

Licence  
Appeal  
Tribunal

Tribunal  
d'appel en  
matière de permis



DATE: 2017-03-09  
FILE: 10507/TIA  
CASE NAME: 10507 v. Registrar, *Travel Industry Act, 2002*

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An Appeal from a Notice of Proposal by the Registrar, *Travel Industry Act, 2002*, S.O. 2002, c. 30, Sch. D - to Revoke Registration

Riva Tours and Travel Inc.

Appellant

-and-

Registrar, *Travel Industry Act, 2002*

Respondent

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**REASONS FOR DECISION AND ORDER**

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**ADJUDICATOR:** Mary Ann Spencer, Member

**APPEARANCES:**

**For the Appellant:** Antonio Sardella, Agent

**For the Respondent:** Soussanna Karas, Counsel  
Jennifer Chin, Counsel

Heard in Toronto: February 6, 2017

## REASONS FOR DECISION AND ORDER

### BACKGROUND

This is a hearing before the Licence Appeal Tribunal (the “Tribunal”) arising out of a Notice of Proposal issued by the Registrar, *Travel Industry Act, 2002* (the “Registrar” and the “Act” respectively). The Notice of Proposal dated September 30, 2016 proposes to revoke the registration of Riva Tours & Travel Inc. (the “Appellant”) as a travel agent under the Act on the basis that the Appellant’s past conduct with respect to its failure to comply with financial statement filing, trust accounting, sales records/invoices available for inspection, management of the travel agency and the issuance of invoices, is inconsistent with the intention and objective of the Act.

For the reasons below, the Tribunal orders the Registrar to carry out the Proposal to Revoke Registration.

### EVIDENCE AND FACTS

#### Evidence for the Registrar

The evidence of the Registrar comprised two books of documents and the testimony of Sanja Skrbic who is the Director of Financial Compliance at the Travel Industry Council of Ontario (“TICO”) and a chartered accountant. Ms Skrbic’s responsibilities include the preparation of inspection programs and the review of financial statements to ensure registrants are in compliance with the financial requirements set out in the Act.

The Appellant was registered as a travel agent on February 22, 2011. Ms Skrbic reviewed the Appellant’s registrant profile as at September 21, 2016. Its address on record is 5875 Highway 7, Woodbridge, Ontario. Antonio Sardella is listed as both its business contact, as Director of the corporation, and its office contact as Manager/Director.

Ms Skrbic explained that registrants with sales in Ontario of less than \$10 million are required to file financial statements with TICO within three months after the end of their fiscal year. The Appellant’s fiscal year end is October 31<sup>st</sup>. Therefore, its financial statements are required to be filed by January 31<sup>st</sup> of the following year. Registrants are also required to maintain a minimum level of working capital with the level determined by the amount of their sales. The Appellant is required to maintain a minimum working capital of \$20,000.

Ms Skrbic testified that TICO uses the financial information filed by registrants to determine their compliance with the regulated financial requirements and to assess their financial viability. For example, TICO staff would review the financial disclosure to ensure a registrant’s trust account was not in deficit. Staff would also look for trends; for example, a pattern of increasing operating losses over time could raise concerns. If a

registrant fails to file financial statements, TICO cannot determine that a registrant is properly managing consumer funds.

Ms Skrbic reviewed the process that TICO follows with respect to financial statements. She explained that a reminder letter is automatically sent to registrants 30 days before the statements are due. If the statements are not filed by the due date, a second reminder letter is sent, normally on the 4<sup>th</sup> or 5<sup>th</sup> day of the month following the month they were due. If the statements are still not filed by the 21<sup>st</sup> day of that month, a third letter is sent. This letter advises that if the statements are not filed by the end of the month, further action will be taken. If the statements still are not filed, TICO staff will attempt to contact the registrant by telephone or e-mail. Ms Skrbic noted that, depending on the circumstances, TICO will try to work with a registrant. For example, if a registrant requires more time to prepare statements, TICO staff will consider the registrant's compliance history and assess its risk level and an extension may be granted. If an extension is not granted, a final letter will be sent which typically provides registrants with another two weeks in which to file. If the registrant still fails to file, a Notice of Proposal is issued.

