

In the Matter of

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

and

**THE INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")**

and

APEX INSURANCE SERVICES LTD.

AND

APEX INSURANCE SERVICES (1993) LTD.

AND

**APEX INSURANCE SERVICES (1996) LTD.
(collectively known as "the Agencies")**

AND

AMY MAN MEE LAU ("Lau")

ORDER

Pursuant to section 237 of the Act, Council convened a hearing at the request of the Agencies and Lau to dispute an intended decision dated December 28, 2006.

The subject of the hearing was set out in a Notice of Hearing dated February 13, 2007.

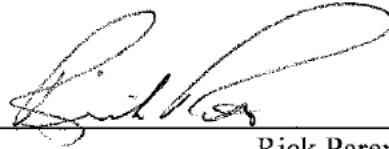
A Hearing Committee heard the matter on March 29, 2007 and presented a hearing report to Council at its June 16, 2007 meeting.

Council considered the Hearing Committee's report and made the following order pursuant to section 231, 236 and 241.1 of the Act:

1. Lau's licence is suspended for a period of nine months;
2. Lau is not suitable to be licensed as a Level 3 general insurance agent for a minimum period of two years;

3. Lau is fined \$5,000.00;
4. the Agencies each are fined \$20,000.00;
5. as a condition of the Agencies' licences, the Agencies' employees are prohibited from processing ICBC transactions for any family member or staff of the Agencies;
6. Lau and the Agencies are jointly and severally liable to pay the costs of Council's investigation into this matter, assessed at \$7,800.00; and
7. as a condition of this decision, Lau and the Agencies are required to pay the above mentioned fines and costs within three months from the date of the final order and if Lau and the Agencies do not pay those amounts by that date, Lau and the Agencies' licences are suspended without further action from Council.

This order takes effect the 22nd day of June, 2007



Rick Parent, CIP, CRM
Chairperson, Insurance Council of B.C.

INSURANCE COUNCIL OF BRITISH COLUMBIA (“Council”)

HEARING COMMITTEE REPORT

**IN THE MATTER OF THE *FINANCIAL INSTITUTIONS ACT* (the “Act”)
(S.B.C. 1996, c. 141)**

AND

APEX INSURANCE SERVICES LTD. (“Apex”)

AND

APEX INSURANCE SERVICES (1993) LTD. (“Apex 1993”)

AND

APEX INSURANCE SERVICES (1996) LTD. (“Apex 1996”)

AND

AMY MAN MEE LAU (“Lau”)

DATE: **March 29, 2007**
9:30 A.M.

BEFORE: **Tejinder Grewal** **Chair**
Cristina Osen **Member**
Daniel O’Fee **Member**

HEARING AT: **Insurance Council of British Columbia**
Suite 300 - 1040 West Georgia Street
Vancouver, B.C. V6E 4H1

PRESENT: **Amy Man Mee Lau** **Licensee**
Peter Willcock **Counsel for Apex *et al***
David McKnight **Counsel for the**
Insurance Council of British Columbia

Background and Issue

On December 28, 2006, Council made an intended decision respecting Apex, Apex 1993, Apex 1996 (collectively known as the "Agencies") and Lau pursuant to sections 231, 236 and 241.1 of the Act. The Agencies and Lau subsequently requested a hearing before Council pursuant to section 237 of the Act.

As set out in the Notice of Hearing dated February 13, 2007, the purpose of the hearing was to determine whether:

1. the Agencies and Lau processed unnecessary Autoplan transactions on their own or other Lau family members' vehicles for the sole purpose of generating extra commissions and fees for the Agencies;
2. the Agencies and Lau used their positions as insurance agents for personal gain by processing an excessive number of Autoplan transactions on their own or other Lau family members' vehicles in order to save on insurance premiums;
3. the Agencies and Lau purchased Autoplan insurance with high coverage on their own or other Lau family members' vehicles and reduced those coverages shortly thereafter in order to generate commissions for the Agencies;
4. the Agencies and Lau processed or allowed other family members to process Autoplan documents which had been falsely or improperly executed;
5. the Agencies and Lau allowed an individual licensed at one of the Agencies to access and interchangeably use ICBC validation stamps from each of the other Agencies, thereby conducting Autoplan business contrary to Council and ICBC requirements;
6. two of the Agencies' nominees and an employee used their personal credit cards to pay for clients' Autoplan insurance in circumstances where the clients had paid in cash, cheque or part payments; and
7. Council should do one or more of the following:
 - a. reprimand the Agencies and/or Lau;
 - b. suspend or cancel the licence(s) of the Agencies and/or Lau;
 - c. attach conditions to the licence(s) of the Agencies and/or Lau;
 - d. require the Agencies and/or Lau to cease any specified activity related to the conduct of insurance business;
 - e. fine the Agencies an amount of not more than \$60,000.00 (\$20,000.00 per agency);

