

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

and

THE INSURANCE COUNCIL OF BRITISH COLUMBIA (the “Council”)

and

Piotr Pawel (Peter) Lipski (the “Licensee”)

DECISION AND ORDER
UNDER SECTIONS 231 & 238 OF THE ACT

INTRODUCTION

Pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council conducted an investigation to determine whether the Licensee had complied with the requirements of the Act.

In particular, the investigation related to allegations that the Licensee:

1. made misrepresentations and failed to disclose material information;
2. submitted altered documents in support of his clients’ mutual fund applications which he knew or ought to have known were altered; and
3. made false or misleading statements to Council.

The investigation report was presented to Council at its September 16, 2008 meeting. At the conclusion of its meeting, Council determined that the matter should be disposed of in the manner set out below.

INTENDED DECISION 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, 236 and/or 241.1 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 a written notice of the action Council intends to take against the Licensee.

FACTS

Based on the information contained in the investigation report, Council made the following findings of fact:

Licensing History

1. the Licensee was first licensed as a Level 1 life insurance agent in 1992;
2. the Licensee is currently licensed as a life and accident and sickness insurance agent nominee with Entire Financial Services Ltd. (the “Agency”);
3. the Agency is currently licensed as a life and accident and sickness insurance corporate agent;

Chronology of Events

4. by letter dated April 2, 2008, the Licensee’s advisor contract with Transamerica Life Canada (“Transamerica”) was terminated;
5. in the course of an internal investigation of the Licensee’s accounts, AEGON Dealer Services Canada (“ADSCI”) determined that the Licensee submitted Canada Revenue Agency (“CRA”) Notice of Assessments (“NOA”) to AGF Trust that had been altered to reflect a higher income for the purposes of obtaining investment loans for his clients;
6. the ADSCI investigation material revealed that the Licensee misled or failed to disclose material information upon questioning by ADSCI’s Vancouver Compliance Manager, Al Ferguson (“Ferguson”), the Branch Manager, Enzo Calamo (“Calamo”), and ADSCI Head Office Compliance;

a. Failure to disclose material as required and altered client documents

7. the Licensee had nine mutual fund clients, all of whom purchased the Stone and Co. Flagship Growth and Income Fund (“Stone Fund”);
8. the Licensee’s application form for leveraged loans and mutual fund transactions were submitted with supporting documents such as CRA NOAs and T4 slips, pay stubs and letters from employers;
9. a number of discrepancies were found between the documents submitted to AGF Trust, and certified true copies of the originals. Examples of the discrepancies include the following:

- a. Andrezj Suprynowicz
 - 2006 NOA submitted by Licensee = \$121,874.00
 - 2006 NOA provided by client to Transamerica = \$41,715.00

- b. Janina Suprynowicz
 - 2006 NOA submitted by Licensee = \$73,420.00
 - Pay stubs submitted by Licensee = \$72,800.00 per year
 - 2006 NOA provided by client to Transamerica = \$14,226.00

- c. Zbigniew Szubski
 - 2006 T4 submitted by Licensee = \$87,400.00
 - Pay stubs submitted by Licensee = \$86,400.00 per year
 - 2006 NOA provided by client to Transamerica = \$20,072.00

- d. Grazia Stanecka (aka Stanecki)
 - 2006 T4 submitted by Licensee = \$68,400.00
 - Pay stubs submitted by Licensee = \$68,400.00 per year
 - 2006 NOA provided by client to Transamerica = \$6,808.00

- e. Krzysztof Stanecki
 - Pay stubs submitted by Licensee = \$86,400.00 per year
 - Tax summary submitted by Licensee = \$64,800.00 per year
 - 2006 NOA provided by client to Transamerica = \$11,395.00

- f. Viktoriya Harbuz
 - Pay stubs submitted by Licensee = \$72,000.00 per year
 - 2006 NOA provided by client to Transamerica = \$28,373.00

- g. Dariusz Blanchnio
 - Pay stubs submitted by Licensee = \$81,600.00 per year
 - 2006 NOA submitted by Licensee = \$89,142.00
 - 2006 NOA provided by client to Transamerica = \$24,044.00
 - Employment letter submitted by Licensee = \$88,000.00 per year (signed by the Licensee under the name Peter Kirsky)

