

In the Matter of the

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

and the

INSURANCE COUNCIL OF BRITISH COLUMBIA
 (“Council”)

and

DONALEE JOY KELLY
(the “Licensee”)

ORDER

As Council made an intended decision on March 12, 2024, 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 March 27, 2024; 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 \$3,000, to be paid by July 22, 2024;
- 2) The Licensee is required to complete the following courses, or equivalent courses, as acceptable to Council, by July 22, 2024:
 - i. The Council Rules Course for general insurance and adjusters; and
 - ii. Nominee Responsibilities and Best Practice Course for General Insurance and Adjuster Nominees and Applicants
(Collectively, the “Courses”);
- 3) The Licensee is assessed Council’s investigation costs in the amount of \$1,031.25 to be paid by July 22, 2024; and

- 4) A condition is imposed on the Licensee's general insurance licence that failure to pay the fine and investigation costs in full, and failure to complete the Courses by July 22, 2024 will result in the automatic suspension of the Licensee's licence and that the Licensee will not be permitted to complete the Licensee's 2026 annual licence renewal until such time as the Licensee has complied with the conditions listed herein.

This order takes effect on the **22nd day of April, 2024**



Janet Sinclair, Executive Director
Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA

(“Council”)

respecting

DONALEE JOY KELLY

(the “Licensee”)

1. 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 to determine whether the Licensee breached section 4 (“Good Faith”), section 5 (“Competence”) and section 7 (“Usual Practice: Dealing with Clients”) of the Code of Conduct by becoming aware of a policy that did not have insurance coverage placed as instructed and for failing to deal with the matter and/or the client according to the usual practice; and that the Licensee failed to conduct insurance activities in a manner consistent with the usual practice of the business of insurance.
2. On December 19, 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, the Licensee and the Licensee’s legal counsel prior to the meeting. A discussion of the investigation report took place at the meeting with the Licensee and the Licensee’s legal counsel who provided their submissions. Having reviewed the investigation materials and after discussing the matter, the Committee prepared a report for Council.
3. The Committee’s report, along with the aforementioned investigation report, were reviewed by Council at its March 12, 2024, meeting, where it was determined 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 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

5. The Licensee held a Level 1 general insurance salesperson (“Level 1 Salesperson”) licence with the Insurance Council effective October 5, 2004. The Licensee then held a Level 2 general insurance agent (“Level 2 Agent”) licence effective September 26, 2007. The Licensee obtained a Level 3 general insurance agent (“Level 3 Agent”) licence on July 9, 2012. The Licensee has held an Authority to Represent (ATR) with the Agency since March 16, 2018.
6. On July 26, 2021, the Insurance Council received a complaint from a customer (the “Complainant”) regarding an insurance transaction completed at the Agency by a Former Licensee. At the material time, the Licensee was the manager of commercial insurance sales at the Agency and supervised the Former Licensee. Another licensee within the Agency, Licensee X, was the director of commercial sales for BC.
7. On September 15, 2020, the Complainant contacted the Agency to purchase insurance on a commercial property. The Complainant purchased the commercial property, and the possession date was September 30, 2020. The Former Licensee was the agent completing the insurance sale at the Agency. The property being purchased by the Complainant was previously insured through a representative at the Agency.
8. The Former Licensee initially obtained a quote for insurance coverage on September 16, 2020, with an incorrect address. On September 29, 2020, after receiving information about the property purchase from the Complainant’s lawyer, the Former Licensee confirmed with the Complainant that the previous policy on the commercial property (with the Agency under the previous owner) contained the wrong address. Additionally, the Complainant decided to make a new company name under which the property was to be purchased.
9. The Complainant instructed the Former Licensee to proceed with binding coverage as previously quoted but with the new business name and correct address. On September 29, 2020, the Former Licensee sent the Agency National Insurance Operations (“NIO”) an email advising of a name and address change to the initial insurance policy submission.
10. On September 30, 2020, the Complainant received an invoice for \$3,997, paid the insurance quote invoice, and a cover note of insurance was sent to the Complainant. However, later that same day, an NIO representative advised the Former Licensee that the new address was located on a flood plain. This resulted in the initial offer to provide insurance coverage on the property being rescinded. The Former Licensee did not contact the Complainant and no action was taken.

