

**LICENCE APPEAL
TRIBUNAL**

**Safety, Licensing Appeals and
Standards Tribunals Ontario**

**TRIBUNAL D'APPEL EN MATIÈRE
DE PERMIS**

**Tribunaux de la sécurité, des appels en
matière de permis et des normes Ontario**



Citation: Hossein Mostafavi v. Registrar, *Real Estate and Business Brokers Act, 2002*,
2018 ONLAT REBBA 11127

Date: 2018-12-05
File Number: 11127 REBBA

Appeal from a Proposal of the Registrar under the *Real Estate and Business Brokers Act, 2002*, S.O. 2002, c. 30, Sch. C to Refuse Registration

Between:

Hossein Mostafavi

Appellant

And

Registrar, *Real Estate and Business Brokers Act, 2002*

Respondent

DECISION AND ORDER

Adjudicator: Sandeep Johal, Member

Appearances:

For the Appellant: Self-represented

For the Respondent: Jonathan Miller, Counsel

Shaun Chu-A-Kong, Counsel

Heard in Toronto: May 17, 18, 22, 23, 24, 30, 2018

REASONS FOR DECISION AND ORDER:

A. OVERVIEW

- [1] Under the *Real Estate and Business Brokers Act, 2002*, S.O. 2002 c. 30 Sch. C (the “Act”) the Registrar issued a Notice of Proposal to Refuse Registration dated October 23, 2017 and a Supplemental Notice of Proposal to Refuse Registration dated April 6, 2018 (together the “Proposal”) to refuse the appellant’s registration as a broker under the Act on the basis that his past conduct affords reasonable grounds for belief that he will not carry on business in accordance with law and with integrity and honesty.
- [2] The Registrar alleges that the appellant’s past conduct includes;
- a. Depositing a consumer’s \$100,000 trust deposit for a real estate transaction into the brokerage’s general bank account rather than the brokerage’s trust account, then misappropriating the \$100,000 by withdrawing the money and using it for his personal affairs.
 - b. Purposely providing false information to a RECO (Real Estate Counsel of Ontario) investigator during an investigation into a consumer complaint.
 - c. Causing the client of another brokerage to breach his buyer representation agreement with that brokerage and having the client sign a buyer representation agreement with his brokerage.
 - d. Changing the terms of a document and having his client sign the document before notifying the client of the change and refusing to cancel the agreement after the client became aware of the change.
 - e. Unlawfully evicting tenants from a rental property.
 - f. Submitting a misleading document to a statutory tribunal.
 - g. As a broker of record failing to ensure that the books and records of the brokerage were in compliance with the Act and its Regulations, even though he had been previously notified and educated about proper accounting and bookkeeping practices.
 - h. Having four pending charges against him for breaches of the Act and its Regulations.

- i. Entering into an agreement with no conditions to purchase 38 Maple Grove Road, Lindsay, Ontario by December 19, 2017 and failed to fulfil his obligations under the agreement, thereby breaching the agreement. The seller entered into an agreement with another purchaser on December 22, 2017 and then the appellant registered a certificate of pending litigation (CPL) against the property on January 5, 2018 providing a disincentive for any new potential purchasers to purchase the property.
- j. Receiving several warnings from the Registrar respecting his conduct as a registrant.

[3] The appellant appeals the Proposal to this Tribunal for the following reasons:

- I. He does not believe the respondent has documentary evidence to prove the allegations,
- II. The respondent did not thoroughly examine all his supporting documentation
- III. The respondent was biased in its investigation because they were trying to find evidence to convict him.
- IV. The appellant was only short in his trust account on one occasion for \$5,000 and that the buyer and seller were aware of it.
- V. The respondent has raised past issues that date back to 2007 and there is not one case where a buyer or a seller lost a business opportunity because of a lack of knowledge or action on the appellant's part and that the appellant was in compliance with his fiduciary duties as an agent.

B. ISSUES:

[4] The issues to be decided are as follows:

- a. Does the appellant's past conduct afford reasonable grounds for belief that he will not carry on business in accordance with the law and with integrity and honesty?
- b. If so, is refusal to register the appellant as a broker under the Act appropriate?

