

Licence Tribunal
Appeal d'appel en
Tribunal matière de permis



DATE: 2016-06-02
FILE: 9815/REBBA
CASE NAME: 9815 v. Registrar, *Real Estate and Business Brokers Act 2002*

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

Robert Earl Harvey

Appellant

-and-

Registrar, *Real Estate and Business Brokers Act 2002*

Respondent

REASONS FOR DECISION AND ORDER

ADJUDICATOR: Mary Ann Spencer, Member

APPEARANCES:

For the Appellant: Stacey Nichols, Counsel

For the Respondent: Timothy Snell, Counsel
Shaun Chu-A-Kong, Counsel

Heard in Toronto: April 25, 26, 27 and 28, 2016

REASONS FOR DECISION AND ORDER

BACKGROUND

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 August 28, 2015 proposes to revoke the registration of Robert Earl Harvey (the “Appellant”) as a salesperson under the Act.

The grounds for the proposal are that the Registrar has reasonable grounds to believe that the Appellant will not carry on business in accordance with law and with integrity and honesty. In summary, the Registrar alleges that the Appellant facilitated the trading without registration under the Act, of Paul Jaigo, an individual whose registration had been revoked for cause.

EVIDENCE AND FACTS

The evidence of the Registrar consisted of documents and the testimony of nine witnesses, including registrants Ronald Puccini, Chad Campbell, Stephen Rath, Gurminder Singh, Elechia Barry-Sproule, and Danny Tulshi; Royal LePage Trinity office administrator Tisha Boutet; and consumers R.S. and T.C. The Registrar’s documents were entered as follows:

Registrar’s Books of Documents, Volumes 1 to 4	Exhibit 3
Sentrilock Lockbox Access Log	Exhibit 5
Note: R. Harvey e-mail & cell phone	Exhibit 6
Tribunal Decision re: Paul Jaigo	Exhibit 7
Transcript of RECO Investigator’s Interview With the Appellant	Exhibit 8

The Appellant’s evidence comprised his testimony and a book of documents entered as Exhibit 4.

The Appellant was first registered under the Act on September 13, 1984. The allegations in the Registrar’s Notice of Proposal relate to transactions which occurred while he was registered at Huronia Real Estate Inc. o/a Royal LePage at Your Service Realty (“RLAYS”) where he worked between May 10, 2012 and February 26, 2014.

Paul Jaigo was registered under the Act from August 4, 1989 to March 2, 2012 when his registration was revoked following a hearing by this Tribunal. The Appellant testified that he met Mr. Jaigo when they both worked at Sutton Group – Commitment Realty Ltd. (“Commitment Realty”) The Directors’ Certificates filed in Exhibit 3 indicate that Mr. Jaigo was registered at Commitment Realty roughly continuously between September 27, 1999 and April 23, 2010. The Appellant was also registered at Commitment Realty from July 28, 1999 to October 31, 2000 and from November 21, 2000 to September 16,

2003. The Directors' Certificates also indicate that they were both registered at Homelife Superstars Real Estate Limited during a six month period in 2010.

The allegations in the Notice of Proposal relate to four properties in Wasaga Beach and two properties in Brampton. The evidence for each of the properties is set out separately, below.

The Wasaga Beach Properties

Offers to purchase properties at 106 43rd Street North, 55 47th Street and 689 Mosley Street in Wasaga Beach were all made by consumer R.S. who ultimately purchased 689 Mosley Street.

R.S. testified that he was seeking a retirement home and he contacted Paul Jaigo who he knew because he had previously purchased property with his assistance. R.S. was told by Mr. Jaigo that he would be working with the Appellant for the Wasaga Beach search. R.S. went to Wasaga Beach to view properties three or four times and stated that he saw most properties with the Appellant and Mr. Jaigo.

106 43rd Street

R.S. testified that he could not recall viewing 106 43rd Street but agreed that he signed an Agreement of Purchase and Sale ("APS") for the property dated May 13, 2013, and testified that both the Appellant and Mr. Jaigo were present when he signed it. He could not recall who completed this document but stated that they all sat together and either the Appellant or Mr. Jaigo explained it to him. He could not recall who provided him with the Confirmation of Co-operation and Representation form, but testified the Appellant explained it to him. Similarly, he could not recall to whom he gave the required \$5,000 deposit, stating it was "Robert or Paul". The transaction was not completed because R.S.'s wife did not like the property. He is not sure who provided him with the refund of his deposit; nor could he recall who provided him with the Mutual Release form.

Robert Puccini has been employed by Re/Max of Wasaga Beach for 24 years. The property at 106 43rd Street was Mr. Puccini's listing. Mr. Puccini testified that two showings of the property were booked by the Appellant; one on May 11, 2013 and one on May 21, 2013. On May 11th, while he was at the property, Paul Jaigo introduced himself and told Mr. Puccini he worked for the Appellant. Because Mr. Jaigo was showing the property, Mr. Puccini assumed he was a realtor.

Mr. Puccini later received a request from Mr. Jaigo and, on May 12th, responded to him by e-mail. On May 13th, he forwarded this e-mail to the Appellant. Mr. Puccini explained that at some point he had a conversation with the Appellant, asked him who Mr. Jaigo was, and was told he worked for the Appellant. To the best of his recollection, he did not receive the Appellant's telephone number from Mr. Jaigo but looked it up.

On May 14, 2013, Mr. Puccini received an e-mail from “Rico Gopaul” attaching an offer, with conditions, for 43rd Street. Mr. Puccini did not question who this e-mail was from because its subject line refers to “P. Jaigo”. He sent a counteroffer removing one of the conditions, to the Appellant. On May 16th, he sent an e-mail to the Appellant indicating that he had not received all of the pages of a sign-back, and on May 17th, he sent a signed-back offer to the Appellant. On May 21, 2013, the deposit of \$5,000 was delivered in person by Mr. Jaigo to Mr. Puccini. Mr. Puccini asked him for a business card which Mr. Jaigo did not have. He then asked him if he had a copy of his real estate licence which he also did not have.

