

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

and

The INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

and

SU MING GUO
(the “Licensee”)

ORDER

As Council made an intended decision on January 12, 2016, 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 February 19, 2016; and

As the Licensee requested a hearing of Council’s intended decision in accordance with the Act on March 8, 2016; and

As the Licensee subsequently withdrew her request for a hearing on August 29, 2016;

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

1. The Licensee’s life and accident and sickness insurance licence is suspended for a period of six months, commencing on **September 28, 2016** and ending at midnight on **March 27, 2017**.
2. A condition is imposed on the Licensee’s life and accident and sickness insurance licence that requires her to be supervised by a qualified life and accident and sickness insurance agent until such time as she accumulates an additional 24 months of active licensing.
3. A condition is imposed on the Licensee’s life and accident and sickness insurance licence that prohibits her from engaging in the sale of any non-insurance financial products.
4. The Licensee is fined \$5,000.00.

5. The Licensee is assessed Council's investigative costs of \$1,637.50.
6. A condition is imposed on the Licensee's life and accident and sickness insurance licence that requires her to pay the above-ordered fine and investigative costs in six equal monthly instalments of \$1,106.25, with the first monthly instalment due **April 27, 2017**, and the remaining monthly instalments due on the 25th of each month thereafter. If the Licensee fails to pay any of the six instalments in accordance with the payment schedule set out above, the Licensee's life and accident and sickness insurance licence will be suspended the next calendar day, without further action from Council, and the Licensee will not be permitted to submit her next annual filing until such time as the ordered fine and investigative costs are paid in full.

This order takes effect on the **27th day of September, 2016**.



Dr. Eric Yung
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

respecting

SU MING GUO
(the “Licensee”)

and

SUNING FINANCIAL SERVICE LTD.
(the “Agency”)

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 August 17, 2015, a Review Committee (the “Committee”) met with the Licensee and her lawyer, Mary Clare Baillie (“Baillie”) to discuss allegations that the Licensee recommended and personally guaranteed insurance clients’ investments in an unregulated financial vehicle.

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 and Baillie were provided an opportunity to make further submissions. Having reviewed the investigation materials and after discussing this matter with the Licensee and Baillie, the Committee prepared a report of its meeting for Council and recommended that Council staff conduct an inspection of further records.

The Committee’s report, along with the aforementioned investigation report and additional written submissions on behalf of the Licensee, were reviewed by Council at its January 12, 2016 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 was first licensed as a life and accident and sickness insurance agent ("life agent") on April 13, 2000. She is currently the nominee and the only licensee authorized to represent the Agency. The Licensee holds the Chartered Life Underwriter ("CLU") and Certified Financial Planner ("CFP") designations.

The Investment

The British Columbia Securities Commission ("BCSC") is currently investigating the activities of an individual (the "Principal") and his company (the "Investment") regarding the soliciting of funds from investors for the purposes of trading in the foreign exchange market. In promoting the Investment, the Principal is alleged to have promised a return of 60% per year. Although the matter is still under investigation by the BCSC, it appears the Principal did not invest the funds as agreed, and to date, many investors have not recovered their investment.

The Principal

The Licensee became acquainted with the Principal in 2005. She attended the same social gatherings and was invited to the Principal's home on multiple occasions. Sometime in 2007, the Principal's wife suggested the Licensee invest with the Principal. The Principal's wife told the Licensee that the Principal was very successful with his investments, but did not give her any details.

The Licensee acknowledges that she did not do any due diligence with respect to the Investment before deciding to invest. She signed agreements with the Principal based on trust and her high personal opinion of the Principal, rather than as a result of investigating the Investment itself.

The Licensee stated that she invested approximately \$800,000.00 of her own money between 2007 and 2013. Her contract with the Principal stated that she would receive an annual return of 60%; however, she decided she wanted a guarantee that her capital would be kept safe, and agreed with the Principal to accept a lower rate of return of 30%. She was permitted to make withdrawals at any time.

Between May and July 2014, the Principal told the Licensee that her investment was worth more than \$2,000,000.00 on paper. At that time, the Licensee spoke with the Principal and advised him to make sure her insurance clients (who had invested as set out below) were paid before her.

Insurance Clients

The Licensee discussed the Investment with several of her insurance clients, as she saw it as a way to assist clients in being able to continue to either pay premiums on their insurance policies, or be able to purchase new insurance policies. Her strategy was that clients' returns from the Investment would pay the premium payments on their insurance policies. The Licensee stated the alternative was that some of her clients would have had to cancel, or not purchase, the insurance she recommended. The Licensee felt strongly that her clients needed to have insurance, and, because some clients were "financially constrained", the Investment provided a possible solution.

The Licensee stated that she advised her clients to keep their principal to a minimum and to only invest an amount that would generate enough interest to pay their insurance premiums. She even recommended that once their policies were paid up, that they should withdraw their principal.

According to the Licensee, she did not want her clients' money to be exposed to any risk, and so she took the additional step of guaranteeing some of her clients' principal, using her own investment in the Investment to back her guarantees.

