

**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: Michael Stolberg v. Registrar, *Real Estate and Business Brokers Act, 2002*,
2018 ONLAT-REBBA 11025

Date: 2018-08-30

File Number: 11025/REBBA

Appeal from a Notice of Proposal by the Registrar, *Real Estate and Business Brokers
Act, 2002*, to Revoke Registration

Between:

M.S.

Appellant

-and-

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

Respondent

DECISION AND ORDER

Adjudicator: Ted Crljenica, Vice-Chair

Appearances:

For the Appellant: W. Xavier Navarrete, counsel

For the Respondent: Jonathan Miller, counsel

Place and date of hearing: Toronto, Ontario

November 8, 2018,
April 23, 24, 25, 2018
June 11, 2018

Teleconference

REASONS FOR DECISION AND ORDER

A. OVERVIEW

- [1] This hearing before the Licence Appeal Tribunal (“Tribunal”) arises from the appellant’s appeal pursuant to section 14 of the *Real Estate and Business Brokers Act, 2002*, S.O. 2002, c. 30 Sch. C (“REBBA” or the “Act”) of the November 18, 2015, Notice of Proposal to Revoke the appellant’s registration issued by the Registrar, *Real Estate and Business Brokers Act* (“respondent” or “Registrar”). Licencing under REBBA is administered by the Real Estate Council of Ontario (“RECO”).
- [2] The Notice of Proposal was issued when the respondent learned that on October 20, 2015, the appellant stole money and batteries from a home he was viewing in his capacity as a real estate salesperson registered under the REBBA. RECO also suspended him by way of an Immediate Suspension Order (the “2015 suspension”) and the appellant stopped working as a real estate salesperson.
- [3] This appeal was initially heard by the Tribunal in April 2016. On May 5, 2016, the Tribunal issued a decision (“the Tribunal’s 2016 decision”) allowing the appellant to retain his registration, subject to a number of conditions. The respondent reinstated the appellant’s registration and for the next 17 months he worked as a real estate salesperson, subject to the conditions imposed by the Tribunal.
- [4] The respondent appealed the Tribunal’s 2016 decision to the Divisional Court. On October 16, 2017, the Court found the Tribunal’s decision to be unreasonable and directed that the Tribunal hold a new hearing.
- [5] Pursuant to section 15 of the Act, on October 19, 2017, the respondent again suspended the appellant’s registration by way of an Immediate Suspension Order (“the 2017 suspension”) and the appellant stopped working as a real estate salesperson.
- [6] On October 26, 2017 the appellant filed a written request for a hearing with the Tribunal.
- [7] On the first day of the hearing, November 8, 2017, the only issue dealt with was whether the suspension should or should not be extended until the conclusion of the hearing. By Interim Decision and Order dated January 24, 2018, I found that it was in the public interest to extend the suspension until the completion of the hearing.

B. THE ISSUE

- [8] The issue in this appeal is whether the respondent Registrar has reasonable grounds to believe that the appellant will not carry on business in accordance with law and with integrity and honesty.
- [9] For the reasons set out below the Tribunal directs the respondent Registrar to proceed with the proposal to revoke the appellant's registration.

C. THE BACKGROUND FACTS

- [10] The appellant first registered as a salesperson under REBBA on June 9, 2008.
- [11] The high-rise condominium unit of Mr. and Ms. F was listed for sale with a broker other than the broker for whom the appellant worked. On October 20, 2015, the appellant attended the unit ostensibly to view it to determine if it met the needs of one of his clients. He was alone in the unit. Video cameras captured him going through the consumer's personal belongings, including drawers and shelving units. He was recorded stealing batteries from a storage unit and money from a piggy bank, which the appellant subsequently admitted.
- [12] On November 18, 2015, the Registrar issued the 2015 suspension order and a Proposal to Revoke to revoke the appellant's registration. The appellant appealed the 2015 Proposal to Revoke.
- [13] The appellant was charged with, and subsequently pleaded guilty to, one count of theft under \$5,000. He received a suspended sentence with one year of probation.
- [14] After the theft, the appellant began to attend counselling sessions with David Feder, a social worker. The first session was on November 19, 2015.
- [15] On the first hearing day I was advised that at the 2016 hearing appellant admitted that he took the batteries and money from the piggy bank as alleged by the Registrar but he disputed the amount taken. He stated that it was only \$20 whereas the Registrar alleged that it was between \$200 - \$300. No determination was made in regard to the amount stolen as the parties agreed that the only issue to be addressed at the hearing was penalty. The hearing was held on April 19, 2016 ("the first hearing").
- [16] Mr. Feder's evidence at that hearing was that the appellant had attended 8 sessions, that he reported to Mr. Feder that he had stolen small items such as chocolate bars at various times in his youth and that the theft from the Fs' home was the only time he

stole in his professional capacity. This was also the appellant's testimony at the first hearing.

- [17] Pursuant to the Tribunal's 2016 decision the Registrar was ordered by the Tribunal not to carry out the proposal to revoke the registration of the appellant, but made the appellant's registration subject to a number of conditions. Those conditions included:
- a. For a period of three years from the date of this Order, Mr. Stolberg shall not attend any property unless it is occupied or he is accompanied by client(s) and/or another registrant under the Act.
 - b. For a period of three years from the date of this Order, Mr. Stolberg shall maintain a formal independent log of all properties at which he attends. This log shall include the property address, the date and time of his attendance, and the name and contact number of either the client(s) and/or registrant who either accompanies him or who is present at the property. This log shall be immediately provided to either Mr. Stolberg's broker of record and/or the Registrar for their inspection at their request.

[18] The respondent appealed the Tribunal's 2016 decision to Divisional Court. On October 19, 2017, the Court remitted the matter to the Tribunal for a new hearing. The Court ruled, among other things, that the first condition was unreasonable because it would have required other registrants as well as members of the public to monitor the appellant, despite the fact that they did not know they were expected to do so. The Court found the condition in regard to the appellant maintaining of log of all homes he enters to be unreasonable, in part, because it was dependent on the honesty of the appellant who had a history of dishonesty : 2017 ONSC 5904 (CanLII).

D. THE EVIDENCE IN THE CURRENT HEARING

(a) The Respondent's Evidence

(i) The Video Evidence

- [19] For purposes of this decision when it is not necessary to distinguish between broker registrants and salespeople, I will use the word "realtor" to refer to either.
- [20] At the time the appellant committed the theft in question he was employed with Red Pin Realty. He made arrangements to view the condominium unit of Mr. and Ms. F that had been listed for sale. The Fs had two "nanny cams" set up: one in the family room from which one could view most of that room, some of the adjacent kitchen area, a curved staircase to the second floor as well as some of the second floor, which is a partial floor. The other camera was in the baby's bedroom and was above head height with a downward view of a crib and some areas to the side of the crib, including part of a closet door.

