

In the Matter of the

FINANCIAL INSTITUTIONS ACT, RSBC 1996, c.141
(the “Act”)

and the

INSURANCE COUNCIL OF BRITISH COLUMBIA
 (“Council”)

and

LEWIS TIMOTHY SMITH
(the “Former Licensee”)

ORDER

As Council made an intended decision on May 3, 2022, pursuant to sections 231, 236, and 241.1 of the Act; and

As Council, in accordance with section 237 of the Act, provided the Former Licensee with written reasons and notice of the intended decision dated July 6, 2022; and

As the Former 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 Former Licensee is fined \$1,000, to be paid by January 23, 2023;
- 2) The Former Licensee is assessed Council’s investigation costs of \$2,737.50, to be paid by January 23, 2023; and
- 3) A condition is imposed on the Former Licensee that requires him to pay the above-ordered fine and investigation costs in full prior to the Former Licensee being licensed in the future.

Order
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July 27, 2022
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This order takes effect on the **27th day of July, 2022.**

A handwritten signature in black ink, appearing to read 'Janet Sinclair', positioned above a horizontal line.

Janet Sinclair, Executive Director
Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA

(“Council”)

respecting

LEWIS TIMOTHY SMITH

(the “Former Licensee”)

1. Pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council conducted an investigation to determine whether the Former Licensee acted in compliance with the requirements of the Act, Council Rules, and Code of Conduct, and in particular to determine whether the Former Licensee breached Rule 7(1), 7(4), 7(8), and 7(9), and section 3 (“Trustworthiness”); section 4 (“Good Faith”); section 5 (“Competence”); and section 7 (“Usual Practice of Dealing with Clients of the Code of Conduct related to allegations from a complainant (“GS”) that the Former Licensee shared the complainant’s confidential information with another life agent, non-disclosure of deferred sales charges (“DSC”) for the complainant’s segregated funds, suitability of segregated fund transactions such as switches and resets, and a failure to honestly represent services provided.
2. On December 1, 2021, and May 3, 2022, as part of Council’s investigation, a Review Committee (the “Committee”) comprised of Council members met with the Former Licensee and the Former Licensee’s legal counsel via video conference to discuss the investigation. An investigation report prepared by Council staff was distributed to the Committee and the Former Licensee and the Former Licensee’s legal counsel prior to the meeting. A discussion of the investigation report took place at the meeting and the Former Licensee was given an opportunity to make submissions and provide further information. Having reviewed the investigation materials and discussed the matter with the Former Licensee and the Former Licensee’s legal counsel, the Committee prepared a report for Council.
3. The Committee’s report, along with the aforementioned investigation report, were reviewed by Council at its June 14, 2022, 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 Former Licensee of the action it intends to take under sections 231, 236, and 241.1 of the Act before taking any such action. The Former 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 Former Licensee.

FACTS

5. The Former Licensee was licensed with Council as a life and accident and sickness insurance agent ("Life Agent") from March 1987 to June 2021. The Former Licensee was the owner and nominee of Summit Insurance Agency Ltd. which held an active corporate life licence with Council from August 1994 to June 2021.
6. At the material time, the Former Licensee shared an office space with another Life Agent licensee (the "Other Licensee"). The Other Licensee was the owner and nominee of an insurance agency. The Former Licensee did not have authority to represent the Other Licensee's agency and each agent had separate businesses. The Former Licensee and the Other Licensee had a long-standing relationship of twenty years and would rely on the other for office support in each other's absence from the office.
7. In October of 2016, due to health concerns, the Former Licensee moved to another town, however, the Former Agency's head office remained and operated in [REDACTED]. The Former Licensee did not intend to permanently move from [REDACTED] but wanted to focus on his health and recovery. The Former Licensee did not advise Council of his change of address. The Former Licensee's interim plan was to return to the [REDACTED] office once or twice a month, depending on the weather and the Former Licensee's health. In his absence from the Former Agency's [REDACTED] office, the Other Licensee helped to complete administrative tasks for the Former Licensee.
8. The Former Licensee states that the Other Licensee's role was limited to completing administrative tasks and relaying instructions related to requests from the Former Licensee's clients. The Former Licensee advised that, at all times, all client files were locked in a filing cabinet for which he had the only key. The Former Licensee advised that any electronic files were on his personal computer and no other persons had access to that information. The Former Licensee stated that there was no need to provide the other Licensee with a key to the filing cabinet as there was never a need for the Other Licensee to access client files. The Former Licensee continued to work from home in the new town and would return to the [REDACTED] office as business required and health permitted.

