

In the Matter of the

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

and the

INSURANCE COUNCIL OF BRITISH COLUMBIA
 (“Council”)

and

KENNETH WILLIAM ARMSTRONG
(the “Nominee”)

and

SUSSEX INSURANCE AGENCY INCORPORATED
(the “Agency”)

ORDER

As Council made an intended decision on January 30, 2024, 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 February 27, 2024; 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 Nominee is fined \$5,000, to be paid by July 10, 2024;
- 2) The Nominee is required to complete the following courses, or equivalent courses, as acceptable to Council, by July 10, 2024:
 - i. The Council Rules Course for general insurance and adjusters; and

- ii. The Nominee Responsibilities and Best Practices Course for General Insurance and Adjuster Nominees and Applicants
(Collectively, the “Courses”);
- 3) The Agency is fined \$20,000, to be paid by July 10, 2024;
- 4) The Nominee and Agency are jointly and severally assessed Council’s investigation costs in the amount of \$2,625, to be paid by July 10, 2024;
- 5) A condition is imposed on the Nominee’s general insurance licence that failure to pay the fine and costs and complete the Courses by July 10, 2024 will result in the automatic suspension of the Nominee’s licence, and the Nominee will not be permitted to complete the Nominee’s 2026 annual licence renewal until such time as the Nominee has complied with the conditions listed herein; and
- 6) A condition is imposed on the Agency’s general insurance licence that failure to pay the fine and investigation costs in full by July 10, 2024 will result in the automatic suspension for the Agency’s licence, and the Agency will not be permitted to complete the Agency’s 2026 annual licence renewal until such time as the Agency has complied with the conditions listed herein.

This order takes effect on the **11th day of April, 2024**



Janet Sinclair, Executive Director
Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA

(“Council”)

respecting

KENNETH WILLIAM ARMSTRONG

(the “Nominee”)

and

SUSSEX INSURANCE AGENCY INCORPORATED

(the “Agency”)

1. Pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council conducted an investigation to determine whether the Nominee and/or Agency acted in compliance with the requirements of the Act, Council Rules, and Code of Conduct regarding allegations that the Nominee and Agency allowed insurance transactions to be completed by Agency employees that extended beyond their licensure and/or authority with the insurers, that the Agency and/or Nominee failed to supervise and/or ensure the Agency and its employees operated in accordance with the conditions and restrictions on their licences, that the Agency and/or Nominee allowed unlicensed employees to take applications, and that the Agency and/or Nominee failed to adhere to the authority granted by the insurer.
2. On November 29, 2023, as part of Council’s investigation, a Review Committee (the “Committee”) comprised of Council members met with legal counsel for the Nominee and Agency, as well as the Nominee via video conference to discuss the investigation. The Investigation Report was distributed to the Committee and legal counsel for the Nominee and Agency prior to the meeting. A discussion of the Investigation Report took place at the meeting, and the Nominee, Agency, and their legal counsel were given an opportunity to make submissions and provide further information.
3. Having reviewed the investigation materials, the Committee prepared a report for Council. The Committee’s report, along with the Investigation Report, were reviewed by Council at its January 30, 2024, 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 Nominee and/or Agency of the action it intends to take under sections 231, 236, and 241.1 of the Act before taking any such action. The Nominee and/or Agency 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 Nominee and Agency.

