



Citation: Angie's All-Season Travel Inc. o/a Cheap Trips Travel v. Registrar, Travel Industry Act, 2020 ONLAT 12645 TIA

**Date: 2021-08-26**  
**File Number: 12645/TIA**

Appeal under s.11(5) of the *Travel Industry Act, 2002*, S.O., 2002, c. 30, Sch D, from a notice of proposal to revoke registration.

**Between:**

**Angie's All-Season Travel Inc. o/a Cheap Trips Travel**

**Appellant**

and

**Registrar, *Travel Industry Act, 2002***

**Respondent**

**DECISION AND ORDER**

**ADJUDICATOR:** Stephen Scharbach, Member

**APPEARANCES:**

For the Appellant: Angela Comella, Officer and Director

For the Respondent: John Park, Counsel  
Jennifer Shin, Counsel

**Heard by Videoconference:** April 19, 20, May 17,18, 21, 2021

## OVERVIEW

- [1] This is an appeal from a notice of proposal<sup>1</sup> issued by the Registrar appointed under the *Travel Industry Act, 2002* (“Act”) to revoke the registration of Angie’s All-Season Travel Inc. (“appellant”) as a travel agent.
- [2] The appellant is a corporation whose sole officer, director and shareholder is Ms. Angela Comella. It has been registered as a travel agent under the Act since 1989 and carries on business in Richmond Hill, Ontario.
- [3] The Registrar proposed revocation of the appellant’s registration on various grounds. However, during the hearing, the Registrar withdrew certain grounds and consolidated the remaining ones into the following:
- the appellant failed to comply with conditions that had been placed on its registration in 2016 (“2016 conditions”) to resolve an earlier notice of proposal to revoke.
  - the appellant’s past conduct affords reasonable grounds for belief that it will not carry on business in accordance with the law and with integrity and honesty. That past conduct includes the appellant’s failure to comply with the 2016 conditions, but also its pattern of non-compliance as reflected in several proposals to revoke that were issued by the Registrar before the 2016 conditions were put in place.
- [4] After considering the evidence and submissions of the parties, I conclude that the Registrar’s allegations have been proven and for the reasons set out below, I have directed the Registrar to carry out his proposal to revoke the appellant’s registration.

## THE LAW

- [5] The Act is consumer protection legislation designed to protect consumers by regulating the business conduct of those who provide travel services to the public.
- [6] The Act provides that no person may act as a travel agent unless they are registered under the Act. Registration is restricted to those who have demonstrated to the Registrar that they are qualified and suitable to provide travel agent services to the public.
- [7] Once a travel agent is registered, they must comply with the Act as well as the requirements set out in Ontario Regulation 26/05 (“regulation”), in particular sections 8 – 47 of the regulation which are titled “Obligations of Registrants”.

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<sup>1</sup> The Registrar issued a Notice of Proposal to Revoke dated February 24, 2020. Afterwards the Registrar issued three additional notices of further or other particulars (dated April 8, 2020, October 15, 2020 and February 19, 2021) which set out additional allegations. The notice of proposal to revoke, as well as the additional notices of further or other particulars, are collectively referred to as the “Notice of Proposal”.

- [8] Those sections establish standards for the conduct of travel agent business, and they include various requirements relating to matters such as minimum working capital, bank accounts, trust account, business records, invoicing, and duties to disclose information to clients.
- [9] The Act provides that the Registrar may revoke a registration in the circumstances described in s. 8 of the Act. In this case the Registrar proposes revocation based on the following provisions:
- s. 8(1)(f) – the appellant is in breach of conditions of its registration,
  - s. 8(1)(d)(iv) - the past conduct of the appellant’s officers and directors affords reasonable grounds for the belief that its business will not be carried in accordance with the law and with integrity or honesty.
- [10] If the Registrar intends to revoke a registration, the Act requires the Registrar to serve notice of the proposed revocation, together with reasons, on the registrant. The registrant then has 15 days to request a hearing before this Tribunal.
- [11] If requested, the Tribunal shall hold a hearing. At the hearing, the onus is on the Registrar to prove on a balance of probabilities the factual basis that supports the proposed revocation.
- [12] After holding a hearing, the Tribunal:
- “...may, by order, 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.”<sup>2</sup>

## FINDINGS

### (a) Introduction

- [13] The facts related to the Registrar’s two allegations are closely related.
- [14] In summary, the 2016 conditions were imposed on consent by a Tribunal Order to resolve a notice of proposal to revoke that had been issued by the Registrar in 2015. The conditions were intended to address the appellant’s non-compliance with regulatory requirements to file financial information and its failure to effectively respond to the Travel Industry Council of Ontario’s (TICO) reminders, inquiries, and requests for additional information, including information about a consumer complaint.
- [15] The Registrar alleges that since the conditions were imposed in 2016, the appellant has failed to comply with several of them in each year from 2016 to 2020.