Ms Skrbic reviewed the Appellant's history. Referring to the documents in Exhibits 3 and 4, she noted that the Appellant's financial statements for the year ended October 31, 2013 were filed on February 7, 2014, approximately a week late.

With respect to the financial statements for the year ended October 31, 2014, TICO sent reminder letters on October 2, 2014 and February 5, 2015. On February 23, 2015, a letter signed by the Registrar informed the Appellant that the financial statements must be filed by February 28, 2015 or further action, including issuance of a Notice of Proposal to revoke registration, would be initiated. On March 6, 2015, the Appellant's employee John Guido called TICO to advise he had health issues and that he expected the statements would be ready by the end of the month. On April 23, 2015, when the statements still had not been received, TICO staff called Mr. Guido who advised they would be ready by May 15, 2015. On both May 11, 2015 and June 9, 2015, Mr. Guido telephoned TICO and advised that he needed additional time. The statements were filed on June 19, 2015, approximately five months late.

Ms Skrbic explained that the review of the 2014 statements revealed no strong concerns. Although the Appellant had sustained a small operating loss, the amount of working capital was sufficient for its sales level and the trust account was in a surplus position.

Ms Skrbic testified that the Appellant has failed to file its financial statements for the year ended October 31, 2015. On October 1, 2015, TICO sent a letter reminding the Appellant that the statements were due by January 31, 2016. On February 3, 2016, Mr. Guido called TICO and advised that he had serious vision problems requiring surgery. He requested an extension of the filing date to the end of May, 2016. On February 24, 2016, the Registrar sent a letter to Mr. Sardella advising that TICO would be contacting him to set up an appointment for an inspection visit. Ms Skrbic explained that because

the Appellant was requesting a lengthy filing extension, the decision was made to conduct an inspection to determine if the extension could be granted. The inspection was scheduled to take place on March 23, 2016. However, Mr. Guido cancelled the inspection because he required further eye surgery. The inspection took place on May 17, 2016.

Ms Skrbic noted that the May 26, 2016 inspection report indicates that Mr. Guido advised that he was managing the office and that Mr. Sardella, who is Mr. Guido's father-in-law, was retired. Mr. Guido also advised that the office lease was ending and that he was considering working from home. Non-compliance issues were identified at the inspection; sales records and invoices were not available for review, the Appellant was paying operating expenses from the trust account, and the Appellant did not always issue agency invoices to the customer but provided supplier invoices instead. Ms Skrbic explained that because the records were not available, the inspector was unable to determine either the Appellant's total sales or whether customer deposits had been properly handled. She further explained that registrants are required to provide invoices to their customers which contain information which is specified in the regulations and which is not contained on supplier invoices. A report of Inspection Findings was provided to the registrant. Mr. Guido acknowledged its receipt, signing as "Manager". Based on the inspection findings, Ms Skrbic concluded that the Appellant represented a "medium risk".

On June 17, 2016, the Registrar wrote to Mr. Sardella and notified him that the financial statements for the year ended October 31, 2015 were due by no later than June 30, 2016. The letter also requested confirmation of the steps taken to correct the deficiencies that had been noted during the inspection. On June 23, 2016, Mr. Guido e-mailed TICO staff to advise that he continued to have vision issues and that the financial statements should be ready by July 31<sup>st</sup>. On July 27, 2016, he advised TICO staff that he needed an additional month to prepare the statements. On August 31, 2016, he sent an e-mail advising "we're almost there, our accountant is working on our year end and has told me that we will have it complete by Sept. 30, hopefully sooner." On September 30, 2016, the Registrar issued the Notice of Proposal to revoke the Appellant's registration. Ms Skrbic explained that the Appellant failed to file the financial statements and had not provided a response to indicate that the issues identified during the inspection had been addressed.

