

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

and the

INSURANCE COUNCIL OF BRITISH COLUMBIA
 (“Council”)

and

TROY WOTHERSPOON INSURANCE SERVICES LTD.
(the “Agency”)

and

LUNG HWA (ANDY) TAN
(the “Licensee”)

and

TROY JOHN WOTHERSPOON
(the “Nominee”)

ORDER

As Council made an intended decision on March 10, 2020, pursuant to sections 231, 236, and 241.1 of the Act; and

As Council, in accordance with section 237 of the Act, provided the Agency, the Licensee and the Nominee with written reasons and notice of the intended decision dated April 3, 2020; and

As the Agency, the Licensee and the Nominee have not requested a hearing of Council’s intended decision within the time period provided by the Act;

Under authority of sections 231, 236, and 241.1. of the Act, Council orders that:

1. The Licensee is fined \$1,500, due and payable by August 10, 2020;
2. The Nominee is fined \$1,500, due and payable by August 10, 2020;
3. The Agency is fined \$2,000, due and payable by August 10, 2020;
4. The Agency is assessed investigative costs of \$2,712.50, due and payable by August 10, 2020;
5. The Licensee and the Nominee are required to complete the Council Rules Course by August 10, 2020;

Order

Lung Hwa (Andy) Tan, Troy John Wotherspoon, Troy Wotherspoon Insurance Services Ltd.

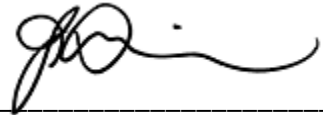
LIC-169202C104453R1, LIC-62493C120044R1, LIC-9023832C113470R02, COM-2018-00197

May 11, 2020

Page 2 of 2

6. The Licensee and the Nominee are required to complete an errors and omissions course by August 10, 2020;
7. A condition is imposed on the Licensee's general insurance licence that failure to pay the fine or complete the course requirements by August 10, 2020 will result in the automatic suspension of that licence, and the Licensee will not be permitted to complete the 2021 annual filing until such time as the Licensee has paid the fine in full and completed the course requirements;
8. A condition is imposed on the Nominee's general insurance licence that failure to pay the fine or complete the course requirements by August 10, 2020 will result in the automatic suspension of that licence, and the Nominee will not be permitted to complete the 2021 annual filing until such time as the Nominee has paid the fine in full and completed the course requirements; and
9. A condition is imposed on the Agency's general insurance licence that failure to pay the fine and investigative costs by August 10, 2020 will result in the automatic suspension of the Agency's licence, and the Agency will not be permitted to complete the 2021 annual filing until such time as the Agency has paid the fine and investigative costs in full.

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

TROY WOTHERSPOON INSURANCE SERVICES LTD.
(the “Agency”)

and

LUNG HWA (ANDY) TAN
(the “Licensee”)

and

TROY JOHN WOTHERSPOON
(the “Nominee”)

1. Pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council conducted an investigation to determine whether the Licensee, Nominee, and Agency acted in compliance with the requirements of the Act, Council Rules, and Code of Conduct, and in particular whether the Licensee, Nominee, and/or Agency had breached sections 3 (“Trustworthiness”), 4 (“Good Faith”), 5 (“Competence”), and/or 7 (“Usual Practice: Dealing with Clients”) of the Code of Conduct in relation to a failure to bind a storage insurance policy that occurred in or around April 2018.
2. As part of Council’s investigation, on January 21, 2020, a Review Committee (the “Committee”) met with the Licensee and Nominee to discuss the investigation. Prior to the meeting, an investigation report prepared by Council staff was distributed to the Committee for review and to the Licensee, Nominee, and Agency for review and response. A discussion of the investigation report and submissions provided by the Licensee, Nominee, and Agency took place at the meeting. Having reviewed all relevant materials and discussed the matter, the Committee prepared a report for Council.
3. The Committee’s report, along with the aforementioned investigation report, were reviewed by Council at its March 10, 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, Nominee, and Agency of the action it intends to take under sections 231, 236 and 241.1 of the Act before taking any such action. The Licensee, Nominee, and Agency 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, Nominee, and Agency.

