

**FINANCIAL SERVICES TRIBUNAL**

**IN THE MATTER OF** the *Insurance Act*, R.S.O., 1990, as amended (“the Act”);

**AND IN THE MATTER OF** a decision dated May 9, 2005, of the Executive Director, Licencing and Market Conduct Division of the Financial Services Commission by delegated authority from the Superintendent of Financial Services (the “Superintendent”), to revoke the Level II Life Insurance Agent’s licence of Ms. Claudia A. Smith.

**AND IN THE MATTER OF** a Notice of Appeal in accordance with sections 17(1) and 393(10.2) of the Act.

**BETWEEN:**

**CLAUDIA A. SMITH**

Appellant

- and -

**SUPERINTENDENT OF FINANCIAL SERVICES**

Respondent

**BEFORE:**

Paul W. Litner  
Chair of the Panel

Colin H. H. McNairn  
Chair of the Tribunal

Heather Gavin  
Member of the Tribunal

**APPEARANCES:** Vishna N. Sukdeo, for the Appellant

Robert Conway, for the Respondent

**HEARING DATE:** May 19, 2006

## REASONS FOR DECISION

### Background and Facts

This is an appeal from a decision dated May 9, 2005 (the “Decision”) of the Executive Director of the Licensing and Market Conduct Division of the Financial Services Commission of Ontario (the “Director”). The Decision was made under delegated authority from the Respondent Superintendent of Financial Services.

The Decision ordered the revocation of the Appellant’s level II life insurance agent’s licence, as proposed in the recommendation of an Advisory Board dated April 12, 2005. That recommendation was made after a hearing by the Advisory Board held on March 29-31, 2005, at which the Appellant and the Respondent appeared, presented evidence and made submissions.

The Advisory Board examined five separate allegations made against the Appellant and concluded that those allegations had been established, in particular that the Appellant had:

1. misappropriated funds from her client, Ms. Gertibelle Schoberg-Keiller (the “Complainant”), for her own personal use;
2. committed forgery by falsifying a document, namely a Norwich Union deposit confirmation;
3. failed to comply with a demand by the Respondent for full information respecting activities related to the business of insurance made pursuant to section 31 of the Act;
4. provided false information to the Financial Services Commission of Ontario (“FSCO”); and
5. failed to complete and review a disclosure statement with the Complainant and forward a copy to the affected insurers, all as required by Regulation 674 adopted pursuant to the Act.

Based upon these conclusions, the Advisory Board found that the Appellant had committed fraudulent acts, demonstrated untrustworthiness, was not of good character, and was not a suitable person to hold a life insurance agent’s license.

The Advisory Board also found that there were no mitigating factors for the Appellant’s conduct and recommended the revocation of the Appellant’s life insurance agent’s license.

It is helpful at this point to summarize our understanding of the salient facts.

The Appellant was a licensed life insurance agent in Ontario. In 1998, the Complainant was introduced to the Appellant through a mutual friend. At the time, the Complainant was 73 years old, and the Appellant described her relationship with the Complainant as akin to that of mother and daughter, although the Complainant was also the Appellant’s client.

Early in 1999, the Appellant met with the Complainant to discuss her insurance needs. At that time, the Complainant had a life insurance policy with The Empire Life Insurance Company (“Empire”). On January 30, 1999, the Agent and the Complainant completed an application for Life Insurance with the Norwich Union Life Insurance Company of Canada (“Norwich”). In February of 1999, Empire received a number of requests for withdrawals from the Complainant’s Empire policy, and ultimately received a letter dated March 24, 1999 requesting the cancellation of the Empire policy. As a result of those requests, Empire issued four separate cheques made out to the Complainant, three of which were deposited into the Complainant’s Bank of Nova

Scotia (“BNS”) account, and the fourth was deposited into the Appellant’s account at the Canadian Imperial Bank of Commerce (“CIBC”).

