In the Matter of

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

and

The INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

and

ADAM SIDNEY HEINRICH
(the "Licensee")

ORDER

Pursuant to section 237 of the Act, Council convened a hearing at the request of the Licensee to dispute an intended decision, dated August 31, 2015, pursuant to sections 231, 236, and 241.1 of the Act.

The subject of the hearing was set out in a Notice of Hearing dated December 18, 2015, and Amended Notice of Hearing dated July 25, 2016.

A Hearing Committee heard the matter on October 11 to 13, 2016, and presented a Report of the Hearing Committee to Council at its December 13, 2016 meeting.

Council considered the Report of the Hearing Committee and made the following order pursuant to sections 231, 236, and 241.1 of the Act:

1. The Licensee's life and accident and sickness insurance licence is cancelled for a period of three years.
2. The Licensee is fined $10,000.00.
3. The Licensee is assessed Council's investigative costs of $3,637.50.
4. The Licensee is assessed Council's hearing costs of $21,102.24.

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5. A condition is imposed on the Licensee's life and accident and sickness insurance licence that requires the Licensee to pay the above-ordered fine, investigative costs, and hearing costs no later than **March 13, 2017**. If the Licensee does not pay the ordered fine, investigative costs, and hearing costs in full the Licensee will not be permitted to make an application for an insurance licence upon completing the licence cancellation period, until such time as the ordered fine, investigative costs, and hearing costs are paid in full.

This order takes effect on the **13th day of December, 2016**.

Dr. Eric Yung
Chairperson, Insurance Council of British Columbia

INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

REPORT OF THE HEARING COMMITTEE

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

AND

ADAM SIDNEY HEINRICH
(the "Licensee")

Date:	October 11 to 13, 2016	
Before:	Ken Kukkonen	Chair
	Bob Scott	Member
	John Crisp	Member
Location:	Suite 300, 1040 West Georgia Street Vancouver, British Columbia V6E 4H1	
Present:	David McKnight	Counsel for Council
	Paul Varga	Counsel for Licensee
	Adam Sidney Heinrich	Licensee

BACKGROUND AND ISSUES

The matter before the Hearing Committee relates to an August 31, 2015 intended decision of Council in response to allegations that the Licensee:

- Failed to act in his clients' best interests by recommending and facilitating unregulated investment strategies that were unsuitable in their circumstances;
- Failed to conduct a proper or adequate needs analysis for his clients;
- Misled clients to believe that losses they incurred from the investment strategies he had recommended and facilitated would be recovered;
- Made representations and promises to his clients that were inadequate and/or inappropriate in the circumstances;

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- Operated his insurance practice under an entity that he failed to properly license in British Columbia; and
- Had clients sign blank transactional forms.

The purpose of the hearing was to determine whether the Licensee is able to carry on the business of insurance in a trustworthy and competent manner, in good faith, and in accordance with the usual practice of the business of insurance.

The Hearing Committee was constituted pursuant to section 223 of the Act. This is a Report of the Hearing Committee, as required pursuant to section 223(4) of the Act.

EVIDENCE

The evidence reviewed by the Hearing Committee in consideration of this matter included:

Exhibit 1	Agreed Statement of Facts
Exhibit 2	Council's Book of Documents

FACTS

The Licensee has been a life and accident and sickness insurance agent ("life agent") in British Columbia since 1999. Since 2003, the Licensee has worked independently, without any affiliation with an insurance agency.

In 2007, the Licensee began promoting exempt market securities ("EMS") to his insurance clients. At the time, the Licensee did not require registration under the *Securities Act* to sell EMS, provided that certain requirements were met. EMS are not subject to the same regulatory oversight as securities that trade on public stock exchanges, and accordingly, they are considered to carry a higher degree of risk for those who hold them.

Two married couples ("MW" and "GW", and "AS" and "BS") and another individual ("JG") made similar allegations against the Licensee. They alleged that the Licensee recommended and facilitated their purchase of EMS even though the investments were contrary to their best interests.

At the hearing, MW and AS testified; however, the Licensee chose not to testify. As explained by his legal counsel, the Licensee wanted to be sympathetic to his clients and he did not dispute their evidence.

Client Situation 1: MW and GW

MW and GW first met the Licensee in 2004 after being referred to him by their daughter, who knew the Licensee through church. At the time, MW and GW were in their fifties, had been married for approximately 30 years, and owned and operated an organic farm. MW was trained as an educator and also worked in the school system. GW had been a logger. MW had a small pension through her education work; GW did not have one. Their net worth was approximately $1,000,000.00, and they earned approximately $65,000.00 annually from their farm.