Eight of the Licensee's insurance clients invested a total of \$680,000.00 with the investor. However, the Licensee only "informed" seven of the clients of the Investment. The eighth client knew the Principal and had invested on his own. Four of the clients recovered their principal plus interest. There is no evidence to suggest the Licensee received any compensation from the Principal as a result of directing her clients to the Investment.

Client A: Request for Referrals

One of the eight clients who invested in the Investment ("Client A") advised Council that she met the Licensee when the Licensee took over as her servicing agent about four years ago.

In early 2013, Client A contacted the Licensee to purchase a life insurance product. At that time, the Licensee introduced the Investment to her. According to Client A, the Licensee said she only offered the Investment to certain clients, and that the Investment paid at least a 30% annual return and would help her pay her insurance premiums. The Licensee did not explain where the money would be invested, but said that all the other clients she introduced the Investment to were receiving good quarterly returns, and that she fully trusted the Principal.

In April 2013, Client A purchased critical illness insurance from the Licensee. During the meeting, the Licensee again discussed the Investment and advised her that the return on the Investment would pay her insurance premiums. The Licensee presented Client A with a contract, which included the Agency as a party, and the Licensee as Guarantor, in which the Licensee personally guaranteed a 30% return. The Licensee told Client A she was not receiving any commission or referral fees, and was only suggesting the Investment to help her with her insurance premiums. Client A signed the contract and invested \$40,000.00 in the Investment in May 2013.

In May or June 2014, the Licensee contacted Client A to advise her that there was a problem with the Investment. Client A had received a letter from the Principal stating that he was closing his business and would return her principal. The Principal did not return any money to Client A.

Following the news about the Investment, the Licensee contacted Client A to request a friend's contact information so she could sell the friend insurance. The Licensee told Client A that all her money was tied up in the Investment, but if Client A introduced the Licensee to her friend, and the Licensee could interest the friend in some insurance, she would pay Client A back with the commissions she received. Client A refused.

Client A subsequently advised Council that the Licensee had apologized to her for recommending the Investment and had paid her \$5,000.00. Client A advised that she is happy with the Licensee's continued service as her insurance agent.

None of the other insurance clients who invested in the Investment have had contact with Council. No clients have complained about the Licensee's conduct.

The Licensee's Submissions

The Licensee submitted the following:

- That her sole concern was her client's ability to obtain and/or maintain appropriate insurance coverage.
- The Licensee informed six clients of the Investment. One client had already heard of the opportunity and another client approached the Licensee and asked her to invest in whatever investment project she was involved with.
- Of the six clients to whom the Licensee recommended the Investment, four had pre-existing policies they wished to keep, and two were seeking to purchase new policies.
- The existing policies were in their second or subsequent years, and the Licensee stood to gain very little by their maintenance in terms of commission and/or annual trailer fees.

- With respect to Client A, the Licensee confirmed she has received no return on her funds that were placed in the Investment. The Licensee has confirmed her intention to repay Client A's principal. In that regard, the Licensee suggested to Client A that it would be helpful if Client A could refer new insurance clients to the Licensee, although the Licensee's commitment to repay Client A is in no way tied to such referrals.
- The new policies purchased by the Licensee's insurance clients, who invested in the Investment, generated returns and enabled at least one client to purchase a critical illness policy.
- Another client was apparently repaid by the Principal, in addition to being provided funds by the Licensee.
- The Licensee received no form of benefit from the Principal.

In written submissions, the Licensee stated she approached the investment opportunity offered by the Principal cautiously and prudently, initially only investing on her own behalf. The Licensee submitted that she took the following steps before investing in the Investment:

- Preparing a questionnaire aimed at obtaining detailed information concerning the Investment and its risk factors.
- Arranging a formal meeting with the Principal and his spouse to review the questionnaire.
- Receiving assurances from the Principal concerning the "at risk" amount.
- Receiving assurance from the Principal concerning the amount of capital reserves in place.
- Consulting with experts in foreign exchange contract investing to evaluate proposed rate of return.
- Inquiring as to the Principal's *bona fides* from others associated with him.
- Developing a relational basis for trust (with the Principal) over a period of two or more years.

However, the Licensee stated that although she prepared the questionnaire seeking information from the Principal, she never received responses to the questionnaire.

The Licensee emphasized that Council should consider the cultural context in which the situation and relationship with the Principal arose. In particular, that trust forms a central tenant of the business dealings in the immigrant community, in which the Licensee was conducting business.

The Licensee acknowledged that, in hindsight, she was not in a position to evaluate the Investment as fully as the circumstances warranted, given that she was recommending the Investment to others. She acknowledges that “in an effort to protect her clients against financial hardship, she placed too great an emphasis on her trust in [the Principal]”.

ANALYSIS

Council determined that the Licensee recommended the Investment to insurance clients based on her personal confidence in the Principal, rather than on any understanding of the Investment itself. It determined that the Licensee did so in order to allow some clients to maintain, or purchase, insurance products that they otherwise could not afford, but from which she stood to benefit financially.