- [21] Videos from both cameras were viewed at the hearing. In addition, the Fs prepared a written timeline of the appellant's activities in their home. On consent, it was marked as an exhibit in the hearing. I am including details from the videos in my reasons as the appellant's conduct in the Fs' unit is important in my analysis.
- [22] The video from the family room shows the appellant entering the unit. He immediately called out to announce himself, to which there was no response. After picking up and looking at what the Fs described as a package addressed to them he entered the baby's room which took him out of view of the family room camera. For most of the two and one-half minutes he was in the baby's room he was also out of the view of the camera in that room. However, one can hear sounds that the Fs described, and with which I agree, as the appellant rummaging through books and baby toys. He can also be heard to utter, "nipple balm". After coming back into camera view the appellant is observed looking into the closet and then opening and looking into drawers under the crib.
- [23] After leaving the baby's room the appellant returned to the family room and was in the view of the family room camera. He went to the kitchen where he was out of view for a short time. Again one can hear sounds associated with rummaging. In their timeline, the Fs describe the sounds as the appellant looking into the fridge, cabinets and dishwasher. He then began to walk toward the staircase to the second floor. He quickly stopped and looked back at a shelving unit which he appeared to eye from top to bottom before turning and ascending the stairs to the second floor.
- [24] On the second floor, the appellant bent down and was out of view. One can hear what sounds like drawers and cupboard doors opening and closing. From there the appellant can be observed walking toward the stairs where he crouched down in front of what appears to be a small filing cabinet. The appellant can be seen opening, from top to bottom, each drawer pausing to look in each one before closing it. While looking in one of the drawers he flipped through some papers. He then moved out of view of the family room camera for about four minutes. During this time one can again hear sounds of drawers and cupboard doors opening and closing.
- [25] The appellant then descended the stairs to the main floor and stopped at the television that is beside the staircase. He looked behind the television into the open area under the staircase and then looked into the drawer or drawers in the television stand. While looking into a drawer he can be heard to say "ooo" in a surprised, happy tone. While walking away from the television stand toward the location of the family room camera he was holding something in his hand, which the Fs believe to be the batteries that he put

into his back pocket. While immediately in front of the family room camera, that appears to have been on a thigh-high shelf of a storage unit, the appellant can clearly be seen opening drawers and doors of the storage unit and looking into them.

[26] From there, the appellant walked away from the location of the camera to the kitchen area. Something on what appears to be a window ledge on the left side of the camera view caught the appellant's attention and he proceeded to that location. There he picked up what appears to be, and what the Fs described as, the piggy bank from which he stole money. The appellant emptied the contents of the piggy bank on a window ledge or shelf, picked up some coins and placed them into his front pocket. He returned other coins to the piggy bank. The appellant departed the unit about 12 minutes after he arrived.

[27] I also note that when he entered and left the unit the appellant was carrying what appears to be a notepad folio. It remained in the kitchen during his entire visit and at no point in the videos can he be seen making any notes.

(ii) Jo Ann Swain

[28] Jo Ann Swain, an investigator with RECO testified that her involvement in this matter began on November 10, 2015 when she was assigned to investigate the Fs' complaint against the appellant.

[29] Ms. Swain contacted Mr. Gidamy, the broker of record for Red Pin, where the appellant was working. Mr. Gidamy told Ms. Swain he had been contacted by the police in regard to this matter, had viewed the videos, and fired the appellant.

[30] The appellant immediately found new employment with iPro Realty. Ms. Swain contacted Mr. Colucci, the broker of record for iPro to arrange a meeting with him and the appellant.

[31] Ms. Swain met with Mr. Colucci and the appellant at iPro's office on November 12, 2015. At the meeting the appellant admitted to Ms. Swain that he stole batteries and money from the Fs' unit, but disputed the amount of money taken. He also told Ms. Swain that the theft was an isolated incident. Ms. Swain then showed them the videos following which Mr. Colucci fired the appellant on the spot.

(iii) Fedele Colucci

- [32] Mr. Colucci has been a realtor since 1984. He testified that when he was contacted by Ms. Swain he spoke to the appellant who admitted to him that he had stolen some batteries and money. He told Mr. Colucci that he “has issues,” that he made a mistake, and is in counselling. The appellant asked Mr. Colucci what he should say to RECO, to which Mr. Colucci responded that he should tell the truth. Mr. Colucci testified that the appellant told him he took the money off a counter and did not mention the piggy bank.
- [33] For Mr. Colucci, the videos “changed everything”. He testified that he had never seen anything like what he saw in the videos. When a realtor views a property for a client, he or she looks for the features of the property which, in Mr. Colucci’s opinion, the appellant did not do. He did not even take notice of the large picture window.
- [34] Mr. Colucci explained that realtors have access to lockboxes (in which keys to the units listed for sale are affixed to the property, usually a door handle) and to the property with no one to monitor them. He has no idea how consumers can be protected from the conduct he observed on the videos.

(b) The Appellant’s Evidence

(i) Lauren Reim

- [35] The appellant’s first witness was his wife, Lauren Reim. She and the appellant have been married since 2010. They have two children, aged five and two. Ms. Reim is employed as a high school teacher.
- [36] She described the appellant as generally a patient, kind, reticent, logical, usually even-tempered man who gets angry at times. The appellant is great with his children and does most of the parenting in the family.
- [37] Sometime in 2013, she and the appellant attended marriage counselling after she discovered he had been having on-line conversations with women he met through Craigslist.
- [38] Ms. Reim first learned about the theft from the Fs’ home when she overheard a conversation the appellant was having in regard to his suspension. When she confronted him, the appellant told her that he had stolen money from a piggy bank during a showing. She was shocked as the appellant had not exhibited such behaviour before. She thought he had a good moral compass and was not capable of such conduct. This caused strife between them and she thought the marriage was over but after many sleepless nights she decided to support the appellant.

- [39] According to Ms. Reim, as a result of the appellant's therapy with Mr. Feder, he has been calmer, more communicative about his emotions, has emerged from an internal darkness, has been remorseful, and wants to make things right. She believes that because he was caught, he will not steal again.
- [40] Ms. Reim testified that during the 17 months that the appellant worked after the Tribunal's 2016 decision he was diligent to log all of his showings as required by the conditions imposed by the Tribunal. She also testified that the appellant wants to be an ethical realtor as his career is important to him. It is his passion, he is good at it, and he has good rapport with his clients. It also provides him with flexibility to pick up the children at school and cook dinner.
- [41] Ms. Reim also testified that the appellant sleeps in the basement because he feels he is not deserving of a bed. Also, he has not been eating well, to the point that he is emaciated. She described him as a shell of his former self.
- [42] When asked if she provides emotional support to the appellant, Ms. Reim testified that he does not require much emotional support but when needed, she does support him.
- [43] The two of them have attended couples' counselling since February 2018, at the recommendation of Dr. Bloom¹. They had attended once every three weeks and they plan to continue.
- [44] Ms. Reim was asked if she knows the details of the appellant's history of theft. She said she does and testified that the appellant told her that in addition to the theft of money from the Fs' piggy bank, he stole a chocolate bar in his youth, for which he was punished, and he stole a turkey from Loblaws. When asked if she is aware of other thefts he may have committed in his capacity as a realtor, she stated that she does not.
- [45] Although Ms. Reim testified that she has read Dr. Bloom's report and knows that the appellant engaged in extensive rummaging in the Fs' home, she did not read the references to other thefts. She has not read the Divisional Court judgment overturning the 2016 decision nor has she not viewed the videos from the Fs' unit. She added that if the appellant takes accountability, she does not need to see these things; what he tells her is "good enough for [her]".

