

In the Matter of the

FINANCIAL INSTITUTIONS ACT, RSBC 1996, c.141

(the "Act")

and the

INSURANCE COUNCIL OF BRITISH COLUMBIA

("Council")

and

ZUO CHUN (REMY) XU

(the "Licensee")

ORDER

As Council made an intended decision on June 13, 2023, pursuant to sections 231, 236, and 241.1 of the Act; and

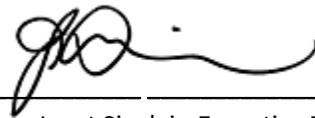
As Council, in accordance with section 237 of the Act, provided the Licensee with written reasons and notice of the intended decision dated July 4, 2023; and

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, 236, and 241.1 of the Act, Council orders that:

- 1) The Licensee be fined \$1,000, to be paid by October 30, 2023;
- 2) The Licensee be assessed Council's investigation costs in the amount of \$1,662.50, to be paid by October 30, 2023; and
- 3) A condition be imposed on the Licensee's life and accident and sickness insurance agent ("Life Agent") licence that failure to pay the fine and investigation costs in full by October 30, 2023 will result in the automatic suspension of the Licensee's Life Agent licence, and the Licensee will not be permitted to complete the Licensee's 2025 annual licence renewal until such time as the Licensee has complied with the conditions herein.

This order takes effect on the **1st day of August, 2023**



Janet Sinclair, Executive Director
Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA

(“Council”)

respecting

ZUO CHUN (REMY) XU

(the “Licensee”)

1. 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, Council Rules, and Code of Conduct, and in particular to determine whether the Licensee breached section 3 (“Trustworthiness”), section 4 (“Good Faith”), section 5 (“Competence”) and section 7 (“Usual Practice: Dealing with Clients”) of the Code of Conduct by signing as a witness to the Acknowledgement of Policy Received form, when the Licensee did not witness the insured sign the form.
2. On March 28, 2023, as part of Council’s investigation, a Review Committee (the “Committee”) comprised of Council members met with the Licensee and the Licensee’s legal counsel via video conference to discuss the investigation. An investigation report prepared by Council staff was distributed to the Committee, the Licensee and the Licensee’s legal counsel prior to the meeting. A discussion of the investigation report took place at the meeting and the Licensee was given an opportunity to make submissions and provide further information. Having reviewed the investigation materials and discussed the matter with the Licensee, the Committee prepared a report for Council.
3. The Committee’s report, along with the aforementioned investigation report, were reviewed by Council at its June 13, 2023, 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 of the action it intends to take under sections 231, 236 and 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 written notice of the action Council intends to take against the Licensee.

FACTS

5. The Licensee became licensed with the Insurance Council as a life and accident and sickness insurance agent (“Life Agent”) from July 15, 2014, and was licensed until August 2, 2017. The Licensee became licensed again on September 20, 2017, and has remained licensed until the present.
6. The Licensee advised that at the beginning of August 2017, the Licensee realized he had not renewed his individual Life Agent licence and stopped conducting insurance activities until his licence was renewed on September 20, 2017. During the time the Licensee was unlicensed, the Licensee restricted his insurance business to providing administrative help for another licensee, JH.
7. On October 16, 2019, the Insurance Council received a letter from legal counsel for SL (the “Complainant”), regarding allegations that the Licensee and JH had misrepresented policies sold to the Complainant and that the Licensee had engaged in the practice of insurance business while unlicensed.
8. The complaint is related to two insurance policies (the “Policies”) sold to the Complainant by JH. JH was introduced to the Complainant by the Licensee. The insurer investigated the Complainant’s concerns but concluded that the evidence and documentation supported that the policies sold to the Complainant were issued as requested with acknowledgement and consent.
9. The Complainant’s letter stated that in August 2017, the Licensee had approached the Complainant, who had a registered corporation in British Columbia. The Licensee discussed insurance products with the Complainant and the Licensee advised that there could be tax benefits if the proposed insurance products were placed under the Complainant’s company. The Complainant further stated that the Licensee had advised that using an Immediate Financing Arrangement (“IFA”) would allow the Complainant to apply for a loan to pay for the insurance policies.
10. The Licensee stated that in July 2017, he discussed the IFA strategy with the Complainant and contacted a banker to obtain further details regarding an IFA for the Complainant. The Licensee then provided the Complainant with the IFA illustrations that the banker provided. The Licensee advised that the Complainant expressed a preference for a particular insurer’s products, and as the Licensee was not authorized to represent that insurer, the Licensee referred the Complainant to JH.

