

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

and

The INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

and

JOANNE DENISE QUESNEL
(the "Licensee")

ORDER

As Council made an intended decision on April 12, 2011, 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 May 26, 2011; 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:

1. a condition imposed on the Licensee's general insurance agent's licence requiring that, for a period of 24 months of active licensing, she provide a copy of Council's decision to the nominee of any insurance agency she is or will be authorized to represent;
2. the Licensee be fined \$2,500.00;
3. the Licensee be assessed Council's investigative costs of \$3,912.61; and

ORDER

Joanne Denise Quesnel

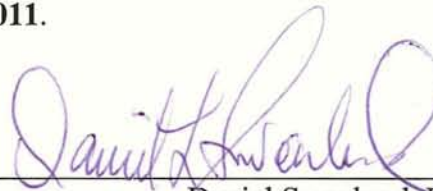
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4. as a condition of this Order, the Licensee is required to pay the above ordered fine and investigative costs no later than **September 21, 2011**. If the Licensee does not pay the ordered fine and investigative costs in full by this date, the Licensee's general insurance licence is suspended as of **September 22, 2011**, without further action from Council and the Licensee will not be permitted to complete any annual filing until such time as the ordered fine and investigative costs are paid in full.

This Order takes effect on the **21st day of June, 2011**.



Daniel Swanlund, B.Comm., CFP
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

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

respecting

**JOANNE DENISE QUESNEL
(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.

In December 2009, Council received notice from a Canadian financial institution about the Licensee's alleged involvement in a financial scheme aimed at procuring monies from the United States Internal Revenue Service (the "IRS"). As part of Council's investigation, on March 14, 2011, an IRC met with the Licensee to discuss the Licensee's apparent participation in the scheme.

The IRC was comprised of one voting and two non-voting members of Council, all of whom have significant experience in the insurance business. Prior to the IRC's meeting with the Licensee, an investigation report was distributed to the IRC and the Licensee for review. A discussion of this report took place at the meeting and the Licensee was provided an opportunity to clarify the information contained therein and make further submissions. Having reviewed the investigation materials and after discussing this matter with the Licensee, the IRC made a recommendation to Council as to the manner in which this matter should be disposed.

A report setting out the IRC's findings and recommended disposition, along with the aforementioned investigation report and an additional written submission from the Licensee, was presented to Council at its April 12, 2011 meeting. At the conclusion of its meeting, Council determined that the matter should be disposed of in the manner set out below.

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, 236 and/or 241.1 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 information contained in the investigation report, Council made the following findings of fact:

Licensing History

1. the Licensee was first licensed as a Level 1 general insurance salesperson on December 3, 2003;
2. she is currently licensed as a Level 2 general insurance agent;
3. she has not been subject to any discipline by Council in the past;

IRS Scheme

4. the Licensee became involved in the filing of IRS documents after a long time friend approached her in the summer of 2009. The friend had attended seminars and learned about a process which he advised the Licensee was a legitimate opportunity to claim money from the IRS for monies related to transactions on her personal bank accounts held with various financial institutions in British Columbia;
5. the Licensee stated that she provided money to her friend for attending the seminars and she was told that the friend would receive fifty percent of any successful claim payment she received from the IRS;
6. in December 2009, the Licensee's friend advised her she needed an Individual Tax Identification Number ("ITIN"). In order to get an ITIN, she required an interest bearing bank account in the United States, so she opened one in Bellingham, Washington. In addition, the friend advised the Licensee that she needed the Goods and Services Tax ("GST") numbers for the financial institutions she held bank accounts with in British Columbia. The Licensee obtained these required GST numbers;

