

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

and

The INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

and

JASON ROBERT VERBEKE
(the “Licensee”)

ORDER

As Council made an intended decision on February 13, 2018, 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 April 11, 2018; 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 is imposed on the Licensee’s general insurance licence that requires the Licensee to successfully complete the *Privacy Compliance – How to Protect Your Brokerage, Part 1* and *Part 2* courses, available through the Insurance Brokers Association of British Columbia (“IBABC”), on or before **July 27, 2018** otherwise the Licensee’s general insurance licence will be suspended as of **July 28, 2018** without further action from Council and the Licensee will not be permitted to complete any subsequent annual filings until such time as the required course is successfully completed.
2. A condition is imposed on the Licensee’s general insurance licence that requires the Licensee to successfully complete the Council Rules Course, available through IBABC, on or before **July 27, 2018** otherwise the Licensee’s general insurance licence will be suspended as of **July 28, 2018** without further action from Council and the Licensee will not be permitted to complete any subsequent annual filings until such time as the required course is successfully completed.

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3. The Licensee is fined \$2,500.00.
4. The Licensee is assessed Council's investigative costs of \$2,037.50.
5. A condition is imposed on the Licensee's general insurance licence that requires the Licensee to pay the above-ordered fine and investigative costs no later than **July 27, 2018**. 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 **July 28, 2018**, without further action from Council and the Licensee will not be permitted to complete any subsequent annual filings until such time as the ordered fine and investigative costs are paid in full and the above noted courses have been successfully completed.

This order takes effect on the **27th day of April, 2018**.



Michael Connors, CIP, CRM
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

respecting

JASON ROBERT VERBEKE
(the “Licensee”)

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.

As part of Council’s investigation on December 11, 2017, a Review Committee (the “Committee”) met with the Licensee and his legal counsel to discuss allegations that the Licensee had taken confidential client information from an insurance agency (the “Agency”) that he was formerly authorized to represent without prior consent from the clients or the Agency.

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

The Committee’s report, along with the aforementioned investigation report and additional submissions provided by the Licensee, were reviewed by Council at its February 13, 2018 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 Licensee of the action it intends to take under sections 231, 236, and 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

The Licensee was first licensed in British Columbia as a general insurance licensee in 2003 and he currently holds a Level 2 general insurance agent licence. The Licensee joined the Agency in 2004 and worked there until he ceased to represent it in October 2016. The Licensee now represents another insurance agency.

Prior to becoming a representative of the Agency, the Licensee stated that he and the Agency's nominee had come to an oral agreement whereby the Licensee would continue to own his book of clients that he had built in the years prior. The Licensee stated he managed his own client files during his time at the Agency, which he said was demonstrated by the fact that he received no salary, made income strictly based on commissions, and was responsible for his own expenses. The Licensee primarily engaged in Insurance Corporation of British Columbia ("ICBC") Autoplan insurance business and serviced automobile dealerships.

The Licensee advised that, upon leaving the Agency in October 2016, he did not remove any physical files. However, he acknowledged that he kept a spreadsheet that he maintained while representing the Agency which included client names, policy numbers, and policy effective dates. The Licensee stated it was his practice to ask clients each year if he could contact them the following year for their Autoplan renewal and to also have them sign ICBC consent forms.

The Licensee stated he felt he did not act improperly, since he believed these clients to be his own. He said he called each client when their insurance policy was up for its annual renewal to inform them that he had moved to a different agency. He also said that he obtained their verbal consent before proceeding with the renewal. The Licensee further stated he sent a letter of brokerage to all of his home insurance clients and posted on public media that he was transferring to a different agency.

ANALYSIS

Maintaining the confidentiality of client information is one of the cornerstones of the insurance industry and is required under Council Rule 7(1), which states:

"A licensee must hold in strict confidence all information acquired in the course of the professional relationship concerning the personal and business affairs of a client, and must not divulge or use any such information other than for the purpose of that transaction or of a similar subsequent transaction between the licensee and the same client unless expressly authorized by the client or a required by law to do so."

It is also a requirement, as set out in Council's Code of Conduct (the "Code"), that licensees carry on the business of insurance in good faith. Good faith is honesty and decency of purpose and a sincere intention on a licensee's part to act in a manner which is consistent with a client's or principal's best interests, remaining faithful to the duties and obligations as an insurance licensee.

Council accepted that the Licensee genuinely believed that clients he serviced as a licensed representative of the Agency were his own, however, Council found that he ultimately serviced the clients as a representative of the Agency and therefore had a duty to ensure he received the required consent and permission from the Agency, as well as from the clients, in order to keep the client information (via the spreadsheet) following his departure.

Council's position on this issue was reiterated in Council Notice ICN 17-004 *Reminder of Licensee Responsibilities Related to Disclosure or Transfer of Client Information* ("Notice 17-004") which was published on June 29, 2017. Notice 17-004 states that it is the general insurance agency, and not the general insurance agent representing the agency, that is the agent of record on a client's general insurance policy. Therefore, the agency ultimately holds responsibility for the proper handling of the client's information. As such, if a general insurance agent leaves one agency to represent another, the general insurance agent must not have client information, including records or documentation, in his or her possession, and must also not disclose or transfer client information from the former agency to the new agency without the consent of both agencies and the express authority from the client to do so.

Since the Licensee did not demonstrate he had obtained express consent from the clients or had the permission of the Agency to keep the client information, Council found he acted contrary to Council Rule 7(1) and the requirement that he act in good faith to the Agency as articulated in the Code.

In determining an appropriate disposition, Council considered that the breaches in this matter appear to have been unintentional and did not result in any consumer harm. Nonetheless, Council determined that a fine was warranted. Council also felt the Licensee would benefit from further education regarding privacy and Council Rules.

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 licence requiring the Licensee to successfully complete the *Privacy Compliance - How to Protect Your Brokerage, Part 1* and *Part 2* courses, available through the Insurance Brokers Association of British Columbia ("IBABC"), within 90 days of the date of Council's order;

2. Impose a condition on the Licensee's general insurance licence requiring the Licensee to successfully complete the Council Rules Course, available through IBABC, within 90 days of the date of Council's order;
3. Fine the Licensee \$2,500.00;
4. Assess the Licensee Council's investigative costs of \$2,037.50.

The Licensee is advised that should the intended decision become final, the fine and investigative costs will be due and payable within 90 days of the date of the order. In addition, failure to pay the fine and investigative costs within the 90 days, or failure to successfully complete the ordered courses within 90 days of the date of Council's order, will result in the automatic suspension of the Licensee's general insurance licence and the Licensee will not be permitted to complete any annual filing until such time as the fine and investigative costs are paid in full and the above noted courses have been successfully completed.

Subject to the 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

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 **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 Licensee does not request a hearing **within fourteen (14) days of receiving this intended decision**, the intended decision of Council will take effect.

Intended Decision
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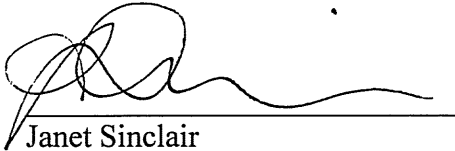
Even if this decision is accepted by the Licensee, pursuant to section 242(3) of the Act, the Financial Institutions Commission still has a right to appeal this decision of Council to the Financial Services Tribunal ("FST"). The Financial Institutions Commission has 30 days to file a Notice of Appeal, once Council's decision takes effect. For more information respecting appeals to the FST, please visit their website at 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 **11th day of April, 2018.**

For the Insurance Council of British Columbia



Janet Sinclair
Executive Director
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jsinclair@insurancecouncilofbc.com

JS/vy