

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

and the

INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

and

BRENT MICHAEL POLISCHUK
(the “ Former Licensee”)

ORDER

As Council made an intended decision on December 13, 2022, pursuant to sections 231, 236, and 241.1 of the Act; and


As Council, in accordance with section 237 of the Act, provided the Former Licensee with written reasons and notice of the intended decision dated January 10, 2023; and

As the Former 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 Former Licensee is fined \$5,000, to be paid by May 29, 2023, and which must be paid in full prior to the Former Licensee being licensed in the future.
- 2) Council will not consider an application for any insurance licence from the Former Licensee for a period of five years, commencing on the date of this order and ending at midnight on February 27, 2028; and
- 3) The Former Licensee is assessed Council’s investigation costs of \$2,562.50, to be paid by May 29, 2023, and which must be paid in full prior to the Former Licensee being licensed in the future.

This Order takes effect on **27th day of February, 2023**



Janet Sinclair, Executive Director
Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA

(“Council”)

respecting

BRENT MICHAEL POLISCHUK

(the “Former Licensee”)

1. 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, Council Rules, and Code of Conduct, and in particular to determine whether the Former Licensee breached Rule 7(8), 7(11) and section 3 (“Trustworthiness”); section 4 (“Good Faith”); section 6 (“Financial Reliability”); section 7 (“Usual Practice of Dealing with Clients”); section 8 (“Usual Practice: Dealing with Insurers”), and section 12 (“Dealing with the Insurance Council of British Columbia”) of the Code of Conduct related to allegations that the Former Licensee borrowed funds from insurance business clients which gave rise to a conflict of interest or potential conflict of interest and for a lapse in errors and omission insurance while licensed.
2. On October 18, 2022, as part of Council’s investigation, a Review Committee (the “Committee”) comprised of Council members met to discuss the investigation. An investigation report prepared by Council staff was distributed to the Committee and the Former Licensee prior to the meeting. The Former Licensee provided written submissions for the Review Committee’s consideration but did not attend the meeting. A discussion of the investigation report took place at the Review Committee. Having reviewed the investigation materials and written submissions of the Former Licensee, the Committee prepared a report for Council.
3. The Committee’s report, along with the aforementioned investigation report, were reviewed by Council at its December 13, 2022, 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 Former Licensee of the action it intends to take under sections 231, 236, and 241.1 of the Act before taking any such action. The Former 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 Former Licensee.

FACTS

5. The Former Licensee was first licensed with the Insurance Council as a life and accident and sickness insurance agent (“Life Agent”) on September 5, 2001. The Former Licensee was the nominee and sole licensee of Brent Polischuk Financial Services Inc. (the “Agency”) from November 2, 2017, until August 1, 2020, when the Agency’s licence was terminated for non-renewal and the Former Licensee’s individual licence was put into an inactive status. On August 4, 2021, the Former Licensee’s Life Agent licence was terminated for non-renewal.
6. On September 9, 2020, the Insurance Council received correspondence from an insurer advising that they had terminated the Former Licensee’s contract with them for unacceptable sales practices. The insurer was first alerted to these sales practices by a client who had loaned funds to the Former Licensee. The client claimed that the Former Licensee had secured the loan with his book of business. Upon further review, the insurer found that the Former Licensee had borrowed funds from several clients. The insurer investigated the professional conduct of the Former Licensee and consequently terminated his contract with cause on March 16, 2020.
7. On March 5, 2020, a client of the Former Licensee, Mr. X, met with the insurer’s district director (the “District Director”), at one of their financial centers and made a complaint against the Former Licensee. Mr. X explained that he was a childhood friend of the Former Licensee, and in November 2018 he had loaned the Former Licensee \$100,000 for a townhouse development. Mr. X acquired the \$100,000 by taking out a home equity line of credit against his home, and he loaned it to the Former Licensee with the agreement that the Former Licensee would repay the loan plus interest by January 11, 2019; however, when Mr. X complained to the insurer, the loan had not been repaid. Mr. X further advised that the Former Licensee had been paying interest on the loan up until December 2019, when he stopped making interest payments or communicating with Mr. X.
8. Mr. X provided the insurer with a copy of the promissory note related to the loan (the “Promissory Note”). The Promissory Note, signed November 9, 2018, indicated that:
 - The Former Licensee would pay Mr. X the principal sum of \$100,000, with interest payable on the unpaid principal at the rate of 4.45% per annum, calculated monthly not in advance, beginning on November 9, 2018.

