

In the Matter of the

FINANCIAL INSTITUTIONS ACT, RSBC 1996, c.141

(the “Act”)

and the

INSURANCE COUNCIL OF BRITISH COLUMBIA

(“Council”)

and

YAN QI MA

(the “Former Licensee”)

ORDER

As Council made an intended decision on March 12, 2024, pursuant to sections 231, 236, and 241.1 of the Act; and

As Council, in accordance with section 237 of the Act, provided the Former Licensee with written reasons and notice of the intended decision dated March 25, 2024; and

As the Former 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 that:

- 1) The Former Licensee is fined \$3,000, to be paid by July 22, 2024, and which must be paid in full prior to the Former Licensee being licensed in the future;
- 2) The Former Licensee is required to complete the following courses, or equivalent courses, as acceptable to Council, prior to the Former Licensee being licensed in the future:
 - i. The Council Rules Course for life and/or accident and sickness insurance; and

- ii. The Continuing Education Guidelines and Requirements Course (Collectively, the “Courses”); and
- 3) The Former Licensee is assessed Council’s investigation costs in the amount of \$875 to be paid by July 22, 2024 and which must be paid in full prior to the Former Licensee being licensed in the future.

This order takes effect on the **22nd day of April, 2024**



Janet Sinclair, Executive Director
Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA

(“Council”)

respecting

YAN QI MA

(the “Former Licensee”)

1. Pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council conducted an investigation to determine whether the Former Licensee had acted in compliance with the requirements of the Act, Council Rules, and Code of Conduct regarding an investigation as the Former Licensee left the errors and omissions (“E&O”), continuing education (“CE”), and authority to represent (“ATR”) declarations blank in the Former Licensee’s 2021 Annual Licence renewal.
2. On January 10, 2024, as part of Council’s investigation, a Review Committee (the “Committee”) comprised of Council members met with the Former Licensee via video conference to discuss the investigation. The Investigation Report was distributed to the Committee and the Former Licensee prior to the meeting. A discussion of the Investigation Report took place at the meeting, and the Former Licensee was given an opportunity to make submissions and provide further information.
3. Having reviewed the investigation materials, the Committee prepared a report for Council. The Committee’s report, along with the Investigation Report, were reviewed by Council at its March 12, 2024, meeting, where it was determined the matter should be disposed of in the manner set out below.

PROCESS

4. Pursuant to section 237 of the Act, Council must provide written notice to the Former Licensee of the action it intends to take under sections 231, 236 and 241.1 of the Act before taking any such action. The Former 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 Former Licensee.

FACTS

5. The Former Licensee obtained her Life and Accident and Sickness insurance agent (“Life Agent”) licence on September 24, 2010. The Former Licensee’s licence was subsequently terminated for non-filing on July 31, 2013. The Former Licensee reapplied for her licence and held an ATR at an agency from July 27, 2015, to October 1, 2015. The Former Licensee then held an ATR with another agency from July 28, 2015, until December 9, 2015. The Former Licensee then held an ATR with a managing general agency until December 14, 2017. The Former Licensee held an unaffiliated ATR from December 15, 2017, to April 2, 2018, and from July 3, 2019, to January 4, 2024. From April 2018 to January 3, 2024, the Former Licensee held an active licence but did not have an active contract with any insurance carriers. As a result of not having any active contracts with any insurance carriers, the Former Licensee’s Life Agent licence was cancelled on January 4, 2024.
6. On November 24, 2021, the Former Licensee was audited as she had left the E&O, CE, and ATR declarations blank in her 2021 Annual Renewal declaration.
7. On November 25, 2021, Council staff emailed the Former Licensee requesting that she complete the audit form and provide copies of her E&O policies and CE certificates for the last three licence periods, 2018 / 2019, 2019 / 2020, and 2020 / 2021 (the “Licence Periods”)
8. On December 21, 2021, the Former Licensee responded, explaining that she quit her role as an Advisor Assistant with an insurer in January 2021. The Former Licensee advised she no longer had access to her work computer, advisor portal, and email where her CE certificates were kept. The Former Licensee had to complete the CE credit form with a colleague's help to find the courses' names. The Former Licensee provided the completed audit forms and, in the form, noted that she was on maternity leave from July 2019 to June 2020 and believed that her CE credits would be “*carried forward from 2019 to 2020.*”
9. On December 23, 2021, the Former Licensee attached her amended CE certificates and forms, and proceeded to explain that some of the CE courses were completed through virtual meetings, and she could not access the certificates via her previous employer. The Former Licensee explained that her contracts with the insurance company and managing general agency office were terminated due to her bankruptcy. The Former Licensee has had no active insurance business with clients since then. The Former Licensee explained that her business was transferred to another advisor in 2018 when her contract with the managing general agency was terminated. The Former Licensee has not held E&O since her contract with the managing general agency was terminated.
10. On January 25, 2022, Council staff emailed the Former Licensee and requested the Former Licensee confirm the date her E&O coverage was terminated. The Former Licensee was asked to verify the CE

