

In the Matter of

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

and

The *INSURANCE COUNCIL OF BRITISH COLUMBIA*
("Council")

and

DARWIN JAMES HAJIME OKANO
(the "Licensee")

ORDER

As Council made an intended decision on November 12, 2013, 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 27, 2013; 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. A condition is imposed on the Licensee's life and accident and sickness insurance licence that the Licensee must only conduct life and accident and sickness insurance business under the supervision of a qualified life and accident and sickness insurance agent approved by Council until he has accumulated an additional 24 months of active licensing.
2. A condition is imposed on the Licensee's life and accident and sickness insurance licence that requires him to disclose to any insurance company that he is, or subsequently becomes contracted with, and all managing general agents with which he places insurance business, the Settlement Agreement he entered into with the British Columbia Securities Commission, in a manner acceptable to Council.

This order takes effect on the 17th day of December, 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

DARWIN JAMES HAJIME OKANO
(the “Licensee”)

INTRODUCTION

Pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council conducted an investigation into the Licensee’s suitability to hold a life and accident and sickness insurance agent (“life agent”) licence in light of a Settlement Agreement with the British Columbia Securities Commission (the “BCSC”) pertaining to his illegal promotion and sale of securities.

On October 21, 2013, an Investigative Review Committee (the “Committee”) met with the Licensee to discuss his suitability to hold a life agent licence. The Committee was comprised of one voting member and three non-voting members of Council. Prior to the Committee’s meeting with the Licensee, an investigation report was distributed to the Committee and the Licensee for review. A discussion of this report took place at the meeting and the Licensee was provided an opportunity to clarify the information contained therein and make further submissions.

A report setting out the Committee’s findings and recommended disposition, along with the aforementioned investigation report, was reviewed by Council at its November 12, 2013 meeting. At the conclusion of its meeting, Council 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 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

The Licensee has been licensed as a life agent with Council since August 24, 2012. The Licensee advised that he has not yet conducted any insurance business.

On June 20, 2013, the Licensee notified Council of the Settlement Agreement with the BCSC.

The Licensee is registered with the BCSC as a dealing representative of an exempt market dealer. He has been registered in this capacity with the BCSC since September 19, 2011. There is a condition on his BCSC registration that requires he be strictly supervised by the dealer's chief compliance officer.

On June 13, 2013, the Licensee and his personal corporation 0894563 B.C. Ltd. ("0894563") signed a Settlement Agreement with the BCSC pertaining to his illegal promotion and sale of securities under the name Armadillo Energy Inc. ("Armadillo") Partnership Agreements ("Partnership Agreements").

The Settlement Agreement provides that between December 2010 and April 2011, the Licensee and 0894563 illegally sold Partnership Agreements through 0894563 to at least 26 investors in British Columbia for proceeds of approximately \$868,789.00. The Licensee is the sole director of 0894563. The Licensee agreed to the following facts in the Settlement Agreement:

- Armadillo is a Nevada corporation and never filed a prospectus, offering memorandum, or exempt distribution report under the *Securities Act*.
- The Licensee illegally traded and distributed securities without being registered and without having filed a prospectus. 0894563 and the Licensee contravened the *Securities Act*.
- Under a Partnership Agreement, an investor received title to a defined amount of crude oil from Armadillo's lease in Oklahoma.
- Armadillo distributed its securities in Canada through 0894563, and 0894563 received a nineteen percent commission on the sale of each Partnership Agreement.
- The Licensee agreed to pay \$27,709.96 to the BCSC in respect of the settlement, and to wind up the company within six months of the date of the Settlement Agreement.

On June 16, 2013, the BCSC ordered the following:

1. Under section 161(1)(a) of the *Securities Act*, that the Company (0894563) and Licensee comply fully with the *Securities Act*, the *Securities Rules*, and any applicable regulations;
2. Under section 161(1)(d) of the *Securities Act*, the Licensee is prohibited from becoming or acting as a director or officer, except that the Licensee may act as director or officer of a holding company into which commission from his work as a dealing representative is paid;
3. Under section 161(1)(v) of the *Securities Act*, the Licensee is prohibited from purchasing or trading in securities, except that the Licensee may purchase or trade securities:
 - (i) in the course of his employment with a dealer registered under the applicable securities legislation and only with or to the clients of that dealer; or
 - (ii) through accounts in his own name with a person registered to trade in securities under the *Securities Act*.
4. The prohibitions remain in force until the later of either three years from the date of the agreement and the date the amount described in the undertaking to pay is paid.

The Licensee acknowledged that, prior to engaging in the sale of the Partnership Agreements, he failed to conduct his own due diligence to confirm whether the regulatory requirements for distributing the Partnership Agreements had been met by Armadillo. Instead, he relied on the advice of Armadillo's primary partner who led him to understand that the Armadillo investment fell under the authority of a statute governing real estate transactions, and therefore was not subject to securities legislation.

ANALYSIS

Council considered the Licensee's suitability to hold a life agent licence in light of the Settlement Agreement with the BCSC and the surrounding circumstances.

Council found the Licensee to be forthright in his explanation and noted that he complied with Council's notification requirements throughout the BCSC investigation. Council accepted that the Licensee failed to conduct his own due diligence before becoming involved with Armadillo, and relied on others to ensure compliance with securities legislation.

Council also took into consideration that the Licensee remains registered by the BCSC to engage in the sale of exempt market securities, albeit subject to direct supervision.

Council concluded the Licensee remained suitable to hold a life agent licence provided that he is subject to supervision. Council reasoned that the Licensee, by his own admission, has not engaged in the insurance business since becoming licensed with Council in August 2012, and this lack of industry experience coupled with his breach of another financial regulator's requirements, is a concern. Council determined this concern can be addressed by requiring that the Licensee be supervised for a period of time which should allow him to demonstrate that the regulatory transgression was an isolated event and that he is operating his insurance practice in accordance with the requirements under Council's purview.

INTENDED DECISION

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

1. Impose a condition on the Licensee's life and accident and sickness insurance licence that he must only conduct life and accident and sickness insurance business under the supervision of a qualified life and accident and sickness insurance agent approved by Council until he has accumulated an additional 24 months of active licensing.
2. Impose a condition on the Licensee's life and accident and sickness insurance licence that requires him to disclose, in a manner acceptable to Council, the British Columbia Securities Commission Settlement Agreement to any insurance company that he is, or subsequently becomes contracted with, and all managing general agents with which he places insurance business.

The intended decision will take effect on **December 17, 2013**, 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 **December 16, 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.

Intended Decision
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If the Licensee does not request a hearing by **December 16, 2013**, 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

Dated in Vancouver, British Columbia, on the **27th day of November, 2013**.

For the Insurance Council of British Columbia



Gerald D. Matier
Executive Director

GM/tp