

In the Matter of

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

and

The *INSURANCE COUNCIL OF BRITISH COLUMBIA*
("Council")

and

DOUGLAS BRYAN RUEMPER
(the "Licensee")

ORDER

As Council made an intended decision on November 16, 2010, 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 December 15, 2010; 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:

1. a condition imposed on the Licensee's life and accident and sickness insurance licence, for a minimum period of two years of active licensing, that the Licensee must be under the direct supervision of a life insurance agent who has at least five years of active licensed experience and has been approved by Council;
2. a condition imposed on the Licensee's life and accident and sickness insurance licence that the Licensee must successfully complete Council's Life Licence Qualification Program examination on or before July 11, 2011. If the Licensee does not successfully complete the examination by this date, the Licensee's life and accident and sickness insurance licence is suspended as of July 12, 2011 without further action from Council and the Licensee will not be permitted to complete any annual filing until such time as the ordered examination is successfully completed;
3. the assessment of Council's investigative costs of \$950.00; and

ORDER

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4. as a condition of this Order, the Licensee is required to pay the investigative costs no later than **April 11, 2011**. If the Licensee does not pay the investigative costs in full by this date, the Licensee's life and accident and sickness insurance licence will be suspended without further action from Council and the Licensee will not be permitted to complete any annual filing until such time as the ordered costs are paid in full.

This Order takes effect on the **11th day of January, 2011**.



Barbara MacKinnon, CAIB
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

respecting

DOUGLAS BRYAN RUEMPER
(the "Licensee")

INTRODUCTION

Pursuant to section 232 of the *Financial Institutions Act* (the "Act"), Council conducted an investigation to determine whether there was compliance by the Licensee with the requirements of the Act.

As part of Council's investigation, on October 25, 2010, an Investigative Review Committee (the "Committee") met with the Licensee via conference call to discuss the disciplinary action taken against the Licensee by the Mutual Fund Dealers Association of Canada ("MFDA"); a civil judgment against the Licensee involving an investment; and, the non-disclosure of the matters to Council.

The Committee was comprised of one voting and two non-voting members of Council, all of whom have significant experience in the insurance business. Prior to the Committee's meeting with the Licensee, an investigation report was distributed to the Committee and the Licensee for review. A discussion of this report took place at the meeting and the Licensee was 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 Licensee, 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 findings and recommended disposition, along with the aforementioned investigation report, was presented to Council at its November 16, 2010 meeting. At the conclusion of its meeting, Council determined that the matter should be disposed of in the manner set out below.

INTENDED DECISION PROCESS

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

Based on the information contained in the investigation report, Council made the following findings of fact:

Licensing and Employment Information

1. The Licensee was first licensed as a life insurance agent on December 2, 1986.
2. The Licensee has not been subject to any discipline by Council in the past.
3. The Licensee operates his life insurance business under the name "Douglas B. Ruemper Financial Services".
4. The Licensee primarily places his insurance business through a managing general agency ("MGA") in Kelowna.

MFDA Discipline

5. As set out in an order of the MFDA of May 25, 2010, the MFDA concluded that the Licensee had contravened its rules by:
 - a) engaging in personal financial dealings with a client, thereby creating a conflict or potential conflict of interest between the Licensee and the client;
 - b) making an offer to settle a complaint without the prior written consent of his mutual funds dealer;
 - c) engaging in 12 outside investment activities without disclosing the same to, or obtaining approval from, his mutual funds dealer; and

- d) failing to comply with the policies and procedures of his mutual funds dealer relating to disclosure of client complaints, avoiding conflicts of interest and exclusive representation of products approved by his mutual funds dealer.
6. Prior to being registered as a mutual funds salesperson, the Licensee was involved in the development of two luxury alpine inns in British Columbia. He was the Executive Vice President of the management corporation that oversaw the development. While in that role, he raised money for the development from a client and when the client's investment did not perform as anticipated, the client complained to the Licensee.
7. The client complained on more than one occasion and at a period of time when the Licensee was registered as a mutual funds salesperson, thereby requiring him to report the complaints to his mutual funds dealer.
8. Between 2005 and 2007, the complaints were not reported as required and the Licensee instead personally compensated the client for his investment losses, ultimately offering to settle the client's complaints with a lump sum payment.
9. When the matter came to the attention of his mutual funds dealer, a subsequent review identified a total of 12 business activities other than mutual funds which the Licensee had engaged in between 2004 and 2007, without any disclosure to his mutual funds dealer, which he was required to do.
10. Between 2004 and 2006, the Licensee was found to have sold or facilitated the sale of \$105,000.00 in shares of two companies, in which he had an interest, to five clients through the facilities of his mutual funds dealer.
11. As a result of the foregoing, the Licensee, who had been registered as a mutual funds salesperson from 1997 to 2008, was permanently prohibited by the MFDA from conducting securities related business in any capacity while in the employ of, or in association with, any MFDA member; fined \$25,000.00; and ordered to pay the investigative costs of \$2,500.00.
12. The Licensee submitted that he has paid the investigative costs of \$2,500.00 and that he intends to pay the fine in full.
13. The Licensee advised that because the order was on the internet and since he had told his MGA about it, he assumed Council was aware of the order. Therefore, it was not necessary for him to provide formal notice and he did not disclose the MFDA order to Council as required under Council Rules.

