

**In the Matter of**  
**The *FINANCIAL INSTITUTIONS ACT***  
**(RSBC 1996, c.141)**  
**(the “Act”)**

**and**

**The INSURANCE COUNCIL OF BRITISH COLUMBIA**  
**(“Council”)**

**and**

**MELVIN ZULAK**  
**(the “Licensee”)**

**ORDER**

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

As Council, in accordance with section 237 of the Act, provided the Licensee with written reasons and notice of the intended decision dated February 3, 2014; and

As the Licensee has not requested a hearing of Council’s intended decision within the time period provided by the Act;

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

1. A condition is imposed on the Licensee’s life and accident and sickness insurance licence that requires him to notify any managing general agent or insurer with whom he does business of his Settlement Agreement with the British Columbia Securities Commission.

This order takes effect on the **25<sup>th</sup> day of February, 2014**.



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

## **INTENDED DECISION**

of the

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

**respecting**

**MELVIN ZULAK  
(the "Licensee")**

#### **INTRODUCTION**

Pursuant to section 232 of the *Financial Institutions Act* (the "Act"), Council conducted an investigation to determine whether the Licensee acted in compliance with the requirements of the Act.

As part of Council's investigation, on November 18, 2013 an Investigative Review Committee (the "Committee") met with the Licensee to discuss his suitability in light of a Settlement Agreement entered into between the British Columbia Securities Commission ("BCSC") and the Licensee regarding the illegal distribution of securities.

The Committee was comprised of one voting member and two non-voting members of Council. Prior to the Committee's meeting with the Licensee, an investigation report was distributed to the Committee and the Licensee for review. A discussion of this report took place at the meeting and the Licensee was provided an opportunity to clarify the information contained therein and make further submissions.

A report from the Committee, along with the aforementioned investigation report, was reviewed by Council at its December 10, 2013 meeting and it determined the matter should be disposed of in the manner set out below.

#### **PROCESS**

Pursuant to section 237 of the Act, Council must provide written notice to the Licensee of the action it intends to take under sections 231 and 236 of the Act before taking any such action. The Licensee may then accept Council's decision or request a formal hearing. This intended decision operates as written notice of the action Council intends to take against the Licensee.

## FACTS

Zulak Financial Group Ltd. (the “Agency”) is operated by its directors, the Licensee and Karla Ann Davis (“Davis”). On December 4, 2012, the BCSC entered into a settlement agreement with the Licensee, Davis, and the Agency. The Licensee was originally registered under the *Securities Act* as an exempt market dealing representative on March 23, 2012.

The Licensee, Davis, and the Agency were found to have engaged in illegal distribution of securities and unregistered trading during the period between February 2010 and April 2011. They distributed Aviawest Resorts Inc. (“Aviawest”) securities without Aviawest having filed a prospectus with the BCSC, and without an exemption from the prospectus requirements, breaching section 61 of the *Securities Act*. The Licensee agreed to pay the BCSC \$6,000.00 in settlement, and a Notice of Discontinuance was issued December 6, 2012.

According to the BCSC, the fine of \$6,000.00 reflects a minimum sanction for illegal distribution. The BCSC stated it did not feel any sort of trading ban was warranted in the circumstances. The BCSC indicated the Licensee was cooperative throughout the process. The BCSC stated it had no issues or concerns with the Licensee registering as an exempt market dealer and the BCSC placed no conditions on his registration.

The Licensee has been licensed with Council as a life and accident and sickness insurance agent since 1987. He has been the nominee of the Agency since it was first licensed with Council in September 2008.

As the Licensee also sells registered exempt market products as an exempt market dealer he has two different business cards; depending on the nature of the business – he has a business card for insurance business with the Agency and one for his dealings in exempt market products.

### **Aviawest: BCSC Decision**

Aviawest was a British Columbia company incorporated in 1999 that sold time share interests in vacation properties, offered for sale as Aviawest’s promissory notes (“Promissory Notes”).

In a notice of hearing issued on August 9, 2012, BCSC staff alleged that from December 2006 through June 2011, Aviawest Resorts Inc. and other named parties illegally distributed securities of Aviawest. The notice of hearing contained similar allegations against the Agency and the Licensee.

According to the BCSC Decision dated August 9, 2013 (2013 BCSECCOM 319) with respect to Aviawest and its affiliates, “*Aviawest’s business was prosperous, profitable, and growing until a combination of events from 2008 through 2011 presented significant challenges to the company.*”

Ultimately, Aviawest was forced to restructure under the *Companies Creditor Arrangement Act* on October 24, 2011. Under the restructuring, all of Aviawest's assets were sold and most of Aviawest's properties came under the management of another company.

In its decision, the BCSC panel found that Aviawest distributed several million dollars' worth of Promissory Notes to at least 150 investors and, in so doing, contravened the *Securities Act*. The BCSC panel ordered that Aviawest be permanently cease traded.