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<sup>2</sup> The Act, s. 11(5).

- [16] The Registrar also states that between 2000 and 2015, the Registrar issued seven previous notices of proposal to revoke the appellant's registration. All of them were eventually resolved when the appellant brought itself into compliance.
- [17] The 2016 conditions were explicitly intended to be the appellant's last chance to demonstrate an ability to comply with regulatory requirements.
- [18] In the Registrar's view, the appellant has failed to comply with the 2016 conditions, which is itself a ground for revocation. However, the Registrar asserts that the appellant's previous conduct as reflected in the several notices of proposal indicates a long-standing, repetitive pattern of non-compliance which, together with non-compliance with the 2016 conditions, affords reasonable grounds to believe that the appellant will not carry on business in accordance with law and with integrity and honesty.

**(b) The 2016 Conditions**

- [19] In April 2016, the Registrar and the appellant consented to an Order issued by this Tribunal which placed conditions on the appellant's registration.
- [20] That Order, and the Minutes of Settlement ("MOS") upon which it was based, resolved the appellant's appeal of the Registrar's October 2015 notice of proposal to revoke the appellant's registration.
- [21] The appellant agreed to several conditions on its registration including requirements to:
- Maintain its trust account in accordance with the Act and the regulation and Trust Accounting Guidelines (MOS, paragraph 7)
  - File fiscal year Form 1 and contribution payments to the Fund by September 30<sup>th</sup> of each year, and half year contributions by December 31<sup>st</sup> of each year (MOS, paragraph 10).
  - File annual financial statements prepared by a public accountant as required by the Regulation by September 30 of each year (MOS, paragraph 13)
  - Annual financial statements shall disclose the trust position at the end of the year including the balance in the account and customer deposit liability. If customer deposits are nil, then it must be disclosed as such (MOS, paragraph 14).
  - Given the previous history of non-compliance, the appellant shall respond to TICO inquiries and requests within a reasonable time (MOS, paragraph 15).

- Maintain the minimum working capital as required by s. 24 of the Regulation.<sup>3</sup> If, based on the appellant's financial statements, the Registrar determines that the working capital is deficient, the appellant shall take the necessary steps to correct its deficiency and submit proof within the deadline set by the Registrar (MOS, paragraph 17).

[22] Those conditions resolved the Registrar's 2015 proposal to revoke. However, the 2015 proposal was preceded by six proposals to revoke and they are relevant to my overall assessment of this case.

**(c) Previous Proposals to Revoke**

[23] Between 2000 and 2015 the Registrar issued seven separate notices of proposal to revoke the appellant's registration.<sup>4</sup>

[24] In most of the seven cases, the allegations were based on similar conduct as is presently alleged - mainly failure to file Form 1s and annual financial statements, but also failure to respond to the Registrar's requests for financial information, failure to maintain minimum working capital, and failure to maintain a trust account in accordance with the Regulation.

[25] In three of the seven cases, the appellant brought itself into compliance and the notice of proposal was withdrawn. In three other cases, the proposal was carried out and appellant's registration was revoked but later re-instated by the Registrar when the appellant brought itself into compliance.

[26] However, the remaining case – the 2015 proposal - was resolved when the parties agreed to several conditions on the appellant's registration.

[27] According to Ms. Comella, she was given the impression that the appellant's failures to file financial statements and Form 1s and respond in a timely way to the Registrar's requests were not fatal to its continued registration. In every case before the 2015 proposal, the proposal was eventually resolved after the appellant brought itself into compliance by filing the required information and responding to the Registrar's inquiries.

[28] Ms. Comella testified that most of those pre-2015 notices were issued by Mr. Michael Pepper, the Registrar under the Act from 2002 to 2014, and with whom she had a good working relationship.

