

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

and

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

and

MALKEET SINGH BAINS
(the “Licensee”)

ORDER

As Council made an intended decision on July 16, 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 August 6, 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. A condition is imposed on the Licensee’s life and accident and sickness insurance licence that permits him to only act as a nominee for an insurance agency which does not have any additional authorized representatives.
2. A condition is imposed on the Licensee’s life and accident and sickness insurance licence that prohibits him from acting as a supervisor pursuant to Council Rule 7(16.1).
3. A condition is imposed on the Licensee’s life and accident and sickness insurance licence that prohibits him from selling any non-insurance financial products.

4. A condition is imposed on the Licensee's life and accident and sickness insurance licence that requires him to disclose, in a manner acceptable to Council, the British Columbia Securities Commission (the "BCSC") decision and Council's decision to any insurance companies that he is, or subsequently becomes, contracted with, and all managing general agents with which he places insurance business.
5. A condition is imposed on the Licensee's life and accident and sickness insurance licence that requires him to disclose, in a manner acceptable to Council, the BCSC decision to all new and existing clients upon the transaction of any new or subsequent insurance business.
6. The Licensee is assessed Council's investigative costs of \$900.00.
7. A condition is imposed on the Licensee's life and accident and sickness insurance licence that requires him to pay the above-ordered investigative costs no later than **November 27, 2013**. If the Licensee does not pay the ordered investigative costs in full by this date, the Licensee's life and accident and sickness insurance licence is suspended as of **November 28, 2013**, without further action from Council and the Licensee will not be permitted to complete any annual filing until such time as the ordered investigative costs are paid in full.

This order takes effect on the 27th day of August, 2013.



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

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA (“Council”)

respecting

MALKEET SINGH BAINS (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.

As part of Council’s investigation, on May 21, 2013, an Investigative Review Committee (the “Committee”) met with the Licensee to discuss his suitability following the resolution of an investigation of the Licensee by the British Columbia Securities Commission (the “BCSC”).

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 July 16, 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 life and accident and sickness insurance agent (“life agent”) since 1991. Since 1999, he has been the nominee for M. Bains Financial Inc. (the “Agency”), and since 2008, he has also been the nominee for an additional agency (“Agency B”).

On June 31, 2010, the Licensee’s life agent licence was terminated due to non-filing and, as such, both the Agency and Agency B’s licences were suspended under Council Rules as each ceased to have a nominee.

On September 20, 2010, the Licensee submitted a reapplication for a life agent licence, seeking to act as the nominee for the Agency. As part of his reapplication, the Licensee disclosed he was under investigation by the BCSC for his involvement with Sungro Minerals Inc. (“Sungro”), a Nevada-based company that he incorporated in August 2007. The Licensee started Sungro with the assistance of a friend (“McLeary”), who the Licensee understood had experience starting public companies. On July 29, 2009, the BCSC issued a cease-trade order against Sungro, pending a full investigation regarding allegations of stock manipulation.

Initial Committee Meeting

On November 22, 2010, a Committee met to discuss the Licensee’s involvement in Sungro, and his suitability to be a life agent.

The Licensee was granted a life and accident and sickness insurance licence based on representations he made to the Committee, and the information available at the time. The Committee determined a licence could be issued, subject to the following three conditions:

1. The Licensee is only permitted to act as a nominee for an insurance agency which does not have any authorized representatives other than the nominee himself.
2. The Licensee is prohibited from conducting any activities related to exempt securities or any companies listed on the U.S. Over the Counter Bulletin Board.
3. The Licensee is prohibited from being a major shareholder, officer, or director in any company dealing in exempt securities or over the counter trading.

The Licensee agreed to these conditions.

The BCSC investigation was subsequently concluded and disposed of by way of a Settlement Agreement. As part of the Settlement Agreement, the Licensee admitted he should have known that market manipulation was occurring.

The Settlement Agreement required that the Licensee pay a fine of \$125,000.00 to the BCSC, and that he testify against McLeary at a further hearing.

Additionally, the BCSC issued the following orders regarding the Licensee:

- The Licensee will be prohibited from purchasing or trading in securities for a period of 25 years, (with the exception that he may purchase and trade through one non-registered account, registered retirement savings plan and registered education savings plan accounts through a registered representative, provided he has given a copy of the order to the registered representative through which he makes a purchase or trade).
- The Licensee will be prohibited from the following for a period of 25 years; becoming or acting as an officer or director of any issuer; becoming or acting as a promoter; acting in a management or consultative capacity in connection with activities in the securities market; and engaging in investor relations activities.

