

In the Matter of

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

and

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

and

**JAMES ROBERT MILLIGEN
(the “Licensee”)**

ORDER

Pursuant to section 238 of the Act, Council convened a Hearing at the request of the Licensee to dispute the suspension of his licence as ordered by Council on April 12, 2011.

The subject of the Hearing was set out in a Notice of Hearing dated September 13, 2011.

A Hearing Committee heard the matter on October 25, 2011, and presented its report to Council at its December 13, 2011 meeting.

After considering the Report of the Hearing Committee, Council varies its order respecting the Licensee, pursuant to sections 231 and 238 of the Act, as follows:

1. The Licensee’s life and accident and sickness insurance agent’s licence is cancelled for five years, effective from April 12, 2011.

Pursuant to section 241.1 of the Act, Council also orders the following:

2. The Licensee must pay Council’s investigative costs of \$ 1,075.00; and
3. as a condition of this order, the Licensee is required to pay the above ordered investigative costs no later than **March 13, 2012**.

ORDER

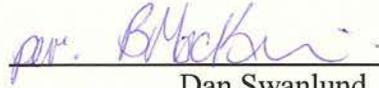
James Robert Milligen

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December 13, 2011

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This order takes effect on the 13th day of December, 2011.



Dan Swanlund, B.Comm, CFP
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

**JAMES ROBERT MILLIGEN
(the "Licensee")**

DATE: **October 25, 2011
9:30 A.M.**

BEFORE: **Ken Thom Chair
Rita Ager Member
Eric Yung Member**

HEARING AT: **Insurance Council of British Columbia
Suite 300, 1040 West Georgia Street
Vancouver, British Columbia V6E 4H1**

PRESENT: **David McKnight Counsel for Council
Larry Gold Counsel for Licensee
James Robert Milligen Licensee**

Background and Issues

On April 12, 2011, Council issued a decision and Order pursuant to sections 231 and 238 of the *Financial Institutions Act* (the "Act"), suspending the Licensee's life and accident and sickness insurance licence, pending further investigation into concerns with his involvement in raising funds from insurance clients under the guise of an investment, to facilitate importing gold from Ghana. The Licensee subsequently requested a hearing.

As set out in the Notice of Hearing dated September 13, 2011, the purpose of the Hearing was to determine whether:

- a) the Licensee failed to act in a trustworthy and competent manner, in good faith, and in accordance with the usual practice of the business of insurance in this matter, and whether the Licensee:
 - i. acted appropriately in recommending that his insurance clients invest in the shipment of gold from Ghana to Canada;

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- ii. acted in whole or in part for his own financial gain and contrary to the interests of his clients;
 - iii. continued to approach his insurance clients about the investment in the gold after providing an assurance to Council staff that he had ceased doing so and despite knowing of Council staff's concerns with these activities;
 - iv. misrepresented to Council staff that the money he received from two of his insurance clients for the investment has been repaid when that was not the case; and
 - v. in any other manner.
- b) the Licensee is able to carry on the business of insurance in a trustworthy and competent manner, in good faith, and in accordance with the usual practice as required under Council Rule 3(2) and pursuant to section 231(1)(a) of the Act;
- c) Council should do one or more of the following:
- i. confirm or revoke the terms of the Order;
 - ii. vary the Order, which could include:
 - suspend the Licensee's licence for a determinate period;
 - cancel the Licensee's licence;
 - attach conditions to the Licensee's licence;
 - require the 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; and
 - iii. require the Licensee to pay the costs of Council's investigation and of this Hearing.

The Hearing Committee was constituted pursuant to section 223 of the Act. This is a report of the Hearing Committee as required by section 223(4) of the Act.

Evidence

Evidence reviewed by the Hearing Committee in consideration of this matter:

- Exhibit 1: Agreed Statement of Facts
- Exhibit 2: Book of Documents of Council
- Exhibit 3: Letter of reference, dated October 24, 2011
- Exhibit 4: Email letter of reference, dated October 24, 2011

