

In the Matter of the

FINANCIAL INSTITUTIONS ACT, RSBC 1996, c.141

(the “Act”)

and the

INSURANCE COUNCIL OF BRITISH COLUMBIA

(“Council”)

and

XIAOHUA (AVA) TIAN

(the “Former Licensee”)

and

VIKING FINANCIAL SOLUTIONS INC.

(the “Former Agency”)

ORDER

As Council made an intended decision on January 30, 2024, 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 March 4, 2024; and

As the Former Licensee requested a hearing on April 5, 2024;

As the Former Licensee voluntarily cancelled her life and accident and sickness insurance licence on July 21, 2024;

As the Former Agency voluntarily cancelled their corporate life licence on July 22, 2024;

As the Former Licensee and Former Agency confirmed on August 23, 2024, that they wished to withdraw their request for a hearing;

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

- 1) The Former Licensee is fined \$10,000 to be paid by December 23, 2024;
- 2) The Former Licensee is required to be supervised by a qualified life and accident and sickness insurance agent, as approved by Council, for a period of two years of active licensing, should the Former Licensee be licensed in the future;

Order

Xiaohua (Ava) Tian & Viking Financial Solutions Inc.
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- 3) A condition is imposed prohibiting the Former Licensee from acting as a nominee for any insurance agency until such time as the Former Licensee has completed the period of supervision;
- 4) The Former Licensee is required to complete the following courses, or equivalent courses, as acceptable to Council by December 23, 2024:
 - i. The Council Rules Course for life and/or accident and sickness insurance;
 - ii. The Advocis “Compliance Toolkit: Know Your Client and Fact-Finding” course;
 - iii. The Advocis “Compliance Toolkit: Know Your Product and Suitability” course;
and
 - iv. The Advocis “The Challenge of Documenting Nothing” course.

Collectively, the “Courses”

- 5) The Former Agency is fined \$5,000, to be paid by December 23, 2024;
- 6) The Former Licensee and Former Agency jointly and severally be assessed Council’s investigation costs in the amount of \$1,312.50 by December 23, 2024;
- 7) Council will not consider an application for any insurance licence from the Former Licensee until the fine and investigation costs are paid in full and the Courses have been successfully completed;
- 8) Council will not consider an application for any insurance licence from the Former Agency until the fine and investigation costs are paid in full.

This order takes effect on the **24th day of September, 2024**



Janet Sinclair, Executive Director
Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA

(“Council”)

respecting

XIAOHUA (AVA) TIAN

(the “Licensee”)

and

VIKING FINANCIAL SOLUTIONS INC.

(the “Agency”)

1. Pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council conducted an investigation to determine whether the Licensee had acted in compliance with the requirements of the Act, Council Rules, and Code of Conduct regarding allegations that the Licensee recommended insurance products and strategies to clients that were not appropriate or suitable to the complainants’ needs; the Licensee misrepresented the terms and conditions of a loan that was obtained for the purpose of obtaining immediate financing of the clients’ insurance premiums; the Licensee and Agency made through an intermediary, payments towards the clients’ life insurance premiums, and rebated commissions generated from the complainants’ insurance policies in an amount larger than 25% of the first year’s premium; the Licensee and Agency did not provide or disclose the Licensee’s or Agency’s fees to the clients; and the Licensee and Agency failed to maintain proper and adequate books, records of fact-finding, or an assessment of the client’s insurance needs, to ensure a mutual understanding of the transactions.
2. On October 24, 2023, as part of Council’s investigation, a Review Committee (the “Committee”) comprised of Council members met with legal counsel for the Licensee and Agency and the Licensee via video conference to discuss the investigation. The Investigation Report was distributed to the Committee and legal counsel for the Licensee and Agency prior to the meeting. A discussion of the Investigation Report took place at the meeting, and the Licensee and Agency’s legal counsel, as well as the Licensee, were given an opportunity to make submissions and provide further information.
3. Having reviewed the investigation materials, the Committee prepared a report for Council. The Committee’s report, along with the Investigation Report, were reviewed by Council at its January 30,

2024, 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 Licensee and/or Agency of the action it intends to take under sections 231, 236 and 241.1 of the Act before taking any such action. The Licensee and/or Agency 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 and Agency.

