

In the Matter of

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

and

The *INSURANCE COUNCIL OF BRITISH COLUMBIA*
("Council")

and

KEN TAM
(the "Licensee")

ORDER

As Council made an intended decision on November 15, 2011, 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 5, 2012; and

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

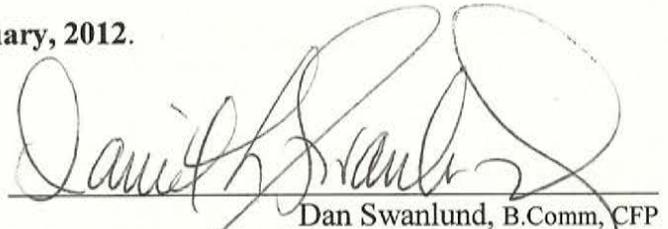
Under authority of sections 231, 236 and 241.1 of the Act, Council orders:

1. a condition imposed on the Licensee's general insurance licence requiring that, for a period of 24 months of active licensing, he provide a copy of Council's decision to the nominee of any insurance agency he is or will be authorized to represent;
2. a condition imposed on the Licensee's general insurance licence that requires him to successfully complete an errors and omissions course approved by Council, within six months of the date of this Order;
3. the Licensee is fined \$2,000.00;
4. the Licensee is assessed Council's investigative costs of \$1,050.00; and

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5. as a condition of this Order, the Licensee is required to pay the above ordered fine and investigative costs no later than **April 30, 2012**. If the Licensee does not pay the ordered fine and investigative costs in full by this date, the Licensee's general insurance licence is suspended as of **May 1, 2012**, without further action from Council and the Licensee will not be permitted to complete any annual filing until such time as the ordered fine and investigative costs are paid in full.

This Order takes effect on the **31st day of January, 2012**.



Dan Swanlund, B.Comm, CFP
Chairperson, Insurance Council of British Columbia

INTENDED DECISION
of the
INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)
respecting
KEN TAM
(the “Licensee”)

INTRODUCTION

Pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council conducted an investigation to determine whether there was compliance by the Licensee with the requirements of the Act. In particular, it was alleged the Licensee issued a false insurance cover note and did not adequately notify a client that insurance coverage could not be placed on certain properties as requested by the client.

As part of Council’s investigation, on October 17, 2011, an Investigative Review Committee (the “Committee”) met with the Licensee to discuss the matter. The Committee was comprised of one voting and three non-voting members of Council, all of whom have significant experience in the insurance business. Prior to the Committee’s meeting with the Licensee, an investigation report was distributed to the Committee and the Licensee for review. A discussion of this report took place at the meeting and the Licensee was provided an opportunity to clarify the information contained therein and make further submissions. Having reviewed the investigation materials and after discussing this matter with the Licensee, the Committee made a recommendation to Council as to the manner in which this matter should be disposed.

A report setting out the Committee’s findings and recommended disposition, along with the aforementioned investigation report, was presented to Council at its November 15, 2011 meeting. At the conclusion of its meeting, Council determined the matter should be disposed of in the manner set out below.

INTENDED DECISION 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/or 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

Based on the information contained in the investigation report, Council determined:

Licensing History

1. the Licensee was first licensed as a Level 1 general insurance salesperson on January 14, 2000;
2. he is currently licensed as a Level 2 general insurance agent and is authorized to represent one insurance agency (the "Agency");
3. the Licensee has not been subject to any discipline by Council in the past;

Property Insurance Transaction

4. the Licensee and the business manager ("RL") of an importing and exporting company (the "Company") had attended high school together and spoke regularly. The Licensee had previously placed a number of insurance policies for RL personally and for the Company;
5. around February or March 2010, the Licensee and RL were speaking about an existing insurance policy held by the Company which was due for renewal;
6. in the course of the conversation, RL asked the Licensee if he would like to provide a quote for a property insurance policy for four properties owned by the Company in the United States (the "US Properties");
7. the Licensee told RL that he would try to obtain a quote for insurance, but did not promise to bind the risk;
8. in or around March 2010, the Licensee sent several queries to various underwriters to see if they would be willing to provide a quote. At the time, the Licensee was not able to obtain a quote for the Company;
9. on January 18, 2011, RL contacted the Licensee via email and requested the Licensee make certain changes to coverage for the US Properties, which RL thought had been in place since April 13, 2010. The Licensee figured RL made a mistake in sending the email as this coverage did not exist through the Agency. He noted that on a previous unrelated occasion, RL had made an error in thinking the Agency had placed a policy for him when, in fact, it had been done through a different insurance agency;

