

In the Matter of

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

and

The INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

and

KYLE CHRISTOPHER MARCHUK
(the "Licensee")

ORDER

As Council made an intended decision on December 10, 2013, pursuant to sections 231 and 236 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 16, 2014; 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 and 236 of the Act, Council orders:

1. The Licensee is fined \$500.00.
2. A condition is imposed on the Licensee's life and accident and sickness insurance licence that requires him to pay the above-ordered fine no later than **May 5, 2014**. If the Licensee does not pay the ordered fine in full by this date, the Licensee's life and accident and sickness insurance licence is suspended as of **May 6, 2014**, without further action from Council and the Licensee will not be permitted to complete any annual filing until such time as the ordered fine is paid in full.

This order takes effect on the **4th day of February, 2014**.



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

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

respecting

KYLE CHRISTOPHER MARCHUK
(the “Licensee”)

INTRODUCTION

Pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council conducted an investigation into allegations the Licensee failed to obtain the minimum continuing education (“CE”) credits in accordance with Council Rule 7(5).

As part of Council’s investigation, an Investigative Review Committee (the “Committee”) met with the Licensee on October 21, 2013. 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 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 recommended disposition, along with the aforementioned investigation report, was reviewed by Council at its December 10, 2013 meeting. Based on this, Council 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 and 236 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 resides in Whitehorse, Yukon, and has been licensed with Council since February 2010 as a life and accident and sickness insurance agent. As Yukon does not require CE, the Licensee was required to meet Council's CE requirements. The Licensee does not actively conduct insurance business in British Columbia, but does interact with clients from British Columbia on occasion.

Based on the Licensee's licensing history, he was required to have completed 15 technical CE credits for the licence year ending May 31, 2010. The Licensee has not completed any CE for that licence year.

The Licensee explained that he was not aware of his requirement to complete CE. The Licensee acknowledged that it was his responsibility to ensure he met Council's CE requirements and admitted that it was his lack of due diligence for failing to do so. The Licensee explained that during subsequent licence years he completed three of the required courses to earn a Certified Financial Planner designation and had completed a number of CE credits.

The Licensee expressed his remorse for failing to meet Council's CE program requirements and has since completed the required credits for the licence year ending May 31, 2010.

ANALYSIS

Council determined that the Licensee's failure to complete his CE credits for the licence year ending May 31, 2010 constituted a breach of Council Rule 7(5).

Council recognized that while the Licensee does not actively conduct business in British Columbia, he is required to meet Council's CE program while he maintains a licence in British Columbia. Council accepted that the Licensee was not aware of the requirements of Council's CE program, and noted that the Licensee has accepted responsibility for his failure to ensure that he was in compliance with Council Rule 7(5).

Council determined the Licensee's breach of Council Rule 7(5) for the licence year ending May 31, 2010 was not intentional. Council considered prior decisions relating to unintentional breaches of Council Rule 7(5) and was of the view that a fine of \$500.00 was appropriate in the circumstances.

INTENDED DECISION

Pursuant to sections 231 and 236 of the Act, Council made an intended decision to fine the Licensee \$500.00.

The Licensee 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 Licensee's life and accident and sickness insurance licence and the Licensee 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 **February 4, 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 **February 3, 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 **February 3, 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 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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179298
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Dated in Vancouver, British Columbia, on the **16th day of January, 2014.**

For the Insurance Council of British Columbia



Gerald D. Matier
Executive Director

GM/tp