

In the Matter of

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

and

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

and

RUDOLPH MACKENZIE BOATES
dba RUDY BOATES INSURANCE AGENCY
(the "Licensee")

ORDER

As Council made an intended decision on September 10, 2013, 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 October 31, 2013; and

As the Licensee originally requested a hearing, but has subsequently withdrawn his request for a hearing of Council's intended decision;

Under authority of sections 231 and 236 of the Act, Council orders:

1. The Licensee is fined \$1,600.00.
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 **March 31, 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 **April 1, 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 **31st day of December, 2013**.



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

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA (“Council”)

respecting

RUDOLPH MACKENZIE BOATES dba RUDY BOATES INSURANCE AGENCY (the “Licensee”)

INTRODUCTION

Pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council conducted an investigation into allegations the Licensee failed to comply with the requirements of Council Rule 7(11) by failing to notify Council of the loss of his errors and omissions (“E&O”) insurance coverage within five business days and by failing to cease conducting insurance activities.

As part of Council’s investigation, on July 22, 2013, an Investigative Review Committee (the “Committee”) met with the Licensee to discuss the allegations.

The Committee was comprised of one voting member and three non-voting members of Council. Prior to the Committee’s meeting with the Licensee, an investigation report was distributed to the Committee and the Licensee for review. A discussion of this report took place at the meeting and the Licensee 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 Licensee, 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 September 10, 2013 meeting. Based on 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 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

1. The Licensee was first licensed as a life and accident and sickness insurance agent in November, 1981. The Licensee is semi-retired and has no disciplinary record.
2. On November 16, 2011, Council received notification from the Licensee's managing general agent ("MGA") that the Licensee did not have E&O insurance. The Licensee contacted Council on the same day, stating that he had been contacted by his MGA regarding his E&O insurance.
3. The Licensee did not have E&O insurance coverage from January 1, 2009 until November 18, 2011.
4. During the time period he was without E&O coverage, the Licensee did conduct insurance activity with his existing clients and in response to referral business.
5. The Licensee believed that he applied, in December 2008, to renew his E&O insurance. The Licensee provided evidence of a completed December 2008 application, but he did not have proof that it was submitted.
6. On February 18, 2009, the Licensee received a letter from his E&O insurance agent that his E&O insurance coverage lapsed as of January 1, 2009. On February 25, 2009, the Licensee emailed his E&O insurance agent regarding the lapse letter of February 18, 2009. The Licensee stated he did not receive any further correspondence regarding the renewal of his E&O coverage from his E&O insurance agent.
7. The Licensee explained that at the same time he was corresponding with his E&O insurance agent regarding his E&O coverage, he was preoccupied with health complications relating to himself and a family member. In addition, the Licensee was in the process of building a new home. In the absence of further correspondence from his E&O insurance agent regarding E&O insurance, the Licensee failed to follow up on the expiration of his E&O coverage.

ANALYSIS

Council found the Licensee's failure to notify Council within five business days of losing E&O insurance coverage and continued insurance activities without E&O insurance coverage in place constituted a breach of Council Rules 7(11)(c)(i) and 7(11)(c)(ii).

While acknowledging Council was sympathetic to the personal challenges facing the Licensee at the time his E&O insurance coverage expired and the length of his unblemished career, Council felt operating without E&O insurance coverage for over 34 months, regardless of the circumstances, had the potential for placing the public at risk. Council noted the Licensee, while not engaged in insurance activities full-time during this period, did continue to service clients and transact insurance business.

Council considered prior decisions relating to unintentional breaches of Council Rule 7(11). These decisions included cases where, for various personal reasons, licensees continued to conduct insurance activities without minimum E&O insurance coverage in place. In such cases, the usual penalty was a fine equal to approximately two times the licensee's annual E&O insurance premium. Council determined this matter was similar in nature, constituting a single continuous breach of Council Rule 7(11), and warranted a similar penalty.

INTENDED DECISION

Pursuant to sections 231 and 236 of the Act, Council made an intended decision to fine the Licensee \$1,600.00.

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 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 **November 19, 2013**, 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 **November 18, 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 Licensee does not request a hearing by **November 18, 2013**, the intended decision of Council will take effect.

Intended Decision
Rudolph MacKenzie Boates dba Rudy Boates Insurance Agency
28095
October 31, 2013
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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 **31st day of October, 2013.**

For the Insurance Council of British Columbia



Gerald D. Matier
Executive Director

GM/cp