C. RESULT:

- [5] I find that the respondent has established that the appellant's past conduct affords reasonable grounds to believe that he will not carry on business in accordance with the law and with integrity and honesty.
- [6] I direct the Registrar to carry out the Proposal.

D. LAW:

- [7] Section 4 of the Act prohibits a person from trading in real estate unless they are registered under the Act.
- [8] Section 10(1)(a) of the Act provides that an applicant that meets the prescribed requirements is entitled to registration or renewal of registration by the registrar unless
- (a) the applicant is not a corporation and,
 - (b) the past conduct of the applicant or of an interested person in respect of the applicant affords reasonable grounds for belief that the applicant will not carry on business in accordance with the law and with integrity and honesty.
- [9] Section 10 (1) of the Act means that if the appellant meets the requirements, he is entitled to registration. However, if the Registrar can prove that the appellant's past conduct affords reasonable grounds for belief that he will not carry on business in accordance with the law and with integrity and honesty, then section 13 of the Act states that the Registrar can refuse to register the appellant. In this case, the Registrar refused to register the appellant and he has appealed the refusal to this Tribunal. At this hearing the Registrar has to prove that the appellant should not be registered because of his past conduct.
- [10] Pursuant to section 14 of the Act, following 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.

E. ANALYSIS

Does the appellant's past conduct afford reasonable grounds for belief that he will not carry on business in accordance with the law and with integrity and honesty?

[11] It is my finding that the appellant's past conduct affords reasonable grounds for the belief that he will not carry out business in accordance with law and with integrity and with honesty for the following reasons.

Misappropriation of trust funds

[12] It is my finding that the appellant misappropriated deposit trust funds. Mr. Ali Reza Keramati testified that he and his business partners approached the appellant in order to help them purchase a home as an investment property. The appellant suggested a deposit of \$100,000 and Mr. Keramati's assumption was that the funds would be put into the appellant's brokerage's trust account.

[13] On August 26, 2016 a bank draft for \$100,000 was made payable to the appellant's brokerage at the request of the appellant so that the appellant could show the sellers that he had buyers that were serious about purchasing the property.

[14] An agreement of purchase and sale was prepared in order to present an offer to the seller. The agreement was dated August 26, 2016¹ showing a deposit in the amount of \$100,000 from the buyer to be made payable to the appellant's brokerage.

[15] The offer was not accepted and Mr. Keramati testified that the appellant stated to him that the seller needed another week to consider the offer. On September 19, 2016 after failing to hear from the appellant, Mr. Keramati called the appellant to request his \$100,000 deposit to be returned. 11 days later the appellant responded by a text message that he would call Mr. Keramati later and that he did not know why Mr. Keramati needed the money back so soon.

[16] A week passed by and on October 4, 2016 Mr. Keramati followed by way of a text message where the appellant stated he will try to get the money back to Mr. Keramati later that week. On October 6, 2016 the appellant wrote in a text message that by the end of the following week he would be able to return the deposit money. By October 13, the money was still not returned and the appellant sent a text to say he would return the money the following week, at which point Mr. Keramati texted the appellant back to say he was filing a complaint.²

¹ Exhibit 3 Tab 5E Volume 1 Respondent Book of Disclosure at page 46.

² Exhibit 6, Tab 5I Volume 1 Respondent Book of Disclosure at pages 65-70.

- [17] The appellant on the other hand testified that Mr. Keramati told him that as his agent he could keep the deposit funds and since there was no selling agent the appellant stated he did not know where the funds should go.
- [18] David Tredrea who is an investigator with RECO testified that the appellant deposited the \$100,000 into his general business account and then into his personal bank account, and then admitted that he spent the money for his personal use.³
- [19] In response to the transcript evidence and the testimony of Mr. Tredrea the appellant testified that he did not know what his obligations were with respect to deposited funds where the seller does not accept a purchaser's offer to purchase a property. He also testified that the funds were eventually returned to the complainant in full.
- [20] I do not accept the appellant's testimony as being credible because the appellant by his own admission has been a licenced real estate agent since 2001 and to suggest he was not aware of his obligations with respect to deposit monies that he or his brokerage receives for a property transaction after 15 years of being an agent and how they should be handled is not plausible in my opinion. Even if the appellant was unaware of his obligations in this situation as he claims, he took no steps to understand his obligations.
- [21] Section 27 of the Act sets out the requirements for a brokerage with respect to money that comes into the brokerage's hands in trust for other persons. The appellant's lack of effort in understanding and knowing his obligations and using deposit funds for his own purposes are reasonable grounds for the respondent to believe the appellant will not carry on business in accordance with the law and with integrity and honesty.

