

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

and

The INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

and

JONATHAN KAI IP CHENG
(the "Former Nominee")

ORDER

As Council made an intended decision on October 15, 2013, pursuant to sections 231 and 236 of the Act; and

As Council, in accordance with section 237 of the Act, provided the Former Nominee with written reasons and notice of the intended decision dated October 29, 2013; and

As the Former Nominee 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. The Former Nominee is fined \$2,500.00.
2. A condition is imposed on the Former Nominee's general insurance licence that requires him to pay the above-ordered fine no later than **February 19, 2014**. If the Former Nominee does not pay the ordered fine in full by this date, the Former Nominee's general insurance licence is suspended as of **February 20, 2014**, without further action from Council and the Former Nominee will not be permitted to complete any annual filing until such time as the ordered fine is paid in full.

This order takes effect on the **19th day of November, 2013**.



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

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

respecting

JONATHAN KAI IP CHENG
(the “Former Nominee”)

INTRODUCTION

Pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council conducted an investigation into allegations that the Former Nominee failed to ensure licensed employees of Hanin Insurance Services Inc. (the “Agency”), an insurance agency he was authorized to represent as a nominee, were properly supervised and operating in accordance with the conditions and restrictions on their licences.

As part of Council’s investigation, on September 9, 2013, an Investigative Review Committee (the “Committee”) met with the Former Nominee to discuss the allegations. The Agency’s current nominee (the “Current Nominee”), one of the Agency’s Level 2 general insurance agents (the “Level 2 Agent”), and a Level 1 general insurance salesperson from the Agency (the “Licensee”), also attended the meeting.

The Committee was comprised of one voting member and two non-voting members of Council. Prior to the Committee meeting, an investigation report was distributed to the Committee and the Former Nominee for review. A discussion of this report took place at the meeting and the Former Nominee was provided an opportunity to clarify the information contained therein and make further submissions. Having reviewed the investigation materials and after discussing this matter with the Former Nominee, the Committee made a recommendation to Council as to the manner in which this matter should be disposed.

A report setting out the Committee’s findings and recommended disposition, along with the aforementioned investigation report, was reviewed by Council at its October 15, 2013 meeting. At the conclusion of its meeting, Council accepted the Committee’s recommended disposition and 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 Former Nominee of the action it intends to take under sections 231 and 236 of the Act before taking any such action. The Former Nominee 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 Former Nominee.

FACTS

The Agency has held a corporate general insurance licence with Council since July 2006. During the material time in this matter, the Former Nominee was the Agency's nominee. He has been licensed as Level 3 general insurance agent since 1995. The Licensee, who was involved in this matter, was a Level 1 general insurance salesperson ("Salesperson") at the Agency during the material time and had been licensed in this capacity for approximately two years.

With the assistance of his supervisor at the Agency (the Level 2 Agent), the Licensee procured commercial insurance for a sushi restaurant (the "Restaurant") in March 2010. In placing the insurance, the Licensee attended the Restaurant unaccompanied on a few occasions to gather information about the risk, take pictures of the Restaurant, and discuss the cost of the insurance with the Restaurant's owner. This was done at the direction of the Level 2 Agent.

In December 2010, the Restaurant suffered a loss and made a claim for coverage under the commercial insurance policy. After it was determined that part of the loss would not be covered, a concern arose that the Licensee failed to place adequate coverage for the Restaurant, and also that he may have misled the Restaurant about the extent of coverage when discussing the claim with the Restaurant's owner.

The Licensee stated he had worked outside the Agency office on a number of occasions, contrary to a condition on his licence that prohibits Salespersons from engaging in insurance activities outside an agency office.

In response to the Licensee's conduct, the Current Nominee and the Former Nominee stated that while the Agency does not have a formal training manual on proper practices and procedures, Salespersons authorized to represent the Agency are reminded upon their hiring about the conditions on their licences, including that they cannot engage in insurance business outside the office, except to conduct Insurance Corporation of British Columbia roadrunner service, as permitted.

The Level 2 Agent indicated that when he procures insurance coverage for clients, he has, on occasion, directed an Agency Salesperson to attend the site of a risk to obtain more information. He did not provide specific details on what type of information would be gathered, or if the Salesperson was expected to meet with a client when outside the office. However, he indicated he was unaware that Salespersons could not engage in this type of activity outside the office. Similarly, the Former Nominee understood Salespersons could go outside the office unaccompanied to take pictures of risks.

