

IN THE MATTER OF THE *FINANCIAL INSTITUTIONS ACT*
(RSBC 1996, c.141)
(the “Act”)

and the

INSURANCE COUNCIL OF BRITISH COLUMBIA
 (“Council”)

and

LINI OUTH
(the “Licensee”)

ORDER

As Council made an intended decision on July 21, 2020, pursuant to sections 231, 236, and 241.1 of the Act; and

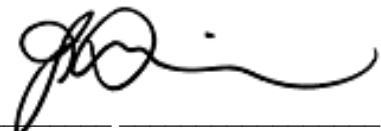
As Council, in accordance with section 237 of the Act, provided the Licensee with written reasons and notice of the intended decision dated July 27, 2020; and

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 that:

1. The Licensee is fined \$1,000;
2. The Licensee is assessed investigative costs of \$1,462.50;
3. The Licensee is required to complete the Autoplan Basics course;
4. The Licensee is required to complete the Council Rules Course;
5. A condition is imposed on the Licensee’s general insurance licence that failure to pay the fine and investigation costs or complete the required courses by November 16, 2020 will result in the automatic suspension of her licence and she will not be permitted to complete her 2021 annual filing until the fine and investigation costs are paid in full and the courses are completed.

This order takes effect on the **18th day of August, 2020.**



Janet Sinclair, Executive Director
Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA

(“Council”)

respecting

LINI OUTH

(the “Licensee”)

1. Pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council conducted an investigation respecting allegations that the Licensee, an experienced Level 1 general insurance salesperson and road agent, fraudulently transferred and insured a vehicle under the name of a person she did not meet and without his knowledge or consent and, when the transactions were discovered, fraudulently transferred the vehicle back to a motor vehicle dealership.
2. On June 9, 2020, as part of Council’s investigation, a Review Committee (the “Committee”) comprised of Council members met via video conference to discuss an investigation report prepared by Council staff. The Licensee was invited to provide any additional information or submissions but she declined to attend. Therefore, the Committee reviewed the investigation report in her absence.
3. Staff’s investigation report and the Committee’s report to Council were reviewed by Council at its July 21, 2020 meeting where it was determined the matter should be disposed of in the manner set out below.

PROCESS

4. 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

5. On October 1, 2018, a person who will be referred to in this intended decision as “JC” purchased a used vehicle at a motor vehicle dealership. That same day, the Licensee attended the dealership, as she routinely conducted road agent business there.

6. JC advised the Licensee that he had purchased the vehicle on behalf of his son-in-law who would be attending the dealership later in the day to sign the required paperwork to complete the transfer of registration and insurance.
7. In the son-in-law's absence, and in the presence of JC, the Licensee processed the Insurance Corporation of British Columbia ("ICBC") APV9T Transfer/Tax Form ("ICBC Transfer Form"), resulting in the transfer of the vehicle from the dealership to the son-in-law. The Licensee also processed an ICBC APV250 form, registering and insuring the vehicle in the son-in-law's name. The Licensee also used the son-in-law's banking information to process an ICBC monthly payment plan agreement, between the son-in-law and ICBC, to pay the vehicle's insurance premiums.
8. On November 22, 2018, the son-in-law received notification from ICBC that he was being charged for a non-sufficient-fund payment with regard to the vehicle's insurance policy. However, he had no knowledge the vehicle had been registered and insured in his name.
9. On November 23, 2018, the son-in-law obtained confirmation from ICBC that his name was listed as the registered owner of the vehicle. He and his wife (JC's daughter) had known JC wanted to buy a vehicle for them but they reportedly did not know he actually had. The daughter texted JC asking how he had put the vehicle in the son-in-law's name without his signature. During a subsequent telephone conversation, JC advised his daughter that he had used the son-in-law's name and date of birth to register and insure the vehicle, and that the insurance agent was the Licensee.
10. The daughter followed up with the Licensee via telephone conversations and text messages disputing the vehicle transactions. The daughter also requested that the Licensee disclose the paperwork and documents used to register and insure the vehicle in the son-in-law's name. However, the daughter advised Council staff that the Licensee was uncooperative and adamant that she did nothing wrong. She stated the Licensee refused to provide any paperwork, other than one document regarding the sale of the vehicle back to the dealership.
11. On November 26, 2018, the Licensee and JC attended the dealership. The Licensee cancelled the vehicle's insurance and registration, with JC allegedly signing his son-in-law's name. The Licensee processed the vehicle's ICBC Transfer Form from the son-in-law to the dealership. The Licensee also processed an ICBC APV250 form, registering and insuring the vehicle back to the dealership.
12. On November 30, 2018, the Licensee's agency advised Council staff that, as a result of this incident, the agency removed the Licensee's road agent access to the ICBC system, seized

her allotted ICBC inventory, and removed her access to the agency's internal system. In addition, the agency suspended the Licensee without pay for two weeks.

