

ALBERTA INSURANCE COUNCIL  
(the "AIC")

In the Matter of the *Insurance Act*, R.S.A. 2000 Chapter I-3  
(the "Act")

And

In the Matter of Ann Warkentin  
(the "Former Agent")

DECISION  
OF  
The Life Insurance Council  
(the "Council")

This case involved an allegation pursuant to s. 452(1) of the Act. Specifically, it is alleged that the Former Agent acted as an insurance agent during a period of time in which she did not hold a valid and subsisting Certificate of Authority and that this constitutes an offence pursuant to s. 480(1)(b) of the Act.

**Facts and Evidence**

This matter proceeded by way of a written Report to Council dated January 4, 2016 (the "Report"). The Report was forwarded to the Former Agent for review and to allow the Former Agent to provide the Council with any further evidence or submissions by way of Former Addendum. The Former Agent signed the Report on January 25, 2016 and she provided the Council with further submissions dated January 25, 2016.

The Agent previously held life, accident & sickness ("A&S") and general insurance agent certificates of authority. She originally held some of these in 2009 and was last licensed in 2014. When she held individual certificates of authority the Former Agent worked for Travel Guardian Insurance Ltd. ("TGI"). A related entity relevant to this matter is Travel Guardian Travel Ltd. ("TGT"). TGT is a travel agency that holds a restricted certificate of authority that authorizes it to sell travel insurance through its employees. It is not entitled to utilize unlicensed independent contractors under its restricted certificate of authority. "JD" is the licensed Designated Representative ("DR") of TGI and is responsible for the management and supervision of TGI. He is also the Designated Individual ("DI") of TGT. DI's of restricted agents are not required to hold a license and their responsibilities are limited to receiving notifications and communications from the AIC. A third relevant and related entity is Travel Guardian Insurance (Calgary) ("TGIC"). It held an A&S certificate of authority between 2005 and 2007 and "ES" was its designated representative ("DR").

The Former Agent submitted an application form to obtain an A&S certificate of authority to represent TGI. She signed it on June 2, 2014 and she requested that the AIC issue an A&S certificate of authority to represent TGI. In section 9 (Employment History for the Previous Five Years), the Former Agent indicated her employer was "Travel Guardian" from 2013 onward.

In a series of e-mails between the AIC and the Former Agent, the AIC sought information about the Former Agent's activities and whether or not the Former Agent was compensated for acting as an insurance agent when she did not have a valid and subsisting certificate of authority. In a June 20, 2014 email, the Former Agent wrote: "Secondly, I wish to make PERFECTLY clear that I did NOT sell any insurance products prior to being hired at Travel Guardian in July 2013, but MOST DEFINITELY HAVE AND CONTINUE to do so since becoming employed last year." (emphasis added)

On June 26, 2014 the Former Agent sent the AIC an undated four page fax wherein the Former Agent wrote: "Pursuant to our conversation earlier this month, I wish to inform you of my history regarding any insurance activity. I have had NO compensation or sold any products up until July 2013 at which time I was hired by Travel Guardian Insurance in Edmonton. I HAVE been selling and receiving compensation for my work since July 2013." Page three of the fax contained the Former Agent's errors & omissions insurance information and the named insured on the policy was TGI. Approximately there weeks later "HW" sent a fax to the AIC on TGI letterhead that requested that the AIC remove the Former Agent from the list of agents affiliated with TGI.

The Investigator wrote to "JB" a Royal & Sun Alliance ("RSA") official on October 31, 2014. In his letter the investigator sought information about the Former Agent's activities undertaken on behalf of RSA while she was with TGI. The Investigator received an e-mail dated November 21, 2014 with attached letter of the same date from JB with Royal & Sun Alliance. In her letter, JB advised that no sales were made by the Former Agent and that they have no record of any payments made to her. JB further advised that their contract was with TGI.

By letter dated November 15, 2014 the Former Agent advised the AIC that she was hired to assist existing clients who were re-directed to her by staff from the main office in Edmonton. The Former Agent further advised that she had no written contract and when offered to her in July of 2014, she "declined and ceased all activity." The Former Agent also advised that she was only paid by "Travel Guardian."

Included amongst the attachments accompanying the letter were documents referencing a commission account under the Former Agent's name and a "Posted Sales Commissions Report" detailing commissions of \$4,322.78. Each of the documents that the Former Agent provided reference TGI.