(ii) Susan Hausmann

- [46] The appellant's next witness was Susan Hausmann who has been a realtor since 2008. She worked with the appellant at Red Pin Realty from 2012 to 2014. She considers the

¹ Dr. Bloom is a forensic psychiatrist to whom the appellant was referred by his previous lawyer.

appellant a friend and described him as a hard worker who wants to provide for his family.

[47] When Ms. Hausmann first learned of the appellant's theft from the Fs' home she was shocked, sad and thought that to have done this he must have been behind in his bills, or in a "dark place", adding that the real estate industry is very stressful. When asked in cross-examination her reaction if it turns out that the appellant did not need the money he stole from the Fs, she responded that she would be very surprised.

[48] She was also asked if she thought the appellant would steal again to which she responded with an emphatic "no", adding that she thought he was not so foolish as to do it again as he almost lost everything. She testified that this matter has taken a toll on his marriage, he no longer jokes around, and is now a bag of bones, having lost about 20 lbs.

[49] When asked in direct examination if she is aware of other thefts by the appellant, Ms. Hausmann stated that she had not been but immediately before entering the hearing room to testify the appellant told her that 10 or 15 years ago he had also stolen marijuana and gift cards and also said that he is not a career criminal. When Ms. Hausmann was asked in cross-examination if the appellant told her that he took the marijuana and gift cards from homes to which he had access in his capacity as a realtor, she responded that he did not and added that she hopes that is not the case.

[50] Ms. Hausmann did not see the videos of the appellant's activities in the Fs' residence.

(iii) Dr. Hy Bloom

[51] The appellant's next witness was Dr. Hy Bloom, who the parties agreed should be recognized as an expert witness in the field of forensic psychiatry. Having reviewed Dr. Bloom's CV, I have no reservations about his qualifications to be so recognized.

[52] Although Dr. Bloom still provides treatment to a few patients the bulk of his work is medico-legal in nature and he understands his duty to be an impartial witness.

[53] The appellant was referred to him by the appellant's former lawyer in this appeal, for the purpose of providing an assessment for use in this hearing.

[54] Dr. Bloom prepared a report that was entered as an exhibit. His conclusions in his report as expanded upon in his testimony were that:

- a. The appellant did not have a major mental disorder or a personality disorder, and during his testimony Dr. Bloom specifically rejected a diagnosis of kleptomania or depression;
- b. The psychological underpinnings for the appellant's theft behaviour is likely multifactorial;
- c. The risk of the appellant repeating his behaviour in the future is low provided that he follows Dr. Bloom's recommendations. However the risk can never be stated to be zero;
- d. The appellant should resume therapy with Mr. Feder (which the appellant stopped in August or September 2016), continue with couples' therapy, and if the appellant's registration is reinstated, Mr. Feder should provide RECO with regular reports as to how the appellant is doing. Dr. Bloom had reviewed a letter Mr. Feder prepared for use at the first Tribunal hearing in 2016, and had spoken to Mr. Feder by telephone.

[55] During their sessions, the appellant told Dr. Bloom that he engaged in many petty thefts in his youth, such as from day care, summer camp and retail stores. He also told Dr. Bloom that on four or five occasions, beginning in 2010, he stole items from premises he was showing.

[56] When asked if the information provided to him by the appellant was reliable Dr. Bloom responded in the affirmative. It did not seem out of sync with other information conveyed to Dr. Bloom by others and by documents. Dr. Bloom added that he is hardly a lie detector machine but that the appellant was consistent, responsive, not evasive and maintained eye contact, all of which Dr. Bloom considers to be good indicators of reliability.

[57] According to Dr. Bloom, from a therapeutic standpoint, the appellant's voluntary disclosure of his history of thefts is a positive indicator for a lower rate of recidivism. The appellant has recognized his problem, is working through the factors that led to the thefts, and sees them as a failure of his own moral compass. By being "outed" the hold that the psychological factors have on him is reduced. As his stealing is no longer secret there will be surveillance of his conduct by his wife and in his career. This tends to deactivate the need to steal thus allowing the appellant to work on the causes of his conduct.

- [58] Dr. Bloom agrees with the opinion of Mr. Feder, set out in his 2016 report, that the driving force behind the appellant's thefts was his feeling of powerlessness. When this psychological determinant is deactivated, the risk of the appellant reoffending is very low and can be further lowered by ongoing intervention. He also testified that the fallout from the appellant's conduct is also a deterrent because he "gets it".
- [59] Regarding the appellant's powerlessness, Dr. Bloom testified that the appellant did not take advantage of his education, had no career goals, and his wife did not like his floundering. All of this affected his self-esteem. Dr. Bloom also stated that the appellant feels powerless in his relationship with his wife as she has a stronger personality and she sets the tone and direction of the relationship. Thus, the powerlessness of his youth has been recreated in his marriage. He felt powerless until he found a career path in real estate.
- [60] When asked in direct examination if the appellant can do anything to overcome his feeling of powerlessness, Dr. Bloom stated that the appellant already has; he started counselling with Mr. Feder with whom he relates well.
- [61] When asked in direct examination his view of the concept of "once a thief always a thief", Dr. Bloom testified that it depends on whether the factors that are driving the conduct have been dealt with. If they have, the thief "can get over it" unless he or she has a social disorder which, in Dr. Bloom's opinion, the appellant does not. He is also of the opinion that the appellant's moral compass is generally intact as he knows that stealing is wrong.
- [62] In regard to Dr. Bloom's recommendation that Mr. Feder provide ongoing reports to RECO he explained that there should be some type of monitoring in this type of problematic situation whereby the regulator can know that the appellant is on the "straight and narrow". He suggests that in the first year after the appellant's registration is reinstated, Mr. Feder should report every quarter, then twice a year for a year and once in the third year. He also recommended that Mr. Feder provide the appellant with assertiveness training so that he can vocalize things that bother him.
- [63] Dr. Bloom recommended that the appellant and his wife continue with couples' therapy especially as Ms. Reim now knows about the appellant's behaviour and how the marital situation affects his behaviour. Dr. Bloom believes that Ms. Reim's willingness to engage in couples' therapy is a positive indicator for the appellant. As strides are made in the marital relationship the appellant's sense of powerlessness should decrease. Dr. Bloom estimated they might need between three months to a year of therapy depending on their progress.