The Complainant subsequently discovered transactions in her BNS and Royal Bank of Canada (“RBC”) accounts which she could not recall authorizing. These included three cheques made out to the Appellant, and one to cash (in amounts totalling \$4,350) from her RBC account. As a result, the Complainant advised RBC about her concerns and an investigation was commenced by RBC. The RBC investigator interviewed the Appellant on three separate occasions. FSCO was subsequently advised of the complaints by RBC and commenced its own investigation, which included interviewing the Appellant on May 3, 2001 (collectively, the RBC investigations and the FSCO investigations are referred to as the “Investigations”).

Although we use the term “Complainant” to describe the Appellant’s client, Ms. Gertibelle Schoberg-Keiller, as did the parties in the proceeding before us, it appears that she did not complain directly to FSCO. However, her complaints about the Appellant, initially passed on to FSCO by RBC, apparently played a significant part in the decision, following FSCO’s investigation, to initiate the process to revoke the Appellant’s life insurance agent’s license, which ultimately led to the proceeding before the Advisory Board and the proceeding before this Tribunal.

During the course of the Investigations, the Appellant admitted to depositing cheques from the Complainant’s RBC and BNS accounts (and also one cheque from Empire) to her own bank accounts. To this point, the parties appear to agree on the facts. Where they disagree is on whether or not the cashing of these cheques amounts to a misappropriation of funds by the Appellant. FSCO alleges that these transactions were not authorized by the Complainant, based on her statements made during the Investigations. The Appellant admitted that she received these monies, but states that the funds were used for the benefit of the Complainant, not for her own personal benefit. Much of the evidence given at the Advisory Board hearing focussed on the use of these funds by the Appellant in the context of the first allegation.

For example, the Appellant stated that some of the funds from the cheques she had cashed had been sent to the Complainant’s grandson in Jamaica, Mr. Dwayne Lambert. In support of her position, the Appellant presented documentary evidence during the Investigations to show that she had made Western Union money order transfers to Mr. Lambert. The legitimacy of these documents was contested by FSCO before the Advisory Board.

In the course of the Investigations, the Agent also produced a document which purported to show that an investment of \$3,000 had been made in the name of the Complainant with Norwich (the “Norwich Deposit Confirmation”), the Appellant claiming that she had made the investment out of the funds she held on behalf of the Complainant. A former officer of Norwich testified before the Advisory Board that no moneys had been received as per the Norwich Deposit Confirmation, that the Norwich Deposit Confirmation was a false document and that no investment was made on behalf of the Complainant with Norwich. Based on these facts, FSCO alleged that the Appellant had created a false document (the Norwich Deposit Confirmation) and this forms the basis for the second allegation.

During the course of the FSCO investigations, a demand was made that the Appellant produce records from her personal bank accounts to verify her position regarding the use of the funds received from the Complainant’s accounts. While the Appellant produced records for her CIBC

account, she did not produce records for her BNS account, as had been requested. This forms the basis for the third allegation. Also FSCO claims, in support of the fourth allegation, that statements and information provided to it by the Appellant during the Investigations were false, and that the Appellant knew that they were not true and made the statements with the intent to deceive.

In his Decision, The Director adopted the conclusions of fact reached by the Advisory Board and, accepting the recommendation of the Advisory Board, ordered that the Appellant's life insurance be revoked.

On this appeal, the Appellant asked the Tribunal to set aside the Decision and order that the Appellant's life insurance agent's license be reinstated.

### **The Appellant's and Respondent's Positions**

The Appellant argued that (i) her right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice, as guaranteed by Section 7 of the *Canadian Charter of Rights and Freedoms*, and (ii) her right to a fair hearing in accordance with the principles of natural justice, were infringed by the Advisory Board which:

- made findings, inferences and a recommendation without the benefit of *viva voce* evidence from the Complainant and without giving the Appellant the opportunity to cross-examine the Complainant;
- denied the Appellant the right to adduce evidence in support of her own *viva voce* evidence or to supplement affidavit evidence that she had tendered to that end;
- misapprehended or failed to consider portions of the evidence;
- made findings of fact that were unreasonable and unsupported by the evidence; and
- failed to provide adequate or sufficient reasons for its finding and recommendation.