- h. Bogumilia Blanchnio
 - 2006 NOA submitted by Licensee = \$57,248.00
 - Pay stubs submitted by Licensee = \$48,000.00 per year
 - Employment letter submitted by Licensee = \$55,000.00 per year
 - 2006 NOA provided by client to Transamerica = \$10,117.00

10. Bogumilia Blanchnio's employment letter from Vitamin Republic was purportedly signed by another client of the Licensee, Grazya Stanecka (aka Stanecki). The signature on the letter is different than the one on Grazya Stanecka's loan and new client applications;
11. Dariusz Blanchnio's employment letter from Pacific B Contractors was signed by a "Peter Kirsky". The contact information for "Peter Kirsky" included the same phone number as the Licensee's. An ADSCI Compliance Officer phoned that number to speak with Dariusz Blanchnio's employer and the Licensee answered as "Peter Kirsky". The Licensee, as "Peter Kirsky", stated that he used Stantax for his accounting, and that he prepared pay stubs based on a template provided to him by Stantax;
12. Stantax is the Licensee's own tax firm;
13. the Licensee submitted to Council that Dariusz Blanchnio was self-employed and could not provide documentation required by ADSCI/AGF to secure an investment loan, despite having the income;
14. the Licensee submitted that he was simply confirming his client's employment;
15. by e-mail dated March 3, 2008, the Licensee provided ADSCI with an explanation for the discrepancies between the NOAs submitted on behalf of his clients' loan applications and the original NOAs obtained directly from the clients;
16. the Licensee stated that Miroslav Wierciszewki ("Miroslav") had assisted Janina Suprynowicz, Bogumilia and Dariusz Blachnio, with finding a mortgage and business loan respectively. In the process, these clients had obtained documents from Miroslav which they then mistakenly provided to the Licensee in support of their mutual fund applications;
17. the clients were not aware of an individual named Miroslav and did not understand why an altered NOA had been produced;
18. pay stubs for the Licensee's mutual fund clients were formatted similarly. The Licensee initially submitted to ADSCI that his clients may have done it themselves using free software from CRA. This explanation was proven to be false;
19. the Licensee continued to mislead ADSCI investigators by suggesting that the similar pay stubs were generated by clients who used "Simply Accounting" software, and perhaps used the same bookkeeper since they are Polish;
20. many of the Licensee's clients had used the Licensee's own tax firm, Stantax, to prepare their taxes;
21. the Licensee did not concede this fact when confronted by the chief compliance officer of ADSCI. He continued to provide changing and conflicting explanations by claiming that

- the clients had been mistaken in naming himself and his firm as the person who did their income taxes;
22. he also suggested his wife was responsible for preparing the taxes, a direct contradiction of previous statements he made to investigators;
 23. the Licensee's wife has been licensed with Council since July 23, 2008. Her application to Council provides that she is on contract with Stantax and does bookkeeping for the firm for seven to ten hours a week;
 24. a review of the Licensee's life insurance business revealed that large lump sum transfers of the Licensee's accounts have been transferred into an account managed by his wife;
- b. False or misleading information to Council*
25. on June 6, 2008, the Licensee provided a written statement to Council in which he denied that he altered or falsified information on applications to AGF Trust;
 26. he repeated his suggestion that Miroslav was responsible for providing improper documents to his clients. According to the Licensee, Miroslav was probably in England now and no longer in Vancouver;
 27. as part of its investigation, Council staff made several inquiries but were unable to locate Miroslav;
 28. the Licensee's gross sales for 2007 was \$2,150,425.00. The Licensee earned \$121,875.00 in commissions for the Stone Fund product;
 29. the Licensee provided written submissions to Council which emphasized his commitment to client service and attributes some of the discrepancies in the documents to time pressure and an inadequately trained assistant;
 30. the Licensee admits to being negligent in the preparation of documents, blames himself for 'errors and omissions' and has expressed regret for the way he handled his AEGON accounts;
 31. the Licensee submitted to Council that he had produced some of the pay stubs on behalf of his clients' applications. He stated that he would forward the names of those clients for whom he had prepared pay stubs to Council. To date, Council has not received this information;
 32. the Licensee provided Council with form letters from his clients which state that all documents were prepared by the client and a third party, and not the Licensee.