FACTS

5. The Agency has held a corporate general insurance licence with Council since February 26, 2020. The Nominee has maintained an active general insurance licence since July 24, 1997, and has been the nominee of the Agency since February 26, 2020.
6. On April 7, 2022, a complaint was received by SJ, a compliance officer at the Financial Services Regulatory Authority of Ontario ("FSRAO"). SJ advised Council that FSRAO evidence suggests Licensee KF sold two property insurance policies for risks located in Ontario. The email stated the insurance transactions occurred sometime in April 2020. It is alleged at the time the policies were sold that Licensee KF did not have an active insurance licence in Ontario where the property was located. Council staff subsequently requested the Nominee provide information about the two transactions noted by SJ.
7. On April 13, 2022, a complaint was made by VC to Council. VC made complaints against Licensee KF and Licensee DA. VC's complaint alleged a negative customer experience due to the Agency's inability to extend coverage on a risk located in Ontario. A tenant insurance policy was sold to VC on June 3, 2020, for a location in Ontario and coverage could not be extended beyond the expiry date of July 18, 2021.
8. On May 12, 2022, KE, a representative of the Agency replied to Council staff's inquiry. The letter confirmed an agent of the Agency, Licensee KS, sold insurance for risk locations in Ontario and that KS was not a licensed salesperson in Ontario.
9. On December 14, 2022, Council staff requested the Nominee to verify and provide the names of all licensees within the Agency who sold insurance on risks located in Ontario.
10. On December 19, 2022, the Nominee confirmed Licensee KF sold a policy on July 18, 2019, and a tenant policy on June 3, 2020, for risks located in Ontario. It was also confirmed that Licensee KS

completed the sale of a policy on August 19, 2020. Both locations of the policies were for properties in Toronto, Ontario. It was also stated that Licensee KS and Licensee KF did not hold insurance licences in Ontario when the policies were sold.

11. On February 13, 2023, Council staff requested KE to provide a list of all out-of-province risks sold by the Agency and confirmation of the licensees involved with those insurance policies.
12. On March 10, 2023, KE provided copies of 32 transactions for out-of-province risk locations completed by the Agency between March 12, 2020, to November 18, 2022.
13. On March 15, 2023, Council staff requested KE provide all out-of-province transactions completed by the Agency in addition to the list provided on March 10, 2023.
14. On March 29, 2023, KE provided details about the licensees involved in 26 insurance transactions for risk locations in Alberta and Ontario. It was confirmed that the Agency completed 13 insurance transactions for properties located in Ontario. There were also 13 transactions completed for Alberta risk locations. All the Ontario and Alberta sales were completed by licensees within the Agency who did not hold the requisite insurance licences in Ontario and Alberta.
15. On June 9, 2023, based on the information provided by KE on March 10, 2023, and March 29, 2023, it was confirmed that between November 18, 2012, and November 1, 2022, the Agency had completed 13 insurance transactions that were Ontario risk locations. The licensees involved did not hold insurance licences in Ontario at the time the policies were sold. The Ontario transactions were completed by unlicensed Agency licensees. The employees who completed the transactions were Licensee DA, Licensee KF, and Licensee RF. During this period, the Agency also completed 13 insurance transactions that were Alberta risk locations, and the licensees involved did not hold insurance licences in Alberta when the transactions were completed. The Alberta transactions were completed by unlicensed Agency licensees. The employees who completed the transactions were Licensee KF, Licensee DA, Licensee RF, and Licensee AS.
16. When questioned about steps the Agency has taken since becoming aware of the unlicensed activity, KE responded on behalf of the Agency advising “*We are in the process of educating ourselves on the requirements for these agents to be licensed in Alberta and Ontario and we intend to proceed with that licensing process where applicable. It is our current practice and intention going forward to ensure that all agents hold the appropriate licensing at all times.*” Additionally, KE advised that the licensees within the Agency were advised not to write any new business or additions to existing policies in any province in which they were not licensed.