The Appellant further argued that the Director erred by adopting the findings and recommendation of the Advisory Board.

The Respondent's submissions can be summarized as follows:

- the Appellant is raising new concerns about the right to produce and cross-examine witnesses on the appeal that she did not raise at the Advisory Board hearing;
- the Advisory Board's findings against the Appellant are the result of her pervasive lack of credibility and honesty during the Investigations and the Advisory Board hearing and are supported by the evidence on the record; and
- the Advisory Board hearing was conducted in accordance with the principles of natural justice and procedural fairness.

## **Analysis and Conclusions**

The parties acknowledged, as this Tribunal made clear in its Reasons in *Transamerica Life Insurance Company of Canada v. Superintendent of Financial Services* (FST File No. 10028/98), that this proceeding is to be conducted as an appeal and not as a *de novo* hearing in which the Tribunal is asked to reconsider the evidence and decide the matter afresh.

As this appeal is from a decision of the Director accepting the recommendation of an Advisory Board that was arrived at following a hearing, we would be justified in interfering with the Decision if we were to conclude that the hearing was unfair or that there was no reasonable basis for the Decision (see *Jatinder Suri v. Superintendent of Financial Services* (FST File No. I0138-2000) and *Patrick Lee v. Superintendent of Financial Services* (FST File No. I0182-2002)). We would also be justified in interfering with the Decision if there were new evidence that caused us to take a different view of the matter than was taken by the original decision-maker. However, no new evidence was introduced on this appeal. The parties relied entirely on the evidence as presented in the record (transcript) of the Advisory Board hearing and the Agreed Book of Documents filed with the Tribunal.

It is important to note that the Appellant had the opportunity to present evidence and make submissions at the Advisory Board hearing and was represented by legal counsel throughout that hearing. We have concluded that the Advisory Board hearing was fair and that there was a reasonable basis for the findings of the Advisory Board and hence also a reasonable basis for the Decision. The reasons for our conclusions follow.

(a) *Did the Advisory Board Hearing Infringe the Appellant's Rights under Section 7 of the Charter?*

The Appellant argued that Section 7 of the Charter applied to the Decision and the Advisory Board hearing but did not advance any authorities in support of her position.

The Respondent submitted that Ontario courts have consistently held that Section 7 of the Charter does not guarantee an individual the right to practice a particular profession or occupation. In support of this position, the Respondent referred the Tribunal to the case of *Cosyns v. Canada (Attorney-General)* (1992), 88 D.L.R. (4<sup>th</sup>) 507 (Div. Ct.), wherein the court stated, citing earlier authorities:

In this province the courts have consistently held that the expression 'liberty and security of the person' in s. 7 relates to a person's physical and mental integrity and one's control over these. It does not describe any right of a corporation or the purely economic interests of a natural person: nor does s. 7 guarantee the right to unrestrained business activity or to practise a particular profession or occupation (at pp. 518-519).

We find that the Appellant's interest in being licensed as a life insurance agent under the Act is an interest in carrying on a business activity or occupation, which cannot amount to a right to life, liberty or security of the person protected by section 7 of the Charter. As a result, we have concluded that the Advisory Board hearing did not infringe any of the Appellant's rights under section 7 of the Charter.

