

In the Matter of

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

and

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

and

BRIAN LAIRD RUSSELL
(the "Licensee")

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 Licensee with written reasons and notice of the intended decision dated February 28, 2014; 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.
2. A condition is imposed on the Licensee's life and accident and sickness insurance licence that requires him to pay the above-ordered fine no later than **June 19, 2014**. 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 **June 20, 2014**, 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 **19th day of March, 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

BRIAN LAIRD RUSSELL
(the “Licensee”)

INTRODUCTION

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

On February 11, 2014, Council considered an allegation that the Licensee failed to notify Council of the expiry of his errors and omissions (“E&O”) insurance within five business days of the loss of coverage, in accordance with Council Rule 7(11).

At the conclusion of its meeting, Council determined that the matter should be disposed of in the manner set out below.

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 February 11, 2014 meeting, Council made the following findings of fact:

1. The Licensee has been a life and accident and sickness insurance agent (“life agent”) since at least 1981.
2. The Licensee’s E&O insurance expired on March 30, 2013, and was not renewed.

3. The Licensee advised he was aware that his E&O insurance had lapsed, and he had intended to obtain E&O coverage, but he is retired and it was difficult to come up with the premium.
4. After allowing his E&O insurance to expire, the Licensee failed to notify Council of the termination of his E&O insurance.
5. The Licensee advised Council that he did not conduct any insurance activities during the time he was without E&O coverage.
6. The Licensee's life agent licence was terminated in June 2013, in accordance with Council Rule 7(11)(e). After obtaining the minimum E&O insurance coverage, the Licensee subsequently reapplied for a life agent licence and it was issued in January 2014.

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 business while he was without E&O insurance, in accordance with Council Rule 7(11)(c)(ii).

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 sections 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 within 90 days of the date of the order. In addition, failure to pay the fine within the 90 days will result in the automatic suspension of the Licensee's life and accident and sickness insurance agent licence and the Licensee 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 **March 19, 2014**, 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 **March 18, 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 Licensee does not request a hearing by **March 18, 2014**, the intended decision of Council will take effect.

Intended Decision
Brian Laird Russell
12885
February 28, 2014
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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 **28th day of February, 2014.**

For the Insurance Council of British Columbia



Gerald D. Matier
Executive Director

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