17. In June 2023, legal counsel for the Nominee and Agency provided further information regarding this investigation to Council. It was stated that the clients of the Agency already had insurance products and the out-of-province locations added were not due to Agency marketing but because of requests made by the clients to add coverage. For each out-of-province transaction in question, the licensee had the equivalent level licence in BC required for the sale of each insurance product. For each out-of-province transaction in question, the insurer's underwriters were aware that the risks being added already had a BC-located risk.
18. As a result of the investigation, the Agency immediately advised the licensees in question not to write any new business, personal lines, or commercial insurance business, in any province they are not licensed in.
19. Having reviewed the requirements for having one or more of their agents licensed in Alberta and Ontario, the Agency determined that out-of-province licensing was too cumbersome for the number of policies involved and took steps to have all subject policies transferred to brokers qualified in Alberta and Ontario, or otherwise confirmed that such a transfer is not necessary.
20. The Agency contacted an agency located in Calgary, Alberta, which has agents licensed in BC, Alberta, and Ontario. With appropriate client consent, the agency from Alberta was provided information from the Agency's agents for seven customers with properties outside of BC. This agency agreed to take over the client files and place the coverage through their agency for those properties.
21. The Agency advised going forward it will maintain a policy within the Agency that ensures its compliance so that transactions outside of British Columbia will not be bound or brokered unless a licensee holds the requisite licence in the required jurisdiction.
22. On June 9, 2023, the Agency provided additional information to Council staff containing a consolidated Excel spreadsheet confirming the insurance transactions completed by the Agency for Ontario and Alberta risk locations. The list identified 56 out-of-province insurance transactions completed by the Agency. The list included the insurance transactions completed by the Agency between November 18, 2012, and November 1, 2022.
23. On July 12, 2023, legal counsel for the Agency and Nominee provided information indicating an additional 11 insurance transactions had been completed by Agency licensees from July 18, 2016, to July 18, 2020. There were 10 transactions sold by Licensee KF and Licensee KS. One of the insurance transactions for policy [REDACTED] was completed on August 22, 2018, by Licensee MB. Licensee MB did not have an active Ontario insurance licence when he completed the transaction.

24. In summary, there were 67 insurance transactions completed between November 18, 2012, to November 1, 2022, by the Agency's agents who did not hold an active licence in Alberta or Ontario. The transactions were completed by six different agents at the Agency.
25. At the Review Committee meeting, the Nominee stated that many of the transactions involved clients that were acquired from purchasing two books of businesses. The Nominee advised that these transactions happened organically while licensees were servicing clients who required additional out-of-province insurance products in addition to the insurance products required in BC. The Agency was not actively marketing or attempting to acquire business outside of BC.

ANALYSIS

26. Council was concerned about whether there were appropriate procedures and policies in place to ensure that all licensees within the Agency understood that out-of-province insurance transactions required the licensees to be licensed in the location in which they were selling an insurance product. Council determined the Nominee should have been aware that licensees within the Agency were conducting insurance business in other provinces where they were not licensed and not authorized to conduct insurance business. This demonstrated a lack of supervision and oversight of the Agency by the Nominee. A nominee of an agency is responsible to Council for the activities of the insurance agency, and in this instance, the Nominee holds equal responsibility for the failure of the Agency regarding unlicensed activities within the Agency.
27. Council further concluded the Nominee and Agency should have been aware of the limitations of the Agency's authority related to their licence and the insurers regarding out-of-province insurance transactions. Council determined the Nominee should have had policies in place so that licensees within the Agency would be aware of their limitations and authority with insurers in which they were transacting business. Council noted that the insurer contracts have provisions which warrant that the Agency is properly licensed in all applicable jurisdictions where the insurance business is conducted. As the insurance transactions in question did not adhere to the Agency's authority granted by the insurer, the Agency allowed policies to be bound that were not authorized. This, in Council's view, poses a risk to the public, as the policies in question would be beyond the authorization of the Agency. Therefore, the policies could be deemed by the insurers to be invalid.
28. Council further concluded that although the intentions in placing these out-of-province transactions were likely a result of the licensees within the Agency wanting to assist the clients, these actions were outside of the usual practice of dealing with clients. The Agency and Nominee are responsible for the actions of the licensees within the Agency. In these transactions, the licensees conducted business in

which they did not possess the proper expertise, training, or experience, as they conducted business for other provinces where they did not have the requisite knowledge or were appropriately licensed. Council further believes that the Agency had a responsibility when purchasing the books of business to ensure that the clients within that book of business have their needs evaluated and ensure the clients are protected within the transition. Council concluded that the Agency and Nominee did not appropriately evaluate the client's needs and therefore breached the usual practice of dealing with clients.