14. The Licensee also indicated that at the time of the MFDA review and order, he was preoccupied with his wife's ill health as well as some personal health issues he was experiencing, both of which he felt compromised his cognitive abilities, focus and organizational skills, and contributed to his failure to notify Council of the MFDA order.
15. The Licensee advised that ultimately it was his responsibility to disclose the order to Council, which he failed to do, and for this, he apologized to the Committee.

Civil Default Judgment

16. The Licensee was named as a defendant in a civil proceeding. Court records indicate that the plaintiff commenced an action against the Licensee and other partners from one of his outside business ventures for \$300,000.00, allegedly owing in satisfaction of funds the plaintiff claimed to have advanced as a loan for a private investment.
17. The proceedings concluded by way of a default judgment issued on October 19, 2009.
18. A default judgment can be obtained for an action in debt if the defendant fails to file a statement of defence within the permitted time frame.
19. In this case, a statement of defence was initially filed after which the statement of claim was amended. An amended statement of defence was never filed in response.
20. The Licensee submitted that he is no longer involved in the venture in question and resigned from its board, despite the information reflected in the British Columbia Corporate Registry indicating otherwise.
21. The Licensee submitted that he had no knowledge of the default judgment until receipt of Council's investigative report attached hereto.
22. The Licensee suggested that he intended to look into the matter and work out some financing arrangements with the plaintiff with a view to restitution.

Licensee's Insurance Clients

23. Four of the Licensee's insurance clients invested monies in his private business ventures, however, none of them used insurance funds to facilitate the private investments, which were done when the Licensee was registered as a mutual funds salesperson.

24. Since the business ventures related to building, construction and property development, “unrelated to mutual funds”, the Licensee did not believe they required reporting to the MFDA or his mutual funds dealer at the time.
25. The Licensee advised he does not intend to market, promote, or sell any private or public securities for any company in the future.

LEGISLATION

Council Rule 3(2) **Licence Applications** ***Applicants to Satisfy Council***

- (2) If an applicant satisfies Council that the applicant:
 - (a) has met all of the requirements set out in the Act and Council Rules;
 - (b) is trustworthy, competent and financially reliable;
 - (c) intends to publicly carry on business as an insurance agent, salesperson or adjuster in good faith and in accordance with the usual practice of the business of insurance;
 - (d) has not in any jurisdiction:
 - (i) been refused, or had suspended or cancelled, an insurance licence or registration;
 - (ii) been convicted of an offence; or
 - (iii) been refused or had suspended or cancelled a licence or registration in any other financial services sector or professional fieldfor a reason that reveals the applicant unfit to be an insurance agent, salesperson or adjuster;
and
 - (e) does not hold other business interests or activities which would be in conflict to the duties and responsibilities of a licensee, or give rise to the reasonable possibility of undue influence.then the Council may consent to issuing a licence.

Council Rule 7(3)(a) **Licence Conditions**

- (3) A licensee must notify Council within 5 business days:
 - (a) where the licensee or any business the licensee owns or has participated in as a director, officer or partner:
 - (i) is disciplined by any financial sector regulator, or any professional or occupational body;
 - (ii) has any judgment rendered in relation to any insurance activities, fraud or breach of trust;
 - (iii) declares bankruptcy; or
 - (iv) is charged or convicted of any criminal offence or any offence under any law of any jurisdiction, excluding traffic offences resulting in monetary fines only;
 - (b) when a licensee’s authorization to represent an insurance agency, adjusting firm or general insurance direct writer is withdrawn;
 - (c) in the case of subsection (b) if the reason for withdrawing the authorization relates to the

- individual's suitability or conduct as a licensee, of the reasons for the action taken; and
(d) of any change in name, including trade names.

