

In the Matter of

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

and

The INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

and

KHAMSOUEI PHOVIXAYBOULOM
(the “Licensee”)

ORDER

Pursuant to section 237 of the Act, Council convened a hearing at the request of the Licensee to dispute an intended decision, dated January 16, 2017, pursuant to sections 231, 236, and 241.1 of the Act.

The subject of the hearing was set out in a Notice of Hearing dated October 18, 2017.

A Hearing Committee heard the matter on November 14, 2017, and presented a Report of the Hearing Committee to Council at its February 13, 2018 meeting.

Council considered the Report of the Hearing Committee and made the following order pursuant to sections 231, 236, and 241.1 of the Act:

1. The Licensee’s life and accident and sickness insurance agent (“life agent”) licence is suspended for a period of one year, commencing on **February 26, 2018** and ending at midnight on **February 25, 2019**.
2. The Licensee is fined \$5,000.00.
3. A condition is placed on the Licensee’s life agent licence requiring that he be supervised by a life agent supervisor for two years following the completion of his licence suspension.
4. The Licensee is assessed investigative costs of \$637.50.

5. A condition is imposed on the Licensee's life agent licence that requires him to pay the above-ordered fine and investigative costs no later than **February 25, 2019**. If the Licensee does not pay the ordered fine and investigative costs in full by this date, his life agent licence will remain suspended and he will not be permitted to complete his 2019 annual filing until such time as the ordered fine and investigative costs are paid in full.

This order takes effect on the **16th day of February, 2018**.



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

INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

REPORT OF THE HEARING COMMITTEE

IN THE MATTER OF THE *FINANCIAL INSTITUTIONS ACT*
(the “Act”)
(S.B.C. 1996, c. 141)

AND

KHAMSOUEI PHOVIXAYBOULOM
(the “Licensee”)

Date: Tuesday, November 14, 2017
2:00 p.m.

Before: Ken Kukkonen Chair
Calvin Joe Member
Frank Mackleston Member

Location: Suite 300, 1040 West Georgia Street
Vancouver, British Columbia V6E 4H1

Present: David McKnight Counsel for Council
Eric Bojm Counsel for Licensee
Khamsouei Phovixayboulom Licensee

BACKGROUND AND ISSUES

As set out in the Notice of Hearing, the purpose of the Hearing was to determine whether the Licensee failed to act competently, in a trustworthy manner, and in good faith, in accordance with the usual practice of the business of insurance by:

- a) intentionally misleading a client for personal benefit and failing to place insurance as instructed;
- b) improperly placing insurance on behalf of a client by failing to first provide the client with information necessary to make an informed decision;
- c) improperly completing an application for life insurance by failing to include current information on the client’s address;
- d) using a third party’s banking information to pay the policy premiums of a client without the third party’s knowledge or consent; and

- e) making a false declaration to an insurer by materially misrepresenting a client's address when applying for insurance.

The Hearing Committee was constituted pursuant to section 223 of the Act. This is a report of the Hearing Committee, as required pursuant to section 223(4) of the Act.

EVIDENCE

The evidence reviewed by the Hearing Committee included:

- Exhibit 1 Agreed Statement of Facts
- Exhibit 2 Council's Book of Documents

AGREED STATEMENT OF FACTS

The Licensee holds a life and accident and sickness insurance agent ("life agent") licence and has held a life agent licence in British Columbia since 1990. The Licensee is currently authorized to represent AJ Insurance Services Ltd. (the "Agency") and has been representing it since 1999. The Licensee has contracts with Canada Life Assurance Company ("Canada Life") and Industrial Alliance Pacific Insurance and Financial Services Inc. ("IAP"). The Licensee does not hold a licence or a registration with any other regulatory bodies.

The Licensee currently has in excess of five hundred clients, with his primary focus relating to the sale of life and critical illness insurance, although a small portion of his business involves the sale of segregated funds.

In April 2015, a complainant (the "Client") held two insurance policies with Canada Life, providing approximately \$800,000.00 in life insurance coverage. In April 2015, the Licensee was advised by Canada Life that one of the Client's life insurance policies, with \$500,000.00 of life insurance, had lapsed.

Based on the information from Canada Life, the policy had lapsed February 25, 2015, after a number of premium payments were missed. If the Client wanted to reinstate the policy, Canada Life indicated it would cost approximately \$6,000.00 in outstanding premiums and surcharges. The Licensee also understood that the Client would have to have a new medical assessment as part of reinstatement of the policy.

