

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

and the

INSURANCE COUNCIL OF BRITISH COLUMBIA
 (“Council”)

and

JIAN GUO HAN
(the “Licensee”)

ORDER

As Council made an intended decision on April 15, 2020, 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 April 22, 2020; 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 that:

1. The Licensee is fined \$2,000 for the errors & omissions coverage breach and \$3,000 for the continuing education (“CE”) breaches, for a total fine of \$5,000;
2. A condition is imposed on the Licensee’s life and accident and sickness insurance agent (“Life Agent”) licence that requires him to complete make-up courses to fulfil his CE credits for the licensing years 2016/2017, 2017/2018 and 2018/2019;
3. A condition is imposed on the Licensee’s Life Agent licence that requires him to complete the Council Rules Course;
4. A condition is imposed on the Licensee’s Life Agent licence that failure to complete the Council Rules Course and make-up the required CE credits by September 8, 2020 will result

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in automatic suspension of his licence and he will not be permitted to complete his 2021 annual filing until such time as the requirements of this condition have been fulfilled; and

5. A condition is imposed on the Licensee's Life Agent licence that failure to pay the \$5,000 fine by August 10, 2020 will result in automatic suspension of his licence and he will not be permitted to complete his 2021 annual filing until the fine is fully paid.

This order takes effect on the **11th day of May, 2020.**



Janet Sinclair, Executive Director
Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA

("Council")

respecting

JIAN GUO HAN

(the "Licensee")

1. Pursuant to section 232 of the *Financial Institutions Act* (the "Act"), Council conducted an investigation to determine whether the Licensee breached Council Rule 7(5) by failing to meet the requirements of Council's continuing education ("CE") program for three consecutive licence years and/or Council Rule 7(11) by failing to maintain errors and omissions ("E&O") insurance from February 2, 2018 to May 27, 2018.
2. On February 19, 2020, as part of Council's investigation, a Review Committee (the "Committee") comprised of Council members met with the Licensee via telephone conference to review an investigation report prepared by Council staff and provide the Licensee an opportunity to make submissions or provide any further information. A copy of the investigation report was forwarded to the Licensee in advance of the meeting.
3. Staff's investigation report, the Committee's report to Council, and the Licensee's submissions were reviewed by Council at its April 15, 2020 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 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

5. The Licensee has held a life and accident and sickness insurance agent ("Life Agent") licence with Council since 2002.

6. On May 29, 2019, Council staff wrote to the Licensee asking him to provide proof of E&O insurance coverage and CE credits for three licence years: 2016/2017, 2017/2018, and 2018/2019. The Licensee did not respond.
7. On June 26, 2019, Council staff wrote to the Licensee asking him to respond to the May 29, 2019 letter. The Licensee did not respond.
8. On July 17, 2019, Council staff again wrote to the Licensee asking him to provide his response.
9. On July 23, 2019, the Licensee responded and provided proof of E&O coverage for some of the dates requested but not for the period February 2, 2018 to May 27, 2018. In addition, the Licensee only provided proof of two hours of CE credits obtained in the 2018/2019 licence year.
10. On August 22, 2019, Council staff wrote to the Licensee and asked that he provide, among other information, proof of:
 - a) a contract with at least one insurer for the period June 1, 2016 to May 31, 2019,
 - b) evidence of E&O insurance for the period February 2, 2018 to May 27, 2018; and
 - c) proof of any other CE credits obtained during the three licence years being audited.
11. On September 12, 2019, the Licensee responded to staff's letter in writing and enclosed a copy of two insurance contracts, one with Manulife Life Insurance Company and the other with The Canada Life Assurance Company, both effective as of 2006. The Licensee also advised he was without E&O insurance from February 2, 2018 to May 27, 2018 because he did not believe he needed it and he was trying to save money.
12. The Licensee also advised in his September 12, 2019 response that, due to a residential move, he was not able to locate evidence of CE credits he obtained prior to 2018. Additionally, he stated he had "took part in many trainings" in 2019 but that "delivery CE credits was too slow". However, he did include some certificates, indicating as follows:
 - a) 2 credits, earned April 23, 2019 by Jianhuo Han;
 - b) 2 credits, earned June 25, 2019 by Wilson Han;
 - c) 1 credit, earned August 26, 2019 by Hanjian Guo.
13. These are the only certificates the Licensee has produced in response to Council staff's request. Of note, only the April 23, 2019 certificate is responsive to the timeframe audited by staff as it was earned during the 2018/2019 licence year. The other two certificates, respectively dated June 25, 2019 and August 26, 2019, are for the 2019/2020 licence year

which concludes on May 31, 2020. Of further note, none of these three certificates match the Licensee's registered Life Agent licence name of Jian Guo Han. The Licensee has no "also known as" names registered with Council, although staff note that he has signed correspondence with Council as "Wilson Han" and "Han Jian Guo". In any event, although staff was unable to definitively confirm the Licensee's attendance with the course providers, the certificates were accepted as credits earned by the Licensee during the applicable licence years.

