

In the Matter of

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

and

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

and

**DANIEL CLAUDE SHAW
(the "Licensee")**

ORDER

As Council made an intended decision on October 19, 2010, pursuant to sections 231 and 236 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 October 27, 2010; 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 and 236 of the Act, Council orders:

- the suspension of the Licensee's life and accident and sickness insurance licence until such time as full restitution of all outstanding fees, including service charges, is made in the form of a certified cheque or money order.

This order takes effect on the 23rd day of November, 2010.



Barbara MacKinnon, CAIB
Chairperson, Insurance Council of British Columbia

INTENDED DECISION
of the
INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)
respecting
DANIEL CLAUDE SHAW
(the “Licensee”)

INTRODUCTION

Pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council conducted an investigation to determine whether there was compliance by the Licensee with the requirements of the Act.

At its October 19, 2010 meeting, Council considered the allegation that the Licensee failed to make restitution on a dishonoured cheque submitted for his 2010 annual filing made in June 2010.

The Licensee was sent two letters outlining the issue surrounding the dishonoured cheque and was advised that if no response was made, his file would be brought before Council to determine the status of his licence. Council staff also attempted to contact him by telephone, however, his residence telephone number is not in service.

INTENDED DECISION 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 and 236 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

Based on the Licensee's file, Council made the following findings of fact:

1. On June 1, 2010, Council received a cheque in the amount of \$155.00 which formed part of the Licensee's 2010 annual filing for his life insurance agent licence.
2. On June 9, 2010, Council staff received a Chargeback Notice due to Non-Sufficient Funds in the Licensee's bank account.
3. On June 16, 2010, Council staff sent a letter to the Licensee requesting a certified cheque or money order in the amount of \$180.00, representing the annual filing fee and a \$25.00 service charge, no later than June 30, 2010.
4. On August 5, 2010, Council staff sent a second request letter to the Licensee for payment of \$180.00 confirming that if no response was received by August 19, 2010, his case would be brought before Council to consider whether his licence should be terminated.
5. On September 8, 2010, Council staff sent a third letter to the Licensee advising the Licensee, as payment had not been received, his case would be brought before Council at its October 19, 2010 meeting.
6. The residential telephone number provided by the Licensee is not in service.
7. On October 6, 2010, Council staff contacted the business telephone number provided by the Licensee. Council staff were advised that the Licensee had not been in contact for quite some time.
8. As of October 19, 2010, restitution had not been made to Council.

ISSUES

Council identified the following issues:

1. Is the Licensee suitable to hold an insurance licence pursuant to Council Rule 3(2) given that his annual filing fee was returned Non-Sufficient Funds; he failed to make restitution on the returned cheque; and failed to keep contact information current?
2. Is the failure to submit payment of the annual filing fee a breach of Council Rules?

LEGISLATION

Council Rule 3(2)
Licence Applications

Applicants to Satisfy Council

- (2) If an applicant satisfies Council that the applicant:
- (a) has met all of the requirements set out in the Act and Council Rules;
 - (b) is trustworthy, competent and financially reliable;
 - (c) intends to publicly carry on business as an insurance agent, salesperson or adjuster in good faith and in accordance with the usual practice of the business of insurance;
 - (d) has not in any jurisdiction:
 - (i) been refused, or had suspended or cancelled, an insurance licence or registration;
 - (ii) been convicted of an offence; or
 - (iii) been refused or had suspended or cancelled a licence or registration in any other financial services sector or professional fieldfor a reason that reveals the applicant unfit to be an insurance agent, salesperson or adjuster;
and
 - (e) does not hold other business interests or activities which would be in conflict to the duties and responsibilities of a licensee, or give rise to the reasonable possibility of undue influence.
- then the Council may consent to issuing a licence.

Council Rule 4(4)
Licence Period

- (4) Where a continuous licence is issued:
- (a) Council will publish a mandatory filing schedule;
 - (b) a licensee must submit to Council a filing, including supporting documentation, in the form required by Council;
 - (c) a licensee who fails to meet a filing deadline will be required to pay a late filing fee, in accordance with Council's Fee Schedule; and
 - (d) the licence of a licensee who has not met the filing requirements within 60 calendar days of the filing date is automatically terminated, without Council taking any action.

