

In the Matter of

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

and

The INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

and

EPHRAIM JOSHUA AZUCENA DELA CRUZ
(the “Licensee”)

ORDER

As Council made an intended decision on May 14, 2013, pursuant to sections 231, 236, and 241.1 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 June 7, 2013; 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, 236, and 241.1 of the Act, Council orders:

1. The Licensee is fined \$1,000.00.
2. The Licensee is assessed Council’s investigative costs of \$437.50.
3. A condition is imposed on the Licensee’s general insurance licence that requires him to pay the above-ordered fine and investigative costs no later than **September 26, 2013**. If the Licensee does not pay the ordered fine and investigative costs in full by this date, the Licensee’s general insurance licence is suspended as of **September 27, 2013**, without further action from Council and the Licensee will not be permitted to complete any annual filing until such time as the ordered fine and investigative costs are paid in full.

Order
Ephraim Joshua Azucena Dela Cruz
178485-11267
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This order takes effect on the **26th day of June, 2013.**



Rita Ager, CFP, CLU, RHU, CSA
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

respecting

EPHRAIM JOSHUA AZUCENA DELA CRUZ
(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. In particular, Council considered allegations that the Licensee improperly executed Insurance Corporation of British Columbia (“ICBC”) transactions by allowing a customer to forge an ex-husband’s signature on transactional documents.

An investigation report was reviewed by Council at its May 14, 2013 meeting. At the conclusion of its meeting, 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, 236, and 241.1 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 as a Level 1 general insurance salesperson since October 2009. The Licensee is currently authorized to represent an agency (the “Agency”), where he has been working since May 2012.

In August 2012, a customer (the "Customer") purchased a vehicle (the "New Vehicle") from a dealership (the "Dealership"). As part of the New Vehicle purchase, the Customer traded in her current vehicle (the "Trade-In Vehicle"), which was registered in her and her ex-husband's names. The Licensee attended the Dealership and processed the required ICBC transactions, completing two ICBC transfer forms (transferring the Trade-In Vehicle from the Customer and her ex-husband to the Dealership, and transferring the New Vehicle from the Dealership to the Customer and her ex-husband) and processing a vehicle registration and insurance certificate on the New Vehicle for the Customer and her ex-husband.

Prior to facilitating these transactions, the Customer produced a blank vehicle transfer form that had apparently been signed by her ex-husband sometime in the month prior. The Licensee advised the Customer that the transfer form was not acceptable and that a new transfer form was required. The Customer advised the Licensee she would secure a power of attorney ("POA") from her ex-husband, who resided in the Philippines, authorizing the transactions.

The following day, the Customer again attended the Dealership and met with the Licensee to complete the purchase of the New Vehicle and the required transactions. The Customer told the Licensee that a POA for the transactions from her ex-husband would follow but, in the meantime, she had her ex-husband's authority to proceed with the transactions.

Based on this, the Licensee processed two transfer forms and a vehicle registration/insurance certificate for the Customer, resulting in the Trade-In Vehicle being transferred to the Dealership, the New Vehicle being transferred to the Customer and her ex-husband, and insurance (licence plates) being transferred from the Trade-In Vehicle to the New Vehicle. The Customer signed the ex-husband's name three times on the transactional documents.

On the same day, the ex-husband executed a POA in the Philippines, giving the Customer authority to act on his behalf in the aforementioned transactions. The POA was received by the Customer approximately one week later.

Upon learning of the matter from ICBC, the Agency placed the Licensee on probation. The Licensee apologized in writing to the Agency for his error in judgment and acknowledged responsibility for his actions.

ANALYSIS

Council found the Licensee failed to carry on the business of insurance in accordance with the usual practice. Council determined the Licensee should have known that allowing the Customer to sign on behalf of her ex-husband without written authorization was wrong.

Council accepted that the Licensee's actions were solely to convenience the client. Council found that the execution of a POA by the ex-husband on the same day as the vehicle transactions was evidence the ex-husband was in agreement with the transactions.

Council considered the precedents *S. Kearns* and *S. Moh*. In *S. Kearns*, the licensee forged the signatures of two clients when executing insurance transactions for them. Council concluded that the forgeries were done for convenience. Council fined the licensee \$1,000.00, assessed investigative costs, required the licensee to complete an errors and omissions course, and required the licensee to remain under supervision for 12 months of active licensing.

Similarly, in *S. Moh*, the former licensee improperly signed insurance documents for convenience on behalf of two clients. He was fined \$1,000.00, and assessed investigative costs. Council determined that should the former licensee return to the industry, he would be required to remain under supervision for 12 months of active licensing and complete an errors and omissions course.

Council considered whether supervision or education conditions were required in this case, but determined there was no concern with the Licensee's overall competency and that such conditions were not necessary.

Council held that a fine of \$1,000.00 would be appropriate to address the Licensee's failure to complete an insurance transaction in accordance with correct procedures and the requisite client authority.

INTENDED DECISION

Pursuant to sections 231, 236, and 241.1 of the Act, Council made an intended decision to:

1. Fine the Licensee \$1,000.00.
2. Assess the Licensee Council's investigative costs of \$437.50.

The Licensee is advised that should the intended decision become final, the fine and costs will be due and payable within 90 days of the date of the order. In addition, failure to pay the fine and costs within the 90 days will result in the automatic suspension of the Licensee's general insurance licence, and the Licensee will not be permitted to complete any annual filing until such time as the fine and investigative costs are paid in full.

The intended decision will take effect on **June 26, 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 **June 25, 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 **June 25, 2013**, 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 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 7th day of June, 2013.

For the Insurance Council of British Columbia



Gerald D. Matier
Executive Director

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