Mr. Puccini testified that the transaction was not completed because the buyers were unable to obtain financing. On May 29, 2013, he wrote the Appellant to explain there would be a delay in return of the deposit. On May 30, 2013, a Mutual Release form was faxed to him from RLAYS. After he had received the Mutual Release, he told his broker of record his suspicion that Mr. Jaigo was not licensed.

Counsel for the Respondent referred Mr. Puccini to the Confirmation of Co-operation and Representation form from the RLAYS file (Exhibit 3, Vol. 4, Tab 16D) and to the same document from Mr. Puccini’s records (Exhibit 3, Vol. 1, Tab 7). Both documents indicate RLAYS, with the Appellant’s name, is the Co-operating/Buyer Brokerage. However, the brokerage fax number and the signature are different on the documents. Mr. Puccini testified that he did not sign two documents.

The Appellant testified that Mr. Jaigo told him that R.S., whom the Appellant had met previously through Mr. Jaigo, wanted to buy a property in Wasaga Beach. He met with R.S. on May 3, 2013 and did some preliminary paperwork. Showings were booked for May 11, 2013 and the Appellant arranged to meet R.S. in Wasaga Beach. However, he injured himself in the morning, called R.S. and cancelled. He did not cancel the viewing appointments. He later went with R.S. to view 43rd Street after R.S. had put in his offer. Asked how Mr. Jaigo was able to view the property on May 11th without lockbox codes, the Appellant suggested he might have written them on MLS printouts.

The Appellant testified that he had no knowledge of the APS which R.S. signed for 43rd Street until he was called by Mr. Puccini. He gave no one permission to use his name on the offer and did not sign it. He acknowledged that the fact his contact information was used implied that Mr. Jaigo was expecting him to become aware of the transaction, and he noted that he did not know what Mr. Jaigo expected to get away with. He explained he “stepped in” once the offer had been put in his name, stating that his attitude has always been to “close the deal”. He stated he “figured I could deal with other problems later”. He acknowledged that he did receive e-mails from Mr. Puccini but he stated he had no knowledge of e-mails Mr. Puccini sent to Mr. Jaigo. He did not tell Mr. Puccini that Mr. Jaigo worked for him. Rather, he advised him that Mr. Jaigo had worked for him, but for the purpose of the offer, Mr. Harvey would deal with it and Mr. Jaigo would not be involved. With respect to the two versions of the Confirmation of Co-operation and Representation, Mr. Harvey stated that the signature on one is “close”

to his and he thinks the other was signed by Mr. Jaigo. Ultimately, R.S. told Mr. Harvey that he could not obtain financing and the transaction failed. Mr. Harvey did not sign the Mutual Release form.

55 47th Street

Chad Campbell has been registered under the Act since 1989 and has been a broker with Royal LePage Trinity Realty since 2001. The property at 55 47th Street was his listing. Mr. Campbell testified that the list of showings on this property indicates Mr. Harvey saw it on both May 11 and May 21, 2013 but the document lists different brokerage names and phone numbers on those dates. Mr. Campbell was not contacted by the Mr. Harvey before the showings.

Mr. Campbell received an APS from R.S dated May 11, 2013 which indicates the co-operating brokerage is RLAYS. The document was e-mailed to him from "Rico Gopaul". On May 13, 2013, Mr. Campbell e-mailed a counter-offer to the Appellant at a sympatico.ca e-mail address he had recorded along with a cell phone number. He did not receive any e-mails back from this address. On May 14th, he sent an e-mail to the Rico Gopaul address inquiring if the counter offer had been received. On May 16th, he received an e-mail from the Appellant from a bell.net address which copied Paul Jaigo. On May 17th, he received another e-mail from Rico Gopaul. He then received a phone call from the cell number from an individual he described as having a noticeable accent. Until he received this phone call he assumed he was dealing with the Appellant.

R.S. confirmed he signed the APS for 47th Street. Either "Robert or Paul" gave it to him but he could not recall who explained it to him. He noted that he submitted three or four offers for properties in Wasaga Beach but could not recall in which order they were done. He could not recall why he did not purchase the 47th Street, stating that it might have been because of the price.

The Appellant testified that he did not see 47th Street personally and had no contact with Mr. Campbell until after the offer had been made. Mr. Jaigo prepared the APS, which is not in the Appellant's handwriting. Asked if he was involved in the Confirmation of Co-operation and Representation, he stated "not really" and noted that it is incomplete and unsigned. He also testified that his business e-mail is a bell.net address and not the sympatico.ca e-mail address obtained by Mr. Campbell. This is why Mr. Campbell did not get a response to the e-mail sent to the latter address. When the Appellant e-mailed Mr. Campbell, he copied Paul Jaigo at "Rico Gopaul" because R.S. did not have an e-mail address. Asked why he inserted himself into this transaction, Mr. Harvey stated the "deal is paramount" and he will work problems out after; the parties have no idea that there's a problem with the broker. No paperwork was submitted to RLAYS on this transaction because the transaction failed.

689 Mosley Street

Darlene Anstey has been registered since 1993 and has been a broker at Royal Lepage Trinity Realty Wasaga Beach since 1996. Ms Anstey listed the property at 689 Mosley Street for sale on March 10, 2013. She testified that the record of showings for this property indicate that the Appellant showed the property on May 21, 2013. She received an APS from R.S. dated May 22, 2013. The Confirmation of Co-operation and Representation for this property lists Sutton Royal Realty as the co-operating brokerage and was signed by Danny Tulshi. However, the APS, at page 4, indicates Mr. Jaigo is the contact. On May 23, 2013, Ms Anstey e-mailed an offer back to Mr. Jaigo. On May 27, 2013, she was notified that a deposit cheque had been dropped off by Mr. Tulshi. On May 28, 2013, she e-mailed the name of the sellers' lawyer to Mr. Jaigo.

On May 28, 2013, Ms Anstey received an e-mail from the Appellant's bell.net address attaching an Amendment to the Agreement of Purchase and Sale which removed a condition and changed the co-operating brokerage from Sutton Royal Realty to RLAYS. She testified that this was the first she had seen an amendment used for this purpose.

