

In the Matter of

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

and

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

and

BALWINDER SINGH MAND (the “Licensee”)

**DECISION AND ORDER
UNDER SECTIONS 231 & 238 OF THE ACT**

Upon reviewing an investigation report and supporting documents prepared by Council staff and submissions put forward by the Licensee, Council is of the opinion that:

Licensing History

1. the Licensee was first licensed as a Level 1 General Insurance Salesperson with Rand & Fowler Insurance Ltd. (the “Agency”) on September 30, 1993; this licence remained active until September 29, 1999;
2. on or about October 18, 2000, the Licensee submitted a reapplication to Council for an insurance licence with a new employer and advised that since 1999, he had been, and continued to be, employed at a dealership located in Prince George, Second Chance Auto Sales Ltd. (the “Dealership”), and had part ownership in the same;
3. Council advised the Licensee that it would not issue a licence to him unless he agreed not to transact any road running automobile insurance services at any auto dealership at which he was currently employed;
4. the Licensee, along with the nominee of the agency at which he was to be licensed, agreed to the restriction and his licence was approved effective March 6, 2001;
5. on or about April 5, 2001, the Licensee submitted a transfer application to the Agency;

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6. on April 11, 2001, the Licensee and the Agency's nominee, Brad Jefferson (the "Nominee"), provided their written agreement to Council that the Licensee would not conduct any road running automobile insurance services at any auto dealership at which he was currently employed; his licence was transferred the following day;
7. effective March 6, 2003, the Licensee upgraded his licence to a Level 2 General Insurance Agent's licence;
8. the Licensee resigned from the Agency effective November 21, 2005, as his intention was to work full-time at the Dealership;
9. at no time between March 6, 2001, to the termination of his licence on November 21, 2005, was a request made by the Licensee or the Nominee to remove the aforementioned licence restriction;

Council's Initial Investigation

10. in or around October 2005, Council received notification from the Insurance Corporation of British Columbia ("ICBC") that the Licensee had processed Autoplan transactions at the Dealership;
11. on October 18, 2005, a client (the "Client") attended the Dealership and purchased a 2000 Dodge Neon ("Neon"); she also purchased an extended warranty policy;
12. the Licensee transferred ownership and the insurance from her trade-in vehicle to the Neon and Autoplan coverage was bound;
13. shortly after the purchase, the Neon's transmission failed; the Licensee submitted that as the Dealership had yet to remit the paperwork and premiums, it would take some time before the vehicle warranty provider responded to the claim;
14. as the Client did not want to wait for the warranty provider to process the paperwork before starting repairs, the Licensee agreed to cover the Client's repair costs;
15. the Client required a courtesy vehicle because she had to drive to Alberta to attend a funeral, however, neither the repair shop nor the Dealership offered courtesy cars;
16. the Licensee submitted that, as a gesture of good will, he manually transferred ownership and insurance from the Neon to another vehicle owned by the Dealership, a 2002 Pontiac Sunfire (the "Sunfire"), for the Client's use while

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- repairs were being made to the Neon; the transfer was processed on October 26, 2005;
17. approximately one week later, repairs to the Neon were completed and the Licensee provided the Client with new insurance documents that reverted the insurance back from the Sunfire to the Neon; this transfer was also completed manually by him;
 18. the Nominee had not been made aware of the aforementioned transactions and when he learned of them, he acknowledged that the Licensee was in breach of the restriction on his licence;
 19. although the Nominee was not aware of any other insurance transactions processed by the Licensee at the Dealership, the Agency had not performed an audit of the Licensee's insurance business;
 20. because the Licensee's licence was terminated effective November 21, 2005, Council did not pursue the matter further and closed its investigation;
 21. the Licensee submitted an application to Council for a Level 1 General Insurance Salesperson's licence on or about September 14, 2007; the Dealership had not turned out to be a successful business venture for him and as a result, he wanted to resume his career in the insurance industry;
 22. shortly thereafter, Council reopened its investigation and as part of the investigation process, the Licensee met with an Investigative Review Committee (the "Committee") of Council on November 22, 2007;
 23. the Licensee admitted to Council investigators and to the Committee that he had breached a licence restriction by processing the ICBC transactions at the Dealership; at the time, he thought he was doing the right thing by trying to assist the Client, but he has since regretted his actions;
 24. the Licensee submitted to Council investigators and to the Committee that he did not process the transactions for personal or financial gain but rather, he acted out of convenience for the Client, who had been difficult to deal with throughout this incident;
 25. the Licensee conceded that there were other agencies in the vicinity of the Dealership that could have handled the transfers, however, he estimated that it would have taken up to an hour for another road runner to arrive at the Dealership and as the Client did not want to wait, he wanted to resolve this matter quickly for her;

26. the Licensee stated to Council investigators and to the Committee that this was an isolated incident and that he had not, on any other occasion, processed insurance transactions at the Dealership;
27. the Licensee's application was presented to Council on December 11, 2007, with a recommendation from staff that additional investigation be undertaken in order to make a final determination regarding this matter and specifically, to determine the veracity of the Licensee's evidence;
28. Council granted the Licensee a Level 1 General Insurance Salesperson's licence in the interim and, as he still had ownership and involvement in the Dealership, attached a condition on the licence that prohibited him from conducting any automobile insurance services at any auto dealership at which he was employed or in which he had an interest; the licence became effective December 20, 2007;

