

**LICENCE APPEAL  
TRIBUNAL**

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



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

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

Citation: Akbar Zarehhossainabadi, Kingsway Real Estate Inc. and Rouhollah Houshmand v. Registrar, *Real Estate and Business Brokers Act 2002*, 2019 ONLAT REBBA 9820

Date: 2019-06-11  
File: 9820 REBBA

Appeals from a Notice of Proposal by the Registrar, *Real Estate and Business Brokers Act, 2002*, S.O. 2002, c. 30, Sch. B - to Revoke Registrations

**Between:**

Akbar Zarehhossainabadi, Kingsway Real Estate Inc.  
and Rouhollah Houshmand

Appellants

-and-

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

Respondent

**REASONS FOR DECISION AND ORDER**

**Adjudicator:** Patricia McQuaid, Vice-Chair

**Appearances:**

For the Appellants,  
Akbar Zarehhossainabadi,  
Kingsway Real Estate Inc.: Eugene Bhattacharya, Counsel

For the Appellant,  
Rouhollah Houshmand: Parisa Hooshmand Sarvestani, Paralegal

For the Respondent: Jonathan Miller and Shane Smith, Counsel

**Heard in Toronto:** October 10, 11, 15, and 22, November 22 and 26,  
December 13, 2018 & February 7 and March 6, 2019

## REASONS FOR DECISION AND ORDER

### BACKGROUND

- [1] This is a hearing before the Licence Appeal Tribunal (the “Tribunal”) arising out of a Notice of Proposal issued by the Registrar, *Real Estate and Business Brokers Act, 2002* (the “Registrar” and the “Act”, respectively). The Notice of Proposal dated September 15, 2015 proposed to revoke the registrations of Akbar Zarehossainabadi and Rouhollah Houshmand as brokers under the Act, and to revoke the registration of Kingsway Real Estate Inc. (“Kingsway”) as a brokerage under the Act. The Notice of Proposal was subsequently amended; the last amendment was issued on October 25, 2016 and it is that Notice of Proposal (the “NOP”), together with further particulars issued on August 30, 2018 which formed the basis of the Registrar’s allegations in this hearing.
- [2] The Registrar cites several statutory grounds for revocation of the individual appellants’ registrations as set out in section 10 (1)(a) of the Act:
- i. Having regard to their financial position, they cannot reasonably be expected to be financially responsible in the conduct of business;
  - ii. Their past conduct affords reasonable grounds for belief that they will not carry on business in accordance with law and with integrity and honesty; and
  - iii. They made a false statement in their application for renewal of registration.
- [3] With respect to Kingsway, Mr. Zarehossainabadi is its president and sole director and shareholder. The Registrar asserts, and the parties agree, that in this hearing, pursuant to s. 10(1) (d) of the Act, any findings made against Mr. Zarehossainabadi also apply to the brokerage.
- [4] Pursuant to s. 14 of the Act, I may direct the Registrar to carry out the NOP or substitute my opinion for that of the Registrar. Should I determine that the appellants are entitled to continue to be registered, I have the authority, under the Act, to attach conditions to the appellants’ registrations, if appropriate
- [5] This hearing took place over a period of almost six months due to scheduling challenges for both the legal representatives and witnesses. Sixteen witnesses testified, including the two individual appellants. Document disclosure was ongoing through the course of the hearing. A further allegation against Mr. Zarehossainabadi was added at the commencement of the hearing. At all times, however, the parties and their representatives displayed a high level of professionalism and courtesy and they are commended for that.

## RESULT

- [6] After carefully considering the evidence and submissions, and for the reasons set out below, I direct the Registrar not to carry out the NOP. I find that the appellants are entitled to registration, subject to conditions, under the Act.

## ANALYSIS

- [7] As noted above, multiple witnesses testified at this hearing, eight of whom were 'character' witnesses - five for Mr. Zarehhossainabadi and three for Mr. Houshmand. Registrar's counsel expressed concerns about late disclosure of the appellants' list of witnesses and their witness statements. There was a pattern of late disclosure throughout this hearing which I have also noted above. However, I did permit the appellants to call these witnesses and indicated that Registrar's counsel could address the weight to be given to their evidence in closing submissions.
- [8] Each of the character witnesses testified, to varying degrees, depending on the nature of their relationship with each of the appellants, to their honesty, integrity and experience in the real estate business. Several witnesses stated, for example, that Mr. Zarehhossainabadi was a mentor to them and supportive of their developing careers. The witnesses also had varying degrees of knowledge about the allegations contained in the NOP. While I appreciate the testimonials provided, in making this decision, this evidence has had minimal relevance to the issues before me and therefore, I have given it little weight.
- [9] The evidence will be analyzed by issue, first with respect to the allegations against Mr. Zarehhossainabadi followed by those against Mr. Houshmand.

### **Akbar Zarehhossainabadi**

- [10] Mr. Zarehhossainabadi was often referred to, and at times identifies himself, as Mr. Zareh. I will refer to him as Mr. Zareh in these reasons. As noted above, the Registrar relies on s. 10(1)(a)(i)-(iii) of the Act and submits that findings under each of those sections taken together also highlight an overarching lack of honesty and integrity.
- [11] The Registrar stated that the major ground for the NOP to revoke registration is Mr. Zareh's past conduct, specifically his conduct in "committing a large scale theft from a residence listed for sale by him". It was that event, and particularly the court decision flowing from a civil action arising from it that was the catalyst for the Notice of Proposal issued in September 2015. Given this, I will deal with the

specific 'past conduct' allegations first. In addition to the 'theft' allegation, the Registrar also relies on a sexual assault conviction in 2008. The Registrar was made aware of this issue by Mr. Zareh at that time and attached conditions to his registration, but included this issue in the NOP when they considered the global past conduct of Mr. Zareh.

### The theft

Issue: Does Mr. Zareh's past conduct afford reasonable grounds for belief that he will not carry on business in accordance with law and with integrity and honesty - s. 10(1)(a)(ii)?

- [12] This event will be reviewed in detail given that it is central to the Registrar's decision to take disciplinary action against Mr. Zareh. The facts of this incident are set out in the reasons for judgment of M. J. Donohue, J. (Superior Court of Justice). For the purposes of this matter, the relevant facts are as follows. Sofia Oliveira and Frederick Kurz purchased a property in November 2009 which was listed through power of sale proceedings by the mortgagee Royal Bank. Mr. Zareh was retained to handle the listing of the property. He was not the real estate agent for the purchasers. While the house was listed, there were items in it which were unclaimed by the estate of the owner/mortgagor. These included a number of framed pictures or paintings, a piano, gym equipment, furniture including an armoire, a television and a large wine cooler. The purchasers were interested in acquiring these items, however, the mortgagee could not include these contents in a power of sale proceeding as the mortgagee had no title to them. The evidence at the trial was that the purchasers were told by a representative of the mortgagee that if the contents were in the house at the time of closing, then they would be considered 'abandoned' by the owner and the purchasers could therefore have them.
- [13] When the purchasers inspected the house the day before closing, the items were missing and they noted that there was some minor damage to the home, including scratched floors. Ms. Oliveira called Mr. Zareh, asking about their whereabouts. Mr. Zareh responded that he had no idea. The purchasers wrote a letter of complaint to the Real Estate Council of Ontario ("RECO") in February 2010 about Mr. Zareh's conduct, believing that he had removed the items. RECO responded that it had no jurisdiction to involve itself in a contractual dispute and recommended that the purchasers contact a lawyer. The purchasers did so and sued Mr. Zareh and Kingsway Real Estate Inc. for unlawful conversion. The trial took place in February 2015.