- f. fine Lau an amount of not more than \$10,000.00; and
- g. require the Agencies and/or Lau to pay the cost of Council's investigation.

The Hearing Committee was constituted under section 223 of the Act. This is the report of the Hearing Committee to Council as required by section 223(4) of the Act.

Evidence

Evidence reviewed by the Hearing Committee in consideration of this matter:

- Exhibit 1: Book of Documents of the Insurance Council of British Columbia;
- Exhibit 2: Letters of support from insurance companies contracted with the Agencies;
- Book of Authorities of the Insurance Council of British Columbia;
- Written submission of the Agencies and Lau; and
- Sworn testimony of Lau.

Lau

During examination-in-chief, Lau testified under oath to the following:

1. she was the Nominee of Apex 1993 and her main duty was to supervise the office;
2. she was first licensed in June 1992;
3. she is currently licensed as a Level 3 general insurance agent with Apex;
4. prior to starting her insurance career, she worked at the Vancouver School Board for 15 years as a staff assistant;
5. she started working at Apex in 1992, and then worked at Apex 1993 as the Nominee;
6. she acknowledged that, from 2001 to 2004, 64 ICBC transactions had been processed on her vehicle, but she could not recall directing anyone to process the transactions or signing the insurance documents to effect the changes;
7. her husband, Kenneth Lau, may have processed some of the transactions on her behalf, or she may have processed some of them herself to save on premiums, but she did not remember;

8. she was not aware that Kenneth Lau was processing transactions on her vehicle in order to generate commissions;
9. she did not know whether she signed some of the insurance documents to effect the 64 transactions;
10. she did not know whether she signed insurance documents Kenneth Lau asked her to sign without reading or verifying the changes;
11. she did not know whether she signed insurance documents to save on premiums;
12. she did not think she had done anything wrong;
13. she did not feel she was acting dishonestly and did not realize that transactions were being processed at the Agencies, and in particular, at Apex 1993, for the purposes of generating commissions, until ICBC commenced its investigation;
14. she did not recall processing any transactions on her daughter [REDACTED] vehicles and did not know why her daughter had stated to ICBC investigators that she had;
15. Jackson Chan, her brother-in-law, was employed at Apex 1993 as a licensed agent from June 2001 to January 2004 and was under her supervision during that time; and
16. Jackson Chan had admitted to carrying ICBC agency validation stamps for some of the Agencies at which he was not licensed, but she did not know anything about it.

During cross examination, Amy Lau testified to the following:

1. she signed insurance documents without reading or verifying them, but only when these were brought to her by Kenneth Lau;
2. she acknowledged that 242 ICBC transactions on vehicles owned by her or her family were processed at Apex 1993 when she was the Nominee, but she did not know about it and did not remember anything about it;
3. she did not process any of the transactions because she did not understand the ICBC computer system very well and did not like to use the computer;
4. as part of a negotiated settlement with ICBC, she was asked to step down as the Nominee of Apex 1993, but she does not remember why she was asked to do so;
5. ICBC advised her that she was not managing Apex 1993 properly;