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10. the Licensee looked through his emails and files and confirmed he had never bound the policy for the Company as he had no paperwork or a copy of the policy in place. The Licensee submitted that notwithstanding the lack of documentation, he believes he did advise RL at the material time that he was not able to get a quote;
11. in response to RL's email, the Licensee called RL to inform him that he had not placed coverage on the US Properties;
12. approximately three weeks to one month later, RL called the Licensee back and told him he did not have the policy elsewhere. RL and the Licensee concluded that whatever happened regarding getting a quote or placing coverage was in the past now and they should focus on getting an insurance policy for the US Properties;
13. the Licensee advised that RL asked him to first work on the renewal of the Company's existing insurance policy and then work on acquiring a property insurance policy for the US Properties;
14. the Licensee had the existing insurance policy renewed and proceeded to attempt to obtain insurance for the US Properties. He was eventually able to place the risk and obtain a policy for the US Properties for the policy period of June 20, 2011 to June 20, 2012;
15. around March 2011, RL called the Licensee and advised him that the Company wanted to close its books for 2010. RL requested the Licensee send him some sort of paperwork for the insurance policy that had never been placed. RL provided him with the policy period dates of April 13, 2010 to December 31, 2010;
16. the Licensee rationalized there would be no harm in giving RL a piece of paper so the Company could close its books. The Licensee submitted this would have been a claims-made property insurance policy and, as reported by RL, there were no losses on the US Properties between April 13, 2010 to December 31, 2010;
17. the Licensee then created a false cover note for the US Properties for the expired period of April 13, 2010 to December 31, 2010; on March 26, 2011, the Licensee sent the false cover note to RL via email; on March 31, 2011, RL sent the Licensee an email regarding payment and forwarded a cheque from the Company to the Agency;

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18. the Licensee advised he was not expecting the Company to send a premium payment. When the cheque came to the Agency, it was given to the Licensee as the Company was his client. In the envelope, there was the cheque and a copy of the false cover note. The Licensee advised he put the cheque and the cover note on his desk;
19. the Licensee later contacted RL regarding the cheque. The Licensee advised he was unsure if RL was confused in thinking that by sending a cheque, there would be coverage for the US Properties. The Licensee clarified there was no coverage in place. He also told RL that the cheque would have to go back to the Company;
20. the Licensee did not receive financial benefit or any other benefit as a result of providing the false cover note to RL. He reported he has never created a false document before. The Licensee communicated that what he did was not his typical behaviour. He stated that as a result of the experience, he has learned that in any such circumstance it is important to tell the client "no" and explain to them why he must say "no." In his view, he acted impulsively in the situation; and
21. as a result of the Licensee's actions, his insurance activities at the Agency are being closely monitored; the Agency conducted an audit of the Licensee's work after this issue was discovered and did not find any other improper activities regarding the Licensee; and the Licensee has taken steps to be more organized and he has started to make better use of an Agency computer program to ensure he maintains better books and records as well as an abeyance system.

LEGISLATION

Council Rule 7(8)

Licence Conditions

Applicable to All Classes of Licences

A licensee must comply with the Council's Code of Conduct, as amended from time to time.

Section 231 of the Act

Part 7 – Administration of the Regulation of Financial Institutions

Division 2 – Insurance Council of British Columbia

Council may suspend, cancel or restrict licences and impose fines

- (1) If, after due investigation, the council determines that the licensee or former licensee or any officer, director, employee, controlling shareholder, partner or nominee of the licensee or former licensee
 - (a) no longer meets a licensing requirement established by a rule made by the council or did not meet that requirement at the time the licence was issued, or at a later time,
 - (b) has breached or is in breach of a term, condition or restriction of the licence of the licensee,

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- (c) has made a material misstatement in the application for the licence of the licensee or in reply to an inquiry addressed under this Act to the licensee,
- (d) has refused or neglected to make a prompt reply to an inquiry addressed to the licensee under this Act,
- (e) has contravened section 79, 94 or 177, or
- (e.1) has contravened a prescribed provision of the regulations,

then the council by order may do one or more of the following:

- (f) reprimand the licensee or former licensee;
 - (g) suspend or cancel the licence of the licensee;
 - (h) attach conditions to the licence of the licensee or amend any conditions attached to the licence;
 - (i) in appropriate circumstances, amend the licence of the licensee by deleting the name of a nominee;
 - (j) require the licensee or former licensee to cease any specified activity related to the conduct of insurance business or to carry out any specified activity related to the conduct of insurance business;
 - (k) in respect of conduct described in paragraph (a), (b), (c), (d), (e), or (e.1), fine the licensee or former licensee an amount
 - (i) not more than \$20 000 in the case of a corporation, or
 - (ii) not more than \$10 000 in the case of an individual.
- (2) A person whose licence is suspended or cancelled under this section must surrender the licence to the council immediately.
- (3) If the council makes an order under subsection (1)(g) to suspend or cancel the licence of an insurance agent, or insurance adjuster, then the licences of any insurance salesperson employed by the insurance agent, and of any employees of the insurance adjuster are suspended without the necessity of the council taking any action.
- (3.1) On application of the person whose licence is suspended under subsection (1)(g), the council may reinstate the licence if the deficiency that resulted in the suspension is remedied.
- (4) If an insurance agent's licence or an insurance adjuster's licence is reinstated, the licences of any insurance salespersons or employees of the insurance adjuster who
 - (a) were employed by that agent or adjuster at the time of the suspension, and
 - (b) remain employees of that agent or adjuster at the time of reinstatement,are also reinstated without the necessity of the council taking any action.

Section 236 of the Act

Part 7 – Administration of the Regulation of Financial Institutions

Division 2 – Insurance Council of British Columbia

Power to impose conditions

- (1) The commission, superintendent or council, depending on which of them has the power to make the order, give the consent or issue the business authorization permit or licence may
- (a) impose conditions that the person considers necessary or desirable in respect of
 - (i) an order referred to in section 235(1),
 - (ii) a consent referred to in section 235(2),
 - (iii) a business authorization,
 - (iv) a permit issued under section 187(1), or
 - (v) a licence issued under Division 2 of Part 6, and

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- (b) remove or vary the conditions by own motion or on the application of a person affected by the order or consent, or of the holder of the business authorization, permit or licence.
- (2) A condition imposed under subsection (1) is conclusively deemed to be part of the order, consent, business authorization, permit or licence in respect of which it is imposed, whether contained in or attached to it or contained in a separate document.
- (3) Except
 - (a) on the written application or with the written permission of the holder, or
 - (b) in the circumstances described in section 164, 231 or 249(1),
a power of the commission, superintendent or council under this Act to impose or vary conditions in respect of
 - (c) a business authorization is exercisable only on or before its issue date, or
 - (d) a permit under section 187(1) or a licence under Division 2 of Part 6 is exercisable only on or before its issue datewith effect on and after that date.

Section 241.1 of the Act

Part 7 – Administration of the Regulation of Financial Institutions

Division 2 – Insurance Council of British Columbia

Assessment of Costs

- (1) If an order results from an investigation or hearing, the commission, the superintendent or the council may by order require the financial institution, licensee, former licensee or other person subject to the order to pay the costs, or part of the costs, or either or both of the following in accordance with the regulations:
 - (a) an investigation;
 - (b) a hearing.
- (2) Costs assessed under subsection (1)
 - (a) must not exceed the actual costs incurred by the commission, superintendent or council for the investigation and hearing, and
 - (b) may include the costs of remuneration for employees, officers or agents of the commission, superintendent or council who are engaged in the investigation or hearing.
- (3) If a person fails to pay costs as ordered by the date specified in the order or by the date specified in the order made on appeal, if any, whichever is later, the commission, superintendent or council, as the case may be, may file with the court a certified copy of the order assessing the costs and, on being filed, the order has the same force and effect and all proceedings may be taken on the order as if it were a judgment of the court.

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ANALYSIS

Council concluded the above information constituted a breach of section 231(1)(b) of the Act in that the Licensee failed to act in good faith and in accordance with the usual practice of the business of insurance. In particular, the Licensee created a false insurance document and he did not properly notify a client that insurance coverage could not be placed on the US Properties as requested by the client.