11. On December 14, 2020, an Agency employee contacted the Former Licensee requesting policy documents for the Complainant. On January 25, 2021, another email reminded the Former Licensee about the required policy documents.
12. On February 4, 2021, the same Agency employee contacted the Agency NIO representative about the Complainant's insurance policy as it was flagged in an Agency report as being outstanding. On February 4, 2021, the Agency NIO representative responded stating the offer for insurance had been rescinded on September 30, 2020, because the new address was located on a flood plain.
13. On February 21, 2021, an Agency employee sent an email regarding the Complainant's policy to the Former Licensee, the Licensee and Licensee X. The Licensee advised she received a binder report concerning the Complainant. The Licensee further explained that the binder report showed that a client paid for a policy, but the Agency did not have policy documents from the insurer. The Licensee advised that at that time, she rarely saw binder reports. Still, during the COVID-19 pandemic, there was a rise in binder reports as insurance companies took longer to send out policy documents. The Licensee advised that she relied on what the Former Licensee stated to her, and this notification was the first notice that the Licensee received about the policy in question. The other notifications were internal checks that were sent directly to the Former Licensee. The Licensee stated she had no reason to believe the policy was not bound, and believed the only issue was that the policy documents were outstanding from the insurer.
14. There was no documented communication from the Former Licensee to the Complainant from September 30, 2020, to February 24, 2021. During the period of February 21, 2021, to July 5, 2021, the Former Licensee stated that he forgot or put off the situation regarding the Complainant's policy.
15. The Licensee advised that she held regular meetings with the Former Licensee. During the material time, these meetings were virtual as work was conducted remotely due to the COVID-19 pandemic. The Licensee advised she followed up with the Former Licensee regarding this policy. However, the Licensee did not record her ongoing discussions with the Former Licensee as those were discussions in their one-on-one meetings, and therefore, she did not document these notes in the Complainant's client file.
16. In late May 2021, the Licensee and Licensee X were copied in an internal email regarding the outstanding binder for the policy in question. This was the 5th notification sent to the Former Licensee; however, this was the 2nd notification that the Licensee and Licensee X were aware of and included in. It was at this time that the Licensee stated that she first became aware that the policy was not bound and that coverage was not available with that insurer.
17. The Licensee and Licensee X discussed the matter after the May 2021 email notification. The Licensee advised Licensee X that the Former Licensee was still trying to obtain replacement coverage for the

Complainant but had not done so yet. Licensee X discussed with the Licensee that the Former Licensee was capable of finding replacement coverage and expected the Former Licensee to find replacement coverage for the Complainant. The Licensee advised the Former Licensee to immediately obtain coverage and that the Agency would approve a write-off of any additional premium.

18. Around this time due to the extreme weather events in BC and the location of wildfires relative to property, the property could not be insured. Licensee X advised that in early July 2021, he became aware of the wildfire situation and advised the Former Licensee to address the mistake.
19. On July 5, 2021, the Former Licensee contacted the Complainant to advise the Complainant that the Agency did not place coverage on September 30, 2020. The Former Licensee indicated the policy could not be issued due to a "*last minute change in address and Postal Code.*" In early July, the Former Licensee advised Licensee X that the Complainant did not want the Agency to continue to market his account without permission.
20. The Complainant had concerns about whether coverage was not being provided because of the weather events in the area as opposed to the change in postal code. The Former Licensee assured the Complainant it was not related to the fires, it was because the new postal code indicated it was located on a flood plain. On July 14, 2021, an evacuation alert was issued for the area where the property was located.
21. On July 22, 2021, Licensee X contacted the Complainant to advise of the issue with the new address being declined for coverage in September 2020 and confirmed to the Complainant there was no coverage in place. Licensee X stated that in the telephone call with the Complainant, the Complainant advised that he did not want to use the Agency further and would arrange for replacement coverage himself.
22. On August 4, 2021, a refund cheque of \$3,997 was sent to the Complainant for the premium collected on September 30, 2020. As the Complainant indicated he did not receive a cheque on October 26, 2021, the Agency voided that cheque and reissued a second refund cheque on October 27, 2021. The cheque was cashed by the Complainant on November 8, 2021.
23. On August 13, 2021, the Former Licensee was terminated from his employment with the Agency.
24. Council's investigator spoke to the Complainant who confirmed he was successfully able to obtain insurance elsewhere once he was aware there was no insurance in place. The Complainant further stated that he did not experience any losses or claims during the period of being uninsured.
25. The Licensee was issued a written warning by the Agency for her role in this incident. The Licensee has stated that she should not have relied on the Former Licensee's word and that she should have

checked if the policy was bound and/or taken steps herself to ensure the situation was rectified instead of relying on the Former Licensee. The Licensee is no longer in a leadership role and works in a training role where the Licensee can use lessons from this incident to provide lessons to other licensees.