courses she completed during each of the Licence Periods. The Former Licensee was also asked to provide a copy of her bankruptcy package and to explain why the Former Licensee did not provide Council the mandatory notification of her bankruptcy within 5 days as required by the Council Rules.

11. On February 18, 2022, the Former Licensee replied attaching the requested documentation. The Former Licensee further explained that her E&O coverage expired on April 1, 2018, and she did not know she was required to notify the Insurance Council within five business days of her E&O insurance coverage ceasing. The Former Licensee believed she had answered or provided a response of “*NO E&O coverage*” in her 2018 Annual Filing declarations, and therefore presumed that this was reporting the lapse of E&O to Council. The Former Licensee further assumed that her managing general agency informed Council of her bankruptcy at the time of her termination. The Former Licensee obtained a Certificate of Discharge, dated December 20, 2018, related to the bankruptcy.
12. The Former Licensee further advised she held an insurance licence in Alberta from 2010 to 2018. When the Former Licensee changed her residence to BC in 2015, she re-obtained her Life Agent licence in BC. The Former Licensee believes that as she was first licensed in 2010, and as the gap in her BC licence was when she held an Alberta insurance licence, the Former Licensee believed she should qualify for the reduced amount of CE credits of 10 credits per year.
13. On March 3, 2022, Council staff emailed the Former Licensee asking her to confirm whether she had any E&O coverage at that time. Council staff also requested the Former Licensee to resend the CE portion of her response from February 18, 2022, as the file could not be opened. In her response on April 4, 2022, the Former Licensee resent her CE records and explained her employment history.
14. The Former Licensee advised that from May 2018 to December 2021, she worked for different financial institutions, both in an assistant role and in office administration. Additionally, the Former Licensee was on maternity leave for one year beginning in July 2019. The Former Licensee currently works in an administrative role outside the insurance industry.
15. On August 16, 2022, Council staff further requested that the Former Licensee provide CE certificates for the 2021/2022 licence period. On August 26, 2022, the Former Licensee replied and advised that she had not completed her CE by June 1, 2022, as she was not sure if her licence would be suspended but had completed 12 CE credits by July 2022. The Former Licensee further advised in this email that she assumed that as she had completed 40 CE credits in the 2018/2019 licence year that these credits could be carried forward in 2019/2020.

16. A review of all the CE credit submissions made by the Former Licensee for the 2018/2019, 2019/2020, 2020/2021, and 2021/2022 licence periods shows that she submitted 40 credits for 2018/2019, 3 credits for 2019/2020, 5.75 credits for 2020/2021 and 12 credits for 2021/2022.
17. As per Insurance Council Notice ICN#08-005 from April 28, 2008, a person who has been licensed continuously for five years or five of the past seven years will not be considered a new licensee and will have the CE requirements reduced to 10 CE credits per licence period. This notice is no longer in effect as of June 1, 2021; therefore, 15 CE credits are required for the 2021/2022 licence period.
18. The Former Licensee was questioned why she continued to hold an active Life Agent licence from April 2018 to January 3, 2024, when she held no insurer contracts, conducted no insurance business and worked in an administrative role. The Former Licensee advised that she hoped to return to the insurance industry when her credit score and bankruptcy no longer affected her ability to obtain insurance contracts. The Former Licensee maintains that she did not conduct any insurance business during the period of April 2018 to January 3, 2024. The Former Licensee advised she continued to renew her Life Agent licence so that she would not have to re-take the education requirements for a Life Agent licence as she would have had she cancelled and waited to reapply when her credit score allowed her to obtain insurance contracts.