Ms Skrbic also testified that the renewal of registration form delivered to TICO on February 4, 2016, indicates Mr. Guido's title is manager although the pre-printed information on the form shows Mr. Sardella in that position. She referred to TICO's Member Profile which contains a note written by TICO registration staff indicating that Mr. Guido advised that Mr. Sardella was still manager but Mr. Guido had assumed some of the responsibilities and expected to be appointed as manager. He was given a Notice of Business Change Form to complete. On January 30, 2017, TICO received the Appellant's next registration renewal form. Ms Skrbic noted that the form indicates the business address is still 5875 Highway 7, Woodbridge and lists Mr. Sardella, who signed the form, as manager. However, on the same day, TICO staff sent an e-mail

addressed to both Mr. Guido and Mr. Sardella indicating that they understood that the registrant had moved to Ben Boy Avenue, Schomberg, but TICO had not received a Notice of Business Change Form advising of the change of address. The e-mail also stated that because the new address was a private dwelling, “Terms and Conditions for Operating from a Dwelling” needed to be signed and a letter from King Township was required to verify that the business use was permissible. The municipality’s letter was provided on February 1, 2017.

On cross-examination, Mr. Sardella asked whether the letters sent to the Appellant by the Registrar were sent by registered mail. Ms Skrbic advised that registered mail would be used only when mail is returned ‘undeliverable’. Notices of Proposal, however, are sent by registered mail. Mr. Sardella also asked why the Registrar accepted responses from Mr. Guido when he was not listed as the manager of the business. Ms Skrbic noted that all of TICO’s written correspondence had been addressed to Mr. Sardella at the address TICO’s records contain.

After he completed his cross-examination of the witness for the Registrar, Mr. Sardella requested that the balance of the hearing be postponed. He stated that until January, 2017, no e-mail had been addressed to him personally and he noted that while the letters sent by the Registrar had been addressed to him, TICO had no proof that he had received them. He had not been informed of any of the issues by Mr. Guido. Further, he only became aware of the hearing approximately ten days ago and had been attempting to rectify the situation since then. He advised that he had various documents, including financial information, to submit. He then indicated that he needed two weeks to produce the Appellant’s financial statements.

Counsel for the Registrar objected to any adjournment. She noted that all of TICO’s correspondence had been properly addressed to Mr. Sardella who is the Appellant’s director and manager and had been sent to the Appellant’s address on TICO’s records.

The Tribunal noted that Mr. Sardella had the opportunity to contact the Tribunal when he became aware of the hearing date. He confirmed that he did not do so. He also had the opportunity to request an adjournment at the beginning of the hearing and did not do so. The Tribunal also noted that the Notice of Proposal before the Tribunal was dated September 30, 2016 and the conduct allegations at issue pre-dated the Notice. The Tribunal denied the adjournment.

With respect to the documents Mr. Sardella indicated he wished to submit to the Tribunal, Counsel for the Registrar advised that she had received no disclosure from the Appellant. With the consent of the parties, the Tribunal recessed the hearing for 90 minutes to allow Counsel for the Registrar the opportunity to review the documents. The hearing then proceeded.

## **Evidence for the Appellant**

Mr. Sardella confirmed that he is the director and manager of the Appellant. He acknowledged that the Registrar needs to know that the Appellant is financially sound and stated that the only reason the financial statements had not been submitted to TICO was because Mr. Guido has been ill with serious vision problems and in fact had been declared legally blind in 2015. Throughout the period when TICO was requesting the financial statements be filed, Mr. Guido had advised Mr. Sardella that everything was fine with the business.

Mr. Sardella stated that the Appellant has no financial issues. He submitted spreadsheets that he testified he had personally prepared in the week before the hearing. He noted that the documents, which show monthly sales, operating expenditures by category and commissions received for the fiscal years ended October 31, 2015 and 2016, indicate the Appellant is profitable. He provided a print out of the balances as of February 3, 2017 for both the Appellant's trust and general accounts, totalling \$4,724.12 and \$30,535.99 respectively. He also submitted a letter dated January 30, 2017 from accounting firm Flax Spitzen LLP signed by Mark Spitzen which indicates that the firm was asked by Mr. Sardella to prepare the 2015 financial statements in the fall of 2015. The letter states that the firm did not receive the year end records and could not prepare the statements. It further states that it would treat the preparation of the statements as a priority once it received the information. Finally, Mr. Sardella submitted a list of Mr. Guido's physicians and advised the Tribunal it could call them to confirm Mr. Guido's illness.