29. Council considered the impact of Council Rules 7(6), 7(8), 7(14) and Council's Code of Conduct guidelines on the Nominee and Agency's conduct, including section 4 ("Good Faith"), section 5 ("Competence"), section 7 ("Usual Practice: Dealing with Clients") and section 8 ("Usual Practice: Dealing with Insurers"). Council concluded that the Nominee and Agency's conduct amounted to breaches of the above Rules and Code of Conduct sections and the professional standards set by the Code.

PRECEDENTS

30. Prior to making its intended decision, Council took into consideration the following precedent cases. While Council is not bound by precedent and 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.
31. [All Write Insurance Agencies Ltd. dba All Write Insurance Service](#) (August 2016): Council concluded there were concerns regarding a lack of policies and procedures at the agency. There was a licensee who was permitted to conduct insurance business on behalf of the agency without having the authority to represent ("ATR"). Council noted concern that the agency and nominee had a lack of policies and procedures to ensure compliance with Council Rules. The nominee was unable to contact an additional two salespersons who had an active authority to represent and was unable to say whether they had an authority to represent at another agency. However, Council noted that it was the agency's decision whether the licensees were permitted to continue to represent the agency. As the two licensees still had ATRs with the agency, Council determined the agency had not breached Council Rules by failing to notify Council within five business days when a licensee no longer had an ATR with the agency. Council found the licensees in question still had the ATR with the agency. Council ordered a fine of \$2,500 and investigation costs against the agency.
32. [All Write Insurance Services \(2013\) Ltd](#) (August 2016): The agency's insurance licence was terminated on July 31, 2015, for failing to submit its annual filing with Council. The nominee advised that the

accountant was left to ensure the licence was reinstated. However, during this timeframe, the agency did not cease conducting insurance activity at the agency. It was not until October 2015 that the agency licence was reinstated. Additionally, in August 2015, while the agency licence was terminated, a licensee who did not have the authority to represent the agency conducted insurance activities on behalf of the agency. Council ordered a fine of \$5,000 and investigation costs against the agency.

33. [Mapleleaf Insurance Services Ltd.](#) (April 2016): A licensee of the agency failed to submit his annual filing resulting in a termination of his general insurance licence on July 31, 2014. The licensee did not become aware of the termination until September 5, 2014, and was not reinstated until November 24, 2014. The nominee became aware of the licensee's unlicensed status on October 28, 2014, and instructed the licensee to stop engaging in insurance activities, however, the licensee did not comply with the nominee's direction. The licensee completed many insurance transactions during the time he was unlicensed. Council determined there was a lack of procedures in place to ensure all licensees were properly licensed. Council ordered a fine of \$10,000 against the agency as well as investigation costs.
34. [Family Insurance Solutions Inc.](#) (March 2015): The agency allowed unlicensed agents to engage in insurance activities. Although the agency was taking steps to license its staff appropriately, it took almost 16 months for this process to be completed, and the unlicensed staff continued to perform the same activities during that period. Council fined the agency \$5,000 and imposed costs associated with the investigation for this breach. As the nominee had taken appropriate steps to inform senior management of its problematic practices, the nominee was not penalized.
35. [Ironwood Insurance Agencies Ltd. & Devender Dave Sood](#) (July 2017): The agency permitted a Level 1 general insurance agent to engage in activities outside of the office and allowed another licensee, not authorized to represent the agency, to engage in insurance activities on behalf of the agency. The nominee of the agency essentially admitted that he did not afford the situation the appropriate due diligence and incorrectly assumed that the Level 1 agent was permitted to work outside the office which was contrary to their licence restrictions. Council had difficulty accepting this explanation as the nominee was very experienced and ought to have known better. Council fined the agency \$10,000 and imposed conditions on the nominee's licence.
36. [Park Georgia Insurance Agencies \(2014\) Ltd. and Churk Yin Winnie Lo](#) (November 2018): The agency had knowingly permitted 36 Level 1 general insurance agents to conduct insurance business outside of the office which was contrary to their licence restrictions. Due to the number of agents permitted to operate outside of their licence restrictions, contrary to the Council Rules, Council imposed a fine of \$20,000 on the agency, a \$5,000 fine on the nominee, downgraded the nominee to a Level 2 general

insurance licence for a period of two years, required them to complete the Council rules course, and assessed investigation costs against the agency.

