insurer B") without obtaining a signature from either the Clients or Client X attesting to the changes;
17. Insurer B received the application on January 14, 2010;
18. in early January 2010, the lawyer for the Clients contacted the Licensee and requested an update on the status of the insurance policy. A fax dated January 14, 2010, confirmed that an insurance binder was sent from the Agency to the lawyer. The binder identified Insurer B as the insurer and indicated a policy period from January 14, 2010 to January 14, 2011;

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19. on January 16, 2010, the lawyer sent an email to fellow counsel in which he confirmed that he had spoken to the Licensee, and she had advised him that there was a policy in effect prior to December 30, 2009. The lawyer's email also advised that, according to the Licensee, the new policy with Insurer B went into effect on December 30, 2009, and that she had mistakenly noted the effective date for this policy as January 14, 2010;
20. the Agency cannot bind a policy for Insurer B that was lapsed, cancelled, or was not renewed by the Clients' former insurance carrier. A policy of this kind can only be bound if a broker contacts Insurer B to obtain its direct approval to bind coverage. In this case, the policy had been lapsed by Insurer A;
21. consequently, on January 22, 2010, Insurer B advised the Licensee that the policy was unbound as it was outside of her binding authority. Insurer B then requested additional information from the Licensee so that it could consider binding coverage. Insurer B expressly advised that it would not consider backdating the policy to December 30, 2009, and further stated that if the requested information was not received by February 3, 2010, it would return the unbound application to the Agency;
22. on February 9, 2010, Insurer B sent a memo to the Agency stating that it had not received the requested information. Accordingly, Insurer B returned the unbound application and advised there would be no coverage;
23. when the Licensee received the above cited memo from Insurer B, she panicked. She then created a false document which purported to confirm coverage for the rental unit with Insurer B; the Licensee photocopied another client's insurance policy document with Insurer B, typed out the particulars of the Clients and Client X, and printed the document; she then taped the printed information onto the photocopy of the other client's policy and made a photocopy;
24. in or around March 2010, the Licensee forwarded the falsified document to the Clients;
25. the Licensee did not do anything further on the file until August 2010. At this time, the Agency had a new nominee who began reviewing the Agency's files. The nominee noticed some discrepancies on this particular file and questioned the Licensee. The Licensee admitted to creating a false document;

26. the Agency's new nominee contacted the Clients and Client X to inform them of the situation. As per her note in the Agency's records:

"(Client X) returned (an Agency representative's) call and requested to talk to me. I called him and he was under the impression the policy had been placed I told him it hadn't as (Insurer B) returned the policy due to his signature not being on the application and they needed his DOB, occupation and insurance history. He is unwilling to sign as the family is in Litigation over the Estate. I explained that if he is unwilling to sign and is on title I can not place the risk. He said that was fine and I explained I will be sending out Registered letters to him, his Mother and the Executor. He gave me the executors address to send the letter to";

27. the Agency did not place coverage on the risk through another insurer. The Agency refunded the premium to the Clients;
28. following the discovery of the falsified document, the Agency reviewed additional files handled by the Licensee to ensure there were no further outstanding matters. In its review, the Agency discovered another instance where a client submitted a premium for a policy to the Licensee without receiving a policy in return. In this case, the Licensee again failed to follow-up on a request for additional underwriting information, resulting in a client being without required insurance coverage. The Agency has since refunded the premium to the affected client; and
29. the Licensee is a salaried employee of the Agency, except where she receives commissions on transactions completed for her own clients. In the transactions reviewed above, the Licensee would not have received any commissions.

LEGISLATION

Council Rule 7(8)
Licence Conditions

Applicable to All Classes of Licences

- (8) A licensee must comply with the Council's Code of Conduct, as amended from time to time.

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 date
- with 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.

- (2) Costs assessed under subsection (1)
 - (a) must not 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 the above mentioned facts constituted a breach of section 231(1)(b) of the Act in that the Licensee failed to act in a competent manner and in good faith. In particular, the Licensee failed to perform an adequate assessment of risk; she failed to follow up to obtain information necessary to place coverage properly; she issued evidence of coverage without authority; and she created a false document to cover for her mistakes with the intention of deceiving others into believing that a risk was insured when it was not.

The Licensee and her legal counsel submitted evidence in support of the Licensee's good character and otherwise sound judgement. In their submissions, the Licensee's creation of a false document represented a major aberration from her normal practice. The only explanation proffered for the deviation was that most of the Licensee's transactions go through without additional requests for information from the insurer. However, as a result of the unique circumstances and the number of intervening parties, the Licensee found herself overwhelmed and outside of her comfort zone. Nonetheless, she did not excuse her conduct, and appeared to be genuinely remorseful.

Council considered the foregoing but concluded that with the Licensee's experience in the industry, she was capable of distinguishing right from wrong in general and moreover, she was familiar with the particular requirements of Council's Code of Conduct. Yet, she chose to deliberately create a false document. In doing so, the Licensee acted without honesty and decency of purpose; the key indicators of good faith. With that said, Council considered the surrounding circumstances and the Licensee's submissions and ultimately did not view the Licensee as untrustworthy. This conclusion was based on Council's finding that the Licensee did not set out to cause harm to her clients or further her own interests. Rather, she reacted very poorly.

