In the Matter of the

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

and the

INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

and

TRACY MICHELE MONTGOMERY
(the "Licensee")

ORDER

As Council made an intended decision on December 10, 2019, 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 January 23, 2020; 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 that:

1. The Licensee is fined $1,500;

2. The Licensee is assessed Council's investigative costs of $1,862.50;

3. The Licensee's Level 3 general insurance licence is downgraded to Level 2 for a period of two years of active licensing;

4. The Licensee must complete the Council Rules Course;

5. The Licensee must complete an ethics course as approved by Council; and

6. A condition is imposed on the Licensee's general insurance licence that failure to pay the fine and investigative costs and complete the Council Rules Course and ethics course by May 14, 2020 will result in the automatic suspension of the Licensee's general

insurance licence, and the Licensee will not be permitted to complete her annual filing until the fine and investigative costs are fully paid and the Council Rules Course and ethics course are completed.

This order takes effect on the **14th day of February, 2020.**

Lesley Maddison
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

respecting

TRACY MICHELE MONTGOMERY
(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, Council Rules, and Code of Conduct, and in particular whether the Licensee breached her duties set out in sections 3 ("Trustworthiness"), 4 ("Good Faith"), and 8 ("Usual Practice: Dealing with Insurers") of the Code of Conduct.

As part of Council's investigation, on October 8, 2019, a Review Committee (the "Committee") met with the Licensee to discuss an allegation that the Licensee had reacted inappropriately when an Insurance Corporation of British Columbia ("ICBC") decal went missing from her office.

Prior to the Committee's meeting with the Licensee, an investigation report prepared by Council staff was distributed to the Committee and the Licensee for review. A discussion of the investigation 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, were reviewed by Council at its December 10, 2019 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 is a Level 3 general insurance agent ("Level 3 Agent") who has been licensed with Council for over 25 years. At the material time, the Licensee was the manager of a branch (the "Branch") for the agency that employed her (the "Agency").

On or around November 14, 2018, an ICBC decal was noted to be missing from the road services bag of one of the Branch employees. The Licensee was made aware of the missing decal, and Branch staff unsuccessfully searched the office for it. A Branch employee contacted ICBC in order to check whether the decal had been issued, and to find out the required procedure for dealing with a missing decal. The Licensee, however, instructed Branch staff to continue searching for the decal, and to not report it as missing to ICBC.

Ultimately, the Licensee never reported the lost decal to ICBC, as is required by ICBC policy. Instead, on November 19, 2018, the Licensee instructed a Branch employee to conduct an Autoplan transaction by which the decal was assigned to one of the Licensee's own vehicles. Following the assignment of the decal, the Licensee reportedly informed Branch staff that the decal had been found and told the employee who had helped her to carry out the Autoplan transaction to not disclose to others that the decal had been assigned. On November 21, 2018, the Licensee met with members of the Agency's upper management, who were made aware of the missing decal and the Licensee's ensuing actions. The Agency proceeded to inform ICBC about the lost decal and carried out an Autoplan transaction that corrected the prior transaction.

In her communications with Council staff, as well as during her meeting with the Committee, the Licensee explained that she had reacted as she did to the decal being lost in order to protect the other Branch employees. The Licensee explained that she was afraid at the time that if ICBC became aware of the lost decal, the Branch might no longer be permitted to sell Autoplan insurance which would result in the termination of several Branch employees. The Licensee stated that her priority at the time was to protect her colleagues. The Licensee also stated that she believes her judgement was affected during the material time due to a medical issue.

When asked by the Committee as to what she had planned to do after having assigned the missing decal to her vehicle, the Licensee stated that she was going to cancel the insurance and declare the decal as lost. She also explained that she had wanted to speak with the Agency's upper management before taking further action.

ANALYSIS

Council considers the Licensee's actions relating to the missing decal to have been a serious deviation from the ethical and professional standards expected of a licensee. The Licensee, when faced with the problem of a missing decal, failed to report the lost inventory to ICBC as should have been done. Furthermore, the Licensee falsely assigned the decal to her own vehicle, pressuring a reluctant Branch employee to assist her in doing so. Council is of the opinion that the Licensee has demonstrated dishonest behavior and poor professional judgment, and that such conduct, demonstrating as it does a failure to meet the trustworthiness and good faith standards for licensees as set out in the Code of Conduct, warrants discipline.