- The loan would be repaid in full in the amount of \$111,250 on January 11, 2019, with the balance then owing being paid at that time.
- The loan was secured by the Former Licensee's book of business, totalling 25% of the revenue stream of said book, valued at \$249,000.

9. An addendum to the Promissory Note, signed on May 17, 2019, indicated that:

- The Former Licensee would pay Mr. X the principal sum of \$100,000, with interest payable on the unpaid principal at the rate of 4.45% per annum on the \$100,000, calculated monthly not in advance, beginning on November 9, 2018. A second monthly payment would be made on the principal sum of \$25,000 with interest payable on the unpaid principal at the rate of 8.95% per annum on the \$25,000 calculated and paid monthly beginning on April 1, 2019.
- The loan would be repaid in full in the amount of \$120,000 on June 1, 2019 (*"with the possibility of June 15/2019"*, handwritten) or sooner with the balance then owing being paid at this time.

10. The Former Licensee used his book of business, totalling 25% of the revenue stream of said book, valued at \$249,000 as a form of security for the loan with Mr. X.

11. The insurer determined that the Former Licensee had contacted other clients for loans. From the emails between the insurer and the Former Licensee's clients discussing the Former Licensee, it appeared that the Former Licensee was in financial difficulty and possibly was in arrears in income taxes.

12. On March 26, 2020, a client of the Former Licensee, JG, called the District Director after receiving the notification letter sent by the insurer, which advised that the Former Licensee was no longer affiliated with the insurer. He indicated that the Former Licensee had been his advisor and had approached him for a \$160,000 personal loan in October or November 2019. JG had been told that the Former Licensee was in financial trouble with the Canadian Revenue Agency and needed the money to pay them off. JG refused, but the Former Licensee went back to him several times to request smaller amounts until JG finally gave him a *"Hard No"* to lending any funds.

13. Another client of the Former Licensee, JN, called the District Director on May 6, 2020, and the District Director connected with him on May 7, 2020. JN advised that in the first week of December 2019 he had suffered a heart attack. Shortly after this, the Former Licensee approached him and asked to borrow \$25,000. JN *"was in a vulnerable situation after his heart attack"* and on December 23, 2019, he agreed to loan the former Licensee \$25,000, which the Former Licensee was to pay back by the end of January 2020.

14. The Former Licensee missed the payment deadline. When JN approached the Former Licensee about being paid back in early February 2020, the Former Licensee asked for another \$40,000, but JN declined to loan him any more funds. JN confirmed that the Former Licensee had paid him back in full on February 27, 2020, for \$25,000 plus \$180 in interest.
15. JN provided the District Director with a copy of the cheque he wrote for \$25,000 as a loan to the Former Licensee.
16. The District Director spoke to another client of the Former Licensee, DN, on May 15, 2020. DN had known the Former Licensee for 10 years. In mid-February 2020, the Former Licensee called DN and mentioned that he needed to borrow \$25,000. DN considered it, and the next day the Former Licensee sent him a message saying that the amount he needed was \$30,000. Later in February 2020, the Former Licensee followed up and DN sent two transfers: one for \$25,000 and one for \$5,000. DN told the Former Licensee that he would require the money back by the end of March 2020.
17. The Former Licensee did not pay DN back at the end of March as requested. During the investigation, DN indicated that he could provide correspondence (such as text messages) from the Former Licensee relating to his requests to borrow funds, but he did not respond to follow-up requests for production of the correspondence. DN later indicated to the insurer that he would not be providing the related correspondence. It is currently unknown if the Former Licensee has repaid DN.
18. The District Director was also able to speak to the Former Licensee's client BT, who had sent the former Licensee \$1,700 on July 31, 2019. BT indicated that the Interac e-transfer "*was personal and had nothing to do with business*" and did not provide further information.
19. The Insurance Council's investigator spoke with Mr. X on April 19, 2021, and Mr. X confirmed that he would discuss the Insurance Council's request for information with his lawyer before he provided anything. The Insurance Council has not heard from Mr. X since that time.
20. The Insurance Council staff located a Notice of Civil Claim filed on April 27, 2020, in the Supreme Court of British Columbia. This action was filed by Mr. X against the Former Licensee for the return of the money owed from the loan. In the Notice of Civil Claim, Mr. X also named the insurer as a defendant on the grounds that the promissory note with the Former Licensee included an assignment of the Former Licensee's book of business with the insurer, in the event of non-payment of the loan. On July 30, 2021, a Consent Order was

filed dismissing the claim by consent. The matter was settled between the parties, but the terms of the settlement was subject to confidentiality.

