

In the Matter of

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

and

The INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

and

ADVANTAGE BENEFITS PLUS INC.
dba PROVIDENT FIREFIGHTER BENEFIT SERVICES
(the "Agency")

and

MICHAEL ANTHONY EDWIN CROWE
(the "Nominee")

ORDER

As Council made an intended decision on September 10, 2013, pursuant to sections 231 and 236 of the Act; and

As Council, in accordance with section 237 of the Act, provided the Agency with written reasons and notice of the intended decision dated October 31, 2013; and

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

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

1. The Agency is fined \$1,000.00.
2. A condition is imposed on the Agency's life and accident and sickness insurance licence that requires it to pay the above-ordered fine no later than **February 19, 2014**. If the Agency does not pay the ordered fine in full by this date, the Agency's life and accident and sickness insurance licence is suspended as of **February 20, 2014**, without further action from Council and the Agency will not be permitted to complete any annual filing until such time as the ordered fine is paid in full.

Advantage Benefits Plus Inc. dba Provident Firefighter Benefit Services and Michael Anthony Edwin Crowe
9143221 and 2863
November 19, 2013
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This order takes effect on the **19th day of November, 2013.**



Rita Ager, CFP, CLU, CHS, CPCA, FEA
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

respecting

ADVANTAGE BENEFITS PLUS INC.
dba PROVIDENT FIREFIGHTER BENEFIT SERVICES
(the “Agency”)

and

MICHAEL ANTHONY EDWIN CROWE
(the “Nominee”)

INTRODUCTION

Pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council conducted an investigation to determine whether the Nominee and the Agency acted in compliance with the requirements of the Act.

As part of Council’s investigation, on July 22, 2013, an Investigative Review Committee (the “Committee”) met with the Nominee, via teleconference, to discuss allegations the Nominee failed to comply with the requirements of Council Rule 7(11). Specifically, the Nominee failed to notify Council within five business days when the Agency ceased to have errors and omissions (“E&O”) insurance coverage and that the Agency continued to conduct insurance activities without the required E&O insurance.

The Committee was comprised of one voting member and three non-voting members of Council. Prior to the Committee meeting, an investigation report was distributed to the Committee and the Nominee for review. A discussion of this report took place at the meeting and the Nominee 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 Nominee, 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 reviewed by Council at its September 10, 2013 meeting. At the conclusion of its 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 a licensee of the action it intends to take under sections 231 and 236 of the Act before taking any such action. The licensee may either accept Council's decision or request a formal hearing. This intended decision operates as written notice of the action Council intends to take in this matter.

FACTS

Based on the information contained in the investigation report, Council made the following findings of fact:

1. The Nominee is a licensed life and accident and sickness insurance agent, as well as the nominee for the Agency.
2. On September 28, 2012, the Nominee was asked to provide the current E&O certificates for the Agency and all licensed staff to Council.
3. The Nominee provided the Agency's corporate E&O certificate for the period of August 20, 2010 to August 20, 2011, but advised that he cancelled the corporate E&O coverage on May 18, 2011, after his licensed assistant, the only other licensee representing the Agency, left.
4. The Nominee confirmed that separate E&O coverage was again purchased for the Agency on March 20, 2012.
5. A new assistant (the "Second Assistant") became licensed to represent the Agency on June 2, 2011. The Agency did not have separate E&O coverage from June 2, 2011 to March 19, 2012.
6. The Nominee explained the Agency had purchased E&O coverage for the period of August 20, 2010 to August 20, 2011 because the Agency had a licensed associate (in addition to the Nominee) representing the Agency. After that licensed associate left the Agency in January 2011, the Nominee decided to cancel the Agency's E&O coverage, relying on his E&O insurance to cover both him and the Agency.
7. The hiring of the Second Assistant resulted in the Agency, once again, requiring its own E&O insurance. Instead, the Agency went without separate E&O coverage from June 2, 2011 to March 19, 2012.

8. The Nominee explained that he cancelled the Agency's corporate E&O insurance in May 2011 because he was going through a transition period with his business. The Nominee claimed he was confused about the appropriate E&O coverage required at the time the new assistant became licensed to represent the Agency in June, 2011.
9. The Nominee admitted that it was his responsibility to obtain the required corporate E&O coverage for the Agency.

ANALYSIS

Council found the above-mentioned facts constituted a breach of Council Rules 7(11)(c)(i) and 7(11)(c)(ii) as the Agency failed to notify Council within five business days of when it ceased to have the appropriate E&O insurance, and continued to conduct insurance activities.

Council was concerned by the length of time the Nominee allowed the Agency to carry on insurance activities without E&O insurance.

Council noted that this was the second time within a two-year period that the Nominee was found to be conducting insurance business contrary to Council Rules. Council expressed concern about this, noting that further breaches would bring into question the suitability of the Nominee to continue to act as a nominee.

Ultimately, Council determined this matter represented an unintentional breach of Council Rule 7(11). Regardless, Council felt that operating the Agency without the required E&O coverage had the potential for placing the public at risk.

Council considered prior decisions relating to unintentional breaches of Council Rule 7(11). These decisions included cases where, for various reasons, licensees and agencies unintentionally continued to conduct insurance activities without the minimum E&O insurance coverage in place. In such cases, the usual penalty was a fine equal to approximately two times the annual E&O insurance premium paid by the licensee, with the minimum fine being \$1,000.00. Council determined that this case was similar in nature and warranted a similar penalty.

INTENDED DECISION

Pursuant to sections 231 and 236 of the Act, Council made an intended decision to fine the Agency \$1,000.00.

The Agency is advised that should the intended decision become final, the fine will be due and payable within 90 days of the date of the order. In addition, failure to pay the fine within the 90 days will result in the automatic suspension of the Agency's licence and the Agency will not be permitted to complete any annual filing until such time as the fine is paid in full.

The intended decision will take effect on **November 19, 2013**, subject to the Agency's right to request a hearing before Council pursuant to section 237 of the Act.

RIGHT TO A HEARING

If the Agency wishes to dispute Council's findings or its intended decision, the Agency 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 Agency must give notice to Council by delivering to its office written notice of this intention by **November 18, 2013**. 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 Agency does not request a hearing by **November 18, 2013**, the intended decision of Council will take effect.

Even if this decision is accepted by the Agency, 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

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Dated in Vancouver, British Columbia, on the **31st day of October, 2013.**

For the Insurance Council of British Columbia



Gerald D. Matier
Executive Director

GM/tp