

In the Matter of the

FINANCIAL INSTITUTIONS ACT, RSBC 1996, c.141

(the “Act”)

and the

INSURANCE COUNCIL OF BRITISH COLUMBIA

(“Council”)

and

DIOSA DELACRUZ

(the “Former Licensee”)

ORDER

As Council made an intended decision on October 31, 2023, pursuant to sections 231, 236, and 241.1 of the Act; and

As Council, in accordance with section 237 of the Act, provided the Former Licensee with written reasons and notice of the intended decision dated December 5, 2023; and

As the Former Licensee has not requested a hearing of Council’s intended decision within the time period provided by the Act;

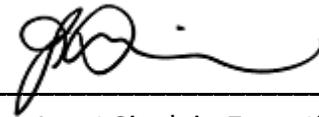
Under authority of sections 231, 236, and 241.1 of the Act, Council orders that:

- 1) Council will not consider an application for any insurance licence from the Former Licensee for a period of five years, commencing on January 11, 2024 and ending at midnight on January 11, 2029;
- 2) The Former Licensee is fined \$20,000, to be paid by April 10, 2024, and which must be paid in full prior to the Former Licensee being licensed in the future;

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- 3) The Former Licensee is assessed Council's investigation costs of \$2,000, to be paid by April 10, 2024, and which must be paid in full prior to the Former Licensee being licensed in the future.

This order takes effect on the **11th day of January, 2024**



Janet Sinclair, Executive Director
Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA

(“Council”)

respecting

DIOSA DELACRUZ

(the “Former Licensee”)

1. Pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council conducted an investigation to determine whether the Former Licensee misappropriated client funds and engaged in a conflict of interest by borrowing funds from a client.
2. On August 30, 2023, as part of Council’s investigation, a Review Committee (the “Committee”) comprised of Council members met via video conference to discuss the investigation. An investigation report prepared by Council staff was distributed to the Committee and the Former Licensee prior to the meeting, and the Former Licensee was given an opportunity to make submissions and provide further information. The Former Licensee was given advance notice though did not attend the meeting. A discussion of the investigation report took place at the meeting.
3. Having reviewed the investigation materials and having discussed the matter at the August 30, 2023 meeting, the Committee prepared a report which was reviewed by Council at its October 31, 2023 meeting. Council determined that the matter should be disposed of in the manner set out below.

PROCESS

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

FACTS

5. The Former Licensee was licensed with Council as a life and accident and sickness insurance agent (“Life Agent”) from June 3, 2011, to August 3, 2022. The Former Licensee’s Life Agent licence was terminated for non-renewal.
6. The Former Licensee maintained an authorization to represent (“ATR”) an insurance agency (the “Agency”) from June 3, 2011 to December 6, 2021. The Former Licensee was an independent contractor with the Agency and her job title was Senior Marketing Director.
7. On November 23, 2021, Council received an email notification from the Agency noting a termination of ATR for the Former Licensee due to compliance issues.
8. On January 21, 2022, the nominee of the Agency (the “Nominee”) explained to Council that the Former Licensee was terminated because she did not deposit funds in a client’s Tax-Free Savings Account (“TFSA”) as directed. The Former Licensee had used the funds to purchase Bitcoin with an unknown company (the “Bitcoin Investment”).

The Agency Investigation

9. The Agency received a complaint on November 9, 2021, from a client (the “Client”), who was seeking to redeem the funds that she believed were invested in a TFSA account with an insurance company (the “Insurer”). The Agency’s investigation revealed that both the Agency and the Insurer had not received a TFSA application for the Client, and her investment of \$25,000 was directly addressed to the Former Licensee.
10. When asked about the complaint, the Former Licensee indicated that she had deposited the funds into the Bitcoin Investment which allegedly promised significant returns. She had been informed that the proceeds of the Bitcoin Investment were being returned to her and she would be paying the client back. There were no affected policies as the Insurer did not receive the client’s TFSA application.
11. The Agency conducted an interview with the Client. The Client stated that she had asked the Former Licensee for updates every month, stating that she had not heard back from the Insurer regarding her TFSA. The Former Licensee had kept telling the Client that there was a backlog due to the Covid-19 pandemic. The agreement was for the money to be kept for six months and she was allegedly promised a 6% return on her investment. The Former Licensee had told her that the money would be deposited back by the end of September 2021, and October 2021 at the latest; however, the funds were never deposited back into her account.

