

COMPETITION TRIBUNAL

IN THE MATTER of the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER of an inquiry under subparagraph 10(1)(b)(ii) of the *Competition Act* relating to certain marketing practices of Premier Career Management Group Corp and Minto Roy;

AND IN THE MATTER of an application by the Commissioner of Competition for an order under section 74.1 of the *Competition Act*;

BETWEEN:

THE COMMISSIONER OF COMPETITION

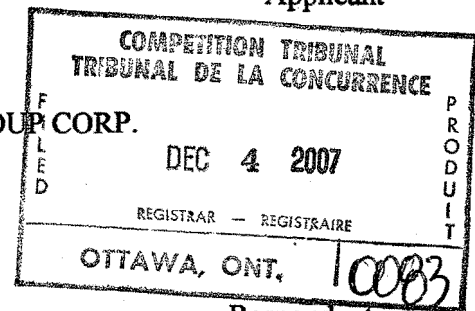
and

PREMIER CAREER MANAGEMENT GROUP CORP.

and

MINTO ROY

Applicant



Respondents

**AMENDED RESPONSE OF PREMIER CAREER MANAGEMENT GROUP CORP.
AND MINTO ROY**

1. The Respondents file this Amended Response in reply to the Amended Notice of Application of the Commissioner filed November 26, 2007 (the "Amended Notice of Application").
2. The Respondents deny all of the allegations contained in the Amended Notice of Application, except where expressly admitted, and hold the Commissioner to the strict proof thereof.

3. The Respondents admit the facts contained in Paragraph 6, 7, 8, 10, and 12 of the Amended Notice of Application.

I. Response to the Applicant's Statement of Material Facts

4. The Respondent, Premier Career Management Group Corp. ("PCMG") is a British Columbia company in the business of providing career management services or career counselling to individuals. PCMG offers to perform the following services for clients:

- (a) Analyze the client's skills, personality, and aptitudes;
- (b) Explore the client's, interests, and preferred environments;
- (c) Assess the client's marketability and help them find industries and companies that are a match for their qualifications, interests, and values.
- (d) Craft custom-tailored marketing materials to help the client message their qualifications for the right audience;
- (e) Support the client in the client's development of a comprehensive network of contacts for the client's job search;
- (f) Provide the client with access to third party registered databases like Zoom Info and Info Canada;
- (g) Prepare the client for interviews;
- (h) Help the client negotiate a compensation package that reflects their value;
- (i) Be on call for future performance evaluations; and

- (j) Support the client in continuing career management.
5. In response to paragraph 11 of the Amended Notice of Application, the Respondents submit that PCMG enters into contracts with approximately 150 clients a year.
 6. In response to paragraph 13 of the Amended Notice of Application, the Respondents submit that PCMG clients include people who are currently employed and seeking to change employment, people who are unemployed or underemployed, and people who are employed but would like more upward mobility within their particular employment situation.
 7. PCMG was incorporated and commenced operations in October 2004. PCMG occupied the same premises previously occupied by another career counselling company, Bernard Haldane Associates (later named BH Careers). PCMG has no corporate affiliation with Bernard Haldane Associates.
 8. Minto Roy was an employee of Bernard Haldane Associates from 1997 to 2004.
 9. The Competition Bureau began investigating Minto Roy and the companies associated with him in January, 2004.
 10. PCMG has been erroneously associated with Bernard Haldane Associates and has been affected by the negative publicity associated with that company.
 11. PCMG has an independent division, Careers Today, which offers recruitment services to organizations and employers.

II. The Alleged Misrepresentations

12. In response to paragraph 14 of the Amended Notice of Application, the Respondents deny that Minto Roy or any employee of PCMG made the misrepresentations alleged.
13. In further response to paragraph 14 of the Amended Notice of Application, the Respondents submit that not only did they not make the alleged misrepresentations, they engaged in due diligence regarding any and all representations through the implementation of significant quality control measures to ensure that no misrepresentations were made or relied on, that clients were satisfied with the services of PCMG, and that there was no disconnect between the representations made and the services provided.
14. The quality control measures include, non-exclusively, that the services provided by PCMG are explained to the client; the client is not guaranteed any specific interviews with specific companies, salary, or time frame to obtain a new position or promotion; that the client answers questions in writing on evaluation forms confirming that they have received no such guarantees; and that the services provided by PCMG are part of a written agreement.
15. In further response to paragraph 14 of the Amended Notice of Application, the Respondents say and the fact is that no alleged representation of the Respondents nor any impression conveyed by a representation induced any complainant to purchase the services of PCMG, nor would any alleged representation of the Respondents nor any impression conveyed by a representation induce the ordinary citizen to purchase the

services of PCMG. The Respondents advised their clients and their clients acknowledged in the written agreement that PCMG is not an employment or placement agency and that PCMG did not induce the client to enter into the engagement by implication, representation or guaranteeing the client interviews with companies or people, salary or time frames for new positions, or any other verbal promises.

16. In further response to paragraph 14 of the Amended Notice of Application, the Respondents submit that the alleged misrepresentations, if made (which is specifically denied), were mere exaggerations and not false or misleading in any material respect.
17. In further response to paragraph 14 of the Amended Notice of Application, if any employee made any misrepresentation alleged, which is not admitted but is specifically denied, such misrepresentations were made in excess of the employee's authority and contrary to instructions.

