

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

and the

INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

and

XIAO MEI ZOU
(the “Licensee”)

ORDER

Pursuant to section 237 of the Act, Council convened a hearing at the request of the Licensee to dispute an intended decision of Council dated April 10, 2018.

The subject of the hearing was set out in a Notice of Hearing dated August 21, 2018.

A Hearing Committee heard the matter on November 1, 2018 and presented a Report of the Hearing Committee to Council at its January 22, 2019 meeting.

Council considered the Report of the Hearing Committee and made the following order pursuant to sections 231, 236 and 241.1 of the Act:

1. A condition is imposed on the Licensee’s life and accident and sickness insurance licence that requires the Licensee to successfully complete the 12 missing continuing education credits from 2015 and 2016, on or before May 9, 2019;
2. A condition is imposed on the Licensee’s life and accident and sickness insurance and on her general insurance licence that requires the Licensee to successfully complete the Council Rules Course through Advocis, on or before May 9, 2019;
3. The Licensee is fined \$1,000 for each year in which she failed to fully complete the required continuing education credits (2015 and 2016 for her life and accident and sickness insurance licence and 2015 for her general insurance licence), for a total of \$3,000, to be paid on or before May 9, 2019;
4. The Licensee is assessed Council’s hearing costs of \$5,875.71, to be paid on or before May 9, 2019;

5. A further condition is imposed on the Licensee's life and accident and sickness insurance licence that failure to complete the 12 missing continuing education credits from 2015 and 2016 on or before May 9, 2019 will result in automatic suspension of her life and accident and sickness insurance licence and the Licensee will not be permitted to complete her 2019 annual filing until such time as the 12 missing continuing education credits are successfully completed; and
6. A further condition is imposed on the Licensee's life and accident and sickness insurance licence and on her general insurance licence that failure to complete the Council Rules Course or pay the fine and hearing costs on or before May 9, 2019 will result in automatic suspension of her licences and the Licensee will not be permitted to complete her 2019 annual filings until such time as the Council Rules Course is successfully completed and the fine and hearing costs are paid in full.

This order takes effect on the **8th day of February, 2019.**



Ken Kukkonen
Chairperson, Insurance Council of British Columbia

INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

REPORT OF THE HEARING COMMITTEE

IN THE MATTER OF THE *FINANCIAL INSTITUTIONS ACT*
(R.S.B.C. 1996, c. 141)

AND

XIAO MEI ZOU
(the "Licensee")

Date: November 1, 2018

Before: Bill Bennett Chair
Nanette Bennett Member
John Van Tassel Member

Location: Suite 300, 1040 West Georgia Street, Vancouver, British Columbia

Present: Naomi J. Krueger Counsel for Council
Xiao Mei Zou Licensee, appearing on her own behalf

ISSUES

On April 10, 2018, Council made an intended decision pursuant to sections 231 and 236 of the Financial Institutions Act, R.S.B.C. 1996, c. 141 (the "Act") against the Licensee. The intended decision respected allegations that the Licensee failed to complete the required continuing education credits in prior licensing years. On May 28, 2018, the Licensee requested a hearing before Council to dispute Council's intended decision pursuant to section 237(3) of the Act.

Council held a one-day hearing in this matter on November 1, 2018.

The issues in the hearing were:

1. Did the Licensee fail to act in a trustworthy and competent manner, in good faith, and in accordance with the usual practice of the business of insurance:
 - a. By failing to complete the required continuing education ("CE") credits in prior licensing years;
 - b. By failing to provide evidence of completing the required CE credits;
 - c. By failing to obtain and maintain records of CE credits; and
 - d. In any other manner.

2. Is the Licensee able to carry on the business of insurance in accordance with the usual practice, as required under Council Rules, Council's Code of Conduct and pursuant to section 231 of the Act.
3. Should the Licensee be subject to any disciplinary or other action in the circumstances; and if so, whether Council should do one or more of the following in accordance with sections 231 and 236 of the Act:
 - a. Reprimand the Licensee;
 - b. Suspend or cancel the Licensee's licence(s);
 - c. Fine the Licensee an amount not more than \$10,000.00;
 - d. Require the Licensee to cease any specified activity related to the conduct of insurance business or to carry out any specified activity related to the conduct of insurance business; and
 - e. Require the Licensee to pay the costs of Council's investigation and/or of this hearing.

The Hearing Committee was constituted pursuant to section 223 of the Act. This is a report of the Hearing Committee as required by section 223(4) of the Act.