ISSUES

Council identified the following issues:

1. Does the evidence show that the Licensee failed to act in a trustworthy and competent manner, in good faith and in accordance with the usual practice of the business of insurance in this matter by:
 - a) failing to disclose material information where required;
 - b) submitting fictitious documents to support his clients' mutual fund applications;
and
 - c) providing misleading statements to Council?
2. Is disciplinary or other action warranted in the circumstances?

LEGISLATION

Rule 3 of the Council Rules Licence Applications

Applicants to Satisfy Council

(2) If an applicant satisfies Council that the applicant:

- (a) has met all of the requirements set out in the Act and Council Rules;
- (b) is trustworthy, competent and financially reliable;
- (c) intends to publicly carry on business as an insurance agent, salesperson or adjuster in good faith and in accordance with the usual practice of the business of insurance;
- (d) has not in any jurisdiction:
 - (i) been refused, or had suspended or cancelled, an insurance licence or registration;
 - (ii) been convicted of an offence; or
 - (iii) been refused or had suspended or cancelled a licence or registration in any other financial services sector or professional field;for a reason that reveals the applicant unfit to be an insurance agent, salesperson or adjuster;
and
- (e) does not hold other business interests or activities which would be in conflict to the duties and responsibilities of a licensee, or give rise to the reasonable possibility of undue influence.

then the Council may consent to issuing a licence.

Section 231 of the Act

Part 7 – Administration of the Regulation of Financial Institutions

Division 2 – Insurance Council of British Columbia

Council may suspend, cancel or restrict licences and impose fines

(1) If, after due investigation, the council determines that the licensee or former licensee or any officer, director, employee, controlling shareholder, partner or nominee of the licensee or former licensee

(a) no longer meets a licensing requirement established by a rule made by the council or did not meet that requirement at the time the licence was issued, or at a later time,

(b) has breached or is in breach of a term, condition or restriction of the licence of the licensee,

(c) has made a material misstatement in the application for the licence of the licensee or in reply to an inquiry addressed under this Act to the licensee,

(d) has refused or neglected to make a prompt reply to an inquiry addressed to the licensee under this Act,

(e) has contravened section 79, 94 or 177, or

(e.1) has contravened a prescribed provision of the regulations,

then the council by order may do one or more of the following:

(f) reprimand the licensee or former licensee;

(g) suspend or cancel the licence of the licensee;

(h) attach conditions to the licence of the licensee or amend any conditions attached to the licence;

(i) in appropriate circumstances, amend the licence of the licensee by deleting the name of a nominee;

(j) require the licensee or former licensee to cease any specified activity related to the conduct of insurance business or to carry out any specified activity related to the conduct of insurance business;

(k) in respect of conduct described in paragraph (a), (b), (c), (d), (e) or (e.1), fine the licensee or former licensee an amount

(i) not more than \$20,000 in the case of a corporation, or

(ii) not more than \$10,000 in the case of an individual.

(2) A person whose licence is suspended or cancelled under this section must surrender the licence to the council immediately.

(3) If the council makes an order under subsection (1) (g) to suspend or cancel the licence of an insurance agent, or insurance adjuster, then the licences of any insurance salesperson employed

by the insurance agent, and of any employees of the insurance adjuster are suspended without the necessity of the council taking any action.

- (3.1) On application of the person whose licence is suspended under subsection (1) (g), the council may reinstate the licence if the deficiency that resulted in the suspension is remedied.
- (4) If an insurance agent's licence or an insurance adjuster's licence is reinstated, the licences of any insurance salespersons or employees of the insurance adjuster who
 - (a) were employed by that agent or adjuster at the time of the suspension, and
 - (b) remain employees of that agent or adjuster at the time of reinstatement, are also reinstated without the necessity of the council taking any action.

