

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

and

The INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

and

RICHARD ALFRED FORD
(the “Licensee”)

ORDER

As Council made an intended decision on March 12, 2013, 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 March 25, 2013; and

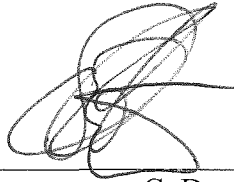
As the Licensee has not requested a hearing of Council’s intended decision within the time period provided by the Act;

Under authority of sections 231, 236, and 241.1 of the Act, Council orders:

1. A condition is imposed on the Licensee’s general insurance licence that he must only conduct general insurance business under the direct supervision of the nominee for any insurance agency he is authorized to represent, until such time as he has accumulated an additional 24 months of active licensing.
2. A condition is imposed on the Licensee’s general insurance licence that requires him to notify any insurance agency that he is or becomes authorized to represent of Council’s decision.
3. A condition is imposed on the Licensee’s general insurance licence that requires him to complete an errors and omissions course approved by Council within six months of the date of this order, or his general insurance licence will be suspended without further action from Council.

4. The Licensee is fined \$6,000.00.
5. The Licensee is assessed Council's investigative costs of \$1,762.50.
6. A condition is imposed on the Licensee's general insurance licence requiring that he pay the above-ordered fine and investigative costs no later than **July 15, 2013**. 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 **July 16, 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 is paid in full.

This order takes effect on the **13th day of April 2013**.



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

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

respecting

RICHARD ALFRED FORD
(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.

As part of Council’s investigation, on January 14, 2013, an Investigative Review Committee (the “Committee”) met with the Licensee via teleconference to discuss allegations that the Licensee failed to place insurance coverage and issued cover notes to three different clients, where no coverage was in place.

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. A discussion of the report took place at the meeting and the Licensee was provided an opportunity to clarify the report therein and make further submissions. Having reviewed the investigation materials, and after discussing the 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 and the aforementioned investigation report were reviewed by Council at its March 12, 2013 meeting. Council also considered further written submissions provided by, and on behalf of, the Licensee. At the conclusion of the 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 has been licensed for over 30 years. He obtained a Level 2 general insurance agent ("Level 2 agent") licence in 1985, and held a Level 3 general insurance agent ("Level 3 agent") licence for several periods between 1993 and 2007. The Licensee currently holds a Level 2 agent licence.

The Licensee failed to place insurance coverage for three different clients ("Client 1," "Client 2," and "Client 3") while working for his former employer (the "Agency") and, despite the fact that no coverage was in place, he created cover notes for these clients, which he subsequently forwarded to them.

Client 1

On June 20, 2012, the Agency received a call from a representative of Client 1, who stated Client 1 had not received its invoice and asked when it could expect to receive its insurance policy. The Agency reviewed the file and found that Client 1 had a policy through the Agency that expired on May 20, 2011.

The Agency determined that on April 11, 2011, Client 1's insurer sent an email to the Licensee to advise him Client 1 would not be able to renew its business insurance policy. The insurer was, however, willing to offer coverage to Client 1 under a different policy, although this policy would be required to be accepted by May 20, 2011, otherwise the existing policy would be deemed to have lapsed. On May 10, 2011 the Licensee sought and received a quote for Client 1 from another insurer, which expired on August 6, 2011. In June, 2011, the Licensee sought quotes from two other insurers. Ultimately, neither insurer was willing to provide a quote.

There were no further notes in the Agency's system or in Client 1's physical file until a cover note, signed by the Licensee and dated January 20, 2012, was issued with the policy period stated as January 3, 2012 to January 3, 2013. In late March 2012, the Licensee created a certificate of insurance, and sent it to Client 1. In reality, there was no coverage for Client 1 between May 20, 2011 and June 20, 2012.

Client 2

On April 27, 2012, the Agency discovered a signed application and a cover note with a policy number for Client 2 with an effective date of August 8, 2011. On October 14, 2011, Client 2 paid \$1,354.00 for the policy. On November 30, 2011, Client 2 emailed the Licensee requesting a cover note for the insurance. The Licensee forwarded a cover note to Client 2 dated November 30, 2011.

The Agency noticed there was neither an actual insurance policy sent to Client 2, nor an insurance policy processed by the Agency, and contacted the insurer to look into the matter. The insurer advised the Agency that it had no record of the policy number stated on the cover note, and it had never received an application from the Licensee with respect to Client 2.

Client 3

In July 2010, Client 3's secretary contacted the Licensee regarding obtaining insurance for a home that Client 3 planned to build. The Licensee established that the foundation for the home would be poured on April 28, 2011, and sent a questionnaire to Client 3.

In mid-April 2011, the Licensee spoke with an underwriter for an insurer and obtained an approximate premium to insure the home while under construction. Between June and October 2011, Client 3's secretary made several inquiries with the Licensee as to the status of the insurance coverage.