9. The Other Licensee advised that in January of 2017, the Former Licensee and the Other Licensee made a formal agreement for the purchase of The Former Licensee's client book. The Former Licensee advised that in the summer of 2018, the formal agreement with the Other Licensee for the purchase of his book was made. The parties had differing accounts for when the formal agreement was made. There was no documentation presented by the parties to confirm the date of the formal agreement. The Former Licensee wrote a letter to the insurer signing all rights of interest to the Other Licensee. It was only after the formal sale agreement had been made that the Other Licensee gained access to the Former Licensee's client files.
10. GS was a long-standing client of the Former Licensee, and they had a familiar relationship. The Former Licensee advised that regardless of his move to the new town, he remained agent of record for GS and his other clients, unless the client expressed a desire to leave. The Former Licensee advised that GS frequently visited the office, as GS at one point had an office in the same building. The Former Licensee stated that GS was very familiar with the office set up and with the Other Licensee.
11. The Former Licensee advised that if a client came to the office in his absence, the Other Licensee could provide administrative help for basic forms such as address changes or a beneficiary change, but that the client would need to bring in their statements or account information as the Other Licensee did not have access to it. The Former Licensee advised that if the client wanted something more substantial completed, they would need to give "verbal or written consent" to the Other Licensee to handle the matter, or for the Other Licensee to relay the message to the Former Licensee to complete. If an emergency was to arise and a client needed immediate assistance, the client would be advised to call the insurer directly to give the Other Licensee permission to complete the task. However, the Former Licensee advised that no emergency situations arose in his absence from the [REDACTED] office.
12. The Former Licensee stated that GS provided the Other Licensee with their statements from an insurer when they would visit the office in his absence. Both the Former Licensee and the Other Licensee denied that the Other Licensee had access to GS's client file. The Former Licensee advised the Committee that he had taken GS's client file with him to his new town at some point in late fall 2016 so that the Other Licensee would not have had access to GS's file.
13. On April 5, 2017, the Other Licensee helped GS by completing and witnessing an insurer "Insurance Switch Form." It is noted that this particular transaction did not incur any fee to GS. The switch was from a more "conservative" fund to an "aggressive" fund. The Former Licensee advised that the Other Licensee had discussed with GS the strategy to switch the

fund from a conservative fund to an aggressive fund, however, the Former Licensee processed the form as he was the agent on record. There was nothing in the Former Licensee's file that documented this transaction or any client instruction to do so. The Former Licensee provided two Insurance Guaranteed Investment Funds Trading Authorization forms dated February 5, 2010, and March 20, 2014, which provided the Former Licensee authorization to conduct all various transactions in relation to GS's insurance accounts.

14. The Former Licensee advised that it was his practice to tell clients about any fees related to switches or for deferred sales charges. A review of the client file was difficult to understand, as the notes were undated, handwritten, and were largely illegible. The Former Licensee provided an explanation of the notes, which mainly demonstrated discussions with GS about their financial situation but only two of the fifteen pages discussed "keep rrsp's" or "rrsp split." There were no other notes of instructions by GS or documentation of advising GS of fees related to any of the products.
15. The Former Licensee advised that although he always told clients about fees, when GS was charged a deferred sales charge in 2016, he had reimbursed them for these fees to keep his client happy. GS was charged a substantial amount of deferred sale charges in August 2018, when they transferred their accounts from the Former Licensee's agency to another agency. The Former Licensee advised that he was unaware that there were any issues with the relationship with GS and he was shocked to find that GS had transferred to another agency in 2018. At that time, since the Former Licensee was no longer GS's advisor, he was not able to provide GS advice that any transfer on their accounts would result in the substantial deferred sale charges that GS was charged and complained about to Council.

ANALYSIS

16. Council concluded that the Former Licensee failed to engage in the usual practice of the business of insurance by his failure to document communications and instructions from GS. The Former Licensee had been licenced for over thirty years at the time the complaint arose and should have known his requirement to properly document all communications and instructions from a client. Council concluded that the client file did not sufficiently document client instructions or communications related to essential aspects of products such as fees. The notes provided did not evidence the Former Licensee's stated practice of advising GS of any fees associated with products sold. Licensees should be able to demonstrate proper documented communications and instructions with a client to ensure mutual understanding and provide a record of the transaction. As the agent of record the Former Licensee should have had documentation related to GS's April 5, 2017 switch that the Former Licensee processed. There were no notes related to instructions to conduct this

switch or documentation to show that all material information was disclosed to GS related to the switch.

