



**Citation:** McGee v. Registrar, *Real Estate and Business Brokers Act, 2002*, 2019  
ONLAT REBBA 12233

**Date:** 2021-12-13

**File Number:** 12233/REBBA

Appeal from a Notice of Proposal and Decision of the Registrar, *Real Estate and Business Brokers Act, 2002*, to Revoke Registration as a Salesperson and Immediately Suspend Registration as a Salesperson

**Between:**

**David McGee**

**Appellant**

**and**

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

**Respondent**

## **DECISION & ORDER**

**ADJUDICATOR:** Jeanie Theoharis, Vice-Chair

### **APPEARANCES:**

**For the Appellant:** David McGee, Appellant

**For the Respondent** Shane Smith, Counsel  
Angela Volpe, RECO staff

**Heard at Toronto, Ontario:** August 7, 22; September 5, December 10, 11, 2019  
October 6, 7, 14, 16, 21, 2020  
February 3, 4, 19, 2021

## INTRODUCTION

- [1] David McGee (“appellant”) is registered as a salesperson under the *Real Estate and Business Brokers Act, 2002*, S.O. 2002, c. 30, Sched. C (“the Act”).
- [2] He appeals a July 19, 2019 Notice of Proposal issued by the Registrar, *Real Estate and Business Brokers, Act 2002* (“Registrar”) to revoke his registration, and an order to immediately suspend his registration as a salesperson, pursuant to sections 13 and 15 of the Act.
- [3] The appellant requested a hearing to address the Registrar’s Notice of Proposal and immediate suspension order. The hearing commenced on August 7, 2019.
- [4] On consent of the parties and by order dated August 13, 2019, the expiration of the Order to immediately suspend the appellant’s salesperson licence was extended until the hearing concluded.

## ISSUES

- [5] The Registrar proposes to revoke the appellant’s registration as a salesperson because he is not entitled to registration under section 10(1) of the Act. As such, the specific issues to be determined on this appeal are:
  - a. Did the appellant make a false statement in his application for registration?
  - b. Did the appellant breach the conditions of his registration?
  - c. Having regard to the appellant’s financial position, whether the appellant cannot reasonably be expected to be financially responsible in the conduct of business.
  - d. Does the appellant’s past conduct afford reasonable grounds for belief that he will not carry on business in accordance with law and with integrity and honesty?
  - e. If any of the above issues are answered in the affirmative, are there appropriate conditions that could facilitate a registration?

## RESULT

[6] Having considered the testimony and exhibits presented at the hearing as well as the submissions of the parties, and for the reasons set out below, I find that the appellant is not entitled to registration as a salesperson and that this is not an appropriate case for registration with conditions. I would direct the Registrar to carry out the proposal to revoke the appellant's registration.

## LAW

[7] Section 4 of the Act prohibits anyone from trading in real estate unless they are registered under the Act. An applicant who meets the prescribed requirements is entitled to registration unless a ground set out in section 10(1) of the Act is met.

[8] In this appeal, the Registrar asserts that the appellant is not entitled to be registered on four grounds. Each ground is independent of the other. Failure to satisfy one ground can be enough to revoke the appellant's registration as a salesperson under the Act.

[9] After a hearing, the Tribunal may by order direct the Registrar to carry out the Registrar's proposal, or the Tribunal may substitute its opinion for that of the Registrar and the Tribunal may attach conditions to its order or to a registration (s. 14(5) of the Act).

[10] The onus is on the Registrar to prove that the appellant does not meet the requirements of the Act.

## ANALYSIS

[11] The Registrar has met the onus of proving that the appellant is not entitled to registration as a salesperson pursuant to section 10 of the Act.

### False Statement and Breach of Conditions

[12] Subsection 10(1)(a)(iii) provides that a person may be denied registration as a salesperson if they make a false statement or provide a false statement in an application. The submission of the application is the first test of integrity for a person who seeks to be licenced in a heavily-regulated industry.