12. The Agency conducted an interview with the Former Licensee. The Former Licensee stated that she did not know the name of the company or understand the company that she invested with, and she was advised that the money would be doubled in three months. She had paid them in cash through a Bitcoin machine and was approached by email about this investment opportunity. She noted that her upline did not know what she was doing, nor did she tell her downlines. In addition, she revealed that she borrowed \$5,000 from another client (the "Other Client"), two years ago, and had not paid the Other Client back the funds. The Other Client subsequently passed away.
13. The Former Licensee submitted a screenshot to the Agency that showed one purchase of Bitcoin (\$3,000, cash) conducted on March 12, 2021. No other supporting evidence for the Bitcoin purchases was provided.

Council's Investigation

14. The Former Licensee told Council that she had been caught in an investment scam and risked the Client's money in an attempt to double it in six months. She indicated that she could not provide any files or information because her house had caught on fire. She provided her account statement from a bank (the "Bank") as evidence that she had received three Interac e-Transfers on March 1, 2021, for \$3,000 each, as well as an additional deposit on March 6, 2021, for \$16,000.
15. Council staff made multiple email and telephone attempts to contact the Former Licensee between February 16, 2022, and March 15, 2022; however, no response was received. A registered letter that was sent to the Former Licensee in April 2022 was also returned as unclaimed. All further attempts to contact the Former Licensee between April 2022 and February 2023 were unsuccessful.
16. On March 14, 2022, the Bank confirmed to Council that it did not have any Bitcoin transaction records of the Former Licensee. Based on the banking statements provided by the Bank, the funds the Former Licensee deposited on March 6, 2021, came from a cheque written by the Client. The memo section of the cheque noted "TFSA-2nd installment".
17. The banking statements also indicated that the Former Licensee withdrew a total of \$9,000 between March 4, 2021 and March 9, 2021. On March 12, 2021, the Former Licensee withdrew a further \$3,000 from her account. Also, an outgoing draft dated March 12, 2021, for \$13,419.39 in the name of another company was noted. The draft was subsequently deposited on March 18, 2021.
18. The Nominee notified Council that the Agency did not receive any confirmation that the Client had settled her dispute with the Former Licensee.

ANALYSIS

19. Council considered the impact of Council's Code of Conduct (the "Code") on the Former Licensee's conduct, including section 3 ("Trustworthiness"), section 4 ("Good Faith"), section 5 ("Competence"), section 6 ("Financial Reliability"), section 7 ("Usual Practice: Dealing with Clients"), section 12 ("Dealing with the Insurance Council of British Columbia") and section 13 ("Compliance with Governing Legislation and Council Rules"). Council concluded that the Former Licensee's conduct amounted to clear breaches of the aforementioned sections of the Code and professional standards set by the Code. In addition, Council determined that the Former Licensee breached Council Rules 7(2) and 7(9). Licensees are required by Council Rule 7(8) to comply with the Code.
20. Council found that the Former Licensee was not trustworthy and did not carry on the business of insurance in good faith. The Former Licensee misappropriated client funds for a personal investment, instead of investing the funds in a TFSA account as instructed by the Client. By doing so, the Former Licensee was dishonestly dealing with client funds and intentionally misleading the Client through false statements that the funds were invested in the TFSA. Council also believed that the Former Licensee withheld material information from Council as the funds were not solely invested through Bitcoin. The Former Licensee disregarded her duties and obligations under the Council Rules and the Code and breached her duty of good faith to the Insurer, the Client, and to Council.
21. Council determined that the Former Licensee failed to conduct insurance activities in a competent manner and in the usual practice of the business of insurance. Although the Former Licensee claimed that she was a victim of an investment scam, Council noted that she misappropriated client funds and invested outside of the scope of her knowledge as she did not have experience with cryptocurrency investments. The Former Licensee failed to properly place insurance coverage as instructed by the Client, failed to properly handle the Client's funds, and failed to maintain adequate books and records. Similarly, Council found that the Former Licensee breached Council Rule 7(9). Of note, there was no record to show how the Former Licensee would compensate the Client for the Bitcoin Investment.
22. The Former Licensee's act of taking and using client funds for a personal investment, instead of collecting and remitting funds to the insurer, demonstrated that the Former Licensee was not financially reliable. In this regard, Council found that the Former Licensee breached Council Rule 7(2). Council also noted that the Former Licensee borrowed funds from the Other Client and had failed to pay the funds back.