EVIDENCE RELIED UPON

The Hearing Committee reviewed and considered the following evidence:

- | | |
|-----------|---|
| Exhibit 1 | Book of documents of the Insurance Council of British Columbia |
| Exhibit 2 | Printout of an email to [REDACTED] from [REDACTED] dated February 27, 2017 |
| Exhibit 3 | Printout of emails between [REDACTED] and the Licensee in March 2015 |
| Exhibit 4 | Printout of an email to the Licensee from [REDACTED] dated February 19, 2016 |
| Exhibit 5 | Printout of emails between [REDACTED] and the Licensee in March 2017 and April 2017 |
| Exhibit 6 | Printout of emails between [REDACTED] and the Licensee dated October 29, 2018 |
- Sworn Testimony of [REDACTED] at the November 1, 2018 hearing
Sworn Testimony of [REDACTED] at the November 1, 2018 hearing
Sworn Testimony of [REDACTED] at the November 1, 2018 hearing

Sworn Testimony of the Licensee at the November 1, 2018 hearing

FACTS

Background

The Licensee holds a level 3 general insurance agent (“General Agent”) licence and a life and accident and sickness insurance agent (“Life Agent”) licence. The Licensee was first licensed with Council as a General Agent in 2006 and as a Life Agent in 2014.

The Licensee began working at [REDACTED] (“[REDACTED]”) in October, 2015. [REDACTED] became [REDACTED] (“[REDACTED]”) in March 2016. The Licensee continued to work for [REDACTED] until March 2017.

As part of its mandate to regulate the insurance industry, Council requires all individual licensees under the Act to comply with CE requirements to ensure that licensees’ knowledge of insurance products, practices, and business remains current. Council sets rules and has a policy establishing CE requirements for licensees. Licensees must meet the requirements of Council’s CE program. General agents with an approved designation must complete 4 CE credits per licensing year. Life and accident and sickness agents with less than 5 years’ experience in the last 7 years in a Canadian jurisdiction and without an approved designation must complete 15 credits per year.

As the Licensee holds an approved designation for her General Agent licence in the form of a Certified Accredited Insurance Broker (“CAIB”) designation, she was required by Council Rules to obtain 4 CE credits per year for her General Agent licence for the period 2014 to 2017. She was also required to obtain 15 CE credits per year for her Life Agent licence for the period 2015 to 2017.

Insurance Council Audit of Licensee’s Continuing Education Credits

In early 2017, [REDACTED] the president and compliance officer of [REDACTED] at the time, asked the Licensee to provide him with proof of her CE credits. Subsequently, Mr. [REDACTED] reported to Council his belief that the Licensee had not in fact completed the requisite CE credits for the 2017 licensing year.

In March, 2017, Council audited the Licensee’s CE credits for her General Agent licence for the 2014, 2015, 2016, and 2017 licensing years and her CE credits for her Life Agent licence for the 2015, 2016, and 2017 licensing years.

During the audit, the Licensee was unable to provide records of any completed CE credits to Council for her Life Agent licence for 2015 and 2016. The Licensee also did not provide Council with records showing completed CE credits for her General Agent licence in 2015. The Licensee informed Council during the audit that despite not having proof of credits, she had completed training in house at [REDACTED].

On December 4, 2017 Council spoke with Mr. [REDACTED] at [REDACTED] who confirmed that [REDACTED] did not keep CE records for licensees who attended training at [REDACTED]. Council also spoke with [REDACTED], the Marketing and New Business Coordinator at [REDACTED], who offered to check [REDACTED]'s records for proof that the Licensee attended sessions.

Council spoke to Ms. [REDACTED] on December 12, 2017 by telephone. During that call Ms. [REDACTED] confirmed that she could not find any CE certificates proving that the Licensee had attended training in house at [REDACTED] during the audit period. However, during the hearing Ms. [REDACTED] admitted that she did not check the records. Her explanation for failing to do so was that she was "busy". Council's request to check records was made almost a full year prior to this hearing.

Proof of CE Credits Subsequent to Council's Audit

The Licensee faxed additional certificates to Council on December 2-8, 2017. The certificates related to her Life Agent licence in 2017 and 2018 and to her General Agent licence in 2018. The Licensee did not submit any certificates for the 2015 or 2016 licensing years.

The Licensee sent two certificates to Council on January 12, 2018. However, Council already received these certificates from the Licensee and they had already been considered in the audit.

Through these various documents, the Licensee provided Council with proof of having completed 4.5 excess CE credits in 2017 for her Life Agent licence, which Council applied to the Licensee's requirements.

