

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

and

The INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

and

GRANT SHELDON PERSALL
(the “Licensee”)

ORDER

As Council made an intended decision on April 15, 2014, 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 May 1, 2014; 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’s life and accident and sickness insurance licence is suspended for a period of two years.
2. A condition is imposed on the Licensee’s life and accident and sickness insurance licence that requires him to successfully complete the Life Licence Qualification Program (“LLQP”) before his licence suspension is lifted.
3. A condition is imposed on the Licensee’s life and accident and sickness insurance licence that requires him to be supervised by a qualified life and accident and sickness insurance agent until such time as he accumulates an additional two years of active licensing.

4. A condition is imposed on the Licensee's life and accident and sickness insurance licence that, following completion of the suspension imposed in number 1 above, the Licensee must successfully complete at least one course, per licence year, toward either a Chartered Life Underwriter designation or a Certified Financial Planner designation, until he has successfully completed all of the courses required to attain either designation.
5. A condition is imposed on the Licensee's life and accident and sickness insurance licence that if the Licensee does not meet the licence condition outlined in number 4 above, the Licensee's life and accident and sickness insurance is automatically suspended without further action from Council and the Licensee will not be permitted to complete any annual filing until such time as the required education has been successfully completed.
6. The Licensee is assessed Council's investigative costs of \$3,275.00.
7. A condition is imposed on the Licensee's life and accident and sickness insurance licence that requires him to pay the above-ordered investigative costs no later than **August 21, 2014**. If the Licensee does not pay the ordered investigative costs in full by this date, the Licensee's life and accident and sickness insurance licence is suspended as of **August 22, 2014**, without further action from Council and the Licensee will not be permitted to complete any annual filing until such time as the ordered investigative costs are paid in full.

The Licensee's suspension will begin on **June 4, 2014**, and end on **June 3, 2016** at midnight.

This order takes effect on the **21st day of May, 2014**.



Rita Ager, CFP, CLU, CHS, CPCA, FEA
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

respecting

GRANT SHELDON PERSALL
(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 February 17, 2014, a Review Committee (the “Committee”) met with the Licensee and his legal counsel, Martin Peters, to discuss allegations, that, contrary to Council Rule 7(8) and section 231(1)(b) of the Act, the Licensee distributed inaccurate and misleading marketing materials and promoted a strategy for a property tax deferral program by providing misleading information, withholding material information, forging client signatures, and employing unlicensed persons to solicit insurance.

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 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, were reviewed by Council at its April 15, 2014 meeting and 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 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

Licensing History

The Licensee has been licensed as a life agent since April 2011. Prior to being licensed as a life and accident and sickness insurance agent ("life agent"), the Licensee worked for a credit union as a financial services representative. In this position, he acquired a basic knowledge of banking, lending, and investing.

For his first 18 months as a life agent the Licensee placed business through CF Canada Financial Group Inc. ("CF Canada Financial"). In the fall of 2012, RBC Insurance ("RBC") discontinued CF Canada Financial's managing general agent ("MGA") contract. Due to this, CF Canada Financial and Customplan Financial Advisors Inc. ("Customplan") worked out an arrangement where Customplan was willing to become the MGA for approximately 110 CF Canada Financial brokers who wanted to continue to place business through RBC, provided that these brokers completed required applications and contracting with Customplan.

This transition took place around October 2012. The Licensee never completed contracting with Customplan and never wrote any new business through Customplan. In November or December 2012, Daystar Financial Group Inc. ("Daystar") became the Licensee's new MGA.

The Investment Strategy

The Licensee promoted a strategy in which his clients would apply for a property tax deferral program offered through the Government of British Columbia. A leveraged loan would be applied for through B2B Bank ("B2B") and the funds from these loans would be used to purchase RBC segregated funds.

The Licensee's objective was for the property taxes to be deferred for three to five years and the payments that would otherwise be spent paying property taxes would be utilized to repay the leveraged loans. The goal was for the segregated funds to grow in value until the funds were withdrawn and that the profits from the sale of the segregated funds would then pay for the deferred property taxes (the "Strategy"). The Licensee claimed that he did not invent the Strategy but originally heard about it from other persons in the insurance industry.

According to the Government of British Columbia's website, the property tax deferral is a low-interest loan program that is available to qualified homeowners in British Columbia. There are two property-tax deferral programs available. Each program requires, among other things, a successful applicant to have a minimum percentage of equity in their home. The interest rate is either the prime rate of interest minus 2%, or the prime rate of interest, depending on the program.

In order to apply for either of the property tax deferral programs an applicant must wait until they receive their annual property tax notice, after which an applicant may complete an application.

