

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

and

The INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

and

TOMLINSON ALLIANCE GROUP FINANCIAL LTD.
(the “Agency”)

and

SHAWN HAYDEN PERRYMAN
(the “Nominee”)

ORDER

As Council made an intended decision on February 11, 2014, pursuant to sections 231 and 236 of the Act; and

As Council, in accordance with section 237 of the Act, provided the Agency and the Nominee with written reasons and notice of the intended decision dated March 18, 2014; and

As the Agency and the Nominee have 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 Nominee’s life and accident and sickness insurance licence that the Nominee must complete an errors and omissions course approved by Council by **October 8, 2014**, or his life and accident and sickness insurance licence will be suspended without further action from Council.
2. The Nominee is fined \$1,500.00.
3. The Agency is fined \$3,000.00.

4. A condition is imposed on the Nominee's life and accident and sickness insurance licence that requires him to pay the above-ordered fine no later than **July 8, 2014**. If the Nominee does not pay the ordered fine in full by this date, the Nominee's life and accident and sickness insurance licence is suspended as of **July 9, 2014**, without further action from Council and the Nominee will not be permitted to complete any annual filing until such time as the ordered fine is paid in full.

5. A condition is imposed on the Agency's life and accident and sickness insurance licence that requires it to pay the above-ordered fine no later than **July 8, 2014**. If the Agency does not pay the ordered fine in full by this date, the Agency's life and accident and sickness insurance licence is suspended as of **July 9, 2014**, without further action from Council and the Agency 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 **8th day of April, 2014**.



Rita Ager, CFP, CLU, CHS, CPCA, FEA
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

respecting

TOMLINSON ALLIANCE GROUP FINANCIAL LTD.
(the “Agency”)

and

SHAWN HAYDEN PERRYMAN
(the “Nominee”)

INTRODUCTION

Pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council conducted an investigation to determine whether the Agency and the Nominee acted in compliance with the requirements of the Act.

As part of Council’s investigation, on December 16, 2013, an Investigative Review Committee (the “Committee”) met with the Nominee, via teleconference, to discuss allegations the Agency failed to notify Council that it no longer held errors and omissions (“E&O”) insurance and did not immediately cease to conduct insurance activities as required by Council Rules 7(11)(c)(i) and 7(11)(c)(ii); failed to notify Council within five business days of licensees’ authorization to represent the Agency being withdrawn as required by Council Rule 7(3)(b); and failed to comply with Council Rule 2(18) by conducting insurance business under a name that was not registered as required.

The Committee was comprised of one voting member and three non-voting members of Council. Prior to the Committee’s meeting with the Nominee, an investigation report was distributed to the Committee, the Agency, and the Nominee for review. A discussion of this report took place at the meeting and the Nominee and the Agency were provided an opportunity to clarify the information contained therein and make further submissions. Having reviewed the investigation materials and after discussing this matter with the Nominee, the Committee made a recommendation to Council as to the manner in which this matter should be disposed.

A report setting out the Committee’s findings and recommended disposition, along with the aforementioned investigation report, was reviewed by Council at its February 11, 2014 meeting and 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 Nominee and the Agency of the action it intends to take under sections 231 and 236 of the Act before taking any such action. The Nominee and the Agency 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 Nominee and the Agency.

FACTS

The Agency was first licensed in British Columbia as a corporate life and accident and sickness insurance agent on September 18, 2009. The Nominee was first licensed in British Columbia on November 1, 2007, and has been the nominee of the Agency since its inception. The Agency has three officers and directors: David McDonald Norman ("Norman"), John Edward Holiday Tomlinson ("Tomlinson"), and the Nominee.

Council received a notification from Willis Canada Inc. ("Willis") that the Agency's E&O insurance coverage lapsed as of December 21, 2011.

When contacted, the Nominee stated that he was unaware that the Agency was without E&O insurance coverage, but was actively obtaining quotes. He later confirmed that the Agency was without E&O insurance from December 21, 2011, until coverage was again obtained on February 6, 2012.

The Nominee advised that Norman was shopping the market for E&O insurance as Willis' rates had risen significantly. The Agency's E&O insurance lapsed while it was awaiting quotes for alternate coverage. Willis had addressed correspondence pertaining to the Agency's E&O insurance to Norman, and not the Nominee. Norman was aware the Agency's E&O insurance had lapsed, but because all of the Agency's authorized representatives had individual E&O insurance coverage, Norman thought the Agency did not require separate E&O insurance.

Tomlinson knew the Agency required separate E&O insurance but thought the Willis premium continued to be paid on a monthly basis, thereby covering the Agency while it obtained quotes for alternate coverage.