(b) *Did the Advisory Board Hearing Infringe the Principles of Natural Justice?*

The main submissions that the Appellant made in support of her arguments that the Advisory Board hearing infringed her right to a fair hearing in accordance with the principles of natural justice can be summarized as follows:

- The Advisory Board made findings, inferences and a recommendation without the benefit of *viva voce* evidence from the Complainant.
- The Advisory Board made its findings without first allowing the Appellant an opportunity to cross-examine the Complainant.
- The Advisory Board denied the Appellant an opportunity to adduce evidence from witnesses who would corroborate her own evidence.
- The Advisory Board misapprehended or failed to consider portions of the evidence.
- The Advisory Board made findings of fact that were not supported by the evidence.
- The Advisory Board failed to provide meaningful reasons for preferring the evidence put forward by FSCO over the Appellant's evidence.

As a result of these errors by the Advisory Board, the Appellant argues that she was denied a fair hearing in accordance with the principles of natural justice and thus the Decision (which relied on the findings of fact in the Advisory Board hearing) must also be set aside.

Most of the Appellant's arguments were directed at the Advisory Board's findings on the first allegation (misappropriation of funds) and the second allegation (falsification of a document). The Appellant did not argue that the Advisory Board's finding on the third and fourth allegations (providing false information to FSCO and failure to comply with a demand for information under the Act) was incorrect, although she did argue that the Appellant had attempted to comply with the demand for information, which should have been taken into account by the Advisory Board. The Appellant also did not address, at any length, the Advisory Board's conclusion that she had failed to complete and review a disclosure statement with the Complainant and forward a copy to the affected insurers, all as required by Regulation 674 adopted pursuant to the Act.

We will address each of the Appellant's submissions, in turn.

1. Failure to Require *Viva Voce* Evidence from the Complainant

There were a number of allegations made against the Appellant at the Advisory Board hearing, the most serious of which, the Appellant submits, was the allegation that she had misappropriated funds from her client (the Complainant). It is clear from the record of the Advisory Board hearing that the Complainant was unable to testify before the hearing or provide

affidavit evidence of the basis for the complaints as she suffered from Alzheimer's disease. Instead, the Complainant's evidence was introduced by other witnesses who attested to her statements made to RBC and others both before and during the Investigations.

The Appellant submits that the Advisory Board committed an error of law in admitting the Complainant's evidence in this form as it did not contain sufficient indicia of reliability as is required for out-of-court statements to establish the truth of their contents.

The Respondent argued that the Appellant's position on this issue was flawed in that her arguments were based on the laws of evidence as applied to criminal proceedings, which were not applicable to a regulatory/licensing proceeding such as this case. Counsel directed us to the Supreme Court of Canada's decision in *British Columbia Securities Commission v. Branch*, [1995] 2 S.C.R. 3, as supporting the proposition that less stringent standards are to be applied to regulatory/licensing proceedings than criminal proceedings when considering claims that evidence by way of statements made to a regulator violates Section 7 of the Charter and also the principles of fundamental justice, taking into account the protection of the public interest goals of the legislation. The Respondent submits that these proceedings (i.e., the Advisory Board hearing and this Appeal) are not criminal or even quasi-criminal proceedings. The loss of a license is not a prosecution and the Appellant is not subject to any penalty, fine or imprisonment.

As a result, the Respondent submits that any and all statements made by the Appellant to the investigators are admissible (even if under statutory compulsion), given the public protection goals of the Act and the need to obtain evidence necessary to regulate the insurance industry. The Respondent further contends that if we accept the Appellant's submissions on this point, then FSCO, as regulator, would effectively be hamstrung and unable to regulate whenever a complainant was unavailable.

Having considered the submissions on this point, we are not persuaded by the Appellant's arguments. The Appellant's counsel argued that if the regulator (FSCO) is unable to compel the attendance of a key witness then, just as in a criminal case where the Crown cannot prosecute the accused, FSCO cannot proceed against the Appellant. This we cannot accept given the duty of the regulator to regulate the industry and the protection of the public interest goals of the Act. In this respect, we think that there is a difference between a criminal proceeding and a licensing proceeding under the Act.