Inducing a breach of a buyer representation agreement

- [22] The respondent alleges the appellant engaged in unethical conduct by ignoring the existence of a buyer representation agreement and inducing a breach of that representation agreement in order to receive a financial benefit. According to the respondent, this provides reasonable grounds for belief that the appellant will not carry on business in accordance with the law and with integrity and honesty as it was a clear breach of the Code of Ethics.⁴

³ Exhibit 52, Tab 3 of Supplementary Book of Disclosure, RECO recorded interview with Appellant on October 24, 2016 at page 65.

⁴ Section 7 of Ontario Regulation 580/05, the Code of Ethics under the Act.

- [23] I agree with the respondent that the appellant induced a breach of a buyer representation agreement in order to receive a financial benefit and this type of behaviour shows that the appellant will not act in accordance with the law and with integrity and honesty for the following reasons.
- [24] The appellant testified that the buyers came to him because they did not want to work with their existing agent and that he checked the buyer registry system to find out if the buyers were represented by another agent. The buyer representation registry is where buyer representation agreements are registered so that other agents and brokerages have notice of existing agreements between buyers and agents. The appellant testified there was no agreement uploaded into the system on February 10, 2016 with respect to these buyers. Further, he took steps to verify the existence of an agreement with the other brokerage by checking the registry and speaking to the agent, however, the brokerage did not provide a copy of the agreement to him.
- [25] The respondent provided the decision of an arbitration hearing between the appellant and the Toronto Real Estate Board (“TREB”) on January 26, 2017 with respect to the buyer representation agreement. The arbitration panel found that the case supports a finding of interference by the appellant. TREB stated that the appellant procured the offer to purchase prior to a mutual release being fully signed by all parties. According to the decision of the hearing, the buyer was the same individual who submitted an offer on the same property (where the appellant was the selling agent) through another brokerage and this is a clear indication that a buyer representation agreement may have existed.⁵ The onus (in the TREB hearing) is on the appellant to ensure interference did not occur and once communication was received from the other brokerage regarding their buyer representation agreement and its entry onto the buyer registry system it was not unreasonable for the other brokerage not to provide a copy of the buyer representation agreement considering privacy concerns.⁶
- [26] Furthermore, in an email exchange on February 12, 2016 with Eric Han, an agent with the other brokerage, he stated to the appellant that his office registered the buyer representation agreement with those same clients on the registry website on February 10, 2016. Despite having this information, the appellant continued to pursue the clients into working with him and his brokerage.

⁵ Exhibit 24, Tab J, Respondent's Book of Disclosure, Arbitration Decision of TREB at page 131.

⁶ Supra note 4.

- [27] The appellant was also previously warned about communicating with clients from another brokerage by way of a written warning on June 9, 2008 from the respondent. It would appear as though the appellant did not adhere to that warning and engaged in a similar type of behaviour again.
- [28] The appellant testified that he was trying to protect the sellers of the property as the home was about to be sold by way of a power of sale so the sellers were desperate to sell the home as quickly as possible. The appellant stated that he was only trying to protect the sellers by way of a quick sale and not through any kind of self-interest even though he acknowledged that he would be receiving an additional commission by representing the buyer and the seller in that transaction.
- [29] The appellant was aware that the buyers may have been represented by another brokerage because as the agent for the sellers he received an offer from those same buyers and their agent at that time. Furthermore, the agent also confirmed to him that there was a buyer representation agreement in place. Even with this information, the appellant still chose to pursue the buyers and represent them with the transaction despite being warned against this type of behaviour in the past. As a result, I agree with the respondent that the appellant induced a breach of a buyer representation agreement in order to receive a financial benefit and despite being warned previously, this type of behaviour shows in my opinion, that the appellant will not act in accordance with the law and with integrity and honesty.