- [14] The purchasers were unsuccessful. Donohue J. found that there could be no action for conversion because the purchasers did not have ownership or a possessory right in the chattels. However, the judge made a finding that Mr. Zareh, assisted by his son and Mr. Houshmand, took chattels from the home valued at \$30,000. At the trial, Mr. Zareh admitted that they removed a piano, an armoire, an exercise bicycle and jump-rope and a set of dumbbells. Mr. Houshmand also testified at the trial and stated that he did assist Mr. Zareh and in fact the piano was to be for his son's use; however, he believed that Mr. Zareh had permission to remove the items.
- [15] Donohue, J made adverse, and at times, scathing, credibility findings against Mr. Zareh and found that he removed more items than he admitted to at the trial, stating that Mr. Zareh had 'nefariously' removed chattels from the home. The judge stated that Mr. Zareh's actions deserved denunciation and that other agents should be deterred from acting in such a manner which abused the trust they are given when they are allowed access to properties. An order was made that RECO be given a copy of the decision. The judge awarded costs against Mr. Zareh in the amount of \$40,000. The purchasers appealed the result and Mr. Zareh appealed the cost award. Both were unsuccessful and Mr. Zareh paid the cost award.
- [16] RECO received a copy of the Court's decision from the purchasers' lawyer in August 2015. It was at this time that the matter came to the attention of Angela Volpe, the manager of registration at RECO. Ms. Volpe testified at this hearing. She stated that she had not seen the letter of complaint in February 2010, but when she reviewed the file in August - September 2015, she was dismayed that no action was taken in 2010. She now believes that it was misinterpreted as a contractual issue, and with the benefit of reading the court decision, she believed that RECO's response was incorrect. Her concern was that Mr. Zareh, with Mr. Houshmand, had removed items from the home when Mr. Zareh had no authority to do so. Ms. Volpe testified that the value of the items and the number of items taken were not as important as the fact of the 'theft' itself. It was noted that criminal charges were not laid.
- [17] Ms. Volpe stated that for the Registrar, the incident spoke quite directly to issues of honesty and integrity and compliance with the law and that Mr. Zareh's actions were not aligned with that test set out in the Act. As a result, the Registrar issued the Notice of Proposal almost immediately. By agreement with Mr. Zareh's legal representative, they decided to wait on the outcome of the Divisional Court appeal before proceeding further with this matter. By inference, this incident was central to the Registrar's issuance of the NOP.

- [18] Ms. Oliviera was called as a witness at this hearing by the Registrar. Ms. Volpe stated that after seeing Ms. Oliviera at the hearing, and observing how upset Ms. Oliviera continues to be about the incident, she sees in her the ‘consumer harm’ that RECO is mandated to protect against. In the issue of ‘consumer harm’, Ms. Volpe did acknowledge that though Mr. Zareh (who has been registered with RECO since approximately 1989) has been the subject of prior complaints to RECO, this is the first time that RECO has taken disciplinary action against him.
- [19] Mr. Zareh’s evidence at the hearing was that he believed that the items he removed from the home had been “abandoned”. He testified that he called the property management company representative with whom he had been dealing throughout the listing and asked if it would be ok for him to remove the piano. He knew that Mr. Houshmand was looking for a piano for his son. He testified that he was given permission to take it. He went to the house on the day before closing with his son and Mr. Houshmand. His son saw the gym equipment and asked if he could take it to which Mr. Zareh responded, yes. He believed the items had been abandoned. They also took the armoire. He denied that they caused any damage to the home when they removed the items. Mr. Zareh acknowledged that he was aware that the purchasers wanted the contents in the home, but these had been crossed off the agreement of purchase and sale by the bank so the purchasers knew that they were not getting them as part of the sale.
- [20] Mr. Zareh testified that Ms. Oliviera called him the day before the closing, but he never revealed to her that he had taken items from the home. He continues to assert that he had permission to take the piano, but acknowledged that he took more than just the piano (and continues to disagree with the findings of the court regarding the list of items taken). Mr. Zareh stated that he has learned a lesson and this is something that he would never do again; he made a bad decision.
- [21] I do note that Mr. Zareh never called a witness at the civil trial or at this hearing to corroborate that he had the permission to take the piano. Further, his suggestion that it was ‘possible’ that another agent took some of the items was less than compelling. Mr. Zareh has, without question, minimized his responsibility in this incident.
- [22] Mr. Miller, counsel for the respondent, has submitted that I must adopt all of the findings of fact made by Donohue, J., citing *Piersanti v. Law Society of Ontario* 2018 ONLSTA 10 (CanLII). Mr. Bhattacharya, counsel for Mr. Zareh and Kingsway, accepts some but not all of those findings, taking exception to the judge’s characterization of Mr. Zareh’s actions constituting a “large scale theft” when it was not a criminal matter.

- [23] Though both counsel made submissions on the application of the principles of abuse of process or *res judicata* in this instance, I need not get mired in the nuances of these principles here to decide whether I must adopt every finding made in the court decision. I do need to determine, and have the discretion to do so as stated in *Piersanti*, what is required by way of factual and legal analysis to do justice in the particular circumstances.
- [24] Based on the evidence before me, it is undisputed that Mr. Zareh took items from the home in November 2009. Whether he took three or ten, he did so without clearly established permission to do so. The value of the items taken is less important than the fact that items were taken at all. Mr. Zareh's conduct in relation to this incident in 2009 (including, for example, that he was not honest with the purchasers when they asked about the missing items), and in and around the time of the civil trial in 2015 reflects a lack of integrity and honesty. He did not acquit himself at all well - and while now acknowledging that taking the items was a "bad decision", he compounded its impact by his less than forthright conduct and honesty at the trial. The question then is whether this conduct affords reasonable grounds for belief that Mr. Zareh will not carry on business in accordance with law and with integrity and honesty from which consequences should flow, and if so, what that consequence is appropriate in the circumstances.
- [25] It is useful to consider the jurisprudence flowing from tribunal and Court decisions on this issue of whether there are reasonable grounds to believe that an appellant will not, in the future, carry on business in accordance with law and with integrity and honesty, as enunciated in s. 10 of the Act and in the similar, if not identical, wording in several other statutes. The courts have stated that reasonable grounds will exist where there is an objective basis for the belief which is based on credible and compelling evidence. The Court of Appeal in *Ontario (Alcohol and Gaming Commission of Ontario) v. 751809 Ontario Inc. (Famous Flesh Gordon's)*, 2013 ONCA 157 (CanLII) stated that the purpose of the examination of the past and present conduct is to see if there are reasonable grounds for belief that the person will, in future, carry on activity in a way that is contrary to the public interest. The Court of Appeal emphasized that any and all past or present conduct can and should be considered. The Tribunal must consider the whole of an appellant's conduct, including the recent conduct.
- [26] A primary focus of RECO is its consumer protection mandate –prevention of harm to consumers. While the continuing anger that Ms. Oliviera continues to feel towards Mr. Zareh and the upset about not getting the items on closing, nine years after this incident, cannot be dismissed, I also note that this is the only incident of 'consumer harm' cited by the Registrar in the context of Mr. Zareh's time as a real

estate agent and broker over a span of almost 30 years (while acknowledging that the ability to carry on business in accordance with the law encompasses more than just dealing with consumers). Though there is but one incident of consumer harm, the Registrar submits that this is but one of several factors that cumulatively lead to the conclusion that there are reasonable grounds to believe that Mr Zareh will not carry on business in accordance with law and with integrity and honesty and furthermore that revocation is the only appropriate consequence.

