

In the Matter of the

FINANCIAL INSTITUTIONS ACT, RSBC 1996, c.141

(the “Act”)

and the

INSURANCE COUNCIL OF BRITISH COLUMBIA

(“Council”)

and

JIAN FENG HE

(the “Former Licensee”)

ORDER

As Council made an intended decision on June 13, 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 July 25, 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) The Former Licensee is fined \$2,000, to be paid by November 21, 2023, and which must be paid in full prior to the Former Licensee being licensed in the future;
- 2) The Former Licensee is required to complete the Council Rules Course for life and/or accident and sickness insurance, prior to being licensed in the future; and
- 3) The Former Licensee is assessed Council’s investigation costs in the amount of \$1,250, to be paid by November 21, 2023, and which must be paid in full prior to the Former Licensee being licensed in the future.

This order takes effect on the **23rd day of August, 2023**



Per Janet Sinclair, Executive Director
Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA

(“Council”)

respecting

JIAN FENG HE

(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 breached the Council Rules and/or the Code of Conduct (the “Code”) when the Former Licensee failed to maintain his Errors and Omissions insurance (“E&O”) and failed to notify Council of the lapse in E&O coverage.
2. On April 3, 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 and did not attend the meeting. A discussion of the investigation report took place at the meeting.
3. Having reviewed the investigation materials, the Committee prepared a report for Council. The Committee’s report, along with the aforementioned investigation report, were reviewed by Council at its June 13, 2023, 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 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 had been licensed with Council as a life and accident and sickness insurance agent (“Life Agent”) from July 16, 2015, until August 2, 2022, when his licence was terminated due to non-renewal. The Former Licensee had an authority to represent an agency (the “Agency”) between July 16, 2015 and August 2, 2022.
6. On March 16, 2021, Council commenced a random audit on the Former Licensee’s E&O insurance.
7. On March 19, 2021, the Former Licensee confirmed to Council that his E&O lapsed in July 2020. During Council’s investigation, it was determined that the Former Licensee’s E&O lapsed twice, from October 2, 2019, to October 29, 2019, and from July 2, 2020, to March 16, 2021 (collectively, the “Lapse Periods”). The Former Licensee did not self-report the Lapse Periods to Council.
8. The Former Licensee stated that he was not aware his E&O had lapsed during the Lapse Periods, despite repeated reminders sent by his E&O provider. Further, the Former Licensee stated that he was unaware of his obligation to notify Council within five business days of an E&O lapse, per Council Rules requirements.
9. On July 7, 2022, the Agency’s nominee advised Council that the Former Licensee did not write any insurance policies in British Columbia during the Lapse Periods.
10. In one instance, the Former Licensee took 40 days to respond to inquiries from Council. In several other instances, the Former Licensee advised he was not receiving emails from Council, despite confirming the email address Council had on record was correct.
11. The Former Licensee also held a Chartered Professional Accountant, Certified General Accountant designation at the time of his interview with Council.
12. On November 17, 2022, the Agency’s nominee advised Council that the Former Licensee had decided to leave the insurance industry.

ANALYSIS

13. Council considered the investigation report, the Committee’s report to Council, and the Former Licensee’s submissions and determined that the Former Licensee’s conduct amounted to clear breaches of Council Rule 7(11) and section 13 (“Compliance with Governing Legislation and Council Rules) of the Code. Council Rule 7(8) requires licensees to comply with the Code.

14. Council found that the Former Licensee had failed to maintain his E&O coverage twice and failed to notify Council within five business days of an E&O lapse as required under Council Rule 7(11).
15. Council considered that the Former Licensee had not conducted any insurance business during the Lapse Periods to be a mitigating factor.
16. Notwithstanding the mitigating factor above, Council found several aggravating factors to be applicable in this matter. First, the Former Licensee's E&O lapsed twice, which constituted multiple breaches of the Council Rules and the Code. Second, Council found the Former Licensee's non-responsiveness to Council's inquiries to be aggravating. Finally, the significant period of the second E&O lapse and the fact the Former Licensee did not self-report the Lapse Periods were both aggravating.
17. 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.
18. With respect to the Former Licensee's misconduct, Council considered the cases of [Maria Rhodora Banada Thomas](#) (July 2018) and [Varinder Kaur](#) (July 2020).
19. [Maria Rhodora Banada Thomas](#) (July 2018) concerned a Life Agent whose E&O coverage lapsed. The licensee advised Council that the lapse was due to inadvertence and that she had not conducted insurance business during the lapse period. Despite finding the breach unintentional, Council ordered a \$1,000 fine. This decision stands for the proposition that Council will apply a minimum fine of \$1,000 for breaches of Council Rule 7(11), regardless of the reasons for that breach.
20. [Varinder Kaur](#) (July 2020) concerned a Life Agent whose authority to represent her agency was terminated. Subsequently, the agency's E&O broker emailed the licensee advising that, because her contract had been terminated, her E&O coverage was cancelled. After being advised that her E&O coverage had been cancelled, the licensee wrote one insurance policy, followed by a second after Council informed her that her licence status had been changed from active to inactive. She self-reported to Council that she had written two insurance policies. The licensee was fined \$1,500 for failing to maintain her E&O coverage and for conducting insurance business without E&O insurance and reprimanded for failing to notify Council that she was without E&O coverage. Further, the licensee was required to complete the Council Rules Course.

21. Council recognized, having reviewed the precedents, that the approach Council had adopted for licensees who have breached Council Rule 7(11) is to assess a “baseline” fine of \$1,000 for each breach, as well as require the licensee to complete the Council Rules Course. In some cases, mitigating factors are identified that support a lowering of the fine.
22. Overall, Council concluded that the aggravating factors outweighed the mitigating factors. Council considered that a \$1,000 fine for each breach is generally appropriate. While Council considered that the first E&O lapse was of minimal length and severity, Council determined that the second E&O lapse, combined with the aggravating factors, are sufficient to warrant a fine of \$2,000.
23. Council has determined that investigation costs should be assessed against the Former Licensee. 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

24. Pursuant to sections 231, 236 and 241.1 of the Act, Council made an intended decision to:
 - a. Fine the Former Licensee \$2,000, to be paid within 90 days of Council’s order, and which must be paid in full prior to the Former Licensee being licensed in the future;
 - b. Require the Former Licensee to complete the Council Rules Course for life and/or accident and sickness insurance, prior to being licensed in the future; and
 - c. Assess the Former Licensee Council’s investigation costs of \$1,250, to be paid within 90 days of Council’s order, and which must be paid in full prior to the Former Licensee being licensed in the future.

RIGHT TO A HEARING

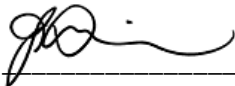
25. If the Former Licensee wishes to dispute Council’s findings or its intended decision, the Former Licensee may have legal representation and present a case in a hearing before Council. **Pursuant to section 237(3) of the Act, to require Council to hold a hearing, the Former Licensee must give notice 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.

26. 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 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 **25th day of July, 2023.**

For the Insurance Council of British Columbia



Janet Sinclair
Executive Director