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7. on or around December 16, 2009, one particular financial institution that the Licensee held an account with received several documents purporting to evidence transactions in the Licensee's account with this financial institution;
8. the financial institution questioned the authenticity of the documents, partly because it had no record of authorizing such transactions. For example, one document bears the heading "Notice to Nominee" and identifies the Licensee as the lender and the financial institution as the borrower on a 1099-Original Issue Discount ("OID"), a form that is produced by the IRS. The 1099-OID also assigned the financial institution with a "Recipient Tax ID Number" which appears to be closely related to the financial institution's registered GST number;
9. the financial institution's records indicated the Licensee had a line of credit account with it at the time. She had also recently secured a safety deposit box with it in order to obtain its GST number. When a GST number was not provided to her after opening the safety deposit box in October 2009, the Licensee began contacting the financial institution's head office and her individual branch for the GST number. Ultimately, it was provided to the Licensee;
10. the financial institution confirmed that the transactions described in the documents provided by the Licensee had never occurred;
11. the financial institution froze the Licensee's bank account and referred the matter to Council;
12. in May 2010, the Licensee received a response from the IRS stating that her claim for all accounts amounting to approximately \$13,000.00, had been denied;
13. the IRS, in conjunction with the FBI, has posted "Problem Alerts" in respect to "Form 1099-OID Fraud" on the IRS website. Reports have surfaced about two separate criminal cases involving Canadians caught up in a fraudulent scheme with clear similarities to that which the Licensee appeared to be participating in;
14. it was reported that: "The fake filings are part of a widely disseminated scheme called "1099-OID" fraud, based on the forms used to try to fraudulently claim a tax refund";

Correspondence between the Licensee and Council

15. shortly after receipt of the documents from the financial institution in or around December 2009, Council staff attempted to contact the Licensee to learn more about the situation;

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16. on December 29, 2009, a Council investigator contacted the Licensee by telephone to arrange to meet and discuss the circumstances surrounding the complaint received from the financial institution. The Licensee agreed to meet on January 6, 2010. The following day, the Licensee sent a fax to Council's office requesting written "proof that administrative process...is incorrect";
17. on January 4, 2010, a Council investigator sent a fax to the Licensee to confirm the meeting scheduled for January 6, 2010, and explained the purpose, with an attachment of applicable legislation outlining Council's authority and the Licensee's obligation to respond to an inquiry made by Council;
18. on January 5, 2010, the Licensee responded via fax declining the meeting of January 6, 2010, for reasons stated in her letter titled "Final Notice." The Licensee also attached a document titled: "Fee Schedule Between Claimants" where she listed various fees incurred, reflected in U.S. currency. The address she provided for herself on the fax cover sheet belonged to a UPS postal box outlet, and the telephone number ("604-111-1111") and email address ("noreply@nowhere.com") were false;
19. on January 15, 2010, Council delivered a Subpoena to the Licensee's home which required the Licensee to meet with the investigator on February 8, 2010;
20. on February 1, 2010, the Licensee sent a letter to Council titled: "Notice Demand for Claim of Allegations." She included a copy of the January 5, 2010 fax, as well as an excerpt of section 337 of the Criminal Code;
21. on February 23, 2010, Council delivered a second Subpoena to the Licensee requiring her attendance at Council's office on March 12, 2010;
22. on March 8, 2010, the Licensee sent a letter to Council titled: "Re: Assumption of Fraud with malicious intent to persecute by Council." The Licensee continued to request proof that the material sent to the financial institution was "fraudulent". She included an "invoice" to Council for \$562,845.00 for the period covering December 20, 2009 to March 5, 2010;
23. as a result, Council went to court to enforce its Subpoena, and obtained an order of the Supreme Court of British Columbia (the "Order") against the Licensee, dated June 30, 2010. The court found the Licensee in contempt of Council's two previous Subpoenas and she was ordered to give evidence under oath at Council's office;
24. on July 5, 2010, a copy of the Order was faxed and mailed to the Licensee compelling her to attend and give evidence on oath at Council's office;