FACTS

5. The Licensee has been licensed with Council since 2007 and holds both a Level 2 general insurance agent ("Level 2 Agent") licence and a life and accident and sickness insurance agent ("Life Agent") licence. The Nominee has been licensed with Council since 1987 and holds a Level 3 general insurance agent ("Level 3 Agent") licence.
6. In March 2018, a married couple who were clients of the Licensee (the "Complainants") informed the Licensee that they were in the process of moving their residence. The Complainants received insurance advice from the Licensee in relation to the move and submitted an application for a storage insurance policy to the Agency on or around March 23, 2018.
7. In the following days, the Agency received a quote from the insurer (the "Insurer") and provided it to the Complainants, who instructed the Licensee to move forward with the policy, and gave him their credit card information for payment. On April 1, 2018, the Licensee put the application on the desk of a colleague, with a sticky note placed on top of it that contained the Complainants' credit card information along with a handwritten request to bind the quote and process the payment. The Licensee did not speak with the colleague, who was out of her office at the time, and did not follow up with her about the matter. The Licensee also did not enter the Complainants' information into his "new business" sheet.
8. On Friday, May 18, 2018, the Licensee was contacted by the Complainants, who wanted to file a claim in regards to a theft of their property from the storage facility in which it had been held. The Licensee searched for the storage policy at the Agency' office on the following day, and discovered that the application was still on his colleague's desk, and had never been bound or had its payment processed.
9. On Monday, May 21, 2018, the Agency contacted the Insurer and was informed that the Insurer had not received instructions to bind the policy. The Licensee did not advise the

Complainants that the policy had not been bound, as he did not want to alarm them while the Agency looked for potential ways to rectify the matter.

10. The Nominee began to take action at this point, holding discussions with the Insurer in an effort to see whether they would accommodate binding of the policy. After several weeks passed, the Insurer informed the Nominee that they would not bind and backdate the policy, or adjust the loss. The Nominee then reached out to an independent adjuster (the “Adjuster”) with the intention of having them adjust the claim. The Adjuster reportedly advised the Nominee that it can be difficult to obtain coverage under a storage policy when the loss is associated with cut locks, and suggested that the Agency reach out to the agency and insurer (the “Homeowner’s Policy Insurer”) who had previously provided homeowner’s coverage to the Complainants.
11. Ultimately, after reporting the claim to them on June 28, 2018, the Nominee was able to convince the Homeowner’s Policy Insurer to reinstate and backdate the Complainants’ homeowner’s policy. The Agency paid the premiums required to reinstate the homeowner’s policy. The Homeowner’s Policy Insurer paid the Complainants the policy limit on October 16, 2018.
12. In his discussion with the Committee, the Licensee admitted that he had been disorganized at the time when he prepared the Complainants’ application due to being temporarily without an assistant. The Committee also asked the Licensee about how familiar he had been with storage insurance policies at the relevant time, and the Licensee explained that he had only processed one or two storage policies in the past. In response to further questions from the Committee, the Licensee reported that he had not explained the distinction between theft and burglary to the Complainants.
13. The Committee asked the Nominee as to when, if ever, he had been upfront with the Complainants about the fact that the storage insurance policy had not been bound. It was pointed out to the Nominee that emails sent by the Complainants on June 27 and 28, 2018, made it appear that they were still unaware on those dates of the Licensee/Agency having made an error that resulted in the storage policy not being bound. The Nominee told the Committee that he had explained the mistake to one of the Complainants over the phone, but had not been understood.

ANALYSIS

14. Council’s opinion is that this matter involved review of three main questions: 1) the seriousness of the Licensee’s error in failing to bind the storage insurance policy; 2) the appropriateness of the actions the Nominee took when dealing with the error; and 3)

whether a lack by the Agency of appropriate administrative policies contributed to the incident.

