

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

and the
INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

and
HUGO DONAIS
(the “Licensee”)

ORDER

As Council made an intended decision on July 10, 2018, 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 August 10, 2018; 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 life insurance agent licence that requires the Licensee to successfully complete the Council Rules Course and “Making Choices: Ethics and Professional Responsibility in Practice”, both available through Advocis, by no later than **December 5, 2018**;
2. The Licensee is fined \$1,000.00, to be paid no later than **December 5, 2018**;
3. The Licensee is assessed Council’s investigative costs of \$1,512.50, to be paid no later than **December 5, 2018**;
4. If the Licensee does not complete the required courses and pay the ordered fine and investigative costs in full by **December 5, 2018**, the Licensee’s life insurance agent licence is automatically suspended and the Licensee will not be permitted to complete any annual filing until such time as the courses are successfully completed and the fine and investigative costs are paid in full.

This order takes effect on the **6th day of September, 2018**.



Ken Kukkonen
Chairperson, Insurance Council of British Columbia

Original issued August 8, 2018

Amended August 10, 2018

AMENDED INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

respecting

HUGO DONAIS
(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 June 18, 2018, a Review Committee (the “Committee”) met with the Licensee to discuss the allegation that the Licensee improperly completed various client insurance forms.

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 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 July 10, 2018 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 held a life and accident and sickness insurance (“life agent”) licence with Council since December 2007. The Licensee represented his now former agency (the “Agency”) from 2008 until 2017 when his contract with the Agency was terminated. The Licensee stated that while representing the Agency, he had approximately 700 - 800 clients.

After the Licensee left, the Agency conducted a review of his files which showed that the Licensee had improperly completed various client insurance forms. In particular, the review identified client signatures on blank and/or partially completed Agency forms, whited out and/or crossed out information on Agency forms, and the Licensee's witnessing of Agency forms before clients had signed the forms.

With respect to blank or incomplete Agency forms, the Agency's review identified ten client files that were incomplete except for client signatures. None of these forms were ever processed. The Licensee advised these documents were pre-signed in an attempt to expeditiously assist his clients.

With respect to whited out and/or crossed out information on Agency forms, the Agency's review identified four client files with crossed or whited out information contained therein. The Licensee advised that there was no intent to deceive or harm his clients by these alterations and they were simply done to complete corrections on the forms.

Regarding the documents that were signed and/or witnessed by the Licensee prior to the clients signing, the Licensee advised that, like the other forms, there was no malicious intent and he was simply trying to assist his clients in completing the insurance transactions.

When questioned on the improperly completed insurance forms the Licensee advised that this issue was only brought up once he had left the Agency. The Licensee stated that he had been audited by the Agency on numerous occasions while still a representative and had never been instructed that he was acting improperly. The Licensee further stated that, to his recollection, the Agency provided no training or guidance as to how to properly complete client documents. The Licensee also felt that many of the issues stemmed from his assistant completing the documents in question.

Nevertheless, the Licensee acknowledged that he had acted improperly and was remorseful for his actions. He advised the Committee that there was no intention to act in a fraudulent manner and any shortcuts were done to assist his clients. The Licensee also stated that he has since changed his business practices to ensure every document is completed properly and he is handling far less volume of clients than he did while representing the Agency.

ANALYSIS

Council found that by improperly completing various client insurance forms the Licensee failed to act in accordance with the usual practice of the business of insurance as required by Council's Code of Conduct. In particular, Council concluded that, while representing the Agency, the Licensee had clients sign blank and/or partially completed Agency forms, had whited out and/or crossed out information on Agency forms, and had witnessed Agency forms before clients had signed them.

Although Council accepted that the Licensee was remorseful, appeared to be focused on assisting his clients, and had harmed no clients by his actions, Council concluded that the Licensee's repeated improper completion of various client insurance forms was unacceptable. Accordingly, Council determined that it is necessary to discipline the Licensee as a means to deter him from repeating such conduct in the future and also to serve as a general deterrent for the industry.

Based on the foregoing, Council determined that a fine of \$1,000.00 was appropriate to address the Licensee's conduct. Council also determined that, in light of the repeated improper completion of insurance forms, the Licensee would benefit from further education to ensure his practices have changed when conducting insurance transactions.

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 life agent licence requiring the Licensee to successfully complete the Council Rules Course and "Making Choices: Ethics and Professional Responsibility in Practice", courses offered through Advocis;
2. Fine the Licensee \$1,000.00;
3. Assess the Licensee Council's investigative costs of \$1,512.50.

The Licensee is 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. In addition, failure to pay the fine and investigative costs within the 90 days, or failure to successfully complete the Council Rules Course and "Making Choices: Ethics and Professional Responsibility in Practice" within 90 days of Council's order, will result in the automatic suspension of the Licensee's life agent licence and the Licensee will not be permitted to complete any annual filing until such time as the fine and investigative costs are paid in full and the ordered courses are successfully completed.

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

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 **within fourteen (14) days of receiving this intended decision**. A hearing will then be scheduled for a date within a reasonable period

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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 fourteen (14) days of receiving this intended decision**, 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 **10th day of August, 2018**.

For the Insurance Council of British Columbia


for Janet Sinclair
Executive Director
604-695-2001
jsinclair@insurancecouncilofbc.com