- [64] When asked in direct examination about other factors that may have contributed to the appellant's behaviour, Dr. Bloom stated that he feels the appellant thefts were a "cry for help" but he cannot say how much of a factor this was. He thinks that the appellant could not speak about his marital problems so he did something to bring attention to himself and trigger intervention. Dr. Bloom explained that it would not be a decision to steal in order to get caught but rather an external hand coming into one's life to direct events to help the person. However, in cross-examination Dr. Bloom agreed that the appellant's conduct as recorded on the videos is not that of someone who is trying to get caught.
- [65] Dr. Bloom also discussed the exhilaration one can experience by stealing. He found it unusual that the appellant used the money he stole as an adult to buy candy and with the appellant's fascination with the piggy bank. He described this as childish and therefore related it to the appellant recapturing some of his youthful exhilaration. He also testified that the appellant must find a psychological strategy to overcome the exhilaration. When asked if Mr. Feder is dealing with this, Dr. Bloom responded that he believes so and added that he suggested that Mr. Feder read Dr. Bloom's report.
- [66] It was Dr. Bloom's opinion that stealing gave the appellant a sense of entitlement but does not know the source of this emotion. He surmised that it was probably from something in the appellant's youth. He wondered if the appellant's thefts were passive-aggressive behaviour by which he was saying, "screw you".
- [67] Focussing now on the cross-examination of Dr. Bloom, he testified that he did not see the videos until after the appellant described to Dr. Bloom his actions in the Fs' unit. It was apparent to Dr. Bloom that the appellant minimized his conduct when he described the theft.
- [68] Based on Mr. Feder's report from February 2016, in which there is reference to only the theft from the Fs' home while working in his capacity as a realtor, Dr. Bloom agreed that it can be assumed that the appellant has not told Mr. Feder about thefts from other homes.
- [69] In his report Dr. Bloom relied on a letter from the appellant's probation officer. He referred to a number of points made by the probation officer in regard to counselling with a probation office social worker, Mr. Foote. It was pointed out to Dr. Bloom that the only comment from the probation officer's letter he did not include in his report was that the appellant reported that he did not benefit from Mr. Feder's counselling. This is contrary

to the appellant reporting to Dr. Bloom that he values and likes Mr. Feder's intervention. Dr. Bloom did not ask the appellant about this discrepancy.

- [70] Dr. Bloom was asked if he knew that the appellant sleeps in the basement as a form of self-punishment. He did not and agreed that it is not a constructive way for the appellant to deal with his issues.
- [71] When asked if the appellant is suffering from depression, Dr. Bloom testified that he is not as he does not exhibit any of the criteria for depression, such as loss of appetite, sleep difficulties, etc. As will be discussed below, this is inconsistent with the testimony of Ms. Reim, Ms. Hausmann, and, the appellant's own testimony to the effect that the appellant has lost a significant amount of weight.
- [72] The appellant's family physician referred the appellant to a psychiatrist, Dr. Zelina who suggested the appellant has an impulse control disorder i.e. – kleptomania and a cannabis use problem. Dr. Zelina recommended that the appellant obtain a forensic psychiatric assessment and suggested cognitive behaviour therapy (CBT). Although Dr. Bloom feels that Dr. Zelina's CBT recommendation was based on a diagnosis of kleptomania with which Dr. Bloom does not agree, he did agree that CBT would be reasonable therapy for the appellant. He then added that he assumes that Mr. Feder is providing CBT. Dr. Bloom did not discuss this with Mr. Feder and there is no evidence that Mr. Feder is providing the appellant with CBT
- [73] Dr. Bloom was asked his opinion about the fact that the appellant started to attend therapy with Mr. Feder after he was caught stealing from the Fs, stopped seeing him a few months after his registration was reinstated in May 2016 and has now resumed seeing Mr. Feder following the overturning of his reinstatement by Divisional Court. Dr. Bloom responded that some people think that when their legal problems are over it is time to move on.
- [74] When Dr. Bloom was told that Ms. Reim testified that she knew of only three thefts committed by the appellant and of these only one was in his professional capacity (the theft from the Fs' home), he expressed surprise. When he conducted his telephone interview of Ms. Reim he thought she was fully aware of all the thefts. He agreed that it is important that Ms. Reim know the entire situation and felt that the appellant's failure to tell her is not what one would want to see at this point in time.
- [75] When told that the appellant's character witness, Ms. Hausmann, did not know the extent of the thefts Dr. Bloom was "bothered" but added that shame sometimes makes it difficult to make full disclosure to people in one's network.

- [76] In response to the final question in cross-examination Dr. Bloom agreed that it is possible that the appellant is still minimizing his behaviour.
- [77] In redirect examination Dr. Bloom stated that the revelations that Ms. Reim does not know the whole story and that the appellant sleeps in the basement do not change his diagnosis, his treatment recommendations or his opinion that the appellant's risk of reoffending is low, although he did say that more dialogue should have happened by now.

(iv) The Appellant

- [78] The appellant was the final witness. He has a degree in Creative Arts and another in Urban Studies. He testified that his career as a realtor is very important to him, it is his identity.
- [79] He testified that the theft from the Fs' unit was not the first time he stole in his professional capacity. The first was in 2010 after he was advised by another realtor that there was marijuana in a drawer in a condo unit that was listed for sale. He arranged access to the unit and took some of the marijuana which he found by rummaging through drawers.
- [80] The second occasion was in 2014. He stole a Victoria's Secret gift card from another home he was showing to a client. In direct examination the appellant testified he took the card before the client arrived but in cross-examination he stated he did not know if the client was present. The card turned out to have a zero balance.
- [81] In cross-examination the appellant testified that the marijuana, the gift card, as well as the batteries and money from the Fs' residence are the only thefts he committed in his professional capacity "that [he] can recall". Later he acknowledged that there may have been more incidents of thefts in his professional capacity. It is possible there were times he took change from counters, immediately adding that stealing has been a "lifelong problem". He also acknowledged that he has looked through drawers in other units.
- [82] The appellant testified that his personal life he engaged in theft about six times. He spoke of stealing sliced turkey from a grocery store and chocolate bars. Dr. Bloom, in his report wrote that according to the appellant, over a 15-year period ending in October 2015, he stole every couple of months. Respondent's counsel cross-examined on this point and suggested to the appellant that if he stole once every four months (at ½ the frequency reported by Dr. Bloom) it would add up to 45 thefts. The appellant initially

disagreed with the math but when taken through it again stated that he likes to think it was less than 45 times. When pressed on this he said it could be 100 times or 10 times, he does not remember – it was a “personal demon”. After he was reminded that in direct examination he testified that he can recall six times in total, three in his professional capacity and three in his personal life, he acknowledged that he may have stolen more than six times.