While the failure to have *viva voce* or affidavit evidence might cause the trier of fact to give the evidence less weight or probative value, it does not make that evidence inadmissible. We also note that section 15 of the *Statutory Powers Procedures Act* (Ontario) ("SPPA"), which applies to the Advisory Board hearing (see section 393 (10.1) of the Act), allows a tribunal to admit any document as evidence in a hearing whether or not it would be admissible as evidence in a court. For this reason, we think it was not an error of law for the Advisory Board to take the Complainant's evidence into account, even though the Complainant was not able to give direct (*viva voce* or affidavit) evidence.

We further note that the Appellant was represented by legal counsel at the Advisory Board hearing and did not raise any objections at that time to the evidence presented or its admissibility in that proceeding.

2. Failure to Permit Cross-Examination of the Complainant

The Appellant submits that the inability of the Complainant to testify at the Advisory Board hearing denied the Appellant the right to cross-examine the Complainant and as a result the Advisory Board should have given little or no weight to the information provided by the Complainant to the investigators to which the investigators testified at the hearing. Put another way, the Appellant argued that the Advisory Board erred in preferring the indirect evidence of the Complainant that was not subject to cross-examination over the direct *viva voce* evidence of the Appellant. The Appellant did not suggest that adequate information on the allegations made by the Complainant was not provided to her prior to the Advisory Board hearing, thus breaching the principles of natural justice or section 8 of the SPPA.

We agree that the right to cross-examine witnesses is an important component of the principles of natural justice but, of course, the Complainant was not a witness who appeared before the Advisory Board.

There is no evidence that the Appellant ever sought to have the Complainant attend and give *viva voce* evidence before the Advisory Board such that a cross-examination of the Complainant could be carried out. The Appellant submits that she was denied the opportunity to challenge the Complainant's testimony by way of cross-examination, but there is no indication on the record that the Advisory Board denied such a request. Instead, the fact appears to be that the Appellant did not seek to have the Complainant testify as a witness at the hearing and now she subsequently argues that the Respondent or the Advisory Board breached the principles of natural justice in not taking the initiative to bring the Complainant before the Advisory Board. We cannot accept that submission, which we think improperly characterizes the responsibilities of the Respondent and the role of the Advisory Board.

With respect to the weight given to the indirect evidence of the Complainant by the Advisory Board, there is nothing on the record to indicate that the Advisory Board erred in this regard. As an appellate tribunal, we are not in a position to second guess the Advisory Board which has had an opportunity to assess the evidence presented by FSCO and weigh that against the evidence of the Appellant. The Advisory Board is not required to give no weight to the Complainant's indirect evidence because it was not subject to cross-examination and there was certainly other evidence presented by FSCO on which the findings of the Advisory Board could reasonably have been based.

3. Denying the Applicant the Right to Adduce Additional (Corroborating) Affidavit Evidence

The Appellant contends that she was denied the right to adduce additional affidavit evidence from witnesses who would corroborate her testimony on the first allegation (misappropriation of funds), causing it to be preferred over that of the Complainant. This goes to the Appellant's contention that the funds she received from the Complainant's accounts were ultimately used for the benefit of the Complainant. In particular, the Appellant sought to prove that she had indeed sent funds to the Complainant's grandson by way of Western Union money orders.

Once again, there is no indication on the record that the Appellant sought, and was denied, permission to adduce this evidence. Nor did the Appellant seek our leave to consider fresh evidence on this appeal. To be fair, the Appellant argued that this was the effect of the Advisory

Board failing to consider and give proper weight to the affidavit evidence of Egon and Mildred Kenton and of Mr. Kwabena Antwi, rather than an express ruling on the part of the Advisory Board.

The Appellant submits that the affidavit evidence given by Mr. Antwi, in particular, corroborated the evidence of the Appellant on key points relating to the Western Union money order transfers and is not mentioned in the reasons of the Advisory Board. This, the Appellant urged us to accept, leads to the inevitable conclusion that the Advisory Board failed to properly consider such evidence, effectively denying the Appellant her right to have such evidence taken into account.