MITIGATING AND AGGRAVATING FACTORS

37. Council gave consideration to relevant mitigating and aggravating factors in this matter. The primary mitigating factor was that the Nominee acknowledged the misconduct and that these actions were unintentional. Council believed that the Agency was trying to help service the clients' insurance needs without realizing the transactions were beyond their authority. Additionally, the Committee considered the Agency's and Nominee's cooperation throughout the investigation as a mitigating factor. However, Council considered the fact that the transactions in question took place over a span of at least 10 years to be an aggravating factor as these actions took place over some time as opposed to an isolated event. Council noted that although there was no proof of actual harm to the clients involved in these transactions, there was a potential risk of harm to the clients. This is because the policies issued went beyond the insurers' authority and could have been considered invalid by the insurers. This in Council's view was an aggravating factor.

CONCLUSIONS

38. After weighing all of the relevant considerations, Council views the Nominee and Agency to be in breach of Council's Rules and the Code of Conduct and concludes that it is appropriate for the Nominee to be fined and required to complete courses. Council further concludes that it is appropriate that the Agency be assessed a fine. Council believes that a fine is appropriate in the circumstances to communicate to the Nominee, the Agency, the insurance industry, and the public, that insurance agencies and their nominees are expected by Council to perform their roles and conduct insurance business competently.
39. Council notes that there were 67 transactions in question and determined the [Park Georgia Insurance Agencies \(2014\) Ltd. and Churk Yin Winnie Lo](#) case to be the most analogous case to the facts of this matter. Therefore, the Committee believes the same fines as the [Park Georgia Insurance Agencies \(2014\) Ltd. and Churk Yin Winnie Lo](#) case should be issued in this instance.
40. With respect to investigation costs, Council has concluded that these costs should be assessed to the Agency and Nominee. 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.

INTENDED DECISION

41. Pursuant to sections 231, 236, and 241.1 of the Act, Council made the following intended decision to:
- a. Fine the Nominee \$5,000 to be paid within 90 days of Council's order;
 - b. Require the Nominee to complete the following courses, or equivalent courses as acceptable to Council, within 90 days of Council's order:
 - i. the Council Rules Course for general insurance and adjusters; and
 - ii. the Nominee Responsibilities and Best Practice Course for General Insurance and Adjuster Nominees and Applicants
(Collectively, the "Courses");
 - c. Fine the Agency \$20,000, to be paid within 90 days of Council's order;
 - d. Jointly and severally assess the Agency and Nominee Council's investigation costs in the amount of \$2,625, to be paid within 90 days of Council's order;
 - e. Impose a condition on the Nominee's general insurance licence that failure to pay the fine and costs and complete the Courses within 90 days will result in the automatic suspension of the Nominee's licence, and the Nominee will not be permitted to complete the Nominee's 2026 annual licence renewal until such time as the Nominee has complied with the conditions listed herein; and
 - f. Impose a condition on the Agency's general insurance licence that failure to pay the fine and investigation costs in full within 90 days will result in the automatic suspension of the Agency's licence, and the Agency will not be permitted to complete the Agency's 2026 annual licence renewal until such time as the Agency has complied with the conditions listed herein.
42. Subject to the Nominee and/or Agency'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.

ADDITIONAL INFORMATION REGARDING FINES/COSTS

43. Council may take action or seek legal remedies against the Nominee and Agency to collect outstanding fines and/or costs, should these not be paid by the 90 day deadline.

RIGHT TO A HEARING

44. If the Nominee and/or Agency wishes to dispute Council's findings or its intended decision, the Nominee and/or Agency 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 Nominee and/or Agency **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 Nominee and/or Agency does not request a hearing within 14 days of receiving this intended decision, the intended decision of Council will take effect.**
45. Even if this decision is accepted by the Nominee and Agency, 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 <https://www.bcfst.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 **27th day of February, 2024.**

For the Insurance Council of British Columbia



Janet Sinclair
Executive Director