R.S. testified that Mr. Tulshi is a real estate agent who is a friend of Mr. Jaigo's whom Mr. Jaigo worked with in the past. Asked if he spoke to Mr. Tulshi about any of the properties he saw, or received any real estate advice from him, R.S. stated he met him once in Wasaga Beach. R.S. saw 689 Mosley St. twice; first with the Appellant and then with Mr. Jaigo and Mr. Tulshi. He testified that the Appellant and Mr. Jaigo were with him when he signed the APS. Asked about Mr. Tulshi's involvement, R.S. stated that he did not speak to Mr. Tulshi about the property. Asked to whom he gave the deposit cheque, he replied "Mr. Jaigo" but then immediately stated he could not remember. Mr. Jaigo gave him the Confirmation of Co-operation and Representation which was signed by Mr. Tulshi. R.S. believes he was at Mr. Jaigo's house when he signed it. He was later asked by Mr. Jaigo to sign a document to change the brokerage to RLAYS because the Appellant had first shown him the property. With respect to the Buyer Representation Agreement with RLAYS which the Appellant signed on May 3, 2017, R.S. acknowledged he signed it but could not recall whether this was before or after the offer for the property was submitted.

On cross-examination, R.S. confirmed that he initially made the offer on 689 Mosley Street with Mr. Tulshi but because he had an agreement with the Appellant, he changed the brokerage. Asked if he went to Wasaga Beach with Mr. Jaigo because the Appellant was unable to attend, he indicated he did not recall although he agreed he and Mr. Jaigo went alone once. He agreed that Mr. Jaigo told him he worked as a team with the Appellant. Asked if he had viewed properties with Mr. Tulshi, he stated he did one day but did not recall which properties.

Gurminder Singh has been a real estate broker since 2004. Mr. Singh had previously worked at Commitment Realty but formed Sutton Royal Realty in 2012, taking 50 agents, including Danny Tulshi, with him. He had no complaints or issues with Mr. Tulshi. Mr. Singh also knew Paul Jaigo, who was an agent at Commitment Realty when

he first joined that brokerage in 2004. Mr. Jaigo has never worked for Mr. Singh's company. Mr. Singh has never met the Appellant.

In 2013, Mr. Singh was the broker of record at Sutton Royal Realty. He testified that his firm has no file with respect to 689 Mosley Street. He noted that the APS dated May 22, 2013 does have his firm's name on the bottom of the form and suggested that someone must have acquired his "easy offer" CD program. He also noted that the Confirmation of Co-operation and Representation has no signatures on it under the brokerage names.

Mr. Singh testified that the Amendment to the APS incorrectly refers to "Sutton Group Royal Realty", noting his firm no longer uses the word "Group" in its name. He added that the amendment was not likely produced using his firm's "easy offer" program as it did not have the brokerage name printed at the bottom. Mr. Singh did not sign the form. He also stated that he had never seen an amendment of this type and indicated that he would not sign one before he had seen all documentation, including a prior representation agreement. In this case, he had never seen the May 3, 2013 Buyer Representation agreement signed by R.S.

Stephen Rath has 36 years experience in real estate. From June, 2012 to December 2013, he was at RLAYS where, for a period of six months, he was broker of record. Mr. Rath explained that as broker of record he would review trade record sheets which would have all transaction documents attached to them.

Mr. Rath testified that it would be unusual for buyers and sellers to change brokerages using an Amendment to an APS and stated it should have been done as an assignment by one brokerage to the other. He had never seen the amendment to the 689 Mosley Street APS but acknowledged that it was not unusual for some paper to be missing from files.

On May 28, 2013, Ms Anstey wrote a note to her broker of record indicating that there were three realtors working on the sale of 689 Mosley and that the Appellant's brokerage was the proper one. On May 29, 2013, Ms Anstey e-mailed both the Appellant and Mr. Jaigo, sending them a copy of the survey for 689 Mosley St.

Ms Anstey testified with respect to notes she kept in her file. On May 22, 2013, she received a fax from Mr. Tulshi on which she wrote Mr. Jaigo's telephone number and e-mail. On that date, she made notes which include the Appellant's and Mr. Jaigo's names and Mr. Tulshi's name and his brokerage's number. She could not recall where she got this information. On May 28, 2013, she checked off a list of what the buyers did not want in the property and noted she had received a handwritten document signed by the Appellant with a copy of his business card indicating what those items were.

Although Ms Anstey could not recall when she received it, her brokerage's file does include a copy of the RLAYS Buyer Representation Agreement for purchaser R.S. Asked if this could have been given to her after she had received the Amendment to the

APS to show there was a prior relationship with RLAYS she stated she did not know. Nor could she recall why she continued to copy Mr. Jaigo on correspondence after she received the amendment. She did not do any checks to determine who Mr. Jaigo was.

Tisha Boutet has been employed as the office administrator at Royal LePage Trinity since 2012. Ms Boutet testified that she wrote the receipt for the deposit cheque issued by R.S. for the purchase of 689 Mosley Street. The receipt indicates the deposit was delivered by Danny Tulshi. She stated that to identify him, she would have asked him his name or for a business card which she would not necessarily have kept.

Danny Tulshi has been a real estate salesperson since 2003. Mr. Tulshi moved to Sutton Royal Realty when it was formed by Mr. Singh and remained there until 2014. Mr. Tulshi testified that he knew Paul Jaigo from Sutton Group Commitment Realty and worked with him from 2006 to 2008, and that he last saw him two years ago at a social event. He has seen the Appellant only once; after Mr. Tulshi received a call from RECO, he called the Appellant to find out what RECO was talking about and the Appellant brought him a document. Mr. Tulshi denied all knowledge of the transaction for 689 Mosley Street. He denied meeting R.S., viewing properties in Wasaga Beach, signing any documents or delivering a deposit cheque.

Mr. Tulshi testified that he last went to Wasaga Beach “decades ago” and that R.S. was lying when he testified that Mr. Tulshi had shown him properties. Asked why his name and his brokerage’s fax numbers appeared on documents, he stated he “didn’t have anything to do with it”. He only became aware of the Amendment to the APS which changed the brokerage from Sutton Royalty to RLAYS when the Appellant gave him a copy sometime in 2014 after he called him following RECO’s inquiry. He testified that the Appellant did call him in May 2013 to talk about a property but he hung up when he heard Paul Jaigo’s name. He did not know what they were doing but “I didn’t want any part of it”. On cross-examination, he stated that Mr. Jaigo had been into his brokerage and did talk to him about helping him out with properties, possibly in May 2013, but Mr. Tulshi had indicated he was not interested.

