

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 Travel Guard Group Canada, Inc.  
(the "Agency")

As represented by  
Designated Representative Melissa Beson  
(the "DR")

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

This case involved an allegation pursuant to s. 499(1) of the Act. Specifically, it is alleged that the Agency compensated Premiere Tours Ltd. (the "Restricted Agent") individuals for acting as insurance agents during the period November 13, 2015, through to July 20, 2016, when they were not authorized to sell insurance under the Act. In so doing, it is alleged that the Agency 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 and currently holds a valid and subsisting restricted certificate of authority to act as an insurance agent for sales of travel insurance.

The Restricted Agent was previously sponsored by RBC Insurance Company of Canada ("RBC") and RBC terminated its sponsorship on November 11, 2015 and the effect of this was that its license was suspended. For various reasons, the Restricted Agent never learned of the termination.

The Restricted Agent and the Agency were parties to Agency & Broker Sales Agreements in 2011 and 2013 that authorized the Restricted Agent to sell "Travel Guard" on the Agency's behalf. During the

period November 16, 2015 to June 10, 2016, the Restricted Agent sold 50 policies and the Agency paid the Restricted Agent commissions in the amount of \$2,369.17.

The Agency has denied having any knowledge that the Restricted Agent's certificate of authority was terminated. They initially verified its validity with the AIC, and seeing that the certificate of authority was issued and in good standing, even printed out a copy of the verification for their files. During the period when the policies were sold, they did not make further period inquiries, but rather, it was their business practice to rely on the Restricted Agent to advise them of any changes.

The Restricted Agent eventually learned their license had been terminated (quite possibly while processing its renewal) and notified the Agency on June 15, 2016. The Agency immediately issued a notice to the Restricted Agent that their binding authority was suspended.

### **Discussion**

It is alleged that the Agency compensated the Restricted Agent for acting as insurance agents when they were not entitled to act in this capacity because their certificate of authority had been terminated. These provisions are strict liability offences in nature. Therefore, to prove the allegations in the Report, the AIC must adduce sufficient evidence to demonstrate that it is more likely than not that the Agency compensated the Restricted Agent to act in the capacity of insurance agents when they were not authorized to do so. Once this is proven, the onus shifts to the Agency to demonstrate that it took all reasonable measures to avoid doing this. This means that the AIC is not required to prove that the Agency intentionally committed the offence.

The evidence in the Report clearly establishes that the Restricted Agent acted in the capacity of insurance agents as defined in s. 1(bb) of the Act. This much is beyond dispute and we must now turn to the question of whether the Agency can establish a due diligence defence. Given the unique circumstances in this case, including the facts that the Restricted Agency may not have been adequately notified by RBC that its recommendation was withdrawn and its timing, we are prepared to find the Agency not guilty of the offence as alleged. However, the Agency should be cognizant of the fact that it has the responsibility to ensure that the entities that it is compensating are licensed and that it cannot

simply check this status once or twice per year or rely on restricted agents to inform the Agency about their licensing status.

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: June 27, 2017

Ken 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