21. As part of the investigation, in March and April 2021, the Insurance Council's investigator contacted the Former Licensee several times to request a written response to the information received from the insurer and arrange a telephone conversation.
22. On May 6, 2021, the Former Licensee emailed the Insurance Council's investigator advising that he was in the process of negotiating with Mr. X and did not want to jeopardize the negotiations, but when the matter was concluded he would provide a complete statement.
23. On June 27, 2021, the Former Licensee emailed the Insurance Council's investigator advising that the matter with Mr. X had been resolved but was subject to confidentiality, and he was unable to provide information related to the matter.
24. On July 5, 2021, the Insurance Council's investigator emailed the Former Licensee advising that the investigation was still ongoing, and that the Insurance Council was continuing its request for a response to the allegations outlined in the March 10 and April 20, 2021, letters.
25. On November 24, 2021, the Insurance Council's investigator emailed the Former Licensee informing him that although the terms of the settlement with Mr. X might be subject to confidentiality, the information that was requested was regarding the circumstances of obtaining the loan which was likely not subject to confidentiality. On December 1, 2021, the Former Licensee responded, requesting the questions be re-sent.
26. The Insurance Council's investigator re-sent the April 20, 2021, letter to the Former Licensee, and the Former Licensee responded on December 9, 2021. The Former Licensee's response confirmed that he had been terminated by the insurer because he had received a loan from a client. The Former Licensee stated that his block of business was not meant to secure the loan, but to demonstrate his ability to repay the debt. The Former Licensee further stated that his failure to respond to Insurance Council staff was primarily due to his ongoing negotiations with Mr. X.
27. On December 21, 2021, and January 17, 2022, the Insurance Council's investigator emailed the Former Licensee asking for proof that he had held a contract with an insurance company and errors and omissions insurance ("E&O") between March 16, 2020, and August 1, 2020. The Former Licensee's Agency licence was terminated for non-renewal on August 1, 2020. At this point, the Former Licensee's individual licence was put into an inactive status until August 4, 2021, when it was terminated for non-renewal.

28. The Former Licensee responded on January 17, 2022, that to his knowledge, he had not held a contract between those dates, and that he had been told that his E&O would be renewed by the insurer. In a further response on January 24, 2022, the Former Licensee told the Insurance Council's investigator that he wasn't sure when the insurer had renewed his E&O, but he thought it was around the same time that his contract had been terminated; he was unable to provide any documentary evidence of this. The Former Licensee stated that he might have held a contract with a second insurer between March 16, 2020, and August 1, 2020.
29. On January 18, 2022, the Insurance Council's investigator sent an email to the insurer asking if the Former Licensee had continued to have coverage under their E&O after they terminated his contract. The insurer responded on January 25, 2022, that the Former Licensee's E&O had been terminated on the same day as his contract, on March 16, 2020.
30. On January 25, 2022, the Insurance Council's investigator sent an email to the second insurer asking them to confirm whether the Former Licensee had held a contract with them between March 16, 2020, and August 1, 2020. On February 22, 2022, the second insurer stated that the Former Licensee had been contracted with them between March 16, 2020, and August 1, 2020. There was no proof or evidence produced to suggest that the Former Licensee had E&O coverage between March 16, 2020, to August 1, 2020, as required by the Council Rules.
31. The Former Licensee had no history of past disciplinary action. However, on April 7, 2022, the Mutual Fund Dealers Association of Canada (the "MFDA") issued a Notice of Hearing concerning a disciplinary proceeding against the Former Licensee alleging the Former Licensee engaged in personal financial dealings with clients, made false or misleading statements to the insurer, and for failing to cooperate with the MFDA investigation.