On January 13, 2015 the Investigator spoke with JD who, as noted above, is the DR for TGI and DI for the restricted insurance agent TGT. The Investigator advised JD of this matter and the time period for which the Former Agent allegedly acted as an insurance agent without a valid and subsisting certificate of authority. JD advised the investigator that the Former Agent was selling travel insurance as an employee of TGT under its restricted certificate of authority. He said that she was not selling travel insurance through TGI prior to obtaining her certificate of authority to represent TGI. A different TGI official ("AC") later provided the investigator with a series of documents on behalf of TGI. Among the documents that AC provided were Canada Revenue Agency T4 and T4A slips for the Former Agent and other individuals who were paid from TGI's account but allegedly employed by TGT which is a wholly owned subsidiary of TGI.

In an accompanying written statement JD referred to the T4 slips as follows: that

As you will see we have also enclosed other individuals [names omitted] T4's who are also paid from Travel Guardian Insurance's account but are all definitely employed by our Wholly owned Subsidiary Travel Guardian Travel Ltd. We just haven't set up a separate payroll account with Ceridian (our payroll company) to pay them out that way. Twice yearly [the Former Agent's] mother ... the manager of the Travel Agency writes a cheque to Travel Guardian Insurance to make up for the funds/monies that are going out to the travel agencies employees. If you will see we are and have been paying for a number of years, fees for a Travel Agency employing 11 – 15 staff. Nowhere in the act, does it require us to list the names of the people we deem, staff, nor do they have to require a written employee agreement as far as we can see.

JD further advised that "We relied on [the Former Agent's] licensing, to be under the umbrella of [TGT's] Certificate of Authority, and the restricted insurance definition from the Act below. We have always co-operated with the AIC and have done so for 25 yrs." In copies of the Former Agent's 2013 and 2014 T4A statements the payer's name is set out as "Travel Guardian Health Insurance Ltd." and the amounts paid to the Former Agent are found in Box 020 which are "Self-employed commissions."

In response to a further request for information, AC provided the investigator (by letter dated February 5, 2015) additional documents including, among other things, a further written statement from JD. In this statement JD wrote:

Because [TGT] is a wholly owned subsidiary of [TGI] we, for expediency and convenience sake run the Travel Agencies pay through the one payroll account of the Parent company (Travel Guardian Insurance ltd.) *sic*. We have done this for years and twice yearly the Travel Agency writes a cheque to the insurance company to balance the books. In every sense of the word, we considered [the Former Agent] an Employee of Travel Guardian Travel Ltd. Although the insurance act mentions employee 132 times there is no definition of the term employee listed."

We have paid for a staffing level of 10 to 15 people for our restricted Travel Agency license for years now. At one time, years ago, I believe we had to list the people covered in this license. Sometime ago, I believe this naming requirement was abolished, but we have paid the appropriate

fees for situations just like [the Former Agent's]. As far as [the Former Agent's] pay, being paid straight commission; I thought that for tax purposes, her income had to be reported that way.

Years ago when we first set up the *payroll* of Travel Guardian Insurance Ltd., I made a mistake with the enrollment forms concerning the company name. I have always thought in my own mind that because we sell only Health insurance (disability, individual health, travel health insurance) that in a sea of insurance agencies and marketers that we would be better defined if we had the term '**Health**' inserted. I think of us as a **Health** insurance agency. We never caught on to it at the time, never realized it would be a problem (Revenue Canada and the Bank of Montreal with whom the monies for payroll derive have had no problem with it, even though with BMO they have us as Travel Guardian Insurance Ltd.). We have now contacted the payroll company that we use, Ceridian, and have taken steps to correct this oversight. At all times, both the Travel Agency and the Insurance Agency had all of our people licensed through the Council.

[The Former Agent] applied for an A&S certificate to be under the umbrella of Travel Guardian Insurance Ltd. This way she wouldn't be governed by the 'restricted Certificate of Authority' that she was under with Travel Guardian Travel Ltd. (for example; if she wanted to get licensed in another province she would need an A&S license). It was applied for at the beginning of June 2014 but somewhere between then and July 15, 2014, we decided to mutually and amicably go our separate ways. We had provided her with office furnishings and office equipment which we reclaimed in the summer of that year. We did have a verbal agreement at the time she started with us and the topic of 'being under the Travel Agency's wing for licensing' was mentioned (only once and briefly) before we went on to other matters. Because her Mother... is the Manager of the Travel Agency we didn't require a formal written agreement.

