

**In the Matter of**

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

**and**

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

**and**

**SHERRY CHENG-HUI KAO**  
**(the “Licensee”)**

**ORDER**

Pursuant to section 237 of the Act, Council convened a hearing at the request of the Licensee to dispute an intended decision, dated November 9, 2015, pursuant to sections 231, 236, and 241.1 of the Act.

The subject of the hearing was set out in a Notice of Hearing dated September 13, 2016.

A Hearing Committee heard the matter on November 30, 2016, and presented a Report of the Hearing Committee to Council at its January 10, 2017, meeting.

Council considered the Report of the Hearing Committee and made the following order pursuant to sections 231, 236, and 241.1 of the Act:

1. The Licensee’s life and accident and sickness insurance licence is cancelled for a period of five years.
2. The Licensee is fined \$10,000.00.
3. The Licensee is assessed Council’s investigative costs of \$3,675.00.
4. The Licensee is assessed Council’s hearing costs of \$ 2,407.50
5. As a condition of this Order, the Licensee is required to pay the above-ordered fine, investigative costs, and hearing costs, in full, no later than **April 10, 2017**.

This order takes effect on the **10<sup>th</sup> day of January, 2017**.

  
\_\_\_\_\_  
Dr. Eric Yung  
Chairperson, Insurance Council of British Columbia

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

**REPORT OF THE HEARING COMMITTEE**

**IN THE MATTER OF THE *FINANCIAL INSTITUTIONS ACT***  
(the “Act”)  
(S.B.C. 1996, c. 141)

**AND**

**SHERRY CHENG-HUI KAO**  
(the “Licensee”)

**Date:** November 30, 2016  
9:30 a.m.

**Before:** Izumi Miki McGruer                      Chair  
Gary Barker                                      Member  
Frank Mackleston                              Member

**Location:** Suite 300, 1040 West Georgia Street  
Vancouver, British Columbia V6E 4H1

**Present:** David McKnight                      Counsel for Council  
Sherry Cheng-Hui Kao                      Licensee  
Robert Pryer                                      Counsel for Licensee

**BACKGROUND AND ISSUES**

The matter before the Hearing Committee relates to an intended decision of Council dated November 9, 2015, in response to allegations that the Licensee:

- a) borrowed funds from insurance clients for personal gain and, as a result, placed herself in a conflict of interest with the clients;
- b) put herself in a position where she may not be able to meet her financial obligations to her insurance clients;
- c) did not adhere to the authority granted by an insurance company she was authorized to represent; and,
- d) misled and failed to provide truthful responses to an insurance company when asked about the nature of financial dealings on loans she obtained from insurance clients.

The purpose of the hearing was to determine whether the Licensee is able to carry on the business of insurance in a trustworthy, competent, and financially reliable manner, in good faith and in accordance with the usual practice of the business of insurance.

The Hearing Committee was constituted pursuant to section 223 of the Act. This is a Report of the Hearing Committee as required pursuant to section 223(4) of the Act.

## **EVIDENCE**

The evidence reviewed by the Hearing Committee in consideration of this matter included:

- Exhibit 1      Agreed Statement of Facts
- Exhibit 2      Summary of Promissory Notes
- Exhibit 3      Book of Documents

## **FACTS**

The Licensee has been a life and accident and sickness insurance agent (“life agent”) in British Columbia since March 2001. From 2003 until December 2014, the Licensee was a life agent with Sun Life Assurance Company of Canada (“Sun Life”).

In December 2014, Sun Life notified Council that the Licensee’s contract with it was terminated after it had determined the Licensee had engaged in business activities in contravention of Sun Life’s policies and procedures. More specifically, the Licensee’s advisor agreement with Sun Life stated that the Licensee could not, without the written consent of Sun Life, engage in any business or occupation other than acting as an insurance agent for Sun Life. The Licensee had neither sought nor received Sun Life’s consent.

In 2004, the Licensee purchased a house, in her name, in Richmond, British Columbia (“Property One”). The Licensee borrowed \$300,000.00 from one of her insurance clients (“Client A”), as well as \$200,000.00 USD from Client A’s father. These loans were used by the Licensee to make a down payment on Property One.