This argument too must fail. The affidavit evidence of the Kentons does not speak to the misappropriation of funds issue; it only attests to the good character of the Appellant in general terms. The affidavit evidence of Mr. Antwi also does not support the Appellant's testimony as the Appellant contends. Mr. Antwi's affidavit does nothing more than attest to the fact that the Complainant had asked the Appellant to forward a sum of money to her grandson in Jamaica, on her behalf. It does not in any way support the Appellant's contention that the funds received by the Appellant were ultimately spent for the benefit of the Complainant, and not her own personal benefit, and it does not state that the moneys were actually transferred via Western Union money order. In fact, the Antwi affidavit contradicts the Appellant's evidence in some respects. For example, the Antwi affidavit indicates that the Complainant asked the Appellant to transfer funds to her grandson in Jamaica, and that she would repay the Appellant. Yet the Appellant testified that the Complainant gave her cash to be transferred.

We find no indication that the Advisory Board erred in its assessment of the affidavit evidence of Mr. Antwi and the Kentons.

#### 4. Failure to Consider/Misapprehension of the Evidence

The Appellant submits that the Advisory Board erred in relying on the fact that the Appellant was short of funds as indicating that the Appellant had a motive for misappropriating funds from the Complainant, thereby supporting its finding that the Appellant had indeed misappropriated funds from the Complainant. This submission is not sustainable based on a careful review of the record of the Advisory Board hearing. The record indicates that the Advisory Board had some reservations about the relevance of motive but, on hearing the Respondent's submissions, agreed to admit the evidence and give it the appropriate weight. The evidence presented regarding the Appellant's motive was relevant but not determinative of the issue of whether the funds had indeed been misappropriated by the Appellant. There was also other evidence to support the finding of a misappropriation of the Complainant's funds by the Appellant and we cannot conclude that the Advisory Board made a clear or palpable error in considering evidence as to a possible motive on the part of the Appellant along with all of the other evidence presented.

The Appellant also submitted that the Advisory Board erred in finding that she had forged the Norwich Deposit Confirmation without giving consideration to the possibility that someone else may have created the document (including, the Complainant herself). Again, this submission is not borne out by a review of the Advisory Board's findings. While the Advisory Board drew adverse inferences from the Appellant's failure to respond to Norwich's enquiries regarding the

false document, it also clearly considered the Appellant's contention that the Norwich Deposit Confirmation was created by the Complainant and found that to be implausible. We see no error in this finding.

Ultimately, we agree with the Respondent that the Advisory Board made adverse findings against the Appellant as a result of her pervasive lack of credibility and honesty during the hearing. There was ample evidence of this on the record, including her own admissions that she had changed her testimony on certain points during the hearing from her statements made during the Investigations. For example, at the hearing the Appellant admitted that the Western Union forms she had presented during the Investigations were not actually the ones used for the purpose of sending money to the Complainant's grandson.

As an appellate tribunal, we are not in as good a position as the Advisory Board to assess the credibility of the Appellant as a witness and we are not to substitute our judgment for that of the Advisory Board absent a clear error on its part. We can see no such error on the record; rather, there are other inconsistencies in the Appellant's evidence that support these findings. Moreover, the Appellant's own counsel admitted that the Appellant's testimony before the Advisory Board was incoherent at times. The transcript of the Advisory Board hearing indicates that the Appellant's counsel made the following statements at the hearing in respect of the Appellant's testimony:

The evidence that we have from Ms. Smith is not clear, I submit, it's confused, but it is evidence that ultimately she received money and she dealt with the funds. [at p. 540]

During the course of the investigation, she was not a perfect witness, she was not a cooperative witness, she was difficult. She describes herself as being secretive, she did not disclose information. There's no question about that, we readily admit that. [at p. 541]

The evidence is not satisfactory as to exactly what happened to the money. And it has been all over the map, I don't deny that. [at p. 544]

We are unable to conclude that the Advisory Board erred in its consideration of the evidence, as the Appellant submits.