- [83] When asked why he stole the things he did, the appellant did not answer the question. Instead he said that these were victimless crimes that hurt no one, but through therapy now understands that by stealing he is hurting himself, his family and his profession. At another point in his testimony, the appellant testified that his stealing was a cry for help related to his loss of power in other parts of his life, but now he feels empowered by being a good person. The appellant was also asked if he now understands the seriousness of his actions. Again, he did not answer the question but responded that he does not want to pass this behaviour on to his kids.
- [84] The appellant described the circumstances around the theft from Fs’ home. A client, whose name he cannot recall, was looking for a place with a view of the water, which this unit had. He testified that his sole purpose for attending the unit was to determine if it met his client’s needs but while there he also snooped. He saw the piggy bank and took about \$40 and took 4 batteries that were in a drawer under the television.
- [85] Counsel for the respondent put to the appellant that he went to the Fs’ unit with the intent to snoop around. He denied this. He also disagreed that on the videos it appears as though he went there to snoop. When counsel referred the appellant to Dr. Bloom’s report in which he referred to the appellant’s conduct on the video as “a man with a purpose”, he agreed and immediately added that he has a “history of problems”, is now in therapy and is no longer the same person.
- [86] Further into his cross-examination, when it was again put to him that he went to the Fs’ home to steal, he acknowledged that he did have the intent to steal but it was not his primary purpose for going.
- [87] When counsel for the respondent put to the appellant that he went through all of the Fs’ drawers, he challenged counsel and stated quite firmly that he did not go through all of them. When it was put to him that rummaging is not part of his job he did not answer the question; his response was that he checked out the closets to see if they were walk-ins.

- [88] Notwithstanding the video evidence, when asked about looking through the drawers under the crib, he denied doing so, stating that he only went through a box on the window ledge. When asked again, he admitted looking in the crib drawers. Later, it was put to him that he was “rummaging” through things in the baby’s room to which he responded that he looked under the crib. When asked again he admitted rummaging in the baby’s room.
- [89] The appellant denied returning money to the piggy bank in order to make it more difficult to tell that money had been stolen. Rather, he did it because he couldn’t carry all of the money from the piggy bank. He did agree that he was trying to avoid getting caught but added that he is thankful that he was caught. As for the amount stolen from the piggy bank the appellant stated it was \$40 but acknowledged that at the first hearing he testified that it was \$20.
- [90] Although the appellant acknowledged in direct examination that his conduct constituted an invasion of privacy, when asked about it in cross-examination his response was that once one gives up the code to the lock box they are open to giving up their privacy. He then acknowledged that what he did was wrong but qualified this by stating that the building in which the Fs resided did not have a concierge so anyone could have gotten in. He disagreed that the code to the lock box is only available to realtors although he did not explain who else would have access. When asked if anyone can obtain the code, the appellant’s response was that there is a regulatory problem, adding that there should be regulations and advanced technology so that the code changes after each visit.
- [91] When asked if he is proud of his conduct as recorded by the video cameras the appellant’s response was, “of course not” and immediately added that it is the most damaging piece of evidence against him and he regrets it more than anything.
- [92] After the appellant pleaded guilty in September 2016 to the criminal charge of theft under \$5,000, he was given a conditional discharge with probation. He has complied with all of the probation conditions and added that his meetings with Mr. Foote, the probation office social worker reminded him of what he did wrong and that he does not want to be in that situation again. The appellant denies the statement in the probation officer’s letter that he told Mr. Foote that he did not find Mr. Feder helpful. He testified that he told Mr. Foote that Mr. Feder looks like the appellant’s father. He is willing to continue counselling with Mr. Feder and to continue couples’ counselling.
- [93] The appellant testified that he has had 11 sessions with Mr. Feder, most of them before the Tribunal’s 2016 decision and two or three afterwards. He stopped going to Mr.

Feder in August or September 2016. He then had four sessions with Mr. Foote through the probation office during which time he did not see Mr. Feder as he thought it would be a conflict of interest to receive counselling from both. In addition, he did not have to pay to see Mr. Foote. He also testified that he stopped seeing Mr. Feder because when he attended the Divisional Court on the day the appeal was argued he heard RECO's lawyer submit that Mr. Feder was not an appropriate person for the appellant to be seeing. Based on this he spoke to 3 or 4 psychoanalysts, one of whom recommended that he see Dr. Bloom. When Dr. Bloom saw the appellant in December 2017 or early 2018 he told the appellant to continue with Mr. Feder. He has seen Mr. Feder three times since.

- [94] One of the conditions imposed by the Tribunal in its 2016 decision required him to immediately inform his broker of record if he terminates his therapy with David Feder. In August or September 2016 when he stopped counselling with Mr. Feder the appellant did not advise his broker of record. When asked why he did not, his response was that he did not terminate his relationship with Mr. Feder; he stopped seeing him while he was seeing Mr. Foote and then resumed seeing Mr. Feder in February 2018.
- [95] As for his view of therapy, initially, the appellant did not think it would help but he now sees the value in it, again testifying that he is not the same person he was when he stole. He has learned about himself and now realizes that his powerlessness was a factor in his conduct. The appellant expressed thanks to the Tribunal as he has been empowered by the condition that he log his visits to homes.
- [96] When asked if he told his wife about all of his thefts the appellant said that he did not tell her everything but that she knows there were more thefts in his professional capacity than just from the Fs' unit. He could not explain why she testified that she did not know about the others.
- [97] Although he acknowledged that he sleeps in the basement, he disagrees with his wife who testified that it is a form of self-punishment. He explained that he does so because he likes to watch TV to help him fall asleep whereas his wife is a light sleeper and does not like the TV to be on. Also, on occasion he snores so she sends him downstairs. The appellant added that sleeping in the basement is a reminder of what he did wrong.
- [98] The appellant also testified about his interaction with RECO in this matter. He stated that Ms. Swain contacted him after he left Red Pin to join iPRO. He testified that he did not know that cooperating with RECO could harm him. He thought RECO would see he had a problem and would offer help. He also testified that he did not know that the theft from Fs "was consequential to this ordeal" and could impact his registration with RECO.

