

In the Matter of

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

and

The *INSURANCE COUNCIL OF BRITISH COLUMBIA*
(“Council”)

and

AMC INSURANCE SERVICE LTD.
(the “Agency”)

and

FRANK REED BOEHNER
(the “Nominee”)

ORDER

As Council made an intended decision on March 14, 2017, pursuant to sections 231, 236, and 241.1 of the Act; and

As Council, in accordance with section 237 of the Act, provided the Agency and the Nominee with written reasons and notice of the intended decision dated April 27, 2017; and

As the Agency and the Nominee have 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. The Agency is fined \$10,000.00.
2. The Nominee is fined \$2,500.00.
3. A condition is imposed on the Nominee’s general insurance licence that requires the Nominee to successfully complete the Council Rules Course and Council’s Level 3 Seminar, *Duties and Responsibilities of a Level 3 General Insurance Agent*, on or before **August 16, 2017**. If the Nominee does not successfully complete the Council Rules Course and Council’s Level 3 Seminar by this date, the Nominee’s general insurance licence is suspended as of **August 17, 2017** without further action from Council, and the Nominee will not be permitted to complete any subsequent annual filings until such time as the above-noted courses are successfully completed.

Order

AMC Insurance Service Ltd. Frank Reed Boehner

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4. A condition is imposed on the Nominee's general insurance licence that requires the Nominee to pay the above-ordered fine no later than **August 16, 2017**. If the Nominee does not pay the ordered fine in full by this date, the Nominee's general insurance licence is suspended as of **August 17, 2017** without further action from Council, and the Nominee will not be permitted to complete any subsequent annual filings until such time as the ordered fine is paid in full.
5. The Agency is assessed Council's investigative costs of \$875.00.
6. A condition is imposed on the Agency's general insurance licence that requires the Agency to pay the above-ordered fine and investigative costs no later than **August 16, 2017**. If the Agency does not pay the ordered fine and investigative costs in full by this date, the Agency's general insurance licence is suspended as of **August 17, 2017** without further action from Council, and the Agency will not be permitted to complete any subsequent annual filings until such time as the ordered fine and investigative costs are paid in full.

This order takes effect on the **16th day of May, 2017**.



Dr. Eric Yung
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

respecting

AMC INSURANCE SERVICE LTD.
(the “Agency”)

and

FRANK REED BOEHNER
(the “Nominee”)

Pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council conducted an investigation to determine whether the Agency and the Nominee acted in compliance with the requirements of the Act.

As part of Council’s investigation, on February 6, 2017, a Review Committee (the “Committee”) met with the Nominee, and the Agency’s office manager, to discuss allegations that the Agency and the Nominee failed to maintain adequate procedures for conducting Insurance Corporation of British Columbia (“ICBC”) Autoplan special-coverage insurance (“Autoplan special coverage”) business and failed to properly supervise a licensee (the “Former Licensee”) who mishandled Autoplan special coverage business.

The Committee was comprised of one voting member and two non-voting members of Council. Prior to the Committee’s meeting with the Nominee and the Agency’s office manager, an investigation report was distributed to the Committee and the Nominee for review. A discussion of this report took place at the meeting and the Agency and the Nominee were provided an opportunity to make further submissions. Having reviewed the investigation materials, and after discussing this matter with the Nominee and the Agency’s office manager, the Committee prepared a report for Council.

The Committee’s report, along with the aforementioned investigation report, were reviewed by Council at its March 14, 2017 meeting, where it was determined the matter should be disposed of in the manner set out below.

PROCESS

Pursuant to section 237 of the Act, Council must provide written notice to the Agency and the Nominee of the action it intends to take under sections 231, 236, and 241.1 of the Act before taking any such action. The Agency and the Nominee 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 Agency and the Nominee.

FACTS

The Agency holds a general insurance licence and has been licensed in British Columbia since November 2001. The Agency also holds a life and accident and sickness insurance licence in British Columbia, which was issued in 2005. The Agency's general insurance business consists of Autoplan and general insurance, including personal and commercial lines. The Agency holds an Autoplan Service at Dealerships ("ASD") agreement with ICBC.

The Nominee has been licensed in British Columbia since 1991. The Nominee holds a Level 3 general insurance agent licence and has been the Agency's nominee since 2008.

The Agency's office manager, Jaswinder Singh Parmar ("Parmar"), is a Level 2 general insurance agent and the president and sole director of the Agency.

In September 2014, a Council inspection identified concerns with regard to the Agency's procedures for conducting Autoplan business. In January 2015, Council reminded the Nominee of his responsibility to ensure that the Agency's insurance procedures were in accordance with the usual practice of the business of insurance.