Subsequent Investigation by Council

29. ICBC records confirmed that, including the three aforementioned transactions the Licensee had processed for the Client, there were 311 transactions processed through the Agency for vehicles owned by the Dealership; of those, 88 were transactions for clients who had purchased Dealership vehicles;
30. the Agency pays its agents commissions once photocopies of Autoplan transaction documents are submitted; agents who do not submit this paperwork are not paid and the Agency retains the commissions;
31. the Agency's records showed that the Licensee had not received any commissions in 2004 and 2005;
32. the Licensee subsequently admitted to processing more transactions at the Dealership than he had previously stated to Council investigators and to the Committee, but was not certain how many more he had completed;
33. the Licensee acknowledged that these additional transactions were in breach of the restriction on his insurance licence that he held at the time and his agreement with Council;
34. the Licensee submitted that he was desperate to return to work in the insurance industry and was therefore not truthful to Council investigators and to the Committee about the number of transactions he had processed at the Dealership; and

35. the Licensee did not recall receiving any commissions from the Agency for transactions processed at the Dealership; he did not submit any paperwork to the Agency, as this would have alerted the Agency to the fact that he was actively processing Autoplan transactions at the Dealership.

Council found the above mentioned facts constituted a breach of a restriction on his licence and his agreement with Council not to conduct any road running automobile insurance transactions at any dealership at which he was employed. At the time that he processed the Autoplan transactions, the Licensee was not only employed at the Dealership, but also had ownership in the same. These facts also constituted a breach of section 231(1)(a) of the Act in that the Licensee failed to act in a trustworthy manner, in good faith and in accordance with the usual practice of the business of insurance. Specifically, Council determined that the Licensee had processed a large volume of Autoplan transactions at the Dealership over the course of two years and by doing so, wilfully disregarded the restriction on his licence and the agreement he had with Council. In addition, Council concluded that the Licensee had made a material misstatement in response to an inquiry from Council, contrary to section 231(1)(c) of the Act.

Council found that, contrary to the Licensee's initial submissions, in excess of 300 Autoplan transactions were processed through the Agency for vehicles owned by the Dealership. Of these, 88 transactions were for customers who had purchased Dealership vehicles. Council concluded, on a balance of probabilities, that it was the Licensee who had processed these transactions. There was no evidence to suggest that the Licensee had another agent at the Agency complete the transactions on his behalf. This was far beyond the three transactions that the Licensee first admitted to processing.

Council also concluded that the Licensee wilfully mislead the Agency and Nominee by not submitting the Autoplan transactions for payment of commission. Council accepted that he was not motivated by direct financial gain in this regard. Rather, this was seen as a value-added service the Dealership provided to its clients, without requiring them to wait a long time for an agent from another agency in Prince George to become available. This could then enhance the reputation and good will of the Dealership, which would result in indirect personal gain for the Licensee. The Licensee ultimately conceded to processing more than just the three ICBC transactions in question, although he could not say exactly how many he had processed at the Dealership. The Licensee admitted that he had not been forthright with Council from the outset about the number of ICBC transactions he had processed at the Dealership because he was desperate to obtain his insurance licence and re-enter the industry.

Council concluded that the Licensee purposefully and deliberately disregarded the restriction on his licence and his agreement with Council not to conduct any automobile insurance transactions at a dealership at which he was employed. This necessarily reflected on his intention to practice the business of insurance in good faith and in a trustworthy manner. The Licensee processed an excessive number of transactions at the Dealership knowing that each time, he was acting contrary to the restriction on his licence and in breach of his agreement with Council. With respect to the material misstatement the Licensee made in reply to an inquiry from Council, the

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Licensee admitted he had lied to both Council investigators and the Committee to obtain his insurance licence.

Council found the Licensee's submissions to be completely self-serving. He did not appreciate the necessity of having rules and provisions in place in order to protect the public and the seriousness of Council's role as a regulator. Council determined that the Licensee's overall conduct in these matters called into question his trustworthiness and his ability to act in good faith in the future. His behaviour, both in breaching the restriction on his licence and his agreement with Council, and then being untruthful about it, demonstrated a pattern of behaviour that is inconsistent with the requirements to be licensed as an insurance agent. Council found that his actions make him a continued risk to the public and as such, concluded that he is unsuitable to hold an insurance licence at this time.

Council reviewed a number of previous decisions in which licensees acted in an untrustworthy manner and as a result, were found to be unsuitable to hold an insurance licence. In the case of *Derek David Henneberry*, the former licensee had improperly accessed the ICBC database to provide a third party with personal information about an ICBC client who had then used the information to threaten the client during a road rage incident. He had also improperly rated his own vehicle and vehicles owned by his acquaintances, on at least 17 occasions, in order to circumvent AirCare. The former licensee was found not suitable to hold an insurance licence for a minimum period of two years. He was also assessed the costs of the investigation.

