

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

and

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

and

ISMAT SIMO
(the “Licensee”)

ORDER

As Council made an intended decision on July 11, 2017, 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 24, 2017; 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 life and accident and sickness insurance licence is suspended, commencing on **September 13, 2017**, until his successful completion of the first four courses (FP241 – Financial Planning Foundations, FP242 – Taxation and Investment Planning, FP243 – Retirement Income Planning, and FP244 – Insurance and Estate Planning) of the Certified Financial Planner program.
2. A condition is imposed on the Licensee’s life and accident and sickness insurance licence that requires him to be supervised by a qualified life agent for a two-year period, commencing from when the Licensee has completed the required education referenced in item 1 above. The supervising life agent will be required to sign off on all insurance business activities within the supervisory period.
3. The Licensee is assessed Council’s investigative costs of \$1,650.00.

4. A condition is imposed on the Licensee's life and accident and sickness insurance licence that requires the Licensee to pay the above-ordered investigative costs no later than **December 13, 2017**. 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 will either remain suspended if the required education has not yet been completed, or be suspended if the required education has been completed, and the Licensee will not be permitted to complete any subsequent annual filings until such time as the ordered investigative costs are paid in full.

This order takes effect on the **13th day of September, 2017**.



Michael Connors, CIP, CRM
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

respecting

ISMAT SIMO
(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 May 15, 2017, a Review Committee (the “Committee”) met with the Licensee to discuss allegations the Licensee made insurance and investment recommendations to a 79-year-old client (the “Client”) that were not in her best interest and brought into question his competency as a life and accident and sickness insurance agent (“life agent”).

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.

The Committee’s report, along with the aforementioned investigation report, were reviewed by Council at its July 11, 2017 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 held a life agent licence in British Columbia since 2011. The Licensee states he works approximately 10 to 12 hours per week for an insurance agency selling life insurance products. The Licensee's primary employment is elsewhere, in an activity outside of insurance.

The Client was a 79-year-old widow when the Licensee first met with her. At that time her assets consisted of a home (\$90,000.00), investments (\$23,000.00), and bank accounts (\$13,000.00).

Tax Penalty

In March 2015, the Licensee met the Client to discuss her financial circumstances, investments, and financial goals. At the initial meeting, the Licensee recommended that a segregated fund investment (the "Segregated Fund Investment") in a TFSA would be a good option for her.

The Client and the Licensee met again a few weeks later and the Client informed the Licensee that she had \$30,000.00 in Guaranteed Investment Certificates ("GIC"). The Licensee recommended the Client cash in the GICs in order to purchase the Segregated Fund Investment. In making this recommendation, the Licensee did not review the Client's GIC and was not aware that the GIC were already in a TFSA.

The Client is not a sophisticated investor and she accepted the Licensee's recommendation and proceeded to cash in the GIC. The funds (\$33,000.00) were then used to open a new TFSA and then purchase the Segregated Fund Investment. In July 2016, the Client received her 2015 tax assessment from the Canada Revenue Agency notifying her of a \$2,783.97 tax penalty for over-contribution to her TFSA.

The Licensee acknowledged that it was his error that caused the Client to receive a tax penalty, as he was not aware that the GICs were held in a TFSA. The Licensee stated he completed a needs analysis in regards to the Client as part of his recommendation, but could not locate it or explain why he was unaware that the GIC was already in a TFSA.

Mortgage Financing

The Licensee explained it was his understanding that the Client's primary goal was to have access to more income for herself, her children, and for charitable purposes. To achieve this, the Licensee initially recommended the Client refinance her mortgage to get the benefit of a lower interest rate. The Licensee explained that by increasing her mortgage, the Client could receive additional monthly income by leveraging the funds borrowed against her mortgage through investments in segregated funds.

In July 2015, the Client refinanced her mortgage, increasing by approximately \$35,000.00, resulting in the Client receiving approximately \$32,000.00 in additional cash. The Client used these funds to invest in segregated funds, based on the Licensee's recommendations. By increasing her mortgage, the Client's monthly mortgage payments increased by approximately \$100.00 per month, which was to be offset by the income generated from the segregated funds.

The Licensee advised that his recommendation to increase the Client's mortgage was done to decrease her interest rate and save her money. The Licensee provided no evidence to suggest that any other options were discussed or presented to the Client, as a way of meeting her financial goals. Nor was there any evidence that the Licensee discussed with the Client the risks of leveraging.

The Licensee stated that he met with the Client, either personally or over the phone, before making these recommendations and that he believed the Client understood the decisions she made. The Licensee acknowledged that he kept poor notes and was unable to provide any documentation to support his discussions and recommendations to the Client.

ANALYSIS

Council found that the Licensee's recommendations to the Client were, based on the Client's financial circumstances and risk tolerance, inappropriate and not in her best interests. In particular, Council found the Licensee's recommendation that the Client cash in a GIC held in a TFSA, only to invest it in a new TFSA in the same year, to have been detrimental to the Client and made without any due diligence by the Licensee.

The fact that the Licensee was not aware that the GIC was in a TFSA account demonstrated the Licensee had failed to do even the most basic of needs analysis before making recommendations to the Client. By failing to do so, it brought into question his competency and his ability to carry on the business of insurance in accordance with the usual practice of insurance.

Council found the Licensee's recommendation that the Client increase her mortgage in order to reduce costs and increase cash flow to be inappropriate for the Client, when her age, financial means, risk tolerance, and financial knowledge are taken into consideration.

Council was troubled by the Licensee's recommendation to increase the Client's mortgage to \$75,000.00, which represented 80% of the Client's declared home value. Council concluded, based on her limited financial means, that having the Client increase her debt for the purpose of leveraging was not in her best interests.

Council found the Licensee was ill-prepared to provide proper advice to the Client. Council determined the Licensee's recommendations, along with his failure to properly document or conduct a needs analysis before making recommendations to the Client, brought into question his competency. Council noted that the Licensee is only a part-time life agent and that this may have been a contributing factor in the Licensee's poor practice.

Council concluded the Licensee's lack of competence and inability to carry on the business of insurance in accordance with the usual practice of insurance poses a risk to the public and that he should be required to complete further education before being permitted to continue to engage in insurance activities.

INTENDED DECISION

Pursuant to sections 231, 236, and 241.11 of the Act, Council made an intended decision to:

1. Suspend the Licensee's life and accident and sickness insurance licence until successful completion of the first four courses (FP241 – Financial Planning Foundations, FP242 – Taxation and Investment Planning, FP243 – Retirement Income Planning, and FP244 – Insurance and Estate Planning) of the Certified Financial Planner program.
2. Impose a condition on the Licensee's life and accident and sickness ("life agent") insurance licence that requires him to be supervised by a qualified life agent for a two-year period, commencing from when the Licensee has completed the required education referenced in item 1 above. The supervising life agent will be required to sign off on all insurance business activities within the supervisory period.
3. Assess the Licensee Council's investigative costs of \$1,650.00.

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. In addition, failure to pay the investigative costs within the 90 days will result in the Licensee's life and accident and sickness insurance licence remaining suspended until the investigative costs are paid and the Licensee will not be permitted to complete any annual filing until such time as the investigative costs are paid in full.

The Licensee's suspension will begin on **September 13, 2017**.

The intended decision will take effect on **September 13, 2017**, subject to the Licensee's right to request a hearing before Council pursuant to section 237 of the Act.

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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 **September 12, 2017**. 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 **September 12, 2017**, 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 **24th day of August, 2017**.

For the Insurance Council of British Columbia



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GM/jw