Section 231 of the Act
Part 7 – Administration of the Regulation of Financial Institutions
Division 2 – Insurance Council of British Columbia

Council may suspend, cancel or restrict licences and impose fines

- (1) If, after due investigation, the council determines that the licensee or former licensee or any officer, director, employee, controlling shareholder, partner or nominee of the licensee or former licensee
- (a) no longer meets a licensing requirement established by a rule made by the council or did not meet that requirement at the time the licence was issued, or at a later time,
 - (b) has breached or is in breach of a term, condition or restriction of the licence of the licensee,
 - (c) has made a material misstatement in the application for the licence of the licensee or in reply to an inquiry addressed under this Act to the licensee,
 - (d) has refused or neglected to make a prompt reply to an inquiry addressed to the licensee under this Act,
 - (e) has contravened section 79, 94 or 177, or
 - (e.1) has contravened a prescribed provision of the regulations,

then the council by order may do one or more of the following:

- (f) reprimand the licensee or former licensee;
 - (g) suspend or cancel the licence of the licensee;
 - (h) attach conditions to the licence of the licensee or amend any conditions attached to the licence;
 - (i) in appropriate circumstances, amend the licence of the licensee by deleting the name of a nominee;
 - (j) require the licensee or former licensee to cease any specified activity related to the conduct of insurance business or to carry out any specified activity related to the conduct of insurance business;
 - (k) in respect of conduct described in paragraph (a), (b), (c), (d), (e), or (e.1), fine the licensee or former licensee an amount
 - (i) not more than \$20 000 in the case of a corporation, or
 - (ii) not more than \$10 000 in the case of an individual.
- (2) A person whose licence is suspended or cancelled under this section must surrender the licence to the council immediately.
- (3) If the council makes an order under subsection (1)(g) to suspend or cancel the licence of an insurance agent, or insurance adjuster, then the licences of any insurance salesperson employed by the insurance agent, and of any employees of the insurance adjuster are suspended without the necessity of the council taking any action.
- (3.1) On application of the person whose licence is suspended under subsection (1)(g), the council may reinstate the licence if the deficiency that resulted in the suspension is remedied.
- (4) If an insurance agent's licence or an insurance adjuster's licence is reinstated, the licences of any insurance salespersons or employees of the insurance adjuster who
- (a) were employed by that agent or adjuster at the time of the suspension, and
 - (b) remain employees of that agent or adjuster at the time of reinstatement,
- are also reinstated without the necessity of the council taking any action.

Section 236 of the Act
Part 7 – Administration of the Regulation of Financial Institutions
Division 2 – Insurance Council of British Columbia

Power to impose conditions

- (1) The commission, superintendent or council, depending on which of them has the power to make the order, give the consent or issue the business authorization permit or licence may
 - (a) impose conditions that the person considers necessary or desirable in respect of
 - (i) an order referred to in section 235(1),
 - (ii) a consent referred to in section 235(2),
 - (iii) a business authorization,
 - (iv) a permit issued under section 187(1), or
 - (v) a licence issued under Division 2 of Part 6, and
 - (b) remove or vary the conditions by own motion or on the application of a person affected by the order or consent, or of the holder of the business authorization, permit or licence.
- (2) A condition imposed under subsection (1) is conclusively deemed to be part of the order, consent, business authorization, permit or licence in respect of which it is imposed, whether contained in or attached to it or contained in a separate document.
- (3) Except
 - (a) on the written application or with the written permission of the holder, or
 - (b) in the circumstances described in section 164, 231 or 249(1),a power of the commission, superintendent or council under this Act to impose or vary conditions in respect of
 - (c) a business authorization is exercisable only on or before its issue date, or
 - (d) a permit under section 187(1) or a licence under Division 2 of Part 6 is exercisable only on or before its issue datewith effect on and after that date.

ANALYSIS

Section 231 of the Act requires a licensee to continue to meet the licensing requirements established by a Rule made by Council. Council Rule 4(4)(b) requires that licensees submit to Council a filing, including supporting documentation, in the form required by Council. One of the requirements of an annual filing is the payment of a fee as published in Council's Fee Schedule. Council found that the Licensee's failure to make restitution on the dishonoured cheque represents a breach of Council Rules in that the Licensee failed to provide a complete filing for an insurance licence.

The Licensee's failure to make restitution on the dishonoured cheque and failure to provide any response to Council's inquiries regarding this matter, brings into question his suitability to continue to hold an insurance agent licence.

Council found the above mentioned facts constituted a breach of section 231(1)(a) and (d) of the Act, in that it brought into question the Licensee's ability to act in a financially reliable manner and to publicly carry on business as an insurance agent in good faith and in accordance with the usual practice of the business of insurance pursuant to Council Rule 3(2).

INTENDED DECISION

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

- suspend the Licensee's life and accident and sickness insurance agent licence until such time as full restitution of all outstanding fees, including service charges, is made in the form of a certified cheque or money order.

The intended decision will take effect on **November 23, 2010**, subject to the Licensee's right to request a hearing before Council pursuant to section 237 of the Act.


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 by **November 22, 2010**. 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 Licensee does not request a hearing by **November 22, 2010**, the intended decision of Council will take effect.

Dated in Vancouver, British Columbia, on the **27th day of October, 2010**.

For the Insurance Council of British Columbia



Gerald D. Matier
Executive Director

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