15. The Licensee acknowledged that he was responsible for the failure to bind the policy, explaining that he was working very hard at the time, and that his assistant had recently left. The Licensee failed to document his preparation of the application on his “new business” sheet as should have been done, admitting that he allowed the matter to “fall through the cracks.” The Licensee’s documentation regarding his dealings with the Complainants contained only limited information. Council has concluded, therefore, that there were significant deficiencies in the Licensee’s record keeping practices. Further, although it did not contribute to the failure to bind the policy, Council has concerns about the Licensee’s lack of familiarity with the terms of the storage policy he proffered to the Complainants, and particularly with his failure to discuss the distinction between theft and burglary, which was an important detail of the policy that Council believes should have been communicated to the Complainants.
16. Council is of the opinion that the Nominee had made a sincere effort to fix the problem caused by the Licensee and Agency’s failure to bind the storage insurance policy, and acknowledges that the Nominee, by convincing the Homeowner’s Policy Insurer to reinstate and backdate the Complainants’ homeowner’s policy, was able to procure a significant sum for the Complainants that they likely would not have received had the storage insurance policy been bound as intended. Nevertheless, the Nominee’s actions were overshadowed by his failure to frankly communicate with the Complainants as to the error that occurred. Emails sent by the Complainants on June 27 and 28, 2018 (over five weeks after the Complainants made their claim) indicate that the Complainants were still unaware that a mistake had resulted in the storage policy not having been bound.
17. Although the Nominee told the Committee that he had communicated to the Complainants what had occurred, and the Complainants had not understood, Council concludes that the Nominee had not been appropriately forthcoming about the mistake that had resulted in the storage policy not being bound. The Nominee should have communicated clearly with the Complainants about the error from the outset; instead, the evidence suggests that the Nominee avoided divulging information about the error over the course of several weeks. The Nominee’s claim that he told the Complainants about the Agency’s failure to bind the policy is not supported by the written communications provided to Council, but even if it is true, Council’s opinion is that the Nominee had failed to communicate the facts to [REDACTED] with appropriate clarity.
18. Council is somewhat troubled, based on statements made by the Licensee, about the Agency’s approach to privacy matters and the handling of sensitive client information. The

Licensee informed the Committee that he had written the Complainants' credit card information on a yellow sticky note and attached it to their application, before placing the note and application on his colleague's desk without checking up again. When questioned by the Committee further, as to what had ultimately happened to the sticky note containing the Complainants' credit card information, the Licensee and the Nominee were unable to convincingly report that it had been shredded. Council considers this information to reflect an inappropriately casual approach within the Agency towards the handling of client information.

19. Additionally, Council took into consideration the fact that both the Licensee and the Nominee had been issued a reminder letter by Council dated May 18, 2018, which had been received by both individuals shortly after the Complainants made their claim, and the discovery that the storage policy had not been bound. Although the reminder letter was issued in regards to an unrelated matter, it nevertheless provided specific reminders to the Licensee and the Nominee about the importance of proper record keeping and client notification policies, and, more generally, reminded both of their duties as set out in the Council Rules and Code of Conduct. Council's opinion is that reception of the May 18, 2018 reminder letter reflected worse on the Nominee than on the Licensee, as at the time the letter was received the issue involving the Complainants was being dealt with primarily by the Nominee.
20. Council also has concerns that the Agency lacks appropriate procedures and commitment to best practices. In particular, it did not appear, based on the information provided to the Committee by the Licensee and Nominee, that the mistake involving the Complainants' storage policy had stimulated the development of new policies at the Agency or induced changes to work practices so as to avoid similar incidents occurring in the future. For instance, although the Licensee and Nominee made reference to the Agency having recently established an electronic information storage system, that system had been in place during the material time period but went unused by the Licensee. Further, the Committee was concerned that the Agency did not have appropriate procedures in place for documenting telephone conversations with clients.
21. In determining a disposition in this matter, two precedent cases were reviewed and considered by Council.
22. *Tina Suzanne Jang/The Whistler Shoppe LTD. dba The Whistler Insurance Shoppe and Peggy Kathleen Johannson (April 2016)* concerned an error occurring at an agency that resulted in a client's insurance policy not being renewed upon expiration. Due to a change in a program, the agency had a list of policies which had to be re-marketed with a new insurer

and manually renewed. The licensee responsible for processing the renewals failed to complete the renewal for a client who subsequently suffered a loss. Council concluded that the licensee's failure was an administrative error that did not reflect on her overall ability to act competently and in accordance with the usual practice of the business of insurance. Council was more concerned by a lack of proper administrative and financial procedures being in place at the agency, and with the nominee's failure to provide appropriate oversight. Council required the licensee to complete an errors and omissions course. Council fined the nominee \$2,500, required her to complete the Level 3 seminar, and put a condition on her licence limiting her to being the nominee for a maximum of two agencies, unless there is a full-time Level 3 Agent in regular attendance at every agency for which she is a nominee. Finally, Council fined the agency \$5,000, assessed it investigative costs of \$1,112.50, and required the agency to have a full-time Level 3 Agent in regular attendance.