Mr. Sardella stated that the Appellant is a "one man operation" and was established to keep Mr. Guido busy. He indicated that he will take full responsibility for the business and personally will deal with TICO in the future. The business is now operating from Mr. Guido's home and all books and records will be kept there.

Asked on cross-examination if the reason that he had not seen the letters TICO sent to the Appellant was because Mr. Guido had failed to give them to him, Mr. Sardella stated that he thought that Mr. Guido wanted to handle the business himself and was perhaps too embarrassed to tell him about the problems. Asked if he trusted Mr. Guido to be able to carry on with the business, Mr. Sardella stated that he thought it would make things worse for him if he did not. He noted that "not one e-mail" was sent to Mr. Sardella until January, 2017 and that he would provide TICO with an address to send things directly to him in future. He further noted that Mr. Guido had been in the travel industry for over 20 years and was only working with people he had known that long. Asked if he would be the manager of the office in the future, Mr. Sardella stated that Mr. Guido would only do sales and Mr. Sardella himself would do the bookkeeping; Mr. Guido would forward the bookings to Mr. Sardella. He added that Mr. Guido is very far behind because he takes him a significant amount of time to do things.

Counsel for the Registrar asked Mr. Sardella what steps he had taken to follow up with the accounting firm Flax Spitzen with respect to the 2015 financial statements. Mr.

Sardella responded that he was not advised the statements were not done and stated "if I had known, I would have taken steps. I didn't take steps because I didn't know there was a problem". Asked if he did not realize that he had not signed the statements as the Appellant's director, he repeated that he did not check. He believed the statements had been filed.

Counsel for the Registrar then asked Mr. Sardella if he was aware that financial statements were required in order to calculate working capital. Mr. Sardella stated that the documents he submitted showed that the Appellant has \$30,000 in the bank. He then stated that the Appellant has no liabilities and therefore, it meets the regulatory requirement to maintain \$20,000 working capital.

Asked if he believed he had been a good manager given he had not seen any of the letters sent by TICO, that the financial statements had not been filed, and that he had not been told about this hearing, Mr. Sardella replied that TICO had his personal contact information and should have contacted him.

With respect to the January 2017 registration renewal form, Ms Karas asked if Mr. Sardella had signed it. Mr. Sardella stated it was not his signature and that Mr. Guido had signed his name. Asked if Mr. Guido had Mr. Sardella's authorization to do so, Mr. Sardella stated he did not. Ms Karas then noted for Mr. Sardella's information that if an application were to be sent to TICO to appoint Mr. Guido as manager that she would be obligated to advise that there are allegations that he signed documents without authorization.

Asked if he was made aware of the May, 2016 TICO inspection, Mr. Sardella indicated that Mr. Guido had informed him. However, Mr. Sardella did not attend the inspection because he did not think it was necessary. He further testified that he did not make any inquiries about its results.

## THE LAW

Section 8 of the Act sets out the provisions with respect to registration of applicants:

8. (1) An applicant that meets the prescribed requirements is entitled to registration or renewal of registration by the registrar unless,
  - (d) the applicant is a corporation and,
    - (iv) the past conduct of its officers or directors or of an interested person in respect of its officers or directors or of an interested person in respect of the corporation affords reasonable grounds for belief that its business will not be carried on in accordance with the law and with integrity and honesty, or
  - (e) the applicant or an interested person in respect of the applicant is carrying on activities that are, or will be if the applicant is registered, in contravention of this Act or the regulations, other than the code of ethics established under section 42;

The Registrar may revoke a registration under s. 10(1) of the Act if, in the Registrar's opinion, the registrant is not entitled to registration under s. 8 of the Act:

10. (1) Subject to section 11, the registrar may refuse to register an applicant or may suspend or revoke a registration or refuse to renew a registration if, in his or her opinion, the applicant or registrant is not entitled to registration under section 8.

On appeal to the Tribunal, s. 11(5) of the Act states that the Tribunal may "direct the registrar to carry out the registrar's proposal or substitute its opinion for that of the registrar and the Tribunal may attach conditions to its order or to a registration."