26. Following the Review Committee meeting, Council staff requested that the Agency provide a copy of any procedures and policies implemented by the nominee and the Agency regarding the responsibilities of managers, team leads, and agents with supervision or oversight duties. On January 19, 2024, legal counsel for the Agency provided a copy of the relevant procedures and policies. The Committee reviewed these policies and determined that the Agency had procedures in place that clearly outlined the responsibilities of managers and supervisors. Council determined that the Licensee was provided with the appropriate policies and procedures but did not adhere to the requirements of her role.

ANALYSIS

27. Council determined that the Licensee failed to fulfill her supervisory duties competently. Council noted that the Licensee, as the Former Licensee's supervisor, had an obligation to make inquiries or verify the Complainant's policy, as the Licensee was made aware of the outstanding binder in February 2021. Even if the Licensee believed the policy was bound when she first became aware of the outstanding binder in February 2021, the Licensee continued to discuss the outstanding policy with the Former Licensee in weekly meetings but did not take any additional steps to resolve the issue for several months. Given the seriousness of the issue, and the client's entitlement to receive evidence of insurance documents within a reasonable amount of time, the Licensee's actions in this circumstance did not meet the level expected of usual practice. Additionally, when the Licensee became aware in May 2021 that the policy was not bound, the Licensee continued to rely on the Former Licensee to rectify the situation instead of taking the opportunity to intervene and remedy the situation. At this time, the Licensee was aware that the Former Licensee had let the Complainant go without insurance for several months. The Complainant was under the impression they had insurance but continued to rely on the Former Licensee to remedy this situation.
28. When the Licensee became aware that the policy was not in place, she should have notified the Complainant of the situation. The lack of communication with the Complainant is not in line with the usual practice of dealing with clients. The Licensee should have given the Complainant full and fair disclosure of their circumstances to enable the Complainant to make informed decisions regarding their insurance needs. The Complainant's interests were not protected by the Licensee. The lack of communication and responsibility by any of the parties, the Former Licensee, the Licensee, and Licensee X, in taking proactive steps to rectify the situation when they became aware the Complainant was uninsured, did not serve or protect the client's interest.

29. It was the Licensee's responsibility to ensure that coverage was properly placed as instructed and that all insurance policies were provided to the client in a reasonable time and in accordance with the terms of their agreement with the insurer. In this case, there was no policy issued and the proper insurance policy documents were never sent to the Complainant.
30. Council does not believe that the Licensee intentionally committed the misconduct but that the Licensee did not adequately supervise the Former Licensee or handle the Complainant's matter in a way that would be expected of someone in the situation.
31. Council concluded that the Licensee's misconduct amounted to breaches of the Code of Conduct section 4 ("Good Faith"), section 5 ("Competence") and section 7 ("Usual Practice: Dealing with Clients").

PRECEDENTS

32. Council took into consideration the following precedent cases regarding insurance policies not being bound or properly effected. While Council recognizes that Council is not bound by precedent and that each matter is decided on its own facts and merits, Council found that these decisions were instructive in providing a range of sanctions for similar types of misconduct.
33. [*Amrit Singh Sidhu, Daljit Singh Sidhu and S&S Insurance Services Ltd*](#) (August 2023): concerned a client who was provided with a binder with an insurer's logo, binder number and effective policy date by the agency. However, the binder was not signed by the insurer and was not a valid document. A former employee of the agency had requested that the client's policy be renewed on December 11, 2020, however on December 14, 2020, the insurer replied advising additional information was required to renew the policy. In January 2021, the licensee became aware that the policy had not been renewed, however, the licensee did not take any further steps to ensure the policy was renewed or that the client was made aware there was no policy in place. In November 2021, the client suffered a loss and did not have insurance coverage in place. It was not until March 2022, after Council's investigation of the matter, that the client was refunded the premiums paid for the policy that had not been renewed in December 2020. Council concluded that the licensee and agency failed to properly place insurance coverage as instructed. Further, the nominee and agency failed to properly manage the business aspects of the agency by not properly handling and remitting the premium money to the insurer. Council further determined that the agency claimed to bind terms under a policy when it was not authorized by the insurer to do so. The agency as a licensed person or entity is responsible for the actions of the staff and the agency, and ultimately, the proper management of the agency is the nominee's responsibility. Council ordered the licensee to be fined \$5,000, be required to complete courses, and downgraded the licensee's level 3 general insurance licence to a level 2 general

