

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

and the

INSURANCE COUNCIL OF BRITISH COLUMBIA
 (“Council”)

and

JOSEPH BOON WU KONG
(the “Licensee”)

ORDER

As Council made an intended decision on December 10, 2019, 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 January 27, 2020; 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 that:

1. A condition is imposed on the Licensee’s life and accident and sickness insurance agent (“Life Agent”) licence that requires him to be supervised for a period of two years of active licensing by a Life Agent supervisor, as approved by Council, commencing on March 2, 2020 and ending at midnight on March 1, 2022;
2. A condition is imposed on the Licensee’s Life Agent licence that requires him to complete all 12 modules of the Advocis Core Curriculum Program of the Certified Financial Planner Designation (the “CFP Modules”);
3. A condition is imposed on the Licensee’s Life Agent licence that requires him to complete an Elder Planning course, as approved by Council;
4. A condition is imposed on the Licensee’s Life Agent licence that requires him to complete Modules I, II, and III of the course entitled *Making Choices: Ethics and Professional Responsibility in Practice* (the “Ethics Course”) available through Advocis;

Order
Joseph Boon Wu Kong
LIC-190785C137366R1 / COM-2018-00021
March 2, 2020
Page 2 of 2

5. A condition is imposed on the Licensee's Life Agent licence that requires him to complete the Council Rules Course;
6. A condition is imposed on the Licensee's Life Agent licence that failure to complete the CFP Modules and the Elder Planning course by March 2, 2022 will result in suspension of his Life Agent licence and he will not be permitted to complete his 2022 annual filing until such time as he successfully completed these courses; and
7. A condition is imposed on the Licensee's Life Agent licence that failure to complete the Council Rules Course and the Ethics Course by May 31, 2020 will result in suspension of his Life Agent licence and he will not be permitted to complete his 2020 annual filing until such time as he has successfully completed these courses.

This order takes effect on the **2nd day of March, 2020.**



Lesley Maddison
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA

("Council")

respecting

JOSEPH BOON WU KONG

(the "Licensee")

Pursuant to section 232 of the *Financial Institutions Act* (the "Act"), Council conducted an investigation to determine whether the Licensee acted contrary to his duties to act in a competent manner and in the usual practice of dealing with clients, as respectively set out by sections 5.2 and 7.2 of Council's Code of Conduct, and Council Rule 7(8) which requires compliance with Council's Code of Conduct.

On September 17, 2019, as part of Council's investigation, a Review Committee comprised of Council members met with the Licensee via telephone conference respecting allegations that he recommended investments for an elderly client that were not in his best interests and brought into question the Licensee's competency as a life and accident and sickness insurance agent ("Life Agent"). A copy of an investigation report prepared by Council staff was forwarded to the Licensee in advance of the meeting. A discussion of the report took place at the meeting and the Licensee was provided an opportunity to make further submissions. Having reviewed the investigation material and after discussing this matter with the Licensee, the Review Committee prepared a report for Council.

The Review Committee's report, along with the aforementioned investigation material, was reviewed by Council at its December 10, 2019 meeting where it was 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 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

The Licensee has been licensed with Council as an unaffiliated Life Agent since January 2013 and holds a contract with one faith-based insurer (the "Insurer").

The Complaint

In January 2018, Council received a complaint from another Life Agent (the “Complainant”) who alleged the Licensee convinced the Complainant’s long-time client (the “Client”) to transfer two mutual fund accounts to annuity accounts with the Insurer without advising the Client of the potential transferring charges or the tax and estate management consequences. The Client was 83 years old when this occurred.

On January 22 and 23, 2018 respectively, the Complainant received requests authorized by the Client to transfer the mutual funds to the Insurer. The Complainant was concerned as the Client had not mentioned any intention to make such a change in recent conversations. The Complainant was also concerned as the Client has an adult disabled child in care whom the Complainant understood was the primary beneficiary of the Client’s estate and also had assets under management in a trust arrangement, and this did not appear to have been considered.

On January 23, 2018, the Complainant called the Client to ask him if the Licensee had discussed the capital gains, tax consequences, and fees involved in transferring the accounts. The Client told the Complainant that he had not been advised as such, and authorized the Complainant to stop the transfers. The Complainant also called the Licensee who advised that he had assumed the Complainant would advise the Client of the potential transfer consequences.

The Licensee’s Submissions

The Licensee advised he met the Client through a meeting following a church gathering in November 2017. The Client expressed an interest in discussing how he could invest his money or get insurance through the Insurer whose charitable works he admired.

The two met again in January 2018 for several hours. The Licensee stated he did only a very general fact finding as he knew the Client had a very low income. He said the Client advised he was disappointed in the lack of attentiveness of his current broker (the Complainant) who had not updated the Client’s insurance to reflect the death of his previous spouse. The Client told the Licensee he wanted to transfer the mutual fund accounts to the Insurer, and identified his current spouse as the primary beneficiary and the Insurer as the contingent beneficiary.

The Licensee stated that he suggested the Client could obtain tax advice about the consequences of the transfer. However, he acknowledged that he proceeded to complete the application at that same meeting without waiting for the Client to seek any external advice. The Licensee was generally aware that one of the Client’s adult children had a disability of some kind, but stated that the Client was clear he did not want to leave any of the investments to his children.

Through Council’s investigation and the Review Committee meeting, it was clear the Licensee had an inaccurate understanding of the capital gains process. The Licensee was unaware of what

assets comprised the remainder of the estate, if any, and the Licensee stated he was not aware of the overall contents of the Client's will.

When asked what he would do differently in a similar situation, the Licensee responded that he would not "transfer money for the elderly as it is too problematic". He did not express concern as to the charges that would have been incurred had the transfers not been stopped.