- [27] As stated in paragraph 24 of these reasons, I have found that Mr. Zareh's conduct in relation to this incident, in 2009 and in and around the time of the civil trial in 2015 reflects a lack of integrity and honesty, however, revocation is not the only remedy available to the Registrar or to me. Section 13(1) of the Act states that the registrar **may** suspend or revoke (emphasis added) a registration if in his or her opinion, the applicant is not entitled to registration under section 10. For reasons which will be outlined later in this decision, I have concluded that revocation is not the appropriate outcome.

#### The prior conviction for sexual assault

Issue: Does Mr. Zareh's past conduct afford reasonable grounds for belief that he will not carry on business in accordance with law and with integrity and honesty - s. 10(1)(a)(ii)

- [28] In 2009, Mr Zareh was charged and ultimately convicted of sexual assault involving a former employee. He was given a suspended sentence with probation for one year. Mr. Zareh advised RECO of the charge and later, the conviction, as was his obligation under the Act. The Registrar reviewed the matter and required, as a condition of his continued registration, that conditions attach to his registration. Mr. Zareh agreed to these conditions which included conditions that he provide updates to the Registrar regarding the status of his appeal and that he advise the Registrar of any new charges immediately. He first signed off on the conditions in May 2005 when the charges were pending and on April 10, 2010 after his conviction. Ms. Volpe testified that the Registrar would have considered the circumstances at that time – particularly that this was a first time offence - and decided that conditions were appropriate. The evidence before me was that he fully complied with the conditions and that they are no longer conditions on his licence.
- [29] It is well settled in the Tribunal jurisprudence that a criminal conviction does not necessarily preclude registration. And, but for the decision of Donohue, J., the Registrar would not have re-visited the sexual assault conviction. As Ms. Volpe

stated, the Registrar's perception of its impact on their assessment of Mr. Zareh's honesty and integrity has only changed because of the Donohue decision.

[30] In submissions, the Registrar points to Mr. Zareh's testimony at the hearing regarding this incident as compounding their concerns. It is true that Mr. Zareh did exhibit an apparent lack of insight and diminished the breach of trust issue which was highlighted in the sexual assault matter by his statement that he was not the victim's direct boss. However, Mr. Zareh did not resile from the fact that the behavior was not just inappropriate, but resulted in his conviction for sexual assault. The seriousness of the incident cannot be diminished by saying it was a long time ago, but at the same time, it was reported at the material time and the Registrar determined that conditions were appropriate. No further disciplinary action was taken. There is no indication of any similar or repeat incident subsequent to 2009 nor any evidence before me to suggest that this issue in 2009 is predictive of future behavior. It is not unreasonable that Mr. Zareh would conclude that with respect to this incident, no further action would be taken.

[31] Here, the Registrar appears to rely on the sexual assault conviction and the circumstances surrounding it to buttress an allegation of past conduct issues, almost a decade later. The conduct was considered at the time. A decision was made that conditions were responsive to the seriousness of the incident. No issues were raised then about concerns about Mr. Zareh acting in accordance with law and with honesty and integrity. I do not find that the sexual assault conviction (and his testimony regarding it at the hearing), viewed on its own gives rise to a reasonable ground to believe that Mr. Zareh will not carry on business in accordance with law and with integrity and honesty nor does it, at this point in time, serve to buttress the allegation arising from the theft issue.

[32] Several of the next subject areas touch on both the financial responsibility and nondisclosure allegations.. To minimize repetition in these reasons, I will address them together. I will note too when the 'past conduct' allegation has also been raised by the Registrar in respect to a particular matter.

#### Canada Revenue Agency (CRA) tax arrears

[33] This issue will be discussed in the context of the s. 10(1)(a)(i) and (iii) allegations, but the fact of the CRA arrears also forms part of the Registrar's allegation regarding Mr. Zareh's past conduct.

Issue: Having regard to Mr. Zareh's financial position, can he reasonably be expected to be financially responsible in the conduct of business - s. 10 (1)(a)(i)

[34] The allegation regarding the tax arrears owed to CRA was made in the NOP issued in October 2016. RECO was not aware of any arrears owed in September 2015 when the first Notice of Proposal was issued. RECO received a standard form letter dated October 13, 2015 from the CRA wherein it requested information about Mr. Zareh for purposes of enforcement. As a result, RECO began investigating this issue. That investigation uncovered several Federal Court - Trial Division certificates:

- May 6, 2002 - certificate amount owing under the *Income Tax Act* - \$47,096.20
- November 28, 2013 – certificate amount owing under the *Excise Tax Act* - \$74,867.37
- November 28, 2013 – certificate amount owing under the *Income Tax Act* - \$7,486.27
- November 28, 2013 – certificate amount owing under the *Income Tax Act* - \$512,442.27.

The Registrar also obtained a Writ Detail Report issued from the Sheriff of the Regional Municipality of Peel which shows the debt to CRA as \$512,442.27 as of November 22, 2013. This document notes this as a 'judgment' (with interest compounded daily) as of December 16, 2015. In addition, the Registrar also relied on a subsequent Writ Detail Report, dated September 11, 2018, showing the same information. The Writ Detail Reports are produced by the Sheriff's office on request, a procedure that RECO uses when doing background checks on a registrant. Ms. Volpe testified that she did not know whether Mr. Zareh would have received this document, which is the only document before me that used the word 'judgment' in the context of the CRA debt.

[35] Upon receipt of these documents, RECO requested information from Mr. Zareh. At a pre-hearing before the Tribunal in June 2016, Mr. Zareh was ordered to provide the Registrar with detailed documentation relating to payment arrangements made with CRA including the most recent notices of assessment. In August 2016, he responded to Mr. Maxwell, one of RECO's legal counsel. Mr. Zareh stated in his response that he was not aware that he had to advise RECO of the CRA issue. He stated that he had been dealing with CRA since 2000 and it had never caused an issue or interfered with his business. He also stated that he submits \$4000 to CRA monthly and that he was in the process of hiring a tax expert to help him with the situation. He did not provide any notices of assessment.