Following Council's review, Council determined that the Licensee was short 25.5 CE credits for her Life Agent licence requirements for the period between 2015-2017.

The Licensee also provided Council with proof of having completed an excess of 2.5 CE credits in 2016 and 1.5 CE credits in 2017 under her General Agent licence. Taking those credits into account, Council determined the Licensee had completed 5 more CE credits than required for her General Agent licence from the period between 2014 to 2017.

Despite Ms. [REDACTED]'s comments at the hearing on November 1 2018, on October 24, 2018, Ms. [REDACTED] did provide Council with certificates for the Licensee that indicates she had obtained 6 credits for her Life Agent licence in 2015 and 7.5 credits for her Life Agent licence in 2016. Council acknowledged in its written submission that had these certificates been produced to Council while the Licensee was being audited, she would have been short a total of 12 credits for her Life Agent licence in 2015 and 2016 rather than 25.5 credits.

During the hearing, the Licensee tendered evidence (Exhibit 3) that she said indicates that she had completed additional Life Agent CE credits. In oral testimony the Licensee could not perfectly recall the length of these sessions, but estimated that they were two hours each over two days.

ANALYSIS

Legal Framework

Section 225.1 of the Act enables Council to make rules for the purposes of licensing and regulating the conduct of insurance agents, insurance salespersons, insurance adjusters and employed insurance adjusters.

Section 231(1)(a) of the Act authorizes Council to impose penalties on a licensee or nominee of a licensee if Council determines that the licensee and/or nominee “no longer meets a licensing requirement established by a rule made by the council or did not meet that requirement at the time the licence was issued, or at a later time”. The possible penalties are set out at s. 231(1)(f) to (k) of the Act:

- (f) reprimand the licensee or former licensee;
- (g) suspend or cancel the licence of the licensee;
- (h) attach conditions to the licence of the licensee or amend any conditions attached to the licence;
- (i) in appropriate circumstances, amend the licence of the licensee by deleting the name of a nominee;
- (j) require the licensee or former licensee to cease any specified activity related to the conduct of insurance business or to carry out any specified activity related to the conduct of insurance business;
- (k) in respect of conduct described in paragraph (a), (b), (c), (d), (e) or (e.1), fine the licensee or former licensee an amount
 - (i) not more than \$20 000 in the case of a corporation, or
 - (ii) not more than \$10 000 in the case of an individual.

Council Rule 7(8) states that a licensee must comply with Council’s Code of Conduct, as amended from time to time.

Council Rule 7(5) states: “A licensee must meet the requirements of the continuing education program established by Council, as amended from time to time.”

Code of Conduct clause 5.2 states: “You must continue your education in insurance to remain current in your skills and knowledge.”

Code of Conduct clause 5.3.5 states: “You must comply with the continuing education requirements under the Rules. However, these are minimum requirements and may not be sufficient to maintain appropriate standards, particularly if you work in specialized areas.”

Code of Conduct clause 13.2 states: “You must be aware of and comply with your duties and obligations under the Act, the Insurance Act, the Rules and the Code.” This includes awareness of any notices issued by Council.

Pursuant to notices issued by Council (April 18 and 28, 2008), licensees must maintain records of their completed CE credits for a period of 5 years. While they do not have to submit proof of their CE credits each year, they must do so when they are audited by Council.

Council's Arguments

Council seeks the following findings against the Licensee:

1. The Licensee did not complete the required CE credits for her Life Agent or General Agent licence;
2. The Licensee failed to properly maintain records as required.

Council seeks the following penalties against the Licensee:

1. Impose a condition on the Licensee's Life Agent licence that requires her to successfully complete the Council Rules Course through Advocis within 90 days of the date of the Hearing Committee's order;
2. Impose a condition on the Licensee's General Agent licence that requires her to successfully complete the Council Rules Course through Advocis within 90 days of the date of the Hearing Committee's order;
3. Impose a condition on the Licensee's Life Agent licence that requires her to make up any and all missing continuing education credits within 90 days of the Hearing Committee's order;
4. Impose a condition on the General Agent licence that requires her to make up any and all missing continuing education credits within 90 days of the date of the Hearing Committee's order;
5. The Licensee be fined an amount up to \$10,000.00;
6. The Licensee be required to pay Council's costs associated with the Hearing, in an amount to be determined; and
7. The fines and costs be paid within a period of time to be determined by the Hearing Committee.

Council submitted as follows:

- The Licensee's failure to maintain records is a breach of clause 13.2 of Council's Code of Conduct.