FACTS

5. The Licensee has been licensed with Council as a life and accident and sickness insurance agent ("Life Agent") since September 29, 2017. The Agency has held a corporate licence with Council since September 29, 2017. The Licensee is the nominee of the Agency. The Licensee holds the only authority to represent the Agency.
6. On September 15, 2020, Council received a complaint against the Licensee and Agency by MW and AW (collectively the "Complainants"). The complaint was regarding two participating life insurance ("PAR") policies through an insurer recommended by the Licensee. Specifically, the owner of both insurance policies was MW's business, known as DC. MW and AW were the named insured on two separate policies. Both policies were delivered as 10-pay participating life policies, requiring the payment of premiums for 10 years to the insurer.
7. The Complainants were introduced to the Licensee by JT. JT entered into a consultant agreement with the Agency on October 24, 2019. According to Schedule B of the agreement, JT would "receive a fee equal to %25 of FYC (First Year Commission), exception to be made in the case that the consultant introduces the client to Viking Financial Solutions the Consultant will receive a commission of 50% of FYC. All fees are subject to a five year claw back based on the insurance carrier charge back rules and is subject to company's conditions". This agreement further defines "A successfully completed policy is defined as policy where the applicant accepts the policy and pays the initial premium and has passed the 10 day rescind period."
8. The Complainants had two initial face-to-face meetings with the Licensee in October 2019. One meeting occurred on October 3, 2019, and the other on October 21, 2019.

9. The Licensee stated that the Complainants had expressed interest in an immediate financing arrangement (“IFA”) strategy. The Licensee was under the impression that the Complainants had heard of the IFA strategy from other individuals, as they seemed to have knowledge of and expressed an interest in pursuing it. The Licensee explained that she immediately involved the insurer’s estate planning team and that the Complainants met with the insurer’s estate planning team on two occasions. The Licensee suggested that the products recommended were made by the insurer’s estate planning team.
10. After the October 21, 2019, meeting, the Licensee clarified with the Complainants that with their consent, the Licensee would prepare documents to apply for a line of credit from major banks. The Licensee also stated to the Complainants that after this meeting, the Licensee would look into investment options, including IFA strategies, for their corporate insurance policies and presented them with IFA documents, including an IFA Brochure for a financial institution.
11. On October 30, 2019, AW emailed the Licensee financial information related to the Complainants and DC, including T2’s from 2016 and 2017, and personal Notices of Assessment from 2017 and 2018. The personal incomes reported on Line 150 of the Complainants were between \$70,000 and \$113,000, and the corporate net income from 2016 to 2017 was between \$175,000 and \$477,000.
12. On November 1, 2019, MW as President and CEO of DC, signed a letter of engagement with the Agency which outlines the services the Agency would perform including providing financial services in connection with DC including insurance products. Under heading 8 of the letter of engagement is a section entitled “Fees.” It states “Our fees generally are based on time spent by our professional staff who work on a matter. The time charges are not absolutes to which we adhere without analysis of the time that has been spent. Rather, they serve as "benchmarks" which ordinarily are followed. Each month, before accounts are issued, a review is performed to assess the nature and quality of the services performed. Our fees may be adjusted if there is a significant disparity between the time charges and the services rendered or results achieved.”
13. In response to the allegations, the Licensee provided Council with various documents related to the Licensee and Agency’s dealings with the Complainants. The Licensee provided a copy of a Life Insurance Needs Analysis Worksheet, which was signed by MW on November 12, 2019. The Life Insurance Needs Analysis Worksheet stated the owner of the policy had an insurance need of \$9,866,673, with “Partner 2” having an insurance need of \$9,760,032. The document further states that both the owner and “Partner 2” “decline purchasing and acknowledge the shortfall” of the same total amounts. The Agency emailed both the needs analysis worksheet as well as two illustrations for DC (with MW as the insured) from the insurer. One was a term illustration, and one was a Max20 policy.

Both offered approximately \$10,000,000 in coverage. There is evidence that this was reviewed with the Complainants by the Licensee on the same day it was signed. No affordability analysis, Know Your Client, or Reason Why letter was submitted by the Licensee to provide documented evidence as to why these products were suitable for the Complainants' needs.