The Former Agent's additional submissions were, in part, as follows:

First and MOST IMPORTANTLY the conversation with your staff member, [an AIC licensing officer] which occurred over the phone PRIOR to me sending in a request for licensing with AIC. I KNOW this conversation is available for your investigation as it was over the phone on the AIC telephone system. Each time you call in to AIC you are reminded that your conversation will be recorded. I AM REQUESTING A COPY OF OUR CONVERSTATION BE INCLUDED. This call not only shows that PRIOR to my application being submitted for licensing I spoke at length with YOUR staff member about my concern due to the definition of RECEIVING COMPENSATION. I stated to this woman I had NO WRITTEN CONTRACT with Travel Guardian but was being paid and was unsure what to do ON THE APPLICATION!!!! Is the best course of action not to consult an AIC staff member for assistance a PRIOR to submitting my application? Not only does this show that I understood this was an important document, but also that I was seeking help from YOUR ORGANIZATION PRIOR TO LICENSING!

Secondly there are no places, in ANY documents, anywhere is these findings that list me as AGENT, SIGNING AGENT OR PERHAPS MORE IMPORTANTLY WHERE I HAVE SIGNED ANY PAPERWORK AS AN AGENT, INCLUDING WITH TRAVEL GUARDIAN!!!

Each time previous I have held ANY license with AIC they have been completed properly and held in good standing. With each previous employer the terms were available to me PRIOR to applying for a license.

As you can determine from the confusion surrounding all of this it was IMPOSSIBLE for me to know exactly how I was being paid without a contract. I did ALL I could do to request your organizations help and there was no option on the registration form for ...UNSURE or

ASSISTANCE REQUIRED which may have, PRIOR to submission made this process so much easier. I would NOT have applied for a license before insisting on a written contract with Travel Guardian.

Lastly, I am requesting my ENTIRE conversation over the telephone conversation with [the investigator] be included in this investigation. I feel he has heavily Cherry-Picked bits from our 41 minute conversation and feel ALL that was disclosed during this initial telephone be included for consideration in a matter as important as this. I am confident once again through AIC this call has been recorded for purposes such as this.

At NO point during the 18 months of investigation have I been difficult to contact, unable to provide information to the best of my knowledge and from what is here more to my own potential detriment than ANY other document or evidence. I cannot state clearly enough that it was my intention to once again be in compliance with the AIC and understand the seriousness of licensing, however I just was never given CLEAR and CONCISE information from my employer, Travel Guardian, and if ANYTHING should NOT have proceeded without DEMANDING a written contract from [JD] to protect MYSELF from just such an investigation. (emphasis in original)

### **Discussion**

In order to prove the allegations in the Report, the AIC must adduce sufficient evidence to demonstrate that the Former Agent acted in the capacity of an insurance agent, as defined in the Act, during a period in which she did not hold a valid and subsisting certificate of authority. Once this is done, the onus shifts to the Former Agent to demonstrate that she took all reasonable measures to avoid acting as an insurance agent when she did not hold a valid and subsisting insurance agent certificate of authority. There is no requirement that the Council prove that the Former Agent acted intentionally. If it is shown that the Former Agent acted in the capacity of an insurance agent an additional issue that arises in this case is whether or not the Former Agent was an employee of TGT because she would be able to act under TGT's restricted license to sell travel insurance (rather than an individual A&S certificate) if she was an employee. The Former Agent bears the onus of establishing that she was an employee of TGT rather than being self-employed or an independent contractor.

The evidence in the Report establishes that the Former Agent acted in the capacity of an insurance agent prior to holding her own individual certificate of authority. This is really beyond doubt and she admits this. Given this, we move on to the question of whether the Former Agent was an employee of TGT such that she was entitled to act as an insurance agent under its restricted certificate of authority rather than obtaining her own A&S certificate of authority to sell the policies in question.

The Former Agent is correct to note that the Act does not define the term "employee". As such, we are left to infer the nature of the relationship from the documents and information provided. Much of the Former Agent's addendum focusses on whether or not she had a written contract. There is no requirement that people working under restricted certificates have written contracts of employment and one does not have to have a written

contract to be considered an employee. However, the existence of one and its provisions might have provided evidence as to whether or not she was an employee rather than a self-employed independent contractor. The Former Agent also raised issues as to AIC application forms for individual certificates of authority and the fact that they do not require written contracts of insurance. While these application forms set out the type of information that the AIC requires to issue a certificate of authority to an individual, they do not offer very much assistance in the question of whether or not the Former Agent is an employee of TGT.