THE LICENSEE'S SUBMISSIONS

13. In interviews with Council staff, the Licensee advised she processed the registration and insurance in the son-in-law's name because JC had "conned" her into believing the vehicle was purchased on behalf of his son-in-law. The Licensee acknowledged that she conducted all the transactions in the son-in-law's absence. She further stated that JC signed on behalf of the son-in-law in her presence and that he had provided her with his son-in-law's banking information.
14. The Licensee also advised that, when the original transaction was completed (i.e. the vehicle's registration and insurance in the son-in-law's name), she made additional copies of the documents for the son-in-law to sign but was unsuccessful in her attempts to contact him. She advised that once she became aware that the son-in-law did not want the vehicle, she transferred the vehicle back to the dealership at JC's request.
15. The Licensee acknowledged that the transactions were wrong and invalid.

JC'S SUBMISSIONS

16. Council staff also interviewed JC. He advised that his daughter had agreed he would purchase a vehicle for his son-in-law. JC also advised that the Licensee was supposed to meet with the son-in-law to get the paperwork signed, but that did not happen. He further advised that his daughter later decided she did not want the vehicle because she did not like it and the mileage was too high. The vehicle was therefore sold back to the dealership, and the Licensee processed the transaction.
17. JC claimed he did not sign any of the transfer or insurance paperwork. He stated that he believes the Licensee obtained his son-in-law's driver's licence information, banking information and birthdate herself through ICBC's computer system. However, ICBC advised Council that it determined the Licensee did not obtain the son-in-law's information from an ICBC database.

ANALYSIS

18. After reviewing staff's report and the Committee's report, Council agreed with the Committee's conclusion that the Licensee breached Council Rule 7(8), which requires compliance with the Code of Conduct, and the following sections of the Code of Conduct:

- section 3 regarding Trustworthiness,
- section 4 regarding Good Faith,
- section 5 regarding Competence, and
- section 8 regarding Usual Practice: Dealing with Insurers.

Trustworthiness

19. Council agreed that the Licensee breached the requirement to be trustworthy. Whether it was the Licensee or JC who signed the documentation, it is clear the Licensee knew the son-in-law did not sign any of it. Further, Council agreed that the Licensee was less than forthcoming by refusing to provide the requested paperwork. She should have told the daughter that she would provide a copy directly to the son-in-law and then done so.

Good Faith

20. Council agreed that the Licensee failed to act in good faith. She ought to have known that a forged insurance policy may not be binding. As such, her actions put not only any occupants of the vehicle at risk, but also the public. It was fortunate a motor vehicle accident did not occur while the vehicle was falsely insured.

Competence

21. Council agreed that the Licensee did not act in a competent manner. She knew or ought to have known that the son-in-law had to personally sign the documentation. Her submission that JC “conned” her into facilitating the transactions was irrelevant because she ought not to have processed them without the presence, knowledge and consent of the intended insured.

Usual Practice: Dealing with Insurers

22. Council agreed that the Licensee failed in her duty to act in the usual practice of dealing with insurers. She knowingly provided documentation to ICBC that contained false signatures. In addition, she provided the son-in-law’s banking information to ICBC without having actually obtained it from him.

Mitigating and Aggravating Circumstances

23. In terms of mitigating factors, Council noted that the Licensee acknowledged the transactions were wrong and invalid. Further, it was apparent she did not act with ill intent but was rather simply trying to help JC purchase a vehicle for his family.

Additionally, the Licensee was suspended by her agency for two weeks without pay as a result of her misconduct but she still works there which suggests that they continue to support her. Of further note, the Licensee was forthcoming and cooperative with Council's investigation staff.

24. With regard to aggravating factors, Council agreed that, although the Licensee probably felt pressured into completing the transactions by JC, she ought to have refused, or at the very least called her manager to discuss the situation before proceeding. Additionally, the Licensee knew the signatures were false, whether JC signed them or she did. Further, Council agreed that it was aggravating that the Licensee fraudulently transferred the vehicle not once, but twice. Furthermore, the Licensee, although a Level 1 salesperson, is not new to the insurance industry, having been first licenced in July 2010, so ought to know that she must conduct herself pursuant to the Code of Conduct and Council Rules.
25. After consideration, Council concurred with the Committee that a sanction is warranted for the purposes of specific and general deterrence, denunciation of the Licensee's conduct and the need to maintain the public's confidence in the insurance industry and Council's ability to govern insurance licensees.