The Appellant testified that on May 21, 2013, after Mr. Jaigo had prepared multiple offers for properties in Wasaga Beach on behalf of R.S. under the Appellant’s name, he had a “blow up” with Mr. Jaigo, threatened him, and told him that he “can’t be anywhere near it”. Mr. Jaigo then “went fishing” for an agent and found Mr. Tulshi. The Appellant called Mr. Tulshi and told him not to do it. The APS for 689 Mosley Street was prepared by Mr. Tulshi’s office. The Appellant found out about it on May 28, 2013, testifying that Mr. Tulshi “couldn’t get rid of it fast enough”. He had no involvement with any of the paperwork before the Amendment to the APS was prepared.

The Appellant explained that the Amendment to the APS was done after Mr. Tulshi told him Mr. Singh had advised him to do it this way and after checking with Ms Anstey. The Appellant then sent Ms Anstey a copy of R.S.’s Buyer Representation Agreement with RLAYS. Asked about the fact that the date R.S. signed this agreement appears to have been changed, the Appellant stated that it may have been written incorrectly in

error. The Appellant also sent the note outlining items that the buyers did not want to Ms Anstey with his business card. Asked why the writing on this note appears to be the same as the writing on the fax sheet sent with the initial offer, the Appellant stated he did not know if he wrote the note or if he received it from someone and then signed it. The Appellant did receive commission for this transaction.

693 Mosley St.

Ms Boutet testified that one of her responsibilities is recording showings of listed properties. With respect to the listing for 693 Mosley Street, she stated that the booking for a showing on June 12, 2013 by the Appellant was not made by him. She knew the Appellant's voice because she had spoken to him before. She therefore called Dale Tkatch, her firm's broker of record, to report that someone claiming to be the Appellant was booking showings in his name.

Stephen Rath testified that he received a telephone call from Mr. Tkatch who told him that he suspected the Appellant was using someone who might be unlicensed to show properties. Mr. Rath telephoned the number provided by Mr. Tkatch; the person who answered the phone identified himself as the Appellant and told Mr. Tkatch he was going to show a property. Mr. Rath knew it was not the Appellant, who he immediately called. The Appellant admitted that the individual was not licensed and advised that he would stop him. Mr. Rath then called Mr. Tkatch and left a message.

On cross-examination, Mr. Rath acknowledged that he could not remember his conversations verbatim. He was then asked about the following transcription of his voice message to Mr. Tkatch:

I said he should not be holding himself out to be you and you are to cease and desist and to make your own phone calls and set up your own appointments. Don't allow this guy to go and show properties for you. He assured me that this was not the case but nevertheless I put him on notice not to do that.

Mr. Rath acknowledged that the Appellant had denied he was allowing someone to show properties but added that the Appellant said he was not doing a lot of things that he actually was. Mr. Rath did not report this incident to RECO, stating he thought that he could "nip it in the bud".

The Appellant testified that he never authorized Mr. Jaigo to show properties in Wasaga Beach on his behalf or to impersonate him on the telephone. He told Mr. Rath that he was aware of the situation and would make efforts to ensure it was permanently rectified. After Mr. Rath called him, Mr. Harvey went to Mr. Jaigo in person and told him to stop.

The Brampton Properties

119 Albright Road

Stephen Rath testified that he was asked to sign a Mutual Release form dated June 2, 2013 with respect to a property at 119 Albright Road. However, the form had only been signed by the Appellant as witness to the seller's signature. On June 13, 2013, Mr. Rath sent an e-mail to the Appellant in which he stated he would not sign the form, and he advised how it should be properly completed.

The Appellant testified that he listed 119 Albright after meeting with the owner. He filled out all the paperwork and gave it to the owner who wanted to take it to his lawyer. With respect to the allegation that no paperwork was filed with RLAYS, he was referred to Exhibit 4 and testified that he found the file in his garage. When an offer was received, the Appellant negotiated it with Danny Tulshi who represented the buyers. However, the deposit was NSF. When the Appellant called Mr. Tulshi to obtain a Mutual Release, he said he wanted nothing to do with it. Mr. Harvey "had to step in". Asked why he did not contact Mr. Tulshi's broker of record, Mr. Harvey stated his choice was to "fight with the guy" or go to the buyers himself. He asked Mr. Rath to sign the form before the buyers had signed it because he wanted to save time by not having to drive to meet them. Asked how this would save time since he would have to meet them at some point, he did not respond.

Mr. Tulshi testified that he had no knowledge of the property at 119 Albright. Shown his name on the APS for this property, he denied representing the buyers and stated his signature is not on the APS. He also denied any knowledge of the Mutual Release form and stated that his signature is not on it.

42 Mirabell Court

Consumer T.C. testified that she and her sister (the "C's") were represented by Paul Jaigo when they purchased the property at 42 Mirabell Court in 2006. In November, 2012, they decided to retain Mr. Jaigo to sell the property. Mr. Jaigo met them at their home, advised them that the property was in good condition and estimated its value at \$470,000 to \$489,000. T.C. advised that since purchasing the property, a number of improvements had been made.

On December 5, 2012, Mr. Jaigo went to their home with paperwork. He told the C's that he and his business partner, the Appellant, both of whom were at RLAYS, would be representing them. The C's signed the Listing Agreement with RLAYS at a purchase price of \$489,900. When they signed the document, it had already been initialed by the Appellant although T.C. could not recall if he had signed it on behalf of the brokerage. Mr. Jaigo also provided a copy of the "Working With a Realtor" document which the C's signed as both seller and buyer because they were each intending to buy their own homes. They also initialed and signed an MLS Data

Information Form which had already been completed. When the property appeared on the MLS database, T.C. noticed that Mr. Jaigo's name was not on the listing, but did not think anything of it since she understood the Appellant was his partner.

