

In the Matter of
The *FINANCIAL INSTITUTIONS ACT*
(RSBC 1996, c.141)
(the “Act”)

and

The INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

and

CENTRAL AGENCIES LTD.
(the “Agency”)

and

MARK HERMAN GERLACH
(“Gerlach”)

and

DENNIS STEWART MACNEILL
(“MacNeill”)

ORDER

As Council made an intended decision on October 18, 2016, pursuant to sections 231, 236, and 241.1 of the Act; and

As Council, in accordance with section 237 of the Act, provided Gerlach, MacNeill, and the Agency with written reasons and notice of its intended decision dated November 29, 2016; and

As Gerlach, MacNeill, and the Agency have 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. Gerlach is fined \$1,500.00

Order

Central Agencies Ltd., Mark Herman Gerlach, and Dennis Stewart MacNeill
LIC-9020640C112610R1, LIC-86317C120218R1, and LIC-81647C120178R1
December 20, 2016
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2. A condition is imposed on Gerlach's general insurance licence that requires him to successfully complete the Insurance Brokers Association of British Columbia's Privacy Compliance for Insurance Brokers course (or equivalent approved by Council) on or before **March 20, 2017**. If Gerlach does not successfully complete the above-noted course by this date, his general insurance licence is suspended as of **March 21, 2017**, without further action from Council and he will not be permitted to complete any subsequent annual filings until such time as the above-noted course is successfully completed.
3. A condition is imposed on Gerlach's general insurance licence that requires him to pay the above-ordered fine no later than **March 20, 2017**. If Gerlach does not pay the ordered fine in full by this date, his general insurance licence is suspended as of **March 21, 2017**, without further action from Council and he will not be permitted to complete any subsequent annual filings until such time as the ordered fine is paid in full.
4. MacNeill is fined \$1,500.00.
5. A condition is imposed on MacNeill's general insurance licence that requires him to successfully complete the Insurance Brokers Association of British Columbia's Privacy Compliance for Insurance Brokers course (or equivalent approved by Council) on or before **March 20, 2017**. If MacNeill does not successfully complete the above-noted course by this date, his general insurance licence is suspended as of **March 21, 2017**, without further action from Council and he will not be permitted to complete any subsequent annual filings until such time as the above-noted course is successfully completed.
6. A condition is imposed on MacNeill's general insurance licence that requires him to pay the above-ordered fine no later than **March 20, 2017**. If MacNeill does not pay the ordered fine in full by this date, his general insurance licence is suspended as of **March 21, 2017**, without further action from Council and he will not be permitted to complete any subsequent annual filings until such time as the ordered fine is paid in full.
7. The Agency is fined \$5,000.00.
8. The Agency is assessed Council's investigative costs of \$775.00.

Order

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9. A condition is imposed on the Agency's general insurance licence that requires the Agency to pay the above-ordered fine and investigative costs no later than **March 20, 2017**. If the Agency does not pay the ordered fine and investigative costs in full by this date, the Agency's general insurance licence is suspended as of **March 21, 2017**, without further action from Council and the Agency will not be permitted to complete any subsequent annual filings until such time as the ordered fine and investigative costs are paid in full.

This order takes effect on the **20th day of December, 2016**.



Dr. Eric Yung
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

respecting

CENTRAL AGENCIES LTD.
(the “Agency”)

and

MARK HERMAN GERLACH
(“Gerlach”)

and

DENNIS STEWART MACNEILL
(“MacNeill”)

Pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council conducted an investigation to determine whether the Agency, Gerlach, and MacNeill acted in compliance with the requirements of the Act.

As part of Council’s investigation, on September 12, 2016, a Review Committee (the “Committee”) met with Gerlach and MacNeill (the “Nominees”) to discuss allegations that a licensee (the “Licensee”) transferred client information to the Agency from another agency without obtaining express authority from the clients to do so.