6. she did not think that she had done anything wrong, rather it was Kenneth Lau who was responsible for processing excessive ICBC transactions;
7. there were 64 transactions processed on her own vehicle, a 1997 Mercedes E320, but she did not remember processing any of them or signing the insurance documents, but she believed that these transactions were processed to save on premiums;
8. she knew that Kenneth Lau was not licensed to conduct insurance business at Apex 1993, but she conceded that 40 transactions were processed at Apex 1993 on Kenneth Lau's vehicle;
9. she did not know if Kenneth Lau had processed transactions at Apex 1993;
10. she did not remember processing any transactions on Anne Lau's vehicles, but acknowledged that 73 of those transactions had been processed at Apex 1993;
11. although 43 transactions had been processed at Apex 1993 on a 1995 Mercedes E320 belonging to [REDACTED], a company of which her sister was the president, and operated by her son Benkin Lau, she was not aware of it;
12. she did not learn about the excessive transactions until after ICBC started its investigation;
13. she felt that most of the transactions were done for legitimate reasons, such as to reduce coverage when going away on holidays; and
14. she conceded that Kenneth Lau had instructed Jackson Chan to carry ICBC validation stamps for each of the Agencies, but at the time she did not know that he had to be licensed with the particular agency in order to carry and use its agency stamp.

Council's Submissions

In addition to the above referenced Book of Documents and Book of Authorities, Mr. McKnight made the following submissions:

1. out of 939 transactions, 242 transactions were processed at Lau's office, Apex 1993;
2. given the excessive number of transactions processed at Apex 1993, there lacks an air of reality that Lau did not understand or know about what was going on;
3. her ignorance about the excessive transactions speaks to her competence, negligence and inability to manage Apex 1993;

4. Lau was asked by ICBC to step down as Nominee of Apex 1993 because she was not doing her job properly;
5. Lau should have been monitoring Apex 1993 and should have been aware that Kenneth Lau, who was not licensed at Apex 1993, was processing transactions there;
6. Lau stated that she was not aware of what was happening at Apex 1993 and that she deferred all ICBC matters to Kenneth Lau;
7. Lau and the Agencies are trying to diminish their culpability in this matter by deflecting blame to Kenneth Lau by saying that he was the patriarch of the family and made all the decisions;
8. the evidence demonstrates that ICBC validation stamps were improperly used as, for example, there were two transactions involving the same vehicle that were processed within six minutes of each other at two of the Agencies;
9. another example involved a transaction rating a vehicle under territory Z (out of province) to territory D (Lower Mainland), which shows an attempt to avoid AirCare, again where the transactions were processed at two of the Agencies within the same day;
10. Lau's evidence has been that she did not know about or remember any of the transactions, but never did she equivocally state whether or not she had processed any of the transactions;
11. Lau only admitted to signing insurance documents, but even then did not admit to signing the documents on her own, only when counselled by Kenneth Lau;
12. these transactions and her lack of knowledge about them does not indicate that Lau made an honest mistake or that this was an isolated incident; and
13. Lau is very experienced and very knowledgeable as an insurance agent.

Lau's and the Agencies' Submissions

Mr. Willcock made the following submissions on behalf of Lau and the Agencies:

1. as the Nominee of Apex 1993, Lau should have read the insurance documents related to her vehicle prior to signing the documents and she should have had better supervision in place at Apex 1993 with respect to the use of the agency stamps;

2. Lau did not knowingly engage in any of the transactions;
3. Lau is being wrongly grouped together with Kenneth Lau and Benkin Lau and she should be considered part of the more innocent group, which would include [REDACTED];
4. when the ICBC investigation began, the Agencies independently retained an outside advisor to review the matter to ensure that it would not happen again;
5. the Agencies cooperated fully with ICBC in an effort to regain its trust, and restitution has been made to ICBC;
6. Kenneth Lau no longer conducts any ICBC business and is no longer an Autoplan agent;
7. there has already been notice of the matter in an ICBC publication, restitution has been made and the Agencies are being monitored, therefore the public interest has been served;
8. ICBC is content with the settlement it negotiated with the Agencies;
9. it has been three years since these transactions occurred and there have been no further problems at the Agencies;
10. the Agencies have not benefited financially from this matter and it was not the Agencies that engaged in the misconduct;
11. the Agencies have multiple owners, some of whom were not involved in the excessive transactions, therefore the innocent parties should not have to be punished for the actions of the others; and
12. the public did not suffer any harm as a result of this matter.

Findings by the Hearing Committee

After reviewing the aforementioned exhibits, the Book of Authorities, the testimony of Lau and the submissions of Council, Lau and the Agencies, the Hearing Committee made the following findings.

