

In the Matter of

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

and

The INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

and

TSZ WAH FOK
(the "Former Licensee")

ORDER

As Council made an intended decision on July 15, 2014, pursuant to sections 231, 236, and 241.1 of the Act; and

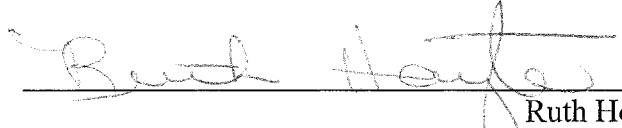
As Council, in accordance with section 237 of the Act, provided the Former Licensee with written reasons and notice of the intended decision dated July 30, 2014; and

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*:

1. The Former Licensee is assessed Council's investigative costs of \$1,025.00
2. As a condition of this order, the Former Licensee is required to pay the above-ordered investigative costs no later than **November 19, 2014**.

This order takes effect on the **19th day of August, 2014**.



Ruth Hoyte
Chairperson, Insurance Council of British Columbia

*NOTE: Council also ordered the Former Licensee's life and accident and sickness insurance licence be terminated; however, the licence was already terminated for non-filing effective July 31, 2014.

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

respecting

TSZ WAH FOK
(the “Licensee”)

INTRODUCTION

Pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council conducted an investigation into the suitability of the Licensee to continue to act as a life insurance agent.

As part of Council’s investigation, a Review Committee (the “Committee”) met with the Licensee on June 23, 2014 to discuss a civil suit filed against the Licensee, the nature of which may reflect on his suitability to hold an insurance licence.

The Committee was comprised of one voting member and three non-voting members of Council. 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 make further submissions. Having reviewed the investigation materials and after discussing this matter with the Licensee, the Committee made a recommendation 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, were reviewed by Council at its July 15, 2015 meeting. Council accepted the Committee’s recommended disposition and 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 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

The Licensee has been licensed as a life and accident and sickness insurance agent (“life agent”) since August 2010. On May 22, 2014, his licence status was changed from active to inactive.

The Licensee has been named as a defendant in a civil claim alleging he misappropriated funds belonging to an employer (the “Employer”), where the Licensee was employed as Controller, in his capacity as a Certified General Accountant (“CGA”). The amount alleged to have been misappropriated is approximately \$300,000.00.

In November 2013, the Licensee repaid the Employer approximately \$300,000.00, an amount he asserts is the full amount of what was taken, with interest. The quantum of the misappropriated funds is still in dispute.

A Mareva Injunction Order was granted by the Supreme Court of British Columbia (the “Court”) which prevents the Licensee from removing from British Columbia, or in any way disposing of, or dealing with his assets, unless otherwise permitted by the Order, until a trial or further order from the Court.

The Licensee has not provided adequate or credible explanations, or background information into the allegations made against him.

Council noted that the Licensee denied all allegations that have been made against him, and that he would be defending the matter at an upcoming trial, which is currently set for December 1, 2014. The Licensee had stated he would provide Council with a copy of an affidavit that set out his defense and version of the facts relevant to the civil claim. Council never received the affidavit.

ANALYSIS

Council considered the actions and submissions of the Licensee. Council was mindful that the aforementioned civil matter remained pending, and the Licensee was subject to allegations that have not yet been determined by the Court.

Council found the Licensee was ambiguous in his responses to its inquiries into the allegations against him. Considering the Licensee’s role at the Employer and his CGA designation, Council was troubled by the Licensee’s inability to provide details on the background of many of the financial transactions in question in the civil matter.

Council was also mindful of the Mareva Injunction Order freezing his assets, which is an interlocutory order that is not readily granted by the courts as it requires compelling evidence to impose. In particular, in the Mareva Injunction Order, Associate Chief Justice Cullen of the Court stated that:

“...case of fraud is a strong one. The only real issue to be determined is the quantum of the assets taken. In the present case, [the Licensee] affirmatively allege[s] that the full amount of what has been taken, together with interest, was returned to the plaintiffs with the \$300,000 payment in November of 2013.

The [Licensee] has not, however, offered any objective documentary evidence in support of the assertion that all the stolen funds have been returned. Moreover, on the basis of evidence placed before the Court by the plaintiffs, it appears that the amount of the fraud is significantly higher than the amount alleged by the defendants.”

Council felt that, given the nature of the circumstances, the information in the Mareva Injunction Order, and the less than forthright responses of the Licensee, there is sufficient evidence to support the position that the Licensee was no longer able to demonstrate his trustworthiness, competence, and financial reliability.

As set out in Council’s Code of Conduct (the “Code”), trustworthiness means conducting all professional activities with integrity, reliability, and honesty. The principle of trustworthiness extends beyond insurance activities. Misappropriation of funds, related to any party, will always be relevant to the evaluation of a person’s suitability to hold an insurance licence. This is a case of alleged misappropriation of funds, the circumstances of which, in Council’s view, adversely reflects on the Licensee’s trustworthiness and his ability to carry on the business of insurance in good faith.

At the time the Licensee was the Employer’s Controller, he held the designation of CGA. Council found that the Licensee’s inability to explain the background detail of many of the alleged fraudulent transactions, or why transactions were structured in the manner in which they were, reflected on his competency.

Council noted that financial reliability means that a licensee can be relied upon to properly safeguard and account for money and property entrusted to the licensee, and to promptly deliver the money in accordance with the circumstances. The Code provides that pending legal proceedings can reflect on financial reliability. Council found that all of the circumstances of the matter reflected on the Licensee’s financial reliability.

INTENDED DECISION

Pursuant to sections 231, 236, and 241.1 of the Act, Council made an intended decision to:

1. Terminate the Licensee's life and accident and sickness insurance licence.
2. Assess the Licensee Council's investigative costs of \$1,025.00.

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

The intended decision will take effect on **August 19, 2014**, 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 **August 18, 2014**. 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 **August 18, 2014**, the intended decision of Council will take effect.

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 fst.gov.bc.ca or contact them directly at:

Financial Services Tribunal
PO Box 9425 Stn Prov Govt
Victoria, British Columbia
V8W 9V1

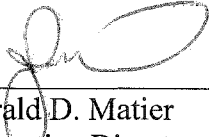
Reception: 250-387-3464
Fax: 250-356-9923

Email: FinancialServicesTribunal@gov.bc.ca

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Dated in Vancouver, British Columbia, on the **30th day of July, 2014.**

For the Insurance Council of British Columbia



Gerald D. Matier
Executive Director

GM/cc