

In the Matter of the

FINANCIAL INSTITUTIONS ACT, RSBC 1996, c.141

(the “Act”)

and the

INSURANCE COUNCIL OF BRITISH COLUMBIA

(“Council”)

and

EVAN WILLIAM POWROZNIK

(the “Licensee”)

ORDER

As Council made an intended decision on June 13, 2023, 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 July 4, 2023; 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 be reprimanded;
- 2) The Licensee be required to complete the following courses or equivalent courses, as acceptable to Council (collectively, the “Courses”), by October 30, 2023:
 - a. the Council Rules Course for general insurance and adjusters; and
 - b. the Ethics for Insurance Brokers Course available through the Insurance Brokers Association of BC;

Order

Evan William Powroznik

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- 3) The Licensee be assessed Council's investigation costs of \$925.00, to be paid by October 30, 2023; and
- 4) A condition be imposed on the Licensee's general insurance agent licence that failure to complete the courses and pay the investigation costs in full by October 30, 2023 will result in the automatic suspension of the Licensee's general insurance agent licence, and that the Licensee will not be permitted to complete the Licensee's 2025 annual licence renewal until such times as the Licensee has complied with the conditions listed herein.

This order takes effect on the **1st day of August, 2023**



Janet Sinclair, Executive Director
Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA

(“Council”)

respecting

EVAN WILLIAM POWROZNIK

(“the Licensee”)

1. 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, Council Rules, and Code of Conduct, and in particular to determine whether the Licensee breached section 3 (“Trustworthiness”); section 4 (“Good Faith”); section 5 (“Competence”); and section 7 (“Usual Practice: Dealing with Clients”) of the Code of Conduct by sending inappropriate correspondence to a client that contained language contrary to the usual practice expected in the industry.
2. On December 6, 2022, as part of Council’s investigation, a Review Committee (the “Committee”) comprised of Council members met via video conference with the Licensee to discuss the investigation. An investigation report prepared by Council staff 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. Subsequently, the Committee met on April 13, 2023, to discuss the matter further. Having reviewed the investigation materials and discussed the matter, 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 13, 2023, 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 was first licensed with the Insurance Council as a Level 1 general insurance salesperson (“Level 1 Salesperson”) on June 28, 2012, and became a Level 2 general insurance agent (“Level 2 Agent”) on June 19, 2013. The Licensee has held an authority to represent (“ATR”) an agency (the “Agency”) since October 14, 2016. Between January 9, 2018, to May 25, 2022, the Licensee was a Level 3 general insurance agent at the Agency, but since May 25, 2022, to the present, the Licensee has been a Level 2 general insurance agent for the Agency. The Licensee also holds an ATR with a second agency, where he has been a Level 3 Agent from November 9, 2021, to present.
6. The Agency at the time had a delegated nominee, AS, who held supervisory responsibilities.
7. The Insurance Council received an email on February 1, 2021, from a property management firm. JC (the “Complainant”), an employee of the property management firm, alleged the Licensee sent the Complainant a letter that contained inappropriate language.
8. The Complainant first contacted the Licensee on November 18, 2020, and asked if the Licensee would be interested in submitting a quote for a strata consisting of two high rises that they managed; the existing insurance was due to expire on December 1, 2020. The Licensee confirmed that the Complainant was not a previous client and that this was a new account that he was approached to work on. According to both the Licensee and AS, after a lot of hard work, they managed to put together a quote and get the coverage in place in time to ensure that the strata remained covered. The annual premium quoted for the strata was \$437,063.
9. It is noted that during the relevant time frame, the marketplace for strata insurance was extremely distressed. It is probable that there was some difficulty in obtaining a quote. The Licensee reported that through a reliance on relationships with insurers, the Licensee and AS were able to obtain a quote.
10. On January 16, 2021, the Licensee provided a summary of insurance to the Complainant. On January 28, 2021, 12 days after the Licensee had sent the summary of insurance, the Complainant requested that the policy be cancelled effective February 1, 2021. The Licensee asked the Complainant to provide him with a copy of the new quote the strata had received so that the Agency would have the opportunity to match it. The Complainant responded with the amount of the premium and the deductibles quoted; however, the Complainant did not provide the actual quote. The Complainant advised that the annual premium quoted on the recent quote received was \$115,000.