When the Licensee approached Client A to borrow the funds, Client A advised the Licensee she did not have any extra money to lend. The Licensee, being aware that Client A owned her own home, recommended Client A obtain a line of credit from her bank, which she proceeded to do.

In obtaining the loans, the Licensee provided promissory notes and issued post-dated cheques in the amount of \$200,000.00, payable on January 15, 2008, and \$100,000.00, payable on January 25, 2008, to Client A, and a cheque in the amount of \$200,000.00 USD, payable on October 27, 2007, to Client A's father.

In November 2007, the Licensee bought a townhome, in her name, also in Richmond ("Property Two"), for investment purposes. The Licensee rented out Property Two from January 2009 to December 2012, at which time she made Property Two her principal residence.

In June 2009, the Licensee sold Property One, netting her approximately \$436,000.00.

In December 2009, the Licensee purchased a third property in Richmond ("Property Three"), for \$1,723,000.00. In February 2013, the Licensee sold Property Three for approximately \$2,280,000.00, which netted her \$538,000.00.

In order to make payments on her various debts, the Licensee borrowed money from three other insurance clients (the "Client Group"), between 2010 and 2013.

When, in September 2011, Client A demanded repayment of her loan from the Licensee, the Licensee met with the Client Group, seeking to borrow from them approximately \$1,000,000.00. The Licensee explained to the Client Group that her funds were tied up in a second mortgage, which she could not access for a minimum of one year. The Licensee advised the Client Group that their \$1,000,000.00 would be invested in a company that provides second mortgages (the "Mortgage Company"), resulting in good monthly returns. The Licensee advised the Client Group that the money was guaranteed by the Mortgage Company and that the Client Group would receive interest payments on a monthly basis. Based on the Licensee's statements, the Client Group was led to believe the Mortgage Company was a related or affiliated party to Sun Life.

One of the members of the Client Group ("CGM1") initially advised the Licensee that she did not have much money. The Licensee, knowing that CGM1 owned her own home, recommended that CGM1 obtain a line of credit from her bank. The Licensee explained that CGM1 could then loan the funds to her and, in return, the Licensee would pay CGM1's interest. CGM1 followed the Licensee's recommendation and loaned the Licensee \$500,000.00.

In borrowing the funds from CGM1, the Licensee provided CGM1 with a promissory note that called for CGM1 to receive a monthly \$5,000.00 interest payment. This was accompanied by a post-dated cheque in the amount of \$500,000.00, payable on January 25, 2013.

In January 2012, the Licensee borrowed an additional \$50,000.00 from CGM1. The Licensee provided CGM1 with a promissory note guaranteeing monthly interest payments of \$500.00 for two years, along with a post-dated cheque for \$50,000.00, payable on January 24, 2014.

In September 2012, the Licensee borrowed \$125,000.00 from another member of the Client Group ("CGM2"), in order to repay Client A. CGM2 had been the Licensee's insurance client since January 2006.

When the initial promissory note issued to CGM1 came due, the Licensee advised CGM1 that her mortgage investment had not matured and asked CGM1 to wait another year, to which CGM1 agreed. The Licensee then replaced the original \$500,000.00 promissory note with a new promissory note, along with a post-dated cheque for the same amount, payable on January 25, 2014. At the same time, the second promissory note for \$50,000.00 was also replaced and the Licensee issued a new post-dated cheque for \$50,000.00, payable on February 25, 2014.

The replacement promissory notes issued by the Licensee to CGM1 included guaranteed monthly interest, due each month; statements that the promissory notes were secured by the Licensee's Sun Life pension; other securities and real estate assets; and statements that, if the Licensee delayed an interest payment for more than 10 days, CGM1 had the right to repossess the assets mentioned above and was entitled to double the monthly interest payments set out in the promissory notes.

In 2006, the Licensee borrowed \$100,000.00 USD from CGM2's mother-in-law, who was also a member of the Client Group. In 2011, the Licensee provided a promissory note to CGM2's mother-in-law for the \$100,000.00 USD, guaranteeing \$1,000.00 USD per month in interest payments, along with a post-dated cheque, payable on February 25, 2013, for \$100,000.00 USD.

In February 2011, the Licensee borrowed an additional \$100,000.00 USD from CGM2's mother-in-law and again provided a post-dated cheque for that amount, payable on February 25, 2013.

