

In the Matter of

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

and

The *INSURANCE COUNCIL OF BRITISH COLUMBIA*
("Council")

and

WEST COAST IMPORT VEHICLES LTD.
dba WEST COAST TOYOTA
(the "Agency")

and

DIANE LOUISE DRAPER
(the "Nominee")

ORDER

Pursuant to section 237 of the Act, Council convened a hearing at the request of the Agency and the Nominee to dispute an intended decision, dated March 27, 2015, 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 May 26, 2016.

A Hearing Committee heard the matter on June 20, 2016, and presented a Report of the Hearing Committee to Council at its August 16, 2016 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 Agency is fined \$2,250.00
2. The Nominee is fined \$1,125.00.
3. The Agency is assessed Council's investigation costs of \$950.00.
4. The Agency is assessed Council's hearing costs of \$3,240.00.

Order

West Coast Import Vehicles Ltd. dba West Coast Toyota and Diane Louise Draper

LIC-9024554C124925R2 and LIC-179334C124926R2

August 16, 2016

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5. As a condition of this order, the Agency is required to pay the above-ordered fine, investigative costs, and hearing costs no later than **November 16, 2016**.
6. As a condition of this order, the Nominee is required to pay the above-ordered fine no later than **November 16, 2016**.

This order takes effect on the **16th day of August, 2016**.



Dr. Eric Yung
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

WEST COAST IMPORT VEHICLES LTD.
dba WEST COAST TOYOTA
(the “Agency”)

AND

DIANE LOUISE DRAPER
(the “Nominee”)

Date: June 20, 2016
9:30 a.m.

Before: Ruth Hoyte Chair
Darlene Hyde Member
Frank Leong Member

Location: Charest Reporting
Suite 1650, 885 West Georgia Street
Vancouver, British Columbia V6C 3G1

Present: David McKnight Counsel for Council
Diane Draper Nominee

BACKGROUND AND ISSUES

As set out in the Notice of Hearing, the purpose of the Hearing was to determine whether the Agency and the Nominee failed to act in a trustworthy and competent manner, in good faith, and in accordance with the usual practice of the business of insurance by failing to ensure required written disclosure was provided to clients in accordance with a condition on the insurance licence of the Agency when selling an extended warranty refund policy (“XWRP”).

XWRP is an insurance product that is sold to a consumer after the consumer has purchased an extended warranty on a motor vehicle. If the consumer does not use the extended warranty on his or her motor vehicle, the XWRP provides coverage that can result in a payment to the consumer that equals the amount of the XWRP premium plus the cost of the extended warranty.

Council initially considered the allegations against the Agency and the Nominee at its meeting on March 10, 2015, and provided the Agency and the Nominee with written reasons for its intended decision, dated March 27, 2015.

In response to the intended decision, the Agency and the Nominee requested a hearing, pursuant to section 237(3)(b) of the Act. The Hearing Committee has the authority to determine if the allegations against the Agency and the Nominee warrant disciplinary action pursuant to section 231 of the Act.

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

EXHIBITS

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

EVIDENCE

On January 23, 2013, the Agency was issued a general insurance licence with the following licence conditions:

1. The Licensee may only conduct insurance activities, incidental to its activities as a Motor Vehicle Dealership.
2. The Licensee may only conduct insurance activities under the direct supervision of a general insurance agent approved by Council.
3. The Licensee must provide written disclosure prior to the sale of insurance, in the form and manner required by Council.

4. The Licensee is restricted to the sale of Trisura Guarantee Insurance Company's Warranty Refund Insurance Policy, as approved by Council on December 13, 2012.

On January 23, 2013, the Nominee was issued a general insurance agent licence with the following licence condition:

1. The Licensee is restricted to representing licensed motor vehicle dealerships for insurance activities related to the named insurance product(s) under the dealerships' licences.

The conditions on the Agency's and the Nominee's general insurance licences arise from requirements established by Council for all motor vehicle dealerships seeking to engage in insurance business. These requirements are described in Council Notice ICN 12-006 *Granting Restricted General Insurance Licences to Motor Vehicle Dealers*, which was published on October 5, 2012.

With respect to the requirement for all motor vehicle dealerships licensed with Council to provide written disclosure to clients in the form and manner required by Council, Notice ICN 12-006 specifically advised:

There are new disclosure requirements to ensure consumers have a clear understanding of their right to decline any insurance coverage. Dealerships will be required to provide consumers with a disclosure document, separate from any other vehicle sales transaction document provided, that outlines in clear and concise language:

- a) *That the purchase of the insurance coverage is optional and can be declined by the consumer; and*
- b) *The premium (as set by the underwriting insurer) and, separately, an itemized list of fees charged by the Dealership which includes the amount of each fee and a description.*

The disclosure document must be presented to the consumer prior to the purchase of any insurance and the consumer must sign and date the document, acknowledging that he or she has read it and understands its content. A copy of the signed document must be maintained by the Dealership as part of its record-keeping responsibilities.

Council will develop a disclosure document that it expects Dealerships to use. Until this is published, both Dealerships and Supervising Agents are responsible for ensuring that consumers receive a disclosure document that meets the above requirements.

On September 30, 2013, Council published Notice ICN 13-002 *Motor Vehicle Dealerships – Inspection Notice*, which included a disclosure form for use by motor vehicle dealerships. In this disclosure form, the following information is provided to consumers:

Important Consumer Information

You are about to purchase optional insurance coverage for a motor vehicle. Before finalizing your decision, please note:

- *You are not required to purchase this insurance coverage; and*
- *You are not subject to any penalty or additional fees if you choose not to purchase this insurance coverage.*

Should you choose to purchase this insurance, make sure any questions you have about the product are answered to your satisfaction. In advance of purchasing the insurance, you must also be provided with clear and concise written disclosure of all coverages and exclusions of the insurance product, including cancellation provisions. These materials must tell you what coverage you have purchased and what your responsibilities are if you need to make a claim.