11. The Licensee confirmed that following the cancellation request, he was emotional. The Licensee stated that it was an upsetting situation as the Agency leaned on relationships to obtain the quote and was advised by AS that the underwriters were upset about the cancellation of the policy.
12. While in an emotional frame of mind, the Licensee drafted a letter to the Complainant. In the letter, the Licensee stated that the cancellation of the strata's insurance would cause the Agency to incur "significant damage to our operations and reputation," and that the quotation and service had been provided "at your request in a very short time frame, at considerable expense and relationship duress." The Licensee further stated: "If you proceed with this cancellation without giving us the opportunity to match an alternative quote that you have received, the intentional damage you have caused our business and reputation will be made public." He further wrote, "If investigation uncovers that existing insurers on your policy have quoted to subscribe on the replacement policy, this unethical and illegal action will also be made public and reported to the regulatory bodies in the governing jurisdictions, including names of participating persons for regulatory action."
13. The Licensee admitted he had not conducted research to confirm the statements' legality or accuracy. The Licensee stated in part that he hoped the letter would save the business with the Complainant. The Licensee, knowing that he was emotional when he wrote the letter, sent it to AS to review. AS instructed the Licensee to send the letter to two other representatives of the agency, and if they approved it, the Licensee could send it to the Complainant. One agent did not have the opportunity to review the letter before the Licensee sent it. As shown by an email provided by the Licensee, the second agent reviewed the letter and suggested a few changes, which for the most part the Licensee states were incorporated. The Licensee subsequently sent the letter to the Complainant.
14. On March 16, 2021, the Insurance Council's Investigator interviewed AS. During the interview, AS said that because of the amount of work that had gone into placing the policy in question, both he and the Licensee were upset when they received the request to cancel it. AS suggested that the Licensee have the draft letter reviewed by two other representatives in the office, as both the Licensee and AS were emotional about the situation. AS stated that if the others gave the go-ahead, that the Licensee could send the letter; but to AS's understanding, neither of the two agents gave the Licensee the go-ahead.
15. The Licensee expressed that looking back, he would have waited and given himself some time to collect himself before sending the letter to the Complainant, however, he felt that he did the correct thing by going to the delegated nominee, AS, before sending the letter out.

ANALYSIS

16. Council has concluded that the Licensee failed to engage in the usual practice of the business of insurance by sending correspondence that contained information that was not accurate and language which was unprofessional. A client is entitled to cancel a policy and is under no obligation to let the Licensee or the Agency match the quote they obtained from a new agency. Council noted there were other ways of addressing the situation rather than resorting to the coercive tone and inappropriate commentary within the letter. Although losing business after working to obtain that business is a difficult situation, it is not appropriate to take that frustration out on the client. There is no entitlement of the Licensee or Agency to the client's business. Council determined that the Licensee's letter appeared coercive as the content of the letter was intended to pressure the client to maintain the policy, especially by providing information that was inaccurate.
17. Council concluded that the Licensee's actions in sending this correspondence was inconsistent with the client's interests. The Licensee admitted that he was unsure of the accuracy or legality of the content of his letter. However, the Licensee sent the letter without verifying the accuracy of the correspondence. Council concluded that the Licensee put his own interests above the interests of the client and did not act with integrity, with competence, or good faith in this instance.
18. Council noted that the Licensee could have sent a letter outlining potential concerns and advising the client to ensure that coverage with the new insurer was sufficient or matched the existing policy. The Licensee wrote the letter on his own volition and even questioned himself on whether the letter was appropriate which was why he sent the draft letter to the delegated nominee. Given the Licensee's experience in the industry at the time of the incident, the Licensee should have known that the content of the communication was inappropriate. Council further noted, the Licensee should have known that this correspondence could be viewed as coercing the client to keep a policy they did not wish to keep.
19. Council considered the impact of Council Rule 7(8) and Council's Code of Conduct guidelines on the Licensee's conduct, including section 3 ("Trustworthiness"), section 4 ("Good Faith"), section 5 ("Competence") and section 7 ("Usual Practice of 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.
20. Prior to making its recommendation, Council took into consideration the following precedent cases. While Council recognizes 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 instructive in terms of providing a range of sanctions for similar types of misconduct.