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<sup>3</sup> Up until March 29, 2020, section 24 of the Regulation provided that registrants with sales under \$500,000 must maintain working capital of at least \$5,000. The Regulation was amended and effective March 30, 2020, s. 24 required only that such registrants maintain a positive working capital – i.e. its current assets must be greater than current liabilities.

<sup>4</sup> Notices of Proposal to Revoke were issued in November 2000, January 2005, July 2006, March 2008, August 2010, December 2013, and October 2015.

- [29] However, the 2015 proposal was signed by Mr. Richard Smart, who succeeded Mr. Pepper as Registrar. Mr. Smart apparently took a less accommodating view to the appellant's lack of compliance.
- [30] Ms. Comella appealed the 2015 proposal to this Tribunal. Once the appellant brought itself into compliance with the reporting requirements, Ms. Comella sought a personal meeting with the Registrar to discuss her request that the proposal be withdrawn, in a similar manner as previous proposals.
- [31] In April 2016, Ms. Comella and Mr. Smart met in person. Afterwards, Mr. Smart agreed to a withdraw the 2015 proposal if the appellant agreed to the imposition of conditions on its registration. However, Mr. Smart made it clear that this would be the appellant's last opportunity to demonstrate its ability to comply with regulatory requirements. Mr. Smart summarised the meeting in a letter to Ms. Comella dated April 6, 2016 in which he stated:

This meeting was requested by the Registrar based on a request made by Ms. Comella to withdraw the Notice of Proposal (issued October 2015) and to cancel a LAT hearing scheduled later in April based on the Registrant's current compliance under the legislation.

The Registrar reviewed the past conduct of the Registrant and the repetitive (non-compliant) behaviour of Ms. Comella with respect to the timely filing of Form -1 payments and Financial Statements. Ms. Comella was reminded of past Notices of Proposal which did result in the revoking of her licence (which as subsequently reinstated.

[...]

Ms. Comella reaffirmed her commitment to abide by the travel legislation pertaining to Ontario travel agents. Ms. Comella understood her past non-compliances and ensured the Registrar that these issues were in the past. **Further she understands that, should the Registrar agree to withdraw the above NOP and request a cancellation of the LAT hearing, that this consideration will not be granted again should another breach of the travel legislation occur in the future by the Registrant.**(emphasis added)

- [32] On April 17, 2016, Mr. Smart and Ms. Comella signed Minutes of Settlement which were incorporated into a Tribunal Order. According to the settlement, the parties agreed that conditions would be placed on the appellant's registration (including those noted in paragraph 21 above) and the LAT proceeding would be terminated.
- [33] The Minutes of Settlement also made it clear that the appellant's long history of non-compliance was of grave concern but the Registrar was willing to give the appellant one more chance to demonstrate governability and maintain its registration provided the appellant complied with the conditions. The Minutes of Settlement contain the following paragraphs

2. Given the number of proposals and revocations outlined above, the Registrant acknowledges and understands that the previous history of non-compliance is a grave concern to the Registrar...
3. However, the Registrar has also taken into consideration the following considerations:
  - a. The Registrant has complied with the outstanding issues.
  - b. The Registrant has been operating as a travel agent for over 25 years and has had few consumer complaints.
  - c. Ms. Comella, the principle of the Registrant has met with the Registrar and undertook to be vigilant in her obligations to comply with the requirements of the Act and Regulation.
4. **As a result, ...the Registrar is willing to give the Registrant one more opportunity to demonstrate its governability by allowing the Registrant to continue to hold its registration, provided the following terms and conditions are complied with. (emphasis added)**

[34] Based on the above, it appears clear that over a course of about 15 years, the appellant repeatedly failed to comply with regulatory requirements and the conditions were intended by the Registrar to give the appellant a last opportunity to demonstrate its ability to operate in compliance with the Act and regulations.

[35] Unfortunately, as is detailed in the following paragraphs, the appellant failed to comply with those conditions in each year from 2016 to 2020.

**(d) Compliance with Conditions in 2016**

[36] The conditions were imposed in April 2016. The appellant's annual financial statements were due by September 30, 2016 and they were required to include a reconciliation of the appellant's trust account.

[37] The 2016 annual statement was filed on time, but it failed to include a trust account reconciliation. Furthermore, there was a discrepancy between the gross sales reported by the appellant on its Form 1 (\$666,389) and the gross sales reported in the annual financial statement (\$82,596).