- Council Rule 7(5) required the Licensee to complete the credits required under Council's CE policy. Similarly, Code of Conduct clauses 5.2 and 5.3.5 require the Licensee to complete the required CE credits.
- The Licensee has been unable to provide evidence that she completed all the credits she was required to complete in order to meet the CE requirement for her Life Agent licence in 2015 and 2016. During the audit, the Licensee was required to submit CE credits for each year. The Licensee did not provide any evidence of having completed her CE credits for her General Agent licence in 2015. [REDACTED] did not offer the General Agent CE courses.
- On the totality of the evidence, Council submits that the Licensee did not complete all of the 15 CE credits she was required to complete for her Life Agent licence for each of the 2015 and 2016 licensing years, nor did she complete the 4 CE credits she was required to complete for her General Agent licence for the 2015 licensing year.
- By so failing, the Licensee breached the Code and the Rules.
- The Licensee lacked awareness about her responsibility to track her CE credits and to obtain and maintain records relating to courses she attended;
- The Licensee's lack of awareness about her responsibility to track her CE credits and to obtain and maintain records relating to courses she attended calls into question her professional competency;
- The Licensee continues to demonstrate a lack of awareness of the requirement to maintain records in that she continues to maintain that [REDACTED] ultimately bears the responsibility for her lack of proof of her Life Agent credits;
- The Licensee's unwillingness to accept that she has breached her obligation to obtain and maintain records of her CE credits is an aggravating factor;
- The Licensee is an experienced licensee. She has a CAIB designation and significant experience in the insurance industry. She has tracked her credits for prior years as well as subsequent years. On that basis, Council submits she ought to have known, and in fact does know, it was solely her obligation to do so for the 2015 and 2016 licensing years.

Council relies on several precedent decisions of Council to support the penalties it seeks as follows:

- *In the Matter of Annie Chu* (order dated May 2, 2018): concerns a licensee who has held a life and accident and sickness agent licence in British Columbia since 2012 and a level 1 general agent licence since 2006. The licensee was the subject of a CE audit in October

2015. As a result of the audit, Council determined that the licensee had failed to meet the CE requirements for the 2014 and 2016 licensing years for both her life and her general licence. The licensee was able to prove some certificates for her CE credits and had completed make up CE credits in subsequent years but still failed to meet the minimum requirements for two years. Council concluded that her failure to complete the credits showed a disregard for Council Rules and fined the licensee \$1,000.00 for each licensing year and each licence for which she had failed to meet the CE requirements. The licensee was also required to complete the Council Rules Course and make up missing CE credits.

- *In the Matter of Evelyn Yap Wong* (order dated July 5, 2018): concerns a licensee who held a life and accident sickness agent licence since 2008. She was subjected to an audit by council in 2017 for three licensing years. During the audit, the licensee admitted she had not completed her CE credits for the audited years and was not aware she had to do so. Council fined the licensee \$1,000.00 for each year she had insufficient CE credits. Council ordered her licence suspended for one year and conditions were imposed that she retake the Life License Qualification Program and exam, complete Council Rules course, make up the missing CE credits, and that she be supervised until an additional two years of active licensing were attained.
- *In the Matter of Sukhdarshan Singh Mann* (order dated May 1, 2018): concerns a licensee who held a life and accident and sickness license. Council audited the licensee for a two year period. The licensee failed to demonstrate he had completed the requisite CE credits for the relevant period and advised Council he was unaware he was required to keep track of his training. Council audited the licensee a second time and found that he had continued to fail to obtain CE credits. Council fined the licensee \$1,000.00 for each year he had insufficient proof of his CE credits and required the licensee to make up the missing credits and take a Council Rules course.

Licensee's Arguments

The Licensee submits that she should not be penalized as she completed the required CE credits.

The Licensee submitted as follows:

- She completed the 2015 General Agent credits in advance in 2014 and this satisfies the missing credits in 2015;
- It was not clear how Council counted the CE credits by calendar year;
- She did "more than I should" to complete the credits;
- She took the required Life Agent CE credits at [REDACTED]. [REDACTED] failed to maintain records of her attending these sessions and she relied on them to do so. She now knows [REDACTED] is not reliable.

- She questioned the purpose of penalizing her. She “promised” that each year she renewed her licence, she can attach the certificate.

The Licensee made no submissions on the precedent decisions relied on by Council or on any other precedent decisions.

Hearing Committee’s Analysis

First, we admit all of the evidence provided in the hearing. Council did not object to the admission of emails provided by the Licensee at the hearing for the first time and, as such, we admit them.