The Committee was comprised of one voting member and three non-voting members of Council. Prior to the Committee’s meeting with the Nominees, an investigation report was distributed to the Committee and the Nominees for review. A discussion of this report took place at the meeting and the Nominees were provided an opportunity to make further submissions. Having reviewed the investigation materials and after discussing this matter with the Nominees, the Committee prepared a report for Council.

The Committee’s report, along with the aforementioned investigation report, were reviewed by Council at its October 18, 2016 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 Agency and the Nominees of the action it intends to take under sections 231, 236, and 241.1 of the Act before taking any such action. The Agency and the Nominees 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 Agency and the Nominees.

FACTS

The Agency

The Agency holds a general insurance licence with Council. It has been licensed with Council since 1989.

The Agency provides its clients with automobile, home, business, travel, boat, along with a variety of other general insurance products through contracts with a number of general insurance companies. The Agency has two offices in Richmond, one in North Vancouver, and a satellite office in Nanaimo. Approximately 76 individual insurance licensees are authorized to represent the Agency.

The Agency has two nominees, Gerlach and MacNeill.

Gerlach has been licensed with Council since 1990, and currently holds a Level 3 general insurance agent ("Level 3 agent") licence in British Columbia. Gerlach has been employed by the Agency for approximately 10 years and is one of the Agency's two nominees.

MacNeill has been licensed with Council since 1989, and currently holds a Level 3 agent licence in British Columbia. He has been with the Agency for approximately 27 years and is one of the Agency's two nominees.

The Licensee has been licensed with Council since 1994. He is a Level 2 general insurance agent.

The Licensee represented another agency (the "Former Agency") prior to moving to the Agency. The Former Agency and the Licensee, along with several other insurance agents, made an arrangement to transition his clients from the Former Agency to the Agency. In order to assist in this transition, after obtaining authority to represent the Agency, the Licensee maintained his authority to represent the Former Agency for a period of time.

Council learned that the Licensee may have transitioned client information from the Former Agency to the Agency without first obtaining express authority from the clients to do so. The Licensee acknowledged that during the transition period he entered client information into the Agency's computer system without having first obtained the client's express authority. In total, 18 clients of the Former Agency had their personal information handled in this manner.

The Licensee stated that the type of information in the Agency's system for these 18 clients included completed insurance applications, copies of insurance policies, certificates of insurance, void cheques, and other business information required for underwriting. The Licensee acknowledged that his actions were not in keeping with confidentiality guidelines as set out in Council's Code of Conduct.

The Licensee could not recall if the Agency had provided him with any training regarding privacy or the procedures for entering client information that was being moved from the Former Agency. He stated that it is possible the Agency may have done so, but he could not remember any specific guidance on this issue.

Agency Procedures

The Nominees stated that it was their understanding that all of the insurance agents, including the Licensee, who transferred clients from the Former Agency, were informed that they were not to enter client information into the Agency's computer system without first obtaining a Letter of Brokerage ("LOB"). The Nominees stated that procedures for the handling of the information on clients that were being moved from the Former Agency were addressed at an in-house training session, which they believed was attended by the Licensee. The Nominees stated that all of the insurance agents transferring from the Former Agency understood these instructions, noting that a number of insurance agents were involved in transferring clients from the Former Agency, but only the Licensee appears to have failed to obtain express consent from clients prior to entering client information into the Agency's computer system.

The Nominees, since learning of the Licensee's actions, acknowledged that neither had reviewed the 18 client files to determine what particular information the Agency possessed. The Nominees thought the unauthorized client information was likely only contact information; however, they were not in a position to confirm their understanding was true.

The Nominees stated there were hundreds of clients transferred to the Agency during this time and argued it would have been impossible for the Agency to supervise the data entry done by all of its licensees. Instead, they relied on the licensees who were entering the client information to ensure that a LOB had first been obtained.