In a similar case, the *Jagjit Singh Cheema* decision, Cheema was a Level 1 general insurance salesperson who had been continuously employed at the same agency since 2000. In or around November 2005, ICBC notified Council that Cheema had accessed ICBC's computer database to conduct a special plate search on a vehicle operated by ICBC's Special Investigation Unit. ICBC's investigation revealed that Cheema intended to share the results of his search with an individual who had a number of criminal convictions, and had recently been released from prison following a conviction for a weapons related offence. Cheema admitted that he had conducted a license plate search with the intention of sharing the information with the individual, however, he claimed that at the end of the day, he did not disclose the information to the individual or anyone else.

Cheema argued that his conduct in this matter was a single momentary and unprecedented lapse in judgment which did not indicate an inability to carry on the business of insurance in good faith or in an untrustworthiness manner, that he had no prior disciplinary record, and that his transgression was minor and deserving only of a reprimand. Council found that Cheema's actions constituted a serious breach of trust, a lack of good faith and untrustworthy behaviour. Council ordered Cheema's insurance licence to be cancelled for a minimum period of two years and that he pay Council's investigative costs.

Council also considered the decision of *Financial Institutions Act and Glenn Frank Bergen*, wherein Bergen had accepted investment monies for an overseas development project from two insurance clients, and had deposited these funds into his own account for personal use. After

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numerous requests from the clients and once money was made available to him from a family account, the licensee reimbursed their investment monies. Council determined that Bergen failed to act in good faith and in a trustworthy manner, and as well, made a material misstatement in reply to an inquiry from Council. Council cancelled his licence for a minimum period of one year, fined him \$6,000.00 and ordered him to pay the costs of Council's investigation.

Council found the *Derek David Henneberry* and *Jagjit Singh Cheema* decisions to be most applicable to the case at hand. The licensees in those cases demonstrated untrustworthy behaviour and a lack of good faith regarding insurance related matters, whereas in the *Bergen* decision, the investment monies the licensee had taken for his personal use were not sourced from an insurance transaction. However, the Licensee's conduct in this case was more egregious than that of Henneberry and Cheema in that this was not an isolated incident. Over the course of a two year period, the Licensee continued to brazenly conduct Autoplan transactions at the Dealership contrary to the restriction on his licence. He then lied about it to Council investigators in 2005 and continued with these untruths to investigators and to the Committee two years later, in 2007. Ironically, this was all done in an attempt to convince Council that he was suitable to hold an insurance licence.

Based on the foregoing, Council determined that the Licensee is not suitable to hold an insurance licence for a minimum period of two years, following which time his suitability would be reviewed again should he reapply for a licence in the future. Council further found it appropriate to fine the Licensee \$2,500.00 to address the breach of the licence restriction and \$2,500.00 for the material misstatements he made to Council, for a total fine of \$5,000.00. Council also determined that the Licensee should be assessed the costs of the investigation.

INTENDED DECISION

Pursuant to sections 231, 236, and 241.1 of the Act, Council intends to order the following:

1. the Licensee's licence be cancelled and that he is not suitable to hold an insurance licence for a minimum period of two years from the date Council's order takes effect;
2. the Licensee be fined \$5,000.00;
3. the Licensee pay the costs of Council's investigation into this matter assessed at \$1,825.00; as a condition of this intended decision, the Licensee is required to pay the above mentioned costs by **July 22, 2008**.

This intended decision will take effect on **April 22, 2008**, subject to the Licensee's right to request a hearing before Council pursuant to section 237 of the Act.

DECISION PURSUANT TO SECTION 238 OF THE ACT

WHEREAS the Licensee is currently licensed as a Level 1 General Insurance Salesperson;

AND WHEREAS Council conducted an investigation pursuant to section 232 of the Act into allegations that the Licensee breached a condition of his licence and his agreement with Council not to conduct any road running automobile insurance transactions at any dealership at which he was currently employed, and made a material misstatement to Council in reply to an inquiry from Council;

AND WHEREAS Council has determined on the basis of its investigation that the Licensee's actions demonstrated that he is not trustworthy and cannot publicly carry on the business of insurance in good faith and in accordance with the usual practice and poses a continuing and imminent risk of serious harm to the public;


AND WHEREAS Council considers it to be in the public interest to cancel the Licensee's licence pursuant to section 231 of the Act;

AND WHEREAS Council considers the length of time required to hold a hearing would be detrimental to the due administration of the Act;

NOW THEREFORE Council orders the Licensee's licence is cancelled pursuant to sections 231 and 238, effective immediately;

TAKE NOTICE that pursuant to section 238 of the Act, the Licensee has the right to require a hearing on this order before the Council by delivering written notice within 14 days of receipt of this order to Council at Suite 300 – 1040 West Georgia Street, Vancouver, B.C., V6E 4H1; alternatively, the Licensee may appeal this order to the Financial Services Tribunal.

This order takes effect on the 18th day of March, 2008.



Ken Hawley, BComm, FLMI, CFP, CLU, ChFC
Vice-Chairperson, Insurance Council of B.C.