The BCSC panel made no orders against the individuals named in its notice of hearing. It only issued an order against Aviawest. In its conclusion, the BCSC panel stated it did not feel the individual respondents posed a threat to investors or markets. The BCSC panel held that the [individual respondents'] conduct "*carries no whiff of dishonesty, of any intent to deceive or of any intent to profit by avoiding the rules.*" (para. 102)

### **The Licensee's Involvement**

The Licensee submitted that in early 2010, Aviawest's Chief Financial Officer approached him about selling Promissory Notes. In February 2010, the Licensee started selling Promissory Notes to Aviawest employees, and offered Aviawest Promissory Notes to his life insurance clients during annual reviews. The minimum investment was \$5,000.00. The Licensee used Know Your Client questionnaires to evaluate whether his clients could afford the investments and if they were suitable in the circumstances. The Licensee indicated that he typically met with clients three to five times before they invested, to ensure they were well informed of any risk associated with the product and that they were comfortable with the investment. Records obtained from the Agency support this submission.

Prior to October 2011, Aviawest made interest payments on the Promissory Notes consistently for the past 7 to 10 years. The Licensee has since been advised that there was no prospectus relating to the sale of the Promissory Notes filed with the BCSC.

According to the BCSC Settlement Agreement, the Agency sold a total of \$770,044.00 in Promissory Notes to 14 of its insurance clients. With the exception of one investment, commission received was 1%, resulting in approximately \$7,700.00 in commissions.

In December 2011, the BCSC contacted the Agency with regard to their involvement in distributing the Promissory Notes. Davis advised the Committee that she originally contacted legal counsel at the BCSC specifically to enquire about the changing rules with respect to exempt market products, and to ensure that their Aviawest sales were compliant. Davis then contacted Aviawest and recommended the principals get in touch with the BCSC to follow up.

The BCSC subsequently advised that Aviawest was under investigation. The Licensee provided the BCSC with all the records and information it requested. The Licensee did not hear anything further from the BCSC or Aviawest until he read about it in the newspaper sometime in the summer of 2012. The Licensee became registered as an exempt market dealer in the interim.

The Licensee submitted that Aviawest was a significant employer on Vancouver Island and he assumed that the investments were properly registered with the BCSC. Aviawest had legal counsel, and it was the Agency's understanding that the Aviawest securities were registered for sale to the public.

### **LICENSEES' POSITION**

The Licensee explained that it was never his intent to run afoul of securities legislation. On the contrary, it was the Licensee's partner, Davis, that originally contacted the BCSC to ensure that they were following all applicable rules. The BCSC investigation came as a serious shock.

The Licensee also provided Council with seven reference letters that clients wrote in support of his and Davis' conduct. Five of the seven references were clients with Aviawest who lost money as a result of Aviawest's failure.

### **ANALYSIS**

Council considered the Licensee's suitability in light of the BCSC Settlement Agreement and the Aviawest failure. Council accepted that the Licensee relied on Aviawest, as an established company with legal counsel, to conduct itself in accordance with securities legislation. Council took into account that the Licensee sought advice from the BCSC regarding compliance, and acknowledged that the Licensee received a relatively small commission from the sale of the Aviawest products.

Council noted that there was no indication in the BCSC Decision or Settlement Agreement that either the principals at Aviawest or the Licensee acted with any intention to deceive investors or regulators, and Council's review of Agency records did not identify any other concerns.

In light of the factors set out above, Council determined that the Licensee did not pose a risk to the public and was suitable to continue to hold an insurance licence.

## **INTENDED DECISION**

Pursuant to sections 231 and 236 of the *Financial Institutions Act* (the “Act”), Council made an intended decision to place a condition on the Licensee’s life and accident and sickness insurance licence requiring him to notify any MGA or insurer with whom he does business of the BCSC Settlement Agreement.

The intended decision will take effect on **February 25, 2014**, subject to the Licensee’s right to request a hearing before Council pursuant to section 237 of the Act.

## **RIGHT TO A HEARING**

If the Licensee wishes to dispute Council’s findings or its intended decision, the Licensee may have legal representation and present a case at a hearing before Council. Pursuant to section 237(3) of the Act, to require Council to hold a hearing, the Licensee must give notice to Council by delivering to its office written notice of this intention by **February 24, 2014**. A hearing will then be scheduled for a date within a reasonable period of time from receipt of the notice. Please direct written notice to the attention of the Executive Director.

If the Licensee does not request a hearing by **February 24, 2014**, the intended decision of Council will take effect.

Even if this decision is accepted by the Licensee, pursuant to section 242(3) of the Act, the Financial Institutions Commission still has a right to appeal this decision of Council to the Financial Services Tribunal (“FST”). The Financial Institutions Commission has 30 days to file a Notice of Appeal, once Council’s decision takes effect. For more information respecting appeals to the FST, please visit their website at [www.fst.gov.bc.ca](http://www.fst.gov.bc.ca) or contact them directly at:

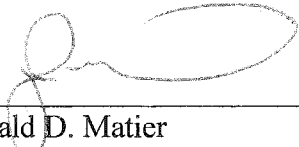
Financial Services Tribunal  
PO Box 9425 Stn Prov Govt  
Victoria, British Columbia  
V8W 9V1

Reception: 250-387-3464  
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Dated in Vancouver, British Columbia, on the **3<sup>rd</sup>** day of **February, 2014**.

For the Insurance Council of British Columbia



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Gerald D. Matier  
Executive Director

GM/fs