The Former Licensee

The Former Licensee obtained a Level 1 general insurance salesperson ("Salesperson") licence in 2006 and remained licensed until 2016.

The Former Licensee was the only one of the Agency's Salespersons at the Agency who worked outside of the office as a roadrunner, conducting automobile insurance business at motor vehicle dealerships. The Former Licensee was also the only Salesperson at the Agency handling Autoplan special coverage, requiring him to deal directly with ICBC for each such transaction.

In dealing directly with ICBC on Autoplan special coverage policies, the Former Licensee received all the relevant documents directly from ICBC, which left the Agency with no method of independently tracking the Autoplan special coverage policies being handled by the Former Licensee. The Nominee acknowledged that he was unfamiliar with the process by which ICBC provided Autoplan special coverage documentation to the Former Licensee and had to rely entirely on the Former Licensee to keep the Agency and the Nominee informed of any Autoplan special coverage business he transacted.

Between January 2015 and September 2015, the Former Licensee submitted several Application for Own Damage Coverage (“Own Damage”) policy forms to ICBC’s Underwriting Services Department, which was the first step in obtaining a premium quote for an Autoplan special coverage policy. Upon receipt of an Own Damage policy form, ICBC provided the Former Licensee with an Autoplan special coverage policy form which he was to complete with the client, including obtaining the client’s signature, and return to ICBC.

ICBC subsequently identified that Autoplan special coverage policy documents and the associated premium payments had not been received from the Agency. ICBC then conducted an audit of the Agency in May 2016 (the “Audit”). The Audit identified that six Autoplan special coverage policies, with a total premium of \$10,321.00, had not been remitted to ICBC by the Agency.

Following the Audit, Parmar discussed the missing Autoplan special coverage policies and premium payments with the Former Licensee. The Former Licensee explained that he had been overwhelmed by his workload and had forgotten to follow up on the policy documentation and premium collection with the clients. Parmar immediately terminated the Former Licensee’s representation with the Agency, while at the same time demanding that the Former Licensee obtain the necessary documentation and premiums from the five clients (one client was involved in two of the transactions).

The Nominee stated he was not involved in the meeting with the Former Licensee that resulted in the Former Licensee’s termination, and was not aware that the Former Licensee was instructed to contact the five clients to complete the insurance documentation and collect the outstanding premiums.

The Former Licensee subsequently attended the five clients’ homes or workplaces to obtain the necessary insurance documentation. The Former Licensee was given no direction, nor was he supervised by the Agency or the Nominee, in obtaining the outstanding insurance documentation and premiums.

The Nominee and Parmar were vague with regard to the Former Licensee's employment status with the Agency at the time he was instructed to contact the five clients about the Autoplan special coverage policies. In explaining why the Former Licensee was directed to contact the five clients rather than someone more senior at the Agency, Parmar and the Nominee stated that only the Former Licensee had the five clients' contact information.

Although the Former Licensee obtained the completed insurance documentation, he did not collect the outstanding premiums. The Former Licensee explained that when he met with the five clients, he did not collect the policy premiums as he was focused on obtaining complete insurance documentation. He also stated it was his intention to visit the five clients on another date to collect the premium payments, but this never occurred.

The Former Licensee then provided the completed insurance documents to the Agency, along with a personal cheque for the outstanding premiums. Upon receipt of the insurance documentation and the Former Licensee's cheque, the Agency proceeded to batch and remit the documents to ICBC.

The Nominee and Parmar were uncertain whether the Autoplan special coverage was ever in place for the five clients as a result of the Former Licensee's actions. They stated they assumed coverage was bound by ICBC, but did not take any steps to determine whether coverage was, in fact, in place and they made no effort to contact or follow up with the clients once the Agency received the completed documentation from the Former Licensee. They also explained that they believed this was a matter between the Former Licensee, the clients, and ICBC.

ANALYSIS

Council determined that ICBC's procedures for transacting Autoplan special coverage insurance meant the Agency and the Nominee were reliant on either ICBC to monitor the Former Licensee's transactions or for the Former Licensee to keep the Agency informed of any Autoplan special coverage business, as the necessary information was not provided to the Agency directly by ICBC. Council accepted that ICBC's process made it very difficult for the Agency and the Nominee to properly supervise the Former Licensee.

Council found, however, that once the Agency and the Nominee became aware of the six ICBC Autoplan special coverage policies, the Agency and the Nominee failed to act properly when they left it up to the Former Licensee to resolve the matter.