ANALYSIS

19. Council has concluded that the Former Licensee failed to notify Council within 5 business days of her declaration of bankruptcy and failed to notify Council within 5 business days that she no longer held the appropriate E&O insurance required. Council notes that licensees are required to be financially reliable. This requirement is important when assessing the suitability of an individual to hold an insurance licence. As licensees are entrusted with money, property, and financial instruments with clients and insurers, it is essential to the practice of the business of insurance that a licensee be financially reliable. Council believes that the Former Licensee's failure to advise Council of her bankruptcy is a significant issue. The Former Licensee's declaration of bankruptcy is relevant to assessing whether the Former Licensee was suitable to hold an insurance licence. Council concluded that non-disclosure of matters so closely related to the ability of an individual to hold a licence prevents Council from properly regulating licensees and provides a disservice in protecting the public by not allowing Council to properly assess the licensee's suitability before the individual holds out to members of the public that they are licensed.
20. However, Council recognizes that in this particular case, the Former Licensee had no insurance contracts and did not conduct any insurance business since April 2018, therefore minimizing any risk to the public. Council acknowledges that the Former Licensee did not fully comprehend that although

she was not conducting any insurance business and had no insurance contracts, if she kept an active insurance licence the Former Licensee was required to comply with the obligations that a licensee has including, maintaining CE credits, E&O, and making appropriate disclosures to Council.

PRECEDENTS

21. Prior to making its intended decision, Council took into consideration the following precedent cases. While Council is not bound by precedent and that each matter is decided on its own facts and merits, Council found that these decisions were instructive in terms of providing a range of sanctions for similar types of misconduct.
22. [Maria Rhodora Banada Thomas](#) (July 2018): The life agent's E&O coverage lapsed. The licensee advised council that the lapse was due to inadvertence and that she had not conducted insurance business during the lapse period. Despite finding the breach of Council Rule 7(11) was unintentional, Council imposed a \$1,000 fine. This decision stands for the proposition that Council will apply a minimum fine of \$1,000 for breaches of Council Rule 7(11), regardless of the reasons for that breach.
23. [William Charles Brash](#) (April 2022): involved a licensee who held an inactive life and accident and sickness insurance agent licence from October 2017 to 2022. In May 2021, the licensee sought assistance with the annual filing declaration with Council staff. The licensee self-disclosed that he had not completed the annual required continuing education credits while his licence was inactive. In January 2022, the licensee completed 60 continuing education credits. Although the licensee had not completed the continuing education requirements for four years, Council considered that the licensee self-reported the breach as well as the licensee's initiative to complete all 60 credits. Council further considered that the licensee had a lack of experience and training as a mitigating factor. With the mitigating factors in mind, Council determined a lower fine than the \$1,000 threshold in the Thomas case was appropriate. Council fined the licensee \$250 for each of the four licensing years in which he failed to complete the continuing education credits and required the licensee to take the Council Rules Course as well as assessed investigation costs.
24. [Levita Bueno Velasco](#) (November 2023): involved a licensee who failed to complete continuing education credits for the 2018/2019, 2019/2020 and 2020/2021 licence periods. The licensee attempted to complete the outstanding continuing education credits but at the time of the investigation only completed 20 credits of the 45 outstanding. Council determined that it was appropriate to fine the licensee \$1,000 for each licence period in which the licensee did not meet the continuing education requirements. The licensee was fined \$3,000, required to take the Council Rules Course as well as assessed investigation costs.

25. [Wah Shing Jacky Chan](#) (September 2020): concerned a life agent who was unable to demonstrate, after having his CE credits audited, that he had met his CE requirements for three licensing years. Council fined the licensee \$3,000 and required him to complete the Council Rules Course.
26. [Varinder Kaur](#) (July 2020): concerned a life agent whose authority to represent her agency was terminated. Subsequently, the agency's E&O broker emailed the licensee advising that, because her contract had been terminated, her E&O coverage was cancelled. After being advised that her E&O coverage had been cancelled, the licensee wrote one insurance policy, followed by a second after Council informed her that her licence status had been changed from active to inactive. She self-reported to Council that she had written the two policies. The licensee was fined \$1,500 for failing to maintain her E&O coverage and for conducting insurance business without E&O; reprimanded for failing to notify Council that she was without E&O coverage; required to complete the Council Rules Course; and a condition was imposed on her life agent licence that failure to complete the Council Rules Course by a prescribed date would result in automatic suspension of her licence.
27. [Cameron Alexander Fortin](#) (August 2023): concerned a licensee who failed to maintain errors and omissions insurance and failed to notify Council of the lapse. The licensee had a lapse in E&O insurance from January 1, 2021, to February 5, 2021. Council considered the licensee's family circumstances at the time of the lapse to be a mitigating factor. Additionally, the fact that the licensee had reported his E&O lapse before the insurer contacted Council is a mitigating factor. Notwithstanding the mitigating factors above, Council found several aggravating factors to outweigh the mitigating factors. Council found the licensee's previous discipline and the fact he had been ordered to take the Council Rules Course both aggravating. Additionally, while he did self-report, he did so only after a year and not the five business days as required by the Council Rules. Council found the fact that the licensee completed a transaction during the lapse period as a significant aggravating factor. Council concluded that a \$1,500 fine was appropriate, the licensee was required to complete the Council Rules course and was assessed investigation costs.