The C's received an offer dated January 3, 2013 which was presented to them at their home by Mr. Jaigo. The Appellant was not present. Mr. Jaigo suggested a counter offer amount and a revised closing date to enable the buyer to obtain financing. They initialed the changes but were not provided with a copy. When they did not hear anything further about the offer, T.C. called Mr. Jaigo and was told that the buyer did not obtain financing. She and her sister had no communication with the Appellant.

T.C. testified that after the failed offer in January 2013, she and her sister would call Mr. Jaigo. There were lots of showings of their property but it was not selling. Mr. Jaigo did not give them any indication that there was anything wrong with the property or with its list price.

T.C. testified that she and her sister neither saw nor initialed a second listing agreement for 42 Mirabell Court dated June 10, 2013. T.C. was unaware that the original agreement had expired in March 2013. The first time she saw the second listing agreement was when it was shown to her by the RECO investigator.

In early July 2013, the C's received an offer of \$465,000. Paul Jaigo called T.C. and told her he was e-mailing the APS dated July 2, 2013 to her sister. When the document arrived, a counter-offer of \$470,000 had been written in. Both the C's initialed and signed the document on July 4, 2013. The witness lines were blank. They also signed the Confirmation of Co-operation and Representation form, noting that RLAYS was representing both buyers and sellers. As instructed, they e-mailed the documents, which had not been explained to them, back to Mr. Jaigo. Mr. Jaigo then called them and told them they had a deal. T.C. did not see two subsequent waivers of conditions which were signed on July 4, 2013 until they were shown to her by the RECO investigator.

Mr. Jaigo subsequently e-mailed an Amendment to the APS. The C's initialed and signed the document but did not date it. The amendment is dated July 10, 2013. T.C. testified that the amendment information changing the deposit amount from \$20,000 to two installments of \$3,000 and \$17,000 was not on the document when she received it and Mr. Jaigo did not tell them why they needed to sign. No one was with them when they signed.

The closing date on the sale was to be August 20, 2013. However, the transaction did not close on that date; Mr. Jaigo told the C's the buyers needed an additional five to seven days to complete financing. He then asked the C's to allow the buyers to move into the property, telling them the transaction would close in September 2013 and they would receive \$2,100 to cover their mortgage payments. The C's agreed. The transaction did not close but the tenants remained in the property. Shown the Mutual Release form from the RLAYS trade file which indicates the Appellant witnessed the

signatures of the C's, T.C. testified that neither she nor her sister signed it. She did not see it before it was shown to her by the RECO investigator.

T.C. testified that she and her sister had no conversations with the Appellant at any time with respect to this transaction. She never met him and the only time she ever spoke to him was when he called and asked to meet the C's before they met with the RECO investigator.

The C's subsequently retained another real estate agent to sell 42 Mirabell Court. The tenants, however, were not cooperating to show the property to prospective buyers. They called Mr. Jaigo to have the tenants removed. The C's did not have a lease. However, Mr. Jaigo told them that he did have a lease which he e-mailed to T.C.'s sister. The C's discovered that the tenants were paying more than the C's were receiving. In March, 2014, the C's had the tenants evicted. Their property was sold in April, 2014.

Elechia Barry-Sproule has been the broker of record at RLAYS since December 1, 2013, succeeding Stephen Rath. Ms Barry-Sproule testified that the agency's procedures require salespersons to immediately turn in all documentation including listings and offers, even if those offers are conditional. Ms Barry-Sproule met the Appellant in 2011 when she was at Royal LePage-Your Community. She does not know Paul Jaigo and has never met him.

On February 19, 2014, Ms Barry-Sproule reviewed the RLAYS file on 42 Mirabell Court after she was contacted by an individual calling on behalf of the C's. T.C. then called her directly and advised her that the sale of 42 Mirabell Court had not closed and that the buyers were living in the property as tenants. T.C. told her that the C's agents were the Appellant and Paul Jaigo. Ms Barry-Sproule met the C's on February 23, 2014 and reported Mr. Harvey to RECO on February 26, 2014.

Ms Barry-Sproule testified that she did initial the Mutual Release form in December, 2013 because it was properly signed by all parties and witnessed. However, she stated the September 27, 2013 APS date is incorrect on the Release; the actual APS date is July 2, 2013.

Ms Barry-Sproule testified with respect to the documents in the RLAYS files. She noted that the December 2012 MLS listing for 42 Mirabell Court indicates it was prepared by the Appellant and explained this means that he uploaded the listing to the Toronto Real Estate Board's system. He also signed the December 5, 2012 Listing Agreement. She noted some deficiencies in the related documents in the file; the Individual Identification Information Record signed by the C's is not completely filled out and the signatures on the "Working With a Realtor" form do not appear to be in the proper place and the form is not initialed. The January 5, 2013 APS is not on the file.

With respect to the second listing of 42 Mirabell, Ms Barry-Sproule noted that the Appellant signed the "Declaration of Insurance" section on the Listing Agreement but

failed to sign next to his typed name to bind the brokerage. The "Working With a Realtor" form is signed, but not initialed by the sellers. The "Confirmation of Cooperation and Representation" is not signed by the Appellant where his name is typed. The July 10, 2013 Amendment to the July 2, 2013 APS provides for installment payments of the deposit and this document was dated after the APS expired. The APS is incorrectly filled out because it lists RLAYS as the co-operating brokerage. On the July 4, 2013 Waiver, the buyers' signatures signing the waiver and acknowledging receipt of a copy differ.

The Appellant testified that he became involved with 42 Mirabell Court after he was asked to list the property by Paul Jaigo. He felt sorry for Mr. Jaigo; it was a personal situation for him and he thought he would help him out. The Appellant admitted that he never met with the C's or went to the property. He completed the December 2012 "MLS Data Information" form using information from the 2006 listing. Asked how he knew the information would still be accurate, he testified that he had been given some of the information by Mr. Jaigo. He completed part of the December 5, 2012 Listing Agreement but did not complete the amounts or dates. He "had nothing to do" with the December 5, 2012 Working With a Realtor form.

The Appellant testified that he did not see the January 13, 2013 offer on the property; his handwriting is not on the APS. As far as he knew, there were no offers on the property before the listing expired in March 2013. He acknowledged that he should have taken a more active role. When the property did not sell, he should have recommended that the price be lowered.