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25. on July 14, 2010, a Council investigator contacted the Licensee to arrange for a suitable date for her to give evidence at Council's office. The Licensee indicated she was not available until August 11, 2010. A Subpoena was issued for that date and delivered to the Licensee at her place of work the following day;
26. on or about August 9, 2010, the investigator received a call from a lawyer who advised that he was now representing the Licensee. The lawyer requested submittal of a sworn affidavit in lieu of the Licensee attending the interview scheduled at Council's office later in the week to give evidence on oath. The Licensee was advised that the affidavit would not preclude her from attending an IRC meeting in the future. On September 16, 2010, Council received the Licensee's sworn affidavit with supporting exhibits;
27. in the Affidavit, the Licensee deposed that the friend she had trusted regarding the legality of the IRS scheme had been the one writing much of the correspondence to Council and advising her to resist speaking with Council. According to the friend, the Licensee's activities with the IRS had nothing to do with her insurance profession and therefore it was outside of Council's jurisdiction;
28. according to the Licensee, the "situation quickly got the better of" her and she went on stress leave from work on January 11, 2010. She continued to look to her friend to assist in her responses to Council, but now recognizes it was "very bad judgement" on her part;
29. the Licensee added that she is embarrassed at her lack of judgement. She deeply regrets how the matter has unfolded and the time and expense it caused Council due to her lack of cooperation. The Licensee further deposed that she is "prepared to pay the reasonable cost of the Council to date and also to take any ethics course the Council deem necessary", and would like to carry on as an insurance agent; and
30. the Licensee advised that she has severed all ties with the friend that told her about the scheme initially and that this was an isolated incident. The Licensee stated that she deeply regrets her "very bad judgment in trusting a long time friend and through his advice resisted the Council's inquiries of this matter".

LEGISLATION

Rule 7(8) of the Council Rules

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 date with effect on and after that date.

Section 241.1 of the Act

**Part 7 – Administration of the Regulation of Financial Institutions
Division 2 – Insurance Council of British Columbia**

Assessment of Costs

- (1) If an order results from an investigation or hearing, the commission, the superintendent or the council may by order require the financial institution, licensee, former licensee or other person subject to the order to pay the costs, or part of the costs, or either or both of the following in accordance with the regulations:
 - (a) an investigation;
 - (b) a hearing.
- (2) Costs assessed under subsection (1)
 - (a) must not exceed the actual costs incurred by the commission, superintendent or council for the investigation and hearing, and
 - (b) may include the costs of remuneration for employees, officers or agents of the commission, superintendent or council who are engaged in the investigation or hearing.

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- (3) If a person fails to pay costs as ordered by the date specified in the order or by the date specified in the order made on appeal, if any, whichever is later, the commission, superintendent or council, as the case may be, may file with the court a certified copy of the order assessing the costs and, on being filed, the order has the same force and effect and all proceedings may be taken on the order as if it were a judgment of the court.

ANALYSIS

Council found the above mentioned facts constituted a breach of section 231(1)(b) of the Act in that the Licensee failed to act in good faith in responding to Council inquiries, as required by Council Rule 7(8).

Under Council's Code of Conduct, good faith means honesty and decency of purpose, and this requirement applies to a licensee when responding to Council inquiries. The Licensee failed to meet this standard in this case by purposely neglecting her responsibilities and by responding to Council in a confrontational manner. In particular, she made a financial demand on Council which had no basis whatsoever; she provided false contact information to Council during the investigation; and she chose to ignore subpoenas causing Council to expend unnecessary time and expense during the investigation.

While Council accepted that much of the correspondence from the Licensee was formulated by her friend, Council did not find this excused the Licensee of her responsibility to Council. The Licensee has experience working in the insurance business and understands the importance of her professional licence. Council's position is that she ought to have appreciated the impropriety of her friend's instructions to refuse to speak with Council as well as the content of the letters sent to Council in her name.

