

FINANCIAL SERVICES TRIBUNAL

**IN THE MATTER OF THE FINANCIAL INSTITUTIONS ACT
R.S.B.C. 1996, C. 141, AS AMENDED**

BETWEEN:

THE SUPERINTENDENT OF FINANCIAL INSTITUTIONS

APPELLANT

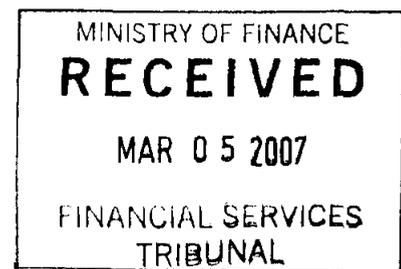
AND:

THE INSURANCE COUNCIL OF BRITISH COLUMBIA
and DANA GABRIELA CIOCAN

RESPONDENTS

SUPPLEMENTARY DECISION

BEFORE:	ROBERT J. HOBART	PRESIDING MEMBER
DATE OF LAST SUBMISSION:	JANUARY 10, 2007	
APPEARING:	RICHARD FERNYHOUGH	FOR THE APPELLANT
	DAVID T. MCKNIGHT	FOR THE RESPONDENT, INSURANCE COUNCIL OF BC
	PATRICK J. SULLIVAN	FOR THE RESPONDENT, DANA GABRIELA CIOCAN
DATE OF DECISION:	MARCH 5, 2007	



BACKGROUND

On February 8, 2007, I issued a decision with respect to the appeal filed by the Superintendent of Financial Institutions (“Superintendent”) against the decision of the Insurance Council of British Columbia (“Council”) regarding Dana Gabriela Ciocan (“Ciocan”). The decision was as follows:

1. The application pursuant to Section 242.2 (8) of the *Financial Institutions Act*, for Ciocan to appear before the FST be refused;
2. The penalty imposed on Ciocan by Council be varied from a fine of \$1,000 to include a fine of \$1,000 and a suspension of 60 days;
3. Any outstanding investigative costs incurred by Council related to this case be assessed against Ciocan; and,
4. No costs be assessed in relation to this appeal.

On February 14, 2007, the Financial Services Tribunal (“FST”) received a letter from Counsel for Ciocan asking for clarification of the decision. It was indicated in the letter that Ciocan, in fact, holds three insurance licenses:

- A Life Insurance License, including accident and sickness issued by the Council on April 21, 2005;
- A Life and Accident and Sickness Insurance License issued by the Council on November 10, 2006; and,
- A General Insurance License issued by the Council on July 19, 2006.

On February 19, 2007 the FST advised Counsel for all three parties in this matter, that I was unaware that Ciocan was in possession of three insurance licenses, as information regarding the General Insurance License did not form part of the record. A request was made for any further submissions by no later than February 23, 2007.

Submissions were received from Counsel for the Superintendent and Counsel for the Council. In addition, the letter of February 14, 2007 from Counsel for Ciocan was in the nature of a submission.

ARGUMENTS

There is no disagreement with respect to the suspension of the Life Insurance License issued on April 21, 2005 and the Life and Accident and Sickness Insurance License issued on November 10, 2006.

Counsel for the Council and Counsel for Ciocan argue against the suspension of the General Insurance License as the activities which led to the suspension decision were solely related to the life insurance industry. Ciocan’s duties as a life insurance agent are separate and distinct from her duties as a general insurance agent. Counsel for Ciocan

also indicates that Ciocan's employer is prepared to strictly supervise her general insurance agent activities during the period of the suspension of her life insurance license and that general insurance business conducted by Ciocan will only be conducted in the office of her employer.

Counsel for the Superintendent argues that the actions of Ciocan involved the false execution of insurance documents and an attempt to mislead an investigator from the Financial Institutions Commission. These are actions involving trustworthiness. Trustworthiness is of the same importance in the general insurance industry as it is in the life insurance industry. Further, with respect to the offer of supervision by Ciocan's employer, it is argued that it was his lack of supervision that resulted in Ciocan carrying on her inappropriate activities for an extended period of time.

Counsel for the Superintendent also submits that costs of \$500.00 be awarded to the Superintendent against Ciocan.

DECISION

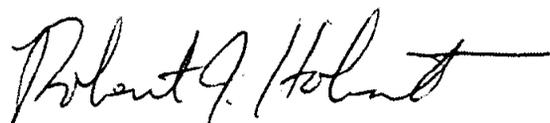
I agree with the arguments of Counsel for the Superintendent that allowing Ciocan to act in any licensed capacity would not be consistent with the nature of her misconduct and the various principles regarding penalty that were previously addressed in the Appeal. I do not, however, agree that costs should be awarded to the Superintendent.

Therefore, I modify my Order dated February 8, 2008 to state as follows:

1. The application pursuant to Section 242.2 (8) of the *Financial Institutions Act*, for Ciocan to appear before the FST be refused;
2. The penalty imposed on Ciocan by Council be varied from a fine of \$1,000 to include a fine of \$1,000 and a suspension of 60 days for all licenses issued to Ciocan by Council;
3. Any outstanding investigative costs incurred by Council related to this case be assessed against Ciocan; and,
4. No costs be assessed in relation to this appeal.

DATED AT DELTA, BRITISH COLUMBIA, THE 5TH DAY OF MARCH, 2007

FOR THE FINANCIAL SERVICES TRIBUNAL



ROBERT J. HOBART
PRESIDING MEMBER