The Nominee acknowledged the Agency's breach of Council Rule 7(11), in that it failed to notify Council it no longer held E&O insurance and did not immediately cease to conduct insurance activities. The Nominee admitted this breach resulted from the Agency's and the Nominee's failure to know and understand Council Rules.

On reviewing the Agency's E&O insurance certificate, Council noted discrepancies with the licensees authorized to represent the Agency listed on the E&O insurance certificate and Council's records. Council's records identified two individuals as still representing the Agency but neither were listed on the Agency's E&O certificate. Council's investigation found that the two licensees had ceased to represent the Agency over a year previous.

The Nominee acknowledged the Agency's breach of Council Rule 7(3)(b), that it failed to notify Council within five business days of licensees' authorization to represent the Agency being withdrawn. The Nominee claimed he was not aware that the Agency had to notify Council when a licensee no longer represented it.

The individual E&O insurance certificate for the Nominee showed the firm name as TAG Financial ("TAG"). Also when Council staff phoned the Agency, the phone was answered with the TAG name. TAG was not a registered business name for the Agency. The Nominee stated that the TAG name was used on the phone, and on the Agency's signage and correspondence, and he thought the Agency was licensed to use this name. When advised the Agency was not authorized to use the name, the Agency immediately ceased doing so.

The Nominee's understanding was concerning because Council had previously dealt with the Agency on this issue in August 2011. At that time the Nominee was advised, via two faxes, that the Agency was not authorized to use the name TAG.

The Nominee acknowledged the Agency's failure to comply with Council Rule 2(18), in that it conducted insurance business under the name "TAG", which was neither registered with the British Columbia Corporate Registry nor Council.

The Nominee admitted that at the time he assumed the role of the Agency's nominee, he did not take steps to ensure that he was fulfilling the obligations and responsibilities associated with being a nominee. The Nominee claimed that he has since familiarized himself with Council Rules and implemented internal safeguards to ensure future compliance.

ANALYSIS

Council considered the actions and submissions of the Agency and the Nominee. Council determined the Agency failed to notify Council that it no longer held E&O insurance and did not immediately cease to conduct insurance activities as required by Council Rules 7(11)(c)(i) and 7(11)(c)(ii); failed to notify Council within five business days of licensees' authorization to represent the Agency being withdrawn as required by Council Rule 7(3)(b); and failed to comply with Council Rule 2(18) by conducting insurance business under a name that was not registered as required.

Intended Decision

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Council found the Agency and the Nominee were forthcoming with Council and readily acknowledged that the Agency had breached Council Rules. Council recognized that these breaches arose because the Agency and the Nominee failed to know and understand Council Rules.

Ultimately, Council was concerned by the extent to which the Agency and Nominee demonstrated a lack of awareness and comprehension of Council Rules. Council found the Agency's poor internal communication and lack of proper procedures contributed to the Agency's breaches of Council Rules. In these circumstances, Council determined it was appropriate the Agency be fined \$3,000.00.

Council holds nominees responsible for all the activities of an agency and requires a nominee to ensure an agency's compliance with Council Rules. Council considered the foregoing breaches of Council Rules in conjunction with the responsibilities of a nominee and determined the Nominee should be fined \$1,500.00 and be required to complete an E&O course approved by Council.

INTENDED DECISION

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

1. Impose a condition on the Nominee's licence that requires him to successfully complete an E&O course approved by Council within 180 days.
2. Fine the Agency \$3,000.00.
3. Fine the Nominee \$1,500.00.

The Nominee and the Agency are advised that should the intended decision become final, the fines will be due and payable within 90 days of the date of the order.

The Nominee is advised that failure to pay the fine within the 90 days, or failure to complete the E&O course within 180 days, will result in the automatic suspension of his life and accident and sickness insurance licence and the Nominee will not be permitted to complete any annual filing until such time as the fine is paid in full and the E&O course is completed as required.

The Agency is advised that failure to pay the fine within the 90 days, will result in the automatic suspension of its life and accident and sickness insurance licence and the Agency will not be permitted to complete any annual filing until such time as the fine is paid in full.

The intended decision will take effect on **April 8, 2014**, subject to the Agency's and the Nominee's right to request a hearing before Council pursuant to section 237 of the Act.

RIGHT TO A HEARING

If the Agency or the Nominee wishes to dispute Council's findings or its intended decision, the Agency and the Nominee 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 Agency or the Nominee must give notice to Council by delivering to its office written notice of this intention by **April 7, 2014**. 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 Agency and the Nominee does not request a hearing by **April 7, 2014**, the intended decision of Council will take effect.

Even if this decision is accepted by the Agency and/or the Nominee, 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 **18th day of March, 2014**.

For the Insurance Council of British Columbia



Gerald D. Matier
Executive Director

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