MITIGATING AND AGGRAVATING FACTORS

28. Council considered that in reviewing the situation holistically, the Former Licensee did complete a significant amount of CE credits, more than required when she was actively conducting insurance business in the 2018/2019 licence year. The lapse in CE occurred when the Former Licensee did not conduct any insurance business and during that time the Former Licensee also went on maternity leave. Council considered that there was little risk of public harm as the Former Licensee held no insurance contracts and could not conduct insurance business. Council concluded these were significant mitigating factors.

CONCLUSIONS

29. Given the significant mitigating factors, Council concluded that when assessing an appropriate fine for failing to complete the required CE credits in a licensing year, a lower penalty is warranted. Council did not believe the factors of this case warranted a fine as low as the Brash case but concluded a fine lower than the \$1,000 assumed threshold is justified. Council determined a fine of \$1,500 to be appropriate, representing \$500 for each License Period in which the Former Licensee had a CE shortfall. Council further determined that the Former Licensee be fined \$1,500 for failing to disclose, as required by Council Rules, her bankruptcy and lapse in E&O. Council also concluded the Former Licensee be required to complete the Council Rules Course so that the Former Licensee is made aware of requirements for licensees, should the Former Licensee decide to return to the insurance business.
30. With respect to investigation costs, Council concludes that these costs should be assessed to the Former Licensee. As a self-funded regulatory body, Council looks to licensees who have engaged in misconduct to bear the costs of their discipline proceedings, so that those costs are not otherwise borne by British Columbia's licensees in general. Council has not identified any reason for not applying this principle in the circumstances.

INTENDED DECISION

31. Pursuant to sections 231, 236, and 241.1 of the Act, Council made the following intended decision to:
 - a. Fine the Former Licensee \$3,000 to be paid within 90 days of Council's order and which must be paid in full prior to the Former Licensee being licensed in the future;
 - b. Require the Former Licensee to complete the following courses, or equivalent courses, as acceptable to Council, prior to the Former Licensee being licensed in the future:
 - i. The Council Rules Course for life and/or accident and sickness insurance; and
 - ii. The Continuing Education Guidelines and Requirements Course; and
 - c. Assess the Former Licensee with Council's investigation costs in the amount of \$875 to be paid within 90 days of Council's order and which must be paid in full prior to the Former Licensee being licensed in the future.

32. Subject to the Former Licensee's right to request a hearing before Council pursuant to section 237 of the Act, the intended decision will take effect after the expiry of the hearing period.

ADDITIONAL INFORMATION REGARDING FINES/COSTS

33. Council may take action or seek legal remedies against the Former Licensee to collect outstanding fines and/or costs, should these not be paid by the 90 day deadline.

RIGHT TO A HEARING

34. If the Former Licensee wishes to dispute Council's findings or its intended decision, the Former Licensee may have legal representation and present a case in a hearing before Council. Pursuant to section 237(3) of the Act, to require Council to hold a hearing, the Former Licensee **must give notice to Council by delivering to its office written notice of this intention within fourteen (14) days of receiving this intended decision.** 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 Former Licensee does not request a hearing within 14 days of receiving this intended decision, the intended decision of Council will take effect.**
35. Even if this decision is accepted by the Former Licensee, pursuant to section 242(3) of the Act, the British Columbia Financial Services Authority ("BCFSA") still has a right of appeal to the Financial Services Tribunal ("FST"). The BCFSA has thirty (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 <https://www.bcfst.ca/> or visit the guide to appeals published on their website at <https://www.bcfst.ca/app/uploads/sites/832/2021/06/guidelines.pdf>.

Dated in Vancouver, British Columbia on the **25th day of March, 2024.**

For the Insurance Council of British Columbia



Janet Sinclair
Executive Director