The Current Nominee and the Former Nominee acknowledged they should not have allowed the Agency's Salespersons to conduct insurance activity outside the office on behalf of the Agency. As a consequence, the Agency is now encouraging their Salespersons to take the required education to upgrade their licences, and more Level 2 general insurance agents are being hired.

ANALYSIS

Council reviewed the information pertaining to the placement of coverage for the Restaurant and the subsequent insurance claim. Council determined, based on the information before it, that it could not be established that the Licensee misled the Restaurant, either at the time insurance coverage was placed or during the claims process. However, it noted situations such as this reinforce the importance of ensuring that Salespersons are adequately supervised and conduct insurance activities in compliance with their licence conditions and restrictions.

However, the information provided by the Former Nominee, the Current Nominee, and the Level 2 Agent led Council to conclude that the Licensee was not being properly trained or monitored, and this was likely the case with other Salespersons authorized to represent the Agency. In particular, proper supervision would have prevented any confusion within the Agency about the limitations on a Salesperson licence and the Licensee would have been told that he could not engage in insurance activity outside its office in the manner that occurred.

While Council was satisfied the Level 2 Agent was directly involved in placing the commercial insurance for the Restaurant, it did not believe this mitigated the fact that by allowing the Licensee to attend at the Restaurant to gather information about the risk and discuss insurance coverage with the Restaurant's owner, the Licensee engaged in insurance business outside the Agency's office, contrary to a licence condition.

Council concluded that the Former Nominee did not adequately fulfill his role as the Agency's nominee, which required that he ensure the Licensee was properly supervised and operating in accordance with the conditions on his Salesperson licence. The licence condition which prohibits a Salesperson from carrying on insurance business outside an insurance agency's office has been in place for decades and is fundamental to the protection of the public. Had the Former Nominee been acting in a competent manner and in accordance with the usual practice of the business of insurance, such a breach would not have occurred.

Council determined that a fine was warranted against the Former Nominee as a means of deterring similar situations from arising again and to stress to other insurance nominees the importance of discharging their duties, such as ensuring there is adequate and proper supervision of their employees.

In recommending an appropriate fine in this matter, Council considered the *R. Atwal* case, which involved a nominee who failed to fulfill her responsibility to adequately supervise an insurance agency. In that case, Atwal was unaware of a culture of misconduct that existed at one of her agency's branch offices which was, in effect, being operated by the agency's owners. Council concluded that while Atwal was not involved in the misconduct at the branch office, her lack of knowledge about the activities at the branch office demonstrated her failure to properly execute her supervisory responsibilities. She was fined \$5,000.00.

In comparing the Former Nominee's conduct to the misconduct in *R. Atwal*, Council noted that the *R. Atwal* case involved a culture of misconduct within an insurance agency, whereas in the matter at hand, the inadequate level of supervision was isolated to one particular area of the Agency's business.

INTENDED DECISION

Pursuant to sections 231 and 236 of the Act, Council made an intended decision to fine the Former Nominee \$2,500.00.

The Former Nominee is advised that should the intended decision become final, the fine will be due and payable within 90 days of the date of the order. In addition, failure to pay the fine within the 90 days will result in the automatic suspension of the Former Nominee's general insurance licence and the Former Nominee will not be permitted to complete any annual filing until such time as the fine is paid in full.

The intended decision will take effect on **November 19, 2013**, subject to the Former Nominee's right to request a hearing before Council pursuant to section 237 of the Act.

RIGHT TO A HEARING

If the Former Nominee wishes to dispute Council's findings or its intended decision, the Former Nominee 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 Former Nominee must give notice to Council by delivering to its office written notice of this intention by **November 18, 2013**. 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 Former Nominee does not request a hearing by **November 18, 2013**, the intended decision of Council will take effect.

Even if this decision is accepted by the Former Nominee, 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 or contact them directly at:

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

Reception: 250-387-3464
Fax: 250-356-9923

Email: FinancialServicesTribunal@gov.bc.ca

Dated in Vancouver, British Columbia, on the **29th day of October, 2013**.

For the Insurance Council of British Columbia



Gerald D. Matier
Executive Director

GM/cp