14. On November 13, 2019, an application for a "Simply Preferred term 10" policy was submitted to the insurer listing DC as the owner and MW as the insured.
15. The Licensee engaged with several representatives in the banking industry to obtain an IFA for the Complainants. In November 2019, ML who was a senior manager at a financial institution, advised the Licensee, "it will not be a go for [the bank] based on the information." In December 2019, another financial institution responded to the Licensee advising they "reviewed the financials and the additional information from the client, but the 2019 and 2017 income does not support the request for the IFA, and as we look at a 3 year average, and the trend of the income, I do not think we can look at an IFA for 10 years out at this time, but we may be able to look at a 5 year approval." The financial institution suggested a 5 year IFA may work and the Licensee began to pursue this option and continued to work with the Complainants in obtaining appropriate financial records.
16. Amid trying to obtain an IFA on DC's insurance policy, the Licensee continued to pursue insurance policies for AW as the insured. On December 11, 2019, an application for a "Wealth Achiever Max 20" participating policy was submitted to the insurer for DC as the owner and AW as the insured.
17. On December 13, 2019, the Licensee received finalized financial statements of DC which showed retained earnings for the company of \$304,300 in 2017, \$1,368,591 in 2018 and \$220,596 in 2019.
18. In February 2020, the financial institution again communicated "the IFA does not qualify at this time, if the client can show consistent earnings in the next year or 2 that are similar with 2019." The Licensee also made inquiries with another bank. The Licensee provided the bank with details regarding the Complainants, which the bank had requested, and there was no further correspondence.
19. The Licensee stated that the Complainants initially were underwritten under term insurance, but as the Complainants were pursuing an IFA strategy, they needed to consider options for a PAR product. The Licensee sent a signed Illustration for AW on March 29, 2020, to this insurer for a PAR policy. On April 3, 2020, the insurer issued the contract for AW. On March 3, 2020, MW, as the owner of the policy and AW as the insured, signed the Acknowledgement of Policy Received form for the 10 PAR policy. The annual premiums for this policy were \$230,064.50. On May 7, 2020, MW as the insured and CEO of DC signed an Acknowledgement of Policy Received for a 10 PAR policy. The annual premiums for this

policy were \$751,200.00. These two PAR policies were issued, and the premiums were paid by the Complainants.

20. In continued efforts to find a financial institution to provide an IFA for the Complainants, the Licensee was approached by a previous bank representative who was now working for a different financial institution, ABC. On May 20, 2020, the Complainants obtained a “Loan Agreement Package” from ABC.
21. On July 21, 2020, JT’s Consultation Agreement was terminated by the Agency. In the termination letter, it was highlighted that “Schedule B and Schedule C of [JT’s] contract are still in effect indefinitely.”
22. In July 2020, the Complainants decided not to proceed with the loan from ABC. The relationship between the Complainants and the Licensee broke down at this time and the Complainants did not want to keep their two PAR policies. The Complainants also made a complaint with the insurer against the Licensee and the Agency at this time. DC and MW were presented with an invoice numbered #1001, dated July 3, 2023, outlining a balance of CAD \$938,000.00 due to the Agency by DC for services rendered. The invoice charged an hourly rate of \$750.00/hour, which was broken down to include an assistant fee of \$250/hour and \$500/hour for “broker” fees. There does not appear to be any breakdown of the dates for which the hours are billed, but it references the total of hours invoiced with a description of the work. It was noted that the invoice total of \$938,000 was a similar figure to the Licensee’s commission for the sale of the policies.
23. The Complainants responded to the invoice and Licensee stating “it appears that there is an hourly rate of 750\$ that we are learning of it for the first time. If this were not a matter of amusement from Viking Financial Solutions, we would like to know when and how did we agree to the terms and conditions of the said rate. Not to mention that this is the first invoice we have received, of the past 8 [months], and [it perplexes] us what is your billing cycle?” On August 7, 2020, the Agency forwarded correspondence from their legal counsel demanding payment from the Complainants for the \$938,000 listed on the invoice. This letter directs the Complainants to the letter of engagement DC signed on November 1, 2019.
24. On September 10, 2020, legal counsel for the Licensee advised the Complainant’s legal counsel that if the Complainants’ PAR policies were maintained in good standing for at least two years from the respective commencement date, then the Agency would release MW, AW, and DC of all amounts owing.
25. On November 16, 2020, the Licensee provided to Council various records and documents regarding this complaint. Included in the submission was a document titled “Advisor Disclosure Xiaohua (Ava)

