

In the Matter of

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

and

The INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

and

GOLD KEY INSURANCE SERVICES LTD.
(the “Agency”)

and

SHARN BHINDER
(the “Nominee”)

ORDER

As Council made an intended decision on August 16, 2016, 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 September 22, 2016; 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. A condition is imposed on the Nominee’s general insurance licence that prohibits the Nominee from holding a Level 3 general insurance licence.
2. The Agency is fined \$10,000.00.
3. The Agency is assessed Council’s investigative costs of \$3,375.00.

4. 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 **January 12, 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 **January 13, 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 **12th day of October, 2016**.



Dr. Eric Yung
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

respecting

GOLD KEY INSURANCE SERVICES LTD.
(the “Agency”)

and

SHARN BHINDER
(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 May 9, 2016, a Review Committee (the “Committee”) met with the Nominee and another Agency representative to discuss allegations regarding improper record keeping practices; inadequate fee disclosure to an Agency client; and failure by Agency representatives to respond in a forthright manner during the course of Council’s investigation.

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

The Committee’s report, along with the aforementioned investigation report, were reviewed by Council at its August 16, 2016 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 has held a general insurance licence in British Columbia since April 4, 1997. The Nominee has been licensed in British Columbia since 1997 and has been the Agency's nominee since April 2011.

A complaint was received from a client's employee (the "Complainant") alleging the Agency mishandled the client's (the "Client") general insurance business by not disclosing insurance policy fees for three consecutive policy terms.

The Agency stated the complaint stemmed from the fact that a former employee/competitor manufactured invoices in an effort to obtain Agency clients' insurance business. It was these same invoices that the Complainant subsequently submitted to Council in support of his complaint. The Agency explained that a previous Agency staff member printed an internal document reflecting the Client's account statement ("Internal Document") and provided it to the Client without authorization to do so. The Client confirmed to Council that it did receive the Internal Document, but would not confirm the source.

The Complainant stated that concerns initially arose when the Client received an email from the Agency, with an invoice attached, on April 23, 2014 (the "April 2014 Email"). The invoice reflected policies renewed earlier that year, but did not reference any policy fees. The Client was under the impression that the premiums had been steadily going up each year without explanation.

Council staff met with the Client's Chief Executive Officer. He stated that after receiving the April 23, 2014 invoice, he initially took no action. A few months later, he received the Internal Document. When reviewing the Internal Document, he noticed there were significant fees assessed for insurance policies in 2012 and 2013. The Client's position was that it was unaware of the nature of these fees charged by the Agency as they had not been previously disclosed to the Client.

In August 2014, the Client contacted the Agency and asked for copies of all the previous statements of the Client's account.

Inconsistencies Related to Disclosure to Council

Council received submissions from the Client and the Agency with respect to the insurance policy terms 2011/2012, 2012/2013, and 2014/2015. These submissions included electronic records, documents, and emails, as well as both verbal and written submissions. The Agency was unable to produce any physical or electronic records related to the Client's 2011/2012 insurance file.

Alleged Theft of Records

When asked to explain the absence of records pertaining to the Client's 2011/2012 policies and client file material, the Nominee submitted that she believed that a portion of the Client's file had been stolen. According to the Nominee, a former employee of the Agency was loading a van with boxes to take to a storage facility when the van was stolen, and the Client's 2011/2012 file was likely in one of the boxes.

The Nominee stated that a police report had been filed. According to the Nominee, the van was later recovered and the file boxes were not in the van.

Council asked the Nominee to provide a copy of the police report relating to the van theft along with the name of the employee who was loading the truck at the time of the theft.

In response to this request, the Nominee advised that there was no police report, explaining that she had simply assumed a police report had been made. She stated that the file boxes did not contain client files, but rather only contained Agency marketing materials. As no damage was done to the van, no police report was filed. The employee who was loading the van when it was stolen was not identified. No explanation was provided as to why the Nominee initially believed that client files, rather than marketing material, had been stolen.

Electronic Document Properties

Two electronic documents received from the Agency in regards to this matter were of concern to Council, as the document properties did not correspond with either the alleged date of creation or the corresponding electronic document provided by the Complainant.

The April 2014 Email from the Agency to the Client

The Complainant acknowledged receiving the April 2014 Email from an employee of the Agency, which contained several attachments, including an invoice. The Agency employee acknowledged sending the April 2014 Email to the Client. Both the Client and the Agency provided what purported to be versions of the same email, with attachments, to Council, in which the relevant invoice was included.