Section 236 of the Act

Part 7 – Administration of the Regulation of Financial Institutions

Division 2 – Insurance Council of British Columbia

- (1) The commission, superintendent or council, depending on which of them has the power to make the order, give the consent or issue the business authorization, permit or licence may
 - (a) impose conditions that the person considers necessary or desirable in respect of
 - (i) an order referred to in section 235 (1),
 - (ii) a consent referred to in section 235 (2),
 - (iii) a business authorization,
 - (iv) a permit issued under section 187 (1), or
 - (v) a licence issued under Division 2 of Part 6, and
 - (b) remove or vary the conditions by own motion or on the application of a person affected by the order or consent, or of the holder of the business authorization, permit or licence.
- (2) A condition imposed under subsection (1) is conclusively deemed to be part of the order, consent, business authorization, permit or licence in respect of which it is imposed, whether contained in or attached to it or contained in a separate document.
- (3) Except
 - (a) on the written application or with the written permission of the holder, or
 - (b) in the circumstances described in section 164, 231 or 249 (1),a power of the commission, superintendent or council under this Act to impose or vary conditions in respect of
 - (c) a business authorization is exercisable only on or before its issue date, or
 - (d) a permit under section 187 (1) or a licence under Division 2 of Part 6 is exercisable only on or before its issue date

with effect on and after that date.

Section 241.1 of the Act
Part 7 – Administration of the Regulation of Financial Institutions
Division 2 – Insurance Council of British Columbia

Assessment of Costs

- (1) If an order results from an investigation or hearing, the commission, the superintendent or the council may by order require the financial institution, licensee, former licensee or other person subject to the order to pay the costs, or part of the costs, of either or both of the following in accordance with the regulations:
 - (a) an investigation;
 - (b) a hearing.
- (2) Costs assessed under subsection (1)
 - (a) must not exceed the actual costs incurred by the commission, superintendent or council for the investigation and hearing, and
 - (b) may include the costs of remuneration for employees, officers or agents of the commission, superintendent or council who are engaged in the investigation or hearing.
- (3) If a person fails to pay costs as ordered by the date specified in the order or by the date specified in the order made on appeal, if any, whichever is later, the commission, superintendent or council, as the case may be, may file with the court a certified copy of the order assessing the costs and, on being filed, the order has the same force and effect and all proceedings may be taken on the order as if it were a judgment of the court.

Section 238 of the Act
Part 7 – Administration of the Regulation of Financial Institutions
Division 2 – Insurance Council of British Columbia

Summary Procedure – Superintendent or Council

- (1) If the superintendent acting in accordance with a delegation by the commission, or the council, depending on which of them has the power to make the order,
 - (a) intends to make an order under section 48 (2), 93 (1) or (2), 99 (2), 144 (3), 231 (1) (g), (h), (i) or (j), 244 (2), 245 (1), 275 or 277 (d) to (f), and
 - (b) considers that the length of time that would be required to hold a hearing would be detrimental to the due administration of this Act,then, despite section 237, the superintendent or council, as applicable, may make the intended order without giving a person directly affected by it an opportunity to be heard, but the superintendent or council, as soon as practicable after making the order, must deliver to that person
 - (c) a copy of the order and written reasons for it, and
 - (d) written notice of the person's rights under subsection (2).
- (2) A person directly affected by an order made under subsection (1) may, within 14 days of receiving a copy of the order,
 - (a) require a hearing before the superintendent or council, as applicable, by delivering written notice to the superintendent or council, or
 - (b) appeal the order to the tribunal.
- (3) Within a reasonable time after receiving written notice referred to in subsection (2) (a), the superintendent or council, as applicable, must hold the required hearing and following the hearing must confirm, revoke or vary the order.

ANALYSIS

Council found the above mentioned facts constituted a breach of section 231(1)(a) and (c) of the Act in that the Licensee failed to act in a trustworthy manner and in accordance with the usual practice of the business of insurance. Specifically, Council found that the Licensee made misrepresentations and failed to disclose material information and submitted altered documents in support of his clients' mutual fund applications which he knew or ought to have known were altered. The Licensee has admitted to insufficient care in the preparation of documents, but continues to deny any intent to mislead or provide inaccurate information to obtain loans on behalf of his clients. Council found the Licensee was not forthcoming throughout the investigative process. The explanations he submitted are not plausible in light of the evidence found in the investigations conducted by both ADSCI and Council. Council also determined the Licensee made material misstatements in reply to inquiries from Council, contrary to section 231(1)(c) of the Act. After repeatedly claiming that he did not know

who had produced the pay stubs for his clients, the Licensee eventually admitted that he had done some of them. He has not submitted further details on the names of those clients for whom he had prepared pay stubs to Council as promised. Instead, the Licensee provided Council with form letters from his clients which state that all documents were prepared by the client and a third party, and not the Licensee. Council did not find the letters to be of assistance in explaining the discrepancies in the documents submitted to AGF as against those obtained from the Licensee's clients.