The Hearing Committee finds that Lau's and the Agencies' conduct in this matter constitutes a breach of section 231 of the Act and Rule 3(2) of the *Council Rules* in that they did not act in a trustworthy and competent manner, in good faith and in accordance with the usual practice of the business of insurance.

Lau was the Nominee of Apex 1993. Lau stated that any decisions relating to ICBC matters were deferred to Kenneth Lau and that she relied on him to make proper decisions with respect to ICBC matters. While she acknowledged that excessive transactions were processed at Apex 1993 in order to generate extra fees and commissions, she denied having any knowledge that these types of transactions were taking place until after ICBC commenced its investigation. While the Hearing Committee accepts Lau's evidence that she herself did not actively participate in processing any of the 242 transactions at Apex 1993, it finds that she knowingly allowed others to process the transactions at her office.

The Hearing Committee accepts Mr. McKnight's submissions. As the Nominee of Apex 1993, Lau was responsible and accountable for all the activities that took place there. The Hearing Committee finds that, on a balance of probabilities, Lau as the Nominee would have been actively supervising at Apex 1993 and would have been aware of the 242 excessive transactions being processed at Apex 1993. Yet, she did not take any action to ensure that misconduct of this nature did not occur.

Furthermore, the Hearing Committee finds that Kenneth Lau processed transactions on his own vehicle at Apex 1993. Not only did Lau allow Kenneth Lau to process excessive transactions at Apex 1993, but she allowed him to do so without being properly licensed. Again, as the Nominee, it was Lau's responsibility not to permit unlicensed persons to conduct insurance business at Apex 1993, nor to allow anyone to process transactions in a manner which is inconsistent with the duties and obligations of an insurance licensee.

The Hearing Committee does not accept Lau's testimony that she did not remember or have any knowledge that these transactions were taking place at Apex 1993. She stated to ICBC, during a May 6, 2004 interview, that she was involved in processing the excessive transactions and may have abused her position as an Autoplan agent by doing so. Later, in a statement to ICBC dated September 18, 2004, she stated that she was not involved in conducting any unnecessary transactions and was not aware that these transactions were being processed. These inconsistencies bring into question her credibility. Where Lau's testimony conflicted with the documentation, the Hearing Committee prefers the evidence in the documentation over Lau's. As such, the Hearing Committee accepts as fact, her statements to ICBC made on May 6, 2004.

Throughout her testimony, Lau stated that she did not remember or did not know that excessive transactions were being processed at Apex 1993, that she did not know whether Kenneth Lau was processing transactions at Apex 1993 or whether Kenneth Lau had been processing transactions on her vehicle. She also stated that she signed insurance documents under the direction of Kenneth Lau without reading or verifying what she was signing. It does not seem reasonable to the Hearing Committee that Lau would not have any idea that these transactions were taking place at her own office. The Hearing Committee finds that Lau knew that these transactions were taking place at Apex 1993.

She cannot now attempt to deflect all the blame onto Kenneth Lau and her son, Benkin Lau.

The Hearing Committee accepts that Lau was not aware of the requirement that ICBC Agency validation stamps be used only by employees of that particular agency. As Nominee, she should have been aware of ICBC's rules and guidelines and she should have been monitoring and supervising agents under her authority to follow these rules.

In conclusion, as the Nominee, Lau was ultimately responsible for all activities of Apex 1993 and its employees. This includes the monitoring and control of ICBC transactions. The evidence shows that inappropriate ICBC transactions were carried out at Apex 1993 under her guidance and management. Lau's statements that she did not understand what she was signing, did not know about the ICBC's rules against stamp sharing, and was not aware of the transactions and activities taking place at Apex, calls into question her competency and suitability as a Nominee.

The Hearing Committee finds that Lau acted in an untrustworthy manner and in bad faith by knowingly allowing the excessive transactions to be processed at Apex 1993. With respect to allowing Jackson Chan to use stamps from the other Agencies and permitting Kenneth Lau to process transactions at Apex 1993 while not licensed there, the Hearing Committee finds that Lau failed to act in a competent manner.