Facts

1. The Licensee obtained his first life and accident and sickness insurance agent's licence on June 6, 2002. The Licensee is not and was not licensed to sell mutual funds or securities.
2. The Licensee was contracted to sell life insurance products on behalf of a fraternal society (the "Fraternal Society") for approximately eight years.
3. In 2010, the Licensee created a blank contract entitled "Inheritance/Investment Opportunity 2010" (the "Inheritance Contract").
4. In the Inheritance Contract, the Licensee sought investments from clients to pay for an over-storage fee and associated costs and fees for a family inheritance for Britney Johnson ("Johnson"), formerly of Cape Coast, Ghana. Johnson was described in the Inheritance Contract as the Licensee's fiancé.
5. In the Inheritance Contract, the Licensee offered:

"I am pleased to provide the depositor with a Tax Free Interest bonus of 30% upon the inheritance landing in Canada and received by James Milligen and converted successfully to a cash settlement. At that time the deposit plus bonus interest will be returned to the Depositor as set out in this agreement in the form of a Cash Settlement, or option for a 2 KG Gold Bar subject to an additional deposit required by the Depositor."
6. On December 7, 2010, the Licensee entered into a contract with a member of the Fraternal Society to invest \$5,000.00 into the Inheritance Contract.
7. On December 19, 2010, the Licensee entered into a contract with a second member of the Fraternal Society to invest \$5,000.00 into the Inheritance Contract.
8. The Licensee had also approached a former Fraternal Society member's widow as well as another woman, for the purpose of having the two women invest money in the Inheritance Contract. The investment with these women did not materialize.

9. In response to concerns raised by the Fraternal Society, the Licensee stated the following to the society in an email dated December 27, 2010:

“I have a fiancé named Britney Johnson, who I have known well for the past 8 months, she moved back to Ghana from Arizona to live with her ailing father who needed to have by-pass surgery which was performed in August of this year, however shortly after the surgery about 5 days he passed away from complications, leaving his only heir to fend for herself, so I had been helping her financially and also with the funeral and living costs. Upon reading the will, she realized her dad had left her a sizeable inheritance in gold bars in a security company in Ghana, he initially paid for the shortage of these by depositing a lump sum for the storage, and she and the lawyer involved found out that they were over storage fees involved in order to gain access to them. So we mutually decided to present an opportunity for investors to friends and families so that they could benefit from this and we agreed to give them back 30% on their short-term investment. This was a personal investment between me and the investor and nothing to do with the [Fraternal Society] and that was made apparent right from the outset. There was no money coming from [Fraternal Society] accounts, no transfers or re-directed premium payments and as I said it has nothing to do with the [Fraternal Society]. This is not a scam, ponzee scheme or a misleading event. With the inheritance arriving very soon I have been dealing with a lawyer regarding export permits, insurance and shipping etc. Once in Canada part of the Inheritance will be cashed in to pay off the investors with their deposit plus 30% bonus interest for there (sic) short term assistance with this. My name is on the contract as the Guarantor to the terms as set out in this contract, and there is no mention of the [Fraternal Society] anywhere so I accept all liability with regards to the investment as it is between me and them solely.”

10. In his email to the Fraternal Society, the Licensee tendered his resignation.
11. On January 14, 2011, Council staff spoke to the Licensee via telephone. The Licensee acknowledged soliciting some of the Fraternal Society's clients but referred to it as a “personal loan.” The Licensee advised Council staff that he was going through a separation and selling his house and he would have more than enough money from the sale of his house to reimburse clients plus 30 percent. The Licensee assured Council staff that he would not solicit the Inheritance Contract to any more clients.
12. The Licensee advised Council staff that the only funds received from the Fraternal Society's clients was \$5,000.00 each from two members and that their money had been wired to his fiancé, Johnson, in Ghana.

