

In the Matter of

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

and

The INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

and

MA-ISABEL PEREZ JAVILLO
(the “Licensee”)

ORDER

As Council made an intended decision on July 15, 2014, 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 July 29, 2014; and

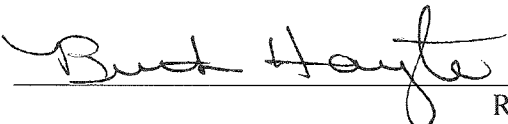
As the Licensee initially requested a hearing of Council’s intended decision within the time period provided by the Act, but subsequently withdrew that request on October 20, 2014;

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

1. The Licensee is fined \$3,300.00.
2. A condition is imposed on the Licensee’s life and accident and sickness insurance licence that requires her to pay the above-ordered fine in minimum monthly installments of \$137.50 commencing on **November 28, 2014** until the total fine has been paid in full. If the Licensee does not meet the minimum monthly installment schedule, the Licensee’s life and accident and sickness insurance licence is suspended effective the first day following the missed payment date without further action from Council and the Licensee will not be permitted to complete any annual filing until such time as the total amount of the fine is paid in full.

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167907
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This order takes effect on the 28th day of October, 2014.



Ruth Hoyte
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

respecting

MA-ISABEL PEREZ JAVILLO
(the “Licensee”)

INTRODUCTION

Pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council conducted an investigation into allegations the Licensee acted in breach of Council Rule 7(11).

As part of Council’s investigation, a Review Committee (the “Committee”) met with the Licensee on June 23, 2014 to discuss allegations that the Licensee breached Council Rule 7(11) by failing to maintain proper errors and omissions (“E&O”) insurance and by making a material misstatement pursuant to section 231 of the Act.

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 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, were reviewed by Council at its July 15, 2014 meeting, where 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

The Licensee was originally licensed as a life and accident and sickness insurance agent (“life agent”) in British Columbia on October 24, 2006. She worked at the same agency from the time she was licensed until September 25, 2013, when her licence was terminated for failing to have E&O insurance in place. The Licensee subsequently reapplied and obtained a life agent licence on January 23, 2014.

On June 26, 2013 the Licensee’s E&O insurance was terminated. She received notice of the cancellation by letter dated July 2, 2013. Council was also provided a copy of this letter. On July 19, 2013, the Licensee submitted her annual filing stating that she was in compliance with all of Council Rules. After her E&O insurance was cancelled, but before her licence was terminated, the Licensee continued to engage in insurance activities.

Council found the Licensee was aware that she was without E&O insurance, and that being so was in breach of Council Rule 7(11), which requires E&O coverage to be in place. Due to a number of personal challenges, the Licensee decided to continue to conduct insurance activities without E&O insurance.

ANALYSIS

Council found the above facts constituted an intentional breach of Council Rules 7(11)(c)(i) and 7(11)(c)(ii), as the Licensee failed to notify Council within five business days of losing E&O coverage and continued to conduct insurance activities. In addition, as the Licensee submitted her annual filing, even though she knew she did not have E&O insurance in place, Council determined the Licensee made a material misstatement under section 231 of the Act.

Council noted the Licensee’s personal circumstances were found by the Committee to be a mitigating factor. Council did not accept this, instead determining the Licensee had a responsibility to ensure her insurance practice was in compliance with Council Rules. Council concluded that, while it was sympathetic to the personal challenges the Licensee was facing, it could not overlook the fact that the Licensee’s actions had potential to put the public at risk.

In determining an appropriate disposition of the matter Council considered prior decisions related to breaches of Council Rule 7(11). These decisions included cases where licensees continued to conduct insurance activities without proper E&O insurance in place. In these previous decisions, Council found that the breaches were unintentional and that the appropriate fine was determined to be two times the licensee’s annual E&O insurance premium.

Council also considered the previous case *Magdalena Mandocdoc Gatus* where the breach of Council Rule 7(11) was intentional. In this decision Council concluded that where a licensee intentionally operated without E&O insurance, a substantive fine was appropriate.

Council was, therefore, of the opinion that in order to assess a reasonable penalty, while providing a deterrent, a substantive fine should be imposed. Council determined that an appropriate fine in this case would be four times the Licensee's annual E&O insurance premium.

Council noted that in past decisions where a licensee made a material misstatement on an annual filing, the licensee was fined. Council found the Licensee had made a material misstatement on her annual filing and that a \$500.00 fine should also be assessed.

INTENDED DECISION

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

1. Fine the Licensee \$2,800.00 for the intentional breach of Council Rule 7(11).
2. Fine the Licensee \$500.00 for making a material misstatement on her annual filing under section 231 of the Act.

In making the intended decision, Council took into consideration the Licensee's personal challenges and agreed to extend the maximum 90-day period to pay the fines and to allow them to be paid in equal monthly installments over a time frame not exceeding 24 months.

The Licensee is advised that should the intended decision become final, the fines will be due and payable in accordance with the above-mentioned installment plan. Failure to pay the fines in accordance with the installment plan will result in the automatic suspension of the Licensee's life and accident and sickness insurance licence and the Licensee will not be permitted to complete any annual filing until such time as the fines are paid in full.

The intended decision will take effect on **August 19, 2014**, 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 **August 18, 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 Licensee does not request a hearing by **August 18, 2014**, 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 fst.gov.bc.ca or contact them directly at:

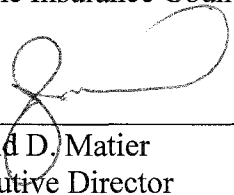
Financial Services Tribunal
PO Box 9425 Stn Prov Govt
Victoria, British Columbia
V8W 9V1

Reception: 250-387-3464
Fax: 250-356-9923

Email: FinancialServicesTribunal@gov.bc.ca

Dated in Vancouver, British Columbia, on the **29th** day of **July, 2014**.

For the Insurance Council of British Columbia



Gerald D. Matier
Executive Director

GM/rg