11. Around the same time that the Licensee referred the Complainant to JH, the Licensee learned that he had not renewed his individual Life Agent licence and stopped conducting insurance activities until the Licensee's Life Agent licence was renewed on September 20, 2017.
12. Council reviewed the correspondence and documentation between the Complainant, the Licensee, and JH during the Licensee's brief lapse in being licensed as a Life Agent. Council determined that the Licensee did not conduct insurance business from August 2, 2017, to September 20, 2017. Council concluded that the documentation demonstrated that the Licensee was providing administrative support to JH by helping gather documents and setting up appointments. The Licensee confirmed that his business was focused on high-net-worth clients. The Licensee stated that during the period that he was unlicensed the Licensee did not conduct business with any other clients.
13. JH was the insurance agent for the Policies in question. The insurance policy application forms were completed by JH and JH orally provided two policy illustrations to the Complainant, from two different insurers. Since the Licensee knew the Complainant, he continued to help JH with administrative duties such as coordinating appointments and gathering documents from the Complainant to provide to JH.
14. On October 25, 2017, the Complainant met with the Licensee, on behalf of JH, to sign the Acknowledgement of Policy Received form and accept delivery of the Policies. The Complainant was the owner of both policies, but one of the policies listed the Complainant's son as the insured. The Licensee advised that in the meeting, the Complainant's son was not present. The Licensee stated that he signed as a witness for the Complainant's son's signature on the Acknowledgement of Policy Received form although he had not witnessed the Complainant's son, who was the named insured of the policy, sign the form. The Licensee believed that the Complainant had authority to sign the documents on behalf of the son.
15. Following the deliberations, the Licensee's legal counsel sent Council staff further submissions in which the Licensee had completed the Council Rules Course on his own initiative and confirmed the Licensee was not paid any commissions during the period in which he was unlicensed. Council considered the submissions in their analysis.

ANALYSIS

16. Council concluded that the Licensee failed to engage in the usual practice of the business of insurance by witnessing a signature on the Acknowledgement of Policy Received form when the Licensee had not in fact witnessed the signature. Council sympathized with the Licensee, as the owner of the policy, the Complainant, and the Licensee had a business relationship. Additionally,

the Licensee advised that the Complainant told the Licensee they had consent to sign on behalf of the son, the insured of the policy. Council noted that the Licensee did not take any steps to confirm instructions that the Complainant had authority to sign on the son's behalf. Council concluded that by witnessing a signature when the Licensee did not in fact witness the person signing the document, the Licensee deviated from the usual practice of the business of insurance. Specifically, the Licensee did not act with competence, in a trustworthy manner, and in good faith to the client, who was the named insured on the policy, as the Licensee signed as a witness to the insured's signature when the Licensee did not in fact witness the insured sign the form.

17. Council notes that properly executing insurance forms is fundamental to the usual practice of the business of insurance. The Licensee should have a level of competency to witness an insurance form accurately, which the Licensee did not demonstrate in this instance.
18. Council concluded that the Licensee's conduct amounted to breaches of the Code of Conduct and the professional standards set by the Code.
19. Prior to making its determination in this matter, Council took into consideration the following precedent cases related to competence and witnessing signatures in the usual practice of the business of insurance. While Council recognizes that it is not bound by precedent and that each matter is decided on its own facts and merits, Council found that these decisions were instructive in terms of providing a range of sanctions for similar types of misconduct.
20. [Randal Thomas Brett Haw](#) (July 2020): concerned a licensee who admitted to having forged client signatures on electronic applications due to an erroneous understanding of procedures. He thought it was acceptable for an advisor to sign an electronic application on behalf of a client. There were also issues with the licensee having accessed client information without authorization and failing to obtain application information directly from a client. Council acknowledged that the licensee's misconduct was not malicious or meant for personal gain; however, they also noted that he was an experienced agent, as well as the nominee of his agency, and ought to have known that the forgeries and other misconduct were unacceptable. Council ordered a fine of \$2,000, required the licensee to complete the Council Rules Course, and assessed investigation costs.
21. [Ka Fai \(Patrick\) Cheng](#) (March 2022): concerned a licensee who admitted to signing as a witness on a transfer of ownership policy form, although he had not witnessed the individual signing the document. The licensee had a longstanding client who was the former owner of the policy, and that client provided signed transfer of ownership forms. The licensee genuinely believed that the owner of the policy had signed the forms and therefore signed as a witness on the form. Council has concluded that the licensee failed to engage in the usual practice of the business of insurance by witnessing a signature on the transfer form when he had not in fact witnessed the signature.

Council concluded that although the Licensee did not intend to purposely mislead the insurer by falsely witnessing the signature on the transfer form, the licensee was not fulfilling his responsibility to the insurer to provide insurance documents that are correct and accurate. Council ordered that the licensee be fined \$2,000, required the licensee to complete the Council Rules Course, and the Advocis Knowing the Code of Professional Conduct course, and assessed investigation costs.