13. On February 24, 2011, Council staff spoke with the Licensee who advised that the gold was expected to arrive in Canada the following day. The Licensee further stated that Johnson had contracted a virus and could not travel, and that the two clients who had invested with him had not yet been paid back.
14. On April 1, 2011, Council staff was contacted by the Fraternal Society who advised the Licensee had solicited another Fraternal Society member to invest between \$5,000.00 and \$10,000.00 in the Inheritance Contract and he "needed a total of \$47,000.00 to transport the gold."
15. On April 5, 2011, Council staff contacted this other Fraternal Society member. The member advised he is 82 years old and he recently purchased an annuity through the Licensee in January 2011.
16. On March 31, 2011, the Licensee presented a laptop presentation to this member at the member's house. The Licensee advised this member of Johnson's inheritance and of the Inheritance Contract to get the gold out of Ghana. This member thought the investment sounded good at a 30 percent return and agreed to give \$5,000.00 to the Licensee. The Licensee left a blank copy of the Inheritance Contract with the member. After speaking with his sons, the member decided not to invest and advised the Licensee of his decision. The Licensee called the member later that evening and during the following days in an effort to get him to change his mind regarding the investment. The Licensee told the member that the investment was "not a scam."
17. On April 5, 2011, Council staff spoke with the Licensee who confirmed that he had obtained \$10,000.00 from two Fraternal Society members and that he had approached the two aforementioned women to invest in the Inheritance Contract. The Licensee told Council staff that he had paid back \$5,000.00 each to the members who had invested with him. The Licensee stated that he asked the 82 year old member for money for his fiancé because she was sick.
18. On April 5, 2011, Council staff spoke with one of two members who had invested with the Licensee. The member advised that he had provided the Licensee with \$5,000.00 on the understanding he would get a 30 percent return in about a month. As of April 5, 2011, the member had not received any money in return from the Licensee. He also advised that the Licensee called him again and asked him to invest another \$1,000.00 at a 40 percent return. The member did not pursue this additional investment.
19. After advising Council on January 14, 2011, that he was no longer promoting the Inheritance Contract, the Licensee continued to do so by presenting the contract to the 82 year old member and by seeking additional funds from one of the members who had already invested in the Inheritance Contract.

Submissions of Council by Mr. McKnight (“McKnight”)

- The Licensee attempted to get clients to invest in the questionable investment regarding the shipment of gold bars to Canada. While the “investment” was not related to the sale of insurance products, the Licensee relied upon his prior relationship with the clients to facilitate the potential investment; in essence, leveraging his position as a licensed insurance agent to persuade clients to engage in more financial business with him.
- While the investments were not a significant monetary amount, the Licensee placed his clients at risk and was potentially in a conflict of interest as he stood to gain directly from his clients’ financial investment.
- In addition, the Licensee continued to approach clients regarding the investment after being advised by Council staff that it viewed such investments as improper. He claimed to have repaid the clients when, in fact, this was not the case. These issues speak to the Licensee’s trustworthiness, suitability and good faith.
- With respect to the issue of competency, the Licensee conducted little if any due diligence to determine the veracity and/or the suitability of the investment for his clients. Council submits he acted blindly given his self interest in the financial vehicle and misrepresented to the clients that the investment gains would be tax free, which would not be the case where interest is earned.

Submissions of the Licensee by Larry Gold (“Gold”)

- It is not easy for many people to identify a scam and many people get caught up in a scam. There is no question this matter was a scam.
- The Licensee, who is 51 years old, married and has three children, was seduced by the scam.
- The Licensee has a clean record with Council. The Licensee acknowledges it was not appropriate to take advantage of the clients, although he knew the clients and thought they may want to invest. This was not a matter of the Licensee taking the clients’ last penny. He was not leveraging his position as an insurance agent.
- In late 2009, the Licensee’s wife wanted a divorce and he put his house up for sale. It has not yet been sold. The Licensee figured there was a fair amount of equity in his house and therefore even if the gold did not arrive, he could pay the clients back.

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- The Licensee met Johnson on the internet and found her seductive and charming. The Licensee never met Johnson in person. A short time later, it was her birthday and he sent a present to her. Thereafter, her father had heart surgery and the Licensee provided money to Johnson to help. Subsequently, her father died and the Licensee provided money to Johnson for the funeral. The Licensee forwarded approximately \$30,000.00 of his own money to Ghana.
- The Licensee found out about the gold after Johnson's father died. He said the gold documents looked convincing but ultimately he exercised terrible judgement and borrowed money from others to help finance his fiancé.
- The Licensee has assumed personal liability for the money invested by the client.
- The Licensee acknowledges that he was not forthright with Council when he continued to solicit the money from clients despite telling Council otherwise, and when he indicated to Council that he had repaid the clients when in fact that was not the case.
- The Licensee was a successful life insurance agent. This matter involved a personal life dilemma where the Licensee was scammed.
- The Licensee is currently selling advertising in Alberta and, up until the day before the hearing, he believed the gold investment was legitimate.
- A one year suspension of the Licensee's licence is appropriate. The Licensee has child support obligations, he lost his savings in this matter, he lost client money, he lost his licence and he lost a relationship. Suspending the Licensee's licence for two years would be overbearing. The principles of sentencing can be satisfied by a one year licence suspension. The Licensee accepts responsibility for Council's investigative costs.

