

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 Premiere Tours Ltd.
o/a Unique Golf Vacations
(the "Restricted Agent")

As represented by
Designated Individual Michael Ho
(the "DI")

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

This case was brought pursuant to s. 452(1) of the Act alleging that the Restricted Agent acted as an insurance agent for the sale of travel insurance between November 13, 2015 and July 20, 2016 despite not holding a valid and subsisting certificate of authority to do so. As such, it is alleged that the Restricted Agent breached a section of the Act as contemplated by s. 480(1)(b) of the Act.

Facts and Evidence

The Restricted Agent was first licensed on November 3, 2004 currently holds a valid and subsisting certificate of authority to act as an insurance agent for the sale of travel insurance. To hold a license, restricted agents must be recommended by a licensed insurer. The Restricted Agent's recommending insurer was RBC Insurance Company of Canada ("RBC"). On November 11, 2015, RBC terminated its recommendation. Approximately seven months later, on June 24, 2016, the Restricted Agent applied to obtain a certificate of authority. Upon receiving the application form the AIC asked the Restricted Agent to confirm whether it acted as an insurance agent during the time that it did not hold a valid certificate of authority (November 12, 2015 - June 24, 2016).

The DI indicated that the Restricted Agent was completely unaware that RBC cancelled its recommendation. Further, he indicated that it was not until June of 2016 when they were contacted by Travel Guard Insurance (on whose behalf they were now selling policies of travel insurance) and advised their license had been terminated.

The AIC investigator contacted RBC for further information. While RBC sent a cancellation letter to the AIC, the only notification that it appears to have given the Restricted Agent was a voicemail that it left the Restricted Agent on November 11, 2015. Apparently, an RBC official spoke with the DI some days later and advised him of the termination.

The DI denies each of these allegations. First, he contends the November 11, 2015, Notice of Termination was never received. It does not appear that it was sent by way of Registered Mail or other courier or delivery service with receipt confirmation and there is no way to verify either set of allegations. Secondly, November 11, 2015, was a statutory holiday and Premiere's offices were closed, as were RBC's. It would be highly unusual for a business to telephone another business and leave a voicemail message, but that is not to say it did not happen. During the investigation, RBC did not produce any corroborating evidence by way of telephone records to confirm such a telephone call was made. Thirdly, the DI denies there was ever a follow-up telephone call from RBC a few days later.

The investigator also obtained a report from Travel Guard Insurance listing the Alberta travel insurance sales by the Restricted Agent from November 16, 2015 to June 10, 2016. During this period, the Restricted Agent sold 50 policies on behalf of Travel Guard Insurance with a total gross commission paid to the Restricted Agent in the amount of \$2,369.17.

Decision of the Council

From the evidence in the Report, the Restricted Agent's certificate of authority to act in the capacity of an insurance agent expired on November 16, 2015. The evidence also proves that, notwithstanding the termination of the certificate of authority, the Restricted Agent continued to act as an insurance agent and it did not hold a valid certificate until June, 2016.

Section 452(1) of the Act states: "No business may act or offer to act as an insurance agent in respect of

a class of insurance unless the business holds a valid and subsisting insurance agent's certificate of authority for that class of insurance.”

This section falls into a category of offences called strict liability offences. In offences of this kind, the AIC only has the onus to prove that the Restricted Agent acted as an insurance agent (which it did) in respect of a sale of insurance (which it admits it did). Once this occurs, the onus shifts to the Restricted Agent to establish a defense of due diligence. To establish this, he must prove that it took all reasonable measures to avoid acting as an agent without a valid certificate of authority to do so.

In our view, the evidence before us is sufficient for us to conclude that the due diligence defence applies. The DI denies that RBC provided the Restricted Agent with any notice that it was cancelling their recommendation and notwithstanding the cancellation, the insurer continued to accept premiums in relation to the policies that the Restricted Agent sold. In our view, the circumstances in this case (which are very rare and exceptional) establish a due diligence defence and we find the Restricted Agent not guilty.

Dated: June 9, 2017

Kenneth Doll
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
402 Terrace Building
9515-107 Street
Edmonton, Alberta T5K 2C3