

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

**and**

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

**and**

**KEI TAI (TIMOTHY) TIN**  
**(the "Licensee")**

**ORDER**

As Council made an intended decision on July 13, 2010, 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 21, 2010; 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 and 236 of the Act, Council orders that:

1. the Licensee pay a fine of \$1,740.00; and
2. as a condition of this decision, the Licensee is required to pay the above mentioned fine by **November 17, 2010**. If the Licensee does not pay the ordered fine by this date, the Licensee's licence is suspended as of **November 18, 2010**, without further action from Council.

This order takes effect on the 17<sup>th</sup> day of August, 2010.



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Barbara MacKinnon, CAIB  
Chairperson, Insurance Council of British Columbia

**INTENDED DECISION**  
**of the**  
**INSURANCE COUNCIL OF BRITISH COLUMBIA**  
**("Council")**  
**respecting**  
**KEI TAI (TIMOTHY) TIN**  
**(the "Licensee")**

**INTRODUCTION**

Pursuant to section 232 of the *Financial Institutions Act* ("Act"), Council conducted an investigation to determine whether there had been compliance by the Licensee with the requirements of the Act.

As part of Council's investigation, on May 17, 2010, an Investigative Review Committee ("Committee") met with the Licensee to discuss the Licensee's alleged failure to notify Council of the loss of mandatory errors and omissions insurance ("E&O") coverage within five business days of the loss of coverage and failure to cease conducting insurance activities, in accordance with Council Rule 7(11).

The Committee was comprised of one voting and two non-voting members of Council. Prior to the Committee's meeting with the Licensee, an investigation report had been 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 presented to Council at its July 12, 2010 meeting. At the conclusion of its meeting, Council determined that the matter should be disposed of in the manner set out below.

**INTENDED DECISION 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 serves as written notice of the action Council intends to take against the Licensee.

FACTS

Based on the information contained in the investigation report, Council made the following findings of fact:

1. The Licensee was first licensed as a life and accident and sickness insurance agent ("Life Agent") with Council on April 18, 2006.
2. The Licensee was authorized to represent Complete Brokerage Services Inc. ("CBS") until April 18, 2008. Since that date, the Licensee has operated as an independent Life Agent working with CBS as its managing general agent.
3. With his first licence, the Licensee was provided with written notification that he had responsibilities under the Act and was instructed to visit Council's website or contact its office for copies of various publications, including Council Rules.
4. On December 10, 2009, Council received a copy of a letter to the Licensee from CBS advising that his E&O coverage had lapsed effective September 1, 2009. Council staff contacted the Licensee on December 18, 2009, to determine if the Licensee had obtained replacement coverage as required under Council Rule 7(11). The Licensee advised he did not have replacement coverage and was advised by Council staff that he was required to cease conducting insurance activities.
5. The Licensee advised Council staff on January 7, 2010, that he had obtained E&O coverage with an effective date of December 7, 2009, and that the coverage protects him for his prior actions.
6. The Licensee continued to conduct insurance activities and delivered a term policy in October 2009, and completed three applications for critical illness insurance for a client in November 2009.
7. In late August or early September 2009, the Licensee was advised he was a father. Shortly thereafter, he was advised that his mother potentially had a serious illness. As it was his responsibility to care for his mother, this took up much of his time until the issue was resolved in November 2009.
8. The Licensee was aware of his responsibilities under Council Rule 7(11), however, given the personal issues he was attending to at the time, he had not been to the MGA's office to check his mail, and as a result, was unaware of the E&O renewal. It wasn't until late November when he attended the office that he became aware that his coverage had lapsed.

## LEGISLATION

Council Rule 7(11) states:

- (11) Effective January 1, 2006, unless otherwise determined by Council a licensee:
- (a) must maintain or be covered by E&O insurance, which extends to all activities as a licensed insurance agent, salesperson or adjuster, with:
    - (i) a minimum limit of \$1,000,000.00 per claim; and
    - (ii) a minimum aggregate limit of \$2,000,000.00;
  - (b) who is a direct employee of an insurer is exempt from subsection (a) where:
    - (i) the licensee only sells the products of that insurer; and
    - (ii) the licensee provides certification from the insurer that:
      - (A) the licensee is an employee of the insurer;
      - (B) the company accepts responsibility for the licensee's activities as a licensee; and
      - (C) the company will respond to E&O claims against the licensee on the same basis as set out in subsection (a);
  - (c) that is no longer insured as required under subsection (a) or (b) must:
    - (i) notify Council within 5 business days; and
    - (ii) immediately stop conducting any insurance activities;
  - (d) will have the licence automatically suspended without Council taking any action, where the licensee remains uninsured for a period exceeding 30 calendar days; and
  - (e) will have the licence suspended under subsection (d) automatically reinstated where:
    - (i) the licensee obtains the required E&O insurance within 30 calendar days from the date of the suspension; and
    - (ii) the licensee delivers to Council the required verification; otherwise the licence is terminated.