After learning of the lapsed policy, the Licensee subsequently phoned the Client. The Client was clear that she wanted to keep both of her policies in force and maintain \$800,000.00 in insurance, as the benefits were intended to repay her mortgage upon her death and provide an estate for her children.

After confirming the Client wanted to maintain \$800,000.00 in insurance coverage, the Licensee determined that obtaining a new life insurance policy from IAP would be better for the Client than reinstating the lapsed Canada Life policy.

Without discussing with the Client her options regarding reinstating the lapsed policy versus applying for a new policy, the Licensee had the Client sign a life insurance application for insurance with IAP. Other than assuring the Client she would continue to have \$800,000.00 of insurance coverage, the Licensee took no steps to inform the Client that she was purchasing a new insurance policy, with a different insurance company.

Prior to the lapse of the Canada Life policy, the Client's daughter (the "Daughter") had been paying the premiums on that policy since 2013. The premium for the IAP policy was twice the premium of what the Client had been paying on the lapsed policy. Because of concerns that the Client might not be able to make the premium payments, the Client and Daughter decided that the premiums would continue to be paid by the Daughter. In completing the IAP application for life insurance, the Daughter's banking information was provided.

After the new IAP policy was issued, the Licensee stated he delivered the new policy to the Client in August 2015. When delivering the IAP policy, the Licensee also provided the Client with an illustration at the same time. However, the illustration, which was signed in August, was dated July 6, 2015. The Client has denied that she ever received a copy of the IAP policy.

After the IAP policy was issued in July, the Daughter's bank account was subsequently debited the premium payments for July and August. However, the Daughter's account did not have sufficient funds to cover the September premium payment. When the Licensee was advised that the IAP premium payment had been missed due to insufficient funds ("NSF"), he wrote to IAP on November 4, 2015 with instructions that a different bank account be used to cover the Client's premium payments. The new bank account information belonged to the Daughter's boyfriend (the "Boyfriend"). Both the Daughter and the Boyfriend were clients of the Licensee and the Boyfriend's bank account was used to pay the Daughter's insurance premiums.

In providing the Boyfriend's banking information, the Licensee made no attempt to contact the Boyfriend to get his consent to have the Client's IAP premium payments debited from his bank account, either before or after the Boyfriend's banking information was provided to IAP.

After providing IAP with the Boyfriend's bank account information, the Boyfriend's account was debited \$1,925.00 to cover the Client's missed premium payments and returned payment fees for September, October, and November. Once the Boyfriend realized that his account was being debited for the Client's premiums, the Boyfriend contacted the Licensee and demanded immediate reimbursement, which the Licensee arranged. The IAP policy was subsequently cancelled by the Client, which resulted in the Licensee having to pay a charge back to IAP of \$6,000.00.

A review of the Client's IAP insurance application had included the Client's correct address on the Confirmation of Identity page, but the Client's address on the original page of the application had been whited-out and changed. The Licensee stated he had not changed it. The only explanation the Licensee could provide was that it was changed after he had submitted it to the Agency.

LICENSEE'S EVIDENCE

The Licensee has held a life agent licence in British Columbia for approximately 25 years and has not previously had any complaints made about him. The Licensee argued that this was an isolated incident and not consistent with his usual insurance practices.

The Client had been a client of the Licensee for approximately 10 years. The Licensee stated that it was not his intention to mislead the Client, explaining he acted on the Client's directions. The Client had advised that it was important she maintain a minimum \$800,000.00 of life insurance. In reviewing the options, the Licensee stated he determined that purchasing a new life policy was cheaper for the Client than reinstating the lapsed Canada Life policy. However, he acknowledged that he did not review these options with the Client.

The Licensee acknowledged that he did not discuss with the Client her options when the Canada Life policy lapsed but stated he had delivered the IAP policy (and provided an illustration) after it was issued.

The Licensee stated that as soon as the Boyfriend contacted him, he took immediate steps to return the funds that had been debited from the Boyfriend's account. The Licensee explained that he believed he had the Boyfriend's implied authority. The Boyfriend was already paying the Daughter's premiums and was financially strong, and the Licensee believed the Boyfriend would be agreeable to having the premium payments debited from his bank account. The Licensee pointed out that the Boyfriend did not complain that funds were debited from his account, but that his account was debited without his knowledge. The Licensee did not explain why he made no attempt to contact the Boyfriend before providing his banking information to IAP.