- [36] This was the last update that Mr. Zareh provided to RECO, which was a matter of concern to the Registrar, though it must be noted that this communication was occurring in the context of this ongoing proceeding and there was no response from Mr. Maxwell to Mr. Zareh, or his counsel, that the information provided was deficient. I do not consider this failure to provide RECO with more documentation regarding the CRA matter to be another factor suggesting Mr. Zareh's lack of honesty and integrity as urged by the Registrar.
- [37] Ms. Volpe testified that the fact of the tax arrears falls under all three subsections of s. 10(1)(a), but emphasized that it shows noncompliance with the law: not paying one's taxes is unlawful and indicates that Mr. Zareh is not meeting his obligations as a citizen to pay taxes. The Registrar did not look favourably on this information about the debt owing.
- [38] Mr. Zareh did hire Syed Hyder, a chartered accountant, in May 2016 to deal with his CRA issues. Mr. Hyder testified at the hearing and presented as an independent and very credible witness. He demonstrated professionalism throughout his testimony. He stated that Mr. Zareh is now current on his corporate and personal tax filing. He had fallen behind for many years. He testified that the Federal Court tax certificates are issued when a person does not file tax returns; CRA will do its own calculation based on historical assumed income, which then generates these certificates. He recommended that Mr. Zareh draw a yearly salary of \$150,000 from Kingsway Real Estate, which he is now doing. From this, Mr. Zareh makes his regular monthly payments of \$4,000 to CRA to service the debt. Mr. Hyder stated that CRA seems to be content with this arrangement as they have not initiated any collection action, such as garnishment of his wages or bank account. He stated that the latest Notice of Assessment from CRA is in the amount of \$555,680.71, which Mr. Zareh does not, at this point, have the money to pay. Mr. Hyder stated that they communicate with CRA on a regular basis and it is their intention to negotiate a lower assessed amount so as to ultimately retire the debt.
- [39] Mr. Zareh testified that corporate tax returns had been filed by him. He explained that some years ago he sold a franchise and an accounting error resulted in the income from this being generated as personal versus corporate income, giving rise to his significant personal tax liability. It is true, as Mr. Miller pointed out, that Mr. Zareh provided no documentation to support this assertion, and Mr. Hyder appeared to have no knowledge of this as his accountant (though not his accountant at the relevant time).
- [40] There is no disputing that the tax arrears are very significant and that these amounts are owed by Mr. Zareh personally. He is not disputing his indebtedness.

There is no evidence that any enforcement action has been taken by CRA against Mr. Zareh. The fact that this appeal has been going on for almost four years has meant that the Registrar has been presented with an opportunity to continue its investigation of Mr. Zareh (for example, its more recent allegation regarding a CRTC violation), but it has also revealed that the tax arrears issue has apparently had no financial impact on Kingsway Real Estate. Ms. Volpe testified that she would have looked at the brokerage's inspection reports and audits when she reviewed this matter. There has never been a negative audit with RECO, nor any indication of issues with Kingsway's trust accounts or improper use of consumer funds or real estate commissions. Mr. Zareh has to answer to CRA for his failure to address his personal tax arrears situation, but there is no evidence that during all that time (apparently since 2002), he has not been financially responsible in the conduct of business.

- [41] Therefore I do not find that the CRA tax arrears give rise to a conclusion that Mr. Zareh cannot reasonably be expected to be financially responsible in the conduct of business, nor that the fact of significant tax arrears, on these facts, affords reasonable grounds to show that he will not carry on business in accordance with the law and with integrity and honesty. Albeit slowly, the evidence, especially that provided by Mr. Hyder, suggests that he is now addressing the tax arrears issues.
- [42] On March 6, 2019, two new documents were submitted into evidence, on consent of the parties. The first was a RECO Director's certificate dated March 5, 2019 certifying that on October 1, 2018, Kingsway Real Estate employed 771 registered individuals and on March 5, 2019, it employed 130 registered individuals. Mr Miller submitted that this showed a precipitous decline in staff and by inference, further reason for concern about financial responsibility and viability of the brokerage. Mr. Bhattacharya submitted a letter to him from Mr. Hyder dated February 20, 2019, which had not previously been disclosed. In this letter Mr. Hyder is sharing his understanding about the transfer of some of Kingsway's agents to another brokerage (iProRealty), based on discussion Mr. Hyder had with Mr. Zareh about a contract with this iProRealty. This is, he states, part of a plan to liquidate some of his personal and business assets to generate funds and negotiate a payment plan with CRA. Mr. Miller submitted that I should give this letter no weight for a variety of reasons: it was produced well after Mr. Zareh and Mr. Hyder testified, there was no reference to this in their testimony and therefore no opportunity to cross examine, the contract referred to has not been produced, and it is simply further obfuscation by Mr. Zareh.
- [43] It is true that there was no mention of the plan referred to in this letter until March 6<sup>th</sup>, 2019. We do not know when this contract was negotiated. It may not have

been in existence in October 2018 when Mr. Zareh testified or in November when Mr. Hyder testified. Mr. Hyder, on re-examination, stated that he had been told by Mr. Zareh that he was hoping to develop opportunities with partner businesses to generate more income to pay down his debt, but would likely only be able to do so when this matter was finally resolved. The letter does perhaps appear to respond to the RECO Director's certificate, from which I was urged to infer financial irresponsibility. However, in terms of the issues before me, I give both documents little weight. Both were submitted very late, without any opportunity for cross examination. But more importantly, questions that both documents may raise about how Mr. Zareh chooses to re-structure the business going forward to respond to his tax situation, absent evidence that it reveals a lack of financial responsibility or suggests an inability to act in accordance with the law and with integrity and honesty are beyond the scope of this hearing.

Issue: Did Mr. Zareh provide false statements in his applications for renewal of registration - s. 10 (1)(a)(iii) of the Act

- [44] As noted above, Mr. Zareh stated that he was not aware that he had to advise RECO of the CRA issue. The Registrar takes the position that this nondisclosure was in violation of s. 10(1)(a)(iii) and points to several of Mr. Zareh's application for renewal forms to support this allegation, specifically, question 5 on those forms.
- [45] On the 2003 renewal form, question 5 asked: "Are there any unpaid judgments outstanding against you?". Mr. Zareh responded "no". The exact same question appeared on the 2005 and 2007 renewal forms. He answered "no" each time. He did disclose on the 2003 renewal, in answer to a question about any personal bankruptcy, "yes" (as he did on his 2001 application form) and on his 2005 renewal he did disclose, in answer to a question regarding whether there were any charges pending against him, the sexual assault charges.
- [46] There was a change to the wording of question 5 on the 2011 renewal form. It read: "Are there any unpaid judgments and/or unpaid debts outstanding against you?" Again, Mr. Zareh responded "no" on his 2011, 2013 and 2015 forms. On an application for a new branch office submitted by Mr. Zareh in March 2016, he did disclose his involvement in another business (real estate coaching) and the costs endorsement of Donohue, J., the latter in response to question 5. He did not reference the CRA tax arrears.
- [47] Ms. Volpe testified that it is not RECO's expectation that every debt needs to be disclosed, such as personal debts like a mortgage or car loan. However, the Registrar asserts that Mr. Zareh has been untruthful regarding his CRA debt and that this constitutes a false statement.