Tian)". Under compensation, it provides that the Licensee "will be paid a sales commission from the company that provides the product. [The Licensee] may receive a renewal (or service) commission...may also be eligible for additional compensation, such as bonuses, or non-monetary benefits", however, there is no mention of any hourly fees. The document was signed by MW and dated October 21, 2019. The handwriting of the date, October 21, 2019, appears to have been corrected by the signatory, as the "2" in "21" has an anomaly. During the investigation, Council staff requested further information and a copy of the signed "Advisor Disclosure" form. On February 6, 2023, ST, a representative of the Agency, provided a copy of an Advisor Disclosure form signed by MW, dated October 21, 2019. This appears to be almost identical to the previous "Advisor Disclosure" form provided on November 16, 2020, as there appears to be the same anomaly in the "21" on the date, October 21. However, this copy of the disclosure included a line under compensation that states in brackets "(A \$750/hour service fee may be applied)". The Licensee was unable to explain as to why two documents that appear to be the same exist, but with the discrepancy that one document refers to service fees and one does not. The Complainants stated that they were unaware of a \$750/hour service fee in relation to the Licensee and Agency's services.

26. Concerning the suitability of the products sold, the Licensee stated that she heavily relied on the insurer's estate team to perform the needs-based assessments for the Complainants. There is an email dated November 4, 2019, from the insurer's wealth & tax planning consultant, where it was noted "from the documents provided, it seems like there is a YTD outstanding balance of \$400,000 in addition to LOCs (account 87636 at \$1,804,235.87 and account 97139 at \$1,784,589.27). Therefore, the loans outstanding amount to approximately \$3,988,825.14. [DC's] balance sheet as of August 31, 2018 shows that there is a significant negative cash balance of \$286,513.74. [MW's] income from her T1s range from \$85K to \$109K while [AW's] income from his T1s range from \$70K to \$113K. Looking at the information we have and the potential sources of funding, I think that a viable option at this time may be to look at term life insurance with a face amount of \$4M to ensure that repayment of these loans can happen in the event of death." The emails provided between the Licensee and the insurer team did not provide a thorough analysis of why each product was recommended or suitable to the Complainants.
27. There is audio evidence of the Licensee telling the Complainants not to take the policy if it was not suited for them, as noted in the insurer's investigation. However, this appears to have taken place after the policies had been delivered, as the audio is labelled 2020-05-06.
28. JT received a total of \$500,000 in referral commissions from the Agency. However, shortly after each commission was paid to JT, there was a transfer of funds from JT to the Complainants. There appeared to be coincidental timing from when JT received her referral fees from the Agency for the Complainants' policies, and when JT subsequently transferred monies to the Complainants. JT

transferred to the Complainants a total of \$500,000, totaling the whole amount of the referral commissions JT received.

29. When the Council investigator initially asked the Licensee about the \$500,000 payment to JT, the Licensee stated that JT “really needed that money that time to [put] the down payment for the one-time purchase. But she needed money very urgently to put the down payment so she could acquire [the Complainants’] house. And that’s why we [lent] another half million dollars to her. And so that’s everything going on and on. And just, like, can’t explain about that time”. However, at the Review Committee meeting, the Licensee could not recall why she initially stated that the monies paid to JT were a loan and insisted that these amounts paid were the referral commissions as per the Agency’s agreement with JT.
30. Ultimately, the insurer rescinded the two PAR policies for the Complainants and returned the premiums paid. There was a settlement agreement between JT’s legal counsel, the Complainants’ legal counsel and the Licensee and Agency’s legal counsel. The Complainants repaid the \$500,000 to JT. JT repaid the referral fees of \$500,000 to the Licensee and Agency as per the terms of Schedule B of the Consulting Agreement, where any commissions were subject to a five-year claw back. The Agency and Licensee did not pursue the invoice against the Complainants after this settlement.
31. The Licensee and Agency were unable to provide any written documentation that evidenced that the Complainants were aware or provided disclosure of the referral arrangement between the Agency and JT.
32. At the conclusion of the Review Committee meeting, the Licensee and Agency were provided an opportunity to provide further evidence in this matter and required to provide the documentation no later than November 3, 2023. On November 2, 2023, legal counsel for the Licensee and Agency provided additional submissions. Council received a certified translation for some of the additional submissions provided. Council considered the additional information and commentary provided by the Licensee relating to the translation.