insurance licence for a period of a year. The agency and nominee were both fined \$1,500, and the investigation costs were assessed against both the agency and the licensee.

34. [*Troy Wotherspoon Insurance Services Ltd., Lung Hwa \(Andy\) Tan, and Troy John Wotherspoon*](#) (May 2020): A client came to the agency and advised they were in the process of moving and submitted an application for a storage insurance policy. The clients instructed the licensee to proceed with the policy and provided their credit card information for payment. The licensee placed a sticky note on a colleague's desk with the information for payment and a note to bind the insurance for the client, but the licensee did not speak to anyone about this. A month later the client wanted to file a claim in regard to a theft at the storage facility. At this time the licensee discovered that the payment and insurance were never bound. The clients were not informed at this point that the insurance had not been bound. The nominee began discussions with the insurer to see if there was a way to bind the policy, which ultimately, he was successful in doing. The agency paid the premiums required to reinstate the policy and the policy was backdated. It did not appear that the clients were fully aware of or understood the situation that occurred. Council found the agency, nominee, and licensee in this matter responsible for the failure to complete the insurance renewal and that there was a lack of procedures in place by the agency and insufficient oversight by the nominee. Council ordered a fine of \$1,500 against the licensee, \$1,500 against the nominee, and \$2,000 against the agency as well as investigation costs. The nominee and licensee were also ordered to complete courses.
35. [*The Whistler Shoppe LTD. dba The Whistler Insurance Shoppe and Peggy Kathleen Johannson*](#) (April 2016): concerned an error occurring at an agency that resulted in a client's insurance policy not being renewed upon expiration. Council was concerned by a lack of proper administrative and financial procedures being in place at the agency, and with the nominee's failure to provide appropriate oversight. Council found the nominee failed to perform her duties as a nominee, raising concerns over the manner in which the agency is managed. Council fined the nominee \$2,500, required her to complete the Level 3 seminar, and put a condition on her licence limiting her to being the nominee for a maximum of two agencies, unless there is a full-time Level 3 Agent in regular attendance at every agency for which she is a nominee. Finally, Council fined the agency \$5,000, assessed its investigative costs of \$1,112.50, and required the agency to have a full-time Level 3 Agent in regular attendance.
36. [*Kanwar Yuvraj Walia*](#) (December 2015): and [*Global Insurance Agency \(2007\) Ltd, Harvinder Kaur Walia and Kanwar Yuvraj Walia*](#) (December 2015): concerned an error whereby a licensee failed to submit the documentation necessary to bind an insurance policy. The agency accepted payment from a client and then issued a Certificate of Insurance before coverage was bound and without the insurer's authorization. About one month later, the licensee realized that documentation had not been submitted and emailed the insurer to request that the policy be issued, with documents to follow. However, the insurer had no records of having received the required documents, and as such coverage was never bound and the client went uninsured. Council concluded that the licensee's failure to bind the policy was an administrative error, but noted that the licensee had had multiple

opportunities to ensure coverage was placed for the client. Council's opinion was that a lack of appropriate administrative and financial policies at the agency contributed to the error and that the agency and nominee were both responsible for these shortcomings. A mitigating factor, however, was that the agency took action when the error was identified and has since taken steps to modernize its processes. Council fined the licensee \$2,000, reprimanded the nominee, fined the agency \$2,000, and assessed investigative costs of \$1,625 to the agency.