Possible Discrepancies

Based on the May 23, 2012 Agreed Statement of Facts between the BCSC and the Licensee that formed part of the Settlement Agreement, there appeared to be discrepancies between the agreed-upon facts and what the Licensee stated to the Committee at its November 22, 2010 meeting.

Regarding the manipulation of Sungro shares, in his discussion with the Committee at the November 22, 2010 meeting, the Licensee stated he was “*still attempting to put together how this occurred.*” However, in the BCSC Agreed Statement of Facts, the Licensee acknowledged there were instances when McLeary instructed him to direct certain shareholders to sell their shares over a certain number of days, in a specific sequence, and at specific prices. The Licensee admitted that when he instructed his associate to enter these sell orders, he knew Sungro had no mineral property and negligible assets.

The Licensee submitted there was no discrepancy between what he told the Committee and the Agreed Statement of Facts, as he had been consistent in his position that, while he should have known market manipulation was occurring, he was, in fact, unaware that it was occurring. In support of this position, the Licensee provided a letter from the BCSC’s legal counsel confirming that the BCSC accepted the Licensee did not know that market manipulation was occurring.

Another discrepancy was the amount of money the Licensee received from the sale of Sungro shares. In particular, on November 22, 2012, the Licensee advised that he did not profit from Sungro at any time. The Agreed Statement of Facts indicates the Licensee received various sums of money as a result of Sungro share sales. The Licensee submitted that, while he did receive proceeds from the sale of Sungro shares, he did not consider this “*profit*” as he also disbursed the funds on behalf of Sungro in order to pay lawyers, accountants, and auditors.

The Licensee argued he was simply the “*face of the company*” and did not understand or know what was going on behind the scenes. He accepts that he should have taken proactive steps to inform himself about the company’s market practices, and should have been aware market manipulation was occurring.

ANALYSIS

Council considered the Licensee’s suitability in light of the BCSC decision and the Licensee’s submissions. Council determined the Licensee’s admission that he should have known market manipulation was occurring gave rise to issues of suitability.

Council also considered the Licensee’s financial reliability and noted the Licensee provided a letter from the BCSC which confirmed that he was up to date with his monthly payments for the BCSC fine. Council noted that there have been no issues identified regarding the Licensee’s insurance business. These factors alleviated some of Council’s concerns related to the Licensee’s suitability in light of his securities-related misconduct.

Council reviewed the precedent *H. C. Chiang*, in which a settlement agreement between the licensee and the Mutual Fund Dealers Association of Canada (“MFDA”) gave rise to issues of suitability. The MFDA determined the licensee had engaged in activities that gave rise to conflicts of interest between her and her clients, including recommending clients purchase shares in a company for which she was a shareholder. Council placed conditions on the licensee’s life and accident and sickness insurance licence, including that she be prohibited from selling non-insurance financial products; she notify Council prior to engaging in outside business activities; and she place all of her insurance business through her managing general agent (“MGA”).

In order to address Council’s goal of public protection, Council determined that a condition should be imposed on the Licensee’s life and accident and sickness insurance licence requiring that he disclose the BCSC and Council’s decision to any insurance companies he is, or will become, contracted with, as well as all MGAs through which he places insurance business. Council further determined the Licensee should be required to disclose, in a manner acceptable to Council, the BCSC decision to new and existing clients when conducting any new or subsequent insurance transactions.

Council determined a condition prohibiting the Licensee from selling any non-insurance financial products was appropriate in light of the BCSC decision. Council held the Licensee should also be prohibited from acting as a life agent supervisor, and that he should only be permitted to act as a nominee for an insurance agency which does not have any additional authorized representatives.

INTENDED DECISION

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

1. Permit the Licensee to only act as a nominee for an insurance agency which does not have any additional authorized representatives.
2. Prohibit the Licensee from acting as a supervisor pursuant to Council Rule 7(16.1).
3. Prohibit the Licensee from selling any non-insurance financial products.
4. Require that the Licensee disclose, in a manner acceptable to Council, the BCSC decision and Council's decision to any insurance companies that he is, or subsequently becomes, contracted with, and all MGAs with which he places insurance business.
5. Require that the Licensee disclose, in a manner acceptable to Council, the BCSC decision to all new and existing clients upon the transaction of any new or subsequent insurance business.
6. Assess the Licensee Council's investigative costs of \$900.00.

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

The intended decision will take effect on **August 27, 2013**, subject to the Licensee's right to request a hearing before Council pursuant to section 237 of the Act.

Intended Decision
Malkeet Singh Bains
93999-11213
August 6, 2013
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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 26, 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 **August 26, 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 **6th day of August, 2013**.

For the Insurance Council of British Columbia



Gerald D. Matier
Executive Director

GM/cp