[38] In a letter dated October 27, 2016, the Registrar asked the appellant to provide, by November 10, 2016, a written explanation of the gross sales discrepancy and verification by an accountant of the trust account activity.

[39] The appellant did not respond to that letter, or to a February 14, 2017 email reminder in which the Registrar again asked for that information.

[40] Based on the information outlined above, I conclude that with respect to the appellant's 2016 fiscal year, the appellant breached the conditions of its registration, specifically:

- Condition 14 (annual financial statement shall include trust account disclosure)
- Condition 15 (responding to the Registrar in a timely way)
- Condition 17 (correct any working capital deficiency and submit proof within the deadline set by the Registrar)

**(e) Compliance with Conditions in 2017**

[41] The interim Form 1 was filed on May 19, 2017, about six weeks late, and the fiscal year end Form 1 was filed on time.

[42] The appellant's annual financial statements were required to be filed by September 30, 2017. They were not received by that date and the Registrar sent a reminder requesting they be filed by October 20, 2017. They were filed by the appellant on that date, about three weeks late.

[43] However, the financial statements raised additional questions. At that time, the regulation required that registrants with sales of under \$500,000 maintain working capital of at least \$5,000. The appellant's financial statements indicated that it had a working capital deficiency of \$6,355. In addition, there was again a very significant discrepancy between the gross sales reported by the appellant in its financial statements (\$78,940), and the gross sales reported in the Form 1s (\$556,107).

[44] The Registrar pointed those issues out to the appellant in a letter dated December 19, 2017. The Registrar asked for an explanation of the discrepancy in the reported gross sales and advised that the appellant needed to contribute \$6,355 into its working capital and provide proof of that deposit to the Registrar.

[45] The Registrar asked for a response by January 9, 2018. The appellant did not respond until a follow up email was sent to Ms. Comella on January 23, 2018. Ms. Comella replied that she would talk to her accountant.

[46] However, no further response was received, and the Registrar sent letters to the appellant asking for a response on February 13 and again on March 20, 2018. In the March letter, the Registrar reminded Ms. Comella that the appellant was in breach of the 2016 Consent Order by failing to maintain sufficient working capital and responding to the Registrar's inquiries within a reasonable time. The Registrar asked for a response by April 3, 2018.

[47] Ms. Comella responded in an email dated April 14, 2018. She stated that she had deposited \$23,789 into the appellant's general account to correct the working



capital deficiency. However, she provided no documentation to confirm that. She also stated that she had spoken to her accountant about the gross sales discrepancy and she planned to review the issue with him. She stated that she will be in touch in two weeks and provide any information and documents as required.

- [48] Ms. Comella did not get in touch and the Registrar sent a “Final Warning” letter dated May 24, 2018 in which he pointed out that no response had been received to the March letter asking for confirmation of the working capital contribution and the gross sales discrepancy. The Registrar advised that a failure to provide the required information by June 8, 2018 would result in a proposal to revoke the appellant’s registration
- [49] Ms. Comella responded by June 8, 2018 by providing documentation confirming that a deposit of \$9,200 had been made that day into the appellant’s general account. The Registrar responded on June 11, 2018 acknowledging the documentation regarding correcting the working capital deficiency but also asking for an explanation about the gross sales discrepancy for the 2017 fiscal year.
- [50] No response to the sales discrepancy was received despite a follow up email sent on June 20, 2018 and a letter sent November 21, 2018.
- [51] In summary, I conclude that that with respect to the appellant’s 2017 fiscal year it breached its conditions of its registration, specifically:
- Condition 10 (filing Form 1s on time)
  - Condition 13 (filing annual financial statements on time)
  - Condition 15 (responding to the Registrar in a timely way)
  - Condition 17 (correct working capital deficiency and submit proof within the deadline set by the Registrar)

**(f) Compliance with Conditions in 2018**

- [52] The appellant was required to file an interim Form 1 by March 30, 2018, and a fiscal year end Form 1 by September 30, 2018.
- [53] The interim Form 1 was filed on September 24, 2018, almost 6 months late, and the fiscal year end Form 1 was filed on December 13, 2018, about two and a half months late.
- [54] The appellant’s annual financial statements were required to be filed by September 30, 2018 but were filed on October 25, 2018, about one month late.
- [55] The Registrar’s staff reviewed the financial statements and identified concerns very similar to those raised in response to the 2016 and 2017 financial statements:

- There was a working capital deficiency of \$10,582.
- There was no trust account reconciliation and no disclosure of the trust account balance or customer deposits at year end.
- There was again a discrepancy between the sales reported in the financial statements (\$76,298) and those reported in the Form 1s (\$253,531).