## ISSUES

Has the Registrar proven that there are grounds to revoke the Appellant's registration as a travel agent under the Act? Specifically,

- Are there reasonable grounds for belief that the business of the Appellant will not be carried on in accordance with the law and with integrity and honesty?
- Is the Appellant carrying on activities that are in contravention of the Act and regulations?

## SUBMISSIONS

Ms Karas submitted that the registration of the Appellant should be revoked because, in accordance with s. 8 (1)(d)(iv) of the Act, the past conduct of its officers and directors provides reasonable grounds for belief that business will not be conducted in accordance with the law and with integrity and honesty, and, in accordance with section 8 (1)(e), the Appellant is carrying out activities that are in contravention of the Act or regulations. She noted that the Appellant is in breach of multiple sections of Ontario Regulation 26/05; it failed to file financial statements for its 2015 fiscal year; it made disbursements from the trust account that are not allowed, and it failed to provide all consumers with agency invoices. The Appellant also failed to provide records to inspectors at the May, 2016 inspection. She further noted that the Appellant failed to provide notification of its change of address in January, 2017 as required by s. 17(2) of the regulation.

Mr. Sardella made no formal closing submission, stating "if financial statements are so important, then I have nothing else to say". He added that all he wanted was a two week extension and then everything "would be just back to normal the way it was".



## ANALYSIS

The onus is on the Registrar to prove to the Tribunal that the Appellant's registration should be revoked. The Appellant is entitled to registration unless one of the grounds in section 8 of the Act applies. The Tribunal must make an independent assessment as to whether or not those grounds have been proven.

The question before the Tribunal is whether the past conduct of the Appellant's officers or directors affords reasonable grounds for belief that its business will not be carried on in accordance with the law and with integrity and honesty. The standard to be applied by the Tribunal in making its determination is set out in *Ontario (Alcohol and Gaming Commission of Ontario) v. 751809 Ontario Inc. (Famous Flesh Gordon's)*, 2013 ONCA 157 (CanLII):

[19] As applied to this case, s. 6(2)(d) of the Act requires the Registrar simply to show that Mr. Barletta's past or present conduct provides reasonable grounds for belief that he will not carry on business in accordance with the law and integrity and honour. The Registrar does not have to go so far as to show that Mr. Barletta's past or present conduct makes it *more likely than not* that he will not carry on business as required

There is no dispute that the Appellant has failed to file financial statements for the year ended October 31, 2015 as required by s. 22 of Ontario Regulation 26/05:

22. (1) Every registrant shall file with the registrar the financial statements required by this section for each fiscal year.

(2) A registrant who had sales in Ontario of less than \$10 million during the previous fiscal year shall file, within three months after the end of the fiscal year,

(a) annual financial statements with a review engagement report by a public accountant licensed under the *Public Accounting Act, 2004*

The Tribunal also notes that the Appellant filed its financial statements for the year ended October 31, 2014 on June 19, 2015, some five months after the statements were due.

In addition, the evidence is that May 17, 2016 inspection found three violations of the regulation.

Section 27 of the regulation sets out the requirement for a registrant to maintain a trust account. Section 27(1)(6) describes the restrictions on its use:

27 (1) (6) No registrant shall disburse or withdraw any money held in a trust account under subsection (1), except,

(a) to make payment to the supplier of the travel services for which the money was received;

(b) to make a refund to a customer; or

(c) after the supplier of the travel services has been paid in full, to pay the registrant's commission

The inspection found that the Appellant was making credit card payments, which included some operating expenses, from the trust account.

Section 29 (1) of the regulation states "A registrant shall maintain the following business records at the registrant's principal place of business" and then sets out the records that must be kept, including "accounting records setting out in detail the registrant's income and expenses and supporting documentary evidence, including copies of statements, invoices or receipts that have unique identifiers or serial numbers provided to customers". The inspection report notes that sales records/invoices were not available for the inspector's review. As a result, the inspector could not conduct a full financial analysis.

Finally, s. 38 (1) of the regulation states "after selling travel services to a customer, a travel agent shall promptly provide the customer with a statement, invoice or receipt" and then sets out the information that must be included. The inspection report notes that the Appellant did not always provide these invoices to its customers. Rather, the Appellant was providing supplier invoices. As Ms Skrbic noted, the agency invoice provides information to a consumer, such as the availability of travel insurance, which is not provided on supplier invoices.