If an application is approved, it becomes a signed agreement and is registered as a restrictive lien in a land title registry.

Marketing the Strategy

The Licensee promoted the Strategy from the fall of 2012 to February 2013. He created brochures, which he distributed to potential clients. One brochure included the Government of British Columbia logo with the slogan "*The Best Place on Earth*" on it. The logos of RBC and B2B were also included in this brochure. The brochure stated, "*In partnership with the Royal Bank of Canada Insurance & the Ministry of Finance in BC, Customplan has put together a program to save clients up to 47% on their annual property tax bill.*"

The Licensee used the logos of RBC, B2B, the Government of British Columbia, and the name of Customplan, without any authorization, in an effort to promote the Strategy. The Licensee claimed that he used the Government of British Columbia logo on his marketing material because the property tax deferral was issued through the provincial government. He used the RBC logo to illustrate that investments would be placed with RBC. The Licensee claimed that he took the logos off his marketing material as soon as he was made aware that he was not authorized to use the logos.

The brochure included an example chart showing how potential clients may save money utilizing the Strategy. It shows current property tax, program payments, and savings over a five-year period. The Licensee advised that he was the one who developed the numbers on this example chart. He stated that he obtained the numbers by looking at historical returns on an average segregated fund which could be leveraged over a period of five years. The Licensee acknowledged that this material gave examples of savings based on hypothetical figures and that the savings figures were not guaranteed.

The Licensee also used the designation "MBA" and "Property Tax & Investment Specialist" on his business cards. The Licensee advised that he does not have an undergraduate degree, that he took his "MBA" program online in a two-month course that also relied upon his work experience. His "MBA" designation is not recognized in Canada as a Master's degree in Business Administration. Regarding his use of the title "Property Tax & Investment Specialist," the Licensee explained that this was not a title to describe his expertise, but instead was used to describe his role in the Strategy.

Another brochure utilized the name of the Licensee's company, "Aquila Star Financial." The Licensee stated that he and his accountant incorporated Aquila Star Financial Inc. ("Aquila") in the fall of 2012. The Licensee claimed that Aquila was not an insurance agency and that no insurance business was placed through Aquila. The Licensee intended to establish Aquila as an insurance agency to facilitate the Strategy, but this never occurred. He claimed that all insurance business relevant to the Strategy was placed directly through Daystar.

In material "*exclusively designed*" for one client, the Licensee claimed that the client's monthly payments would go toward an investment pool held at the Royal Bank of Canada. The investment pool did not exist and monthly payments facilitated a leveraged loan through B2B. The Licensee admitted that his marketing material did not explain that the payments made by clients, which would otherwise pay their property taxes, would be utilized to service leveraged loans and that the funds from the loans would be used to purchase segregated funds. The Licensee claimed the materials were used to facilitate further in-person discussion with clients where he disclosed the nature of the Strategy. During the in-person meetings he stated he would also advise clients that liens would be placed on their properties until such time as their property taxes were paid.

The financial products that clients obtained were RBC segregated funds and not products affiliated with the Royal Bank of Canada. The Licensee admitted using the terms "Royal Bank of Canada" and "Royal Bank of Canada Insurance" interchangeably due to his impression that the entities were synonymous.

The Licensee employed an individual, ("J.G."), to assist in marketing the Strategy. The Licensee claimed J.G. did paperwork and was supposed to try to set up meetings for the Licensee to speak at golf and country clubs. The Licensee advised that J.G. worked for him for about one month before moving to Europe. J.G. has never been licensed with Council.

The Licensee also used a telemarketing company, (“C.B.”), to assist in marketing the Strategy. C.B. advised potential clients that there was a program that could defer their income tax and possibly make a profit for them in five years, based on investments. C.B.’s telephone conversations with potential clients were short and their goal was to book appointments for the Licensee. C.B. has never been licensed with Council.

The Licensee admitted to utilizing unlicensed persons to solicit insurance, but claimed that neither J.G. nor C.B. were acting in a capacity to sell, or give advice, respecting insurance products.

Daystar terminated the Licensee’s contract on February 15, 2013, when they discovered that the Licensee had used the logos of RBC and B2B without permission. Around this period of time, RBC also cancelled the Licensee’s contract.

Facilitating the Strategy

The Licensee advised that he filled out the property tax deferral forms for his clients, and once their applications for the B2B loans and segregated funds were approved, he would give the clients their original property tax deferral application. He claims he instructed each client that it was their responsibility to send in the property tax deferral application once they received their property tax assessment.