In June 2013, Mr. Jaigo told the Appellant that N.S., a friend of his, was going to buy the property on Mr. Jaigo's behalf. The Appellant believed this was going to be an "in and out" private sale, but was asked to list the property again to facilitate financing. He explained this is why the commission on the June 10, 2013 Listing Agreement is only 1%, if the listing broker sells it to his own buyer. It is his signature in the "Declaration of Insurance" area of the form but he testified he had no memory of signing it and suggested it might not be the final copy. He had no knowledge that the C's did not initial the form. He had no involvement in the completion of the sellers' June 2013 Working With a Realtor form and does not remember any involvement in the completion of the buyers form. Asked how the sellers' form came to be placed in RLAYS's files, he suggested that someone e-mailed or faxed it in.

Asked why he agreed to list the property again after he had already confronted Paul Jaigo about his activities in Wasaga Beach, the Appellant stated he only did it because there was an agreement to purchase the property on Mr. Jaigo's behalf.

The Appellant did meet with the buyers with respect to the July 2, 2013 APS. He testified that initially he would not accept the offer because there was no deposit and he wanted "to keep everything kosher" in the documentation. He acknowledged that it is his signature on the "Commission Trust Agreement" section of the APS. He also acknowledged that the APS does not state the property is being purchased in trust for

Mr. Jaigo. He has no knowledge of either of the two waivers that were signed. With respect to the Amendment to the APS which provides for the deposit to be paid in installments, he testified that he initially insisted that the buyers fulfil the terms of the deposit but they said they did not have the funds. He had no involvement in the preparation of the amendment; it was presented to him when \$3,000 was brought to his office. Asked if this did not cause him concern, he stated that he probably should have told them to re-write the offer.

Asked when he understood that the transaction had not been completed, he stated that he had received no notification from a lawyer, and the closing date had come and gone. Therefore, as far as he was concerned, the deal was dead and when the Mutual Release was sent to him by Mr. Jaigo, he signed it to close the file. He had no knowledge that it had not been signed by the C's. He also had no knowledge that Mr. Jaigo had put tenants into the property.

On cross-examination, the Appellant was asked why he did not go to the C's and ask them if they knew what was happening when he had concerns about the transaction. The Appellant stated "it just got out of hand". Similarly, he did not go to them after the transaction failed. He testified that he did not knowingly participate in the forging of any document. He acknowledged that he should have participated more actively with the C's, and stated "I never anticipated Paul doing something like this".

THE LAW

The entitlement to registration is set out in section 10 of the Act as follows:

10. (1) 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,
 - (i) having regard to the applicant's financial position or the financial position of an interested person in respect of the applicant, the applicant cannot reasonably be expected to be financially responsible in the conduct of business,
 - (ii) 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 law and with integrity and honesty, or
 - (iii) the applicant or an employee or agent of the applicant makes a false statement or provides a false statement in an application for registration or for renewal of registration;

Section 13 of the Act sets out that the Registrar may suspend or revoke a registration:

- 13 (1) Subject to section 14, the registrar may refuse to register an applicant or may suspend or revoke a registration or refuse to renew a registration if, in his or her opinion, the applicant or registrant is not entitled to registration under section 10.

Section 14 sets out the powers of the Tribunal:

14 (5) If a hearing is requested, the Tribunal shall hold the hearing and 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.

SUBMISSIONS

Counsel for the Registrar submitted that the Appellant's registration should be revoked because he facilitated Paul Jaigo's trading in real estate. In Wasaga Beach, the Appellant knew Mr. Jaigo was not registered even if he was not aware of everything Mr. Jaigo was doing. With respect to 42 Mirabell Court, he failed to represent his clients. He also misrepresented documents submitted to his brokerage; he witnessed documents he did not see signed and submitted these to RLAYS even though he did not know if they were genuine. Counsel referred the Tribunal to *Khetani (Re)*, [2006] O.L.A.T.D. No. 473. In this case, the Tribunal found that Ms Khetani had "rented her registration" by accepting listings and filling out paperwork at someone else's request. She did not inspect properties and did not meet her clients, thereby failing to represent them. Properties were sold at inflated prices and mortgages were obtained on false information. Ms Khetani's registration was revoked.

Counsel for the Appellant advised the Tribunal that the Appellant admits his conduct with respect to 42 Mirabell Court. However, she submitted that while the situation got out of control, there is no evidence that the Appellant was involved in purposeful fraud. The situation was initiated and perpetuated by Paul Jaigo. In Wasaga Beach, Mr. Harvey did not authorize Mr. Jaigo to act on his behalf. The Appellant found out about offers made on properties only after he was contacted by the listing agents and he acted to protect the buyers and sellers. There was no financial loss in Wasaga Beach and the Appellant only realized a small commission on the sale of 689 Mosley St. There was no significant financial loss to the C's as a result of the Appellant's actions and he received no financial benefit. She argued that the circumstances of the Appellant's case can be distinguished from *Khetani* because there were no significant financial consequences to his actions and therefore his registration should not be revoked.

ANALYSIS

The Appellant is entitled to registration unless one of the grounds in section 10 of the Act applies. The onus is on the Registrar to prove that there are reasonable grounds for belief that the Appellant will not act in accordance with law, with integrity and with honesty. The Tribunal must make an independent assessment of whether section 10 applies.

With respect to the standard to be applied by the Tribunal in making its determination, Counsel for the Registrar referred the Tribunal to *Ontario (Alcohol and Gaming Commission of Ontario) v. 751809 Ontario Inc. (Famous Flesh Gordon's)*, 2013 ONCA 157 (CanLII):

[19] As applied to this case, s. 6(2)(d) of the Act requires the Registrar simply to show that Mr. Barletta's past or present conduct provides reasonable grounds for belief that he will not carry on business in accordance with the law and integrity and honour. The Registrar does not have to go so far as to show that Mr. Barletta's past or present conduct makes it *more likely than not* that he will not carry on business as required.

Counsel also referred the Tribunal to *F.H. v. McDougall* 3 SCR 41, 2008 SCC 53 (CanLII) which establishes that the standard of proof to be applied in a civil case is proof on a balance of probabilities.