23. With respect to the “Usual Practice: Dealing with Clients” principle, Council found that the Former Licensee failed to evaluate the Client’s needs and failed to prioritize their interests. Council noted that there was no demonstrated need for the Client to have the Bitcoin Investment, and even if there was a need, the Former Licensee failed to disclose to the Client that the funds were not invested in the TFSA. Council found the Bitcoin Investment particularly egregious given that the Former Licensee relied on a single advertising email to invest the Client’s funds, with no knowledge of, or experience with cryptocurrency. Further, the Former Licensee engaged in a conflict of interest by borrowing funds from the Other Client. Council believes that it is never appropriate for an insurance licensee to borrow money from insurance business clients.
24. Council concluded that the Former Licensee failed to respond promptly and honestly to inquiries from Council. Council staff made multiple attempts over several months to contact the Former Licensee through telecommunication, electronic communication, and written communication. Attempts to contact the Former Licensee were unsuccessful.

PRECEDENTS

25. Council is not bound by precedent to follow the outcomes from prior decisions, but similar conduct should result in similar outcomes within a reasonable range depending on the particular facts of the case.
26. With respect to the Former Licensee’s misconduct, Council considered the cases of [Zi An \(Charles\) Wang](#) (August 2023), [Jeremy Yuan Wong](#) (January 2022), [Brett Michael Polischuk](#) (February 2023), and [Barbara Ann Nash](#) (December 2020).
27. [Zi An \(Charles\) Wang](#) (August 2023): The former licensee misappropriated client funds, forged client signatures on a policy application and on policy redemption forms, and falsified a letter to show a client’s funds were being invested. The former licensee did not keep proper and adequate records of communications and instructions from clients. Council determined that the former licensee caused significant harm to his clients and to the insurer. The former licensee did not display remorse for his misconduct and did not make any efforts to remedy his misconduct. Council ordered that it would not consider an application for licensure from the former licensee for a period of five years. The former licensee was fined \$10,000 and assessed investigation costs.
28. [Jeremy Yuan Wong](#) (January 2022): The licensee cashed cheques issued to two clients through his personal bank account and amended the mailing address of several clients to his own business and personal addresses. The licensee failed to keep proper records of the clients’ insurance transactions.

Council determined that the licensee took advantage of the clients' level of sophistication and did not act in their best interests. The licensee was licensed with Council for over 25 years, held a certified financial planner designation and was the nominee for an insurance agency. Council ordered the cancellation of the licensee's licence and no application for licensure would be considered for three years. The licensee was fined \$10,000 and assessed investigation costs.

29. [Brent Michael Polischuk](#) (February 2023): The former licensee borrowed funds from insurance business clients and had a lapse in errors and omissions insurance while licensed. A client took out a home equity line of credit against their home to generate funds to loan to the former licensee. On another occasion, the former licensee approached a client to borrow funds shortly after the client had suffered a heart attack. Council concluded that accepting money from insurance business clients placed the former licensee in a conflict of interest. Council determined that the former licensee leveraged his professional and personal relationship with the clients for financial gain contrary to the interests of the clients and insurers. Council ordered that it would not consider an application for licensure from the former licensee for a period of five years. The former licensee was fined \$5,000 and assessed investigation costs.
30. [Barbara Ann Nash](#) (December 2020): The licensee had taken a loan from a client to make a down payment on a home. On the recommendation of the licensee, the client redeemed money from non-registered accounts and Tax-Free Savings Accounts in order to provide funds to the licensee. The client was charged a redemption fee which the licensee did not inform the client of when recommending redeeming the funds. The licensee added the client to the title of a home that was purchased. The client did not understand why he was on the title or the consequences of being on the title, such as being subject to property taxes. Additionally, the licensee obtained a life-term insurance policy naming the client as 50% beneficiary. In October 2017, the licensee and the client entered into a new loan agreement. Council found that the licensee was in a conflict of interest and did not carry on the business of insurance in good faith and in a trustworthy and competent manner. Council noted concerns about the licensee's competence as she did not adequately explain the redemption fees to the client the legal consequences of being on the title to the property or the implications of being a revocable beneficiary on the insurance policy. Council further noted concerns about the licensee's tone and use of language in communications between the client and the licensee. Council ordered that the licensee complete courses, be supervised for a period of twenty-four months, be fined \$2,500, and assessed investigation costs and hearing costs.