- [99] In cross-examination he acknowledged that he was not being truthful when he told Ms. Swain that the theft from the Fs' was an isolated incident, adding that through therapy he now "understands". He also testified that his memory had been repressed prior to therapy. When asked to clarify this, the appellant then testified that therapy did not bring his memory back but rather the comments of respondent's counsel at Divisional Court made him realize he had to come clean. When asked to clarify further he testified that being with Dr. Bloom helped him to remember more details of the prior thefts.
- [100]The appellant was asked if he understood that RECO can consider all of the thefts the appellant committed when deciding whether to seek revocation of his registration. He responded by pointing out that he had not been caught on the prior thefts.
- [101]During the period when his registration was suspended the appellant looked for other employment but testified that he could not earn half as much as he can in real estate. From March 2016 until May 2016 he worked selling computers by telephone. His salary was \$30,000 plus commissions. This was his only employment during the period he was suspended. When asked if he was not able to find other employment, the appellant testified that it is important to him that he "be there" for his family. He had another job offer but he turned it down as the employer could not schedule him so as to accommodate his time with his family.
- [102]When asked what impact the suspension had on his family, the appellant stated that at that time of his 2015 suspension his wife was on maternity leave so they drained their savings, made no RESP contributions and had to pay banking fees because their bank balance fell below the threshold amount.
- [103]During the 17-month period his registration had been reinstated he was refused access to one property by another realtor due to his "history" which realtors can access online. He told his client that he had been refused access to the home but did not tell the client the reason.
- [104]In regard to Ms. Hausmann's testimony that she did not know about the appellant's other thefts in his capacity as a realtor, the appellant stated that he does not tell everyone everything that he disclosed to Dr. Bloom.
- [105]In Mr. F's victim impact statement he wrote that the appellant's conduct does not inspire confidence in the real estate profession. When asked about this, the appellant's response was to rhetorically ask if Mr. F took his home off the market. When asked if he

disagrees with the victim impact statement the appellant responded that he feels terrible for Mr. F.

[106]The appellant testified that he disagrees with the Divisional Court's view that the condition imposed by the Tribunal in its 2016 decision that he not attend any property unless it is occupied or he is accompanied by a client(s) and/or another registrant, is unreasonable; he thinks the condition is reasonable.

[107]Also in evidence on behalf of the appellant was an affidavit from the owner of Your Choice Realty. The affidavit speaks for itself, but in my view adds nothing of relevance to this case.

E. SUBMISSIONS

a. The Respondent's Submissions

[108]Respondent's counsel submitted that the appellant should not be entitled to maintain his registration, with or without conditions. Based on the appellant's history of multiple thefts both in his professional and personal capacity and his continued dishonesty with his wife, Ms. Hausmann, Mr. Feder, Dr. Bloom and with this Tribunal, the respondent has reasonable grounds to believe that the appellant will not carry on business in accordance with the law, with integrity and honesty. Thus, this Tribunal should direct the respondent to carry out the proposal to revoke the appellant's registration.

[109]The Divisional Court knew of only one theft the appellant committed while in his professional capacity and determined that it was not reasonable for the appellant's registration to be continued based on conditions that were dependant on his honesty. Knowing now that there were more thefts, it is more unreasonable to expect the respondent to rely on the appellant's honesty.

[110]It was also submitted that the Tribunal should not rely on Dr. Bloom's evidence as he did not diagnose the appellant with a personality disorder or mental disorder. Thus, the Tribunal can make its own assessment of the cause of the appellant's conduct, his rehabilitation and progress.

b. The Appellant's Submissions

[111]Appellant's counsel submitted that the appeal should be allowed and the appellant be allowed to maintain his registration subject to the conditions proposed by Dr. Bloom that the appellant continue therapy with Mr. Feder who should report to the regulator on the appellant's progress, continue assertiveness training and continue couples counselling.

In addition the conditions imposed by the Tribunal in its 2016 decision, except for the two that the Divisional Court found to be unreasonable, be imposed. They were:

- a. For a period of three years from the date of this Order, Mr. Stolberg shall immediately inform the Registrar in writing of any complaints made against him by a member of the public or other registrants under the Act and he shall provide details of all such complaints and any documentation that the Registrar may request.
- b. Mr. Stolberg shall immediately inform his broker of record of any changes in the status and/or the disposition of the criminal charges against him with respect to the October 20, 2015 theft.
- c. Mr. Stolberg shall immediately inform his broker of record should he terminate his therapy with David Feder or with any other professional therapist whose services he may engage.
- d. Mr. Stolberg shall provide a copy of these conditions to his broker of record, obtain her/his acknowledgement of their receipt, and provide a copy of the acknowledgement to the Registrar.
- e. Mr. Stolberg shall not transfer his registration until the Registrar has received a Notice of Transfer and a signed acknowledgement by the new broker of record of receipt of a copy of these conditions.
- f. If Mr. Stolberg is in breach of any of the above terms and conditions, the Registrar may propose to revoke his registration as a real estate salesperson under the Act.

[112] Counsel acknowledged in the appellant's submissions that the appellant's conduct of stealing and invading people's privacy was wrong, harmful to the Fs, and in violation of his obligations as a realtor.

[113] The appellant submitted that through therapy with Mr. Feder, the intervention of Dr. Bloom, and couples' therapy he now understands the consequences of his actions and that he is not the same person who stole from the Fs.

[114] Dr. Bloom met with the appellant three times, has determined that the cause of the appellant's conduct, is of the opinion that his moral compass is now properly aligned and that he is a low risk to reoffend. The risk of the appellant reoffending is low as the appellant knows that if he reoffends he will likely lose his livelihood as a realtor, face more significant criminal sanctions, face public shaming and jeopardize his marriage. Dr. Bloom's opinion did not change despite revelations during the hearing that the

appellant has not told his wife, his character witness and Mr. Feder the full extent of his thefts and the fact that he sleeps in the basement.

[115] It was noted that during the 17 months he maintained his registration following the Tribunal's 2016 decision the appellant complied with the conditions imposed by the Tribunal and had no disciplinary incidents.

[116] The appellant relied on a paper entitled Parameters of Penalty in Professional Discipline by Glenn Stewart that appears to have been prepared for a continuing education program offered by the Osgoode Hall Law School held on January 26, 2017. The paper deals with disciplinary matters before what was the Law Society of Upper Canada. Based on this paper the appellant submitted that the following factors should be considered when deciding this appeal:

- a. Is there specific deterrence to the penalty imposed;
- b. Will it act as general deterrence to the profession;
- c. Is there an opportunity for improved competence, rehabilitation or restitution;
- d. Will it maintain public confidence in the profession;

[117] Counsel submitted that our justice system emphasizes rehabilitation and the appellant should not be defined solely by the offending conduct, but rather all of the evidence including that of Dr. Bloom who indicated that the appellant has been rehabilitated.

[118] It was also submitted that it would be a violation of fundamental justice for there to be a mandatory revocation of one's registration for every case of theft.

[119] It was pointed out that had the appellant not disclosed to Dr. Bloom that he engaged in theft from homes listed for sale on three occasions, this appeal would have been based on one incident of theft in the appellant's professional capacity. Thus, the appellant's disclosure is an indication that he wants to be open and honest in order to get the help he needs in order to treat the cause of his stealing.

F. ANALYSIS AND ORDER

[120] For the reasons that follow it is my determination that the appellant's registration should not be maintained, with or without conditions, and the Tribunal directs the registrar to carry out the proposal to revoke the appellant's registration. Appeal is dismissed. I find

that there are reasonable grounds to believe that the appellant will not carry on business in accordance with the law and with integrity and honesty.