In September 2011, the Licensee borrowed \$280,000.00 from CGM2, issuing a promissory note and post-dated cheque, payable on February 25, 2013, for the full amount. The promissory note called for CGM2 to receive \$2,800.00 USD per month until February 2013. The \$280,000.00 USD borrowed by the Licensee was used to repay Client A.

The promissory notes issued to CGM2 and CGM2's mother-in-law were replaced in February 2013 with new promissory notes totaling \$480,000.00 USD, which matured on February 25, 2014. The terms and conditions of these promissory notes included statements that the promissory notes were secured by the Licensee's Sun Life pension, as well as other securities and real estate assets; and statements that, if the Licensee delayed an interest payment for more than 10 days, CGM2 had the right to repossess the assets mentioned above and was entitled to double the monthly interest payments set out in the promissory notes. In addition, a post-dated cheque, payable on February 25, 2014, was provided to CGM2's mother-in-law.

When CGM2 and CGM2's mother-in-law's promissory notes matured in February 2014, the Licensee provided new promissory notes and issued a series of post-dated cheques dated for April, May, June, and July, 2014.

In January 2010, a third member of the Client Group ("CGM3") loaned the Licensee \$160,000.00 USD. In return, CGM3 received a promissory note with terms that included guaranteed interest payments of \$1,600.00 USD per month for two years, along with a post-dated cheque, payable on March 20, 2013, for \$160,000.00 USD. When CGM3's promissory note matured, the Licensee advised CGM3 that the mortgage investment into which she had put CGM3's money had not matured, and requested another year to repay the amount.

Around the same time, the Licensee borrowed an additional \$100,000.00 from CGM3, issuing a promissory note that was due January 25, 2014. The promissory note guaranteed interest payments of \$1,000.00 per month until January 2014, along with the issuance of a post-dated cheque, payable on January 25, 2014, for \$100,000.00.

In June 2013, the Licensee borrowed an additional \$50,000.00 USD from CGM3, providing a promissory note that included guaranteed interest payments of \$500.00 a month until February 2014, and a post-dated cheque, payable on February 25, 2014, for \$50,000.00 USD.

When all the promissory notes issued to CGM3 matured, the Licensee was not in a position to repay the amounts. As a result, CGM3 accepted new promissory notes for all three amounts, extending the repayment period to 2014. Each of the promissory notes issued to CGM3 included statements that the promissory notes were secured by the Licensee's Sun Life pension, as well as other securities and real estate assets; and statements that, if the Licensee delayed an interest payment for more than 10 days, CGM3 had the right to repossess the assets mentioned above and was entitled to double the monthly interest payments set out in the promissory notes.

When the Client Groups' promissory notes came due in January 2014, they took their post-dated cheques to the bank to cash. The bank advised there were not sufficient funds in the Licensee's account to cover the cheques. When contacted, the Licensee advised that the Canadian Revenue Agency had put a hold on her bank account and the money could not be released.

In March 2014, after the Licensee no longer responded to telephone calls, the Client Group went to Sun Life, under the impression that the investments the Licensee had made with their money were through Sun Life or an affiliated company. This prompted Sun Life to commence an investigation, which led to the termination of the Licensee's advisor agreement.

When contacted by Sun Life, the Licensee advised that she had been introduced to a lending pool in 2004 and that the Client Group was part of the same lending pool. The Licensee stated that there was approximately \$2,650,000.00 in the pool, and that she had personally contributed \$2,000,000.00 to it. The Licensee also advised Sun Life that she was currently the subject of inquiries from the Canadian Revenue Agency and the Taiwanese Revenue Agency as a result of the large amounts of monies that had passed through her bank accounts between 2009 and 2013.

In further submissions to Sun Life's compliance department, the Licensee advised that the Client Group had invested \$1,250,000.00 and the Licensee had contributed \$2,050,000.00, which had come from savings, property she had sold, and a loan from her line of credit. The Licensee went on to state that the lending pool's business name was Antrim Investments.

In fact, none of these statements were true, and the Licensee had borrowed significant sums from her insurance clients for the sole purpose of investing in properties that she had purchased and owned, and to meet her personal debt obligations relating to her personal mortgages and numerous promissory notes.