ANALYSIS

Council determined that the Agency and the Nominees failed to take appropriate steps to ensure that client information was not transferred to the Agency until a client's consent was obtained. The Nominees had a responsibility to ensure the Licensee acted in a competent manner, and in accordance with the usual practice of the business of insurance. Council found the Agency and the Nominees failed to ensure proper processes and procedures were in place to supervise the entry of new client information by the Licensee.

Council noted the Nominees' explanation that training on client information was provided to the incoming licensees from the Former Agency, and that only the Licensee had failed to obtain the necessary client consent. However, Council found that even if training was provided, it was clearly not adequate in the Licensee's case and the Agency had an obligation to ensure the Former Agency's clients' information was handled properly.

Council was concerned that although the Nominees were aware that the Agency was in possession of information concerning clients who had not provided their consent, they had not reviewed the files to determine the nature of the information, or taken steps to notify the clients.

Council considered the case of *A C & D Insurance Services Ltd. and J. Stonehouse* ("*A C & D*"), in which the licensee's former agency was fined \$5,000.00 for failing to ensure that client confidentiality and insurance needs were protected during the transfer of client information to the Agency. The nominee in that case was reprimanded, as he was found ultimately responsible for the agency's operations.

Council determined that the actions of the Nominees were more egregious than those of the nominee in *A C & D*, in that the Nominees failed to take any steps to ensure information was not transferred to the Agency inappropriately. Council noted that in light of Council's repeated emphasis on privacy procedures and the transfer of client information, the Nominees had an obligation to ensure that the Licensee understood the expectations of the Agency regarding client privacy and consent. Council found that since being informed of Council's concerns, the Nominees had not taken steps to review and address the transfer of information without adequate client consent to be an aggravating factor.

Accordingly, Council determined that the Nominees should each be fined \$1,500.00 and required to complete education on information privacy. Council determined the Agency should be fined \$5,000.00 and assessed investigative costs.

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 Nominees' general insurance licences that will require the Nominees to successfully complete the Insurance Brokers Association of British Columbia's Privacy Compliance for Insurance Brokers course (or equivalent) (the "Course") within 90 days of the date of Council's order.
2. Fine Gerlach \$1,500.00.
3. Fine MacNeill \$1,500.00.
4. Fine the Agency \$5,000.00.
5. Assess the Agency Council's investigative costs of \$775.00.

The Agency and the Nominees are advised that should the intended decision become final, the fine and investigative costs will be due and payable within 90 days of the date of the order.

The Agency is advised that failure to pay the fine and investigative costs within the 90 days, will result in the automatic suspension of its general insurance licence, and the Agency will not be permitted to complete any annual filing until such time as the fine and investigative costs are paid in full.

The Nominees are advised that failure to pay the fines within the 90 days, or failure to successfully complete the Course within the 90 days, will result in the automatic suspension of the Nominees' general insurance licences, and the Nominees will not be permitted to complete any annual filing until such time as the fines are paid in full and the Course is successfully completed as required.

The intended decision will take effect on **December 20, 2016**, subject to the Agency's and the Nominees right to request a hearing before Council pursuant to section 237 of the Act.

RIGHT TO A HEARING

If the Agency and/or the Nominees wish to dispute Council's findings or its intended decision, the Agency and/or the Nominees 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 Agency and/or the Nominees must give notice to Council by delivering to its office written notice of this intention by **December 19, 2016**. 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
Central Agencies Ltd., Mark Herman Gerlach, and Dennis Stewart MacNeill
LIC-9020640C112610R1, LIC-86317C120218R1, and LIC-81647C120178R1
November 29, 2016
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If the Agency and/or the Nominees do not request a hearing by **December 19, 2016**, the intended decision of Council will take effect.

Even if this decision is accepted by the Agency and the Nominees, 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 **29th day of November, 2016**.

For the Insurance Council of British Columbia



Gerald Matier
Executive Director
604-695-2001
gmatier@insurancecouncilofbc.com

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