[56] The Registrar outlined those concerns in a letter to Ms. Comella dated November 1, 2018 and asked for a response by November 15, 2018.

[57] No response was received. A “final warning” letter was sent to Ms. Comella on November 21, 2018 asking for a response by December 5, 2018 or a notice of proposal to revoke the appellant’s registration would be issued.

[58] No response was provided.

[59] In summary, I conclude that that with respect to the appellant’s 2018 fiscal year it breached its conditions of its registration, specifically:

- Condition 10 (filing Form 1s on time)
- Condition 13 (filing annual financial statements on time)
- Condition 14 (annual financial statements shall disclose trust account activity)
- Condition 15 (responding to the Registrar in a timely way)
- Condition 17 (correct working capital deficiency and submit proof within the deadline set by the Registrar)

**(g) Compliance with Conditions in 2019**

[60] The appellant was required to file an interim Form 1 by March 30, 2019, and a fiscal year end Form 1 by September 30, 2019.

[61] The interim Form 1 was filed on May 22, 2019, almost 2 months late, and the fiscal year end Form 1 was filed on November 21, 2019, also about two months late.

[62] The appellant’s annual financial statements were filed on time on September 30, 2019. However, they revealed the same concerns that were apparent in earlier financial statements:

- There was a working capital deficiency of \$15,756.<sup>5</sup>

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<sup>5</sup> That deficiency was corrected on April 24, 2020.

- There was again a discrepancy between the sales reported in the financial statements (\$83,871) and those reported in the Form 1s (\$238,665)

[63] No clear evidence was provided with respect to whether the appellant's 2019 financial statements contained a trust account reconciliation. However, based on the above information, I conclude that with respect to the appellant's 2019 fiscal year it breached its conditions of its registration, specifically:

- Condition 10 (filing Form 1s on time)
- Condition 15 (responding to the Registrar in a timely way)
- Condition 17 (correct working capital deficiency and submit proof within the deadline set by the Registrar).

**(h) Compliance with Conditions in 2020**

[64] The Registrar states that in 2020 TICO received two consumer complaints against the appellant. The complaints differed in their details but both consumers claimed that they had booked a trip with the appellant, which was cancelled due to the pandemic. They wished to re-book or obtain a refund, but the appellant failed to provide an invoice as required by the Regulation or respond to their requests for information.

[65] In both cases, a TICO complaints officer reviewed the complaints, identified regulatory concerns, and made a written request to the appellant to respond within a specified deadline. As described more fully below, in both cases the appellant failed to effectively respond to TICO despite several reminder letters and emails.

**(i) Complaint by Kristy Moore**

[66] On or about August 10, 2020, TICO received a complaint from Ms. Moore who stated that she had booked an April 2020 vacation for four people through the appellant. She paid \$2,700 to the appellant, mostly in cash and e-transfers but, according to Ms. Moore, she did not receive an invoice, tickets, or an official receipt.

[67] The trip was cancelled because of the pandemic and Ms. Moore understood that she would be given a travel voucher and could re-book when things returned to normal.

[68] Ms. Moore stated that she tried to get in touch with the appellant to either re-book the trip or get a travel voucher but her calls, texts and emails to Ms. Comella were not returned.

[69] In a letter dated August 11, 2020, Ms. Sylvia Manuge, a TICO complaints officer wrote to Ms. Comella and pointed out a number of concerns including Ms. Moore's claims that she was not provided with an invoice as required by the Regulation.

Ms. Manuge asked Ms. Comella for a response to Ms. Moore's complaint by August 19, 2020.