17. Council concluded that the Former Licensee did not breach client confidentiality or disclose confidential information of GS to the Other Licensee. Council concluded that the Former Licensee secured client files in locked cabinets that were inaccessible to the Other Licensee. In this regard, the Former Licensee took steps to ensure the safekeeping and confidentiality of client files. Council concluded that the Former Licensee advised GS of his health conditions and that GS was aware he would not be at the Former Agency's [REDACTED] office regularly. Council concluded that the Former Licensee did not provide confidential information about GS to the Other Licensee.
18. Council concluded that the Former Licensee failed to advise Council of his change of address in accordance with Council Rule 7(4)(a).
19. Council considered the impact of Council's Code of Conduct guidelines on the Former Licensee's conduct, including Rule 7 (8-9), section 5 ("Competence"), and section 7 ("Usual Practice of Dealing with Clients"). Council concluded that the Former Licensee's conduct amounted to breaches of the above Code of Conduct sections and the professional standards set by the Code.
20. Prior to making its recommendation, Council considered several precedent decisions. While it is recognized that Council is not bound by precedent and that each matter is decided on its own facts and merits, Council found that these decisions were comparable and instructive in terms of providing a range of sanctions for similar misconduct.
21. *Paul William Moore* (January 2019) concerned a Life Agent licensee who had been licensed with Council since October 2007. Council found he engaged in churning activities, conducted trades without client consent, engaged in unauthorized trading and altered a client's trading authorization form to conduct a trade for another transaction. Council determined that his actions and conduct were incompetent and did not meet the standards expected of a licensee. Council imposed a condition on his licence requiring him to be supervised for 12 months; to complete an ethics course and the Council Rules course; fined him \$7,500; assessed him Council's investigative costs; and assessed him hearing costs.
22. In *Roel Reyes Bernardino* (May 2015), a Life Agent was found to have misrepresented or failed to adequately explain changes to a client's insurance coverage, and to have had the client sign a blank insurance transactional form. The Council found that the licensee was focused on the sale of insurance at the expense of the client's understanding of the

products that the licensee was recommending. The licensee's competency as a Life Agent had been called into question. Council ordered that the licensee be supervised until he accumulated 24 months of active licensing, a condition that the licensee complete the Advocis Getting Established Course, a condition imposed that the licensee be prohibited from acting as a supervisor for three years after the completion of his supervision, and assessed investigative costs of \$1,837.50.

23. *Jack Leonard Parkin* (January 2015) concerned a licensee who had held a Life Agent licence since 1982. Council considered allegations that he had sold his clients a product that did not suit their needs. Council concluded that the licensee had failed to fully understand the product prior to recommending it to the clients and, as a result, did not adequately advise them about certain investment features. Council accepted that the licensee did not intend to harm the clients and genuinely believed he had made appropriate recommendations. However, Council concluded that the licensee had failed to act in a competent manner, in accordance with the usual practice of the business of insurance, in recommending the product and in addressing the clients' concerns about the product. Council placed a condition on his Life Agent license that he be supervised by a qualified Life Agent for a period of 24 months; that he completes certain courses designated by Council; and that he be assessed Council's investigative costs.
24. In the present case, Council acknowledges, as mitigating factors, that the Former Licensee has no prior disciplinary history and that the Former Licensee fully cooperated throughout the investigation with Council. Council considered the Former Licensee's health concerns may have affected his ability to practice to the usual standards but noted that the lack of documentation was in the entirety of GS's client file which indicated the concerns about documentation were ongoing before any health concerns arose.
25. In terms of aggravating factors, the Council noted that the Former Licensee's client file demonstrated that there was a failure to properly document instructions and communications throughout his client relationship with GS. This was not a one-time occurrence.
26. Council views the Former Licensee's conduct to be a breach of Council's Rules and the Code of Conduct and concludes that it is appropriate for the Former Licensee to be fined. As the Former Licensee is no longer in the industry, imposing a period of supervision as in the precedents for competency concerns would not be appropriate in these circumstances. Council concludes that a fine is appropriate in the circumstances to communicate to the Former Licensee, the insurance industry, and the public, that insurance agents are expected by Council to perform their roles and conduct insurance business competently.

27. With respect to investigation costs, Council believes that these costs should be assessed to the Former 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

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

- a) That the Former Licensee be fined \$1,000, which must be paid within 180 days of Council's order;
- b) That the Former Licensee be assessed Council's investigation costs in the amount of \$2,737.50, and which must be paid within 180 days of Council's order; and
- c) That a condition be imposed that the Former Licensee must pay the fine and costs prior to the Former Licensee being licensed in the future.

29. Subject to the Former 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.

RIGHT TO A HEARING

30. If the Former Licensee wishes to dispute Council's findings or its intended decision, the Former 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 Former 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 Former Licensee does not request a hearing within 14 days of receiving this intended decision, the intended decision of Council will take effect.

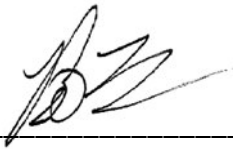
31. Even if this decision is accepted by the Former Licensee, pursuant to section 242(3) of the Act, the British Columbia Financial Services Authority ("BCFSA") still has a right of appeal to the Financial Services Tribunal ("FST"). The BCFSA has thirty (30) days to file a Notice of Appeal once Council's decision takes effect. For more information respecting appeals to

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the FST, please visit their website at www.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 **6th day of July, 2022.**

For the Insurance Council of British Columbia



For Janet Sinclair
Executive Director