Submissions of the Licensee

- The Licensee spoke to the lawyer involved in the gold matter. There is a lot involved to import gold into Canada.
- The clients who provided the funds to him for the investment were shown documentation relating to the gold investment.

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Findings of the Hearing Committee

The Hearing Committee found it hard to understand how the Licensee, who is 51 years of age with approximately eight years of experience in the financial services industry as a life insurance agent: would rely on information he obtained from a person whom he had only ever met on the internet; would believe this person to be his fiancé; and would get himself involved in a financial related scam.

The Licensee did not even conduct a cursory search of the internet which, had he done so, would have revealed information on what he was getting himself into. Instead, he tossed aside any sense of reasonableness and set out on a path to obtain money from others for the benefit of his supposed fiancé, as well as for his benefit by virtue of his relationship with this person.

Had the Licensee simply been duped in the matter, the Hearing Committee's concerns would have focused more on his lack of judgement. However, the Hearing Committee determined the Licensee was not an innocent bystander. Rather, it concluded he took deliberate and improper steps to entice others to invest with him and he specifically preyed upon individuals who trusted him, his insurance clients, ultimately to their detriment.

The Hearing Committee found the Licensee had taken advantage of his position in the industry. In particular, if the Licensee had approached individuals with whom he had no previous relationship and had made accurate representations to them about the investment, the Hearing Committee doubts any of these individuals would have given him money for the gold investment. However, this is not what occurred. Instead, the Licensee approached existing insurance clients who relied on him as a financial services representative, and then proceeded to mislead them about an investment opportunity, which he characterised as a guaranteed tax free opportunity. Both of which he knew or ought to have known was not the case.

After convincing two of his clients to invest in this scheme, the Licensee had another opportunity to step back and reconsider his actions. The Licensee was contacted by Council with regards to his actions and was given good reason to cease any further solicitation and question whether his relationship with his fiancé was legitimate. Instead, he lied to Council staff by saying he paid back the two clients who had invested with him, when in fact he had not, and he continued to solicit other clients to invest in this scheme after promising Council he would not do so in the future.

The Hearing Committee found the Licensee had a number of opportunities to conduct himself in an appropriate manner. Instead, the Licensee got involved in what was obviously a scam; used his position as a life insurance agent for personal benefit; made misleading representations to clients; and lied about his actions. The Hearing Committee found the Licensee's conduct demonstrated he is not trustworthy or capable of carrying on the business of insurance in good faith and in accordance with the usual practice.

Recommendations of the Hearing Committee on Penalty

The authority of Council in this matter is to confirm, revoke, or vary the Order that suspended the Licensee's licence. As the Order was issued pursuant to section 238 of the Act, Council can suspend or cancel the Licensee's licence, or impose licence conditions and/or restrictions.

The Hearing Committee recommends that the Order be varied by cancelling the Licensee's licence for a minimum period of five years effective April 12, 2011, which is the date of the Order. The Hearing Committee also recommends that as part of any review of a future application for a licence from the Licensee, he ought to be required to meet with an Investigative Review Committee of Council to assess his suitability, and he must further demonstrate that he has made restitution to any client who gave him money as part of the Inheritance Contract investment.

In arriving at this recommendation, the Hearing Committee considered the *Farey, Bergen* and *Matthews* cases. The Hearing Committee found the Licensee's situation shared some similarities with these cases in that clients' interests were not properly served and there was a lack of care exhibited by the licensees. However, the Hearing Committee felt the current matter was more egregious because the Licensee's behaviour simply defied common sense as it was obvious he was engaging in a scam and, unlike in the previous cases, this was also a case of a licensee intentionally and repeatedly making misrepresentations to the public and Council, and improperly using his insurance licence to further a personal situation.

On the matter of costs, the Hearing Committee recommends that the Licensee pay Council's investigative costs. However, with respect to hearing costs, it did not feel these should be assessed to the Licensee. The Hearing Committee reasoned that this hearing arose from Council's interim step of suspending the Licensee's licence immediately in the interest of public protection. As a result, the Licensee essentially had no alternative but to appear before the Hearing Committee and, for this, he should not be additionally penalized.

Dated in Vancouver, British Columbia, on the 13th day of December, 2011.



Ken Thom, Chair of Hearing Committee