22. [Anita Yin Ling Ip](#) (March 2022): concerned a licensee who admitted to signing as a witness on a transfer of ownership policy form, although she had not witnessed the individual signing the document. The licensee had a longstanding client who was the former owner of the policy, and that client provided signed transfer of ownership forms. Council has concluded that the Licensee failed to engage in the usual practice of the business of insurance by witnessing a signature on the Transfer Forms when she had not in fact witnessed the signature. Additionally, the Licensee failed to inform the client of the tax implications related to the transfer of ownership of the Policies and in that regard did not properly evaluate the client's needs. Council ordered that the licensee be fined \$2,000, required the licensee to complete the Council Rules Course, and the Advocis Knowing the Code of Professional Conduct course, and assessed investigation costs.
23. [Christopher Robert Gerke](#) (August 2022): concerned a licensee who admitted to forgery by making false documents and falsifying client signatures for five clients on a total of 11 documents. The licensee had not implemented appropriate needs analyses of clients, such as the know your client and reason why letters in client files, which were being requested by the insurer. The licensee was unable to meet five of the clients prior to a deadline in which the insurer had requested documents related to client transactions. The licensee, in a state of panic, signed on behalf of the clients. The Licensee advised that he had contacted all clients whose signatures he had forged and had obtained genuine signatures on the reason why letters and Life Insurance Advisor Disclosure Forms. The insurer formally reprimanded the licensee, required him to be supervised for one year, and complete training. Council ordered that the licensee be fined \$1,000, required the licensee to complete the Council Rules Course, and assessed investigation costs.
24. [Paul Ian Bideshi](#) (May 2016): concerned a former Life Agent licensee who allowed client insurance applications to be signed by a manager and then submitted them to the insurer without any specific disclosure to the client or insurer. Council found that the Former Licensee had a duty to ensure that the Client understood how he intended to proceed with the Client's insurance transactions. As the former Licensee was not going to be the life agent who signed and submitted the application, Council found the former licensee had a duty to provide the client with greater disclosure. The former licensee had a duty to the insurer to disclose that, while he had met with and assisted the client in the completion of the insurance applications, he was not the life agent who was signing and submitting the insurance applications. Council found the former licensee's

failure to include specific notes on the client's insurance applications to advise the insurer of this occurrence was not in accordance with the usual practice of the business of insurance. Council felt that the Former Licensee would benefit from an errors and omissions course. Normally, Council would impose this as a licence condition, but as the Former Licensee did not currently hold an insurance licence, Council directed that, should the Former Licensee decide to re-apply for an insurance licence at some future date, he will be required to successfully complete an errors and omissions course as a requirement of any licence application. Council ordered the former licensee be fined \$3,000 and assessed investigation costs.

25. In terms of mitigating factors, Council recognizes that the Licensee has no prior disciplinary history, and the Licensee acknowledged his actions and demonstrated remorse. Council further noted the Licensee fully cooperated throughout the investigation. Council commended the Licensee for taking proactive steps to rectify the situation by taking the Council Rules Course on the Licensee's own initiative. Council did not identify any aggravating factors in this case.
26. Council views the Licensee's conduct to be a breach of Council's Rules and the Code of Conduct and concludes that it is appropriate for the Licensee to be fined. Council accepted that this incident was a single occurrence of misconduct, in which the Licensee would likely not commit again.
27. Council concludes that it is appropriate for the Licensee to be assessed a fine in order to communicate to the Licensee, the insurance industry, and the public that insurance agents are expected by Council to perform their roles and conduct insurance business competently. Given the mitigating factors, Council concluded that the fine against the Licensee should be on the lower spectrum of the precedents and therefore concluded a \$1,000 fine is appropriate in the circumstances.
28. With respect to investigation costs, Council believes that these costs should be assessed to the Licensee. As a self-funded regulatory body, Council looks to licensees who have engaged in misconduct to bear the costs of their discipline proceedings, so that those costs are not otherwise borne by British Columbia's licensees in general. Council has not identified any reason for not applying this principle in the circumstances.

INTENDED DECISION

29. Pursuant to sections 231, 236 and 241.1 of the Act, Council made an intended decision to:
 - a. Fine the Licensee \$1,000, to be paid within 90 days of Council's order;

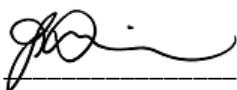
- b. That the Licensee be assessed Council's investigation costs in the amount of \$1,662.50, to be paid within 90 days of Council's order;
 - c. Impose a condition on the Licensee's life and accident and sickness insurance agent ("Life Agent") licence that failure to pay the fine and investigation costs in full within 90 days will result in the automatic suspension of the Licensee's Life Agent licence, and the Licensee will not be permitted to complete the Licensee's 2025 annual licence renewal until such time as the Licensee has complied with the conditions listed herein.
30. Subject to the Licensee's right 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

31. If the Licensee wishes to dispute Council's findings or its intended decision, the Licensee may have legal representation and present a case in 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 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 does not request a hearing within 14 days of receiving this intended decision, the intended decision of Council will take effect.
32. Even if this decision is accepted by the Licensee, pursuant to section 242(3) of the Act, the British Columbia Financial Services Authority ("BCFSA") still has a right of appeal to the Financial Services Tribunal ("FST"). The BCFSA has thirty (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 visit the guide to appeals published on their website at <https://www.bcfst.ca/app/uploads/sites/832/2021/06/guidelines.pdf>.

Dated in Vancouver, British Columbia, on the **4th day of July, 2023.**

For the Insurance Council of British Columbia



Janet Sinclair
Executive Director