Council found the evidence did not establish the Licensee set out to mislead the client into believing there was coverage in place when in fact there was not. In particular, the cover note was issued after expiry of the supposed policy period and by all accounts, the US Properties had not suffered any losses during this period. This fact pattern supports the Licensee's submission that he was in fact trying to help the client, who was his friend, with an accounting matter. Moreover, there was no evidence the Licensee was trying to manipulate a situation to address a loss to the client's properties. Rather, he was likely motivated to help the client given that there had apparently been a misunderstanding about the status of coverage on the US Properties.

Notwithstanding, Council found the Licensee's creation of a false document, which he knew would be used for some purpose, to be inappropriate and contrary to the good faith requirement.

Council also found the Licensee could not demonstrate that he had notified the client that coverage could not be placed on the US Properties. While the Licensee claimed he verbally informed the client about the lack of coverage, he could not produce any records supporting this position. Council noted it is the Licensee's responsibility to maintain proper books and records and it is particularly important to ensure clients are informed about the status of their coverage. The Licensee's failure to document his actions regarding the US Properties was inappropriate and fell outside the usual practice of the business of insurance.

Adding to Council's concerns was what appeared to be a nonchalant approach to securing coverage for the client once it had been determined that a misunderstanding had occurred. Council believed the Licensee should have acted with a greater sense of urgency to place coverage on the US Properties. Council found the Licensee's failure to place coverage on the US Properties for an additional six months suggested the Licensee had not adequately prioritized the matter.

Ultimately, Council viewed the circumstances as an aberration in the Licensee's otherwise unblemished ten year insurance career. While he made a number of missteps in dealing with this particular risk, which seemed to compound on one another, there was no indication that similar problems existed elsewhere in the Licensee's insurance business. Council also accepted that the Licensee had taken steps to improve his internal procedures and maintain better records. For these reasons, Council did not believe the Licensee posed a risk to the public.

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Council felt that measures were necessary to address the Licensee's creation of a false insurance document, as well as the concerns surrounding his communication with the client and placement of coverage. In particular, Council felt the Licensee would benefit from education in order to emphasize the importance of communicating with clients; documenting efforts made on behalf of clients to secure insurance; and the need to act quickly to address any oversights. Council determined that a fine was required with respect to the false cover note. Council also concluded the Licensee should be required to bring the matter to the attention of any future employer while he rehabilitates. This would enable the employer to implement any checks and balances deemed necessary in overseeing his activities, as was done in this case by the Agency.

In arriving at these recommendations, Council considered previous cases including *John Ross Insurance Services Ltd.* ("John Ross"). In *John Ross*, Council found the insurance agency had failed to act in a competent manner and in accordance with the usual practice of the business of insurance when it failed to provide a homeowner's insurance policy, or other evidence of coverage, to a client for almost one year. The client was also not notified that on renewal, one of her properties had been deleted from the policy, leaving it uninsured for approximately one year. Council ordered a fine of \$2,000.00 and assessed the costs of Council's investigation against the agency.

Council also considered the case of *C. Leung*, where the licensee had altered or modified the signature page on an insurance application on numerous occasions. The licensee admitted he did so purely for convenience and confirmed that in all instances, the clients were aware of the questions on the application and had expressly agreed to procure the new policy in question. Council fined the licensee \$5,000.00, required him to complete an errors and omissions course and pay the costs of Council's investigation.

Finally, Council gave consideration to the Agency's role and responsibility in these matters and determined that the circumstances could not be attributed to improper procedures or inadequate supervision. Rather, this was a situation of an experienced insurance licensee clearly acting inappropriately and outside of the Agency's procedures.

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 Licensee's general insurance licence requiring that, for a period of 24 months of active licensing, he provide a copy of Council's decision to the nominee of any insurance agency he is or will be authorized to represent;
2. impose a condition on the Licensee's general insurance licence that requires him to successfully complete an errors and omissions course approved by Council, within six months of the date of its order;
3. fine the Licensee \$2,000.00; and
4. assess the Licensee Council's investigative costs of \$1,050.00.

The Licensee is advised that should the intended decision become final, the fine and investigative costs which form part of the order, will be due and payable within 90 days of the date of the order.

The intended decision will take effect on **January 31, 2012**, subject to the Licensee's right to request a hearing before Council pursuant to section 237 of the Act.

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 by **January 30, 2012**. 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 by **January 30, 2012**, the intended decision of Council will take effect.

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Even if this decision is accepted by the Licensee, 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 www.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 **5th day of January, 2012.**

For the Insurance Council of British Columbia



Gerald D. Matier
Executive Director

GM/cc