ANALYSIS

33. Council has concluded that the products sold by the Licensee were unsuitable considering the financial circumstances of the Complainants. DC, the policy owner of the policies, had high levels of debt and had fluctuating income which could not reasonably support policy premiums of \$230,064.50 and \$751,200 annually. Even if Council were to accept the Licensee’s submission that the Complainants understood and wanted the products, it was still the Licensee’s responsibility to ensure

the products were appropriate for the Complainants. It was also the Licensee and Agency's responsibility to keep records to demonstrate that there was evidence of an appropriate needs analysis or an assessment of affordability. The Licensee and Agency were unable to produce sufficient evidence that a needs analysis was conducted prior to recommending these products. The Licensee did not understand or acknowledge that as a Life Agent, the Licensee is the person responsible for selling the policies and is responsible for ensuring the suitability of the product to the Complainants. The Licensee cannot place the responsibility on the insurer's estate team to conduct the appropriate needs assessment of the product and escape her responsibilities as a Licensee. A needs analysis goes beyond collecting information from the clients but demonstrates why a product will provide value to a client and the benefits of the product. Most of the documentation provided by the Licensee and Agency was related to obtaining financial documents and communications for obtaining an IFA. Council concluded the Licensee's unsuitable recommendations, along with the Licensee and Agency's failure to properly document or conduct a needs analysis before making recommendations to the Complainants, have brought into question the Licensee's competency.

34. Council has further determined that the Licensee and Agency failed to disclose written disclosure of the referral fees of JT before arranging the insurance transaction with the Complainants. Other than the Licensee stating that the Complainants were aware of JT's referral fees, there is no written evidence to support this claim. Council also notes that the Agency and Licensee failed to disclose the Agency's service fees to the Complainants. The only documentation that referenced a \$750/hour service fee was the copy of the Advisor Disclosure form sent to the Insurance Council investigator on February 6, 2023, which was almost identical to a previous copy received on November 16, 2020, that did not have any reference to a service fee. The Licensee was unable to explain as to why two documents that appear to be the same exist, but with the discrepancy that one document refers to service fees and one does not. On a balance of probabilities, given the Complainants' lack of acknowledgment of any service fees, and no initial by the Complainants on the additional line of \$750/hour in the second document, Council determined that the Licensee and Agency failed to disclose any service fees associated with the Licensee and Agency's services. The signed letter of November 1, 2019, between DC and the Agency did not provide an hourly rate for fees. The Licensee stated that she only sent the invoice to the Complainants due to the breakdown of the relationship and that she did not intend to pursue the amount claimed in the invoice. However, Council found this statement to be inconsistent with the Licensee's actions, as the Licensee obtained legal counsel and sent a formal demand for payment of the invoice. Council finds the Licensee and Agency's actions in sending an invoice for \$938,000 to be contrary to the Licensee's duty to act with integrity and in the utmost good faith when dealing with clients. Council finds the Licensee and Agency not only failed to disclose the Agency's service fees but that its actions in presenting an invoice with no appropriate detailed date and time stamp of the hours worked and with such an exorbitant amount owing was an egregious deviation from the usual practice of dealing with clients.

35. Council found the circumstances of the referral fees paid to JT being almost immediately transferred to the Complainants highly suspicious. However, Council was unable to find sufficient evidence that linked the Licensee to JT's referral commissions being loaned to the Complainants, which would demonstrate that rebating of premiums contrary to the Act occurred.
36. In light of the above, Council considered the impact of Council Rule 7(8) and Council's Code of Conduct guidelines on the Licensee and Agency's conduct, including section 4 ("Good Faith"), section 5 ("Competence"), section 7 ("Usual Practice: Dealing with Clients"), and section 13 ("Compliance with Governing Legislation and Council Rules"). Council concluded that the Licensee and Agency's conduct amounted to breaches of the above Code of Conduct sections and the professional standards set by the Code.