[13] Also, subsection 10(1)(f) provides that a person may be denied a salesperson registration if they breach a condition of their registration.

- [14] After review of the evidence and submissions of the parties, I find that the Registrar has shown, on a balance of probabilities, that the appellant made a false statement and also breached the conditions of his licence. Specifically, the appellant falsely described the amount of debt he was facing and the number of judgments outstanding against him. He was further required to immediately update the Registrar of any further judgments against him as well as to take steps to pay down his debts within a reasonable time. He failed to comply with either condition.
- [15] The appellant submits that he provided the Registrar with the information that he was apprised of on the applications, and that he did not breach any conditions because he disclosed the information to the Registrar as he knew it at the time. He asserts that he had many personal and professional obligations to attend to. He was dealing with his marital separation, his mother's health, his own health and his real estate problems. He testified that he was quite scattered and not able to closely monitor all his business dealings. He asserted that he was not getting his mail, and he did not know about many of the judgments. Moreover, he asserts that the Registrar was granted permission to conduct a credit check on the appellant, so the Registrar had the capacity to do so and find out the information they were seeking.
- [16] The appellant was initially registered as a salesperson from 1986 - 2009. The appellant's licence lapsed, and the appellant applied for reinstatement of his licence.
- [17] The appellant initially made an application for reinstatement of registration in April 2018. In the application he indicated his total outstanding debts were approximately \$350,000. He testified that he was not in the position to ensure its accuracy nor did he have the time to gather the information that was being requested of him by the Registrar on the details of his application. At the time he had family issues to address and he needed to focus on his real estate properties. As a result of not having sufficient time and energy to address the issue, he abandoned this application.
- [18] The appellant was aware of the detail the Registrar wanted in respect of his April application, and duly took note of his inability to properly respond to the Registrar's request for information. When he abandoned this application, he understood the detail that was being asked of him to complete the application.
- [19] The appellant thereafter made a second application for reinstatement of registration on October 13, 2018. I would expect that since the appellant was

knowledgeable of the level of detail that was required from April, he would have taken steps to ensure the accuracy of this application. Unfortunately, he did not.

[20] Question 5 of the application asks the following:

Are there any unpaid judgments and/or unpaid debts outstanding against you, including but not limited to, CRA Requirement to Pay and garnishments, or are you an officer, director, majority shareholder of a corporation or partner of a partnership to which the preceding statement applies? (if yes, refer to Page 4 for Completion Instructions)

[21] Page 4 for Completion Instructions indicates:

If you answered yes, you must submit a copy of each judgment and other such documents pertaining to outstanding debts against you (example: garnishments, requirements to pay, writs of execution etc.). State the amount outstanding and repayment arrangements on a separate sheet. You must also submit full particulars regarding the circumstances that led to the matter(s) on a signed and dated statement.

[22] In his October 2018 application, in a signed attachment dated October 17, 2018, the appellant indicated that he had ten (10) outstanding debts or judgements totalling approximately \$650,000. He also indicated that most if not all debt would be cleared through the sale of properties in Ontario and overseas. He also indicated that he would continue to make payments towards these debts until such time as the debts were cleared.

[23] In November 2018, the appellant's application for reinstatement was granted subject to conditions. The appellant voluntarily agreed to the conditions on November 6, 2018. The application for reinstatement was approved with conditions.

[24] The conditions required the appellant to use his best efforts to ensure that outstanding debts against him were fully satisfied at the time of his next application. He was also required to notify the Registrar immediately in writing of any judgments or garnishments filed against him, and to provide the Registrar with copies of said filings along with a repayment schedule. The appellant was further required to notify the Registrar immediately in writing if there was a change to any information included in his application and to set out the nature of the change.

