



FINANCIAL SERVICES REGULATORY COMMISSION

Royal Palms Place, Friars Hill, St. John's, Antigua

PRESS RELEASE

December 02, 2022.

A private legal matter in which the Financial Services Regulatory Commission has been named as the second respondent, which is still before the Eastern Caribbean Supreme Court, has been the subject of stories published in at least two local newspapers in the past week. The form, content and some statements expressed within those published stories, in the opinion of the Commission, do not reflect either the factual or legal reality of the case and is likely to mislead the public and harm the reputation of the Financial Services Regulatory Commission and the jurisdiction as these stories are carried by other media within and outside Antigua and Barbuda. The Financial Services Regulatory Commission advises the public by way of the following.

The Financial Services Regulatory Commission is a statutory authority governed by the Financial Services Regulatory Commission Act 2013 (as amended) and is the sole prudential regulator of financial services business carried on within and from within Antigua and Barbuda with the exception of domestic banking institutions licensed by the Eastern Caribbean Central Bank. The Commission administers a number of regulatory laws which govern the carrying on of financial services business including insurance, money services business, co-operatives and international banking. The carrying on of international banking business from within Antigua and Barbuda is governed by the International Banking Act 2016 (as amended) and assigns exclusive authority to the Commission to administer the Act. As part of its functions under the Act, the Commission has the authority to issue, suspend and revoke licenses as well as issue preemptory directives to licensees and impose administrative fines for breaches of the Act where lawful to do so.

The Commission, as a public body, has a duty to promote and respect the rule of law in all its actions. The rule of law includes respecting the right of every person, legal and natural, to be presumed innocent of any charge or claim and consequential action by the Commission until the charge or claim has been established as true and within the authority of the Commission to address. The rule of law also includes giving the accused party an opportunity to know and give answer to the charge or claim which has been submitted to the Commission in the form of a complaint. It is to be noted that not every subject of a submitted complaint is within the authority of the

Commission to address and therefore the Commission employs a lawful process to address each submitted complaint in consideration of its duties to protect the rights of all parties. Where a complaint is received from any person the Commission transmits it to the licensee with the aim of determining,

- a. Whether the complainant is a *bona fide* customer/depositor/person with sufficient interest in the complaint;
- b. Whether the claims presented in the complaint are factually true;
- c. Whether the matter is one that is within the Commission's authority to address and if yes;
- d. Where the facts are established, the reason for the action or omission by the licensed institution which has given rise to the complaint;
- e. What remedies are being proposed by the licensee to resolve the claim; and
- f. What remedial action the Commission is authorized to take in the given situation.

As a prudential regulator the Commission does not ordinarily have the lawful authority to intervene in matters between a depositor and a licensed international banking institution involving withdrawal or demand for deposits especially where the issue in dispute is one that is justiciable in private law. In all cases a submitted complaint must first be investigated to determine whether the Commission has the lawful authority to intervene and thereafter, if the Commission has such lawful authority, the Commission is bound by natural law to grant the international banking institution an opportunity to give answer to the submitted claim(s). The Commission does not have the lawful authority, in any situation, to make determinations on points of law which are outside of its statutory provisions and therefore such complainants may exercise their right to access the Court for resolution of their claim. Where the Commission has determined that an issue(s) complained of is within its authority to address and the licensee is found to have acted contrary to the regulatory law, the International Banking Act prescribes the administrative actions which the Commission is lawfully authorized to take.

The Commission is a creature of statute and has no authority to do more than the law permits it to do. The Commission has a duty to all the licensees, their customers and creditors to act lawfully which means its decisions regarding any submitted complaint must be determined to be within its legal authority to address while its actions thereafter must reasonable, rational, and proportional and must not be beyond its assigned lawful authority. The procedure used and is used by the Commission in addressing complaints, making determinations and imposing administrative actions is a lawful one which often takes some time which may result in frustration to the complainant but this is not sufficient to permit the Commission to disregard the rights of the accused licensed international banking institution and the law which exists for the protection of all parties. Customers of any licensee retain the right to apply to a court of competent jurisdiction for redress at any point during the investigation of a complaint by the Commission. In every case where the Commission has received a complaint from a customer of an international banking institution the above-stated procedure has been followed and where it has been determined that a

licensed international banking institution has acted contrary to the law, the Commission has taken the appropriate and proportional action in accordance with the existing law. **Ends**