As to the question of the Former Agent's exact status, the redacted T4's and T4A's provided in the Report are instructive. As is common knowledge, these documents are mandated by the Canada Revenue Agency and are instrumental in completing yearly income tax returns. They report, among other things, employment income, and the amount that employers have deducted for taxes, Canada Pension Plan and Employment Insurance premiums on their employees' behalf. As noted above, TGI provided the investigator with the Former Agent's documents and those of other people working for TGT. In our view, the differences between the Former Agent's and the others is significant. The other peoples' redacted forms are T4's and the information that was redacted appears to be in the "employment income", "income tax deducted", "employment income", "EI insurable earnings" and "CPP/QPP" pensionable earnings" boxes. The employees' social insurance numbers are also redacted. Conversely, the Former Agent's T4A's set out "self-employed commissions" not employment earnings. They also show that there are no deductions for income taxes, CPP or EI premiums, no reference to EI and CPP insurable earnings and they do not contain the Former Agent's social insurance number. If the Former Agent had been a TGT employee, her employer would have been obligated to make all of the source deductions that were set out, but redacted, in the other T4's and she would have been issued a similar T4 with similar source deductions that employers are obligated to make. Instead, she was issued a T4A that clearly said that she was self-employed.

Therefore, on the basis of this and the other material in the Report, it is our view that the Former Agent was not an employee of TGT and that she was not authorized to undertake insurance agent activities under TGT's restricted certificate of authority and that she was required to have an A&S certificate of authority to undertake her insurance agent activities. As such, we find that she breached a section of the Act or regulations as alleged.

In terms of the applicable sanction, we have the ability to levy civil penalties in an amount not exceeding \$1,000.00 pursuant to ss. 480(1)(b) of the Act and 13(1)(b) of the *Certificate Expiry, Penalties and Fees Regulation* (A/R 125/2001). In this case, we have before us is a number of related legal entities that appear to be administered in a rather haphazard manner when it comes to what entity is paying for what, which individuals are working for which and the employment status of those individuals. While most of this confusion is largely attributable to JD, we note that the Former Agent's mother is the manager of TGT and JD's confusion does not

relieve the Former Agent of her responsibility to know whether or not she was entitled to act under TGT's restricted certificate of authority. This is especially so given the fact that the T4A's were issued to her so that she could appropriately file her taxes. That being said, this is the Former Agent's first infraction of the Act and we do not believe that a civil penalty at the high end of the spectrum is appropriate.

In the totality of the circumstances, we order that a civil penalty in the amount of \$300.00 be levied against the Agent. The civil penalty must be paid within thirty (30) days of receiving this notice. In the event that the civil penalty is not paid within thirty (30) days, interest will begin to accrue. Pursuant to s. 482 of the Act (copy enclosed), the Former Agent has thirty (30) days in which to appeal this decision by filing a notice of appeal with the Office of the Superintendent of Insurance.

This Decision was made by way of a motion made and carried at a properly conducted meeting of the Life Insurance Council. The motion was duly recorded in the minutes of that meeting.

Date: May 11, 2016

Original Signed By \_\_\_\_\_

Kenneth Doll, Chair  
Life Insurance Council

**Extract from the *Insurance Act*, Chapter I-3****Appeal**

482 A decision of the Minister under this Part to refuse to issue, renew or reinstate a certificate of authority, to impose terms and conditions on a certificate of authority, to revoke or suspend a certificate of authority or to impose a penalty on the holder or former holder of a certificate of authority may be appealed in accordance with the regulations.

**Extract from the *Insurance Councils Regulation*, Alberta Regulation 126/2001****Notice of appeal**

16(1) A person who is adversely affected by a decision of a council may appeal the decision by submitting a notice of appeal to the Superintendent within 30 days after the council has mailed the written notice of the decision to the person.

(2) The notice of appeal must contain the following:

- a) a copy of the written notice of the decision being appealed;
- b) a description of the relief requested by the appellant;
- c) the signature of the appellant or the appellant's lawyer;
- d) an address for service in Alberta for the appellant;
- e) an appeal fee of \$200 payable to the Provincial Treasurer.

(3) The Superintendent must notify the Minister and provide a copy of the notice of appeal to the council whose decision is being appealed when a notice of appeal has been submitted.

(4) If the appeal involves a suspension or revocation of a certificate of authority or a levy of a penalty, the council's decision is suspended until after the disposition of the appeal by a panel of the Appeal Board.

Address for Superintendent of Insurance:

Superintendent of Insurance  
Alberta Finance  
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