

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

and

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

and

MAN KUEN TAM
(the "Licensee")

ORDER

As Council made an intended decision on May 12, 2015, 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 9, 2015; and

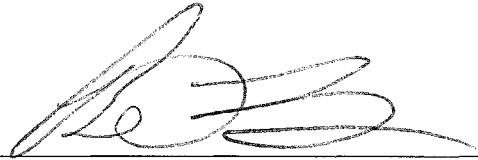
As the Licensee has not requested a hearing of Council's intended decision within the time period provided by the Act;

Under authority of sections 231, 236, and 241.1 of the Act, Council orders:

1. The Licensee's general insurance licence is suspended for a period of six months, commencing on **July 15, 2015** and ending at midnight on **January 14, 2016**.
2. The Licensee is fined \$1,000.00.
3. The Licensee is assessed Council's investigative costs of \$900.00.
4. 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 30, 2015**. If the Licensee does not pay the ordered fine and investigative costs in full by this date, 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. If they remain unpaid as of **January 14, 2016**, the Licensee's general insurance licence will remain suspended until the ordered fine and investigative costs are paid in full.

Order
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This order takes effect on the **30th day of June, 2015.**

A handwritten signature in black ink, appearing to read 'Brett Thibault', is written above a horizontal line.

Brett Thibault
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA (“Council”)

respecting

MAN KUEN TAM (the “Licensee”)

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.

As part of Council’s investigation, on April 13, 2015, a Review Committee (the “Committee”) met with the Licensee to discuss the allegation that the Licensee failed to inform a client that her insurance policy had lapsed.

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 prepared a report for Council’s consideration.

The Committee’s report, along with the aforementioned investigation report, were reviewed by Council at its May 12, 2015 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, 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 general insurance agent for approximately 15 years.

In the summer of 2012, a new agency (the "Agency") purchased the agency where the Licensee worked (the "Former Agency"). During the following year, the Licensee changed office locations twice.

An insurance client (the "Client") began her relationship with the Licensee at the Former Agency, and purchased commercial insurance for her business each year through the Licensee.

On August 1, 2013, the Client's policy expired and was not renewed within the allowable time frame due to delays in submitting the required premium. As a result, the policy lapsed, leaving the Client without insurance for approximately six months.

The Licensee's Submission

The Licensee stated he contacted the Client approximately three weeks prior to her insurance policy expiry date. The Licensee stated he faxed and mailed the renewal forms to the Client. The Client did not return the forms and the Licensee had difficulty contacting the Client, resulting in the policy expiring.

After the policy expired, the Licensee emailed the Client three times, sending her documents and reminding her that the documents needed to be signed and the premium deposit paid, or her insurance would not be renewed.

On August 21, 2013, the Client faxed the signed documents to the Licensee including a Summary of Coverages document. The Summary of Coverages stated that coverage was not in effect until a binder evidencing insurance had been issued. The documents also included the Binding Conditions which specified that proof of payment of the minimum retained premium was required. The documents also stated that the quote was only valid until September 20, 2013.

Immediately upon receipt of the signed documents, the Licensee left the Client a voicemail requesting the required premium payment. When the Client returned his call approximately one week later, the Licensee explained that the premium deposit was required before her insurance could be bound, as per the documents she signed. He asked her for a credit card, but she said she preferred to mail a cheque. By the end of August 2013, the Licensee still had not received the Client's cheque. The Licensee left the Client multiple voicemail messages and sent her emails on August 29, 2013, September 6, 2013, and September 19, 2013 requesting payment.

In late November or early December 2013, the Former Agency office called to inform the Licensee that the Client's cheque had been sent there. The envelope was postmarked September 27, 2013. The Licensee does not know why he was not notified sooner that the cheque had been mailed to the Former Agency, and does not know when it arrived.

Upon receipt of the cheque, the Licensee contacted the insurer to renew the Client's policy; however, he was told that it was too late to backdate the policy, and a new policy application was required.

Lapse Procedure

In cases of non-renewal, the Agency issues a lapse letter to a client. In such cases the client's insurance agent is responsible for making sure a letter is sent to the client. In the case of the Client, the Agency found no record indicating that the Licensee sent a lapse letter to the Client in 2013.

The Licensee advised that his normal practice is to send a letter to the client when the client's insurance expires, advising of the lapse in coverage, but could not explain why such a letter was not on the Client's file. The Licensee could not produce any correspondence between September 2013 and January 2014 specifically advising the Client that she was without coverage.

The Client's Submission

On July 22, 2013, the Client received an email from the Licensee informing her that her insurance renewal was coming due soon, and that the Agency would require a down payment. The Client recalls the Licensee asking her to fill out some forms in August for the renewal. She completed all the forms in August 2013, and sent a cheque. The Client stated she was under the impression everything was fine and her insurance was in place.

Eventually, the Client phoned a supervisor at the Agency to inquire as to why she had not received a copy of her policy. The supervisor advised the Client that the policy had not been renewed and she did not have insurance. The Client stated this was when she first learned her policy had lapsed and that she had been without insurance coverage for approximately six months.

ANALYSIS

Council accepted that the Licensee attempted to contact the Client regarding the renewal of her insurance policy and concluded the Licensee took reasonable steps to notify the Client of her upcoming renewal. However, once the policy had lapsed, Council determined that, based on the fact the Licensee could produce no evidence to the contrary, the Licensee failed to notify the Licensee her coverage had lapsed and she was uninsured.

In making this determination Council took into consideration the fact the Client only learned about the lapse in coverage after she contacted the Agency's manager.

Council determined that failure to advise the Client regarding her lack of coverage represented a significant breach of the Licensee's duties as an insurance agent, contrary to the usual practice of the business of insurance.

In determining an appropriate penalty, Council took into consideration the fact the Licensee was disciplined in 2012 for providing a client with a false cover note for an expired insurance policy, which resulted in a requirement to complete an errors and omissions course, pay a \$2,000.00 fine, and pay Council's investigative costs. Council found there was some relevance between the 2012 decision and this matter, and concluded a more significant penalty was appropriate.

INTENDED DECISION

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

1. Suspend the Licensee's general insurance licence for a period of six months.
2. Fine the Licensee \$1,000.00.
3. Assess the Licensee Council's investigative costs of \$900.00.

The Licensee is advised that should the intended decision become final, the fine and investigative costs will be due and payable within 90 days of the date of the order. Failure to pay the fine and investigative costs before the completion of the suspension period will result in the continued suspension of the Licensee's general insurance licence. The Licensee will not be permitted to complete any annual filing until the fine and investigative costs are paid in full.

The Licensee's suspension will begin on **July 15, 2015**, and end at midnight on **January 14, 2016**.

The intended decision will take effect on **June 30, 2015**, 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 29, 2015**. 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 29, 2015**, 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 **9th day of June, 2015**.

For the Insurance Council of British Columbia



Gerald D. Matier
Executive Director
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gmatier@insurancecouncilofbc.com

GM/bk