The Licensee acknowledged that when he was advised that the premium payment on the IAP policy had been NSF, he did not contact the Client or the Daughter. Further, he acknowledged he should have contacted the Boyfriend before providing his banking information directly to IAP.

In response to questions from the Committee, the Licensee acknowledged that IAP would not have accepted the Boyfriend's banking information if it had known the Boyfriend had not agreed to do so.

When asked why the Licensee had not provided the required disclosure to the Client, relating to a potential replacement of life insurance situation and the switch to a new insurance company, the Licensee stated he did not believe this was a replacement situation. The Licensee acknowledged that he had never completed or provided the required replacement disclosure form.

REVIEW BY THE HEARING COMMITTEE

The Hearing Committee acknowledged that the Licensee is an experienced life agent, as he has been licensed in British Columbia for over 25 years, and has a strong insurance practice with a significant client base. The Hearing Committee noted that the Licensee had not previously been the subject of a complaint or disciplinary action and that an audit of his clients' files, conducted as part of the investigation, had not identified any other issues or concerns.

In light of the Licensee's experience and previously unblemished work record, the Hearing Committee was challenged to understand the Licensee's actions when addressing the Client's lapsed Canada Life policy and the issuance of the new IAP policy.

The Hearing Committee heard the Licensee's explanation that the Client had been specific that her primary financial goal was to maintain a minimum of \$800,000.00 of life insurance. The Licensee has explained that based on this understanding, he determined that replacing the lapsed Canada Life policy with the IAP policy was the appropriate course of action. The Licensee reached this decision and proceeded to complete an application for insurance with IAP without any further discussion with the Client or the Daughter.

The Licensee stated that the Client's desire to maintain a minimum of \$800,000.00 of life insurance, along with his belief the Client could not afford the \$6,000.00 required to reinstate the Canada Life policy, left him to conclude that the best option for the Client was to purchase a new insurance policy.

While the Hearing Committee did not believe it needs to determine which of the two insurance options, Canada Life or IAP, was best suited the Client, it found the Licensee's actions in not discussing the Client's options prior to completing the IAP insurance application to be highly irregular and not in the Client's best interests.

There were a number of factors to be considered by the Client in deciding whether to reinstate the Canada Life policy or purchase the IAP policy. The Licensee stated that he did not believe the Client could afford the \$6,000.00 it would cost to reinstate the Canada Life policy. Instead, he had the Client purchase the IAP policy, which had premiums that were twice those of the Canada Life policy. The Hearing Committee noted that while the IAP option was cheaper at the onset, as there was no \$6,000.00 upfront fee, if the Client kept the IAP policy in effect for more than 20 months, the IAP policy would become more expensive for the Client than reinstating the Canada Life policy.

The Hearing Committee was at a loss to understand why the Licensee would not have discussed these options with the Client. The Licensee had to meet with the Client to get her to sign the IAP application, which provided the opportunity to explain the options available to the Client. At the time the Client signed the IAP application, the Licensee should have also provided the Client an illustration in support of the IAP policy. According to the Licensee, this did not occur until the Licensee delivered the IAP policy in August 2015.

The Hearing Committee found that the Licensee's failure to provide the Client with any information that may have assisted her in making an informed decision prior to completing the IAP application brings into question the Licensee's ability to act in a competent manner and in accordance with the usual practice of the business of insurance. The Licensee's explanation that the Client's instructions to do whatever necessary to ensure she had a minimum of \$800,000.00 neither justified nor supported the Licensee's actions.

As a side issue, the Hearing Committee noted that at the time the Client completed the IAP application, she still had the opportunity to reinstate the Canada Life policy. The Hearing Committee believes that as a result, the replacement requirements, as prescribed by the regulations to the Act, were applicable and the prescribed disclosure should have been provided to the Client. In addition, there are point of sale disclosure requirements prescribed by regulation under the Act, which were also not followed. The Hearing Committee noted that had the Licensee complied with these requirements, it might have mitigated his actions in this matter as the Client would have benefited from the disclosure. The Hearing Committee concluded that while it does not believe the Licensee intentionally withheld the replacement and point of sale disclosures, it reflects on his competency that he did not put his mind to these requirements.

