

In the Matter of

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

and

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

and

**ROBERTA MERLIN MCINTOSH
(the “Licensee”)**

**DECISION AND ORDER
UNDER SECTIONS 231 & 238 OF THE ACT**

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. It is noted the Licensee was licensed under the name Roberta Merlin Mayer at the inception of the investigation.

As part of Council’s investigation, on April 23, 2012, a Committee of Council (the “Committee”) met with the Licensee respecting her involvement in the sale of exempt market securities to former mutual fund clients between 2003 and 2007, and allegations that in doing so, she put her own interests before the interests of the clients.

On May 15, 2012, Council met to review an investigation report, along with a report prepared by the Committee regarding the Licensee’s conduct. Based on this material, Council determined the Licensee’s actions brought into question her trustworthiness and her ability to carry on the business of insurance in good faith and in accordance with the usual practice, and concluded her life and accident and sickness insurance agent’s licence should be cancelled for five years, pursuant to sections 231 and 238 of the Act.

This decision was reconsidered by Council after it was provided with a written submission from the Licensee dated May 8, 2012. After the submission was considered, Council unanimously reaffirmed its decision to cancel the Licensee’s licence.

CONCLUSIONS OF COUNCIL

Prior to 2003, the Licensee engaged in the business of life insurance and mutual funds for approximately 20 years. In 2003, she left the mutual fund industry in order to pursue an opportunity with an exempt market security issuer named Dexior Financial Inc. ("Dexior"). The Licensee did, however, remain in the life insurance business and currently places her insurance business through a managing general agent.

Dexior was an unregulated private equity investment company that raised capital through exemptions in securities legislation. The capital was invested into a portfolio of other companies and development projects. Dexior went bankrupt in February 2008.

The Licensee solicited her former mutual fund clients to invest in Dexior. Between 2003 and 2007, she raised in excess of \$3 million of capital investment for Dexior.

According to the Licensee, it was left to clients to determine the suitability of the Dexior investment, conduct their own due diligence, and decide how much of their asset mix should be invested in Dexior. The Licensee stated she was prohibited under securities rules and regulations from providing financial advice respecting the Dexior investment and she abided by these requirements. In particular, she characterized her role with Dexior as administrative with duties such as arranging presentations, booking catering, ordering supplies, accepting investment cheques and completing subscription agreements. The Licensee stated she did not advise individuals on the suitability of the Dexior investment.

Council did not accept the Licensee's position that she essentially let the clients decide the merit of the Dexior investment on their own. By virtue of her prior relationships with the clients, Council determined she was influential in their decision to invest. Council found the actions of the Licensee also influenced the clients. In particular, the Licensee paid mutual fund redemption charges which were incurred by clients in order to access funds for the investment; misrepresented Dexior as being a good or safe investment which could be liquidated within a short period of time; consulted with clients about leveraging to invest; and assisted clients with financial calculations related to Dexior. The Licensee's job titles at Dexior included *Vice President*, *Senior Private Client Manager* and *Investment Consultant*, which gave her further credibility with the clients. These titles, along with her compensation from Dexior of up to \$10,000.00 per month, demonstrated to Council that the Licensee did not simply have an administrative role with Dexior.

Council identified three situations where clients should never have invested in Dexior given their age, personal situation, and/or risk tolerance, and it concluded the Licensee would have been aware of this given her extensive financial services experience and her past relationships with each of the clients. Council found the Licensee knowingly disregarded her clients' interests and engaged in the sale of Dexior for personal benefit.

One situation involved a husband and wife, aged 80 and 82, who apparently redeemed their entire mutual fund investment savings with the Licensee's former mutual fund dealer to procure funds to invest in Dexior. The couple lost their entire capital investment of \$500,000.00 when Dexior went bankrupt, and they did not receive any dividends to offset their loss. While the Licensee explained the situation involved a sophisticated client who understood the risks of Dexior, the client refutes this position and a risk tolerance questionnaire completed by the Licensee approximately one year prior to the Dexior investment indicated the client had only a moderate risk tolerance. Council could not see how such an investment would ever be appropriate for this couple, given their ages and documented risk tolerance.