As for the concerns with her competency, Council felt that the Licensee ought to have demonstrated better application of her knowledge and skill throughout the transactions. In particular, the Licensee ought to have followed up with her clients to obtain more information, particularly when she was approached by Client X who claimed to be a co-owner of the rental unit. Instead, the Licensee did not question Client X and she accepted his word at face value. Further, she did not make any inquiries about the estate litigation or request documentation from Insurer A regarding the previous policy which Client X claimed to have secured for the rental unit.

As well, the application the Licensee submitted to Insurer B, which was originally prepared for Insurer A, did not include new signatures from the Clients, thereby misrepresenting to Insurer B that the Clients agreed with the amendments to the application. The Licensee then sent a policy binder to the Clients' lawyer without any authority from Insurer B and included an incorrect coverage date on the document. In Council's view, these actions were a reflection of the Licensee's somewhat superficial understanding of the insurance application process and gaps in her competence.

After reaching the above conclusions, Council turned its mind to the Agency's role and responsibility in this matter, and particularly the duty of a general insurance agency and its nominee to ensure there is adequate and direct supervision of their Salespersons. In this case, Council found the Licensee was handling transactions that initially did not seem to be beyond the scope of her abilities given her tenure as an insurance salesperson. When issues arose, however, she did not approach her supervisor for guidance, despite the fact that this was her normal practice. In fact, the Licensee acknowledged that she could have done so and adequate procedures were in place at the Agency, but she chose to try to handle the matter independently.

In view of this, as well as an absence of evidence showing that the Agency's procedures led to the Licensee's inappropriate conduct, Council determined that this was a case of a licensee who acted outside of the Agency's procedures despite being experienced enough to know that her actions were inappropriate. This led Council to conclude that the Licensee ought to bear responsibility for the breach of the Act, not the Agency.

Council noted that it viewed favourably on the Agency's immediate reaction of reporting the matter and its implementation of additional safeguards, such as greater supervision of the Licensee and improved checks and balances to prevent similar circumstances from recurring in the future.

In determining an appropriate disposition, Council reviewed similar cases in which licensees failed to advise clients of lapses or changes to coverage. In *John Ross Insurance Service Ltd.*, the agency failed to provide a homeowner's insurance policy or other evidence of coverage to a client for almost one year. The client was also not notified that, on renewal, one of her properties had been deleted from the policy, leaving it uninsured for approximately one year. The agency was found to have failed to act in a competent manner and in accordance with the usual practice of insurance. Council fined the agency \$2,000.00 and required it to pay the costs of the investigation.

Council also considered cases involving alteration of insurance documents. In *C. Leung* ("*Leung*"), the licensee altered or modified the signature page on an insurance application on numerous occasions. The licensee admitted that he did so purely for convenience and confirmed that in all instances the clients were aware of the questions on the application and had expressly agreed to procure the new policies in question. Council fined the licensee \$5,000.00 and required him to complete an errors and omissions course and pay the costs of Council's investigation. In *P.C. De Jong* ("*De Jong*"), the licensee altered a policy delivery receipt to conceal a material change in his client's health, thereby misrepresenting the risk to the insurer. The licensee found himself in a difficult situation and reacted poorly. Council deemed the conduct as contrary to good faith and the usual practice of insurance. The licensee was suspended for one month, required to complete an errors and omissions course, fined \$2,000.00, and ordered to pay the costs of the investigation. In both *Leung* and *De Jong*, Council determined that the licensees did not derive a personal or monetary benefit from their actions.

In the present case, Council determined the Licensee's breach of the good faith requirement through the creation of a false document warranted a specific punitive measure. Based on the foregoing and acknowledging the isolated nature of her indiscretion, Council concluded that a \$2,000.00 fine was appropriate.

To address the concerns about the Licensee's competence, Council felt that the Licensee ought to take an errors and omissions course. Further, Council reasoned that it would be consistent with the objective of protecting the public to restrict the Licensee from upgrading her licence until such time as she can demonstrate that the shortcomings with her competency have been addressed and that her falsification of an insurance document was in fact an aberration. Council felt that restricting her to a Salesperson's licence for 12 months would achieve this objective. Council also felt that her time spent rehabilitating would be best served by staying with the Agency which has implemented stricter supervision of the Licensee and other safeguards that should facilitate better monitoring of the Licensee's activities.

INTENDED DECISION

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

1. impose a condition on the Licensee's general insurance licence that restricts her from upgrading her general insurance licence until such time as she has been actively licensed as a Level 1 general insurance salesperson for 12 continuous months;
2. impose a condition on the Licensee's general insurance licence that, until such time as she has been actively licensed for 12 continuous months, she cannot represent more than one insurance agency and she must provide confirmation to Council that the agency's nominee has been made aware of this decision;
3. impose a condition on the Licensee's general insurance licence that requires her to successfully complete an errors and omissions course approved by Council, within six months of the date of the Order;
4. fine the Licensee \$2,000.00; and
5. assess the Licensee Council's investigative costs of \$1,775.00.

The Licensee is advised that should the intended decision become final, the costs and fine 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 **November 22, 2011**, 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 **November 21, 2011**. 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 **November 21, 2011**, the intended decision of Council will take effect.

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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 **25th day of October, 2011.**

For the Insurance Council of British Columbia



Gerald D. Matier
Executive Director

GM/cc