In September 2019, a few days before he met with the Review Committee, the Licensee and his manager attended the Client's home and wrote a letter for the Client to sign stating that it was never his intent to complain against the Licensee. The Licensee stated that the letter was written with the Client and signed by the Client.

LEGAL FRAMEWORK

Council Rule 7(8)

A licensee must comply with the Council's Code of Conduct, as amended from time to time.

Code of Conduct, Section 5, Competence

5.2 Requirement

You must conduct all insurance activities in a competent manner. Competent conduct is characterized by the application of knowledge and skill in a manner consistent with the usual practice of the business of insurance in the circumstances.

You must continue your education in insurance to remain current in your skills and knowledge.

5.3 Guidelines

5.3.1 Your practice and level of service to clients should be consistent with that which a reasonable and prudent licensee in similar circumstances would exercise. Honest mistakes do not necessarily constitute a failure to adhere to the Code.

Code of Conduct, Section 7, Usual Practice: Dealing with Clients

7.2 Requirement

When dealing with clients you must:

- *protect clients' interests and privacy;*
- *evaluate clients' needs;*
- *disclose all material information; and*
- *act with integrity, competence and the utmost good faith.*

ANALYSIS

In consideration of the Licensee's actions, his submissions, and the legal framework set out above, Council determined that, contrary to the requirements of competence and the usual practice of the business of insurance when dealing with clients, the Licensee failed to conduct adequate fact finding and failed to provide sufficient advice to the Client as to the consequences of the transfer. It was inappropriate for the Licensee to suggest that the Complainant was responsible for explaining the potential consequences to the Client, especially when he completed the application with the Client without providing any time for him to seek and receive advice from the Complainant or a tax specialist. Council was particularly troubled by the lack of attention given by the Licensee to the obvious complex estate issues that a comprehensive fact finding would have revealed and that he did not appear remorseful for his poor practices.

Council determined that the Licensee should have at a minimum recommended legal advice in relation to the adult disabled child and the consequences to the care arrangement. Council concluded that the Licensee wanted to make a sale at the expense of understanding the ramifications of the transaction for the Client and his income. Council noted that ultimately the Client did not suffer a loss but only because the transfers were successfully halted.

As a result, Council finds the Licensee breached Council Rule 7(8) and sections 5.2 and 7.2 of Council's Code of Conduct, which require licensees to conduct all insurance activities in a competent manner and act in the usual practice of dealing with clients by protecting clients' interests, evaluating clients' needs, and acting with integrity, competence and the upmost good faith. As such, Council finds a sanction is warranted.

Council is not bound by precedent to follow the outcomes from prior decisions, but similar conduct should result in similar outcomes within a reasonable range depending on the particular facts of the case. In this regard, Council considered the precedent of *Ismat Simo* (September 13, 2017). In that case, the licensee made insurance and investment recommendations to a 79 year old client that were not in her best interest and brought into question his competency as a Life Agent. The client incurred significant tax penalties as a result. Council suspended the licensee's licence pending the completion of the foundational courses of the Certified Financial Planner program, required two years of supervision and assessed investigative costs against him.

Council considered the present case involving the Licensee to be less egregious than the facts of *Simo* in that the Client indicated no concern with the Licensee's conduct and was not harmed. Council determined that the Licensee would benefit most from remedial education given his failure to conduct a proper needs analysis and consider all aspects of the transactions he recommended to the Client. Council determined that the Licensee should be required to complete Council's Rules Course, the Advocis Core Curriculum Program for the Certified Financial Planner Designation, as well as an Elder Planning and an ethics course.

INTENDED DECISION

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

1. Require the Licensee to be supervised for a period of two years of active licensing by a Life Agent supervisor, as approved by Council;
2. Require the Licensee to complete all 12 modules of the Advocis Core Curriculum Program of the Certified Financial Planner Designation (the "CFP Modules");
3. Require the Licensee to complete an Elder Planning course, as approved by Council;
4. Require the Licensee to complete Modules I, II, and III of the course entitled *Making Choices: Ethics and Professional Responsibility in Practice* (the "Ethics Course") available through Advocis;
5. Require the Licensee to complete the Council Rules Course;
6. Impose a condition on the Licensee's Life Agent licence that failure to complete the CFP Modules and an Elder Planning course within 24 months of Council's order will result in suspension of his licence and he will not be permitted to complete his 2022 annual filing until such time as he has successfully completed these courses; and
7. Impose a condition on the Licensee's Life Agent licence that failure to complete the Council Rules Course and the Ethics Course within 90 days of Council's order will result in suspension of his licence and he will not be permitted to complete his 2020 annual filing until such time as he has successfully completed these courses.

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 within fourteen (14) days of receiving this intended decision. 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 within fourteen (14) days of receiving this intended decision, the intended decision of Council will take effect.

Even if this decision is accepted by the Licensee, pursuant to section 242(3) of the Act, the British Columbia Financial Services Authority ("BCFSA") still has a right to appeal this decision of Council to the Financial Services Tribunal ("FST"). The BCFSA has 30 days to file a Notice of Appeal, once

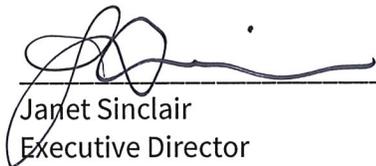
Intended Decision
Joseph Boon Wu Kong
LIC-190785C137366R1 / COM-2018-00021
January 27, 2020
Page 6 of 6

Council's decision takes effect. For more information respecting appeals to the FST, please visit their website at 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 **27th day of January, 2020.**

For the Insurance Council of British Columbia



Janet Sinclair
Executive Director