Once the Licensee determined that a potential client qualified for the property tax deferral, he would then determine the amount of money a client needed to invest in order to equal the projected amount of their property tax at the end of the term of the investment. The Licensee made these determinations based on historic returns of segregated funds.

The Licensee claimed that he explained to his clients, in-person, that they were applying for a bank loan, their monthly payments facilitated the loan, and the loan was invested into an RBC segregated fund. He claimed that he advised his clients that their investment was working for them, but when they collapsed the plan, there was a potential risk that there would be money owing and they would be responsible for that shortfall. Any returned investment, less RBC’s fees, would be used to pay off the balance of the loan at B2B. The client would benefit from any profits.

Client Complaints

The Licensee signed up approximately 15 clients for the Strategy. Five of these clients complained, reporting that they believed they were deferring their property taxes, and that the money was to be invested for a profit. However, these clients stated that the Licensee did not make them aware that they were applying for a leveraged loan through B2B. These clients claimed that they did not sign B2B loan application forms and stated that their signatures appeared to have been forged.

The Licensee claimed that he did advise these clients of the B2B loan and the nature of the Strategy using the leveraged loan. The Licensee acknowledged a language barrier with two of these five clients, but believed they understood the Strategy. He denied forging any of these clients' signatures.

During Council's initial investigation, the Licensee stated that he witnessed his clients signing the B2B application form. However, the Licensee admitted that his clients did not actually receive the B2B loan applications forms. He guessed that they did not receive these forms because they were online forms. The Licensee explained that he believed his employee J.G. may have forged the clients' signatures.

One client complained that his application for property tax deferment was not approved and that he is now paying his property taxes, including a 10% penalty, as well as servicing the B2B loan. He has had to borrow funds from a friend to afford these expenditures.

The Licensee was unable to produce *Know Your Client* forms for any of these five clients.

Dissemination of Client Information

The Licensee directed Daystar to send client information, pertaining to RBC and B2B applications, to the Licensee's accountant. The Licensee's accountant is a Certified Management Accountant and has never been licensed with Council.

Four of the clients who complained claimed they did not give the Licensee consent to disseminate their RBC or B2B information to the Licensee's accountant. During Council's investigation, the fifth client was not available to confirm whether he provided consent. The Licensee acknowledged that he arranged for his clients' information to be sent to his accountant and stated he did not believe he had permission from his clients to do this. He claimed that he intended to utilize the services of an accountant to address the tax implications arising from the Strategy.

The Licensee, during the fall of 2012 through July 2013, was experiencing serious personal problems. The Licensee submitted that these circumstances played a role in his conduct during that time period, but do not constitute an excuse for his conduct.

ANALYSIS

Council determined that the Licensee failed to act in a trustworthy and competent manner and in accordance with the usual practice of the business of insurance by: promoting a strategy for a property tax deferral program through the distribution of misleading marketing materials; providing misleading information and withholding material information; submitting investment loan applications without proper authorization; disseminating client information without their knowledge; and, employing unlicensed persons to solicit insurance.

Council found the Licensee used misleading marketing material to attract clients to purchase an insurance product that his clients did not fully understand. In his marketing material, the Licensee utilized the names and logos of entities without proper authorization. Further, the Licensee's limited education and experience did not reasonably support his use of the titles "MBA" or "Property Tax & Investment Specialist." Council determined that, although the Licensee lacked the experience to properly facilitate the Strategy, he knew, or ought to have known, his presentation of the Strategy was misleading to clients.

Council noted that the marketing material indicated the clients' investments would be utilized in an investment pool, but they were actually used to finance investment loans through B2B. Further, the financial information contained in the marketing material was based on hypothetical situations and misleading mathematical calculations.

Council determined that the Strategy was not practical as the clients were responsible for repaying their loans, paying interest on deferred property taxes, and having to repay the deferred property taxes. Council recognized that clients would be at risk of being unable to refinance their properties for the duration of any lien on their properties and may face potential financial hardship.

Council was unable to establish who signed the clients' B2B loan application forms. The fact that the B2B loan application forms were not presented to the clients raised concerns for Council that the clients could not have signed these forms. Further, Council doubted whether the clients were informed about the investment loans at all, given that the Licensee provided instructions to Daystar to mail the clients' B2B and RBC materials to his accountant, not the clients directly. The Committee considered the precedents *M. Wells*, *I. Khabra*, *J. Scantland*, *R. McIntosh*, *A. Aranton* and *A. Aranton Financial Services Inc.*, and *J. Duke*.

In *M. Wells*, the licensee was found to have raised capital from clients for his agency without disclosing to his clients that they were investing in the agency, and without providing material information to them about the investment. The licensee had created false documents for investment applications, misinformed clients with respect to the tax implications of their investments, and was unable to pay investment monies owed to his clients. The licensee's licence was cancelled.