With respect to the application of the statutory provision of "reasonable grounds for belief" and the *McDougall* standard in hearings before the Tribunal, Vice-Chair Flude wrote as follows in *7686 v. Registrar of Alcohol and Gaming*, 2013 CanLII 51164 (ON LAT):

A hearing before this Tribunal, and indeed before any judicial or quasi-judicial body, requires two steps. Firstly, the Tribunal hears evidence and makes findings of fact. It then applies those findings to the applicable legal standard to determine the success or failure of the party carrying the onus. The statutory provision in issue in the current case, "reasonable grounds for belief" is applicable to the second branch of the process. Having heard the evidence and made findings of fact based on the *McDougall* standard of balance of probabilities, the Tribunal then must review those facts to determine if they create reasonable grounds for belief that the Applicant will not carry on business in accordance with law and with integrity and honesty.

The evidence indicates that the Appellant first co-operated with Paul Jaigo in December 2012 when he agreed to list 42 Mirabell Court. The Appellant admits to his conduct with respect to Mirabell. He neither inspected the property nor made any effort to meet its owners. The evidence shows he relied on Mr. Jaigo, whose registration he knew had been revoked, for property details, and allowed Mr. Jaigo to obtain the required signatures from the owners on various documents such as the Listing Agreement and the Working With a Realtor form. After signing the December 5, 2012 Listing Agreement and uploading the listing to MLS, the Appellant testified he had nothing more to do with the property.

The Appellant's next involvement with Mr. Jaigo was with respect to properties in Wasaga Beach in May, 2013. The Appellant agreed to represent a friend of Mr. Jaigo's, buyer R.S. While he testified that he did not authorize Mr. Jaigo to show properties in Wasaga Beach or to act on his behalf with respect to transactions, the evidence indicates that Mr. Jaigo did both.

Mr. Puccini testified that he met Mr. Jaigo while Mr. Jaigo was showing 106 43rd Street on May 11, 2013. The Appellant had arranged, but did not cancel, the showings when he was unable to attend. Mr. Jaigo proceeded to show the properties, having obtained the lockbox codes. The Appellant suggested this was because he had written them on MLS listing but was vague as to whom the listings were given. Mr. Puccini's first e-mail with respect to a potential offer on the property came from Mr. Jaigo on May 12, 2013.

He spoke to the Appellant and was told Mr. Jaigo was working for him. Challenged on his memory of that conversation, Mr. Puccini was clear with respect to how he remembered it. Mr. Puccini sent information to the Appellant on May 13th. Yet, on May 14th, he received an offer attached to an e-mail from Mr. Jaigo which was later finalized by the Appellant. However, the deposit was delivered by Mr. Jaigo.

Similarly, Mr. Campbell testified that he received an e-mailed offer for 55 47th Street on May 12, 2013 from Mr. Jaigo naming RLAYS as the brokerage. He responded to a sympatico e-mail address for the Appellant although he did not receive a reply. He then e-mailed Mr. Jaigo again and received a reply from the Appellant. However, the signed counter-offer again came from Mr. Jaigo.

With respect to both 106 43rd Street and 55 47th Street, the Appellant testified that he was not aware of the offers until after they had been made. He “stepped in” to both transactions, testifying “the deal was paramount”. However, the evidence indicates that Mr. Jaigo used the Appellant’s name on documents he prepared and remained involved even after the Appellant became aware of the offers. On a balance of probabilities, the Tribunal therefore finds that the Appellant did facilitate Mr. Jaigo’s unlawful trading in real estate.

The Appellant did not report Mr. Jaigo to RECO. Rather, he confronted Mr. Jaigo on May 21, 2013 and suggested that this is why the next transaction, R.S.’s offer for 689 Mosley St., was handled by Danny Tulshi. The Registrar’s allegation is that the Appellant facilitated Mr. Jaigo’s unlawful trading in real estate with respect to Mosley Street and that he was party to the use of Mr. Tulshi’s name in the transaction without Mr. Tulshi’s knowledge.

Darlene Anstey testified the property was shown by the Appellant on May 21, 2013. On May 22, 2013, she received an offer indicating Danny Tulshi and Sutton Royal Realty were acting on behalf of R.S. The Tribunal questions how Sutton Royal Realty produced an offer for a property that the records show the Appellant had seen. The Tribunal also notes that R.S. testified that the Appellant was present when he signed the APS. Notwithstanding the Tribunal’s concerns about the overall reliability of R.S.’s testimony, the Tribunal notes that he was more conclusive with this statement than with others. The Appellant testified that that he telephoned Mr. Tulshi to warn him away from Mr. Jaigo and the Mosley transaction. The Tribunal questions how the Appellant would be aware of Mr. Tulshi’s potential involvement were he not involved himself. The Appellant testified that he became aware of the offer on May 28, 2013, the same day the Amendment to the APS changing the brokerage was signed, stating Mr. Tulshi “couldn’t get rid of it fast enough”. The Tribunal finds that it is not credible that Mr. Tulshi, after all the paperwork had been produced in his name, decided to forgo his commission in favour of the Appellant. Finally, the fax that Ms Anstey received indicating it was from Mr. Tulshi is in the same handwriting as the list of items sent to her by the Appellant with his business card. The Appellant agreed he signed this list and first suggested he wrote it, but then indicated that someone might have given it to him.

There are issues with the testimony of both R.S. and Mr. Tulshi with respect to Mosley Street. The Tribunal notes that a number of times R.S. answered questions inconclusively or stated, in a rote manner, that he could not remember. For example, he initially stated he did not remember 689 Mosley Street, the property he owns. He testified that he had only met Mr. Tulshi once and just “shook his hand”. However, after stating he viewed Mosley Street with “Robert and Paul”, he amended this and said he saw it again with “Danny and Paul”. He could not remember to whom he gave the deposit, which the records indicate was delivered by either Mr. Tulshi or someone impersonating him.

Mr. Tulshi denied any involvement with 689 Mosley Street. However, during his testimony, he contradicted himself when pressed for details. For example, he testified that he had not seen Mr. Jaigo for over two years. On cross-examination, he stated that Mr. Jaigo did come into his brokerage, it could have been in May 2013 and he could have been asked to help with a transaction. And the evidence does indicate that documents signed by R.S. have Mr. Tulshi’s brokerage’s name printed on them, and Mr. Singh testified that for this to be the case someone must have obtained a copy of his brokerage’s computerized forms.