- [48] It is noteworthy that RECO's most recent iteration of the application for renewal form in December 2016 (Exhibit 12) has expanded question 5. It now reads: "Are there any unpaid judgments and/or unpaid debts outstanding against you, including, but not limited to, CRA Requirements to Pay and garnishments...?" This is the first time specific reference to CRA debt appears in the question. A logical inference from this change is that it was previously not clear to registrants that a CRA debt was captured by that question. I accept Mr. Zareh's evidence that he did not know that this was a debt that he was required to disclose. He did not make the statement on the application knowing it to be false. I might have decided this differently had he not disclosed information in response to other questions in his renewal forms, such as those cited in paragraphs 45 and 46.
- [49] For example, I made note of the 2001 application form and the 2003 renewal form, where Mr. Zareh responded 'yes' to the question about personal bankruptcy. He added a note in 2001, "on file" and in 2003, "previously disclosed". There was no allegation about nondisclosure of the bankruptcy in the NOP, nor in Ms. Volpe's evidence, but in cross examination, when asked about his previous bankruptcy, Mr. Zareh responded that he never went through insolvency, though he did make a bankruptcy application. In fact, as Mr. Miller pointed out, he did go through with a bankruptcy and was discharged in October 1994. Mr. Zareh's testimony on this point may be confused. It is not unreasonable that his memory in October 2018 may have been weak on that point, but the fact is, it was disclosed in 2001 and 2003 and the Registrar appeared to have little concern about it then when it was a more recent event. Mr. Zareh's statements about the bankruptcy at this hearing do not suggest a lack of honesty in his answers and to suggest now, as counsel did in submissions, that the 1994 bankruptcy indicates a continued pattern of financial irresponsibility is unfair.
- [50] The assertion of nondisclosure/false statement arises in other areas which will be reviewed, below, and in particular in the context of the "other business" allegation.

#### Other business - the mortgage brokerage

Issue: Did Mr. Zareh provide false statements in his applications for renewal of registration - s. 10 (1)(a)(iii) of the Act

- [51] On November 14, 2011, Kingsway Capital Investment Ltd. ("Kingsway Capital") was incorporated with Mr. Zareh and Mr. Houshmand as sole directors and officers. On November 23, 2011 Kingsway Capital applied to the Financial Services Commission of Ontario ("FSCO") for a mortgage brokerage licence. Mr. Zareh was listed as the CEO and director and Mr. Houshmand was the principal broker. The licence was granted on December 12, 2011 and was then surrendered

on October 12, 2012, though a corporate records search still shows its status as “active”.

- [52] The Registrar asserts that operating as a real estate broker while simultaneously operating a mortgage brokerage has the potential to create conflicts of interest. Thus, Registrar needs to have the opportunity to review any potential conflicts of interest and therefore registrants must notify RECO of any employment and/or business dealing outside the profession of trading in real estate. Mr. Zareh never disclosed the existence of Kingsway Capital to RECO which the Registrar asserts he was required to do in accordance with s. 34 of Regulation 567/05 which directs that a registrant disclose any change to the information given on an application within five days of any change. On his application for renewal which had been filed on May 19, 2011, Mr. Zareh had answered a “no” to question 2 which asked: Are you, or will you be, engaged in any other business, occupation or profession? The answer was correct at that time. The Registrar alleges that Mr. Zareh was obliged to amend that answer as of December 12, 2011, though acknowledged that there is no information that this company brokered any mortgages.
- [53] On August 15, 2014, Mr. Zareh incorporated Kingsway Elite Incorporated (“Kingsway Elite”). Its address was in the same office complex as Kingsway. Mr. Zareh was the sole director. Kingsway Elite was licensed as a mortgage brokerage from October 1, 2014 to March 31, 2016. Mr. Zareh did not disclose any involvement in Kingsway Elite on his 2015 renewal nor did he provide notice of any change under s. 34 of the Regulation.
- [54] Ms. Volpe testified that the mortgage brokerage business is closely tied to the real estate business. The Registrar would want to be able to determine if there is any conflict of interest and to provide comment regarding best practices in that situation. A real estate agent is not barred from doing business in both capacities, but the agent must disclose the fact that they are doing both. The Registrar’s position is that the fact that Mr. Zareh did not disclose his involvement was false information which in and of itself is ground for revocation: the extent of his involvement is less important than the fact that he was eligible to be engaged or involved in the business.
- [55] In the application for a new branch office filed with RECO on March 4, 2016, after the Notice of Proposal was issued in September 2015, Mr. Zareh did not disclose Kingsway Elite in response to question 2. He did disclose a “real estate coaching business as of March 2016”. The fact that he made this disclosure about another business suggests that he did not make a decision to conceal the mortgage brokerage. Mr. Zareh testified that he did not disclose it because the mortgage

brokerage business was not active and it was not a business in which he was either engaged or employed. Indeed, Mr. Zareh has never himself been personally licensed with FSCO as a mortgage agent or broker. There is no evidence that he brokered any mortgages. One can question whether Mr. Zareh ought to have been more discerning or careful when answering questions on the application form, especially as a broker of record who must sign off on applications of real estate agents within his brokerage, but that is not the question before me.

[56] The definition of “business” in the Act reads: an undertaking carried on for gain or profit and includes any interest in such undertaking. This definition, the Registrar submits, captures Mr. Zareh’s involvement in Kingsway Elite. Though Mr. Hyder’s evidence was that the tax returns filed for Kingsway Elite showed net income of \$634 in 2014 and \$5,825 in 2015, for tax purposes, there were very few transactions shown on its bank statements. There were no payments for rent, utilities or payroll.

[57] Mr. Zareh did indeed have an interest in Kingsway Elite, and there was likely an intention for profit to be earned, but question 2 asks whether he was engaged or employed in the business. On the evidence before me, he was not. It is worth noting too that the new application form (as of December 2016) expands the wording of question 2 to include asking whether the applicant is registered or licensed in any other business. This new wording may have captured Mr. Zareh’s connection to Kingsway Elite.

[58] Based on the foregoing, I do not find that Mr. Zareh made a false statement on his application form so as to disentitle him to registration. Nondisclosure was in the nature of an ‘honest mistake’ which may happen as noted by the Court in *Registrar, Motor Vehicle Dealers Act, 2002 v. Vernon* 2016 ONSC 304 (CanLII). Given this finding, I also do not find that this is ‘past conduct’ which gives reasonable grounds to believe that Mr. Zareh will not act in accordance with the law and with integrity and honesty.

#### The CRTC Notice of Violation

Issue: Does Mr. Zareh’s past conduct afford reasonable grounds for belief that he will not carry on business in accordance with law and with integrity and honesty - s.

10(1)(a)(ii)

[59] A Notice of Violation was issued by the Canadian Radio-television and Telecommunications Commission (“CRTC”) against Kingsway Real Estate in February 1, 2016 with a penalty amount of \$70,000. The CRTC determined that between July 1, 2013 and August 31, 2015, real estate agents acting on behalf of

Kingsway Real Estate initiated telemarketing telecommunications to consumers in violation of the prescribed rules for “do not call lists”. The penalty was paid by Kingsway.