The Licensee reiterated his theory that the likely cause of the 'mistake' was Miroslav. The fact that clients did not recognize the name, and Council was unable to locate the individual or confirm his existence, strongly undermine the Licensee's credibility. The Licensee's written submission to Council suggests that the Licensee does not view the inaccuracies as material or harmful. He maintains that he was acting in his clients' best interests and working quickly to sell a product he believed was well suited to their needs, and not on paperwork.

Council reviewed a number of previous decisions in which licensees acted in an untrustworthy manner and, as a result, were found to be unsuitable to hold an insurance licence. In the *Richard Jones* decision, the former licensee directed clients to sign incomplete or blank insurance documents, which he completed at a later date based on information he had previously obtained from them. The former licensee also fabricated a client's signature on correspondence to insurers. Council determined that the former licensee did this for convenience and not for personal benefit. The former licensee provided erroneous tax advice to clients on a subject matter which was beyond his level of expertise, and failed to advise a client about a delay in the transfer of the client's segregated fund investment from one insurer to another insurer, and then failed to revisit the fund transfer with the client before it was processed to ensure that it remained in keeping with the client's interests.

The former licensee recommended and facilitated a short term approach to clients' segregated fund investments by procuring multiple transfers of their fund investments, in order to generate commissions and contrary to the interests of the client. The fund transfers were procured on a deferred sales charge basis from which he earned greater commissions, to the disadvantage of the clients given that other less expensive sales charge options were available. The former licensee recommended and facilitated the replacement of an insurance policy for a client without conducting sufficient fact-finding and needs analysis to properly assess the client's circumstances, goals and needs; without making full and fair disclosure of all material facts about the proposed insurance to enable the client to make an informed decision; and based on a recommendation that was not reasonable in the circumstances.

Council identified a pattern of behaviour whereby the former licensee eschewed his duties and obligations as an insurance agent. Council determined the former licensee had failed to act in a trustworthy and competent manner, in good faith and in accordance with the usual practice of the business of insurance and ordered that he be suspended for nine months; fined \$10,000.00; he attend educational courses as a condition of reinstating his licence; and assessed the costs of the investigation.

In the *Larry James Clark and Clark Thomas Insurance Services* decision, the former licensee and agency had their licences cancelled for a minimum period of five years and received a total fine of \$6,000.00. Clark solicited sales of shares for a company of which he was a director, for personal benefit and to the detriment of clients. He made misrepresentation to clients in order to compel them to purchase these shares, failed to conduct a needs analysis for each client to determine the appropriateness of the investments and he allowed one client to surrender two life insurance policies, the proceeds of which were used to purchase shares in the company. Council determined that the former licensee's actions directly and knowingly prejudiced clients. He put his own interests ahead of others and arguably to their detriment.

In the *Jocelyn Fenelon* decision, Council found that the former licensee had misused ICBC insurance validation decals for personal use on his own vehicles to leave the appearance they were insured when they were not. The former licensee also made a material misstatement in reply to an inquiry from Council. The former licensee admitted he had not been forthright and Council concluded that he had attempted to distort the truth when replying to questions asked of him during the investigation. The former licensee was complicit in the backdating of an ICBC Autoplan policy in order to circumvent a violation ticket that had been issued to him by the RCMP. Council found the former licensee's conduct to be particularly egregious given his position as an agency nominee at the time.

Based on the foregoing cases, Council determined the Licensee's misconduct warranted a significant penalty. The Licensee is the nominee of the Agency, and, as such, has supervisory and managerial responsibilities. Given his position, Council found the actions of the Licensee particularly unacceptable. Although the misconduct relates to the sale of a securities product and not the Licensee's life insurance practice, Council found the Licensee's actions demonstrated he lacked the requisite trustworthiness to qualify as a suitable candidate to hold an insurance licence. The Licensee had admitted to errors in the preparation of his clients' applications for mutual funds which he attributes to haste and lack of experience. Council found that the Licensee does not appreciate the degree of impropriety of impersonating an employer, and submitting fictitious documents to support the purchase of a securities product or receipt of a loan.