14. On January 10, 2020, Council staff spoke with the Licensee by phone. He advised he had taken CE courses through Canada Life, Manulife Financial, and Citistar Financial Services Ltd. but did not have any certificates, other than those he had produced, and could not recall any of the courses he had taken. Accordingly, Council staff contacted representatives of all three companies. Canada Life advised by phone that they had no records of the Licensee having completed CE with them. Similarly, Manulife and Citistar both confirmed by email that they had no records of CE credits completed by the Licensee.
15. Based on the information provided, the Licensee is short a total of 28 credits for the three licence years audited.

The Licensee's Submission to the Review Committee

16. The Licensee advised the Committee that in addition to his given name, he also goes by the name Wilson Han. He also advised that, in addition to Manulife and Canada Life, he has a contract with Sun Life. The Licensee also explained that the reason he was sometimes slow in responding to Council staff's communications was that he did not always receive his mail.
17. The Licensee confirmed that he was without E&O coverage from February 2, 2018 to May 27, 2018. He advised he was out of the country from October 2017 to April 19, 2018 due to the passing of a family member. He further advised that, while away, he did not conduct insurance business, nor did he conduct any when he returned to Canada and until he renewed his E&O coverage in May 2018. The Licensee also advised the Committee that he could not have renewed his coverage while away because he would not have been able to use a credit card from the country he was in at the time.
18. With regard to continuing education requirements, the Licensee advised the Committee that he completed all his required CE credits in the three audited years but that he did not receive any certificates, other than one for 2018/2019 and two for the current licensing year which did not form part of staff's audit.

19. On questioning from the Committee, the Licensee acknowledged his obligation to complete CE credits every year and advised that his usual practice is to keep a printed copy of the certificates. He also advised that he always completed his required CE in the past. He further stated that, while away, his focus was not on attaining credits but on family.
20. The Licensee advised that the most recent CE course he completed was travel insurance training in late 2019 but that he had not yet received a certificate. He also stated that he recently took a six-hour new agent training course with Citistar three times.

ANALYSIS

21. Council considered staff's investigation report, the Committee's report to Council, and the Licensee's submissions.

Errors and Omissions Coverage

22. Council is sympathetic to the loss of the Licensee's family member and accepts that he did not conduct insurance business while he was without E&O coverage. However, Council does not accept the explanation that he did not think he needed coverage while away and not conducting any insurance business. The Licensee is not a new agent and, therefore, either knew or ought to have been aware of his duty to maintain E&O coverage as a requirement to hold a licence whether conducting business or not. Being out of the country does not justify a failure to comply, nor does a misunderstanding or ignorance of the rules. Council finds that, whether he was mistaken or not, the Licensee intentionally chose not to have E&O coverage during the period at issue.
23. While it may be the case that he could not have renewed his coverage by credit card while out of the country (which parenthetically suggests that the Licensee knew he ought to be renewing), Council finds this an invalid excuse because the Licensee should have made arrangements to renew before he left.
24. Council finds that the Licensee breached Council Rule 7(11) by failing to maintain E&O insurance from February 2, 2018 to May 27, 2018. Council further finds that a sanction for this breach is warranted in the circumstances.

Continuing Education

25. With all due respect to the Licensee, Council determined that his assertion that he completed his credits for the three audited years, yet received no certificates except for one, is simply not credible.

26. Firstly, the Licensee confirmed awareness of the requirement to complete CE training every year and advised Council that he usually kept a paper record of certificates which, in Council's view, demonstrates awareness of the requirement to track credits.
27. Second, Council notes that, as an experienced Licensee aware of Council's requirements, it is reasonable to expect that he would have made efforts to obtain copies of course completion certificates; or if they were, in fact, lost due to a move, made efforts to obtain duplicate certificates; or at the very least provided a list of the courses to Council staff. That it appears he did none of this suggests there were no courses.
28. Thirdly, Council found it telling that, although the Licensee asserted to Council staff on January 10, 2020 that he had taken CE courses through Canada Life, Manulife Financial, and Citistar Financial Services Ltd., all three companies advised staff that they had no records of the Licensee having completed CE with them.
29. Council finds that, more likely than not, the Licensee did not actually complete CE as required. If he had, it could reasonably be expected that he would at a minimum have been able to produce a list of the courses he attended for Council staff to verify. However, he did not and, in fact, advised staff that he could not recall any of the CE courses he had taken with Canada Life, Manulife or Citistar.
30. With regard to the Licensee's statement to Council that he recently took new agent training with Citistar three times, Council finds this perplexing considering the Licensee is not a new agent. In any event, no certificates were provided to Council by the Licensee for this training and it is unknown if it would even qualify as valid CE credits.
31. Council finds that the Licensee breached Council Rule 7(5) three times by failing to meet the requirements of Council's continuing education program for the 2016/2017, 2017/2018, and 2018/2019 licensing years. Council further finds that a sanction for these breaches is warranted in the circumstances.