ANALYSIS

32. Council has concluded that accepting money from insurance business clients placed the Former Licensee in a situation where there was a conflict of interest. The actions of the Former Licensee in approaching multiple clients and requesting loans put the Former Licensee in a situation where the Former Licensee put his own interests for personal gain above the interests of his clients. Additionally, Council noted that one of the clients who the Former Licensee requested a loan from had recently suffered a heart attack and was in a vulnerable situation. The Former Licensee's actions were improper and not in his client's best interests. Regardless of the scenarios, or whether the Former Licensee and the clients

were friends and agreed to the loans, this is something that the Former Licensee should not have requested or accepted.

33. Council noted that in the promissory note between the Former Licensee and Mr. X, the Former Licensee secured the loan by using his book of business. Council notes that the book of business belonged to the insurer and the Former Licensee did not have the authority to use the book of business as security for the Former Licensee's personal loan. Council concluded that when the Former Licensee used his book of business to secure a personal loan, he was not acting within the authority granted to him by the insurer and acted contrary to his duty to the insurer with which he was transacting business.
34. Council further concluded that the Former Licensee's actions demonstrated that he is not financially reliable. The Former Licensee had requested loans from multiple clients and was involved in a legal proceeding regarding the outstanding debt between the Former Licensee and Mr. X.
35. The Former Licensee provided written submissions for the Committee's consideration. The Former Licensee stated that he is currently going through difficult circumstances as his father is ill and the Former Licensee is his father's primary caregiver. Additionally, the Former Licensee is helping an individual who has been struggling with substance abuse for some years. The Former Licensee apologized for his actions and stated that he is continuing to repay his debts to his clients. Council considered the Former Licensee's submissions, although Council had some difficulty weighing the credibility of the statements as the Former Licensee did not attend the Review Committee and provided these as written submissions.
36. Council concluded that the Former Licensee made a material misstatement to the Insurance Council investigator when he stated that he did not use his book of business to secure the loan with Mr. X, when the promissory note clearly demonstrates this was the case. Additionally, Council concluded that the Former Licensee did not make timely replies to Insurance Council staff inquiries during the investigation of this matter.
37. Council noted the Former Licensee's lapse in E&O coverage from March 16, 2020, to August 1, 2020. The Former Licensee was required to maintain E&O insurance or notify the Insurance Council within five days of the lapse and to immediately stop conducting insurance activities.
38. Council concluded, based on the seriousness of the Former Licensee's misconduct, that the Former Licensee is unsuitable to hold a licence. The Former Licensee's actions brought into

question his trustworthiness, ability to act in good faith, financial reliability, and ability to act in accordance with the usual practice of the business of insurance.

39. Council has concluded that given the lack of trustworthiness and good faith the Former Licensee has displayed, the Former Licensee would pose a threat to the public if allowed to hold an insurance licence again.
40. Council considered the impact of Council Rule 7(8), 7(11) and Council's Code of Conduct guidelines on the Former Licensee's conduct, including section 3 ("Trustworthiness"), section 4 ("Good Faith"), section 6 ("Financial Reliability"), section 7 ("Usual Practice: Dealing with Clients"), and section 8 ("Usual Practice of Dealing with Insurers"). Council concluded that the Former Licensee's conduct amounted to breaches of the above Code of Conduct sections and the professional standards set by the Code.
41. Prior to making its determination in this matter, Council took into consideration the following precedent cases. While Council recognized that it is not bound by precedent and that 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.
42. [*Barbara Ann Nash*](#) (December 2020) The licensee had taken a loan from a client to make a down payment on a home. On the recommendation of the licensee, the client redeemed money from a non-registered TFSA in order to provide funds to the licensee. The client was charged a redemption fee which the licensee did not inform the client of when recommending redeeming the funds. The licensee added the client to the title of a home that was purchased. The client did not understand why he was on the title or the consequences of being on the title, such as being subject to property taxes. Additionally, the licensee obtained a life term insurance policy naming the complainant as 50% beneficiary. In October 2017, the licensee and the client entered into a new loan agreement. Council found that the licensee was in a conflict of interest and did not carry on the business of insurance in good faith, in a trustworthy and competent manner. Council noted concerns of the licensee's competence as she did not adequately explain the redemption fees to the client or the legal consequences of being on title to the property or implications of being a revocable beneficiary on the insurance policy. Council further noted concerns in the licensee's tone and use of language in communications between the client and licensee. Council ordered that the licensee complete courses, required that the licensee be supervised for a period of twenty-four months, fined \$2,500, and assessed investigation costs and hearing costs.