[25] Within six months of agreeing to these conditions, between November 26, 2018 and May 1, 2019, four judgments were registered against the appellant for debts owing to creditors. The approximate total value of the four judgements was just

over \$1,000,000. The appellant did not notify the Registrar about these judgments, nor did the appellant provide the Registrar with copies of the judgements.

- [26] The appellant indicates that he was not aware of the additional/new judgments until April 5, 2019 when they were brought to his attention during his interview with the RECO investigator. He further stated that had he known of the judgements he would have notified the Registrar as he was aware he was obliged to do so. He attributes not knowing about these judgements to the possibility that they may have not been delivered to him, or if they were delivered by mail, he was not receiving his mail from his Toronto address because he no longer lived there.
- [27] On a balance of probabilities, I find the appellant knew of these judgements and ought to have taken steps to inform the Registrar of them, as opposed to relying on the notion that the Registrar has the power to check for this information. The Act puts an onus on the applicant to provide information and disclose the information. The Registrar is not required to engage in various searches to determine this information.
- [28] A reasonable person who is no longer living at a particular address ought to take adequate steps to have their mail relocated to another address or held at the post office for pick up. The appellant, who at the time had many business ventures established, needs to keep apprised of his business dealings. This is particularly the case where, as here, the appellant had a history of past judgements along with a condition to report knew judgements to the Registrar.
- [29] I also find the appellant would have known of these judgements prior to April 5, 2019 through communication with his first real estate lawyer who he had hired for the sale of his matrimonial home. On March 7, 2019 the appellant's first real estate lawyer sent him an email with an attached summary of the writs and certificates. The email indicated that "after reviewing the requisition requests and the accompanying writs of execution ...the number of writs and the amount of debt owing suggest that you are unable to proceed as you had wished." The counsel then referred the appellant to Goldhar & Associates, a licensed Insolvency Trustee, specializing in bankruptcy and restructuring, to assist with this real estate transaction.
- [30] Although the appellant claims that even on this date he was still not aware of the writs, I find his assertion is not credible. It is highly unrealistic that the appellant would not have questioned why the real estate lawyer would not represent him on the closing of his matrimonial home. Further, the email clearly indicated there were

writs and a writ summary had been provided to the appellant. At this point, the appellant ought to have taken steps to inform the Registrar of the additional writs.

- [31] Moreover, on April 1, 2019, the appellant filed a financial summary with Goldhar & Associates which included details of the executions and his liabilities that were used to prepare a creditors list for the appellant's Notice of Intention to Make a Proposal to his creditors under the *Bankruptcy and Insolvency Act*. On the list of creditors Form 33, the total amount owing to creditors with claims of \$250 or more is \$1,496,151.49.
- [32] The Form 33 lists creditors with claims of \$250 or more. This is what the appellant believed to be his unpaid debts owing to each of these individuals or entities; the amount recorded as owing to each of them. In my view, these are unpaid debts that the appellant acknowledged being owed to the creditors. Many of the creditors noted on the Form 33 existed at the time of the applicant's filing of the October 2018 application, but the applicant failed to include the details of the unpaid debts on his application. For instance, on the Parcel Register for his matrimonial home, there was a construction lien registered in the amount of \$73,590. This amount was not noted on the appellant's application.
- [33] If I am incorrect about the appellant knowing about these judgements, I find in the circumstances he ought to have known. As noted, the appellant has a number of complex business dealings and a history of judgements against him. A person in these circumstances who has a condition to keep the Registrar updated must take reasonable steps to comply with that condition. If the appellant did not know of these judgements, which I have found he did, he ought to have.
- [34] The appellant further argues about the timing of when RECO should have been notified of the judgments and questions the interpretation of the word 'immediately.' He further submits that there is no evidence to show that he had not intended to disclose those judgments and there is no evidence to suggest that he somehow tried to hide them from the Registrar.
- [35] The appellant's evidence throughout the hearing was evasive and contradictory. At one point he indicated not knowing of the judgements prior to April 5, 2019, and at another point, he indicated that he signed the application which also granted the ability of the Registrar to take steps to find out the information themselves. At no time during the hearing did he acknowledge that he was in the process of presenting this information to the Registrar. He merely relied on the assertion that he did not know of the judgments, and the Registrar had the power to find out. This

ignores the fact that his registration condition required him to keep the Registrar updated of any new judgements nor already disclosed.