In reviewing both the sent and received versions of the April 23, 2014 Email, the following characteristics were identified:

- There were four PDF documents attached to the email, which included an invoice.
- The Complainant's version of the invoice did not reflect any policy fees.
- In the attachment line of the screen shot of the sent April 23, 2014 Email provided by the Agency, the PDF invoice was titled "Logistics - 2014".
- When Council asked the Nominee to forward the actual email, rather than a screen shot of the April 23, 2014 Email that was sent, so that the attachments could be opened and viewed, the PDF invoice title differed in that it no longer had a dash (-) between Logistics and 2014. When that PDF invoice provided by the Agency was opened and viewed, the contents were identical as the contents of the PDF invoice received by the Complainant, except under each policy premium, the words "including fees" were denoted in brackets.
- When examining the electronic document properties of both versions of the April 23, 2014 Email, it was discovered that three of the PDF attachments had identical properties, but the PDF invoice that the Nominee forwarded to Council was found to have been created minutes after Council requested the documents.

March 14, 2014 Email from an Agency Employee to the Client

When asked if there was an email on record that confirmed the actual policy fee amounts charged to the Client, the Nominee stated there was an email sent by an Agency employee to the Client on March 14, 2014 that included a breakdown of the policy fees. The Nominee forwarded a copy of this March 14, 2014 email to Council, which contained four attachments with the same titles as those in the April 23, 2014 Email.

In examining the electronic document properties of the four PDF attachments, three had identical properties as the attachments in the April 23, 2014 Email, including (and most notably) that the documents were created on April 23, 2014, five weeks after the March 14, 2014 email was sent. The Agency did not provide an explanation as to how the creation dates of the attachments supposedly attached to a March 14, 2014 email showed that they were not created until five weeks after the fact.

The PDF invoice in the March 14, 2014 email was titled “Logistics - 2014 -”. The document title differed from the April 23, 2014 Email PDF as it had a second dash (-) at the end. When the PDF was opened and viewed, the contents appeared similar to the other two versions of the invoice, although it was dated March 14, 2014, and under each policy premium the actual fee amounts were denoted in brackets. The electronic document properties of the PDF invoice indicated that the “created date” of the document was a few days after the Nominee informed Council about the existence of the March 14, 2014 email.

An Agency employee and the Nominee both submitted that the reason the PDF invoice electronic document properties indicated it was created after Council requested it was because the original file was corrupt. They advised they changed it to a readable format, thereby skewing the electronic document properties. They provided no evidence to support the existence of the alleged original corrupt file.

ANALYSIS

Council considered the actions of the Agency and the Nominee, and their submissions.

With respect to the original complaint regarding inadequate disclosure of policy fees, Council was troubled that the Agency was unable to provide documents to explain the fees that were actually assessed to, and paid by, the Client.

Council was concerned that the version of the PDF invoice received by the Client with the April 2014 Email did not disclose the premiums and fees for the various coverages. Council concluded that in light of the document manipulation, and the fact that the Client’s version of the relevant invoice did not disclose fees, Council determined that the Agency failed to adequately disclose fees to the Client on that occasion.

Council noted that there was conflicting evidence regarding the verbal explanation of policy fees throughout the three policy years. While Council accepted that in some instances the Client may have been provided with verbal policy explanations, Council concluded that the Agency failed to maintain adequate records regarding fee disclosure to the Client.

The record keeping practices of the Agency were called into question by the alleged van theft incident. When the Nominee initially advised that client files, including that of the Client for 2011/2012, had been stolen and never recovered, Council was concerned that the Agency had failed to recognize the potential privacy breach posed by the theft, and had not taken steps to notify its clients accordingly. Council did not find the Nominee credible when she later revoked her statement regarding the filing of a police report and suggested that the stolen files were actually only marketing material.

The Nominee was unable to explain the discrepancies between the April 2014 Email received by the Complainant, and the version provided to Council by the Agency, including why the attachments provided by the Agency predated the emails in which they were supposedly sent. In addition, Council did not receive an explanation as to why electronic document properties indicated that the documents were altered shortly after Council's request for document disclosure from the Agency.

As a result, Council determined that the Agency and the Nominee failed to be forthright in dealing with Council. Council found that the Nominee's behaviour raised serious concerns, given her experience and position as the Agency's nominee. Based on this, Council determined the Nominee was unsuitable to hold a Level 3 general insurance licence.

Council determined the Agency's failure to maintain adequate records regarding policy fee disclosure, and its failure to be forthright with Council throughout the investigation, warranted a significant fine and the assessment of investigative costs.

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 Nominee's general insurance licence that prohibits the Nominee from holding a Level 3 general insurance licence.
2. Fine the Agency \$10,000.00.
3. Assess the Agency Council's investigative costs of \$3,375.00.

The Agency 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, will result in the automatic suspension of the Agency's general insurance licence and the Agency will not be permitted to complete any annual filing until such time as the fine and investigative costs are paid in full.

The intended decision will take effect on **October 12, 2016**, 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, both the Agency and 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 the Nominee must give notice to Council by delivering to its office written notice of this intention by **October 11, 2016**. 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 the Nominee do not request a hearing by **October 11, 2016**, the intended decision of Council will take effect.

Even if this decision is accepted by the Agency and 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 **22nd day of September, 2016**.

For the Insurance Council of British Columbia


per _____

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