Changing the terms of a listing agreement

- [30] With respect to the property at 3 Christine Avenue in Toronto (the “Christine Property”) it is my finding that the appellant changed the terms of the listing agreement between the appellant’s brokerage and the seller of the Christine Property, and the appellant did not act impartially and equally with respect to the buyer and the seller in accordance with the Confirmation of Co-operation and Representation Agreement.
- [31] The seller’s son Adnan Egrlic testified at the hearing that he was at his mother’s home the evening the documents were signed because his mother does not speak English very well and so that he can explain the content of the documents to her. The appellant presented a listing agreement to the seller of the Christine Property which granted the appellant the exclusive right to act as the seller’s agent effective December 20, 2015 until January 27, 2016⁷. The seller wanted

⁷ Registrar’s Book of Disclosure (Volume 2) Tab 7E.

the listing agreement and accompanying offer to purchase her property to review with her lawyer.

- [32] Mr. Egrlic testified that the documents were sent to a lawyer to be reviewed and as a result of the review the seller agreed to sign the documents. The appellant visited the seller that same evening and the documents were executed by the seller. Unbeknownst to the seller and Mr. Egrlic at the time of signing was that the listing agreement was not the same listing agreement that was reviewed by the lawyer. The listing agreement the appellant had the seller sign was for an exclusive listing period that expired on June 30, 2016⁸ and not January 27, 2016.
- [33] During cross-examination the appellant stated the original listing agreement was to be for a one month period and then the next day he changed the listing to expire in June 2016 rather than January 2016. However no explanation was provided as to why the term was changed and whether it was discussed with the seller. The appellant testified that he pointed out the change to the seller and her son and they agreed to sign the agreement.
- [34] However, Mr. Egrlic testified that the change to the listing term was not mentioned by the appellant after their lawyer had already reviewed the documents.
- [35] According to Mr. Egrlic his mother and his understanding was that the documents being signed were the same documents that his mother's solicitor had reviewed and at no point did the appellant mention that the length of the term had been changed.
- [36] I do not find the appellant's testimony to be credible that he advised the seller and her son of the change. He did not state why the change to the term was made later in the day after the documents were reviewed by the seller's lawyer and whether any conversations took place with the seller on why the listing agreement should be changed from the initial period of one month.
- [37] Furthermore, the appellant advised the seller and the seller's son through an email dated February 24, 2016⁹ that the buyer "has a right to pull out" of the agreement. However, upon review of the Agreement of Purchase and Sale (the "APS") dated December 20, 2015¹⁰ there does not appear to be any term or condition that allows the buyer to "pull out" of the agreement as stated by the

⁸ Registrar's Book of Disclosure (Volume 2) Tab 7J at page 197.

⁹ Registrar's Book of Disclosure (Volume 2) Tab 7G at page 169.

¹⁰ Registrar's Book of Disclosure (Volume 2) Tab 7J at page 200.

appellant. In fact, the condition that allowed the buyer to have the APS reviewed by her lawyer was crossed-out.

- [38] The appellant further testified that the buyer on the offer to purchase the Christine Property was someone who works in his office and is someone who he has a close working relationship and that he is also a mentor to the potential buyer.
- [39] In my opinion, it would appear that the appellant chose to prefer the rights of the buyer over that of the seller. This would be contrary to the Confirmation of Co-operation and Representation agreement dated December 20, 2015 wherein the listing brokerage represents both the seller and the buyer and as a result the brokerage must be impartial and equally protect both interests with a duty of full disclosure to both parties.¹¹ By stating to the seller that the buyer has a “right to pull out” of the agreement when that clearly was not a condition that was listed in the APS and for propositioning that the seller sign a mutual release on the unconditional APS in order to cancel the listing agreement that ran until June 30, 2016 shows that the appellant chose to prefer the interests of one party over the other.
- [40] As a result, I find the actions of the appellant by changing the term of the listing agreement and preferring the interests of the buyer when he represented both parties provides reasonable grounds for belief that he will not carry on business in accordance with the law and with integrity and honesty.

Illegal Eviction and misleading documents before the Landlord and Tenant Board

- [41] The respondent has alleged that the fact that the Landlord and Tenant Board has found the appellant to have unlawfully evicted a tenant from his rental property and submitted a false document there are reasonable grounds for belief that the appellant will not carry on business in accordance with law and with integrity and honesty and I agree with the respondent for the following reasons.
- [42] The appellant was found to have illegally changed the key to the lock box on a property that he owned and was renting to a tenant. The Landlord and Tenant Board, in its decision dated April 20, 2017¹² found the appellant to be in breach of the *Residential Tenancies Act* by illegally evicting a tenant and he was ordered to pay general damages, a rent differential and costs to the tenant.

