

In the Matter of

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

and

The INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

and

SHEA KARDI CECIL KEARNS
(the "Licensee")

ORDER

As Council made an intended decision on December 11, 2012, 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 January 3, 2013; 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 is imposed on the Licensee's general insurance licence that until such time as the Licensee accumulates an additional 12 months of active licensing, he be supervised by a general insurance agent approved by Council.
2. A condition is imposed on the Licensee's general insurance licence that the Licensee must complete an errors and omissions course approved by Council within six months of the date of this order, or his general insurance licence will be suspended without further action from Council.
3. The Licensee is fined \$1,000.00.
4. The Licensee is assessed Council's investigative costs of \$781.25.

5. A condition is imposed on the Licensee's general insurance licence requiring that he pay the above-ordered fine and investigative costs no later than **April 22, 2013**. If the Licensee does not pay the ordered fine and investigative costs in full by this date, the Licensee's general insurance licence is suspended as of **April 23, 2013**, without further action from Council and the Licensee will not be permitted to complete any annual filing until such time as the ordered fine and investigative costs are paid in full.

This order takes effect on the **22nd day of January, 2013**.



C. David Porter, LL.B., FCIP, CRM
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

respecting

SHEA KARDI CECIL KEARNS
(the “Licensee”)

INTRODUCTION

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 November 14, 2012, an Investigative Review Committee (the “Committee”) met with the Licensee to discuss allegations the Licensee signed insurance documents on behalf of two clients (“Client A” and “Client B”) without authorization.

The Committee was comprised of one voting member and three non-voting members 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 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, were reviewed by Council at its December 11, 2012 meeting. At the conclusion of its meeting, Council accepted the Committee’s recommended disposition and 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/or 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

Client A

On December 19, 2011, the Licensee met with Client A at her residence in Richmond to facilitate the transfer of a vehicle into her name. After completing the vehicle transfer, Client A purchased insurance on the vehicle from the Licensee under rate class 003 (to and from work) and financed the premium through the Insurance Corporation of British Columbia's ("ICBC") Autoplan financing program. The policy was effective December 19, 2011 to December 18, 2012, with equal monthly payments of \$158.11.

After reviewing her insurance documents one month later, Client A realized the vehicle was insured to drive to and from work. Since her intention was to insure the vehicle for pleasure use only, she contacted the Licensee by telephone on January 23, 2012. At that time, the Licensee acknowledged he made an error when insuring her vehicle as he recalled Client A stating she would be driving the vehicle for pleasure use only.

Client A advised she was unable to attend the office of the agency the Licensee was authorized to represent at the time (the "Agency"), to have the Licensee change the rating. As the Licensee did not have time to attend Client A's home to process the rate change, she provided the Licensee with her approval to sign her name on any required insurance documents. During their conversation, the Licensee reviewed coverage on the vehicle with her.

Later the same day, the Licensee processed a mid-term policy change on Client A's vehicle insurance to reflect the vehicle as being driven for pleasure use only. In doing so, he signed her name and initialled where required on the transactional documents that were to be remitted to the Agency for batching, including the payment plan agreement. Client A's transactional copies were mailed to her without signatures. The mid-term policy change resulted in a monthly premium reduction.

Client B

On November 30, 2011, the Licensee processed an ICBC transaction for Client B at a motor vehicle dealership in Squamish. The internet at the dealership was not working, so the Licensee manually completed an Interim Certificate of Insurance Vehicle Licence and Registration document for Client B's newly-purchased truck. Client B and his wife signed the applicable documents, with Client B listed as the truck's principal operator.

The Licensee called the Agency's North Vancouver office to obtain registration information from the ICBC database. The Licensee stated the normal procedure would have been for the North Vancouver office to mail the computer-generated version of the registration to Client B and his wife; however, this apparently did not occur.

On or around January 23, 2012, Client B attended an insurance agency in Pemberton, where he and his wife reside, to replace the truck's licence plate, which had gone missing. This insurance agency told Client B that a new plate could not be issued with only a manual registration and insurance document on hand.

The Licensee stated Client B contacted the dealership where the truck had been purchased and expressed his frustration. Client B reportedly requested a printout of the truck's insurance documents but did not want to travel to Squamish to sign and pick up the documents. Accordingly, the dealership's business manager contacted the Licensee and asked him to reprint the transactional documents for Client B since he was the agent who completed the original manual registration and insurance documents on November 30, 2011.

On January 23, 2012, the Licensee attended the dealership in Squamish, issued new insurance documents, and signed Client B's name where required on the applicable transactional documents that were to be remitted to the Agency for batching, without Client B's knowledge. The Licensee stated he had done so in order to rectify the matter, and did not want to further inconvenience Client B. There were no changes made to the existing policy. It was considered a "reprint" transaction, which is not forwarded to ICBC. Client B's transactional copies were mailed to him and his wife without signatures.

Licensee's Conduct

The Licensee was under the impression from the Agency that it was acceptable for him to sign insurance documents for clients in particular circumstances. The Agency disputes this, and stated that under no circumstances are agents permitted to sign any transactional documents on behalf of clients. When the Agency learned of the Licensee's conduct, it terminated his employment and took steps to address the improperly executed transactions, including obtaining the clients' signatures on the required documents.

The Licensee stated that other than these two occasions, he had never signed insurance documents on behalf of a client and would not do so in the future.

ANALYSIS

There is no dispute that the Licensee forged the signature of two clients when executing insurance transactions for them. Based on the evidence, Council concluded the forgeries were done for convenience without any material gain for the Licensee.

While the Licensee believed he was acting in the clients' best interests, what concerned Council is that given his lengthy experience as an insurance licensee, he ought to have known that no circumstances exist where it is acceptable to forge another person's signature in an insurance transaction. His actions were clearly contrary to the usual practice of the business of insurance and, in Council's view, raised questions about his practices.

To address these concerns and the Licensee's improper behaviour, Council determined a \$1,000.00 fine would be appropriate as well as requiring education and oversight of the Licensee's practices to help ensure that if deficiencies exist, they will be corrected. This intended action is consistent with what Council imposed in a previous case, *S. Moh*, where the former licensee signed insurance documents for convenience on behalf of clients on at least two occasions.

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 general insurance licence that requires him to be supervised by an insurance agent approved by Council until such time as he accumulates 12 additional months of active licensing.
2. Impose a condition on the Licensee's general insurance licence that requires him to complete an errors and omissions course approved by Council within six months of the date of its order.
3. Fine the Licensee \$1,000.00.
4. Assess the Licensee Council's investigative costs of \$781.25.

The intended decision will take effect on **January 22, 2013**, 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 21, 2013**. 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.

Intended Decision
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If the Licensee does not request a hearing by **January 21, 2013**, 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 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 **3rd day of January, 2013**.

For the Insurance Council of British Columbia



Gerald D. Matier
Executive Director

GM/cc