

In the Matter of the

FINANCIAL INSTITUTIONS ACT, RSBC 1996, c.141

(the “Act”)

and the

INSURANCE COUNCIL OF BRITISH COLUMBIA

(“Council”)

and

DANILO AMESTOSO BARTOLOME

(the “Licensee”)

ORDER

As Council made an intended decision on January 30, 2024, 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 February 26, 2024; 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 required to be supervised by a qualified life and accident and sickness insurance agent, as approved by Council, for a period of 12 months of active licensing, commencing, at the latest, on April 15, 2024;
- 2) The Licensee is required to complete the following courses, or equivalent courses, as acceptable to council, by June 12, 2024:
 - a. The Council Rules Course for life and/or accident and sickness insurance;
and

- b. The Advocis course “Making Choices I: Ethics and Professional Responsibilities in Practice” (collectively the “Courses”);
- 3) The Licensee is assessed Council’s investigation costs of \$1,131.25, to be paid by June 12, 2024; and
- 4) A condition is imposed on the Licensee’s life and accident and sickness insurance agent licence that failure to obtain a supervisor as required, and failure to complete the Courses, and pay the investigation costs in full by June 12, 2024 will result in the automatic suspension of the Licensee’s licence and the Licensee will not be permitted to complete the Licensee’s 2026 annual licence renewal until such time as the Licensee has complied with the conditions listed herein.

This order takes effect on the **14th day of March, 2024**



Janet Sinclair, Executive Director
Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA

(“Council”)

respecting

DANILO AMESTOSO BARTOLOME

(the “Licensee”)

1. Pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council conducted an investigation to determine whether the Licensee had acted in compliance with the requirements of the Act, Council Rules, and Code of Conduct regarding allegations that the Licensee failed to properly handle and account for the money, used a friend’s credit card to pay for a client’s insurance policy which created a conflict of interest and failed to refund a client in accordance with the cancellation provisions set out in the client’s insurance contract.
2. On November 28, 2023, as part of Council’s investigation, a Review Committee (the “Committee”) comprised of Council members met with the Licensee via video conference to discuss the investigation. The Investigation Report was distributed to the Committee and the Licensee prior to the meeting. A discussion of the Investigation Report took place at the meeting, and the Licensee was given an opportunity to make submissions and provide further information.
3. Having reviewed the investigation materials, the Committee prepared a report for Council. The Committee’s report, along with the Investigation Report, were reviewed by Council at its January 30, 2024, 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. The Licensee has been licensed with the Insurance Council as a Life and Accident and Sickness insurance agent (“Life Agent”) since July 2011, to present. The Licensee has held an unaffiliated authority to represent since April 14, 2016.
6. On April 24, 2023, the Insurance Council received a complaint from TN (the “Complainant”) regarding a travel insurance policy (the “Policy”) that was purchased for her parents with an insurer through the Licensee.
7. In June 2021, the Complainant contacted the Licensee via text messages to inquire about a 'Visitors to Canada/Super Visa' travel insurance policy for her parents. The Complainant wanted a policy that was similar to a product her parents had previously purchased. After receiving a recommendation from the Licensee, the Complainant agreed to purchase a 'Visitors to Canada/Super Visa' travel insurance policy with an insurer for a total cost of \$5,168.40.
8. When it came time to pay for the Policy, the Complainant did not have enough credit available on her credit card to pay the \$5,168.40 fee. The insurer did not accept cash payments and only accepted credit card payments. The Licensee stated he wanted to help the Complainant and offered to pay for the policy with a credit card on the Complainant's behalf. The Complainant would then Interac e-Transfer the Licensee the money for the policy. The Licensee confirmed he paid for the policy with a credit card and then was paid by the Complainant via Interac e-Transfer.
9. The Licensee stated that the Complainant was referred to him by the Complainant’s immigration consultant, who had referred business to the Licensee before. Due to the referral, the Licensee stated that he made an exception to his usual practice and offered help with the payment of the policy. The Licensee advised that this was the first time he paid for a client’s policy.
10. The Licensee used a friend’s credit card to purchase the policy. The Licensee described the friend as a close friend and someone the Licensee would consider close to family. The Licensee further described this friend as a personal “financer” who had previously assisted the Licensee.
11. It did not appear that the Licensee advised the Complainant that he would be making the payment for the Policy using a friend’s credit card and not his own.
12. On July 6 and 7, 2021, the Complainant made two Interac e-Transfers in the amounts of \$3,000 and \$2,168.40, to the Licensee for payment of the Policy.
13. The Complainant then asked the Licensee to cancel the policy and requested a pro-rated refund on the Policy as her parents had left Canada on May 27, 2022, before the Policy’s expiration date. On June