The Licensee's actions in providing IAP with the Boyfriend's banking information without the Boyfriend's consent represents a serious breach of the Boyfriend's (who was also a client of the Licensee) confidential information. The Licensee's explanation for providing the Boyfriend's banking information to IAP without contacting him were found to be very concerning. The Licensee stated that the Boyfriend was wealthy and could afford the premium costs. In addition, since the Boyfriend was paying the Daughter's premiums, the Licensee believed this was sufficient reason to support his actions.

The Hearing Committee found the Licensee's actions in arranging to have the Boyfriend's bank account debited to cover the Client's insurance premiums to be highly irregular. The Licensee took no action to first contact the Boyfriend (or even follow up with the Boyfriend after he provided IAP with the Boyfriend's banking information) about using his bank account, even though he had all of the Boyfriend's contact information.

The Hearing Committee found the Licensee's failure to first contact the Boyfriend represented a breach of the Boyfriend's trust and right to privacy. The fact that the Licensee made no effort to contact or notify the Boyfriend of his decision to use his bank account to pay the Client's IAP premium was found to be highly suspicious and caused the Hearing Committee to question the Licensee's trustworthiness and his ability to act in good faith. The Hearing Committee could find no rational explanation as to why a qualified, experienced life agent would act in such a manner, thus causing it to be suspicious of the Licensee's motives.

On the matter of the change of address on the front page of the IAP application, the Hearing Committee was unable to reach a conclusion as to who was responsible for the change. It made no sense that the Client's current address was contained on the last page of the IAP application and had not been changed. The Hearing Committee concluded there was no evidence to indicate that the Licensee was responsible for the change.

The Hearing Committee considered what the Licensee's motives were in completing the insurance transaction on behalf of the Client the way he did. The Licensee appears to have determined that the Client could not afford and would not want to pay the \$6,000.00 required to reinstate the Canada Life policy. The Licensee argued that it was better for the Client to go with a new policy from IAP, even though the monthly premiums were double the Canada Life policy and would become more costly than the Canada Life policy if it remained in effect for more than 20 months. In addition, the Licensee's failure to even engage in some discussion with the Client on her options before completing the IAP application further clouds the issue.

Clearly, had such discussions occurred, this matter most likely would not have come before Council. The Licensee's rationale for his decision in going with the new policy, and the fact that he provided no appropriate disclosure as required both by the usual practice of the business of insurance and by legislation, caused the Hearing Committee to consider whether the Licensee's actions were driven, at least in part, by financial benefit. The Hearing Committee noted that the commission on the IAP policy was approximately \$6,000.00, but had the lapsed Canada Life policy been reinstated, there would have been little or no compensation for the transaction.

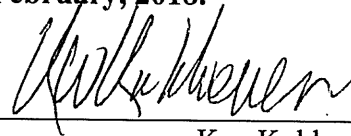
In light of this and an inability to understand any other rationale for the Licensee's actions, the Hearing Committee was left to conclude that the Licensee's actions were, at least in part, driven by financial gain. The Committee notes that, with the cancellation of the IAP policy, the Licensee was required to pay back the commission. However, that does not detract from the fact that the Licensee acted improperly in completing the insurance transaction on behalf of the Client and that his actions may have been motivated by financial gain.

The Hearing Committee found the Licensee's conduct in replacing the Client's life insurance and improperly accessing and using the Boyfriend's banking information is of a serious nature. The Hearing Committee concluded that the Licensee's actions brought into question his competency, his trustworthiness, and his ability to act in good faith and in accordance with the usual practice of the business of insurance.

The Hearing Committee determined that an appropriate disposition of this matter should include the following:

1. The Licensee's life and accident and sickness insurance agent licence be suspended for one year, which represents a six-month suspension for his breach of the Boyfriend's confidential information and a six-month suspension for the Licensee's actions in failing to properly inform the Client of her options before taking an application for life insurance.
2. The Licensee be fined \$5,000.00 for conducting a transaction that appeared to be based at least partially on financial gain.
3. A licence condition be placed that the Licensee must work under a life agent nominee for the first two years after he has completed his licence suspension.
4. The Licensee be assessed the investigative costs of \$637.50

Dated in Vancouver, British Columbia, on the 13th day of February, 2018.



Ken Kukkonen
Chair of Hearing Committee