- [60] Ms. Volpe testified that the notice of violation came to RECO’s attention recently. It was not included as an allegation in the NOP. The Registrar cites it as another instance of conduct that suggests a lack of integrity and a failure of Mr. Zareh and Kingsway to act in accordance with law. The Registrar is not citing it for a failure to disclose as per s. 10(1)(a)(iii) of the Act.
- [61] Mr. Zareh stated that he did not know which agents contravened the “do not call” list, but he did not dispute that it occurred and paid the penalty. He pointed to issues at that time with the tele-listing service used by Kingsway (and still used by it). He was required to post on the Kingsway website that they had received a penalty for this violation and he did so. The Notice of Violation document submitted by the Registrar shows that between January and October 2016 approximately 24 businesses, several of which were real estate companies, received a notice of violation for amounts between \$25,000 and \$650,000.
- [62] Ms. Volpe did not suggest in her evidence that had RECO known about the penalty at the material time, it would have taken any action against Kingsway or Mr. Zareh. While not minimizing that a violation was imposed nor Mr. Zareh’s oversight role as a broker of record, there is a distinction that can be drawn between issues of integrity and honesty and the exigencies of doing business with approximately 700 agents within the umbrella of Kingsway. I do not find that the fact that the CRTC levied a penalty against Kingsway provides reasonable grounds to believe that Mr. Zareh will not act in accordance with law or with integrity and honesty.

Summary of findings regarding allegations against Akbar Zarehhossainabadi and Kingsway

- [63] Regarding the various allegations against Mr. Zareh, outlined in detail above, which here, as noted at the outset, apply to Kingsway as well, I have found that Mr. Zareh’s conduct in relation to the theft incident, in 2009, and in and around the time of the civil trial in 2015 indicates a lack of integrity and honesty pursuant to s. 10(1)(a)(ii) of the Act. I have not found, with respect to the particulars of the CRA debt, the bankruptcy, the “other business” or the CRTC violation that these support a negative finding regarding s. 10(1)(a)(ii) of the Act. The Registrar submits that cumulatively these reflect conduct that supports a finding that Mr. Zareh will not act in accordance with the law or with integrity and honesty. I have not found that taken together these give rise to the requisite ‘reasonable grounds’ for belief.

Furthermore, the reasonableness of relying on some of these events (like the bankruptcy and the sexual assault conviction) to ground an inference concerning any future risks is impacted by the passage of time.

- [64] I have also not found that the particulars of the CRA debt, the bankruptcy, the “other business” or the CRTC violation that these support a negative finding regarding s. 10(1)(a)(i) or (iii) of the Act. The perfunctory approach to completion of forms by Mr. Zareh, whether tax returns or application forms, is not condoned, but it does not support the findings sought by the Registrar. And the looking at the evidence about the bankruptcy and the CRA debt cumulatively, and taking into consideration all of the evidence regarding Mr. Zareh’s financial position and the operation of the brokerage, the allegation that he cannot reasonably be expected to be financially responsible in the conduct of business in the future is not supported.
- [65] Given the foregoing, and pursuant to s. 14 of the Act, I have concluded that the finding I have made regarding the theft incident does not in and of itself require revocation. Considering all of Mr. Zareh’s past conduct revocation is not warranted. A range of remedies are available to the Tribunal. As the courts have noted, where the threshold of s. 10 has been met, albeit at the lower end of the threshold, conditions on registration may be an appropriate remedy. I have concluded that in this particular case, conditions are appropriate to respond to issues highlighted in this decision and to emphasize to Mr. Zareh the seriousness with which RECO and this Tribunal regard his conduct in 2009 and at the civil trial in 2015 as well as the need to be diligent in completion of forms and providing information required by RECO both on his own behalf and for those agents working at Kingsway.

### Conditions

- [66] When deciding whether to impose conditions, I did consider the arguments from the Registrar (applicable to both of the individual appellants) that these are not appropriate. Ms. Volpe stated that conditions are not appropriate when deceitful conduct is found or where there has been a pattern and history of failing to report on a voluntary basis. However, when there were allegations and a subsequent conviction for sexual assault, conditions were imposed on Mr. Zareh by the Registrar. He complied with those conditions. If I had found here that Mr. Zareh was in fact deceitful in respect of any of his reporting requirements in relation to his application forms, I might be less inclined to impose conditions. Several concerns were raised in submissions; for example that Mr. Zareh continues to have a CRA debt. This is true and he is likely to have a debt for some time given

the amount owing, but as heard in evidence he is making payments and CRA appears prepared to continue to work with him in this regard. It has had no impact on his business nor consequences for the public. A concern was also raised that as the broker of record, he is effectively the supervisor and therefore there is no one in place to monitor him. This may be so, and the nature of the condition such as that which the Divisional Court dealt with in *Registrar, Real Estate and Business Brokers Act v. Stolberg* 2017 ONSC 5904 (Can LII) does have an impact; however, RECO is ever present as the regulator with the ability, as we have seen through this proceeding, to readily do checks on a registrant, whether it be through writ execution or criminal record checks or through its own database. This is relevant given the conditions which are being imposed here. Furthermore, as Mr. Zareh should now be acutely aware, failing to strictly comply with any regulatory or licence requirement will likely bring swift action by the Registrar.

[67] Therefore, I have concluded that the following conditions on Mr. Zareh's registration are appropriate and responsive to issues raised and the findings made at this hearing. These conditions will attach to Mr. Zareh's registration for a period of four years from the date of this decision and order.

1. Pursuant to subsection 19(4) of the Act, Mr. Zareh shall enroll in the Ethics in Business Practice Course (REIC 2600) offered by the Real Estate Institute of Canada and provide proof of successful completion of the course on or before December 31, 2019.
2. Mr. Zareh shall immediately notify the Registrar in writing if any complaints (including, without limitation, any ethics complaints) are made against him by members of the public or other registrants under the Act, and shall provide details of such complaints and any documentation that the Registrar may require, and will allow any third party (including without limitation, any local real estate board or the Ontario Real Estate Association) to release any information or documentation to the Registrar.
3. Mr. Zareh shall notify the Registrar's office immediately in writing (and by no later than five days, in accordance with s. 34 of Ontario Regulation 567/05), of any change to information that was included in any application filed by him in his personal capacity or on behalf of Kingsway, and shall set out the nature of the change.

## **Rouhollah Houshmand**

[68] As noted above, the Registrar relies on s. 10(1)(a)(i)-(iii) and submits that findings under each of those sections taken together also highlight an overarching lack of honesty and integrity.

### The theft

Issue: Does Mr. Houshmand's past conduct afford reasonable grounds for belief that he will not carry on business in accordance with law and with integrity and honesty - s.

10(1)(a)(ii)

[69] This incident will not be reviewed in detail again, given the summary provided already. It is clear on the evidence that Mr. Houshmand did help Mr. Zareh remove items from the home on the day before closing. The piano was to be his, for his son's use. The Registrar's position is that this conduct alone would not be grounds for the NOP against Mr. Houshmand, but coupled with the fact that he failed to make inquiries as to whether Mr. Zareh had permission to remove the piano or any other item raises serious concerns. Ms. Volpe testified that as a registered real estate agent, Mr. Houshmand ought to have asked Mr. Zareh by whose authority they were removing the items.

[70] Mr. Houshmand made no such inquiries. He simply accepted Mr. Zareh's statement at face value that a piano was available and that he had permission to take it. Mr. Houshmand testified that he had no reason to think that Mr. Zareh did not have the "ok"; he had no reason to doubt him. Mr. Zareh was a friend and his boss. Mr. Houshmand stated that with the benefit of hindsight (and after hearing Ms. Oliviera's testimony), he would approach things differently.

