

In the Matter of

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

and

The INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

and

JOHN WILLIAM CHARLES GONZALEZ
(the "Former Licensee")

ORDER

As Council made an intended decision on March 12, 2013, pursuant to sections 231 and 236 of the Act; and

As Council, in accordance with section 237 of the Act, provided the Former Licensee with written reasons and notice of the intended decision dated March 21, 2013; and

As the Former 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 Former Licensee is fined \$500.00.
2. As a condition of this order, the Former Licensee is required to pay the above-ordered fine in full no later than **July 9, 2013**.

This order takes effect on the **9th day of April, 2013**.



C. David Porter, LL.B., FCIP, CRM
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

respecting

JOHN WILLIAM CHARLES GONZALEZ
(the “Former Licensee”)

INTRODUCTION

Pursuant to section 232 of the *Financial Institutions Act* (“Act”), Council conducted an investigation to determine whether there had been compliance by the Former Licensee with the requirements of the Act.

On March 12, 2013, Council considered an allegation that the Former Licensee failed to notify Council of the expiry of his errors and omissions (“E&O”) insurance coverage 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.

PROCESS

Pursuant to section 237 of the Act, Council must provide written notice to the Former Licensee of the action it intends to take under sections 231 and 236 of the Act before taking any such action. The Former 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 Former Licensee.

FACTS

Based on the information presented at its March 12, 2013 meeting, Council made the following findings of fact:

1. The Former Licensee was first licensed as a life and accident and sickness insurance agent (“life agent”) on October 7, 2002. He is currently not licensed.

2. The Former Licensee did not renew his E&O insurance, which expired on August 3, 2012.
3. The Former Licensee did not notify Council of the termination of his E&O insurance.
4. The Former Licensee's primary employment was outside of the insurance industry and he forgot to renew his E&O insurance.
5. The Former Licensee stated, and Council accepted, that he did not conduct any insurance activities during the time he was without E&O insurance.

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 Former Licensee failed to notify Council within five business days of ceasing to have E&O insurance. Council accepted that the Former Licensee did not conduct any insurance activities while he was without E&O insurance and, therefore, did not place any clients at risk. Council concluded there was no evidence to suggest the Former Licensee's actions were intentional and, as a result, determined a nominal fine to be appropriate.

In considering the appropriate disposition in this matter, Council noted that precedent for unintentional breaches of Council Rule 7(11)(c)(i), 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 Former Licensee \$500.00.

The Former Licensee is advised that should the intended decision become final, the fine will be due and payable in full within 90 days of the date of the order.

The intended decision will take effect on **April 9, 2013**, subject to the Former Licensee's right to request a hearing before Council pursuant to section 237 of the Act.

RIGHT TO A HEARING

If the Former Licensee wishes to dispute Council's findings or its intended decision, the Former 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 Former Licensee must give notice to Council by delivering to its office written notice of this intention by **April 8, 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.

If the Former Licensee does not request a hearing by **April 8, 2013**, the intended decision of Council will take effect.

Intended Decision
John William Charles Gonzalez
154306
March 21, 2013
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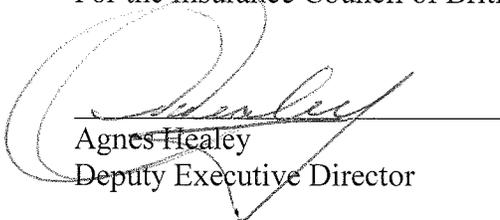
Even if this decision is accepted by the Former Licensee, pursuant to section 242(3) of the Act, the Financial Institutions Commission still has a right to appeal this decision of Council to the Financial Services Tribunal ("FST"). The Financial Institutions Commission has 30 days to file a Notice of 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 **21st day of March, 2013.**

For the Insurance Council of British Columbia



Agnes Healey
Deputy Executive Director

AH/cp