Another situation involved a 64-year-old widow client who was forced to sell her home as a result of the Dexior bankruptcy. This client invested approximately \$331,000.00 in Dexior, \$270,000.00 of which came from a home equity loan with the remaining funds coming from mutual fund investments she held through the Licensee's former mutual fund dealer. The client reported the Licensee recommended she leverage against her home for the investment, and file records show the Licensee did calculations for the client incorporating dividend payments from Dexior that were shown to offset the cost of the leveraging. Specifically, the Dexior investment was intended to provide roughly 70 percent of the client's monthly income; however, it was apparent that without the expected return from the investment, the client would not be able to service the home equity loan. Council noted this particular Dexior investment was based on the client being an "accredited investor," which meant the client met certain wealth thresholds, thereby allowing the Licensee to facilitate the investment without requiring securities registration. In reality, the client was not an accredited investor and information on the Licensee's file indicated she knew or ought to have known this.

In a third situation involving a woman who had been the Licensee's mutual fund client after being widowed, the Licensee suggested that she leverage against her home to invest in Dexior. This client elected not to implement leveraging and instead redeemed approximately \$250,000.00 from her mutual fund holdings to invest in Dexior. The Licensee paid the client's mutual fund redemption charges.

Council determined these situations to be at the heart of this matter, and it found the Licensee's characterization of Dexior, an unregulated and risky financial product, as being safer than a regulated financial product, reflective of the Licensee's unsuitability to hold a licence.

Secondary to the client situations, was the Licensee's failure to meet the continuing education ("CE") requirements for the 2010/2011 licence period. In particular, after an audit, Council found that she only met the CE requirements for six and a half of the required ten hours of CE. While acknowledging that a CE breach occurred, Council determined that in light of the Licensee's actions related to the Dexior investments, the breach was not a factor in its determination for this order.

DISPOSITION

In determining an appropriate disposition, Council acknowledged the Dexior incidents occurred approximately five years ago and did not involve any insurance monies. However, Council did not believe these factors sufficiently mitigated the Licensee's behaviour and the prejudice she caused to financial consumers.

Council found neither the Licensee's verbal explanation presented to the Committee nor her written submissions to Council to be mitigating in any aspect. In particular, the Licensee submitted she was trained and supervised by Dexior lawyers and accountants and was compliant with securities law. The Licensee further submitted that clients who invested in Dexior were her friends or family, and the titles she used at Dexior were not misleading.

Council found the Licensee used her role as a trusted financial advisor to promote her own interests to the serious detriment of her clients. Council found the Licensee's submissions further emphasized her disregard for the overriding concern that she had facilitated extremely risky financial transactions that someone of her experience and in her position of trust should never have entertained.

For these reasons, Council concluded the Licensee poses a significant risk to the public which cannot be mitigated through supervision, education or licence conditions.

DECISION AND ORDER

Council orders that, pursuant to sections 231(1)(g) and 238 of the Act, the Licensee's life and accident and sickness insurance licence is cancelled for five years, effective the date of this order.

Pursuant to section 238 of the Act, the Licensee has the right to require a hearing on this order before Council by delivering written notice within 14 days of receipt of this order to Council at Suite 300, 1040 West Georgia Street, Vancouver, British Columbia, V6E 4H1; alternatively, the Licensee may appeal this order to the Financial Services Tribunal.

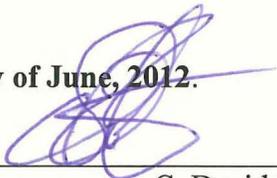
For more information respecting appeals to the FST, please visit their website at www.fst.gov.bc.ca or contact them directly at:

Financial Services Tribunal
PO Box 9425 Stn Prov Govt
Victoria, British Columbia
V8W 9V1

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Dated in Vancouver, British Columbia, on the 6th day of June, 2012.



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