43. [Sherry Cheng-Hui Kao](#) (January 2017) The licensee approached a client to borrow funds and the client advised they did not have extra money to lend. The licensee recommended that the licensee obtain a line of credit to obtain the funds. The licensee provided a promissory note to the client to pay back the monies borrowed. In order to make payment on the licensee's debts, the licensee borrowed money from three other insurance clients. The licensee had borrowed significant sums from her insurance clients for the purpose of investing in properties she had purchased and to meet personal debt obligations. Council found that the licensee's conduct brought into question her competency, trustworthiness, financial reliability, as well as her ability to act in good faith. Council further determined that the licensee acted in a manner that was in conflict of interest with her duties and obligations to her clients. Council ordered that the licensee's licence be cancelled for five years, fined \$10,000, and assessed investigation and hearing costs.
44. Council considered relevant mitigating and aggravating factors in this matter. The Former Licensee had been licensed for almost 18 years at the time of this conduct and he ought to have known that his actions were wrong and not in line with the usual insurance business practices. Additionally, the Former Licensee had sought loans from multiple clients over a period of time. It was not an isolated event, and this was considered by Council to be an aggravating factor that further called the Former Licensee's trustworthiness and good faith into question. Council considered that the Former Licensee had no previous disciplinary history as a mitigating factor.
45. Council has concluded that a fine of \$5,000 is appropriate in the present case, given that the Former Licensee's misconduct fell in between the scenarios that occurred in the two precedents. Council determined that the Former Licensee leveraged his professional and personal relationship with his clients for financial gain contrary to the interests of the clients and the insurers. Due to this, Council considers it in the public's interest for the Former Licensee to be prohibited from holding a licence for five years.
46. After weighing all of the relevant considerations, Council views the Former Licensee to be in breach of Council's Rules and the Code of Conduct and concludes that it is appropriate that the Former Licensee be unable to reapply for an insurance licence for a period of five years and fined \$5,000. Council further concludes that it is appropriate for the Former Licensee to be assessed the investigation costs of \$2,562.50.
47. With respect to investigation costs, Council believes that these costs should be assessed against the Former Licensee. 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

48. Pursuant to sections 231, 236 and 241.1 of the Act, Council made an intended decision:

- a) That the Former Licensee is fined \$5,000, to be paid within 90 days of Council's order;
- b) That Council will not consider an application for any insurance licence from the Former Licensee for a period of five years, commencing on the date of Council's order;
- c) That the Former Licensee be assessed Council's investigation costs in the amount of \$2,562.50, to be paid within 90 days of Council's order; and
- d) That the Former Licensee be required to pay the fine and investigation costs in full prior to the Former Licensee being licensed in the future.

35. Subject to the Former 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

36. If the Former Licensee wishes to dispute Council's findings or its intended decision, the Former Licensee 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 Former 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 of time from receipt of the notice. Please direct written notice to the attention of the Executive Director. If the Former Licensee does not request a hearing within 14 days of receiving this intended decision, the intended decision of Council will take effect.

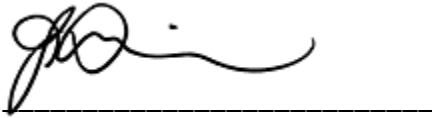
37. Even if this decision is accepted by the Former Licensee, pursuant to section 242(3) of the Act, the British Columbia Financial Services Authority ("BCFSA") still has a right of appeal to the Financial Services Tribunal ("FST"). The BCFSA has thirty (30) days to file a Notice of

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Appeal once Council's decision takes effect. For more information respecting appeals to the FST, please visit their website at www.fst.gov.bc.ca or visit the guide to appeals published on their website at www.fst.gov.bc.ca/pdf/guides/ICGuide.pdf.

Dated in Vancouver, British Columbia, on the **10th day of January, 2023.**

For the Insurance Council of British Columbia

A handwritten signature in black ink, appearing to be 'JS', written over a horizontal line.

Janet Sinclair
Executive Director