- [70] Apparently, around the time Ms. Moore contacted TICO, Ms. Moore was also in contact with Ms. Comella who was attempting to re-book the trip. On August 11, 2020, Ms. Comella attempted to call Ms. Manuge. Ms. Manuge missed the call but emailed Ms. Comella to say that even if the complaint is resolved to Ms. Moore's satisfaction, the Registrar still required a written response from the appellant. According to Ms. Manuge, regardless of a resolution, there was still a compliance issue regarding the apparent lack of an invoice.
- [71] Ms. Comella was able to re-book the trip and Ms Moore was satisfied with that result. However, in an email dated August 21, 2020, Ms. Manuge informed Ms. Comella that the Registrar still required a formal reply to the August 11, 2020 letter.
- [72] No response was received, and on August 26, 2020, Ms. Manuge sent another email asking for a response by August 28, 2020. On August 27, 2020, Ms. Comella emailed to Ms. Manuge a copy of an invoice dated January 3, 2020.
- [73] According to Ms. Manuge, the invoice did not appear to be compliant with the Regulation and she questioned whether it had actually been sent to Ms. Moore. She sent an email to Ms. Comella asking for a copy of the email showing that the invoice was sent to Ms. Moore, as well as a copy of the invoice/tickets for the new booking. No response was received.
- [74] On September 1, 2020, the Registrar sent another letter to Ms. Comella asking for a written reply to Ms. Moore's complaint by September 8, 2020. Ms. Comella tried to get in touch with Ms. Manuge that day, but they were unable to connect by telephone. Ms. Manuge sent an email to Ms. Comella in which she reiterated that she required a formal response to Ms. Moore's complaint as well as a copy of the new invoice and the booking number for the newly booked trip.
- [75] Ms. Comella sent a copy of the new invoice but did not respond to Ms. Moore's complaint.
- [76] In this case the Registrar asked for a formal, written response to Ms. Moore's complaint. Ms. Comella did eventually provide a copy of the original invoice and the booking number. However, she appears to have simply ignored the Registrar's request for a written response to Ms. Moore's complaint or proof that the invoice for the originally booked trip was provided to Ms. Moore as required by the Regulation.
- [77] I conclude that in connection with Ms. Moore's complaint, the appellant failed to effectively respond to the Registrar's requests for and reminders for information and breached Condition 15 (responding to the Registrar in a timely way).

**(j) Complaint by Biagio Randazzo**

- [78] On September 4, 2020, TICO received another consumer complaint about the appellant from Mr. Randazzo who had booked a honeymoon trip through the appellant in February 2020. The trip was scheduled for May 2020 but was cancelled due to the pandemic.
- [79] According to Mr. Randazzo, he paid \$11,531 for the trip but was never provided with an invoice, itinerary, or a breakdown of the charges. He tried to get in touch with Ms. Comella via text, email and phone but claimed that Ms. Comella barely returned calls or messages although she did say that she would take care of cancellations and insurance claims on Mr. Randazzo's behalf.
- [80] Mr. Randazzo stated that due to the lack of progress, he attempted to get in touch with Air Canada about a refund, but Air Canada responded that it did not have Mr. Randazzo's flight details. He attempted to get in touch with Manulife Insurance from whom he had bought trip cancellation insurance, but Manulife stated that it also lacked the necessary documentation. No claims file had been opened with Manulife although, according to Mr. Randazzo, Ms. Comella told him that she started the claim and was waiting for Manulife to send her documentation.
- [81] On September 22, 2020, Ms. Manuge, the TICO complaints officer, wrote to Ms. Comella and identified issues of concern – including no claim apparently submitted to Manulife, the lack of documentation concerning any refund or travel voucher by Air Canada, and Mr. Randazzo's claim that he did not receive an invoice as required by the regulation. Ms. Manuge asked the appellant to provide a written response by October 6, 2020.
- [82] The appellant did not respond, and on October 15, 2020, Ms. Manuge sent a follow up letter pointing out that a response was not received by the October 6 deadline and asking for a response by October 20, 2020. No response was received by that date either.
- [83] While TICO was awaiting a response from the appellant, Mr. Randazzo contacted Manulife and explained his situation. However, Manulife informed him that he needed to provide travel invoices, receipts, and itineraries to proceed with a claim.
- [84] In an email to Ms. Manuge dated November 19, 2020, Mr. Randazzo stressed that since the appellant had not provided that documentation, he could not proceed with his insurance claim. He also asked whether the appellant had provided any documentation or response to the original request sent by TICO to Ms. Comella on September 22, 2020. In fact, this was mid-November and the appellant had still not provided a response.
- [85] On January 13, 2021, Mr. Randazzo emailed Ms. Manuge again asking whether any progress had been made with respect to his complaint. He confirmed that Manulife said that it cannot proceed with his insurance claim until it gets the required information from Ms. Comella. Since Ms. Comella had not communicated

with him since September 2020, he asked that TICO assist in getting the information from Ms. Comella.