The Agency failed to appreciate the gravity of these circumstances or take any steps to immediately contact the five clients to advise that they may be operating a vehicle that was either uninsured or underinsured. Instead, the Agency decided to terminate the Former Licensee's representation while, at the same time, directing him to correct the situation.

Council found that, at best, the Agency directed the Former Licensee to act in contravention of a condition on his licence by allowing him to meet with the five clients outside of the Agency office to complete the insurance documentation. At worst, if Council accepts that the Agency had terminated the Former Licensee's authority to represent it, the Agency directed an unlicensed person to engage in insurance business on its behalf.

Council was concerned that significant decisions at the Agency relating to termination of employees and mishandling of insurance policies were being dealt with primarily by Agency management, without the Nominee's involvement.

While Council accepts that the Nominee was not aware the Agency had terminated the Former Licensee's representation, it found the Nominee failed to take any steps to ensure the five clients were aware they may not be covered by the Autoplan special coverage insurance. Council also noted that the Nominee advised he was not sure whether the five clients were insured, and he had not taken any steps to find out.

Council was also troubled that the Nominee did not appear to have an understanding of the procedures involved with Autoplan special coverages. Council was left with the impression that the Agency and the Nominee appeared to treat the Former Licensee as an independent producer rather than as a Salesperson. The Nominee was unaware that the Former Licensee was acting beyond the restrictions of his Salesperson licence, and took no steps to supervise him directly when significant problems with his performance had been previously identified by Council.

Council concluded that the Agency and the Nominee failed to act in a competent manner and in accordance with the usual practice of the business of insurance after it learned of the six Autoplan special coverage policies that had not been properly completed.

Council considered *A C & D (Quesnel) Insurance Services Ltd. and Joseph Edward Stonehouse* in reaching its decision with regard to penalty. In that case, a licensee failed to ensure coverage was in place for several clients. Despite the fact that the agency was aware of this and other issues with the licensee's performance, the agency directed the licensee to deliver premium refund cheques to the clients who were left without coverage, and terminated her employment. The licensee never delivered the cheques. Council determined that while the agency generally made efforts to properly supervise the licensee, it was not reasonable for the agency and its nominee to rely on the licensee to deliver the premium refund cheques in light of the agency's knowledge of her mishandling of those accounts. The nominee was reprimanded, and the agency was fined \$5,000.00 and assessed investigative costs.

In determining penalty, Council considered that the Agency's previous reminder by Council with regard to improper Autoplan procedures was an aggravating factor in this case. Council concluded a significant fine was appropriate to address the Agency's failure to properly respond to the Former Licensee's actions.

Council further concluded that a fine for the Nominee was also appropriate, particularly because Council had previously reminded him of its concerns about inadequate Autoplan procedures at the Agency. Council determined that the Nominee would also benefit from additional training.

INTENDED DECISION

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

1. Fine the Agency \$10,000.00.
2. Fine the Nominee \$2,500.00.
3. Impose a condition on the Nominee's general insurance licence that requires him to successfully complete the Council Rules Course and Council's Level 3 Seminar: *Duties and Responsibilities of a Level 3 General Insurance Agent*, within 90 days of the date of Council's order.
4. Assess the Agency Council's investigative costs of \$875.00.

The Agency and the Nominee are advised that should the intended decision become final, the fines and investigative costs will be due and payable within 90 days of the date of the order.

The Nominee is advised that failure to pay the fine within the 90 days, or failure to or successfully complete the Council Rules Course and Council's Level 3 seminar: *Duties and Responsibilities of a Level 3 General Insurance Agent* within the 90 days, will result in the automatic suspension of his general insurance licence and he will not be permitted to complete any annual filing until such time as his fine is paid in full and the above-noted courses are successfully completed as required.

The Agency is advised that failure to pay the fine and investigative costs within the 90 days will result in the automatic suspension of its general insurance licence, and the Agency will not be permitted to complete any annual filing until such time as the fine and the investigative costs are paid in full.

The intended decision will take effect on **May 16, 2017**, subject to the Agency's and the Nominee's right to request a hearing before Council pursuant to section 237 of the Act.

RIGHT TO A HEARING

If the Agency and/or the Nominee wish to dispute Council's findings or its intended decision, the Agency and/or the Nominee 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 Agency and/or the Nominee must give notice to Council by delivering to its office written notice of this intention by **May 15, 2017**. 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 Agency and/or the Nominee do not request a hearing by **May 15, 2017**, the intended decision of Council will take effect.

Even if this decision is accepted by the Agency and/or the Nominee, 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 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 **27th day of April, 2017**.

For the Insurance Council of British Columbia



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