Section 231 of the Act
Part 7 – Administration of the Regulation of Financial Institutions
Division 2 – Insurance Council of British Columbia

Council may suspend, cancel or restrict licences and impose fines

- (1) If, after due investigation, the council determines that the licensee or former licensee or any officer, director, employee, controlling shareholder, partner or nominee of the licensee or former licensee
- (a) no longer meets a licensing requirement established by a rule made by the council or did not meet that requirement at the time the licence was issued, or at a later time,
 - (b) has breached or is in breach of a term, condition or restriction of the licence of the licensee,
 - (c) has made a material misstatement in the application for the licence of the licensee or in reply to an inquiry addressed under this Act to the licensee,
 - (d) has refused or neglected to make a prompt reply to an inquiry addressed to the licensee under this Act,
 - (e) has contravened section 79, 94 or 177, or
 - (e.1) has contravened a prescribed provision of the regulations,
- then the council by order may do one or more of the following:
- (f) reprimand the licensee or former licensee;
 - (g) suspend or cancel the licence of the licensee;
 - (h) attach conditions to the licence of the licensee or amend any conditions attached to the licence;
 - (i) in appropriate circumstances, amend the licence of the licensee by deleting the name of a nominee;
 - (j) require the licensee or former 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;
 - (k) in respect of conduct described in paragraph (a), (b), (c), (d), (e), or (e.1), fine the licensee or former licensee an amount
 - (i) not more than \$20 000 in the case of a corporation, or
 - (ii) not more than \$10 000 in the case of an individual.
- (2) A person whose licence is suspended or cancelled under this section must surrender the licence to the council immediately.
- (3) If the council makes an order under subsection (1)(g) to suspend or cancel the licence of an insurance agent, or insurance adjuster, then the licences of any insurance salesperson employed by the insurance agent, and of any employees of the insurance adjuster are suspended without the necessity of the council taking any action.
- (3.1) On application of the person whose licence is suspended under subsection (1)(g), the council may reinstate the licence if the deficiency that resulted in the suspension is remedied.
- (4) If an insurance agent's licence or an insurance adjuster's licence is reinstated, the licences of any insurance salespersons or employees of the insurance adjuster who
- (a) were employed by that agent or adjuster at the time of the suspension, and
 - (b) remain employees of that agent or adjuster at the time of reinstatement,
- are also reinstated without the necessity of the council taking any action.

Section 236 of the Act
Part 7 – Administration of the Regulation of Financial Institutions
Division 2 – Insurance Council of British Columbia

Power to impose conditions

- (1) The commission, superintendent or council, depending on which of them has the power to make the order, give the consent or issue the business authorization permit or licence may
 - (a) impose conditions that the person considers necessary or desirable in respect of
 - (i) an order referred to in section 235(1),
 - (ii) a consent referred to in section 235(2),
 - (iii) a business authorization,
 - (iv) a permit issued under section 187(1), or
 - (v) a licence issued under Division 2 of Part 6, and
 - (b) remove or vary the conditions by own motion or on the application of a person affected by the order or consent, or of the holder of the business authorization, permit or licence.
- (2) A condition imposed under subsection (1) is conclusively deemed to be part of the order, consent, business authorization, permit or licence in respect of which it is imposed, whether contained in or attached to it or contained in a separate document.
- (3) Except
 - (a) on the written application or with the written permission of the holder, or
 - (b) in the circumstances described in section 164, 231 or 249(1),a power of the commission, superintendent or council under this Act to impose or vary conditions in respect of
 - (c) a business authorization is exercisable only on or before its issue date, or
 - (d) a permit under section 187(1) or a licence under Division 2 of Part 6 is exercisable only on or before its issue datewith effect on and after that date.

Section 241.1 of the Act
Part 7 – Administration of the Regulation of Financial Institutions
Division 2 – Insurance Council of British Columbia

Assessment of Costs

- (1) If an order results from an investigation or hearing, the commission, the superintendent or the council may by order require the financial institution, licensee, former licensee or other person subject to the order to pay the costs, or part of the costs, or either or both of the following in accordance with the regulations:
 - (a) an investigation;
 - (b) a hearing.
- (2) Costs assessed under subsection (1)
 - (a) must not exceed the actual costs incurred by the commission, superintendent or council for the investigation and hearing, and
 - (b) may include the costs of remuneration for employees, officers or agents of the commission, superintendent or council who are engaged in the investigation or hearing.