##### 5. Findings of Fact Unsupported by the Evidence

The Appellant further submits that the findings of the Advisory Board were, in several respects, unsupported by the evidence. In particular, the Appellant says that the allegation regarding the Appellant's failure to comply with a request for information as required under the Act was not supported because the Advisory Board failed to consider the Appellant's efforts to comply with the request for information or that she had provided some of the requested information.

We can find no error in the Advisory Board's findings on this matter. Clearly, the Appellant did not fully comply with the request for information as required under the Act. She gave no plausible explanation as to why the missing information was unavailable and could not be produced.

6. Failure to Provide Adequate or Sufficient Reasons for Findings

The essence of the Appellant's argument here is that the Advisory Board's reasons are not sufficient to provide rational support for its findings, which is a denial of natural justice. In particular, the Appellant argued that the Advisory Board had a duty to give reasons why:

- it chose to ignore potentially significant gaps in the evidence of the Complainant and the Respondent;
- it concluded that the evidence of the Appellant was confused or contradictory on key issues;
- it preferred the indirect evidence of the Complainant over the direct evidence of the Appellant.

The Respondent urged us to accept that there were no deficiencies in FSCO's evidence and the fundamental basis for the Advisory Board's findings was the Appellant's own lack of credibility. Moreover, the Respondent argued that there is no authority for the proposition that the Board has a duty to comment on every piece of evidence before it; it is not incumbent on the Board to get better evidence, that is up to the parties, in this case the Appellant.

We accept the Respondent's submissions on this point. There is ample evidence in the record to show that the Appellant was not a credible witness: she changed parts of her story between the Investigations and the Advisory Board hearing, she offered no plausible alternatives to some of the important evidence against her, and her evidence sometimes conflicted with that of her own witnesses (see discussion above regarding the conflict in evidence between Antwi and the Appellant).

It is not incumbent on the Advisory Board to provide reasons in response to each and every gap in evidence or argument put forward by the Appellant. The rules of natural justice require the Advisory Board to provide adequate reasons to enable the Appellant to know why the issues were decided against her—the standard is not perfection. While the Advisory Board did not perhaps go into a level of detail in its reasons for preferring one piece of evidence over another, it is clear enough from the reasons why the issues were decided the way they were.

In view of the foregoing, we cannot conclude that the Advisory Board committed any errors which, either individually or in the aggregate, deprived the Appellant of her right to a hearing in accordance with the principles of natural justice. Accordingly, the Decision of the Director, in relying on the Advisory Board's findings and accepting the Board's recommendation, also did not infringe these principles.

The conduct of the Appellant could fairly be treated by the Director as being serious and sufficiently relevant to the suitability of the Appellant to continue to hold her life agent's licence as to justify the revocation of that licence. The seriousness of that conduct is not significantly diminished by any mitigating factors in this case. We note that, in making his Decision, the Director considered the question of whether there were any mitigating circumstances that should influence his disposition of the matter. All this considered, we do not think there was any error in the Decision of a kind that would justify our disturbing that Decision on appeal. The appeal is, therefore, dismissed.

The Respondent has asked for an order of costs against the Appellant in this matter. If the Respondent wishes to pursue that request, we are prepared to entertain written submissions from the Respondent as to why such an order should be made provided any such submissions are served on the Appellant and filed with the Tribunal no later than two weeks from the date of these Reasons. If the Appellant wishes to respond, she must do so by way of written submissions served on the Respondent and filed with the Tribunal no later than four weeks from the date of these Reasons.

**DATED** the 25<sup>th</sup> day of September, 2006 at the City of Toronto, Province of Ontario.

“Paul W. Litner”

Paul W. Litner  
Chair of the Panel

“Colin McNairn”

Colin H. H. McNairn  
Chair of the Tribunal

“Heather Gavin”

Heather Gavin  
Member of the Tribunal