23. Kanwar Yuvraj Walia (December 2015) concerned an error whereby a licensee failed to submit the documentation necessary to bind an insurance policy. The agency accepted payment from a client, and then issued a Certificate of Insurance before coverage was bound, and without the insurer's authorization. About one month later, the licensee realized that documentation had not been submitted and emailed the insurer to request that the policy be issued, with documents to follow. However, the insurer had no records of having received the required documents, and as such coverage was never bound and the client went uninsured. Council concluded that the licensee's failure to bind the policy was an administrative error, but noted that the licensee had had multiple opportunities to ensure coverage was placed for the client. Council's opinion was that a lack of appropriate administrative and financial policies at the agency contributed to the error, and that the agency and nominee were both responsible for these shortcomings. A mitigating factor, however, was that the agency took action when the error was identified and has since taken steps to modernize its processes. Council fined the licensee \$2,000, reprimanded the nominee, fined the agency \$2,000, and assessed investigative costs of \$1,625 to the agency.
24. Council's conclusion is that the Licensee, Nominee, and Agency should each be fined, and that the Licensee and Nominee should both be required to complete the Council Rules Course and an errors and omissions course. The Licensee strayed from usual practices in his dealings with the Complainants, which included a failure to properly document his business, not fully comprehending the storage insurance policy he was selling, not following up on the file after leaving it with his colleague, and being incautious with credit card information. The Nominee showed a lack of good faith towards the Complainants by failing to properly disclose to them that an error on the Agency's part had resulted in their

policy not being bound. Finally, Council considers the Agency itself to be culpable due to it having a lack of appropriate administrative procedures in place that could have prevented the error from occurring.

INTENDED DECISION

25. Pursuant to sections 231, 236, and 241.1 of the Act, Council made an intended decision to:

- i. Fine the Licensee \$1,500, to be paid within 90 days of Council's order;
- ii. Fine the Nominee \$1,500, to be paid within 90 days of Council's order;
- iii. Fine the Agency \$2,000, to be paid within 90 days of Council's order;
- iv. Assess the Agency investigative costs of \$2,712.50, to be paid within 90 days of Council's order;
- v. Require the Licensee and Nominee to complete the Council Rules Course within 90 days of Council's order;
- vi. Require the Licensee and Nominee to complete an errors and omissions course within 90 days of Council's order;
- vii. Impose a condition on the Licensee's general insurance licence that failure to pay the fine or complete the course requirements within 90 days of Council's order will result in the automatic suspension of that licence, and the Licensee will not be permitted to complete annual filing until such time as the Licensee has paid the fine in full and completed the course requirements;
- viii. Impose a condition on the Nominee's general insurance licence that failure to pay the fine or complete the course requirements within 90 days of Council's order will result in the automatic suspension of that licence, and the Nominee will not be permitted to complete annual filing until such time as the Nominee has paid the fine in full and completed the course requirements; and
- ix. Impose a condition on the Agency's general insurance licence that failure to pay the fine and investigative costs within 90 days of Council's order will result in the automatic suspension of the Agency's licence, and the Agency will not be permitted to complete

Intended Decision

Lung Hwa (Andy) Tan, Troy John Wotherspoon, Troy Wotherspoon Insurance Services Ltd.

LIC-169202C104453R1, LIC-62493C120044R1, LIC-9023832C113470R02, COM-2018-00197

April 3, 2020

Page 8 of 8

annual filing until such time as the Agency has paid the fine in full and investigative costs in full.

26. Subject to the right of the Licensee, Nominee, and Agency to request a hearing before Council pursuant to section 237 of the Act, the intended decision will take effect after the expiry of the hearing period.

RIGHT TO A HEARING

27. If the Licensee, Nominee, or Agency wishes to dispute Council's findings or its intended decision, the Licensee, Nominee, or Agency 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, Nominee, or Agency must give notice to Council by delivering to its office written notice of this intention **within fourteen (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, Nominee, or Agency do not request a hearing **within fourteen (14) days of receiving this intended decision**, the intended decision of Council will take effect.

28. Even if this decision is accepted by the Licensee, Nominee, and Agency, pursuant to section 242(3) of the Act, the British Columbia Financial Services Authority ("BCFSA") still has a right to appeal this decision of Council 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 <http://www.fst.gov.bc.ca/pdf/guides/ICGuide.pdf>.

Dated in Vancouver, British Columbia, on the 3rd day of April, 2020.

For the Insurance Council of British Columbia



Janet Sinclair
Executive Director