PRECEDENTS

37. Prior to making its intended decision, Council took into consideration the following precedent cases. While Council is not bound by precedent and that each matter is decided on its own facts and merits, Council found that these decisions were instructive in terms of providing a range of sanctions for similar types of misconduct.
38. [Eunice Chew Hoon Gan](#) (January 2021): This life agent licensee was found to have given unsuitable advice to an elderly client. The licensee encouraged and facilitated the client, a pensioner with modest assets, to borrow significant sums in 2007 and 2014 to leverage her investment portfolio. The hearing committee considered these investments objectively not suitable for the client, given her age and overall financial circumstances. The hearing committee further found a lack of documentation to support the licensee's recommendations or to confirm advice was given to the client. The hearing committee found that the licensee took advantage of an elderly client and put her own financial interests ahead of the client. Following a hearing, the licensee was fined \$10,000 (the legislated maximum at the time); she was required to be supervised for two years of active licensing; she was required to complete various courses (including technical courses, an ethics course, and the Council Rules Course); and she was required to pay investigation and hearing costs.
39. [Darwin Bernard Peter Braun and Braun & Associates](#) (December 2019): This life agent licensee promoted exempt market products (EMPs), recommending and encouraging clients to invest significant amounts in these risky, unregulated products. The licensee received financial benefits from these investments, which he didn't disclose to the clients. The clients ultimately suffered serious losses. The licensee facilitated a series of client investments in exempt market products that were wholly inappropriate for his clients. The licensee also failed to keep proper records, failed to properly

complete his client's applications and did not adequately assess his client's insurance needs. The hearing committee found that the licensee had capitalized on the client's financial inexperience to encourage her to purchase the two unsuitable insurance policies. The licensee was also found to have made a series of misrepresentations to the insurer when he completed the policy applications. Following a hearing, the licensee's life agent licence was cancelled with no opportunity to apply for a licence for 5 years; he was fined \$10,000 (the legislated maximum at the time); he was prohibited from being a shareholder, partner, officer, director or employee of any licensed insurance agency for 5 years; and he was required to pay investigation and hearing costs.

40. [Andreas Lauri Hinkkala](#) (August 2019): Council found that this life agent licensee had sold insurance products to a client that were grossly unsuitable considering her financial circumstances and needs. There was a lack of records showing that the client understood the products in question. Council found the licensee's conduct was likely motivated by commissions and without regard for consequences to his client. The licensee was fined \$2,500; was required to take an ethics course; was required to be supervised for two years of active licensing; and was assessed investigation costs.
41. [Ismat Simo](#) (September 2017): a life agent recommended that a client cash in a TFSA investment and then re-invest it in the same year in another TFSA. This led to a significant tax penalty for the client. Council determined that the licensee had not undertaken an appropriate needs analysis and that his failure to provide proper advice to his client raised concerns about his competency. The licensee was suspended until he had taken certain continuing education courses, was subject to two years of supervision by a qualified life agent, and assessed investigation costs of \$1,650.
42. [Edraline Buetipo Borginia](#) (June 7, 2016): a life agent was alleged to have sold life insurance policies to a client to replace existing policies, contrary to the client's best interests. Council found no evidence to suggest that the new policies were inferior to the existing ones. However, it did find that the process by which the licensee implemented the new policies less than satisfactory in that the policy comparison provided by the licensee was based on incomplete information. Council found that by providing comparisons without full information, the licensee failed to act in accordance with the usual practice of the business of insurance. Council also found it was inappropriate for the licensee to have had the client sign post-dated policy cancellation letters. While accepting that the licensee was attempting to act in the client's best interests, Council found that the licensee failed to demonstrate good judgment in dealing with the client, which brought into question her ability to act in a competent manner, and in accordance with the usual practice of the business of insurance. As a result, Council imposed conditions on the licensee's licence requiring her to be supervised for 24 months, complete the Advocis Getting Established course, and pay Council's investigation costs of \$1,112.50.

MITIGATING AND AGGRAVATING FACTORS

43. Council considered relevant mitigating and aggravating factors in this matter. The Licensee had no prior disciplinary history, which Council considered a mitigating factor. Council notes, that although the Complainants were returned their premiums by the insurer, this is not always the case. Had the insurer not returned the Complainants their premiums, the Complainants would have suffered a significant loss. The Complainants did incur additional costs by retaining legal counsel to dispute the Licensee and Agency's invoice. Council further noted that the Licensee failed to acknowledge any misconduct, which in Council's view is a potential risk to the public. Council viewed these factors as aggravating and found the aggravating factors to outweigh the mitigating factors.