By November 2015, the Licensee owed the Client Group a total of \$1,500,000.00 and had an outstanding line of credit for \$450,000.00. At the same time, the Licensee's only asset was a \$200,000.00 equity in the Richmond townhome. At no time, in borrowing monies from her clients, did the Licensee disclose that the borrowed funds were being used to purchase property in her own name.

#### **EVIDENCE OF THE LICENSEE**

The Licensee did not dispute the facts contained in the Agreed Statement of Facts and provided no additional information with regard to the facts contained in the Agreed Statement of Facts.

However, the Licensee's lawyer argued that the Licensee did not "benefit" financially from these transactions, although acknowledged that most of the funds borrowed and subject to promissory notes have not been repaid.

#### **FINDINGS OF THE HEARING COMMITTEE**

The Hearing Committee found the Licensee set out to borrow funds from her insurance clients for the purpose of investing in real estate for her own benefit. The Hearing Committee found that the Licensee had engaged in the issuance of a number of promissory notes, many of which replaced the initial promissory notes issued to her insurance clients.

The Hearing Committee found that the Licensee had, in issuing promissory notes, misled clients with regard to how the funds were to be used and where the funds were being invested. The Hearing Committee noted that the Client Group, in particular, were led to believe that the funds had been invested either with Sun Life or with an affiliated company of Sun Life. At no time were the clients aware that the funds had been used by the Licensee for the sole purpose of purchasing, and speculating in, real estate properties.

The Hearing Committee found that the Licensee's actions were improper and not in her clients' best interest. The Hearing Committee noted that the Licensee had encouraged two of her clients to borrow monies in order to lend the funds to her. While the Licensee's actions in borrowing monies from clients were extremely inappropriate, the fact that she had some of her clients incur additional debt so they could lend her money made her actions even more egregious.

The Hearing Committee noted that the Licensee has yet to repay the outstanding amounts owed to her clients, and failed to provide adequate explanations for what happened to the funds borrowed.

The Hearing Committee noted that the Licensee had purchased three different properties, two of which were sold, resulting in profits for the Licensee. The Hearing Committee was left to conclude that the Licensee had used the monies for personal benefit and, for all intents and purposes, had operated a Ponzi scheme to the detriment of her insurance clients.

The Hearing Committee noted that the Licensee had an opportunity to be honest and forthright with regard to this matter when she was contacted by Sun Life, once it was made aware of the complaints from the Client Group, but instead elected to mislead it when she stated that the funds all related to an investment pool over which she had no control.

The Hearing Committee found the Licensee's lack of forthrightness with Sun Life made it clear that the Licensee was prepared to lie and mislead anyone making inquiries about the promissory notes to her insurance clients.

The Hearing Committee found the Licensee's conduct brought into question her competency, trustworthiness, and financial reliability, as well as her ability to act in good faith, in accordance with the usual practice of the business of insurance.

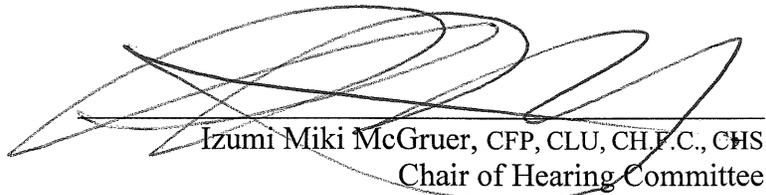
The Hearing Committee found the Licensee had acted in a manner that was in a complete conflict of interest with her duties and obligations to her clients. The Hearing Committee noted that the Licensee lied and was untrustworthy when she explained the purpose of the loans and that from the very early stages of her scheme, she set out to mislead her insurance clients.

#### **RECOMMENDATIONS OF THE HEARING COMMITTEE**

Based on its findings, the Hearing Committee recommends that the Licensee's licence be cancelled for five years commencing from the date of Council's order. The Hearing Committee also recommends the Licensee be fined \$10,000.00 and be assessed the investigative costs.

With regard to the assessment of hearing costs, the Hearing Committee found that the Licensee provided no new evidence regarding this matter and that the hearing costs should be borne by the Licensee.

Dated in Vancouver, British Columbia, on the 5<sup>th</sup> day of January, 2017.



Izumi Miki McGruer, CFP, CLU, CH.F.C., CHS  
Chair of Hearing Committee