- [86] He also mentioned that the appellant was no longer operating out of its previous premises and a new business had taken over the location. The Act requires a registrant to inform the Registrar of any change in a registrant's business address within 5 days of the change. On January 14, 2020, TICO sent to Ms. Comella notice of business address form and asked her to complete it and send it to TICO by January 28, 2020.
- [87] No response was received to that request either and on February 10, 2021 the Registrar issued an Immediate Temporary Suspension and a Notice of Further and Other Particulars
- [88] After that was issued, Ms. Comella submitted a completed Notice of Business Change Form to TICO signed on February 16, 2021. She also provided some information in relation to Mr. Randazzo's complaint. On March 26, 2021, she sent an email to the Registrar and its counsel stating that she will be working on assisting Mr. Randazzo with the airline and Manulife to resolve his concerns. She also provided an invoice dated in March 2020 that she asserted was provided to Mr. Randazzo.
- [89] However, Ms. Comella never responded to the Registrar's letter of September 22, 2020.
- [90] The Registrar's main concern with respect to Mr. Randazzo's complaint is the appellant's failure to effectively answer the Registrar's requests for a response to it. The original September 22, 2020 request for a written response had a due date of October 6, 2020. Despite reminders and new due dates, Ms. Comella failed to respond until February 2021, after the Registrar issued a Temporary Suspension Order suspending the appellant's registration. When she did respond, in February and March 2021, she provided copies of some documents but did not provide, as requested, a written response to the issues identified by Mr. Randazzo.
- [91] In my view, the appellant's late, fragmentary, and mostly incomplete response to the Registrar's request was inadequate. I conclude that in relation to Mr. Randazzo's complaint, the appellant breached condition 15 of its registration (responding to the Registrar in a timely way).

## **APPELLANT'S POSITION**

- [92] Ms. Comella testified that she has been in the travel industry since she graduated from college. She opened Angie's All-Season Travel in 1989 and the business has survived for many years despite difficult changes in the industry, most notably the rise in direct booking by consumers through the internet.

- [93] Ms. Comella stated that her business has survived because she makes her customers her priority. Some of her clients are older and she spends a lot of time on the phone discussing details of bookings and often meets with them at their homes. She answers their calls at all time of the day or night.
- [94] According to Ms. Comella, in putting her clients first she may have at times failed to respond to the Registrar's requests promptly. However, she states (and the Registrar agrees) that at present she is up to date with her annual and biannual filings.
- [95] She was under the impression that taking care of her customers was the most important part of her business and she acknowledges that she may not have responded to inquiries and request from TICO as promptly or effectively as she should have. In each of the six notice of proposals issued before the October 2015 proposal, the Registrar withdrew the notice of proposal and/or re-instated her registration after the appellant brought itself into compliance. That left her with the impression that compliance with filing and responding requirements were "not a big deal".
- [96] With respect to trust account reconciliations, Ms. Comella disagrees that she ever failed to place client funds into her trust account. She did not file trust reconciliations because there was no activity in the trust account and nothing to report - her clients normally paid service providers directly. Going forward she will ensure that trust account information is provided to the Registrar whether there is any activity in the account or not.
- [97] With respect to the discrepancy between the sales reported on her annual financial statements and on her Form 1s, Ms. Comella stated that was due to her incorrectly including the cost of certain services as sales in her Form 1s. She stated that the discrepancy was an error on her part, had no impact on any customer, did not affect the public, and resulted in her overpaying TICO's compensation fund.
- [98] With respect to the Moore and Randazzo complaints, Ms. Comella stated that she kept in touch with them and worked hard to get refunds or travel vouchers for them. She states that this was again an instance when she concentrated on assisting clients rather than responding promptly to TICO's inquiries.
- [99] According to Ms. Comella she now realises the importance of the regulatory filing requirements and responding to the Registrar's inquiries. She has a new accountant and a new bookkeeper who are more experienced in the travel industry and its reporting requirements. She asked this Tribunal to set aside the Registrar's proposal to give the appellant another chance to demonstrate its ability to operate in compliance.