Mr. Sardella did not dispute any of the inspection findings.

The evidence indicates that the Appellant failed to file the 2015 financial statements in spite of the fact that the Registrar extended the filing deadline from January 31, 2016 to June 30, 2016. On August 31, 2016, John Guido, the Appellant's only employee, sent an e-mail to TICO advising "we're almost there, our accountant is working on our year end and has told me that we will have it complete by Sept. 30, hopefully sooner." The Tribunal notes that this e-mail contradicts the January 30, 2017 letter from accountant Mark Spitzen which was submitted by Mr. Sardella:

Antonio Sardella had asked us to prepare the 2015 financial statements in the fall of 2015.

Unfortunately his son-in-law John Guido, who runs the office, became quite ill at that time.

As a result we did not receive the year end records and have been unable to prepare the 2015 financial statements.

Once we receive the information we will treat this as a priority and provide you the required information as soon as possible.

The Tribunal does not question that Mr. Guido faced some serious health challenges that may have prevented him from preparing the documentation required for production of the Appellant's financial statements. However, as Mr. Sardella testified, and as the documents submitted to TICO indicate, Mr. Sardella is the director and designated

manager of the Appellant. It was Mr. Sardella's responsibility to ensure the regulatory requirements were met.

The evidence is that Mr. Sardella abdicated responsibility for management of the Appellant. He testified that he trusted Mr. Guido but Mr. Guido did not advise him of any of the correspondence which the evidence indicates TICO sent addressed to Mr. Sardella at the Appellant's address on record. By Mr. Sardella's own admission, he did not take any proactive steps to determine the status of the business other than to ask Mr. Guido if everything was fine. With respect to the 2015 financial statements, the Tribunal notes that Mr. Spitzen's letter states that "Antonio Sardella had asked us to prepare the 2015 financial statements in the fall of 2015". When asked if he followed up and if he did not have to sign those statements as the Appellant's director, Mr. Sardella testified that he believed the statements had been filed and that he made no inquiries about them. He stated that no one told him the statements had not been filed and "if I had known, I would have taken steps". He also testified he was aware of the May, 2016 inspection but did not think it was necessary to attend. Nor did he make any inquiries after that inspection with respect to its results.

Mr. Sardella did not offer any explanation for the breaches of the regulatory requirements found at the May, 2016 inspection other than to state that Mr. Guido needs more time to do things as a result of his vision loss. Nor did Mr. Sardella provide any testimony to indicate what, if anything, has been done to address the issues that were identified.

Based on the evidence set out above, the Tribunal finds, in accordance with the provisions of s. 8(1)(d)(iv) of the Act, that the conduct of the Appellant's officers and directors affords reasonable grounds for belief that the business will not be carried on in accordance with the law and with integrity and honesty, and, in accordance with s. 8(1)(e), that the Appellant is carrying out activities in contravention of the Act and the regulations. Therefore, grounds for revoking the registration of the Appellant under s. 10(1) of the Act have been made out. However, the Tribunal has the power under s. 11(5) of the Act to substitute its opinion for that of the Registrar. Accordingly, the Tribunal must consider the appropriate action to direct the Registrar to take, which may, in appropriate cases, include approving the registration with conditions as an alternative to revocation.

The Act is consumer protection legislation. As the Registrar sets out in the Notice of Proposal, "the intention and objective of the Act is to regulate the travel industry in the interest of the travelling public". Provisions such as the requirement to file annual financial statements enable TICO staff to ensure that industry participants are financially viable and not placing the public at risk. For example, the Act sets minimum levels of working capital that must be maintained. This provides a measure of the ability of a company to meet its obligations. Working capital, which is calculated by deducting current liabilities from current assets, cannot be assessed in the absence of financial statements.