Council did not find the Licensee to be forthcoming during the investigative process. He provided conflicting, unsubstantiated and self-serving explanations. As a result, Council did not find the Licensee's evidence to be clear, cogent or compelling.

In view of these findings, Council concluded that swift action was necessary to protect public interest and maintain confidence in the industry. Council was conscious of the fact that the

Licensee's misconduct was not a direct breach of Council rules relating to the sale of an insurance product, but concluded that an individual who was prepared to engage in such activity would not hesitate to do so in an insurance transaction.

The Licensee's conduct indicates a disregard for rules and regulations that expose the public to risk that cannot be remedied by education, supervision or other licence conditions. Keeping in mind the general principles of sentencing, Council concluded that its disposition must be sufficient to maintain public confidence in the industry, punish the Licensee proportionately, and sufficiently deter other agents from engaging in this type of behaviour.

INTENDED DECISION

Pursuant to sections 231, 236 and 241.1 of the Act, Council intends to order the following:

1. the Licensee's life and accident and sickness insurance agent licence be cancelled for a minimum of five years from the date Council's order takes effect;
2. if the Licensee seeks to re-apply after the five year minimum, the Licensee has to go before an Investigative Review Committee to determine if he is suitable to hold a licence;
3. the Licensee be liable to pay the costs of Council's investigation into this matter, assessed at \$4,393.75.

The intended decision will take effect on **November 3, 2008**, subject to the Licensee's right to request a hearing before Council pursuant to section 237 of the Act.

Council found the Licensee's submission and conduct demonstrated a disregard for the requirements of the Act. The Licensee supported his clients' applications for leveraged mutual funds with altered tax statements, fictitious letters from employers, and falsely produced pay stubs. The conduct of the Licensee that led to his termination from Transamerica is outside of the Licensee's insurance practice. However, Council identified a significant similarity between leveraged funds and the insurance industry. In particular, Council found that the Licensee's conduct in the securities side of the business revealed how much potential harm the Licensee could cause if he conducted himself in the same manner on behalf of his insurance clients. Council's Code of Conduct explicitly states that trustworthiness extends beyond insurance business activities to include conduct in other areas that may call into question a licensee's suitability to hold an insurance licence.

Council found that the Licensee represents a significant continuing risk to the public by virtue of untrustworthiness and incompetence. Council further concluded that the time required to hold a hearing could be detrimental to the protection of the public. As a result, Council determined that immediate action pursuant to section 238 of the Act was appropriate.

DECISION PURSUANT TO SECTION 238 OF THE ACT

WHEREAS the Licensee is currently licensed as a life and accident and sickness insurance agent;

AND WHEREAS Council conducted an investigation pursuant to section 232 of the Act into allegations that the Licensee:

1. made misrepresentations and failed to disclose material information;
2. submitted altered documents in support of his clients' mutual fund applications which he knew or ought to have known were altered; and
3. made false or misleading statements to Council.

AND WHEREAS Council has determined on the basis of its investigation that the Licensee is not trustworthy and cannot publicly carry on the business of insurance in good faith and in accordance with the usual practice and poses a continuing and imminent risk of serious harm to the public;

AND WHEREAS Council considers it to be in the public interest to cancel the Licensee's licence pursuant to section 231 of the Act;

AND WHEREAS Council considers the length of time required to hold a hearing would be detrimental to the due administration of the Act;

NOW THEREFORE Council orders the Licensee's licence is cancelled pursuant to sections 231 and 238, effective the date of this order;

TAKE NOTICE that pursuant to section 238 of the Act, the Licensee has the right to require a hearing on this order before Council by delivering written notice within 14 days of receipt of this order to Council at Suite 300 – 1040 West Georgia Street, Vancouver, B.C., V6E 4H1; alternatively, the Licensee may appeal this order to the Financial Services Tribunal.

Dated in Vancouver, British Columbia on the 9th day of October, 2008.

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Ken Hawley, BComm FLMI CFP CLU ChFC
Chairperson, Insurance Council of British Columbia