

DECISION

**IN THE MATTER OF
THE LIFE INSURANCE COUNCIL OF SASKATCHEWAN**
(“Council”)

MARKET PRACTICES COMMITTEE
(the “Committee”)

RESPECTING

FIT FINANCIAL INC.
(the “Licensee”)

Represented by
DEAH BLOCK, DESIGNATED REPRESENTATIVE
(the “DR”)

The Committee is authorized under Council’s Bylaw 2, section 2-3, to investigate complaints and adjudicate or mediate disputes respecting alleged non-compliance with *The Insurance Act* (the “Act”), *The Insurance Regulations* (the “regulations”) or Council’s Bylaws by applicants, licensees or persons who are required to be licensees pursuant to section 5-31(3)(i) of the regulations, and to make decisions respecting penalties and other charges pursuant to section 5-31(3)(k) of the regulations.

In response to a complaint received by Council from the Licensing Department of the Insurance Councils of Saskatchewan on June 16, 2023, regarding the conduct of the Licensee, an investigation was undertaken. The outcome of that investigation was submitted to the Committee on August 25, 2023.

A Notice of Proposed Action dated August 29, 2023 with an Investigation Report and a Consensual Agreement and Undertaking (the “Agreement”) was sent to the Licensee by registered mail.



The Licensee, through its DR, chose to submit written representations to the Committee pursuant to section 10-11(3)(b) of the Act, respecting why the actions identified in the Agreement should not be taken.

On January 25, 2024, in accordance with section 10-11(10)(a) of the Act, the Committee met to consider the Licensee's written representations regarding the misconduct identified below:

MISCONDUCT AND BYLAW VIOLATIONS BY THE LICENSEE:

Bylaw 3-1 Licences and obligations

(4) A licence imposes on the licensee, and if a business, the designated representative, obligations including but not limited to, the following:

- (c) to immediately notify LICS of:
 - (i) the failure to maintain the prescribed financial security requirements (errors and omissions insurance or the bond), pursuant to sections 5-10 and 5-23 of the regulations;

Bylaw 4-1 Professional misconduct

(1) For the purposes of the Act, the regulations and these bylaws, professional misconduct is a question of fact but includes any matter, conduct or thing, whether or not disgraceful or dishonorable that:

- (c) is a breach of the Act, the regulations or these bylaws.

REASONS FOR THE DECISION:

The DR has argued that there was no lapse in the Licensee's Errors and Omissions ("E&O") insurance coverage as there was vicarious liability coverage in place under the policy issued in her name. When she was advised by Council that separate entity coverage was required for the Licensee, she obtained separate entity coverage effective April 19, 2023. Then, when the gap in coverage from April 1 to 19, 2023 was brought to her attention, she obtained backdated coverage effective April 1, 2023. The DR also argued that the E&O insurance provider confirmed that with the backdated E&O policy in place, there was no lapse in the Licensee's E&O coverage.



The Committee reviewed the DR's E&O insurance certificate with coverage for the period April 1, 2023 to April 1, 2024, which was issued on March 27, 2023, and noted there was no separate entity coverage for the Licensee, only vicarious liability coverage. After the DR was contacted by Council in relation to the requirement to have separate entity coverage in place, she provided a policy certificate showing entity coverage for the Licensee effective April 19, 2023. That policy certificate was issued on May 5, 2023. The Committee also noted that the DR did not obtain the backdated entity coverage for the Licensee until July 10, 2023. The Committee finds that for the period April 1 to 19, 2023, the Licensee did not have E&O coverage in place, and coverage was not put in place until July 10, 2023, more than three months after coverage under the prior policy had expired.

The evidence shows the E&O insurance provider stated that the backdated coverage was issued after the DR signed a Non-Claim Disclosure Agreement confirming that she had no knowledge of any existing or potential claims. The Committee finds that the requirement for the DR to execute such an agreement on behalf of the Licensee indicates that any claims made during the period April 1 to 19, 2023 would not have been covered by the E&O insurance provider.

The DR also argued that Council had approved vicarious liability coverage for the Licensee for the April 1, 2022 to April 1, 2023 period, and that she obtained identical coverage for the Licensee for the April 1, 2023 to April 1, 2024 period. She stated the reason she did not have separate entity coverage in place for the April 1, 2023 to April 1, 2024 period was due to a change to the rules for E&O coverage for corporations.

The Committee reviewed the policy certificates submitted by the DR and noted that the Licensee did, in fact, have separate entity coverage in place for the April 1, 2022 to April 1, 2023 period. That certificate was issued on December 23, 2022. Further, as noted in the preceding paragraphs, the evidence shows that the E&O insurance certificate issued to the DR for the period April 1, 2023 to April 1, 2024 did not have separate entity coverage in place, only vicarious liability coverage. As a result, the Committee finds that the Licensee did not have identical coverage for the two periods described in the preceding paragraph. Further, the Committee notes that the "rules" governing the requirement for corporate entities to have separate entity coverage did not change between the years 2022 and 2023.

The DR also argued that she did provide notice to Council as required by Bylaw 3-1(4)(c)(i). The Committee finds that there is no evidence that the DR notified Council that the Licensee's E&O coverage had lapsed on April 1, 2023. Rather, the evidence



shows that it was only after the DR was contacted by Council that she obtained separate entity coverage effective April 19, 2023, and when she was advised of the gap in coverage from April 1 to 19, 2023, she then obtained the backdated coverage for the period April 1, 2023 to April 1, 2024.

The Committee notes that the legislation in place in Saskatchewan provides that coverage must be maintained by all individuals and businesses which hold a licence to act as an insurance intermediary in Saskatchewan. The Committee also notes that it is a licence holder's responsibility to ensure that all legislative requirements have been satisfied in order to obtain and retain an insurance licence in Saskatchewan.

After considering all of the evidence and submissions in this case, the Committee finds that the Licensee violated Bylaw 4-1(1)(c) when the DR failed to notify Council that the Licensee's E&O coverage had lapsed on April 1, 2023, in accordance with Bylaw 3-1(4)(c)(i). The Committee unanimously agrees that the fine and costs of investigation recommended in the Investigation Report should stand.

THE COMMITTEE HEREBY ORDERS THAT:

1. The Licensee pay the following fine:

Bylaw 4-1(1)(c) for Failure to Notify	\$ 300.00
Total:	<u>\$ 300.00</u>

Costs of investigation: 4 hours at \$110.00 per hour	\$ 440.00
Total:	<u>\$ 740.00</u>

2. The Licensee must pay the fine and costs of investigation within 30 days of receiving this Decision.

Dated at Saskatoon, in the Province of Saskatchewan, this 30 day of January, 2024.

Originally signed by:

Som Houmphanh, Chair
Market Practices Committee
Life Insurance Council of Saskatchewan



Section 5-39(3)

If a penalty imposed against a holder of an insurance intermediary's licence pursuant to subsection (2) is not paid within 30 days after the holder is served with the written notice of the penalty and the decision of the Superintendent is not appealed, the licence is automatically suspended immediately following the last date for paying the penalty or appealing the decision, whichever is later, and remains suspended until the penalty is paid or the licence expires.