

In the Matter of

The *FINANCIAL INSTITUTIONS ACT*

(the “Act”)

(RSBC 1996, c.141)

and

INSURANCE COUNCIL OF BRITISH COLUMBIA

(“Council”)

and

ELLIOTT T. HERRERA

(the “Licensee”)

ORDER

As Council made an intended decision on July 20, 2017 under 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 20, 2017; and,

As the Licensee has decided not to exercise his right to a hearing, in accordance with section 237 of the Act;

Under authority of sections 231, 236 and 241.1 of the Act, Council orders that:

1. The Licensee’s general insurance licence is suspended for a period of one year, commencing on **January 1, 2018** and ending at midnight on **December 31, 2018**.
2. A condition is imposed on the Licensee’s general insurance licence that requires the Licensee to successfully complete the Council Rules Course and the Insurance Corporation of British Columbia’s Privacy Education Course.
3. The Licensee is assessed Council’s investigative costs of \$1,112.50.
4. A condition is imposed on the Licensee’s general insurance licence that requires the Licensee to pay the above-ordered investigative costs and to successfully complete the above-ordered courses before the end of the suspension of his general insurance licence. If the Licensee does not meet these requirements, the Licensee’s general insurance licence will remain suspended and the Licensee will not be permitted to complete any subsequent annual filings until such time as the requirements are met.

Order
Elliott T. Herrera
LIC-186443C132697R1 / COM-2016-00010
November 17, 2017
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This order takes effect on the **17th day of November, 2017.**



Michael Connors, CIP, CRM
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA (“Council”)

respecting

ELLIOTT T. HERRERA (the “Licensee”)

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.

As part of Council’s investigation, on April 10, 2017, a Review Committee (the “Committee”) met with the Licensee and his legal counsel to discuss allegations the Licensee had his unlicensed spouse assist him with insurance activities and, after his spouse obtained an insurance licence, provided client information belonging to the agency where he was employed (the “Agency”) to his spouse and her employing insurance agency (“Agency B”).

The Committee was comprised of three voting members and one non-voting member of Council. 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 make further submissions. Having reviewed the investigation materials and after discussing this matter with the Licensee, the Committee prepared a report for Council.

The Committee’s report, along with the aforementioned investigation report, were reviewed by Council at its May 9, 2017 meeting, where it was determined the matter should be disposed of in the manner set out below.

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

The Licensee has been licensed in British Columbia since 2011 and has held a Level 2 general insurance agent (“Level 2 agent”) licence since 2014. The Licensee was authorized to represent the Agency from 2011 to February 2016. The Licensee now represents another insurance agency.

The Licensee worked full-time for the Agency, primarily conducting automobile insurance business at motor-vehicle dealerships.

An investigation was conducted by the Agency after it became aware that four Agency clients, who were the responsibility of the Licensee, were unaware that their Insurance Corporation of British Columbia (“ICBC”) Autoplan insurance policies had been renewed through Agency B rather than by the Agency.

The Licensee stated that he initially enlisted the assistance of his spouse, who was unlicensed at the time, to contact clients regarding their ICBC Autoplan renewals when he was too busy to make the calls and schedule the appointments himself. The Licensee was working full-time but found he had to work after his shift at the Agency to be able to keep up. In order to meet his goal of becoming a producer, he had to complete at least 60 renewals per month, which was not possible given his other work duties. The Licensee stated he approached the Agency for assistance with managing his schedule but none was provided.

The Licensee’s spouse began assisting the Licensee in May 2015, which she did from their home. The Licensee provided his spouse with a printout of a client coverage renewal list, which included client contact information as well as the Autoplan expiry date and vehicle information. The Licensee’s spouse would contact the Agency’s clients stating that she was calling on behalf of the Licensee to arrange a time for the client to meet with the Licensee to process an Autoplan renewal.

The Licensee stated that he eventually determined it would be more effective if his spouse held an insurance licence. If licensed, his spouse would be able to provide quotes as well as schedule appointments with the Agency’s clients. He considered having his spouse work at the Agency as well, but believed that she would also become overworked and decided she should work at Agency B.