Council found the Licensee failed to conduct any meaningful due diligence regarding the Investment. It noted that the Licensee stated she prepared a questionnaire for the investor, but did not have him complete it. Council determined that the Licensee’s lack of due diligence reflected on her competence, especially in light of her experience as a life agent and her extensive industry related education, holding CLU and CFP designations. Council also determined that a competent life agent would have known that the promised 60% annual return from the Investment was unrealistic.

Council did not accept the Licensee’s submission that the cultural context of her relationship with, and personal trust of, the investor should be considered as a form of due diligence.

Council found the strategy of recommending and personally guaranteeing an investment in an unregulated financial vehicle in order to finance insurance products, was contrary to the usual practice of the business of insurance. Council found that such a practice, even if the Investment had been legitimate, was not in the best interests of the clients or the insurance companies, whose products were funded in this manner.

Council determined that the Licensee’s personal guarantees of the Investment, and the involvement of the Agency as a party to the guarantee, had the potential to mislead clients as to the security of the Investment and was contrary to the best interests of her clients. Council also noted that the Licensee’s request for referrals from Client A, so she could meet her financial guarantee to Client A, to be inappropriate and represented a conflict of interest.

The Licensee also failed to appreciate the conflict of interest created by her own involvement in her clients’ personal financial affairs, particularly as the stated purpose of her recommendation was to fund insurance policies from which she would receive a commission.

In determining the appropriate penalty, Council took into consideration the following decisions.

In *R. McIntosh*, the licensee solicited funds from her existing and former insurance and mutual fund clients for investment in an unregulated private equity investment company that she worked for; which subsequently went bankrupt. Due to the age and financial status of the clients involved, the significant investments were clearly unsuitable, and resulted in serious financial harm to the clients. The licensee was found unsuitable to hold a licence for a minimum period of five years.

In *J. Duke*, the licensee made inappropriate recommendations to a client, regarding investments in exempt market securities, in light of the client's age, risk tolerance, and financial profile. The licensee was an experienced insurance agent who knew, or ought to have known, the risk posed by the investment was too high for his client and he should not have recommended the investments. The licensee's licence was suspended for 12 months, he had a condition imposed on his licence that required him to complete courses necessary to obtain the CLU designation or the CFP designation, had a condition imposed on his licence that required him to be supervised until such time as he completed one of the above courses, and he was assessed Council's investigative costs.

In *G. Persall*, Council determined that the licensee failed to act in a trustworthy and competent manner and in accordance with the usual practice of the business of insurance by: promoting a strategy for a property tax deferral program (the "Strategy") through the distribution of misleading marketing materials; providing misleading information and withholding material information; submitting investment loan applications without proper authorization; disseminating client information without their knowledge; and employing unlicensed persons to solicit insurance.

Council found the licensee used misleading marketing material to attract clients to purchase an insurance product that his clients did not fully understand. In his marketing material, the licensee utilized the names and logos of entities without proper authorization. Further, the licensee's limited education and experience did not reasonably support his use of the titles "MBA" or "Property Tax & Investment Specialist". Council determined that, although the licensee lacked the experience to properly facilitate the Strategy, he knew, or ought to have known, his presentation of the Strategy was misleading to clients. The licensee's licence was suspended for a minimum period of two years, he had various educational conditions placed upon his licence, as well as a condition that required him to be supervised for an additional two years of active licensing, and he was assessed Council's investigative costs.

Council noted that unlike the *J. Duke* and *R. McIntosh* cases, Council did not have evidence regarding investing clients' financial circumstances, other than the Licensee's statements that they invested in order to be able to afford their insurance policies.

Council concluded that a licence suspension, along with a period of supervision, a fine, and the assessment of investigative costs, was appropriate in the circumstances.

INTENDED DECISION

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

1. Suspend the Licensee's life and accident and sickness insurance licence for a period of six months.
2. Impose a condition on the Licensee's life and accident and sickness insurance licence that requires her to be supervised by a qualified life and accident and sickness insurance agent until such time as she accumulates an additional 24 months of active licensing.
3. Impose a condition on the Licensee's life and accident and sickness insurance licence that prohibits her from engaging in the sale of any non-insurance financial products.
4. Fine the Licensee \$5,000.00.
5. Assess the Licensee Council's investigative costs of \$1,637.50.

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 life and accident and sickness 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 **March 23, 2016**, and end at midnight on **September 22, 2016**.

The intended decision will take effect on **March 9, 2016**, subject to the Licensee's right to request a hearing before Council pursuant to section 237 of the Act.

Intended Decision
Su Ming Guo and Suning Financial Service Ltd.
144194-I1685 and 171551-I1685
February 19, 2016
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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 **March 8, 2016**. 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 **March 8, 2016**, 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

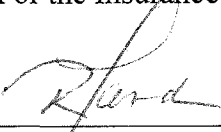
Reception: 250-387-3464

Fax: 250-356-9923

Email: FinancialServicesTribunal@gov.bc.ca

Dated in Vancouver, British Columbia, on the **19th day of February, 2016**.

For the Insurance Council of British Columbia

per 

Gerald Matier
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