¹¹ Registrar’s Book of Disclosure (Volume 2) Tab 7J at page 208.

¹² Registrar’s Book of Disclosure (Volume 2) Tab 8E at page 262.

There is no need to go behind the decision as the decision speaks for itself. The appellant did not take his responsibilities seriously as a landlord and acted contrary to the *Residential Tenancies Act* and forced a tenant out of their home.

- [43] The appellant testified that he found the tenant to be too demanding and he didn't want to deal with him because the tenant kept asking for additional work to be done on the home and as a result of the constant demands to fix and repair items to the home the appellant decided to lock him out.
- [44] Another concerning aspect which in my opinion further provides reasonable grounds for belief, is that the appellant appears to have changed or falsified a mutual release document.
- [45] During the hearing before the Landlord and Tenant Board, Mr. Vanier, the tenant of the rental property, testified that he signed one copy of a mutual release and that mutual release was given to him by the appellant. He testified that only one copy was printed off by the appellant and he signed that one copy in the appellant's office.¹³
- [46] At the Landlord and Tenant Board hearing, the appellant produced a copy of the mutual release which Mr. Vanier says was not signed by him.¹⁴
- [47] The appellant states that he produced two copies of the mutual release for Mr. Vanier to sign; however, I do not find the appellant to be credible with respect to his evidence for the following reasons.
- [48] The documents when looked at side-by-side are not identical, which one might expect when copies are made. The document that Mr. Vanier says he signed has his last name spelled incorrectly (Vaniiier) and the version produced by the appellant has it spelled correctly (Vanier). If that was the only discrepancy, one could assume the spelling was corrected on the second copy that was printed. However, there are several other discrepancies such as the dates inserted in certain sections whereas on the one Mr. Vanier states he signed, the dates were missing. Also the time stated under the irrevocability section and the confirmation of acceptance section are different. Lastly and most importantly, the signatures of Mr. Vanier are completely different and not in the same spot. In the version Mr. Vanier says he signed, he has signed with his full name under the witness part and in the version produced by the appellant, the signature is not a full signature but only initials above the Buyer/Seller line of the agreement.

¹³ Registrar's Book of Disclosure (Volume 2) Tab 8E at page 258.

¹⁴ Registrar's Book of Disclosure (Volume 2) Tab 8D at page 260.

- [49] Mr. Vanier says he does not sign documents using his initials only, he signs with the spelling of this first and last name and furthermore, the initials on that document are not his. He also testified that he never saw this agreement until it was shown to him at the hearing before the Landlord and Tenant Board; however, he only signed one copy and that copy was given to him by the appellant.
- [50] The appellant's evidence was that he prepared two copies and he kept one but other than an acknowledgment that the documents are different, he has not provided testimony as to why the two copies were so vastly different other than to state that he was in a rush and caught the spelling mistake but without any explanation as to the other differences. As a result, I do not find the appellant to be credible in his testimony and I find the version presented by Mr. Vanier to be more likely than not to be the correct version of events and is evidence of conduct that affords the respondent reasonable grounds for the belief that the appellant will not carry on business in accordance with the law and with integrity and honesty.

Trust fund deficiencies

- [51] The respondent's witness Ms. Katsoulis has been an investigator with the Real Estate Council of Ontario ("RECO") for 20 years and part of her responsibilities is to conduct investigations of the books and records of real estate brokerages and guide them into compliance with the legislation.
- [52] Ms. Katsoulis testified that she conducted two inspections of the appellant's books and records. The inspections were from November 2015 and January 2016, and a report based on her findings was emailed to the appellant on February 23, 2016. That report noted that there were deficiencies with regards to preparing monthly trust reconciliations. Part of her report included steps to assist the appellant and she did that by informing him that the appellant can reach out to her for guidance. She also provided him with the Guide to Brokerage Inspections and directed him to the website of RECO which has further information to assist the appellant with his obligations.
- [53] As a result of a consumer complaint, another inspection was done in November 2016. Ms. Katsoulis testified that the appellant did not have reconciliations for the period of December 2015 to November 2016 and the appellant's trust ledger was also incomplete. As a result she was unable to verify if the liabilities of the trust account were being met at any given time. She then proceeded to complete a trust liability analysis which would allow her to accommodate for missed transactions and cheques that may have been issued incorrectly. The

information to complete the trust liability analysis was provided by the appellant from his books and records.