The evidence further shows that inappropriate ICBC transactions were carried out and processed at the Agencies. There was financial benefit to the Agencies for these transactions as the Agencies were in receipt of the extra fees and commissions. The Hearing Committee did not accept Mr. Willcock's submissions that there should be no findings made against the Agencies. The Agencies are also individually licensed entities and can be held responsible for the insurance activities that are run through it. Furthermore, it is the Agencies that are party to the ICBC agency agreements and not the individual licensees, which again shows that the Agencies can and should be held accountable for misconduct that takes place therein.

Recommendations of the Hearing Committee

The Hearing Committee considered the principles of sentencing and Council's sentencing guide articulated in Council Policy 54.1 when determining the appropriate penalty. The Hearing Committee also considered the precedent cases submitted and in particular, the following:

In *Lai Wa (Michelle) Tsui*, a licensee used her position and knowledge as an insurance agent for her personal benefit by intentionally misstating the principal operator on her vehicle in order to avoid paying higher premiums. Council suspended her for three months, fined her \$5,000.00 and downgraded her licence from a Level 2 general insurance agent's licence to a Level 1 general insurance salesperson's licence.

In the matter of the *Mortgage Brokers Act and Rita Darlene Smeeton*, Smeeton, a registered mortgage broker, failed to file a Statutory Declaration with respect to the handling of trust funds and failed to pay a late filing fee. She was also found not to have properly supervised a mortgage broker registered with her. Smeeton's mortgage broker licence was cancelled for a period of one year and she was ordered to pay an administrative penalty of \$1,000.00.

In *Moore v. College of Physicians and Surgeons of Ontario*, the Ontario Superior Court held that a requirement that a licensee pay restitution does not preclude a regulatory body from imposing an additional disciplinary fine. The Hearing Committee further accepts Council's submission that, in situations where a licensee has benefited financially from his or her misconduct, the fine should equal or exceed the benefit.

In the cases cited above, and in the case at hand, the individuals involved failed to show that they were trustworthy and/or competent, and intended to act in good faith. *Tsui* is comparable to this case in that it shows how a licensee can take advantage of his or her position as an insurance agent for personal gain. In this case, Lau used her position as Nominee for her own and her family's personal benefit. As in *Smeeton*, Lau failed to show that she acted in a competent manner by failing to conduct herself properly as a Nominee in her failure to adequately manage and supervise Apex 1993 and her employees. Pursuant to *Moore*, despite the negotiated settlement with ICBC, disciplinary action against Lau and the Agencies can still be taken.

The Hearing Committee believes that Lau's conduct falls in between that of *Tsui* and *Smeeton*. While she did not directly process the ICBC transactions, she allowed them to take place at Apex 1993 and as such, also failed to adequately supervise Apex 1993. These transactions were numerous, involved many thousands of dollars and took place over several years. The Hearing Committee also finds it to be an aggravating factor that Lau failed to accept any responsibility for the excessive transactions, did not show any remorse for her actions, and instead attempted to deflect blame to other members of her family.

Upon consideration of the recommendation made by counsel to Council with regards to penalty, and notwithstanding Lau's and the Agencies' submissions, the Hearing Committee believes that a significant penalty is necessary to deter Lau, the Agencies and other members of the industry from actions that compromise the qualifications of licensed insurance agents, with a view to protecting the public interest and maintaining confidence in the industry.

Accordingly, the Hearing Committee recommends that:

1. Lau's Level 3 general insurance agent's licence be cancelled for a minimum period of two years and during this period, she be issued a Level 2 general insurance agent's licence;
2. Lau's Level 2 general insurance agent's licence be suspended for a period of nine months;
3. Lau be fined \$5,000.00;
4. the Agencies each be fined \$20,000.00;
5. as a condition of the Agencies' licences, the Agencies' employees are prohibited from processing ICBC transactions for any family member or staff of the Agencies;
6. Lau and the Agencies be jointly and severally liable to pay the costs of Council's investigation into this matter, assessed at \$7,800.00; and
7. as a condition of this decision, Lau and the Agencies are required to pay the above mentioned fines and costs within three months from the date of the final order and if Lau and the Agencies do not pay those amounts by that date, Lau and the Agencies' licences are suspended without further action from Council.