

**In the Matter of**

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

**and**

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

**and**

**LU (LUCY) ZHANG (the “Licensee”)**

## **ORDER**

As Council made an intended decision on April 21, 2009, under sections 231 and 236 of the Act;  
and

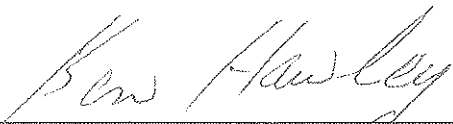
As Council, in accordance with section 237 of the Act, provided the Licensee with written  
reasons and notice of the intended decision dated April 24, 2009; and

As the Licensee has not requested a hearing of Council’s intended decision within the time  
provided to request a hearing;

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

1. the Licensee’s life and accident and sickness insurance agent licence is  
terminated.

This order takes effect on the 20<sup>th</sup> day of May, 2009.



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Ken Hawley, BComm FLMFICFP CLU ChFC  
Chairperson, Insurance Council of British Columbia

**INTENDED DECISION**  
**of the**  
**INSURANCE COUNCIL OF BRITISH COLUMBIA**  
**(“Council”)**  
**respecting**  
**Lu (Lucy) Zhang**  
**(the “Licensee”)**

**INTRODUCTION**

Pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council conducted an investigation to determine whether the Licensee was still suitable to hold an insurance licence in accordance with the Act.

At its April 21, 2009 meeting, Council considered allegations that the Licensee failed to make restitution on a dishonoured cheque submitted for her first application for a licence in December 2008, and failed to respond in any manner to Council’s correspondence on this matter.

The Licensee was sent two letters outlining the issue surrounding the dishonoured cheque and was advised that if no response was made, her file would be brought before Council to determine the status of her licence. No response was received. Council staff also attempted to contact the Licensee by phone, however, her residence phone number is no longer in service; and when attempts were made to contact the Licensee through her business phone number, were advised she no longer worked there.

Council considered these facts, and determined that the matter should be disposed of as follows.

**INTENDED DECISION 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, 236 and/or 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

Based on the Licensee's file, Council made the following findings of fact:

1. On December 12, 2008, an application for a first application for a life insurance agent licence was received with a cheque in the amount of \$225.00.
2. A licence was subsequently issued to the Licensee on December 18, 2008.
3. On December 29, 2008, Council staff received a Chargeback Notice from Coast Capital Savings due to Funds Not Cleared in the Licensee's bank account.
4. On January 5, 2009, Council staff sent a letter to the Licensee asking for a certified cheque or money order in the amount of \$250.00 (which included a \$25.00 service charge) no later than January 19, 2009.
5. On January 21, 2009, Council staff sent a second request letter to the Licensee for the payment of \$250.00 and confirming that if no response was received by February 4, 2009, her case would be brought before Council to consider whether her licence should be terminated.
6. On February 13, 2009, Council staff contacted the Insurance Company noted in the Licensee's application where her business office was located. Council staff was advised that the Licensee no longer worked out of its office and it was their understanding the Licensee had left the country.
7. The residential phone number provided by the Licensee is not in service.
8. As of April 22, 2009, restitution had not been received.

### ISSUES

Council identified the following issues:

- a) Is the Licensee suitable to hold an insurance licence pursuant to Rule 3(2) of the Council Rules given that her licence fee was returned Funds Not Cleared; she failed to make restitution on the returned cheque; failed to notify Council of her new contact information; and failed to respond to enquiries by Council?

## LEGISLATION

### **Rule 3 of the Council Rules Licence Applications**

#### **Applicants to Satisfy Council**

- (2) If an applicant satisfies Council that the applicant:
- (a) has met all of the requirements set out in the Act and Council Rules;
  - (b) is trustworthy, competent and financially reliable;
  - (c) intends to publicly carry on business as an insurance agent, salesperson or adjuster in good faith and in accordance with the usual practice of the business of insurance;
  - (d) has not in any jurisdiction:
    - (i) been refused, or had suspended or cancelled, an insurance licence or registration;
    - (ii) been convicted of an offence; or
    - (iii) been refused or had suspended or cancelled a licence or registration in any other financial services sector or professional fieldfor a reason that reveals the applicant unfit to be an insurance agent, salesperson or adjuster;  
and
  - (e) does not hold other business interests or activities which would be in conflict to the duties and responsibilities of a licensee, or give rise to the reasonable possibility of undue influence.
- then the Council may consent to issuing a licence.

#### **Rule 7 (4) of the Council Rules**

- (4) A licensee must notify Council within 30 calendar days:
- (a) of any change in residential or business address and telephone numbers; or
  - (b) in the case of an insurance agency, adjusting firm or the nominee of a direct writer:
    - (i) of the opening or closing of branch offices; and
    - (ii) of a material change in the ownership of an insurance agency or adjusting firm.

**Section 231 of the Act**  
**Part 7 – Administration of the Regulation of Financial Institutions**  
**Division 2 – Insurance Council of British Columbia**

