

In the Matter of

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

and

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

and

**CHER LEONARDO SAYUNO
(the "Licensee")**

ORDER

As Council made an intended decision on October 16, 2012, 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 November 8, 2012; 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. the Licensee is fined \$500.00; and
2. a condition is imposed on the Licensee's life and accident and sickness insurance licence requiring that she pay the above-ordered fine in full no later than **February 27, 2013**. If the Licensee does not pay the ordered fine in full by this date, the Licensee's life and accident and sickness insurance licence is suspended as of **February 28, 2013**, without further action from Council and the Licensee 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 **27th day of November, 2012**.



C. David Porter, LL.B., FCIP, CRM
Chairperson, Insurance Council of British Columbia

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INTENDED DECISION
of the
INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)
respecting
CHER LEONARDO SAYUNO
(the “Licensee”)

INTRODUCTION

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

On October 16, 2012, Council received a verbal report from staff regarding an allegation the Licensee failed to notify Council of the expiry of her errors and omissions (“E&O”) insurance within five business days of the loss of coverage in accordance with Council Rule 7(11).

Based on the staff report, Council determined that 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

Based on the information presented at its October 16, 2012 meeting, Council made the following findings of fact:

1. The Licensee was first licensed as a life and accident and sickness insurance agent (“life agent”) on April 17, 2007. She is currently licensed as an independent life agent.
2. The Licensee did not renew her E&O insurance, which expired on June 1, 2011.

3. The Licensee did not notify Council of the termination of her E&O insurance as she had been on vacation and, upon her return, had been busy with preparations to open her own physiotherapy clinic.
4. The Licensee advised Council that she did not conduct any insurance activities during the time she was without E&O insurance.

Council Rule 7(11) states:

- (11) Effective January 1, 2006, unless otherwise determined by Council a licensee:
 - (a) must maintain or be covered by E&O insurance, which extends to all activities as a licensed insurance agent, salesperson or adjuster, with:
 - (i) a minimum limit of \$1,000,000.00 per claim; and
 - (ii) a minimum aggregate limit of \$2,000,000.00;
 - (b) who is a direct employee of an insurer is exempt from subsection (a) where:
 - (i) the licensee only sells the products of that insurer; and
 - (ii) the licensee provides certification from the insurer that:
 - (A) the licensee is an employee of the insurer;
 - (B) the company accepts responsibility for the licensee's activities as a licensee; and
 - (C) the company will respond to E&O claims against the licensee on the same basis as set out in subsection (a);
 - (c) that is no longer insured as required under subsection (a) or (b) must:
 - (i) notify Council within 5 business days; and
 - (ii) immediately stop conducting any insurance activities;
 - (d) will have the licence automatically suspended without Council taking any action, where the licensee remains uninsured for a period exceeding 30 calendar days; and
 - (e) will have the licence suspended under subsection (d) automatically reinstated where:
 - (i) the licensee obtains the required E&O insurance within 30 calendar days from the date of the suspension; and
 - (ii) the licensee delivers to Council the required verification;
otherwise the licence is terminated.

ANALYSIS

Council found the above-mentioned facts constituted a breach of Council Rule 7(11)(c)(i) in that the Licensee failed to notify Council within five business days of ceasing to have E&O insurance. Council accepted that the Licensee did not conduct any insurance activities while she was without E&O insurance and therefore did not place any clients at risk. Council concluded there was no evidence to suggest the Licensee's actions were intentional.

In considering the appropriate disposition in this matter, Council noted that precedent for unintentional breaches of Council Rule 7(11)(c)(i), where no insurance activities have been conducted, as it relates to individual life agents, is a fine of \$500.00. Council therefore determined that a fine in the amount of \$500.00 was both reasonable and appropriate in these circumstances.

INTENDED DECISION

Pursuant to section 231 and 236 of the Act, Council made an intended decision to fine the Licensee \$500.00.

The Licensee is advised that should the intended decision become final, the fine will be due and payable in full within 90 days of the date of the order.

The intended decision will take effect on **November 27, 2012**, 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 **November 26, 2012**. 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 **November 26, 2012**, 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 or contact them directly at:

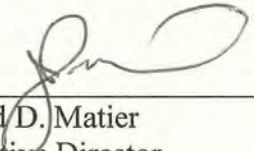
Financial Services Tribunal
PO Box 9425 Stn Prov Govt
Victoria, British Columbia
V8W 9V1

Reception: 250-387-3464
Fax: 250-356-9923
Email: FinancialServicesTribunal@gov.bc.ca

Intended Decision
Cher Leonardo Sayuno
169479
November 8, 2012
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Dated in Vancouver, British Columbia, on the **8th day of November, 2012.**

For the Insurance Council of British Columbia



Gerald D. Matier
Executive Director

GM/cc