37. [*Tina Suzanne Jang*](#) (April 2016): concerned a licensee who failed to renew a client's insurance policy when it expired. The client only discovered they were without insurance when they suffered a fire loss. The licensee had a list of all policies set to expire and after processing the renewals on her list, she left for vacation. While on vacation the client's spouse contacted the licensee about their insurance policy, and the licensee advised she would forward the policy but realized she did not have access to her files while on vacation. Upon her return from vacation, the licensee did not follow up with the client and did not realize the insurance application had been missed. The nominee only learned of this incident after the licensee reported the matter to the agency's errors and omissions provider. Council determined that the licensee failed to properly handle the client's insurance. The licensee did not use procedural systems such as bring forward systems which would have been of assistance, and Council accepted that the licensee had subsequently taken steps to better educate herself. The licensee was ordered to complete an errors and omissions course.

MITIGATING AND AGGRAVATING FACTORS

38. Council considered the relevant mitigating and aggravating factors in this matter. Council considered that failing to provide insurance coverage as instructed can cause significant harm to clients as well as pose a risk to the public. Council considered this to be an aggravating factor in these circumstances. Council further considered the Licensee's lack of involvement and delay in addressing the issue another aggravating factor.
39. Council considered the Licensee's remorse and acknowledgment of her role as a mitigating factor. Additionally, the Licensee was fully cooperative throughout the investigation, which the Committee considers a mitigating factor. Council further noted that the Licensee suffered consequences as a result of this incident, as she was given a formal written warning from the Agency, and the Committee views this as a mitigating factor. Lastly, Council recognized that it may have been more difficult for the licensees to navigate these kinds of issues during the COVID-19 pandemic, and Council considers this to be a mitigating factor.

CONCLUSIONS

40. Having considered the precedent cases, as well as mitigating and aggravating factors, Council has determined that it is appropriate for the Licensee to be assessed a fine to communicate to the Licensee, the insurance industry, and the public that insurance agents are required by Council to perform their roles and conduct insurance business competently. Council considered the precedents and determined the [Sidhu and S&S Insurance Services](#) case to be the most instructive. Given the Licensee's supervisory role and experience in the industry, the Licensee should have taken more steps to address the issue instead of letting the matter continue for several months. As the Licensee is currently in a training role, Council has also concluded it is appropriate for the Licensee to be required to take courses to update the Licensee's knowledge of best practices and the Council Rules.
41. With respect to investigation costs, Council believes that these costs should be assessed equally to both the Licensee and Licensee X for their role in this matter. As a self-funded regulatory body, Council looks to licensees who have engaged in misconduct to bear the costs of their discipline proceedings, so that those costs are not otherwise borne by British Columbia's licensees in general. Council has not identified any reason for not applying this principle in the circumstances.

INTENDED DECISION

42. Pursuant to sections 231, 236 and 241.1(1) of the Act, Council made an intended decision that:
 - a. The Licensee be fined \$3,000 to be paid within 90 days of Council's order;
 - b. The Licensee be required to complete the following courses, or equivalent courses as acceptable to Council, within 90 days of Council's order:
 - i. the Council Rules Course for general insurance and adjusters; and
 - ii. Nominee Responsibilities and Best Practice Course for General Insurance and Adjuster Nominees and Applicants (collectively, "the Courses");
 - c. The Licensee be assessed Council's investigation costs in the amount of \$1,031.25 to be paid within 90 days of Council's order; and
 - d. A condition be imposed on the Licensee's general insurance licence that failure to pay the fine and investigation costs in full, and failure to complete the Courses within the 90 days will result in the automatic suspension of the Licensee's licence and that the

Licensee will not be permitted to complete the Licensee's 2026 annual licence renewal until such time as the Licensee has complied with the conditions listed herein.

43. 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.

ADDITIONAL INFORMATION REGARDING FINES/COSTS

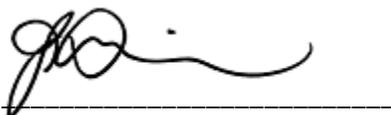
44. Council may take action or seek legal remedies against the Licensee to collect outstanding fines and/or costs, should these not be paid by the 90-day deadline.

RIGHT TO A HEARING

45. If the Licensee wishes to dispute Council's findings or its intended decision, the 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 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 14 days of receiving this intended decision, the intended decision of Council will take effect.
46. 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 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 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>.

Dated in Vancouver, British Columbia, on the **27th day of March, 2024**

For the Insurance Council of British Columbia



Janet Sinclair
Executive Director