INTENDED DECISION

32. Council is not bound by precedent to follow the outcomes from prior decisions, but similar conduct should result in similar outcomes within a reasonable range depending on the particular facts of the case.
33. With regard to the Licensee's E&O breach, Council considered the cases of *Maria Rhodora Banada Thomas* (October 26, 2018) and *Harold Wong Yang* (August 23, 2016).

34. In *Thomas*, a Life Agent unintentionally failed to maintain her E&O from July 1, 2017 to February 4, 2018. She did not conduct insurance business during the period she was without coverage. Council determined that a failure to comply with this requirement ought to be subject to a minimum fine of \$1,000 regardless of the reason for the breach. In the result, the licensee was fined \$1,000.
35. In *Yang*, a Life Agent's E&O lapsed on November 1, 2013 but he did not become aware of the lapse until mid-November. He did not advise Council, cease all insurance activities, or take steps to renew. The licensee advised council he failed to follow up because he became ill. On December 16, 2013, the licensee purchased new E&O, but it did not meet Council's minimum requirements; therefore, his licence was terminated but subsequently reissued on January 13, 2014 after he obtained adequate coverage and reapplied. Council took into consideration the licensee's health issues but found this did not justify his failure to comply. Council concluded that the licensee was aware of the requirements and chose not to comply. The licensee was fined \$2,000 for failing to maintain E&O and ordered to complete the Council Rules Course. He was also fined an additional \$3,000 for failing to meet CE requirements for three licensing periods.
36. With regard to the Licensee's E&O breach, Council concluded that, given the length of time the Licensee has been a licenced agent, he knew or ought to have known his obligations with regard to E&O coverage. In alignment with the *Thomas* and *Yang* cases, the appropriate penalty for his E&O failure is \$2,000 because the Licensee's actions show that he chose not to renew his E&O, thus his breach was deliberate.
37. With regard to the Licensee's CE breaches, Council considered the cases of *Annie Chu* (May 2, 2018), *Sukhdarshan Singh Mann* (May 1, 2018), *Jagjit Singh Gill* (April 9, 2018), and *Yang* as referenced above.
38. In *Chu*, a licensee failed to meet the CE requirements for two licensing years for both her life and her general licence. Council concluded that her failure to complete the credits showed a disregard for Council Rules and fined the licensee \$1,000 for each licensing year and each licence for which she had failed to meet the CE requirements. The licensee was also required to complete the Council Rules Course and make up missing CE credits.
39. In *Mann*, a Life Agent was audited by Council staff for CE. The licensee failed to demonstrate he had completed the requisite CE credits for a two-year period and advised Council he was unaware he was required to keep track of his training. Council audited the licensee a second time and found that he had continued to fail to obtain CE credits. Council fined the licensee \$1,000 for each year he had insufficient proof of his CE credits and required the licensee to make up the missing credits and take a Council Rules course.

40. In *Gill*, a Life Agent was unable to demonstrate he had met his CE credit requirements for four licensing years, although he subsequently completed a sufficient number of make-up credits to address the shortfall. Council concluded that the licensee's action warranted discipline and fined him \$4,000 and required him to complete the Council Rules course.
41. With regard to the Licensee's CE breaches, Council was highly troubled by the Licensee's assertions that he completed his CE when it appears he made no efforts to prove it by obtaining and providing certificates or, at the very least, a list of courses that Council staff could verify. As such, Council determined that, on a balance of probabilities, the Licensee more likely than not failed to fulfil his CE credits for the three audited licence years. As suggested by the *Chu, Mann, Gill, and Yang cases*, the appropriate penalty is a fine of \$1,000 for each year the Licensee did not complete his CE, for a total of \$3,000.
42. Pursuant to sections 231 and 236 of the Act, Council made an intended decision to:
- a) Fine the Licensee \$2,000 for the E&O breach and \$3,000 for the CE breaches, for a total fine of \$5,000;
 - b) Require the Licensee to complete make-up courses to fulfil his CE credits for each audited licensing year, 2016/2017, 2017/2018 and 2018/2019;
 - c) Require the Licensee to complete the Council Rules Course;
 - d) Impose a condition on the Licensee's life and accident and sickness insurance agent licence that failure to complete the Council Rules Course and make-up the required CE credits within 120 days of Council's order will result in automatic suspension of his licence and he will not be permitted to complete his 2021 annual filing until such time as the requirements of this condition have been fulfilled; and
 - e) Impose a condition on the Licensee's life and accident and sickness insurance agent licence that failure to pay the fine within 90 days of Council's order will result in automatic suspension of his licence and he will not be permitted to complete his 2021 annual filing until the fine is fully paid.

RIGHT TO A HEARING

43. 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 within 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 does not request a hearing within 14 days of receiving this intended decision, the intended decision of Council will take effect.

44. Even if this decision is accepted by the Licensee, 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 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 visit the guide to appeals published on their website at www.fst.gov.bc.ca/pdf/guides/ICGuide.pdf.

Dated in Vancouver, British Columbia, on the **22nd day of April 2020**.

For the Insurance Council of British Columbia

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

Janet Sinclair
Executive Director