Council is particularly concerned about the Licensee's ability to work in a supervisory capacity. Council finds it disconcerting that the Licensee, a Level 3 Agent with nearly three decades of experience, could have reacted to the loss of a decal in the manner that she did. Further, Council is of the opinion that the Licensee abused her supervisory position when she instructed a Branch employee to assign the lost decal to the Licensee's own vehicle, and demonstrated poor supervisory judgement when she instructed her staff to not report the decal to ICBC as was appropriate and required.

Council accepts the Licensee's submission that her actions were motivated by a desire to protect the Branch employees from repercussions that might follow from ICBC learning about the missing decal. Nevertheless, Council does not consider the Licensee's fear of reprisal from ICBC to have been reasonable, especially coming from a Level 3 Agent with such lengthy experience. The Branch does not have an uncommon history of losing decals. Council notes that ICBC was eventually informed by the Agency's senior management about the missing decal and the Licensee's ensuing actions, and the Branch's Autoplan business has remained intact.

A further concern of Council is that the Licensee, in addition to having falsely assigned the missing decal to her own vehicle, was contemplating reporting the decal as being lost from her vehicle, prior to her meeting with the Agency's upper management. It appears, based on the evidence, that the Licensee was considering falsely reporting the decal as stolen to the police. Although Council will not discipline the Licensee for a dishonest action that was contemplated but not ultimately carried out, the Licensee's plans about what to do with the decal after assigning it to her vehicle are an additional factor that raises concerns about the Licensee's professional judgement.

Council has taken into account that the Licensee was not motivated by financial or personal gain – rather, this was a case of an individual reacting poorly to a stressful situation that proceeded to spiral out of control. Prior to the missing decal and its fallout, the Licensee had enjoyed a lengthy and unblemished career. Council has also given consideration to the medical issue that was identified by the Licensee.

In determining a disposition in this matter, four previous cases were reviewed and considered by Council.

Peter Calvin de Jong (March 2011) concerned a licensee who failed to disclose material information about a client's health (their breast cancer diagnosis) to the insurer during procurement of life insurance. The licensee was not motivated by personal or financial benefit, but nevertheless acted inappropriately in an emotionally charged situation. The licensee had his Life Agent licence suspended for one month, was fined $2,000, was assessed investigative costs of $1,300, and was required to complete an errors and omissions course.

Colleen Theresa Bustillo (November 2011) concerned a licensee who created a false insurance document purporting to confirm coverage when coverage did not exist. Council noted that the licensee had not set out to cause harm, but reacted to a problem very poorly, demonstrating a lack of competence and good faith which was an aberration from her usual practice. The licensee was fined $2,000, assessed investigative costs of $1,775, and required to complete an errors and omissions course. Conditions were also placed on the licensee's licence which made her unable to upgrade her licence for a year, and unable to represent more than one insurance agency until licensed for a year.

Patricia Yvonne Brienen (August 2017) concerned a licensee who, in emotional distress following a car accident, directed staff at her agency to backdate the effective date of an ICBC Temporary Use policy by one day. The licensee had got the dates confused when the policy was issued, intending for it to be in effect on the date of the accident but accidently using the next day's date. Once a few days passed and the licensee began thinking clearly again, she realized that she had acted inappropriately by instructing her staff to backdate the policy, and told the truth to both her supervisor and ICBC. The licensee was reprimanded and assessed investigative costs of $600.

Allen Ton-Ming Fu (November 2018) concerned a licensee who used his ability to access ICBC's systems to alter his own Claims Rate Fee Scale, giving himself the maximum possible discount. The licensee was suspended for one year, and required to undergo a year of supervision once his suspension was completed; he was also required to pay investigative costs of $1,575 and to complete an ethics course.

INTENDED DECISION

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

1. Fine the Licensee $1,500;

2. Assess the Licensee Council's investigative costs of $1,862.50;

3. Downgrade the Licensee's Level 3 licence to Level 2 for a two-year period of active licensing;

4. Require the Licensee to complete the Council Rules Course;

5. Require the Licensee to complete an ethics course as approved by Council; and

6. Impose a condition on the Licensee's licence that failure to pay the fine and investigative costs and complete the Council Rules Course and ethics course within 90 days of Council's order will result in the automatic suspension of the Licensee's licence, and she will not be permitted to complete her annual filing until the fine and investigative costs are fully paid and the Council Rules Course and ethics course are 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.

Even if this decision is accepted by the Licensee, pursuant to section 242(3) of the Act, the British Columbia Financial Services Authority ("BCFSA") still has a right to appeal this decision of Council to the Financial Services Tribunal ("FST"). The BCFSA 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 **23rd day of January, 2020**.

For the Insurance Council of British Columbia

Janet Sinclair
Executive Director