Much of the oral evidence was not relevant to the issues but instead related to internal dynamics with ██████, on which we cannot comment. We admit and rely on Exhibit 1 – Council’s book of documents. The Licensee did not object to any of these documents being admitted into evidence. The remaining exhibits 2-6 were tendered by the Licensee. Exhibit 2 is not probative and so we do not rely on it. We admit exhibit 4 but it was not discussed or clarified and so we cannot make any conclusions based on this exhibit. Exhibit 5 is not relevant to the issues and so we do not rely on it. We admit exhibit 6 but give it little weight as it does not provide sufficient detail to indicate if CE credits were actually obtained or the nature of the course.

Based on the evidence presented, the Licensee failed to prove completion of any General Agent licence CE credits in 2015, although in aggregate she had sufficient CE credits for the audit period 2014-2018.

Further, the Licensee failed to prove completion of the full number of required CE credits for her Life Agent licence between 2015 and 2017.

While through its audit, Council determined the Licensee was short 25.5 CE credits for her Life Agent licence, Council conceded at the hearing that the records Ms. ██████ provided them on October 24, 2018 indicate the Licensee completed an additional 13.5 credits for the relevant period, making her short 12 CE credits rather than 25.5.

While the Licensee asserted in oral testimony that additional Life Agent CE credits were earned and presented email screen prints of these documents, which were marked Exhibit 6, these documents lacked sufficient detail to indicate if CE credits were actually obtained or the nature of the courses purported to have been taken. We note that even were we to accept the documentary evidence provided by the Licensee and her oral testimony at the hearing as sufficient record of further courses, which we do not, the Licensee would still be 8 credits short of her CE requirements for her Life Agent licence for the period 2015-2017.

The Licensee admitted to being an experienced licensee at the hearing. She did not provide any reasonable excuse for failing to comply with the requirement to maintain the necessary records of CE credits. The Licensee asserted that she took other courses at ██████ to complete her Life

Agent CE requirements, but could not remember any details about these courses other than as set out above.

We agree with Council that the Licensee has a personal obligation as a licensee under Council Rules and the Code of Conduct to maintain proper records. As an experienced licensee with years of practice in the industry, the Licensee should have known it was her responsibility alone to track her CE credits and to ensure that she maintained records for auditing purposes, as required by Council.

While the Licensee alleged she took some courses at other times, without the requisite records to prove completion of all required CE credits, the Licensee is unable to prove that she completed those credits as required. As such, the Licensee violated Council Rule 7(5) and Code of Conduct clause 5.2 and 5.3.5.

The Licensee failed to complete all of the credits necessary under her Life Agent licence from the period between 2015 and 2017. Moreover, the Licensee failed to complete any General Agent licence CE credits for the 2015 year, despite having a total credit count from 2014-2018 in excess of the total credits required for that period. In our view, the failure to obtain any training in 2015 is a violation of the Rules and Code of Conduct.

While the hearing panel is not bound by any precedent decisions, as a matter of procedural fairness, the committee endeavors to remain reasonably consistent with the previous decisions of Council. In our view, the decision *In the Matter of Annie Chu* is extremely similar to this case and, as such, provides the most helpful guide for determining penalties. In that case Council fined the licensee \$1,000.00 for each licensing year and each license for which she had failed to meet the CE credit requirements and imposed a requirement for the licensee to complete the Council Rules Course and make up missing CE credits.

At the hearing, the Licensee indicated that she was not aware that costs may be imposed against her. This is clearly set out in the Notice of Hearing. However, in order to give the Licensee an opportunity to make submissions on this point, we will recommend that both parties be given time to make written submissions on costs, as set out below.

RECOMMENDATIONS OF THE HEARING COMMITTEE

We recommend that Council:

1. Impose a condition on the Licensee's Life Agent licence that requires the Licensee to successfully complete the necessary continuing education credits to complete the missing 12 Life Agent CE credits for the relevant period, within 90 days of Council's order;
2. Impose a condition on the Licensee's Life Agent and General Agent licences that requires the Licensee to successfully complete the Council Rules Course within 90 days of Council's order;

3. Fine the Licensee \$1,000.00 for each year in which she failed to fully complete the required continuing education credits (2015 and 2016 for Life Agent and 2015 for General Agent), for a total of \$3,000.00, to be paid within 30 days of Council's decision being issued; and
4. Permit both parties to provide written submissions on costs for review by Council when it meets to consider this matter.

Dated in Vancouver, British Columbia, on the 3rd day of December, 2018.



William S. Bennett
Chair of the Hearing Committee