In 2004, MW and GW were seeking a plan that would enable them to retire from their farming business. MW also wanted to retire from her education activities, which generated some income for the household. They wanted to do humanitarian work in retirement, and to be able to help pay the costs of post-secondary education for extended family.

Their first financial transactions facilitated through the Licensee involved the redemption of approximately $200,000.00 in mutual funds, and the purchase of variable annuity contracts ("segregated funds") in roughly the same amount. The investments were held in both registered and non-registered accounts, and provided contract maturity and death benefit guarantees.

MW indicated that she and GW were unsophisticated investors, and they did not want to put their financial position in jeopardy as they were approaching retirement. Annual financial analyses prepared by the Licensee for MW and GW appeared to be consistent with this perspective.

In the first three years of investing in segregated funds through the Licensee, MW and GW achieved annualized returns of approximately 12%, 16%, and 3%. MW indicated that during this time, they became close with the Licensee and in some ways considered him to be like a son.

The Licensee first began discussing EMS with MW and GW around 2008. MW said the Licensee promoted the potential of greater returns from EMS investments, and he gave them hope that they could achieve better returns in EMS than through their segregated fund investments. MW also advised they did not realize what returns their segregated fund investments had in fact been producing.

On the Licensee's recommendations, MW and GW began to redeem their segregated fund investments to facilitate purchases of EMS through the Licensee. Over the course of the next year-and-a-half, MW and GW invested approximately $540,000.00 in eight EMS that were based on oil and gas ventures or real estate. The investments, which constituted more than 50% of their net worth, were paid for by proceeds from the sale of their farm, some savings, and also some inheritance money. During this period, the Licensee facilitated a loan for MW and GW to help them meet ongoing expenses.

In facilitating the EMS investments, the Licensee presented risk disclosure documents to MW and GW that included language about the possibility of losing all of their money from the investments. MW said the documents were presented by the Licensee as a "necessary evil", and that he did not fully explain the documents to them.

Three of the EMS investments purchased by MW and GW were found to be fraudulent by securities regulators. In total, they have lost approximately $300,000.00 from their eight EMS investments. According to MW, they are struggling to make ends meet; they live on government-based pensions earning approximately $25,000.00 to $30,000.00 annually; and they have had to find part-time work to meet their daily living expenses.

Client Situation 2: JG

JG was 62 years old when she first met the Licensee in 2004 through a referral from a family member. At the time, JG had approximately $365,000.00 in assets, comprised of proceeds from the sale of her home and savings.

In 2004, JG purchased $250,000.00 in segregated funds from the Licensee. According to JG, she stressed to the Licensee that the safety of her investments was her biggest concern. A financial analysis prepared by the Licensee for JG in 2004 indicated that her objectives included generating a monthly income, preserving capital, achieving better returns, purchasing a car, and having money for travel. JG had no other sources of income at the time.

After the initial segregated fund purchases in the amount of $250,000.00, JG obtained a $100,000.00 investment loan with the assistance of the Licensee. The objective of the loan was to increase and help diversify her investments, and to create monthly income of approximately $2,350.00 ($350.00 of which would be used to pay the interest on the loan). JG later purchased $75,000.00 in segregated funds through the Licensee. The underlying investments in the segregated funds ranged from fixed income to equities.

In 2008, JG purchased a $20,000.00 real estate EMS through the Licensee. She later made three additional EMS purchases through the Licensee in oil and gas ventures. Two of these purchases were in the amount of $30,000.00 and one was for $4,800.00. In a "Know Your Client" form for one of the oil and gas EMS purchases, JG's investment knowledge was indicated as "novice"; she had a low risk tolerance and an investment time horizon of less than three years, and it said that she was seeking income and growth. In purchasing the EMS, JG signed risk disclosure documents that included language about the possibility of losing all of her money in these investments.

Of the $60,000.00 invested by JG in one of the oil and gas EMS, approximately $26,000.00 came from redemptions of her segregated fund investments. This particular EMS investment was subsequently found to be fraudulent by securities regulators and, as a result, she has lost some, if not all, of her capital investment of $60,000.00. The real estate EMS investment remains in place; however, it is illiquid.

According to JG, she is currently renting a home and receiving Old Age Security benefits, and she has indicated that she may have to find work to meet her daily living expenses.

Client Situation 3: AS and BS

AS and BS were natives of Paraguay who moved to Canada in 1979. When they first met the Licensee in 2009 through a co-worker of AS, they had been married for 23 years, were in their mid to late fifties, and had lived in British Columbia for approximately 10 years. Their annual household income was approximately $70,000.00, generated from AS's work in health care and profits earned from the renovation of condominiums by BS, who was semi-retired.