Council determined that a punitive measure was necessary to convey a message to the Licensee as well as the industry, about the requirement to act in good faith when responding to Council's inquiries. Council felt a fine of \$2,500.00 would be an appropriate amount that reflects the severity of her non-compliance but which takes into account that, in part, her actions were guided by a trusted friend, whom in hindsight she should not have relied upon.

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In reviewing this matter, Council also considered the extent to which the Licensee's involvement in the financial scheme reflected on her suitability. In this regard, Council accepted that the Licensee believed she was not participating in something illegal or fraudulent and that she had fallen under the influence of a trusted friend, whom she thought, had her best interests in mind. However, Council was concerned that the Licensee took the various steps she did to make a claim with the IRS without questioning the legitimacy of her actions, particularly since she had no personal or business interests in the United States from which a claim could possibly arise. These steps seemed fairly onerous, and included: opening a bank account in the United States; obtaining GST numbers for the various financial institutions at which the Licensee held a bank account; paying money to her friend to attend seminars; and providing information and forms to a filing clerk in the United States.

Even though the Licensee's involvement in the IRS scheme was separate from the insurance business, Council considered it to be relevant to her competence, and specifically her ability to exercise judgement in the context of a financial transaction. Council concluded that a reasonable person in the Licensee's circumstances would have questioned the illegitimate transactions more seriously, or at a minimum, exercised some due diligence to discover more about the process. In particular, there were warning signals that ought to have alerted the Licensee to the possibility that her attempt to procure monies from the U.S. government was not legitimate. For example, the documents produced and submitted to her financial institutions on her behalf reflected transactions that were fictitious, she was advised not to speak to anyone about the process, and she consented to signing her name to letters to Council wherein she demanded payment of \$562,845.00 with no basis whatsoever. Accordingly, Council determined that these events reflected on her competency.

In determining how best to address this concern, Council gave consideration to the fact that the Licensee has seven years of experience in the industry without any issue arising that would bring into question her competence, and, by all accounts, her misguided actions were isolated in nature. However, Council ultimately determined that someone with the Licensee's experience ought to have questioned the legitimacy of what was being presented to her, particularly when she was afforded numerous opportunities to do so. Instead, she repeatedly made ill advised choices that served to reinforce Council's concerns regarding her judgement. In this regard, Council concluded that a measure ought to be put in place that will facilitate oversight of the Licensee's insurance business conduct, and such a measure should be in place for a period of time that will allow the Licensee to sufficiently demonstrate that she is competent to engage in insurance business without any direct supervision.

Finally, given that the Licensee's actions directly increased the costs and time involved in Council's investigation, Council confirmed that the costs of the investigation ought to be assessed against the Licensee.

INTENDED DECISION

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

1. impose a condition on the Licensee's general insurance agent's licence requiring that, for a period of 24 months of active licensing she provide a copy of Council's decision to the nominee of any insurance agency she is or will be authorized to represent;
2. fine the Licensee \$2,500.00; and
3. assess the Licensee Council's investigative costs of \$3,912.61.

The Licensee is advised that should the intended decision become final, the fine and investigative costs which form part of the Order, will be due and payable within 90 days of the date of the Order.

The intended decision will take effect on **June 21, 2011**, 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 **June 20, 2011**. 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 **June 20, 2011**, the intended decision of Council will take effect.

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Even if this decision is accepted by the Licensee, pursuant to section 242(3) of the Act, the Financial Institutions Commission still has a right to appeal this decision of Council to the Financial Services Tribunal ("FST"). The Financial Institutions Commission has 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 www.fst.gov.bc.ca or contact them directly at:

Financial Services Tribunal
PO Box 9425 Stn Prov Govt
Victoria, British Columbia
V8W 9V1


Reception: 250-387-3464

Fax: 250-356-9923

Email: FinancialServicesTribunal@gov.bc.ca

Dated in Vancouver, British Columbia, on the **26th day of May, 2011.**

For the Insurance Council of British Columbia



Gerald D. Matier
Executive Director

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