

In the Matter of

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

and

The *INSURANCE COUNCIL OF BRITISH COLUMBIA*
(“Council”)

and

DON FOLK CHEVROLET INC.
(the “Agency”)

and

FRANCESCO JESSE SANGUellini
(the “Nominee”)

ORDER

As Council made an intended decision on February 17, 2015, pursuant to sections 231, 236, and 241.1 of the Act; and

As Council, in accordance with section 237 of the Act, provided the Agency and the Nominee with written reasons and notice of the intended decision dated February 25, 2015; and

As the Agency and the Nominee have 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 Agency is fined \$2,000.00.
2. The Nominee is fined \$1,000.00.
3. The Agency is assessed Council’s investigative costs of \$612.50.

4. A condition is imposed on the Agency's general insurance licence that requires it to pay the above-ordered fine and investigative costs no later than **June 17, 2015**. If the Agency does not pay the ordered fine and investigative costs in full by this date, the Agency's general insurance licence is suspended as of **June 18, 2015**, without further action from Council and the Agency will not be permitted to complete any annual filing until such time as the ordered fine and investigative costs are paid in full.

5. A condition is imposed on the Nominee's general insurance licence that requires him to pay the above-ordered fine no later than **June 17, 2015**. If the Nominee does not pay the ordered fine in full by this date, the Nominee's general insurance licence is suspended as of **June 18, 2015**, without further action from Council and the Nominee 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 **17th day of March, 2015**.



Ruth Hoyte
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

respecting

DON FOLK CHEVROLET INC.
(the “Agency”)

and

FRANCESCO JESSE SANGUellini
(the “Nominee”)

INTRODUCTION

Pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council conducted an investigation to determine whether the Agency and the Nominee acted in compliance with the requirements of the Act.

As part of Council’s investigation, on January 12, 2015, a Review Committee (the “Committee”) met with the Nominee to discuss the allegation that the Agency breached a licence condition by failing to ensure required written disclosure was provided to clients when selling its extended warranty refund policy (the “Policy”).

The Committee was comprised of one voting member and three non-voting members of Council. Prior to the Committee’s meeting with the Agency and the Nominee, an investigation report was distributed to the Committee, the Agency, and the Nominee for review. A discussion of this report took place at the meeting and the Agency and the Nominee were 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 Agency and the Nominee, 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 recommended disposition, along with the aforementioned investigation report, were reviewed by Council at its February 17, 2015 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 Agency and the Nominee of the action it intends to take under sections 231, 236, and 241.1 of the Act before taking any such action. The Agency and the Nominee 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 Agency and the Nominee.

FACTS

The Agency was granted a restricted general insurance licence to sell the Policy on January 13, 2013.

The Agency's restricted insurance licence includes a condition requiring it to provide written disclosure prior to the sale of the Policy in the form and manner required by Council. The disclosure form, which informs the client of the policy price, fees, and that the purchase of the product is optional and can be declined, is to be presented at the time of sale of the Policy.

The Agency and its licensees were informed on numerous occasions of the disclosure requirement, including during training by, and a subsequent reminder e-mail from, the supervising agent, as well as by notices from Council.

Council determined that the Agency breached a condition of its licence on four occasions when four Policies were sold by licensees without the clients being provided the required written disclosure. The Agency has since changed its processes to ensure that there will be no further breaches.

ANALYSIS

The disclosure form is an important aspect of transacting the sale of the Policy as it is intended to ensure that clients are in a position to make informed decisions prior to purchasing the Policy. Accordingly, failure to provide the disclosure is detrimental to the public and contrary to the Agency's licence condition.

Council was concerned that despite training and reminders about the use of the disclosure form, the Agency continued to allow the sale of the Policy without it. Council noted that it is the responsibility of the Agency and Nominee to ensure that the Agency complies with its licence conditions. By failing to provide the required disclosure form, the Agency failed to ensure the client was able to make an informed decision and acted contrary to its licence condition.

In determining an appropriate disposition in this matter, Council recognized that the Agency's involvement in the sale of insurance was secondary to its primary business as a motor vehicle dealer, but concluded that the Agency's breaches of the licence condition, despite training and reminders, was an aggravating factor.

As this was a first offence, Council determined that a fine for both the Agency and the Nominee would be appropriate for both specific and general deterrence purposes. Council determined that a base fine of \$1,000.00 along with an additional fine of \$250.00 per breach would be appropriate for the Agency. As the Nominee had a responsibility to ensure the Agency acted in accordance with its licence conditions, Council determined that a fine equal to half of the Agency fine was appropriate. In this instance, as Council identified four breaches of a licence condition, the Agency is fined \$2,000.00, and the Nominee is fined \$1,000.00.

INTENDED DECISION

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

1. Fine the Agency \$2,000.00.
2. Fine the Nominee \$1,000.00.
3. Assess the Agency Council's investigative costs of \$612.50.

The Agency and the Nominee are advised that should the intended decision become final, the fines and investigative costs will be due and payable within 90 days of the date of the order.

The Agency is advised that failure to pay the fine and investigative costs within the 90 days, will result in the automatic suspension of its restricted general insurance licence and the Agency will not be permitted to complete any annual filing until such time as the fine and investigative costs are paid in full.

The Nominee is advised that failure to pay the fine within the 90 days will result in the automatic suspension of his restricted general insurance licence and the Nominee will not be permitted to complete any annual filing until such time as the fine is paid in full.

The intended decision will take effect on **March 17, 2015**, subject to the Agency and Nominee's right to request a hearing before Council pursuant to section 237 of the Act.

Intended Decision
Don Folk Chevrolet Inc. and Francesco Jesse Sanguellini
9022111-I1602 and 184742-I1602
February 25, 2015
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RIGHT TO A HEARING

If the Agency or Nominee wishes to dispute Council's findings or its intended decision, the Agency or Nominee 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 Agency or Nominee must give notice to Council by delivering to its office written notice of this intention by **March 16, 2015**. 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 Agency or Nominee does not request a hearing by **March 16, 2015**, the intended decision of Council will take effect.

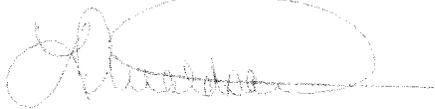
Even if this decision is accepted by the Agency and Nominee, pursuant to section 242(3) of the Act, the Financial Institutions Commission still has a right to appeal this decision of Council to the Financial Services Tribunal ("FST"). The Financial Institutions Commission has 30 days to file a Notice 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 **25th day of February, 2015**.

For the Insurance Council of British Columbia



pm
Gerald D. Matier
Executive Director
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gmatier@insurancecouncilofbc.com

GM/bk