## **DECISION**

- [100] This is a difficult case. I acknowledge Ms. Comella's apparent sincerity and her long career in providing travel services to the public. Despite the two consumer

complaints described above, there is no convincing evidence that Ms. Comella was dishonest with either client or that client funds have gone missing. Ms. Comella provided letters of reference from four clients who were happy with her services, and they included Ms. Moore, one of the complainants.

- [101] However, continued registration requires more than sincerity and honesty. It also requires an ability to comply with the requirements set out in the Act and regulation and respond effectively and promptly to the Registrar.
- [102] Those obligations are not merely administrative. The Act and regulation are designed to protect the public. The reporting requirements ensure that the Registrar has access to information that allows him to ensure that registrants are operating in compliance. Form 1s are meant to ensure that each registrant makes the appropriate contribution to the compensation fund which compensates consumers in certain circumstances.
- [103] Trust account information is required to ensure that client funds are appropriately handled and protected.
- [104] The requirements to file annual financial statements are meant to give the Registrar a glimpse of each registrant's business position, including its working capital, to ensure that registrants have enough liquidity to meet their liabilities. They are a tool to determine if client funds may be potentially misused to meet a registrant's other financial pressures.
- [105] The appellant has, over a prolonged period of time, failed to meet its obligations under the Act and regulation. From 2000 to 2020, the Registrar has issued eight notices of proposal (including the current one) against the appellant. Most, if not all of them, contained allegations involving failures to file required financial information and failure to respond to the Registrar's reminders and request for follow-up information.
- [106] In my view, Mr. Pepper, the previous Registrar, was exceptionally accommodating in withdrawing notices of proposal or re-instating the appellant after previous revocations. That may have contributed to Ms. Comella's impression that compliance with those requirements was not important. However, any misconception in that regard should have been cleared up in 2016 when the present Registrar expressed his grave concern after the seventh notice of proposal and agreed to give the appellant one further chance at demonstrating compliance.
- [107] The 2016 conditions under which the appellant was allowed to continue operating were nothing more than what the Act and regulation already required. They were included as conditions to highlight those requirements to the appellant and make it abundantly clear that adherence to them was essential for continued registration. Unfortunately, the appellant failed to comply with the conditions and the appellant's past pattern of non-compliance continued in each year from 2016 to 2020.



- [108] The Registrar alleges that the appellant has failed to meet the conditions of its continued registration and I have found that to be the case.
- [109] The Registrar also alleges that the appellant's past conduct affords reasonable grounds to believe that the appellant will not carry on business in accordance with the Act and regulation. I also find that to be the case.
- [110] The standard of proof required to establish reasonable grounds for belief is lower than the balance of probabilities standard. In other words, the Registrar does not need to establish that the appellant's past conduct makes it more likely than not that the appellant will not operate in accordance with law and with integrity and honesty. The Registrar need only establish that there are "reasonable grounds" for that belief. "Reasonable grounds" require something more than mere suspicion but will exist where there is an objective basis for the belief based on compelling and credible information.<sup>6</sup>
- [111] In this case I conclude that the Registrar has established an objective basis for the belief that the appellant will not carry on business in accordance with law. The appellant has failed to meet regulatory requirements over lengthy period of time. The Registrar took regulatory action numerous times, but the appellant's record of non-compliance continued. In 2016 conditions were imposed which were meant to give the appellant one last chance to demonstrate compliance. The appellant failed to adhere to the conditions during the first year they were in place and for four years after that.
- [112] The appellant suggested that instead of revocation, further conditions should be imposed. I do not consider this to be an appropriate case for conditions. They have already been tried and they did not result in compliance.
- [113] In conclusion, I find that the appellant has failed to comply with conditions on its registration and its past conduct in failing file financial information or respond effectively to the Registrar's reminders, follow-ups and request for information afford reasonable grounds for belief that the appellant will not carry in business in compliance with the Act and regulation.
- [114] I have therefore directed the Registrar to carry out his notice of proposal to revoke the appellant's registration.

## **ORDER**

- [115] Pursuant to s. 11(5) of the *Travel Industry Act, 2002*, I direct the Registrar to carry out his proposal to revoke the appellant's registration.

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<sup>6</sup> *Mugesera v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 (CanLII) at paragraph 114

LICENCE APPEAL TRIBUNAL

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**Stephen Scharbach,  
Member**

**Released: August 26, 2021**