- [54] The result of the trust liability analysis was that the appellant's brokerage was not meeting its liabilities as there were negative balances. She concluded that the appellant was making too many errors for such a limited set of records and transactions. Some examples were: having a shortfall in his real estate trust account, failing to complete reconciliation reports on a monthly basis and his trade record sheets are either incomplete or not prepared properly.¹⁵
- [55] The appellant testified that he does not deny that his trust account had shortfalls in it and states that he replaced the money a short time later, or that he had a contractual agreement for the funds not to be deposited into the trust account which was a reason for the shortfall.
- [56] He further testified that some items were not documented properly as his father was ill and he was not in the right frame of mind. However according to Ms. Katsoulis the appellant was out of the country visiting his father in November, 2015 and RECO accommodated him by conducting an inspection upon his return, and the deficiencies noted from that inspection were not corrected even upon the next inspection which occurred a year later in November 2016.
- [57] With respect to the trust account shortfall, the respondent directs me to case law from the Divisional Court¹⁶ which would be binding on this Tribunal and I agree. The court stated that "...interfering with a trust account is a wrongful act and the fact that no one was hurt makes no difference."¹⁷ The fact that the appellant replaced the trust shortfall later makes no difference in my opinion and the fact that the appellant was repeatedly in a shortfall position in his trust account is evidence that he will not act accordance with the law, with integrity and with honesty.
- [58] In my opinion, the course of conduct over many occurrences that has been presented by the respondent is sufficient evidence of serious conduct by the appellant that would warrant the respondent to revoke the appellant's licence.
- [59] Conditions would not be appropriate in this case as the appellant was sent several warning letters over the years from 2007 (a warning for failing to

¹⁵ Registrar's Supplementary Book of Disclosure Tab 4 at page 167-168.

¹⁶ *Ontario (Registrar, Real Estate and Business Brokers Act, 2002) v. Vogelsberg*, [1994] O.J. No. 226 (Ont. Div. Ct.) ("*Vogelsberg*") and *Lapcevich v. Registrar, Real Estate & Business Brokers Act, 2010* ONSC 1145 ("*Lapcevich*").

¹⁷ *Vogelsberg, at para 2. and Lapcevich at para 8.*

terminate a seller representation agreement upon request from the seller in accordance with the agreement). In 2008 (a warning for directly communicating with another brokerage's client). In 2014 (a warning for failing to disclose a competing offer and commission reduction) and in 2016 (a warning for misrepresenting a closing date, failing to obtain written consent before releasing trust funds and for relisting a property without first obtaining a written release). All of these past warnings were with respect to the appellant's conduct.

- [60] The appellant submits that he takes full responsibility for what has happened and he feels that he has learned from his mistakes and he would do things differently. He further submits that if he had sources of information available to him, then he would have acted differently.
- [61] However, the appellant was provided with warnings dating back to 2007 about his conduct and his responsibilities and according to Jackie Foster, Registration Officer at RECO, the appellant was provided with guidance and resources from RECO's website including references to the code of ethics, the code of conduct and a requirement to complete the Ethics and Business Practices course on multiple occasions.

F. CONCLUSION:

- [62] Based on the appellant's past conduct which includes misusing trust funds, inducing a breach of an agreement, changing the terms of an agreement, preferring the interest of one party over another when representing both, it is my finding that the respondent has reasonable grounds for its belief that the appellant will not carry out his business under the Act in accordance with the law, with integrity and with honesty based on the above situations.
- [63] The severity of the conduct discussed above warrants the revocation of the licence of the appellant.

G. ORDER:

- [64] The Tribunal directs the Registrar to carry out its Proposal to refuse the appellant's registration as a broker under the Act.

LICENCE APPEAL TRIBUNAL



Sandeep Johal, Member

Released: December 5, 2018