In December 2011, Client 3 requested written proof of coverage. On December 22, 2011, the Licensee created a cover note for Client 3, with a stated effective date of September 6, 2011. The insurance should have been bound effective April 28, 2011, which was the date that the foundation was poured. In fact, insurance was never bound with this insurer, or any of the Agency's other insurers.

ANALYSIS

The Licensee's position was that he did not knowingly leave his clients without insurance, and thought that coverage had been bound in all three cases. He acknowledged his mistakes, and expressed remorse for failing in his duties to his clients, the insurers, and his employer.

Council found there was not sufficient evidence to suggest the Licensee intentionally failed to place coverage, but determined that his failure to recognize that coverage was not placed in all circumstances was clearly negligent, and demonstrated a serious disregard for his clients' best interests. Council determined that given the Licensee's experience, he should have known it was entirely inappropriate to issue cover notes without any supporting documentation on file.

All three clients identified were placed at risk as they were each left without coverage for months. Given that the Licensee provided false insurance documents to clients in response to specific inquiries about their insurance status, Council determined that the Licensee's behaviour posed a risk to the public.

Council found that the Licensee's extensive experience was an aggravating factor and determined that the issuance of cover notes without having reviewed the clients' files to ensure coverage was in place was a serious breach of the requirements of competency and the usual practice of the business of insurance. Council also held that the Licensee's failure to document the clients' files fell outside the usual practice of the business of insurance.

Council determined that measures were necessary to address the Licensee's creation of false cover notes, his failure to place coverage for the clients, and his failure to keep adequate records. Council believed the Licensee would benefit from education in order to emphasize the importance of accurate recordkeeping and abeyance procedures. Council also believed a fine was required to address the failure to place coverage and issuance of false cover notes for each client. To address the risk to the public, and, in light of the Licensee's current employer's statement that it would support and supervise the Licensee closely, Council determined that a condition should be placed on the Licensee's licence that he be directly supervised by his employer's nominee for a period of two years.

In arriving at the above disposition, Council considered the precedents *K. Tam*, *C. Bustillo*, *P. De Jong*, and *John Ross Insurance Service Ltd.* In *K. Tam*, the licensee knowingly provided a client with a false cover note for an uninsured period, in order to assist the client with an accounting matter. The licensee was fined \$2,000.00, required to take an errors and omissions ("E&O") course, required to pay Council's investigative costs, and required to notify his employer of Council's decision.

In *C. Bustillo*, the licensee failed to place coverage, knowingly issued a false confirmation of coverage to a client's lawyer, and issued a false policy document to a client. The licensee was fined \$2,000.00, required to take an E&O course, and required to pay the costs of Council's investigation. The licensee was also restricted to holding a Level 1 general insurance salesperson licence for a period of 12 months of continuous licensing.

In *P. De Jong*, the licensee withheld significant health information about a client from an insurer, which he learned around the time of delivery of a life insurance policy to the client. The licensee did not set out to intentionally withhold the information from the insurer; however, he exercised poor judgment by taking certain steps that caused the information to be withheld from the insurer. Council suspended the licensee for one month, fined him \$2,000.00, required him to take an E&O course, and required him to pay the costs of Council's investigation.

In *John Ross Insurance Service Ltd.*, Council found the agency failed to act in a competent manner and in accordance with the usual practice of the business of insurance when it failed to provide evidence of coverage to a client for almost one year. The client was not notified that, on renewal, one of her properties had been deleted from the policy, leaving it uninsured for approximately one year. Council ordered a fine of \$2,000.00, and assessed the costs of Council's investigation against the agency.

Council acknowledged that, unlike *K. Tam* and *C. Bustillo*, it could not be established that the Licensee intentionally issued false cover notes, knowing that the coverage declared in the cover notes did not exist. However, Council determined that, as the Licensee took no steps to ensure that coverage was in place on three occasions and ought to have known this was improper, the Licensee should be fined \$2,000.00 per false cover note.

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 requires him to be under the direct supervision of his agency's nominee until such time as he has accumulated 24 months of active licensing.
2. Impose a condition on the Licensee's general insurance licence that requires him to successfully complete an E&O course approved by Council within six months of the date of Council's order.
3. Impose a condition on the Licensee's general insurance licence that requires him to notify any insurance agency that he is or becomes authorized to represent of Council's decision.
4. Fine the Licensee \$6,000.00.
5. Assess the Licensee Council's investigative costs of \$1,762.50.

The Licensee is advised that should the intended decision become final, the fine and costs which form part of the order will be due and payable within 90 days of the date of the order. In addition, failure to pay the fine and costs within 90 days of the date of the order or failure to complete the E&O course will result in the automatic suspension of the Licensee's licence until the conditions are met.

The intended decision will take effect on **April 13, 2013**, 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 **April 12, 2013**. 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 **April 12, 2013**, 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 **25th day of March, 2013**

For the Insurance Council of British Columbia



Gerald D. Matier
Executive Director

GM/cp