CONCLUSIONS

44. After weighing all of the relevant considerations, Council found the Licensee and Agency to be in breach of the Council's Rules and the Code of Conduct. Council considered the precedent of the Gan case to be the most analogous to the facts of this case and believes it is appropriate to fine the Licensee \$10,000. Council further determined a fine of \$5,000 against the Agency is appropriate for the Agency's failure to disclose its service fees and referral fees to the Complainants, as well as failing to keep adequate records.
45. Additionally, as Council has noted concerns regarding the Licensee's competency in conducting sufficient need-based assessments, Council further recommends that the Licensee be supervised for 24 months and be required to take courses to bring the Licensee's competency to the usual standard that is required of an insurance licensee. Council concluded it is appropriate that the Licensee be unable to act as a nominee until such time as the Licensee has completed her supervision period.
46. With respect to investigation costs, Council concludes that these costs should be assessed against the Licensee and Agency on a jointly and severally liable basis. 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

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

- a. Fine the Licensee \$10,000, to be paid within 90 days of Council's order;
- b. Require the Licensee to be supervised by a qualified life and accident and sickness insurance agent, as approved by Council, for a period of two years of active licensing, commencing, at the latest, one month from the date of Council's order;
- c. Impose a condition on the Licensee's life and accident and sickness insurance agent licence prohibiting the Licensee from acting as a nominee for any insurance agency until such time as the Licensee has completed the period of supervision;
- d. Require the Licensee to complete the following courses, or equivalent courses, as acceptable to Council, within 90 days of the date of Council's order:
 - i. The Council Rules Course for life and/or accident and sickness insurance;
 - ii. The Advocis "Compliance Toolkit: Know Your Client and Fact-Finding" course;
 - iii. The Advocis "Compliance Toolkit: Know Your Product and Suitability" course;
and
 - iv. The Advocis "The Challenge of Documenting Nothing" course.
Collectively the "Courses"
- e. Fine the Agency \$5,000, to be paid within 90 days of Council's order;
- f. Assess Council's investigation costs in the amount of \$1,312.50, jointly and severally, to the Licensee and Agency to be paid within 90 days of Council's order;
- g. Impose a condition on the Licensee's life and accident and sickness insurance agent licence that failure to obtain a supervisor as required, and failure to complete the Courses, and pay the fine and investigation costs within 90 days of the date of Council's order will result in the automatic suspension of the Licensee's licence and the Licensee will not be permitted to complete the Licensee's 2026 annual licence renewal until such time as the Licensee has complied with the conditions listed herein;
and
- h. Impose a condition on the Agency's licence that failure to pay the fine and investigation costs within 90 days of the date of Council's order will result in the

automatic suspension of the Agency's licence and the Agency will not be permitted to complete the Agency's 2026 annual licence renewal until such time as the Agency has complied with the conditions listed herein.

48. Subject to the Licensee and/or Agency's right to request a hearing before Council pursuant to section 237 of the Act, the intended decision will take effect after the expiry of the hearing period.

ADDITIONAL INFORMATION REGARDING FINES/COSTS

49. Council may take action or seek legal remedies against the Licensee and/or Agency to collect outstanding fines and/or costs, should these not be paid by the 90 day deadline.

RIGHT TO A HEARING

50. If the Licensee and/or Agency wishes to dispute Council's findings or its intended decision, the Licensee and/or Agency 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 Licensee and/or Agency **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 Licensee and/or Agency does not request a hearing within 14 days of receiving this intended decision, the intended decision of Council will take effect.**
51. Even if this decision is accepted by the Licensee and/or Agency, 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 <https://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>.

Intended Decision

Xiaohua (Ava) Tian & Viking Financial Solutions Inc.

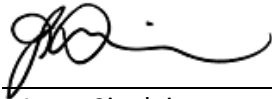
COM-2020-00120 / LIC-2017-0006654-R01/LIC-2017-0006655-R01

March 4, 2024

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Dated in Vancouver, British Columbia on the **4th day of March, 2024.**

For the Insurance Council of British Columbia

A handwritten signature in black ink, appearing to read 'Janet Sinclair', written over a horizontal line.

Janet Sinclair

Executive Director