- [36] The appellant, despite noting an execution debt from the Turks and Caicos on his Notice of Intention to Make a Proposal, also failed to disclose the execution debt in the amount of \$243,630.79 owing to his former lawyer in Turks and Caicos.
- [37] In the appellant's application he indicated that most if not all debt would be cleared through the sale of property in Ontario and overseas. He also indicated that he would continue to make payments towards these debts until such time as the debts are cleared.
- [38] The appellant also indicated that "Three of these were for mortgages on investment property here in Ontario and those properties have now been sold to satisfy the outstanding judgment/mortgage." This is a false statement for the following reasons:
- a. The sale of the appellant's property in St. Thomas, Ontario (Metcalf St) was completed in September 2017. The correspondence from the mortgagee, Equitable Bank, indicated that they had incurred a loss in the realization of its mortgage in the amount of \$89,025.04.
  - b. The sale of the appellant's property in London, Ontario (Grey St) was completed in September 2018. The correspondence from the first mortgagee, Royal Bank of Canada, indicated that they had incurred a loss in the realization of its mortgage and that there were no surplus proceeds available for distribution.

[39] The appellant's assertion on the application that three of the mortgages on investment properties in Ontario have now been sold to satisfy the outstanding judgement/mortgage was false. The two examples above indicate that both mortgagees incurred a loss in the realization of their mortgages.

[40] The appellant's failure to notify the Registrar of these judgments and unpaid debts is a breach of his conditions. The appellant's failure to accurately reflect his unpaid debts as at the time of his application and his explanation of how the debts were to be repaid/satisfied were false statements on his application.

#### *Financial Position of the Appellant*

[41] The appellant's financial position both prior to the application being filed and at the time of the hearing leads to the conclusion that he cannot reasonably be expected

to be financially responsible in the conduct of business. The evidence disclosed that the appellant had difficulty managing his real estate investments and his finances, which resulted in him filing for bankruptcy for debt in the amount of \$4.8 million.

- [42] The appellant's first bankruptcy proposal was in 2001 and discharged debts owing in the approximate amount of \$1.575 million. The appellant filed a second proposal for bankruptcy in May 2019, and noted debts owing in the approximate amount of \$4.8 million. The information relating to his second proposal for bankruptcy was also not provided to the Registrar in accordance with the conditions.
- [43] Moreover, the appellant's real estate investments were laden with debts, and even when sold, the sale proceeds were insufficient to cover the mortgages or other liens noted on title. The evidence is clear that the appellant cannot reasonably be expected to be financially responsible.

*Carry on business in accordance with law and with integrity and honesty*

- [44] I find that the evidence establishes that there are reasonable grounds for belief that the applicant will not carry on business in accordance with law and with integrity and honesty as required by the Act.
- [45] The appellant engaged in the business of rental properties in Turks and Caicos. At one point in time he rented various properties, including a beachfront villa and several condominiums. There were multiple instances in which the public, after seeing his advertisements for one of his properties, contracted with him to rent his properties out. However, on several occasions, the members of the public were impacted by dishonest representations made by the appellant and/or his failure to complete the contract.
- [46] In one significant real estate transaction for the appellant's beachfront villa, the client paid approximately \$20,000 for a 10-day stay over the winter holidays. On the day before, after having been non-responsive to the client's multiple phone calls, the appellant contacted the client to cancel the villa stay claiming that the villa was recently made uninhabitable due to theft and looting. Only after the aggrieved clients sued the appellant in Superior Court did the appellant provide a refund to the clients.
- [47] The evidence at the hearing established that the villa sustained hurricane damage in September 2017 and the appellant never took adequate steps to repair the damage, replace the broken or lost property, or maintain the premises. At the time

that the damage was sustained, he was also facing marital woes, wherein he and his spouse were at odds as to how their money was being managed. The appellant's suggestion was that he was not at fault for the continuing state of disrepair of the villa. He testified that there were supply issues, contractor issues, and he did not have a continuous source of funds to pay for the repairs.

