

**In the Matter of**

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

**and**

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

**and**

**JOHNSON FU INSURANCE AGENCY INC.**  
**(the “Agency”)**

## **ORDER**

As Council made an intended decision on May 13, 2014, pursuant to sections 231 and 236 of the Act; and

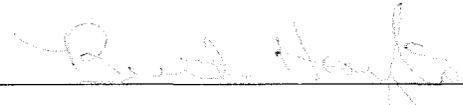
As Council, in accordance with section 237 of the Act, provided the Agency with written reasons and notice of the intended decision dated June 5, 2014; and

As the Agency 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 Agency is fined \$2,800.00.
2. 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 **September 24, 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 **September 25, 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 **24<sup>th</sup> day of June, 2014**.

  
\_\_\_\_\_  
Ruth Hoyte  
Chairperson, Insurance Council of British Columbia

## **INTENDED DECISION**

of the

**INSURANCE COUNCIL OF BRITISH COLUMBIA**

("Council")

**respecting**

**JOHNSON FU INSURANCE AGENCY INC.**

(the "Agency")

**and**

**TIT-PING FU**

(the "Nominee")

### **INTRODUCTION**

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

As part of Council's investigation, on April 22, 2014, a Review Committee (the "Committee") met with the Nominee via telephone to discuss the allegations the Agency failed to notify Council within five business days of no longer having errors and omissions ("E&O") insurance, as required by Council Rule 7(11)(c)(i), and failed to immediately cease to conduct insurance activities when it no longer held E&O insurance, as required by Council Rule 7(11)(c)(ii).

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 and the Nominee for review. A discussion of this report took place at the meeting and the Nominee was 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, were reviewed by Council at its May 13, 2014 meeting. After its review, Council 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 Agency of the action it intends to take under sections 231 and 236 of the Act before taking any such action. 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 Agency.

## **FACTS**

The Agency was first licensed as a life and accident and sickness insurance agent ("life agent") with Council effective May 12, 2004.

On March 22, 2010, in response to an E&O audit letter requesting proof of E&O insurance for the Agency, the Nominee submitted a Certificate of Insurance showing an aggregate coverage of \$2,000,000.00. Through the audit process, it was discovered that the E&O insurance coverage for the Agency and its representatives only covered a maximum of three licensed employees. As the Agency had four licensed employees since September 2009, the corporate rider was null and void, and the insurer would not have recognized any claims should they have arisen.

On April 8, 2010, Council provided written notification to the Agency and the Nominee of the requirements of Council Rule 7(11), and advised that the Agency and any life agents representing the Agency were not authorized to conduct insurance activities. On April 26, 2010, Council received proof of the Agency's E&O insurance effective April 15, 2010.

The Nominee confirmed that all of the Agency's licensees were compliant with their personal E&O insurance obligations. The sole issue was with respect to the Agency's failure to carry E&O insurance. Between the time of Council's letter notifying the Agency of its lack of E&O insurance and corresponding breach of Council Rules, and the April 15 effective date of the new policy, no insurance business was conducted. Prior to Council informing the Agency of its breach, the Agency had been carrying on business for approximately seven months without adequate E&O insurance coverage. The Nominee was unaware that there was inadequate E&O insurance coverage.

## **ANALYSIS**

Council considered the actions and submissions of the Agency and the Nominee.

Council determined, based on the Agency's admissions, as well as the evidence collected, it ought to have known it was in breach of the Agency's E&O insurance contract and, as such, was in violation of Council Rule 7(11)(c)(ii). Council further determined that the Agency did not inform Council within five business days of it no longer being insured for E&O as required under Council Rule 7(11)(c)(i). Council found that the Agency had been conducting business for approximately seven months without adequate E&O insurance coverage. Council accepted that the breach was not intentional.

Failure to carry adequate E&O insurance coverage represents a substantial risk to the public. Council considered prior decisions relating to unintentional breaches of Council Rule 7(11). In such cases, the usual penalty was a fine equal to approximately two times the Agency's annual E&O insurance premium. Council determined that this case was similar in nature and warranted a similar penalty. Accordingly, Council determined that in the circumstances, it is appropriate to fine the Agency \$2,800.00.

## **INTENDED DECISION**

Pursuant to sections 231 and 236 of the Act, Council made an intended decision to fine the Agency \$2,800.00.

The Agency 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.

The Agency is advised that failure to pay the fine within the 90 days, will result in the automatic suspension of its life agent 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 **June 24, 2014**, subject to the Agency's right to request a hearing before Council pursuant to section 237 of the Act.

## **RIGHT TO A HEARING**

If the Agency wishes to dispute Council's findings or its intended decision, the Agency 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 must give notice to Council by delivering to its office written notice of this intention by **June 23, 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 does not request a hearing by **June 23, 2014**, the intended decision of Council will take effect.

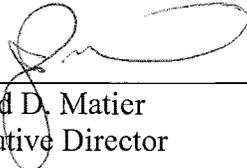
Even if this decision is accepted by the Agency, pursuant to section 242(3) of the Act, the Financial Institutions Commission still has a right to appeal this decision of Council to the Financial Services Tribunal ("FST"). The Financial Institutions Commission has 30 days to file a Notice of Appeal, once Council's decision takes effect. For more information respecting appeals to the FST, please visit their website at [fst.gov.bc.ca](http://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](mailto:FinancialServicesTribunal@gov.bc.ca)

Dated in Vancouver, British Columbia, on the **5<sup>th</sup> day of June, 2014**.

For the Insurance Council of British Columbia



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Gerald D. Matier  
Executive Director

GM/cc