10, 2022, the Licensee sent a Premium Refund Request Form from the Complainant to the insurer with the following note *“Please make refund cheque payable to the payee”* and stated the Complainant’s name.

14. On June 17, 2022, the insurer sent a letter to the Complainant, confirming that they had processed a refund of \$4,630.32 on the Policy. The refund letter stated, *“As requested, a refund of \$4630.32 has been processed against this policy and your credit card or bank account has been credited or a cheque has been issued.”*
15. The Complainant did not receive a refund and continued to check on its status with the Licensee until August 2022. The Licensee informed the Complainant that they had requested the insurance company send a refund to the Complainant by cheque, but the refund amount was credited back to the credit card used for the policy purchase.
16. The Licensee advised the Committee that he inquired with the insurer and was told that the refund was processed against the original credit card. The Licensee did not appear to advocate for the matter with the insurer and stated that there was a delay in speaking to his friend, the owner of the credit card, because his friend was out of the country when this occurred. The Licensee was informed by his friend that the credit card used had been compromised, so the friend no longer had this credit card.
17. The Licensee explained that the delay in providing the refund to the client was due to the Licensee and his friend trying to reach the financial institution of the credit card used to retrieve the refund, as the refund was returned to a non-active credit card.
18. On August 6, 2022, the Licensee sent a refund of \$3,000 to the Complainant. The Licensee advised he had not received the refund from the financial institution of the credit card, but provided the Complainant with this amount as the Complainant was making multiple inquiries as to the status of the refund.
19. The Licensee sent the Complainant the remaining amount of \$1,630.32 on May 16, 2023, by Interac e-Transfer.
20. The Licensee explained that he was previously more active in pursuing insurance business, but over the last few years has not actively prospected or conducted insurance business regularly. The Licensee explained that he conducts only 1 to 2 policies a year if he receives a referral.

ANALYSIS

21. Council has concluded that commingling client premium monies into the Licensee's personal funds and using a friend's credit card to pay for the Complainant's insurance product is not in line with the usual practice of the business of insurance. While Council is sympathetic that the Licensee was trying to help the Complainant purchase the insurance product, the Licensee should have known the potential ramifications of using a personal credit card, especially a friend's credit card, to purchase the Complainant's product. It is usual practice that a refund will be made to the original form of payment, and the Licensee ought to have known this practice could have consequences for the Complainant should they need to request a refund of the policy given that the policy was being paid for by a third-party credit card.
22. Clients entrust money to licensees to facilitate transactions on their behalf, and a licensee's ability and reliability in handling these funds is essential to their practice. Council concluded that once the Licensee personally accepted the money from the Complainant and made the policy payment with a personal credit card, the Licensee took on an obligation to ensure the Complainant was refunded all money due in accordance with the cancellation of the policy. In the public's view or the Complainant's view, the Licensee took the Complainant's money and was then responsible for ensuring the appropriate refund was made.
23. Council further notes that the Licensee did not properly disclose to the Complainant that a friend's credit card would be used to purchase the policy and that the Licensee did not act in the usual practice of dealing with clients in this situation. Although Council recognizes that there was some delay in the Licensee obtaining the refund from the closed credit card, Council has determined that the burden of the delay is on the Licensee, for creating this situation. The Complainant should not have been subject to a long delay in receiving the refund after the insurer confirmed the refund. Council acknowledges the Licensee did provide the Complainant with a \$3,000 refund prior to obtaining the refund from the closed credit card but notes the Licensee ought to have provided the Complainant with the full refund. The Licensee then could have pursued reimbursement with the insurer and/or the financial institution in which the closed credit card received the refund.
24. Council does not believe that the Licensee fully understood the misconduct that occurred in this circumstance. Council noted that the Licensee tried to place blame on the financial institution in providing the refund, but the Licensee failed to recognize the situation was created due to the Licensee's actions by paying for the Complainant's policy with a third-party credit card and deviating from the usual practice of insurance business. Council does not believe that the Licensee had any ill-intent in his actions, but there was a lack of understanding of the knowledge and skills consistent with the usual practice of the business of insurance.