Regardless of who is at fault, the appellant was misleading and dishonest to his clients. He was also evasive and not taking the client's calls. In one instance, the client hired a private investigator to find the appellant in order to obtain a refund. Only after the private investigator found the appellant did the appellant respond to the client.

- [48] Other clients who testified at the hearing faced similar situations wherein they were told at the last minute that their deposit had not been received, and if they wanted to stay at the condominium property, they would have to pay additional funds.
- [49] The appellant argued that during the sale of the property, other people mismanaged the bookings and thereby created the problem with his clients. He feels that he did what he could to affect a proper sale, and that all errors were as a result of the new purchasers not accepting his bookings. I do not find that to be a reasonable explanation as to his real estate dealings.
- [50] The appellant was facing multiple financial and personal problems. He was going through a divorce, selling his marital home, selling his real estate holdings both in Canada and in Turks and Caicos, and needed to address outstanding debts and judgments. Although he believed that the sale of his real estate properties would negate much of the debt and judgements, this was not the case. Despite the sale of his properties, he still had a significant amount of outstanding debts.
- [51] The appellant had several former colleagues and friends attend and testify at the hearing about his good character. I give less weight to the evidence because many, if not all, did not have insight about the extent of his financial instability, his bankruptcy filings, and his actions towards the Turks and Caicos clients. Although I do not doubt that the appellant is capable of working in general, I find that he is not able to manage multiple projects, clients or large scale finances due to his difficulty with staying organized and his inability to appropriately address situations as they arise – in that he would rather avoid speaking to the people, as opposed to addressing problems as required.
- [52] I find that the appellant's lack of honesty in dealing with his clients and his failure to assess problems and rectify them in an appropriate manner provide reasonable

grounds for belief that he will not carry on business in accordance with law, and with integrity and honesty.

- [53] My finding on this ground is also informed by the appellant's failure to be forthright about his outstanding debts and legal liabilities when he filled out his application and was granted registration on conditions. Acknowledging debts in the amount of 10 judgments amounting to debt of \$650,000 is a far cry from acknowledging the debts of over \$4.8 million owed to over 60 creditors that were actually outstanding at the time of the appellant's application, as disclosed by his own bankruptcy documents.

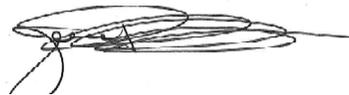
*Conditions are not appropriate to facilitate registration*

- [54] Even where the Registrar has established grounds for disqualification under the Act, the Tribunal retains a discretion to impose conditions if doing so can mitigate any concerns regarding the proposed registrant's conduct and adequately protect the public. Notwithstanding this discretion, I do not find that this case is an appropriate one for conditions.
- [55] The appellant's licence was subject to conditions. The conditions put a positive obligation on the appellant to notify, advise or keep the Registrar current with information or documents. The appellant, as noted above, did not comply with the conditions he had voluntarily agreed to. I am not satisfied that the appellant would now comply with any further conditions. Moreover, I find that concerns about the appellant's financial responsibility and their honesty and integrity cannot be mitigated by way of conditions. In a case such as this, conditions simply are not appropriate.

## ORDER

[56] In accordance with the authority set out in section 14(5) of the Act, I direct the Registrar to carry out the proposal dated July 19, 2019 to revoke the registration of the appellant's licence.

## LICENCE APPEAL TRIBUNAL



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**Jeanie Theoharis, Vice-Chair**

***Released: December 13, 2021***