### **Section 231 of the Act**

#### **Part 7 – Administration of the Regulation of Financial Institutions Division 2 – Insurance Council of British Columbia**

#### **Council may suspend, cancel or restrict licences and impose fines**

- (1) If, after due investigation, the council determines that the licensee or former licensee or any officer, director, employee, controlling shareholder, partner or nominee of the licensee or former licensee
- (a) 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,
  - (b) has breached or is in breach of a term, condition or restriction of the licence of the licensee,
  - (c) has made a material misstatement in the application for the licence of the licensee or in reply to an inquiry addressed under this Act to the licensee,
  - (d) has refused or neglected to make a prompt reply to an inquiry addressed to the licensee under this Act,
  - (e) has contravened section 79, 94 or 177, or
  - (e.1) has contravened a prescribed provision of the regulations,

then the council by order may do one or more of the following:

- (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.
- (2) A person whose licence is suspended or cancelled under this section must surrender the licence to the council immediately.
- (3) If the council makes an order under subsection (1)(g) to suspend or cancel the licence of an insurance agent, or insurance adjuster, then the licences of any insurance salesperson employed by the insurance agent, and of any employees of the insurance adjuster are suspended without the necessity of the council taking any action.
- (3.1) On application of the person whose licence is suspended under subsection (1)(g), the council may reinstate the licence if the deficiency that resulted in the suspension is remedied.
- (4) If an insurance agent's licence or an insurance adjuster's licence is reinstated, the licences of any insurance salespersons or employees of the insurance adjuster who
  - (a) were employed by that agent or adjuster at the time of the suspension, and
  - (b) remain employees of that agent or adjuster at the time of reinstatement,are also reinstated without the necessity of the council taking any action.

**Section 236 of the Act**

**Part 7 – Administration of the Regulation of Financial Institutions**

**Division 3 – Hearings and Appeals**

**Power to impose conditions**

- (1) The commission, superintendent or council, depending on which of them has the power to make the order, give the consent or issue the business authorization, permit or licence may
- (a) impose conditions that the person considers necessary or desirable in respect of
    - (i) an order referred to in section 235 (1),
    - (ii) a consent referred to in section 235 (2),
    - (iii) a business authorization,
    - (iv) a permit issued under section 187 (1), or
    - (v) a licence issued under Division 2 of Part 6, and
  - (b) remove or vary the conditions by own motion or on the application of a person affected by the order or consent, or of the holder of the business authorization, permit or licence.
- (2) A condition imposed under subsection (1) is conclusively deemed to be part of the order, consent, business authorization, permit or licence in respect of which it is imposed, whether contained in or attached to it or contained in a separate document.
- (3) Except
- (a) on the written application or with the written permission of the holder, or
  - (b) in the circumstances described in section 164, 231 or 249 (1), a power of the commission, superintendent or council under this Act to impose or vary conditions in respect of
  - (c) a business authorization is exercisable only on or before its issue date, or

- (d) a permit under section 187 (1) or a licence under Division 2 of Part 6 is exercisable only on or before its issue date with effect on and after that date.

### ANALYSIS

Council found the above mentioned facts constituted a breach of Council Rule 7(11)(c)(i) and 7(11)(c)(ii), as he failed to notify Council within five business days of losing E&O coverage, and continued to conduct insurance activities without E&O coverage in place. Although there was no evidence to suggest that the Licensee's actions were intentional, Council agreed with the Committee that the Licensee would have received notification from his E&O provider of his upcoming renewal at least 30 days in advance, which would be August 1, 2009. This would have been in advance of the personal events that distracted him from dealing with his E&O in late August or early September

Council discussed prior decisions made by Council for breaches of Council Rule 7(11). Precedents respecting licensed travel agencies, who did not have the required E&O coverage in place and conducted insurance activities, resulted in fines equal to two times the E&O premium. One of the cases involved health issues arising during the course of obtaining E&O insurance. A more recent case resulted in a Life Agent being fined \$500.00 for failing to notify Council within five business days of the loss of E&O coverage, however, the agent ceased conducting insurance activities. In both cases, the breaches were found to have been unintentional. Council noted that although the Licensee's situation differed from each of these scenarios, it was similar to the first case in that insurance activities were conducted and the Licensee's actions did not appear to be intentional.

### INTENDED DECISION

Pursuant to section 231 and 236 of the Act, Council intends to order the following:

1. the Licensee pay a fine of \$1,740.00;
2. as a condition of this decision, the Licensee is required to pay the above mentioned fine by **November 17, 2010**. If the Licensee does not pay the ordered fine by this date, the Licensee's licence is suspended as of **November 18, 2010**, without further action from Council.

The intended decision will take effect on **August 17, 2010**, 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, he may present his case at a hearing before Council where he may be represented by legal counsel. 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 16, 2010**. 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.

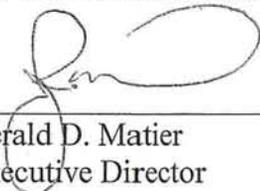
If the Licensee does not request a hearing by **August 16, 2010**, the intended decision of Council will take effect.

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.fic.gov.bc.ca/fst/](http://www.fic.gov.bc.ca/fst/) or contact them directly at:

Suite 1200 - 13450 102nd Avenue  
Surrey, British Columbia  
V3T 5X3  
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Dated in Vancouver, British Columbia, on the **21<sup>st</sup> day of July, 2010**

For the Insurance Council of British Columbia

  
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Gerald D. Matier  
Executive Director

GM/AH