After obtaining a Level 1 general insurance salesperson’s licence and the authority to represent Agency B, the Licensee’s spouse continued to contact the Agency’s clients on behalf of the Licensee from Agency B’s office.

In the four identified cases where the Agency's clients' insurance policies were renewed by the Licensee's spouse through Agency B instead of the Agency, the Licensee stated his primary objective was to renew the insurance through the Agency. He explained that due to time and personnel constraints, the Agency's clients' Autoplan policies were renewed through Agency B. The Licensee stated that the vast majority of the Agency's clients' insurance policies were renewed through the Agency, despite the involvement of his spouse.

Of the four transactions that were processed by Agency B, there was no indication that any of the clients were aware or were provided disclosure that their insurance was being processed by another agency.

Although the Licensee did not receive any compensation from Agency B for these four insurance transactions, the spouse was compensated by Agency B.

The Licensee submitted that he never intended to act inappropriately. He had no intention to mislead clients or the Agency, only to assist clients with completing their renewals.

ANALYSIS

Council determined that the Licensee breached client confidentiality when he shared the Agency's client information with his spouse. Council noted that, initially, when the Licensee's spouse was not licensed, her activities were limited to scheduling appointments. While it does not appear that the spouse engaged in any insurance activity at this time, she was not authorized to represent the Agency and, as such, was not authorized to have access to this information without the clients' or the Agency's approval.

Once the spouse was licensed and authorized to represent Agency B, the Licensee made the breach of client confidentiality even more egregious by allowing his spouse to engage in insurance activities.

Council found that the Licensee failed to provide clients with proper disclosure with regard to his spouse's involvement and that of their respective agencies and failed to advise the Agency that his spouse was facilitating transactions at Agency B for Agency clients.

Council concluded that by providing Agency client renewal information to his spouse, the Licensee breached his clients' privacy, failed to provide proper disclosure to his clients and allowed another licensee to conduct insurance transactions on his behalf, without the appropriate authority to represent.

The Licensee's conduct in allowing his spouse access to his clients' information without proper authority and in allowing her to process transactions through Agency B, without proper disclosure to the clients, brought into question his suitability as an insurance licensee. Council found that the actions of the Licensee in initially having his spouse assist him to be concerning. However, it found his subsequent actions in having his spouse obtain a licence with another agency so that she could better support him to be egregious behavior.

Council determined that a significant suspension is an appropriate penalty to address the suitability concerns and to reflect the serious breach of client confidentiality that occurred when the Licensee allowed his spouse access to the Agency's clients' renewal information.

Council further determined that a condition should be imposed on the Licensee's Level 2 agent licence requiring him to complete the Council Rules Course and ICBC's Privacy Education course prior to the completion of his suspension. Council determined the Licensee should also be assessed Council's investigation costs.

INTENDED DECISION

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

1. Suspend the Licensee's general insurance licence for a period of one year;
2. Impose a condition on the Licensee's general insurance licence that requires him to successfully complete Council Rules Course and ICBC's Privacy Education Course; and
3. Assess the Licensee Council's investigative costs of \$1,112.50.

The Licensee is advised that should the intended decision become final, he will be required to pay the investigative costs and successfully complete the Council Rules Course and ICBC's Privacy Education course before the end of the suspension of his general insurance licence. Should the Licensee fail to meet these requirements, his general insurance licence will remain suspended and he will not be permitted to complete any annual filing until such time as the investigative costs are paid in full and the aforementioned courses are successfully completed.

The Licensee's suspension will begin on **August 18, 2017**, and end at midnight on **August 17, 2018**.

The intended decision will take effect on **August 8, 2017**, 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 **August 7, 2017**. 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 **August 7, 2017**, the intended decision of Council will take effect.


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 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 **20th day of July, 2017**.

For the Insurance Council of British Columbia



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Executive Director
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