Given the contradictions between, and the unreliability of, the testimony of R.S. and Mr. Tulshi, the Tribunal cannot conclude that Mr. Tulshi did not participate in the 689 Mosley Street transaction. However, the Tribunal notes that even if the Appellant’s version of events is the correct one and Mr. Tulshi was a willing participant and the Appellant was not actively involved with the offer, the Appellant apparently had no difficulty later stepping into a transaction which he knew Mr. Jaigo had orchestrated. He agreed to the amendment changing the brokerage, stating he did not want Mr. Tulshi “to get anything from it.” The Appellant, however, apparently had no such qualms. He did not report Mr. Jaigo or Mr. Tulshi to RECO. Rather, he transferred the transaction to his name and his brokerage, thereby legitimizing Mr. Jaigo’s trading. Therefore, on balance of probabilities, the Tribunal finds that he did facilitate Mr. Jaigo’s unlawful trading in real estate with respect to 689 Mosley Street.

On June 10, 2013, the Appellant agreed to list the property at 42 Mirabell a second time. He again failed to meet with the C’s. He signed and witnessed documents he did not see signed. Further, even though he testified he was aware of issues with the deposit for the July 4, 2014 offer and balked at dealing with it because he wanted everything “to be kosher”, he signed an Amendment to the APS, produced after the offer had expired, to allow the deposit to be paid in two installments. He accepted the first installment of \$3,000. As with the first listing of Mirabell, he failed to discuss either the offer, the issues with the deposit, or the amendment with the C’s. In December, 2013, he signed the Mutual Release.

At approximately the same time the offer was being made for 46 Mirabell, Mr. Jaigo was still showing properties in the Appellant’s name in Wasaga Beach. Ms Boutet testified that on June 12, 2013, a showing was booked for 693 Mosley Street by someone

claiming to be the Appellant. Stephen Rath testified the Appellant told him he knew the person doing this, knew he was not licensed, and would stop him. Counsel for the Appellant submitted that Mr. Jaigo was acting without the Appellant's consent. The Tribunal notes that the fact the Appellant was actively involved with Mr. Jaigo, having agreed to sign the Listing Agreement for 46 Mirabell only two days earlier, is indicative of implied consent.

Finally, the Registrar alleges that the Appellant falsified documents with respect to 119 Albright, a transaction which lists Mr. Tulshi as the buyers' representative. There is no allegation that Mr. Jaigo was involved. The Appellant testified that he listed the property, negotiated an offer with Mr. Tulshi, and again "had to step in" when Mr. Tulshi told him he wanted nothing to do with obtaining the Mutual Release. Mr. Tulshi denies any knowledge of the transaction. Notwithstanding the fact that the Tribunal questions why, if Mr. Tulshi were involved, that he would have no difficulty negotiating an offer but would be unprepared to execute a release, as noted above, there are issues with Mr. Tulshi's credibility given the contradictions in his testimony. At the same time, the Tribunal also questions the credibility of the Appellant's explanation that he asked Mr. Rath to sign off on an unsigned Mutual Release form to save travel time. However, there is not enough credible and reliable evidence regarding this transaction for the Tribunal to conclude that the Appellant falsified the documents.

The Act is consumer protection legislation. It sets standards for participants in the real estate industry to protect consumers in what is a significant financial transaction. The most basic standards are set out in section 10 of the Act. The Tribunal has found the Appellant facilitated an unregistered individual in three transactions in Wasaga Beach. He has admitted his conduct with respect to two Mirabell transactions where he not only facilitated an unregistered individual but also failed to represent the best interests of his clients. The Tribunal finds that this conduct provides reason to believe that the Appellant will not act in accordance with law, with integrity or with honesty.

The Tribunal must consider the appropriate action to direct the Registrar to take. In this case, the Appellant has an almost 30-year history as a registrant, and there was no evidence submitted with respect to any previous complaints. Were the Wasaga Beach transactions, which took place over a short period in May, 2013, the only evidence before the Tribunal, it might be able to accept that the Appellant exercised poor judgment in facilitating the trading of Mr. Jaigo, and consider a lesser penalty than revocation. However, the Appellant's involvement with Mr. Jaigo spanned the period of one year. While there is no evidence that the Appellant was aware of Mr. Jaigo's fraudulent activities with respect to Mirabell, he was aware that Mr. Jaigo was not registered because his registration had been revoked by this Tribunal for reasons that included that he would not act in accordance with law and with integrity and honesty.

Not only did the Appellant facilitate Mr. Jaigo's trading, he also violated the Code of Ethics set out in the Regulations to the Act by failing to represent the best interests of his clients. With respect to the first Mirabell listing, he failed to visit the property or to meet the C's, but nonetheless listed the property and filed documents he had not

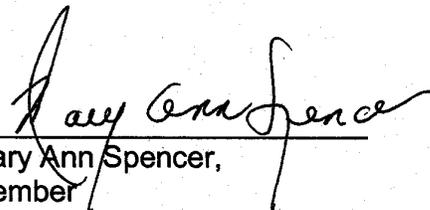
prepared with his brokerage. More troubling is the fact that even after he had confronted Mr. Jaigo about his activities in Wasaga Beach, the Appellant agreed to list Mirabell a second time. He failed to contact the C's, even when he himself had concerns and knew Mr. Jaigo's history. He signed documents he did not see, and witnessed and filed them with his brokerage. Had the Appellant not abdicated responsibility for the listings, the C's might have experienced a very different outcome.

The Appellant's facilitation of a revoked registrant's trading was not an isolated incident; it spanned the course of a year. Based on the totality of this conduct, the Tribunal concludes that his registration must be revoked.

ORDER

Pursuant to the authority vested in it under the provisions of the Act, the Tribunal directs the Registrar to carry out the Proposal to Revoke Registration dated August 28, 2015.

LICENCE APPEAL TRIBUNAL



Mary Ann Spencer,
Member

Released: June 2, 2016