MITIGATING AND AGGRAVATING FACTORS

31. Council found several aggravating factors applicable in the subject case. Council concluded that the Former Licensee's misconduct demonstrated a flagrant disregard for the laws governing the Former Licensee's conduct. The Former Licensee committed multiple deliberate acts of misconduct that resulted in client harm. Council was troubled by the Former Licensee's decision to stop responding to Council's investigation, which Council found to be indicative of a lack of remorse, despite the Former Licensee's acknowledgement of the misconduct.
32. Further, Council noted that the Former Licensee derived a financial benefit from the misconduct as she used client funds for her personal investment. There was no evidence that the Client was made a beneficiary of the Bitcoin Investment. Council also noted that the Former Licensee was licensed as a Life Agent for approximately ten years at the time of the misconduct and that the misconduct took place over several days.
33. The only mitigating factor that Council found was that the Former Licensee's ATR was terminated by the Agency.

CONCLUSIONS

34. After weighing all of the relevant considerations, Council concluded that the Former Licensee should be fined \$20,000, comprised of \$15,000 to address the misconduct relating to the misappropriation of client funds, and \$5,000 to address the misconduct relating to conflict of interest. Also, the Former Licensee should be assessed investigation costs.
35. In addition, Council concluded that the Former Licensee should not be eligible to apply for an insurance licence for five years. Council determined that the Former Licensee committed deliberate acts of misconduct that resulted in client harm.
36. Council has determined that investigation costs should be assessed against the Former Licensee. As a self-funding regulator, the cost to investigate the misconduct of a licensee or former licensee should not be borne by members of the insurance industry unaffiliated with the investigation. This is particularly true when the evidence is clear that the actions of a licensee or former licensee have amounted to misconduct.

INTENDED DECISION

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

- a) That Council will not consider an application for any insurance licence from the Former Licensee for a period of five years, commencing on the date of Council's order;
 - b) Fine the Former Licensee \$20,000, to be paid within 90 days of the date of Council's order, and which must be paid in full prior to the Former Licensee being licensed in the future; and
 - c) Assess the Former Licensee Council's investigation costs of \$2,000, to be paid within 90 days of the date of Council's order, and which must be paid in full prior to the Former Licensee being licensed in the future.
38. Subject to the Former 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.

ADDITIONAL INFORMATION REGARDING FINES/COSTS

39. Council may take action or seek legal remedies against the Former Licensee to collect outstanding fines and/or costs, should these not be paid by the 90 day deadline.

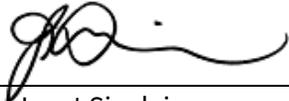
RIGHT TO A HEARING

40. If the Former Licensee wishes to dispute Council's findings or its intended decision, the Former Licensee may have legal representation and present a case in a hearing before Council. Pursuant to section 237(3) of the Act, to require Council to hold a hearing, the Former 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 Former Licensee does not request a hearing within 14 days of receiving this intended decision, the intended decision of Council will take effect.**
41. Even if this decision is accepted by the Former Licensee, pursuant to section 242(3) of the Act, the British Columbia Financial Services Authority ("BCFSA") still has a right of appeal to the Financial Services Tribunal ("FST"). The BCFSA has thirty (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 <https://www.bcfst.ca/> or visit the guide to appeals published on their website at <https://www.bcfst.ca/app/uploads/sites/832/2021/06/guidelines.pdf>.

Intended Decision
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Dated in Vancouver, British Columbia on the **5th day of December, 2023.**

For the Insurance Council of British Columbia

A handwritten signature in black ink, appearing to read 'Janet Sinclair', written over a horizontal line.

Janet Sinclair
Executive Director