In 2009, the Licensee held himself out to the public under the name of an entity called Agility Financial, which was not licensed with Council. According to AS, she and BS understood that the Licensee was a financial advisor.

AS advised that after the Licensee reviewed their mutual fund investments, he indicated their investments had been performing poorly and that he could provide better returns for them. The Licensee subsequently prepared a financial analysis for AS and BS that was based on their objective of being financially independent in three years, being able to travel to Mexico for mission work half of the year, allowing for a one-month vacation in Manitoba (where they had lived previously), and enabling them to reduce the amount they worked the other five months of each year when at home in British Columbia.

The financial analysis included four categories for their investable assets. One category was called a "fun bucket" and it indicated, among other things, a $30,000.00 investment in an EMS with a projected 20% annual income payment. In another category called an "income bucket", the Licensee showed a $100,000.00 investment in the same EMS; however, the annual income was projected to be 12% and not the 20% projected in the "fun bucket." Other categories were a "cash reserve" and a "growth bucket." The total investable assets shown in the plan were approximately $275,000.00, of which $250,000.00 was earmarked for investment into EMS.

AS said that in his review of their situation, the Licensee encouraged them to obtain an investment loan to invest. They ultimately did not proceed with leveraging, but rather used the proceeds from the sale of their home (which had been invested in mutual funds) to invest $150,000.00 (more than 50% of their investable assets) into EMS.

According to AS, she and BS proceeded with the EMS investments based on the Licensee's recommendations and an indication by him that these investments would be safe. $130,000.00 of the EMS investments was in one particular oil and gas venture, which AS said was portrayed to them as a solid company and the safest EMS to invest in. AS also advised that although the Licensee warned them that if oil decreased to $35.00 a barrel it was likely that their monthly income from the investment would stop, he had assured them their principal investment would be safe.

In proceeding with the EMS investments, AS and BS signed risk disclosure forms that included language indicating they could lose all of their money from the investments. As well, AS advised that they signed some forms related to the investments that were not completed, and which the Licensee advised he could fill in later.

As two of the EMS invested in by AS and BS were found to be fraudulent by securities regulators, they have lost most of their retirement investments. According to AS, she and BS currently live on approximately $2,200.00 in monthly income, and they are worried about how they are going to make ends meet in retirement.

The Licensee

The eight EMS promoted by the Licensee had been introduced to him by a managing general agent, financial advisors, and/or other clients and individuals. The EMS involved oil and gas ventures, and real estate ventures. The Licensee said his due diligence on the EMS consisted of reviewing offering memorandums and financial statements, researching the companies on the internet, meeting with company management, and visiting the offices of the companies as well as work sites if possible.

Twenty-five insurance clients of the Licensee who invested in the EMS did so by using proceeds from the redemption of their segregated funds held in registered and non-registered accounts. In some cases, clients used a significant portion of their segregated funds redemptions to invest in the EMS promoted by the Licensee. These clients purchased approximately $2.3 million worth of EMS, facilitated by the Licensee.

When concerns began to arise about the legitimacy of some of the EMS, the Licensee wrote to clients who invested in these EMS and advised that Agility Financial would ensure they received 100% of their investments back over time. In his communications, the Licensee set out steps he had taken to address the matter, such as purchasing life insurance on the lives of the managing partners of Agility Financial; hiring an investigator to investigate the EMS found to be fraudulent; and advising the clients that if the matters were not resolved by a certain time, he would pay them the 8% commissions he earned from the EMS transactions. The Licensee has not been able to meet his financial commitment to the clients, as he has only been able to pay them approximately 50% of the commissions earned.

As summarized by his legal counsel, the Licensee realizes the clients identified in this matter should not have purchased EMS, as these investments were not appropriate in their circumstances. The Licensee also acknowledges it was apparent that these clients did not know the true risks of EMS.

The Licensee's legal counsel submitted that the Licensee is willing to surrender his insurance licence for one year, that he is working towards obtaining the Chartered Life Underwriter designation, and that he believes he ought to be subject to supervision until he completes the aforementioned education.

ANALYSIS AND RECOMMENDATIONS

Council's role as the regulator of life agents in British Columbia includes ensuring that these agents are suitable to engage in insurance business. Suitability includes the need to be trustworthy, competent, and financially reliable, and to have an intention of carrying on the business of insurance in good faith and in accordance with the usual practice.