**Council may suspend, cancel or restrict licences and impose fines**

- (1) If, after due investigation, the council determines that the licensee or former licensee or any officer, director, employee, controlling shareholder, partner or nominee of the licensee or former licensee
- (a) no longer meets a licensing requirement established by a rule made by the council or did not meet that requirement at the time the licence was issued, or at a later time,
  - (b) has breached or is in breach of a term, condition or restriction of the licence of the licensee,
  - (c) has made a material misstatement in the application for the licence of the licensee or in reply to an inquiry addressed under this Act to the licensee,
  - (d) has refused or neglected to make a prompt reply to an inquiry addressed to the licensee under this Act,
  - (e) has contravened section 79, 94 or 177, or
  - (e.1) has contravened a prescribed provision of the regulations,
- then the council by order may do one or more of the following:
- (f) reprimand the licensee or former licensee;
  - (g) suspend or cancel the licence of the licensee;
  - (h) attach conditions to the licence of the licensee or amend any conditions attached to the licence;
  - (i) in appropriate circumstances, amend the licence of the licensee by deleting the name of a nominee;
  - (j) require the licensee or former licensee to cease any specified activity related to the conduct of insurance business or to carry out any specified activity related to the conduct of insurance business;
  - (k) in respect of conduct described in paragraph (a), (b), (c), (d), (e), or (e.1), fine the licensee or former licensee an amount
    - (i) not more than \$20 000 in the case of a corporation, or
    - (ii) not more than \$10 000 in the case of an individual.
- (2) A person whose licence is suspended or cancelled under this section must surrender the licence to the council immediately.
- (3) If the council makes an order under subsection (1)(g) to suspend or cancel the licence of an insurance agent, or insurance adjuster, then the licences of any insurance salesperson employed by the insurance agent, and of any employees of the insurance adjuster are suspended without the necessity of the council taking any action.
- (3.1) On application of the person whose licence is suspended under subsection (1)(g), the council may reinstate the licence if the deficiency that resulted in the suspension is remedied.
- (4) If an insurance agent's licence or an insurance adjuster's licence is reinstated, the licences of any insurance salespersons or employees of the insurance adjuster who
- (a) were employed by that agent or adjuster at the time of the suspension, and
  - (b) remain employees of that agent or adjuster at the time of reinstatement,
- are also reinstated without the necessity of the council taking any action.

**Section 236 of the Act**  
**Part 7 – Administration of the Regulation of Financial Institutions**  
**Division 2 – Insurance Council of British Columbia**

**Power to impose conditions**

- (1) The commission, superintendent or council, depending on which of them has the power to make the order, give the consent or issue the business authorization permit or licence may
  - (a) impose conditions that the person considers necessary or desirable in respect of
    - (i) an order referred to in section 235(1),
    - (ii) a consent referred to in section 235(2),
    - (iii) a business authorization,
    - (iv) a permit issued under section 187(1), or
    - (v) a licence issued under Division 2 of Part 6, and
  - (b) remove or vary the conditions by own motion or on the application of a person affected by the order or consent, or of the holder of the business authorization, permit or licence.
- (2) A condition imposed under subsection (1) is conclusively deemed to be part of the order, consent, business authorization, permit or licence in respect of which it is imposed, whether contained in or attached to it or contained in a separate document.
- (3) Except
  - (a) on the written application or with the written permission of the holder, or
  - (b) in the circumstances described in section 164, 231 or 249(1),a power of the commission, superintendent or council under this Act to impose or vary conditions in respect of
  - (c) a business authorization is exercisable only on or before its issue date, or
  - (d) a permit under section 187(1) or a licence under Division 2 of Part 6 is exercisable only on or before its issue datewith effect on and after that date.

**Section 241.1 of the Act**  
**Part 7 – Administration of the Regulation of Financial Institutions**  
**Division 2 – Insurance Council of British Columbia**

**Assessment of Costs**

- (1) If an order results from an investigation or hearing, the commission, the superintendent or the council may by order require the financial institution, licensee, former licensee or other person subject to the order to pay the costs, or part of the costs, or either or both of the following in accordance with the regulations:
  - (a) an investigation;
  - (b) a hearing.
- (2) Costs assessed under subsection (1)
  - (a) must not exceed the actual costs incurred by the commission, superintendent or council for the investigation and hearing, and
  - (b) may include the costs of remuneration for employees, officers or agents of the commission, superintendent or council who are engaged in the investigation or hearing.
- (3) If a person fails to pay costs as ordered by the date specified in the order or by the date specified in the order made on appeal, if any, whichever is later, the commission, superintendent or council, as the case may be, may file with the court a certified copy of the order assessing the costs and, on being filed, the order has the same force and effect and all proceedings may be taken on the order as if it were a judgment of the court.

ANALYSIS

Section 174 of the Act states that an applicant for a licence must deliver an application to Council that fulfills the requirements of its rules. One of the requirements of an application is the payment of a fee as published in Council's Fee Schedule. Council found that the Licensee's failure to make good on the returned cheque represents a breach of Council Rules in that she failed to provide a complete application for an insurance licence.

The Licensee's failure to make good on the returned cheque; failure to notify Council of a change in her residential and business address and telephone numbers; and failure to provide any response to Council's enquiries regarding this matter, brings into question her suitability to continue to hold an insurance agent's licence.

Council found the above mentioned facts constituted a breach of section 231(1)(a) and (d) of the Act in that it brought into question the Licensee's ability to act in a financially reliable manner and to publicly carry on business as an insurance agent in good faith and in accordance with the usual practice of the business of insurance pursuant to Rule 3(2) of the Council Rules.

INTENDED DECISION

Pursuant to sections 231 and 236 of the Act, Council intends to order the following:

1. the Licensee's life and accident and sickness insurance agent licence be terminated.

Further, should the Licensee seek to be licensed in the future, she will have to make restitution as part of an application for a licence. Upon making an application, Council will then consider whether the Licensee's actions have made her unsuitable to hold an insurance agent's licence.

The intended decision will take effect on **May 20, 2009**, 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, she may present her case at a hearing before Council where he may be represented by legal counsel. 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 **May 19, 2009**. 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, Mr. Gerald Matier.

If the Licensee does not request a hearing by **May 19, 2009**, the intended decision of Council will take effect.

Dated in Vancouver, British Columbia, on the 24<sup>th</sup> day of April, 2009.

For the Insurance Council of British Columbia



Gerald D. Matier  
Executive Director

GM/tlh