[121] I will begin by commenting on a concern raised by the appellant in his closing submissions. I agree with the appellant's submission that theft does not automatically result in the revocation of a realtor's registration as every appeal must be determined on its own facts. This Tribunal has stated this in many of its decisions, including *9488 v. Registrar, Real Estate and Business Brokers Act*, 2015 CanLII 89190.

[122] The principles to be applied in this appeal are set out in *Ontario (Alcohol and Gaming Commission of Ontario) v. 751809 Ontario Inc. (Famous Flesh Gordon's)*, 2013 ONCA 157 (CanLII) as well as *9488 v. Registrar, Real Estate and Business Brokers Act*, above. The test is about integrity and honesty, not just a question as to whether the appellant will steal again. The standard of proof is lower than the balance of probabilities. The respondent need only establish the reasonableness of his belief that the appellant will not carry on business in accordance with law and with integrity and honesty. The evidence to which the test is to be applied is not limited to the appellant's conduct as a realtor, nor is it limited to the conduct that triggered the current enquiry.

[123] I have also taken into account the impact of a revocation on the appellant. I accept that the suspension has had, and a revocation of his registration will have, a significant impact on him and his family, financially and on the family dynamics. However, the REBBA is consumer protection legislation and based on the evidence before the Tribunal, it is my determination that it is reasonable to believe that the risk to the public should the appellant be allowed to maintain his registration far outweighs the impact on the appellant and his family.

[124] It is my view that the paper entitled *Parameters of Penalty in Professional Discipline* relied on by the appellant does not apply here. The paper, in part, presented concepts the author believed should be applied in assessing penalties in disciplinary matters before the Law Society of Ontario. Further, it is premised on the licensee in question having been rehabilitated and, as will be seen below, I do not accept that the appellant has been rehabilitated².

[125] In my deliberations, I have not made my own assessment of the cause of the appellant's conduct, his rehabilitation, and progress as suggested by the respondent in closing argument. Despite the fact that Dr. Bloom did not diagnose the appellant with a

² Other than this paper and the authorities referred to in paragraph 123, I have not relied on any of the other authorities to which the parties referred in closing argument. As they were very fact specific none of them add to, or change my analysis.

personality disorder or mental disorder, he did diagnose psychological issues. I am not qualified to make a psychological diagnosis. In any event it is not the role of this Tribunal to base its decisions on its own psychological assessment of an appellant. Psychology is a field of expertise that requires expert evidence.

[126] However, the Tribunal does have expertise in assessing evidence and it is my view that the appellant was not truthful in his testimony, in his dealings with RECO, in his disclosures to Dr. Bloom, to his wife and to his character witness. His lack of honesty was readily apparent during the course of his testimony. Thus, the factual basis on which Dr. Bloom's opinion is based is not supported by the evidence and therefore I do not accept his assessment that the appellant has been rehabilitated or that he is a low risk to reoffend.

[127] The appellant's testimony contained many internal and external inconsistencies. He was evasive in many of his answers requiring respondent's counsel to repeat questions. Other times he avoided answering questions by responding with platitudes about his "life-long problem". I accept very little of the appellant's testimony and where it is in conflict with any other evidence, I prefer the evidence of other witnesses over that of the appellant.

[128] Counsel for the appellant submitted that the appellant should be commended for disclosing to Dr. Bloom that there have been three incidents of theft in his personal capacity as without that disclosure this appeal would have proceeded on the basis of only the one incident. As will be explained below, I do not accept that there have only been three such incidents, nor would I have accepted that the theft from the Fs' home was the only theft committed by the appellant in his professional capacity had he not disclosed two incidents to Dr. Bloom.

[129] Although he claims to be remorseful, in the witness stand he did not present as such. He showed no signs of contrition. He was combative with respondent's counsel, placed blame on the regulator and the system rather than accepting that he is the only one to blame for the predicament in which he finds himself. Other than uttering words of remorse, it was clear from the appellant's testimony that any remorse he feels is in regard to getting caught and the aftermath of getting caught. When he was asked in cross-examination if he is proud that he stole from the Fs, after responding that he is not, not because of the impact on the Fs and to his profession, but because the videos were the most damaging evidence against him.

[130] Although the appellant testified that he feels bad for the Fs and the others from whom he stole, he said far more about the difficulties he has faced since he was caught. For

example, as a result of the suspension of his registration, he had to pay bank fees because his bank account fell below a threshold level and he has not been able to make any RESP contributions. Generally he wanted to portray himself as a victim rather than the wrongdoer.

[131] The appellant described his stealing as a victimless crime but now understands that it has impacted him, his family and his profession. He did not identify the people or businesses from whom he stole as victims.

[132] The appellant's credibility is further undermined by his attempt to deny indisputable facts such as the fact that he looked through the drawers under the baby's crib despite video evidence that he did.

[133] In cross-examination when it was put to the appellant that he went to Fs' home with the intent to steal he denied it, saying that his purpose was to determine if the unit met his client's criteria. It wasn't until later in his cross-examination that the appellant admitted that he had any intent to steal from the Fs, but maintained that it was not his primary purpose.

[134] In my view, the appellant had only one purpose and that was to steal. As can be seen from the videos he was clearly a man on a mission. The entire time he was in camera view, he did nothing but search the premises. When he was not in view, the audio portion of the recordings captured the sounds of him opening and closing drawers and cupboards. He was extremely focused, very determined and efficient, wasting no time and exhibiting no reticence.

[135] The appellant testified that his client wanted a place with a view of the water. The unit has a large picture window. The appellant did not stop even for a moment to examine the view, nor did he take time to examine the property's other features. The appellant brought with him what appears to be a notepad. He did not make any notes while in the unit. I agree with Mr. Colucci that the appellant did nothing to inspect the unit to determine its suitability for his client.

[136] Further, the appellant's actions on the video recordings are those of someone who, in my opinion, was very experienced and efficient in rummaging through a property in search of something of interest or value.

[137] I do not accept the appellant's testimony that he only stole six or so times total in his life of which three were in his professional capacity, which is what he told Dr. Bloom. In cross-examination he testified that he can only recall three thefts in his professional

capacity but acknowledged there may have been more. The appellant told Dr. Bloom that over the 15 years ending in 2015 he stole about every other month. When faced with the math that stealing once every four months (half the rate he reported to Dr. Bloom) amounts to 45 thefts over the 15 years, the appellant became visibly uncomfortable and responded that he would like to think it was less than 45 times and dismissed the relevance of the actual number of times, stating that if it is 100 times or 10 times, it is still stealing and therefore wrong. The number of times may be irrelevant to the appellant but it is very relevant to the regulator and to this Tribunal. For purposes of Act, the number of times the appellant stole and when during the appellant's life the thefts occurred impacts on the assessment of whether there are reasonable grounds to believe that the appellant will not carry on his profession in accordance with the law and with integrity and honesty.