21. [Barbara Ann Nash](#) (December 2020): The licensee had taken a loan from a client to make a down payment on a home. On the recommendation of the licensee, the client redeemed money from a non-registered TFSA in order to provide funds to the licensee. The client was charged a redemption fee which the licensee did not inform the client of prior to the recommendation to redeem the funds. The licensee added the client to the title of the home that was purchased. The client did not understand why he was on the title or the consequences of being on the title, such as being subject to property taxes. Additionally, the licensee obtained a life term insurance policy naming the complainant as 50% beneficiary. In October 2017, the licensee and the client entered into a new loan agreement. Council found that the licensee was in a conflict of interest and did not carry on the business of insurance in good faith, in a trustworthy and competent manner. Council noted concerns of the licensee's competence as she did not adequately explain the redemption fees to the client or the legal consequences of being on title to the property or implications of being a revocable beneficiary on the insurance policy. Council further noted concerns in the licensee's use of language and communications between the client and licensee. Council ordered that the licensee complete courses, that the licensee be supervised for a period of twenty-four months, fined \$2,500, and assessed investigation costs and hearing costs.
22. [Patricia Yvonne Brienen](#) (August 2017): concerned a licensee who, in emotional distress following a car accident, directed staff at her agency to backdate the effective date of an ICBC Temporary Use policy by one day. The licensee had got the dates confused when the policy was issued, intending for it to be in effect on the date of the accident but accidentally using the next day's date. Once a few days passed and the licensee began thinking clearly again, she realized that she had acted inappropriately by instructing her staff to backdate the policy and told the truth to both her supervisor and ICBC. The licensee was reprimanded and assessed investigative costs.
23. [In the Matter of the Appeal of Robert Arnold](#) (Alberta Insurance Council, August 7, 2015): This was an appeal from a decision dated June 18, 2013. The findings involved an agent who engaged in communications with a client that were unprofessional, inappropriate, and aggressive. The findings determined the agent further engaged in similar inappropriate conduct with the Alberta Insurance Council investigator. The initial decision determined that these communications were in breach of s. 509 of the Insurance Act (Alberta), which prohibits unfair, coercive, or deceptive practice. A penalty of \$1,000 was assessed and a suspension of six months. However, on appeal, the panel agreed that there was a clear breach of the act and awarded a penalty of \$1,000 and a suspension of nine months.
24. Council noted that the circumstances of the precedents provided a reference point and guide for determining an appropriate sanction but could be differentiated from the facts of this case. Council concluded that disciplinary measures for this case should be on the lower spectrum of the

cases, as the Licensee in this instance has only been found to have had this one instance of inappropriate communications and there were no other identified concerns or breaches related to the Licensee's conduct.

25. Council considered the relevant mitigating and aggravating factors in this matter. The primary mitigating factor was that Council believed the Agency played a role in this situation and could have prevented the correspondence from being sent to the client. Council noted that the Licensee went to AS and provided the letter requesting feedback, and at this point, AS, the delegate nominee could have prevented the letter from going to the client. Council notes that the Licensee relied on AS for guidance and was not given appropriate direction. Additionally, the Licensee was cooperative and responsive throughout the investigation process. Council considered as an aggravating factor, that the Licensee continued to pursue and pressure the client to remain a client, when it may have been in the best interest for the client to proceed with a substantially lower premium.
26. Council is responsible for protecting the public by ensuring that insurance licensees are trustworthy, competent, and carry on the business of insurance in accordance with the usual practice in the industry. The Licensee failed to act in a manner that is consistent with the usual practice of the business of insurance and Council must determine the appropriate sanction keeping in mind that the fundamental purpose of sanctioning misconduct is to ensure the public is protected from further acts of misconduct by the licensee and to deter and prevent other licensees from committing similar acts.
27. Council found that the Licensee's actions, while improper, did not make him unsuitable to hold an insurance licence. Council concluded that the matter could best be addressed with the issuance of a reprimand.
28. After weighing all of the relevant considerations, Council views the Licensee to be in breach of Council's Rules and the Code of Conduct and concludes that it is appropriate for the Licensee to be reprimanded and required to complete the Council Rules Course and the Ethics for Insurance Brokers Course available through The Insurance Brokers Association of BC.
29. With respect to investigation costs, Council concluded 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, however, Council has identified that this matter may have been prevented if the delegated nominee or others at the Agency had communicated to the Licensee that this kind of correspondence was not in line with the usual practice of the business of

insurance. Therefore, in these circumstances, Council has determined that the Licensee only be assessed a portion of the investigation costs.

INTENDED DECISION

30. Pursuant to sections 231, 236 and 241.1 of the Act, Council made an intended decision to:
- a. That the Licensee be reprimanded;
 - b. That the Licensee be required to complete the following courses, or equivalent courses as acceptable to Council (collectively the “Courses”), within 90 days of Council’s order:
 - i. the Council Rules Course for general insurance and adjusters; and
 - ii. the Ethics for Insurance Brokers Course available through The Insurance Brokers Association of BC;
 - c. That the Licensee be assessed Council’s investigation costs in the amount of \$925.00, to be paid within 90 days of Council’s order; and
 - d. That a condition be imposed on the Licensee’s general insurance agent licence that failure to complete the Courses and pay the investigation costs in full within 90 days will result in the automatic suspension of the Licensee’s general insurance agent licence, and the Licensee will not be permitted to complete the Licensee’s 2025 annual licence renewal until such time as the Licensee has complied with the conditions listed herein.
31. 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.

RIGHT TO A HEARING

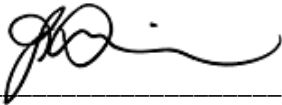
32. If the Licensee wishes to dispute Council’s findings or its intended decision, the Licensee may have legal representation and present a case in a hearing before Council. Pursuant to section 237(3) of the Act, to require Council to hold a hearing, the Licensee must give notice to Council by delivering 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.

33. 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 www.fst.gov.bc.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 **4th day of July, 2023**

For the Insurance Council of British Columbia



Janet Sinclair
Executive Director