The Tribunal acknowledges that Mr. Sardella submitted some financial information with respect to both the Appellant's 2015 and 2016 fiscal years at this hearing. At its face value, this information, which Mr. Sardella himself produced, indicates that the Appellant is profitable. Mr. Sardella also submitted a statement of the Appellant's bank balances and testified that it currently has no liabilities. Again, at face value, this information indicates that the Appellant is maintaining the required \$20,000 working capital. If the failure to file financial statements on time were the only issue before it, the Tribunal might be able to consider the ongoing registration of the Appellant subject to the filing of the outstanding financial statements by a specific date. However, the conduct which led to the failure to file and to the regulatory breaches found at the May, 2016 inspection, is at issue.

The Tribunal does not doubt that Mr. Guido has been dealing with serious health issues which have contributed to the compliance issues faced by the Appellant. However, Mr. Guido was not responsible for the supervision of the Appellant. As he testified, and as the documents submitted to TICO indicate, Mr. Sardella is the director of the Appellant and its designated manager. It was Mr. Sardella's responsibility to ensure that the regulatory requirements were met.

At this hearing, Mr. Sardella did not accept responsibility for his lack of oversight of the business. He testified that Mr. Guido did not advise him of issues such as the delay in filing the financial statements. Nor did Mr. Guido advise Mr. Sardella of the inspection findings about which Mr. Sardella admitted he made no inquiries. Mr. Sardella also blamed TICO, questioning whether they could prove that he had received their letters and later stating "they had all my information, they should have talked to me". He also stated that TICO staff should have been concerned that Mr. Guido was responding to them.

Mr. Sardella testified that he intends to continue as the designated manager of the Appellant. Mr. Guido would only be responsible for sales in the future. The Tribunal notes that this arrangement differs from what appear to be the expectations of Mr. Guido, who in both February and May of 2016, advised TICO staff that he expected to take over as manager.

Mr. Sardella testified that in the future he would be responsible for dealing with TICO and would rely on Mr. Guido to provide him with the information he requires to produce financial statements, for example. The Tribunal notes, however, that one of the areas of non-compliance found at the May, 2016 inspection was the failure to have records available for the inspection; these same records are those which Mr. Sardella would require in the future. Further, as Mr. Sardella testified, Mr. Guido failed to inform and advise him in the past. The Tribunal notes that some of the areas of non-compliance found at the inspection, for example, paying operating expenditures from the trust account and failing to provide consumers with invoices, are operational activities. The Appellant's business is now located in Mr. Guido's home. Mr. Sardella provided no indication of how he would supervise Mr. Guido's day to day activities or what monitoring system he might implement to prevent future regulatory breaches.

The Tribunal has further concerns about Mr. Sardella's plan to rely on information provided by Mr. Guido. In addition to the fact that Mr. Guido failed to keep Mr. Sardella informed of TICO's correspondence, the Tribunal heard evidence of other irregularities. As noted above, the letter submitted by Mr. Sardella from the Appellant's accounting firm indicates that it did not receive the documents it required to prepare the 2015 financial statements in contradiction of the information Mr. Guido e-mailed to TICO in August, 2016. The Tribunal also notes that Mr. Sardella testified that Mr. Guido signed the 2017 registration renewal form as Mr. Sardella without authorization. And, that form failed to advise TICO of the change of address which Mr. Sardella testified took place before the form was submitted. Mr. Guido did not testify at this hearing. The Tribunal therefore has no explanation for these irregularities.

Mr. Sardella testified that the Appellant's business is a one man operation established to keep Mr. Guido busy. The Tribunal does not wish to diminish the seriousness of Mr. Guido's illness and the impact it may have had on his ability to conduct business. However, Mr. Sardella intends to rely on Mr. Guido for documents and records in the future and Mr. Guido would have day to day operating control. In effect, Mr. Sardella's proposal does not change the conditions which contributed to compliance failure in the past.

The Tribunal has no evidence that the manner in which the Appellant's business will be conducted in the future will differ from that which led to the issuance of the Notice of Proposal. In these circumstances, registration with conditions would not be appropriate. Therefore, the Tribunal concludes that the Appellant's registration should be revoked.

## **ORDER**

Pursuant to the authority under section 11(5) of the Act, the Tribunal orders the Registrar to carry out the Proposal to Revoke Registration dated September 30, 2016.

LICENCE APPEAL TRIBUNAL

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Mary Ann Spencer, Member

*Released: March 9, 2017*