[71] Mr. Houshmand has never had a complaint or disciplinary action taken against him by RECO. He has been a real estate broker in Ontario since 2002. At its worst, his participation in the removal of the items from the home was a lapse in judgment on his part. It reflects a reluctance to question Mr. Zareh given their relationship, but I cannot conclude that it is indicative of conduct that affords reasonable grounds for belief that Mr. Houshmand will not carry on business in accordance with law and with integrity and honesty.

### The Consumer Proposal

Issue: Having regard to Mr. Houshmand's financial position, can he reasonably be expected to be financially responsible in the conduct of business - s. 10 (1)(a)(i)

- [72] There is no question, based on the evidence before me, that Mr. Houshmand has experienced significant financial difficulties and that he has, in the past, not been particularly adept in his business dealings. The question though is what impact, if any, this has had or will have in the conduct of his real estate dealings. We are not required to determine whether he has been astute in his other business endeavour as a restaurant owner. There is no dispute - that business failed. Related to the issue of the consumer proposal and Mr. Houshmand's indebtedness is the Registrar's concerns about his integrity and honesty.
- [73] In October 8, 2014, Mr. Houshmand filed a consumer proposal with BDO Canada Limited ("BDO"), a trustee, and advised RECO on October 27, 2014. In the consumer proposal, BDO stated: "...we are of the opinion that the cause of the consumer debtor's insolvency is loss of business, marital separation and over extension of credit." The estimated claims totalled \$128,705. Under the proposal, the creditors would receive a greater dividend than they would in a bankruptcy. Mr. Houshmand would pay \$400 /month for 60 months.
- [74] RECO responded on November 18, 2014 that they were prepared to allow Mr. Houshmand to continue to be registered, on terms. Specifically, Mr. Houshmand was to inform the Registrar as to the progress of the consumer proposal and to provide updates until the proposal was fully performed, including providing a certificate of completion. The Registrar states that Mr. Houshmand has not provided any information since he signed the agreement to these conditions.
- [75] The evidence shows that Mr. Houshmand has not kept the Registrar informed about the status of the consumer proposal. This, the Registrar also alleges, shows a lack of integrity and honesty. However, the evidence also shows that he has continued to make payments. In reply, the Registrar called Lorraine Giroux as a witness. Ms. Giroux is the licensed insolvency trustee at BDO who is administering the consumer proposal. She testified that the initial proposal of October 8, 2014 was rejected by the creditors and was subsequently amended on December 12, 2014. The amended proposal called for payments of \$400/month for 12 months followed by payments of \$600/month for 48 months, thereby changing the total amount paid under the proposal from \$24,000 to \$33,600. Mr. Houshmand agreed to this change and provided pre-authorized payments for these monthly payments (though in his testimony at the hearing he did seem confused about this change, expressing a lack of awareness of it). This was the only status update to his consumer proposal that could have been disclosed, and in light of Ms. Giroux and Ms. Volpe's testimony, it does not seem particularly material given that he continued to meet his obligations under the consumer proposal. There is no

evidence that he intended, deliberately or otherwise, not to meet the conditions placed on his registration in November 2014.

- [76] Ms. Giroux testified that Mr. Houshmand has made all his payments and stated that she found him to be forthcoming and honest in his dealings with her.
- [77] Ms. Volpe reiterated in her testimony that a bankruptcy or consumer proposal does not preclude registration. The Registrar's concern about Mr. Houshmand's financial responsibility, and his integrity and honesty, seemed to arise after they reviewed the transcript of the trial before Donohue, J. Mr. Houshmand testified as a witness at the trial. At the trial, he stated that after his restaurant closed in March 2012 (his business partner had pulled out and left him with, among other things lease payments of \$31,000 for equipment), he went "incognito" until about June 2013. He had creditors chasing him and was trying to evade them by making it impossible for people to contact him. He simply did not want to deal with things. He had separated from his wife by 2010, fallen on hard times financially and had an accident in 2013 that left him unable to work for some time. He was living with his father and/or friends. However, by the fall of 2014 he was pulling himself together. Filing of the consumer proposal was a part of the process to get himself back on track.
- [78] When a registrant's history, financial and otherwise, is put under the microscope as Mr. Houshmand's was as a result of the Donohue judgment, it is not surprising that issues may be highlighted and discrepancies noted. The question is whether these are significant within the parameters of s. 10 of the Act. When one asks whether Mr. Houshmand's response to his financial situation by attempting to evade creditors in March 2012 was prudent, or responsible, the answer is clearly "no". But it was also relatively short lived as a response. Mr. Houshmand has initiated efforts to rehabilitate his financial situation. He has been employed as a contractor steadily for four years, in addition to any real estate work.
- [79] On its face, indebtedness like that of Mr. Houshmand's can give rise to concerns about financial responsibility; however, the particular facts must be considered. The fact of his indebtedness as revealed by the consumer proposal was not of significant concern to the Registrar. It is true that one of his creditors, Equirex, to whom he owes approximately \$40,000 in respect of the restaurant business, did not agree to the terms of the consumer proposal and therefore the consumer proposal will not retire that debt (which would have been known when disclosure was provided in 2014), but at this point they have not pursued enforcement. Should Equirex pursue enforcement, Mr. Houshmand's response may impact an assessment of financial responsibility in the future. Mr. Houshmand has shown an

ability to service a substantial portion of his debt through his consumer proposal, which should be satisfied by the end of 2019. Based on the evidence of Mr. Houshmand's current financial position, I conclude that he can reasonably be expected to be financially responsible in the conduct of business.

Issue: Did Mr. Houshmand provide false statements in his applications for renewal of registration - s. 10 (1)(a)(iii) of the Act

- [80] This issue also arose in reference to Mr. Houshmand's application for renewal filed in December 2013. On that application form, in response to question 5- are there any unpaid judgments and/or unpaid debts outstanding, he answered "no". This was incorrect. He knew there were unpaid debts. He had been avoiding contact with these creditors. The conclusion to be drawn from this is that it was a false statement knowingly made.
- [81] In closing submissions, Mr. Smith urged upon me that if I find that a false statement was made, I must revoke in light of the Divisional Court decision in *Registrar of Alcohol and Gaming v. Hosseini –Rad* [2004] CanLII 34450 ("Hosseini-Rad"). I do not agree that the strict test of Hosseini-Rad is applicable here; it was a decision under the Liquor Licence Act which is structured somewhat differently in terms of its wording on entitlement to registration. As previously noted in this decision, section 13(1) of the Act states that the registrar may suspend or revoke a registration if in his or her opinion, the applicant is not entitled to registration under section 10. This language is discretionary. I have determined here that Mr. Houshmand made a false statement in his response to question 5. Whether it was a deliberate attempt to mislead the Registrar is not the issue; the issue is whether he knew of the falsity of the information. But under the Act, I do have the discretion to determine the appropriate outcome from the available options including registration with or without conditions, revocation or suspension. In this instance, based on the facts before me, and particularly when approximately nine months after this application for renewal, Mr. Houshmand did disclose his indebtedness through the consumer proposal and the Registrar saw fit to continue to register on terms, I have concluded that revocation is too harsh a result.
- [82] I do note, as I did with respect to Mr. Zareh, that Mr. Houshmand needs to exercise greater care and diligence in completion of application forms and in his responses to RECO. However, this does not imply an attempt to mislead RECO nor did I find that Mr. Houshmand in his testimony attempted to mislead the Tribunal though this was suggested by Mr. Smith. Mr. Houshmand's memory may not have been strong at times (for example, about whether he was making

minimum payments on his debts in the period before he filed his consumer proposal), but I found him to be a credible witness, who made a concerted effort to answer questions to the best of his ability.