25. Council considered the impact of Council Rule 7(8) and Council's Code of Conduct on the Licensee's conduct, including section 5 ("Competence"), section 6 ("Financial Reliability") and section 7 ("Usual Practice: Dealing with Clients"). Council concluded that the Licensee's conduct amounted to breaches of the above Code of Conduct sections and the professional standards set by the Code.

PRECEDENTS

26. Prior to making its intended decision, Council took into consideration the following precedent cases. While Council is not bound by precedent and that each matter is decided on its own facts and merits, Council found that these decisions were instructive in terms of providing a range of sanctions for similar types of misconduct.
27. [Jasbir \(Jessie\) Singh Minhas](#) (March 2023): concerned a Level 3 agent licensee who processed his own ICBC Autoplan transactions on 13 occasions between September 14, 2016, and January 12, 2019. Additionally, the licensee's son was involved in a motor vehicle collision where the son was driving the licensee's vehicle. The son left the scene of the accident. The licensee reported to ICBC that he was the driver involved in the collision and not his son. After an ICBC investigation, it was proven that the son was, in fact, the driver and not the licensee. The licensee admitted that he falsely declared being the driver in the accident when he knew his son had been the driver. The licensee was restricted from completing ICBC Autoplan for one year and required to complete courses. Council determined that the licensee engaged in a conflict of interest by processing his own ICBC transactions, did not respond promptly and honestly to inquiries from Council and failed to disclose to Council his criminal charges. Council ordered that the licensee be suspended for a period of one year, downgraded the licensee to a Level 2 for one year following the suspension, required the licensee to complete courses, and assessed investigation costs.
28. [Wendy Chui Ping Kwan](#) (July 2022): concerned a Level 2 agent licensee who processed her own ICBC Autoplan transactions since the early 1990s and misrepresented the principal operator of her personal vehicle on several ICBC policies. The misrepresentation came to light after ICBC's investigation into the licensee's stolen vehicle claim. ICBC prohibited the licensee from conducting Autoplan business for nine months. By processing her own insurance transactions, Council found that the licensee engaged in a clear conflict of interest. Council determined that the licensee ought to have known that her conduct was unacceptable, given that the licensee has over 30 years of experience in the insurance industry. In addition, the licensee made material misstatements to Council during its investigation. The licensee derived a financial benefit from her misconduct, as the misrepresentation led to reduced premiums at the detriment of ICBC. Council accepted that the licensee did not have a prior discipline history with Council. The licensee was suspended for one year, had her Level 2 agent

licence downgraded to a Level 1 salesperson licence for one year, was required to complete an ethics course, the Council Rules Course, and the Autoplan Basics program, and assessed investigation costs.