In *I. Khabra*, the licensee accepted funds from a client for the purpose of an investment. The licensee misled the client about the nature of the investment, failed to disclose the risks of the investment, evaded correspondence with his client, and misled Council staff during Council's investigation into the matter. The licensee was found unsuitable to hold a licence for a minimum of two years and fined \$10,000.00.

In *J. Scantland*, 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 licensee did not adequately discuss 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. The licensee's conduct was for personal financial benefit and to the detriment of his clients. The licensee was reprimanded, had a condition imposed on his licence that required him to be supervised for two years, was fined \$10,000.00, and was assessed Council's investigative costs.

In *R. McIntosh*, the licensee solicited funds from her existing and former insurance and mutual fund clients for investment in an unregulated private equity investment company that she worked for and which subsequently went bankrupt. Due to the age and financial status of the clients involved, the significant investments were clearly unsuitable, and resulted in serious financial harm to the clients. The licensee was found unsuitable to hold a licence for a minimum period of five years.

In *A. Aranton and A. Aranton Financial Services Inc.*, the licensee, and nominee of the agency, facilitated Registered Retirement Savings Plan loans for clients for a purpose other than what was permitted by the financial institution offering the loans. The licensee believed she had found a way for her clients to borrow money at favorable terms, but failed to fully understand the terms of the loans. The licensee had a condition imposed on her licence that required her to be supervised for two years and was assessed Council's investigative costs.

In *J. Duke*, the licensee made inappropriate recommendations to a client regarding investments in exempt market securities in light of the client's age, risk tolerance, and financial profile. The licensee was an experienced insurance agent who knew, or ought to have known, the risk posed by the investment was too high for his client and he should not have recommended the investments. The licensee's licence was suspended for 12 months, he had a condition imposed on his licence that required him to complete courses necessary to obtain the Chartered Life Underwriter designation or the Certified Financial Planner designation, and a condition imposed on his licence that required him to be supervised until such time as he completed one of the above courses, and he was assessed Council's investigative costs.

Council considered the foregoing precedent cases and determined the Licensee to be unsuitable to hold a licence. Council determined that a licence suspension for a minimum of three years is appropriate in the circumstances, but it took into account the Licensee has not conducted insurance business since February 2013, and his licence has been inactive since June 2013. Consequently, Council decided to suspend the Licensee's life agent licence for a minimum of two years.

In light of the Licensee's lack of education and experience in promoting and facilitating the Strategy as a life agent, Council determined it is appropriate that the Licensee be required to complete the Life Licence Qualification Program before his suspension is lifted. Further, Council determined that the Licensee requires the supervision of a qualified life agent for his next two years of active licensing. Finally, Council will require that, upon returning to active licensing status, the Licensee must complete one course, per licensing year, toward a Chartered Life Underwriter designation or a Certified Financial Planner designation, until he has achieved such a designation.

INTENDED DECISION

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

1. Suspend the Licensee's life and accident and sickness insurance licence for a minimum period of two years.
2. Impose a condition on the Licensee's life and accident and sickness insurance licence that requires him to successfully complete the Life Licence Qualification Program before his licence suspension is lifted.
3. Impose a condition on the Licensee's life and accident and sickness insurance licence that requires him to be supervised by a qualified life and accident and sickness insurance agent until such time as he accumulates an additional two years of active licensing.
4. Impose a condition on the Licensee's life and accident and sickness insurance licence that, upon completion of the suspension imposed in number 1, the Licensee must complete at least one course, per licence year, toward either a Chartered Life Underwriter designation or a Certified Financial Planner designation, until he has achieved such a designation.
5. Assess the Licensee Council's investigative costs of \$3,275.00.

The Licensee is advised that should the intended decision become final, the costs will be due and payable within 90 days of the date of the order. In addition, failure to pay the costs within the 90 days, or failure to complete at least one course, per licence year, toward either a Chartered Life Underwriter designation or a Certified Financial Planner designation after completion of the imposed suspension, until he has achieved such a designation, will result in the automatic suspension of the Licensee's life and accident and sickness insurance licence and the Licensee will not be permitted to complete any annual filing until such time as the costs are paid in full.

The Licensee's suspension will begin on **June 4, 2014**, and end on **June 3, 2016** at midnight.

The intended decision will take effect on **May 21, 2014**, 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 **May 20, 2014**. 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 **May 20, 2014**, 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

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Dated in Vancouver, British Columbia, on the **1st day of May, 2014.**

For the Insurance Council of British Columbia



Gerald D. Matier
Executive Director

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