#### Other business - the mortgage brokerage

Issue: Did Mr. Houshmand provide false statements in his application for renewal of registration - s. 10 (1)(a)(iii) of the Act

- [83] Mr. Houshmand was licensed as a mortgage broker by FSCO intermittently between July 2008 and March 2016. He was the principal broker for both Kingsway Capital and Kingsway Elite. Every mortgage brokerage must designate a principal broker to manage the affairs of the brokerage.
- [84] In his applications for renewal in December 2009 and December 2011, Mr. Houshmand answered “yes” to question 2: “are you or will you be engaged or employed in any other business, occupation or profession?” He did not provide any details on the form. Ms. Volpe testified that the first time RECO would have received a “yes” answer to question 2, they would likely follow up with the registrant for details if not provided. In light of her evidence that they would want to explore if the other business might pose a conflict of interest, one would expect further inquiry, though there is no evidence of that before me. Mr. Houshmand testified that he did provide further details by fax or email, which also seems reasonable, though again there is no evidence of that exchange.
- [85] Mr. Houshmand testified that at various times throughout the period of his licence history, he “parked” the mortgage broker licence with an existing licensed brokerage. They paid his errors and omissions insurance but he was not active. Given the evidence about Mr. Houshmand going ‘incognito’ from March 2012 to June 2013, and finally addressing his financial issues in the fall of 2014 this is credible. He was registered as a broker (versus principal broker) with Mortgage Leaders Group from September 2012 - September 2014. At the time of the renewal application in December 2013, he answered “no” to question 2. He was not actively engaged at that time. There may be a question whether the fact that he was still licensed required a ‘yes’ answer, but in light of previous disclosure, and the subsequent disclosure referred to below, I conclude based on the *Vernon* decision that this was an honest mistake, with no intention to falsify.
- [86] Mr. Houshmand then advised RECO by letter dated December 12, 2014 that “as of recently I have obtained my mortgage Broker Licence and am now actively involved in processing mortgages while practicing my real Estate career as well.” There is no evidence of any comment provided by RECO in response to this

notification although they did acknowledge receipt. The Registrar has highlighted the word 'recently' suggesting that I should draw the inference that Mr. Houshmand had not disclosed his mortgage broker licence previously. Based on the evidence, that is not a conclusion I can reach. While 'recently' may seem an unfortunate choice of words at that juncture, it also reflects the fact that as of October 2014, he became the principal broker of Kingsway Capital.

[87] Based on the foregoing, I do not find that Mr. Houshmand made a false statement on his application form so as to disentitle him to registration.

#### Summary of findings regarding allegations against Rouhollah Houshmand

[88] Regarding the various allegations against Mr. Houshmand, I have found that he made a false statement on his application for renewal filed in December 2013 in response to question 5 - are there any unpaid judgments and/or unpaid debts outstanding, in violation of s. 10(1)(a)(iii) of the Act. I have not found, with respect to the particulars of the theft, the consumer proposal or the 'other business' that these support a negative finding regarding s. 10(1)(a)(i) or (ii) of the Act. The Registrar also submits that cumulatively these reflect conduct that supports a finding that Mr. Houshmand will not act in accordance with the law or with integrity and honesty. In light of my conclusions in respect of the particulars of the theft, the consumer proposal or the 'other business' allegations, I have not found that taken together these give rise to the requisite 'reasonable grounds' for belief.

[89] I have reviewed the Registrar's submissions regarding conditions above. One concern about conditions on Mr. Houshmand raised by the Registrar is that he did not comply with the conditions on his registration to keep the Registrar informed about the status of his consumer proposal. For the reasons set out previously, I do not find that argument to be compelling – the only change in status was the increased monthly amount which he did and continues to honour. I have concluded that the following conditions on Mr. Houshmand's registration are appropriate and responsive to issues raised and the findings made at this hearing, and in particular, in relation to his indebtedness now or ongoing. These conditions will attach to Mr. Houshmand's registration for a period of four years from the date of this decision and order.

1. Pursuant to subsection 19(4) of the Act, Mr. Houshmand shall enroll in the Ethics in Business Practice Course (REIC 2600) offered by the Real Estate Institute of Canada and provide proof of successful completion of the course on or before December 31, 2019.

2. Mr. Houshmand shall provide the Registrar with a certificate of completion of the consumer proposal within five days of its issuance.
3. Mr. Houshmand shall notify the Registrar's office immediately in writing (and by no later than five days in accordance with s. 34 of Ontario regulation 567/05), of any change to information that was included in any application filed by him and of any judgment is rendered against him for any unpaid debt or if there are any other unpaid debts outstanding.

## **ORDER**

Pursuant to the authority vested in it under the provisions of the Act, the Tribunal directs the Registrar not to carry out the Proposal to revoke the registrations of Akbar Zarehhossainabadi, Kingsway Real Estate Inc. and Rouhollah Houshmand.

The Tribunal orders the registration of Akbar Zarehhossainabadi shall be subject to the following conditions:

1. Pursuant to subsection 19(4) of the Act, Mr. Zarehhossainabadi shall enroll in the Ethics in Business Practice Course (REIC 2600) offered by the Real Estate Institute of Canada and provide proof of successful completion of the course on or before December 31, 2019.
2. Mr. Zarehhossainabadi shall immediately notify the Registrar in writing if any complaints (including, without limitation, any ethics complaints) are made against him by members of the public or other registrants under the Act, and shall provide details of such complaints and any documentation that the Registrar may require, and will allow any third party (including without limitation, any local real estate board or the Ontario Real Estate Association) to release any information or documentation to the Registrar.
3. Mr. Zarehhossainabadi shall notify the Registrar's office immediately in writing (and by no later than five days in accordance with s. 34 of Ontario regulation 567/05), of any change to information that was included in any application filed by him in his personal capacity or on behalf of Kingsway and shall set out the nature of the change.

The Tribunal orders that the registration of Mr. Houshmand shall be subject to the following conditions:

1. Pursuant to subsection 19(4) of the Act, Mr. Houshmand shall enroll in the Ethics in Business Practice Course (REIC 2600) offered by the Real Estate Institute of Canada and provide proof of successful completion of the course on or before December 31, 2019.
2. Mr. Houshmand shall provide the Registrar with a certificate of completion of the consumer proposal within five days of its issuance.
3. Mr. Houshmand shall notify the Registrar's office immediately in writing (and by no later than five days in accordance with s. 34 of Ontario regulation 567/05), of any change to information that was included in any application filed by him and of any judgment is rendered against him for any unpaid debt or if there are any other unpaid debts outstanding.

LICENCE APPEAL TRIBUNAL



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Patricia McQuaid, Vice-Chair

*Released: June 11, 2019*