On November 23, 2013, Council conducted an inspection of the Agency (the “Inspection”) which revealed that the Agency did not provide five clients, who had purchased XWRP, with written disclosure as required by the aforementioned condition on its licence. In fact, prior to the Inspection, the Agency had never provided any clients who purchased XWRP with such written disclosure. However, the Nominee stated she had provided clients with verbal disclosure about XWRP.

According to the Nominee, while she receives many emails from various persons including Council, she must have missed the notice from Council regarding the written disclosure requirements.

The Nominee also advised that while she had received some initial training on XWRP that was about 90 minutes in length from the supervising general insurance agent responsible for the oversight of the sale of XWRP, she did not recall if there was a discussion during the training with regard to Council's written disclosure requirements. The supervising agent claimed that training was provided on the written disclosure requirements and that blank copies of standard training forms and standard disclosure forms for the XWRP products were provided to dealerships. The Nominee submitted that this has not been verified.

The Nominee also brought to the Hearing Committee's attention that it was important to her that clients who had purchased XWRP be reminded prior to the expiry of the policy about the refund provisions in the policy. As such, in the best interests of Agency clients, the Nominee implemented procedures in this regard.

Since the Inspection, the Agency has been providing the required written disclosure to clients prior to the sale of XWRP. The Nominee advised that the Agency will be ceasing the sale of XWRP.

The Nominee commented that previous Council decisions relating to motor vehicle dealerships that had failed to provide the required written disclosure to clients prior to the sale of XWRP, signified to her that the supervising general insurance agent for the sale of XWRP was not providing adequate training on the disclosure requirements.

The Nominee further submitted that neither she nor the Agency have ever been the subject of discipline by Council or by the Motor Vehicle Sales Authority of British Columbia.

FINDINGS OF THE HEARING COMMITTEE

The requirement for all licensed motor vehicle dealerships to provide written disclosure to clients prior to the sale of incidental insurance is a critical step in the sales process to ensure that clients are adequately informed about the insurance product. The disclosure includes that clients are not required to purchase the insurance and, if they do purchase the insurance, they are provided with specific information about all costs.

In the case of the Agency and the Nominee, there is no dispute that the Agency failed to comply with a condition on its insurance licence which required it provide written disclosure to clients in the form and manner required by Council, prior to the sale of XWRP.

The Hearing Committee accepted that the Agency and the Nominee did not purposely ignore the written disclosure requirement, and it noted that the Nominee appeared to have a genuine intent to ensure Agency clients understood the XWRP policy and its refund provisions. However, the Hearing Committee did not accept that the breach of the licence condition was a result of inadequate training, as was indicated by the Nominee.

The Hearing Committee found that, regardless of whatever training the Agency and/or the Nominee may have received on XWRP, a condition on an insurance licence is a fundamental requirement that a licensee must abide by and there is no justification for non-compliance with the condition.

With respect to the Nominee, the Hearing Committee found that she had a duty to be aware of all conditions on the Agency's licence and to take whatever steps are necessary to ensure that the Agency met these conditions. In this case, albeit unintentional, the Nominee failed in this regard.

For the above reasons, the Hearing Committee concluded that disciplinary action was warranted against the Agency for the breach of its licence condition on five occasions, and against the Nominee for failing to fulfill her responsibilities as a nominee.

In determining the appropriate disposition for this matter, the Hearing Committee considered Council's decisions *Don Folk Chevrolet Inc.* and *Bannister Chevrolet Buick GMC Vernon Inc.* which pertained to motor vehicle dealerships that failed to provide the required written disclosure to clients on multiple occasions when selling XWRP. In these cases, Council fined each motor vehicle dealership a base amount of \$1,000.00 plus a fine of \$250.00 for each occurrence where a client was not provided with the required written disclosure prior to the sale of XWRP. Council also fined the nominee of each motor vehicle dealership half of the total fine that was assessed to their dealership.

Given the similarities between this matter and the circumstances pertaining to *Don Folk Chevrolet Inc.* and *Bannister Chevrolet Buick GMC Vernon Inc.*, the Hearing Committee concluded it is appropriate to impose the same degree of penalty.

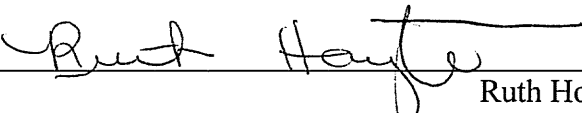
With regard to hearing costs, the Hearing Committee did not believe it would be fair for Council to bear these costs considering there was no dispute that the Agency had breached a licence condition and that such breaches, as previously determined by Council, have resulted in fines, as was proposed in the intended decision for the Agency and the Nominee. Having said that, the Hearing Committee recognized the Nominee's forthrightness throughout the process and that licensees have the right to a hearing process, and as such, it is recommending that the Agency be assessed half of the hearing costs.

PENALTY

The Hearing Committee recommends Council consider the following recommendations:

1. The Agency be fined \$2,250.00
2. The Nominee be fined \$1,125.00.
3. The Agency be assessed Council's investigation costs of \$950.00.
4. The Agency be assessed Council's hearing costs of \$1,620.00.

Dated in Vancouver, British Columbia, on the 5 day of August, 2016.



Ruth Hoyte
Chair of Hearing Committee