

In the Matter of

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

and

The INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

and

DOOHOE LEE
("Licensee")

ORDER

As Council made an intended decision on April 13, 2010, under sections 231 and 236 of the Act;
and

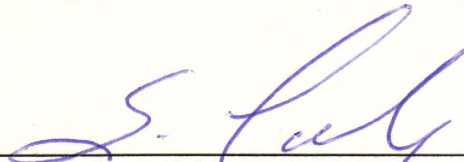
As Council, in accordance with section 237 of the Act, provided the Licensee with written
reasons and notice of the intended decision dated April 22, 2010; and

As the Licensee has not requested a hearing of Council's intended decision within the time
provided to request a hearing;

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

1. the Licensee pay a fine of \$500.00; and
2. as a condition of this decision, the Licensee is required to pay the fine in five
monthly instalments of \$100.00 each, commencing on June 15, 2010. Failure to
pay the ordered fine in accordance with this schedule, will result in the immediate
suspension of the Licensee's licence, without further action from Council.

This order takes effect on the **18th day of May, 2010.**



Graham Calder, CFP, CLU, ChFC, RHU
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

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

respecting

**DOOHOE LEE
("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 March 22, 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 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 April 13, 2010 meeting. Subsequent to the Committee meeting, the Licensee submitted a request for financial consideration which was also considered by Council. 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 September 4, 2008.
2. The Licensee was licensed with SMG Advisors Inc. from the time he was first licensed until the termination of his licence on February 12, 2010 under Council Rule 7(11) for not having E&O coverage.
3. The Licensee did not renew his E&O coverage, resulting in the termination of the insurance effective August 21, 2009.
4. The Licensee was attending Simon Fraser University pursuing a business degree during the time he held a licence. At the time his E&O was due for renewal, the Licensee was focusing on his studies and not on insurance activities. He graduated from university in December 2009.
5. The Licensee stopped conducting insurance activities in or around May 2009, as he was finding it too difficult to deal with work and university concurrently.
6. The Licensee reapplied for licensing and, as of April 9, 2010, is again licensed as a Life Agent with SMG Advisors Inc.

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) in that the Licensee did not notify Council within five business days of ceasing to have E&O coverage as required by Council Rules. Council did accept that the Licensee ceased all insurance activities at the same time and did not place any clients at risk. There was no evidence to suggest that the Licensee's actions were intentional, but rather, he was focused on his education and was no longer acting as a Life Agent.

In considering the appropriate disposition in this matter, Council took note that the only precedents for unintentional breaches of Council Rule 7(11) related to restricted travel insurance agencies, which resulted in fines of \$1,000.00. Unlike the present case, however, each of those cases involved restricted travel insurance agencies continuing to conduct insurance activities.

Council also considered the Licensee's request to reduce the recommended fine, citing that he is a recently graduated student with some financial difficulties. While sympathetic to his situation, Council was of the position that all licensees, regardless of whether part time or full time, must be aware of and appropriately act on their responsibilities. As a result, it was Council's position that a fine in the amount of \$500.00 was both reasonable and appropriate. Recognizing, however, that the Licensee's actions were unintentional and no clients were put at risk, Council did agree to make adjustments to the length of time that the Licensee would be provided to pay the fine.

INTENDED DECISION

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

1. the Licensee pay a fine of \$500.00, which must be paid in accordance with a mutually agreed upon schedule;
2. the schedule referred to above must be finalized before May 17, 2010, otherwise the fine must be paid within 90 days from the date of Council's final decision; and
3. as a condition of this decision, the Licensee is required to pay the above mentioned fine in accordance with the final repayment schedule. If the Licensee does not pay the ordered fine by this date, the Licensee's licence is suspended without further action from Council.

The intended decision will take effect on **May 18, 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 **May 17, 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.

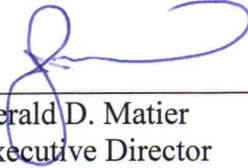
If the Licensee does not request a hearing by **May 17, 2010**, the intended decision of Council will take effect.

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/ or contact them directly at:

Suite 1200 - 13450 102nd Avenue
Surrey, British Columbia
V3T 5X3
Telephone: 604-953-5300

Dated in Vancouver, British Columbia, on the **22nd day of April, 2010.**

For the Insurance Council of British Columbia



Gerald D. Matier
Executive Director

GM/AH/tlh