1. No Misrepresentations Regarding Screening Potential Clients

18. In specific response to paragraph 14(a) of the Amended Notice of Application, the Respondents deny that they made verbal representations to the effect alleged and/or that conveyed the general impression that they screen prospective clients and accept only those whom they consider to be highly qualified and have a lot of potential to succeed.
19. In specific response to paragraph 14(a) of the Amended Notice of Application, the Respondents submit that the representations made, if any, consisted of and conveyed the impression that not every person was an appropriate client for PCMG. The Respondents submit that this representation was fair and accurate.

20. The Respondents say and the fact is that PCMG does have a screening process to separate inappropriate clients who do not have the required commitment level and willingness to work hard from clients who do demonstrate those qualities.
21. The Respondents deny that any representation referred to in paragraph 14(a) was false or misleading in any respect.

2. No Misrepresentation Regarding Arranging Job Interviews or Providing Contacts

22. In response to paragraph 14(b) of the Amended Notice of Application, the Respondents deny that they made verbal representations to the effect alleged and deny that they made representations that conveyed the general impression that they have an extensive network or personal contacts or links with senior level executives of companies that have job openings and that they will use this network to provide contacts and/or arrange job interviews with such senior level executives for clients who enter into contract with PCMG.
23. The Respondents say and the fact is that any representations made by the Respondents related to contacts or links in companies were to the effect and conveyed the general impression that previous clients of PCMG could be useful sources of information about the companies they worked for; that PCMG would help clients to develop the skill set to create their own networks and develop their own contacts; and that PCMG would help clients showcase themselves more effectively to a higher level of management. The Respondents say and the fact is that these representations were fair and accurate.

3. No Misrepresentation Regarding Finding Work in 90 days

24. In response to paragraph 14(c) of the Amended Notice of Application, the Respondents deny that they made verbal representations that conveyed the general impression that clients would almost certainly find work quickly with their help, typically within 90 days, and at a position with salary and benefits equal to or better than their previous job when in fact this was not the case.
25. The Respondents say and the fact is that any representations the Respondents made were to the effect and conveyed the general impression that after completing the preparation phase of the PCMG program, which was usually 6 to 8 weeks in length, clients then go to market, and clients typically found work or made a career decision within 90 days of going to market. The Respondents submit that these representations were fair and accurate.

Limitation Defence

26. The Respondents submit that this Application is barred by s. 3 of the *Limitation Act*, R.S.B.C. 1996, c. 266 and specifically plead. s. 39(1) of the *Federal Court Act*.

Abuse of Process

27. The Respondents submit that the Application which the Commissioner has commenced constitutes an abuse of process.

III. No Personal Liability

28. In specific response to paragraph 16(c) of the Notice of Application, the Respondents submit that Minto Roy did not direct or train its employees to misrepresent the services of PCMG and the representations were not false or misleading in a material respect.

IV. No Aggravating Factors

29. In specific response to paragraph 19 of the Amended Notice of Application, the Respondents submit that the extent of PCMG's advertising is not relevant to a consideration of whether verbal misrepresentations were made to specific individuals, nor what the appropriate penalty for such verbal misrepresentations (if said misrepresentations occurred, which is specifically denied) should be.
30. In response to paragraph 20 of the Amended Notice of Application, the Respondents submit that this Application constitutes a very small minority of PCMG clients.
31. In response to paragraph 21 of the Amended Notice of Application, the Respondents submit that none of the former clients named at paragraph 14 of the Amended Notice of Application were economically vulnerable. In fact, prior to contracting with PCMG:
- (a) Tanya Threatful had earned \$40,000 - \$55,000 per year;
 - (b) Johan de Vaal had earned \$106,000 per year;
 - (c) Bruce Nickson had earned \$54,000 per year;
 - (d) Malia McClean had earned \$22.00 to \$25.00 per hour;
 - (e) William Warren had earned \$100,000 per year;
 - (f) Chinenye Obiajulu had earned \$70,000 per year;

- (g) Rene Navarro-Gonzalez had earned \$88,000 (US) per year; and
 - (h) Raffaele Rocca had earned \$64,000 per year.
32. In response to paragraph 22 of the Amended Notice of Application, the Respondents submit that they made no misrepresentations, and if they did, those representations did not induce clients to retain the services of PCMG.
33. In response to paragraph 23 of the Amended Notice of Application, the Respondents submit that no discussion about self-correction has occurred between the Respondents and the Commissioner.
34. In response to paragraph 24 of the Amended Notice of Application, the Respondents submit that the monetary administrative penalty sought by the Commissioner is inappropriately high. The Commissioner has sought and received extensive publicity with respect to the allegations that the Respondents have engaged in misleading advertising. This publicity has had a significant adverse financial effect on the Respondents and has negatively affected their reputation. The Respondents have lost revenue as a result of the allegations.
35. In response to paragraph 25 of the Amended Notice of Application, the Respondents submit that they have taken reasonable steps to ensure that no misrepresentations are made.

V. Relief and Procedural Matters

36. The Respondents deny that the Commissioner is entitled to the relief requested in paragraphs 5 and 26 of the Amended Notice of Application and requests, in any event or

in the alternative, that the Tribunal exercise its judgment not to make any order under Section 74.1 of the *Competition Act*, R.S.C. 1985, c. C-34.

37. The Respondents request that this proceeding be conducted in the English language.
38. The Respondents further request that the hearing of the Application be held in Vancouver, British Columbia.
39. The Respondents request that all pleadings and correspondence for this hearing be filed in electronic format.
40. The Respondents request that the Application be dismissed.
41. The Respondents request that they be awarded costs of this Application, pursuant to section 8.1 of the *Competition Tribunal Act*, R.S.C. 1985, c. 19.

Dated at Vancouver, British Columbia, December 4, 2007



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