Insurance licensees who fail to meet these requirements can be found unsuitable to engage in insurance activities, regardless of whether any failure arises from improper insurance activities or conduct outside of the business of insurance.

To the Committee, the Licensee, who had almost 10 years of experience as a life agent, ought to have known that the degree of financial risk he had created for the clients identified in this matter was unacceptable and exposed them to potentially devastating financial and personal consequences, which unfortunately came to fruition.

These clients were clearly unsophisticated investors, approaching retirement, who, given their situations, could not afford to lose money or have uncertainty about whether their investments would generate income for their retirement. Yet, despite these facts, the Licensee implemented retirement investment portfolios for them that were reliant on generating income from unregulated securities, which pose a high degree of risk.

The Committee could not identify a situation where it would have made sense for these clients to have invested in EMS to the extent that they did. In fact, the Committee was shocked that the Licensee, given his knowledge about the financial and personal circumstances of the clients, recommended and facilitated their EMS investments.

After contemplating what led to such egregious conduct, the Committee found that the Licensee was, to some extent, motivated to generate commissions for himself, which would be paid upon the sale of the EMS and would be greater than any compensation he would have earned from maintaining and servicing the segregated fund investments held by some of the clients.

To a greater extent, however, the Committee found that the Licensee simply did not understand risk and what is entailed in appropriately assessing the needs of clients and acting in the best interests of clients, which includes ensuring that one has sufficient knowledge to make financial recommendations to clients and that one properly represents his or her abilities to the public. The Licensee demonstrated these shortcomings on several occasions.

For instance, the Licensee held himself out to the public as a financial advisor or planner and, for a period of time, operated under the name of an entity named Agility Financial, even though, prior to the events set out in this matter, he had only ever operated in financial services as a life agent and did not have any industry designations that would confer a higher level of insurance and financial knowledge.

The Licensee also attempted to allay his clients' fears once it became apparent that some of the EMS were fraudulent. In particular, the Licensee initially assured clients they would not suffer any losses from these EMS investments. However, this simply was not true and, as demonstrated, the Licensee did not have the wherewithal to remedy their financial losses as he had promised.

The Committee was further troubled that a financial analysis prepared for AS and BS by the Licensee seemed to have inconsistencies, in that annual income streams for the same EMS investment differed depending on whether the investment was categorized under a "fun bucket" or an "income bucket."

Ultimately, as a life agent, the Licensee had a responsibility to exercise due care with his clients, particularly so with the clients identified in this matter as they were not sophisticated when it came to financial vehicles. They appeared to be practical and hard-working people, who evidently placed their trust in the Licensee to serve their best interests. However, the Licensee failed them and, in the Committee's opinion, acted recklessly, causing significant harm.

The Committee concluded that the Licensee's actions brought into question his competency, and his ability to carry on the business of insurance in good faith and in accordance with the usual practice; and that his continuing to be licensed as an insurance agent represents a risk to the public.

The Committee considered various precedents presented in the hearing, which included *R. Macintosh*, *J. Duke*, *J. Milligen*, *and A. Farey*. These cases involved licensees whose behaviour placed clients at risk and caused unnecessary harm. The penalties against these licensees ranged from a ban on practicing for between one year to a minimum of five years, fines of up to $10,000.00, supervision, and having to complete education requirements.

Bearing in mind the uniqueness of the aforementioned precedents, the Committee concluded that these cases represent a reasonable range of penalties that can be drawn from, but that ultimately Council needs to address the significant harm the Licensee has caused the aforementioned clients, the risk he poses to the public, and the need to maintain the confidence of the public and the industry that Council will not tolerate egregious conduct that results in harm.

Accordingly, the Committee recommends the following:

1. The Licensee's life and accident and sickness insurance licence be cancelled for a minimum period of three years.
2. The Licensee be fined $10,000.00.
3. The Licensee be assessed Council's investigative costs of $3,637.50.

The Committee also recommends that should the Licensee seek an insurance licence in the future, he will first be required to re-qualify educationally to hold an insurance licence.

With respect to hearing costs, the Committee acknowledges the right of a licensee to request a hearing and be provided with due process. However, in this case, the Committee found the Licensee's decision to not introduce any new evidence at the hearing, to accept the evidence and essentially not mount a defence, rendered a three-day hearing unnecessary. Accordingly, the Committee recommends the Licensee be assessed Council's hearing costs in accordance with its Hearing Costs Assessment Schedule.

Dated in Vancouver, British Columbia, on the 6th **day of December, 2016.**

Ken Kukkonen
Chair of Hearing Committee