INTENDED DECISION

26. Council is not bound by precedent to follow the outcomes from prior decisions, but similar conduct should result in similar outcomes within a reasonable range depending on the particular facts of the case. Further, any mitigating or aggravating circumstances must be considered.
27. Council reviewed three previous cases involving similar breaches.
28. In *Melanie June Lund (February 21, 2017)*, a Level 2 general insurance agent conducted a vehicle transfer and auto insurance transaction without the vehicle's purchaser being present. The transaction occurred at the agency's office, with the seller and the purchaser's boyfriend present. The purchaser was a friend and the licensee was trying to be helpful by conducting the transaction in her absence. Council determined that providing licence plates and insurance for a vehicle without the purchaser present brought the licensee's competency into question, as well as her ability to act in accordance with the usual practice of the business of insurance. Council reprimanded the licensee and ordered her to pay a fine of \$1,000 and investigative costs of \$587. The licensee was also required to complete ICBC's Autoplan Basics course, an errors and omissions insurance course, and the Council Rules Course.

29. In *Melissa Almeda Skelton (April 26, 2016)*, a Level 1 general insurance salesperson circumvented ICBC procedures for a friend's convenience. The friend had a debt that needed to be paid before he could renew his Autoplan insurance. The licensee set up conditions that would allow him to use ICBC's financing plan to make monthly payments. The friend's vehicle was gifted to the licensee, who registered it in her own name. The licensee then conducted an Autoplan transaction for herself, using a monthly financing option. She arranged for the monthly payment accounts to come from the friend's bank account, and listed herself as the primary operator, despite having her own vehicle. These transactions circumvented a number of ICBC procedures, and also involved the licensee claiming a PST exemption that she did not qualify for. Council imposed a fine of \$1,000 and investigative costs \$1,025.
30. In *Peter Hing-Fu Hung (January 13, 2015)*, a Level 1 general insurance salesperson completed insurance transactions for two different luxury vehicles for an individual who was later found to have been an imposter. There were suspicious circumstances involved with the transactions, but the licensee did not put a notation on the transaction documents or take any other action to flag suspicions to ICBC or his supervisor. Council believed that the licensee "turned a blind eye" to the suspicious circumstances, and that he had not appreciated his responsibilities when conducting the transactions. Council ordered the licensee to pay a fine \$1,000 and investigative costs \$2,625. The licensee was also required to complete the Autoplan Basics course, the Special Coverages course, the Importing Vehicles course and the Ethics for Insurance Brokers course. The licensee was not permitted to resume mobile road services until the courses were complete.
31. In light of the above noted cases, Council agreed that a fine of \$1,000 and investigation costs of \$1,462.50 should be imposed on the Licensee. Additionally, Council determined that the Licensee should be required to take the Autoplan Basics course and the Council Rules Course.
32. Council agreed that, when collectively considered, the mitigating and aggravating circumstances as discussed above support neither an increase nor a reduction to the penalty.
33. With regard to investigations costs, Council noted that, as a self-funded body, Council looks to licensees who have engaged in misconduct to bear the costs of their disciplinary proceedings so they are not borne by other licensees in general.
34. Pursuant to sections 231, 236, and 241.1 of the Act, Council made an intended decision to:
 - a) Fine the Licensee \$1,000;

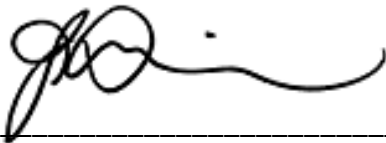
- b) Assess the Licensee investigation costs of \$1,462.50;
- c) Require the Licensee to complete the Autoplan Basics course;
- d) Require the Licensee to complete the Council Rules Course; and
- e) Impose a condition on the Licensee's general insurance licence that failure to pay the fine and investigation costs or complete the required courses within 90 days of Council's order will result in the automatic suspension of her licence and she will not be permitted to complete her 2021 annual filing until the fine and investigation costs are paid in full and the courses are complete.

RIGHT TO A HEARING

35. 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 within 14 days of receiving this intended decision. 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 within 14 days of receiving this intended decision, the intended decision of Council will take effect.
36. Even if this decision is accepted by the Licensee, pursuant to section 242(3) of the Act, the British Columbia Financial Services Authority ("BCFSA") still has a right of appeal to the Financial Services Tribunal ("FST"). The BCFSA 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 visit the guide to appeals published on their website at www.fst.gov.bc.ca/pdf/guides/ICGuide.pdf.

Dated in Vancouver, British Columbia, on the **27th day of July 2020**.

For the Insurance Council of British Columbia



Janet Sinclair
Executive Director