- (3) If a person fails to pay costs as ordered by the date specified in the order or by the date specified in the order made on appeal, if any, whichever is later, the commission, superintendent or council, as the case may be, may file with the court a certified copy of the order assessing the costs and, on being filed, the order has the same force and effect and all proceedings may be taken on the order as if it were a judgment of the court.

ANALYSIS

Council Rule 7(3) requires that licensees notify Council within five business days when certain events occur, such as being disciplined by a financial sector regulator or when a judgment is rendered against them in relation to any insurance activities, fraud or breach of trust.

In the matter at hand, Council considered whether the Licensee had a duty to provide notification to Council of two particular events. The first event was disciplinary action taken against him by the MFDA in May 2010. The second event was a civil judgment rendered against him and others in October 2009. Neither of these two events were disclosed to Council.

With respect to the civil judgment, Council determined it could not be established that it involved insurance activities, fraud or breach of trust, and therefore, the Licensee was not required to disclose it to Council. Whereas, the MFDA disciplinary action clearly required disclosure pursuant to Council Rules.

The Licensee explained that he was dealing with personal and family issues at the time which clouded his judgement. The Licensee stated he believed that disclosure of the discipline to his MGA, as well as publication of the discipline on the MFDA website, met his responsibilities to Council. Nonetheless, he acknowledged his failure and did not dispute that he had breached Council Rules in this regard.

Given this acknowledgement, Council considered what action would be appropriate in the circumstances. While noting that breaches of this nature typically result in a fine, Council did not believe a fine was necessary in this instance. In particular, it did not appear the Licensee intended to withhold the disciplinary action from Council, and a significant penalty had already been imposed on him by the MFDA. Instead, Council felt that a caution letter to the Licensee reminding him about his notification responsibilities was sufficient.

However, in reviewing the matter, Council identified a pattern of behaviour that caused some concern. Specifically, he failed to comply with a number of MFDA requirements, as well as a Council notification requirement, and he was a party to a civil proceeding that resulted in a default judgment against a corporate entity for which he is one of the directors. Council found this indicated the Licensee was either dismissive of important obligations or the personal issues going on at the time these events occurred had significantly impaired his abilities and/or judgement. Regardless, Council felt it reflected on his competency and that he could pose some risk to the public in the future if certain measures were not taken.

In formulating an appropriate response to this concern, Council considered past decisions of Council respecting *Robert Scott Ritchie*, *Martin Raymond Hall* and *David Michael Michaels* wherein the licensees acted contrary to the *Securities Act* to the detriment of clients and were barred from the securities industry for periods of time. In those matters, Council placed the licensees under the supervision of an experienced life insurance agent for a period of time and, where the securities misconduct was deemed to be intentional and to the detriment of clients, the supervision was imposed for a minimum period of two years.

The similarity that Council found between the Licensee's situation and the above mentioned decisions was that an element of public risk existed in each case, and it was necessary to have the activities of the licensees monitored.

Accordingly, because Council determined the Licensee may pose a risk to the public, it felt it necessary to have his insurance activities monitored for a period of time that will allow him to demonstrate to Council that past problems have been resolved.

Council also determined that to enhance the protection of the public, the Licensee ought to demonstrate his competency by successfully completing Council's Life Licence Qualification Program examination.

INTENDED DECISION

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

1. impose a condition on the Licensee's life and accident and sickness insurance licence, for a minimum period of two years of active licensing, that the Licensee must be under the direct supervision of a life insurance agent who has at least five years of active licensed experience and has been approved by Council;
2. impose a condition on the Licensee's life and accident and sickness insurance licence that the Licensee must successfully complete Council's Life Licence Qualification Program examination within six months, otherwise his licence is automatically suspended; and
3. assess the Licensee Council's investigative costs of \$950.00.

The Licensee is advised that should the intended decision become final, the above costs which form part of the order, will be due and payable within 90 days of the date of the order.

The intended decision will take effect on **January 11, 2011**, subject to the Licensee's right to request a hearing before Council pursuant to section 237 of the Act.

RIGHT TO A HEARING

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 by **January 10, 2011**. 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 by **January 10, 2011**, the intended decision of Council will take effect.

INTENDED DECISION
Douglas Bryan Ruemper
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Even if this decision is accepted by the Licensee, 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 www.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 **15th day of December, 2010.**

For the Insurance Council of British Columbia



Gerald D. Matier
Executive Director

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