29. [Allen Ton-Ming Fu](#) (November 2018): concerned a Level 2 agent licensee who processed his own ICBC Autoplan transaction and, while doing so, altered his Claims Rated Scale ("CRS") on the ICBC system, resulting in the licensee receiving the maximum CRS discount on his insurance premium. The licensee had a colleague sign the insurance documents as the agent. ICBC conducted an investigation and subsequently charged the licensee the amount he underpaid for his policy and prohibited the licensee from conducting Autoplan business for one year. Council determined that the licensee improperly used his position as an insurance licensee for personal gain. Council considered the fact that the licensee was penalized by ICBC; however, it concluded that it was necessary to emphasize to the industry that Council will not tolerate conduct that is self-serving and undertaken for personal gain. The licensee was suspended for one year, subject to supervision for one year, required to complete an ethics course, and assessed investigation costs.
30. [Allen Stanley Young](#) (August 2022): concerned a life agent licensee who was found to have failed to document client communications and instructions. Council noted it is difficult for a licensee to demonstrate that he or she acted appropriately should a concern arise regarding the handling of the client file. The lack of a documentation system in place called into question the licensee's ability to engage in the usual practice of insurance and the licensee's competency. Council ordered that the licensee be supervised for a period of 12 months, be required to complete various courses, and assessed investigation costs.

MITIGATING AND AGGRAVATING FACTORS

31. Council considered relevant mitigating and aggravating factors in this matter. The primary mitigating factor is that the Licensee did not intend for this situation to occur, as it appears that the Licensee believed that he was helping the Complainant in the situation. Additionally, Council noted that the Licensee was fully cooperative throughout Council's investigation.
32. As for aggravating factors, Council considered that although the Complainant was paid by the Licensee for the refund, it took almost a year for the Complainant to be paid in full, and this in Council's view posed a potential risk of harm to the public and was viewed as an aggravating factor in the circumstances.

CONCLUSIONS

33. After weighing all of the relevant considerations, Council found the Licensee to be in breach of the Council Rules and the Code of Conduct and concluded that the Licensee would benefit from supervision and educational courses to ensure the Licensee is aware of their duties and obligations as a Licensee. Council has determined that the [Young](#) case is the most analogous case, as competency and usual practice of insurance are relevant to the facts of this matter.
34. With respect to investigation costs, Council concludes that these costs should be assessed against the Licensee. As a self-funded regulatory body, Council looks to licensees who have engaged in misconduct to bear the costs of their discipline proceedings, so that those costs are not otherwise borne by British Columbia's licensees in general. Council has not identified any reason for not applying this principle in the circumstances.

INTENDED DECISION

35. Pursuant to sections 231, 236, and 241.1 of the Act, Council made the following intended decision to:
- a. Require the Licensee to be supervised by a qualified life and accident and sickness insurance agent, as approved by Council, for a period of 12 months of active licensing, commencing, at the latest, one month from the date of Council's order;
 - b. Require the Licensee to complete the following courses, or equivalent courses, as acceptable to Council, within 90 days of the date of Council's order:
 - i. The Council Rules Course for life and/or accident and sickness insurance; and
 - ii. The Advocis course "Making Choices I: Ethics and Professional Responsibilities in Practice"
(collectively the "Courses");
 - c. Assess the Licensee with Council's investigation costs in the amount of \$1,131.25, to be paid within 90 days of Council's order; and
 - d. Impose a condition on the Licensee's life and accident and sickness insurance agent licence that failure to obtain a supervisor as required, and failure to complete the Courses, and pay the investigation costs in full within 90 days of the date of Council's order will result in the automatic suspension of the Licensee's licence and the Licensee will not be permitted to complete the Licensee's 2026 annual licence renewal until such time as the Licensee has complied with the conditions listed herein.

36. Subject to the Licensee's right to request a hearing before Council pursuant to section 237 of the Act, the intended decision will take effect after the expiry of the hearing period.

ADDITIONAL INFORMATION REGARDING FINES/COSTS

37. Council may take action or seek legal remedies against the Licensee to collect outstanding fines and/or costs, should these not be paid by the 90 day deadline.

RIGHT TO A HEARING

38. If the Licensee wishes to dispute Council's findings or its intended decision, the Licensee may have legal representation and present a case in 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 fourteen (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.**
39. 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 thirty (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 <https://www.bcfst.ca/> or visit the guide to appeals published on their website at <https://www.bcfst.ca/app/uploads/sites/832/2021/06/guidelines.pdf>.

Dated in Vancouver, British Columbia on the **26th of February, 2024**.

For the Insurance Council of British Columbia



Janet Sinclair
Executive Director