[138] Whether the majority of thefts were in the appellant's professional capacity or in his personal life, all thefts are evidence of conduct that is dishonest and contrary to the law. When told in cross-examination that the appellant's entire history of thefts can be considered by the regulator when determining whether it would take steps to revoke his registration, the appellant's facial expression and tone were ones of indignation. He thought it was relevant that he had not been caught stealing on other the occasions.

[139] The appellant did not think that stealing from a consumer's home in his professional capacity should have impacted his registration. He also felt that rather than suspend him RECO should have recognized he has a problem and offered him assistance. The appellant does not seem to accept that RECO's primary duty is to protect the public by enforcing the REBBA.

[140] One example, and a very significant example, of the appellant's change in testimony was in regard to his failure to disclose other instances of theft in his professional capacity until he met with Dr. Bloom. He alleged that he suffered from repressed memory (which Dr. Bloom did not mention in his report or evidence). Shortly after this he testified that he did not have repressed memory but rather realized when he heard the respondent's submissions before the Divisional Court he realized he has to make full disclosure in order to get the help he needs. The third version was that being with Dr. Bloom helped him to remember more details of the prior thefts.

[141] As I indicated above, Dr. Bloom's opinion that the appellant is a low risk to reoffend is premised on the fact that the appellant has been "outed" in regard to his entire history of theft. I find that the only person to whom he has been outed is Dr. Bloom. The appellant did not tell Mr. Feder, Ms. Hausmann, or most importantly, he did not tell his wife. Insofar as the appellant says that his wife knows more than she acknowledged in

her testimony, I accept her testimony over that of the appellant, and specifically accept her testimony that she only knows that the appellant stole three times and only one of those occasions was in his professional capacity.

[142] Dr. Bloom stated that Ms. Reim would form part of the “surveillance” that will keep the appellant on the straight and narrow. There are many problems with this. The first is that Dr. Bloom did not confirm with Ms. Reim that the appellant has fully discussed with her the extent of his history of thefts. If the appellant cannot be totally honest with his wife at a time when he is seeking to salvage his career as a realtor, I do not accept that he can or will confide in her in the future. In addition, she did not testify that she is willing to provide such oversight or that she is even aware that it is expected of her. Without complete knowledge of the appellant’s history of theft she cannot be expected to make an informed decision about such a role. In addition, Dr. Bloom did not explain how Ms. Reim could or would oversee the appellant’s activities when he is at work.

[143] In any event, Ms. Reim’s statement that she did not need to view the videos because whatever the appellant tells her is “good enough for her” and her apparent lack of interest in reading Dr. Bloom’s report in its entirety does not bode well for any oversight she might provide. I do not share in Dr. Bloom’s confidence that Ms. Reim can contribute any effective oversight of the appellant.

[144] The same applies to the surveillance function that Dr. Bloom recommended Mr. Feder perform. The appellant has not told Mr. Feder the full history of thefts. The appellant does not think it is important to tell Mr. Feder everything because in the appellant’s opinion it doesn’t matter how many times he stole or how many times he stole in his professional capacity. I disagree with the appellant; that is for Mr. Feder to decide. In any event, Dr. Bloom’s recommendation that Mr. Feder report to RECO on the appellant’s progress was based on the incorrect assumption that the appellant has been open and honest with Mr. Feder. In my view, in its duty to protect the public RECO should not be required to rely on reports from a counsellor with whom the appellant has not been honest.

[145] In any event, there is no evidence from Mr. Feder as to whether he is prepared to assume this responsibility or that if he is told that the appellant has not been open and honest with him, he believes that he can rely on what the appellant tells him in the future. To date Mr. Feder seems to have accepted at face value what the appellant has told him.

[146] In regard to Ms. Hausmann, I do not accept her positive comments about the appellant. Although I have no concerns about credibility, character witnesses testify in order to

vouch for the integrity of someone whose conduct or character is in question. To do so, the character witness must know why the person's conduct or character has been called into question. Ms. Hausmann does not have complete knowledge as the appellant only told her about the theft from the Fs. Although he attempted to tell Ms. Hausmann more in the moments before she entered the hearing room to testify, he did tell not her that he stole more than once in his professional capacity. When asked in cross-examination what her thoughts would be if it turns out the appellant stole in his professional capacity on three occasions, Ms. Hausmann paused, had a look of sadness on her face, and responded, "I hope not". Her positive comments came before this disclosure to her.

[147] One final note about Dr. Bloom's evidence. He testified that the appellant is not suffering from depression as he has not exhibited any of the usual indications such as a lack of appetite. The appellant, his wife and Ms. Hausmann all testified that the appellant has lost significant weight since October 2015, a fact about which Dr. Bloom seems to be unaware. I do not know if this is because the appellant told him that he has not lost weight or if Dr. Bloom did not ask the appellant, but it causes me to question the reliability of Dr. Bloom's diagnosis.

[148] As I stated earlier, the test is not simply whether the appellant will steal again, it is whether there are reasonable grounds to believe that as a realtor he will not conduct himself in accordance with law and with integrity and honesty. Applying my findings of fact to the legal test, at the time the respondent initially proposed to revoke the appellant's registration he knew of the theft from the Fs, the appellant's conduct as seen of the videos, the appellant's statement to Ms. Swain that it was the only time he stole, and Mr. Colucci's statement to Ms. Swain that the appellant lied to him about the circumstances of the theft. At that time the appellant's conduct constituted theft, dishonesty, violation of the law, breach of privacy and a breach of the trust the public places in realtors. Based on this, the respondent had reasonable grounds to believe in 2015 that the appellant will not carry on business in accordance with law and with integrity and honesty.

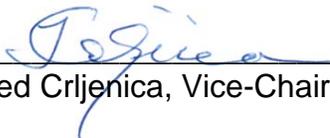
[149] The evidence that has been presented on this appeal not only confirms the reasonableness of that belief, but reinforces it. The appellant has committed the criminal offence of theft on many occasions, has been dishonest with everyone with whom he has dealt in this matter, including this Tribunal, and as such has shown himself to lack integrity. I do not accept Dr. Bloom's opinion that the appellant is a low risk to reoffend because that opinion is based on incomplete information, information that was not proven in evidence and information that was untrue. Nor do I accept the appellant's testimony that he is a changed man or has been rehabilitated. In my view, the appellant should not be allowed access to consumers' homes by way of registration

under the REBBA. There are no conditions to which the appellant's registration can be subject that can reasonably be expected to protect the public.

[150] For these reasons I find that the respondent had, and continues to have, reasonable grounds to believe that the appellant will not carry on business in accordance with law and with integrity and honesty.

[151] The respondent, the Registrar, *Real Estate and Business Brokers Act, 2002*, is directed to proceed with the proposal to revoke the appellant's registration.

LICENCE APPEAL TRIBUNAL



Ted Crljenica, Vice-Chair

Released: August 30, 2018