



Citation: Robert Edward Sole trading as Bobby Sole v. Registrar, *Real Estate and Business Brokers Act 2002*, 2022 ONLAT REBBA 13434

Date: 2022-01-31

File Number: 13434/REBBA

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

**Between:**

**Robert Edward Sole trading as Bobby Sole**

**Appellant**

**and**

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

**Respondent**

**DECISION AND ORDER**

**ADJUDICATOR:** Stephen Scharbach, Member

**APPEARANCES:**

**For the Appellant:** Robert Edward Sole, Self Represented

**For the Respondent:** Michael Collis, Counsel

**Date of Hearing:** November 23, 2021

## **A. Overview**

1. Mr. Robert Sole (“appellant”) appeals a proposal issued by the Registrar under the *Real Estate and Business Brokers Act, 2002* (“Registrar”), to refuse his application for registration as a real estate salesperson.<sup>1</sup>
2. The Registrar proposes refusal on the basis that the appellant’s past conduct affords reasonable grounds for the belief that the appellant will not carry on business as a real estate salesperson in accordance with law and with integrity and honesty.
3. That past conduct in question is mainly the appellant’s activity in 2014 to 2018 when he was registered with the Investment Industry Regulatory Organization of Canada (“IIROC”). Ultimately, that activity led to the appellant being fined and permanently barred from future registration with IIROC.
4. The Registrar states that that conduct, together with the appellant’s failure to pay the IIROC fines or provide honest disclosure to the Registrar about his regulatory history with IIROC, affords grounds for refusal of his application.
5. The appellant acknowledges his history with IIROC but states that the activity took place several years ago. Since then he has been working in another field, he has been making regular payments on the IIROC fine, and there is no allegation of further questionable conduct. The appellant states that his past conduct no longer affords reasonable grounds to deny him registration as a real estate salesperson.
6. After careful consideration I conclude, for the reasons set out below, that the appellant’s past conduct does afford reasonable grounds for belief that the appellant will not carry on business in accordance with law and with integrity and honesty, and I direct the Registrar to carry out his proposal to refuse registration of the appellant.

## **B. The Legal Background**

7. The appellant has applied for registration as a salesperson under the *Real Estate and Business Brokers Act, 2002* (“Act”). The Act is a consumer protection statute which, along with its regulations, attempts to regulate the business of trading in real estate in Ontario. Its main objective is to ensure that the public receives

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<sup>1</sup> The Registrar issued a Notice of Proposal to Refuse Registration dated June 1, 2021 and a Notice of Further and Other Particulars dated November 10, 2021. Together they are referred to as the “NOP”.

honest, ethical, and competent services from real estate brokers and salespersons.

8. To achieve that, the Act prohibits anyone from acting as a real estate broker or salesperson unless they hold a registration granted under the Act by the Registrar.
9. Applicants who meet the prescribed requirements are entitled to registration except in the circumstances specified in the Act. In this case the Registrar proposes refusal based on s.10(1)(a)(ii) of the Act which provides that the Registrar may refuse registration where:

“the past conduct of the applicant ... affords reasonable grounds for belief that the applicant will not carry on business in accordance with law and with integrity and honesty,”
10. However, before the Registrar may refuse a registration, the Act requires the Registrar to first give written notice to the applicant who may then request a hearing before this Tribunal.
11. If requested, the Tribunal is required to hold a hearing and may direct the Registrar to carry out the proposal, substitute its opinion for that of the registrar or attach conditions to the appellant’s registration.
12. In this case, the Registrar proposes refusal on the basis of the appellant’s past conduct, and the issue is whether that past conduct “affords reasonable grounds for belief that the appellant will not carry on business in accordance with law and with integrity and honesty”.
13. The Registrar bears the onus of proving on a balance of probabilities the conduct upon which it relies, and that the conduct provides “reasonable grounds for belief” that the appellant will not carry on business as required.
14. According to the Ontario Court of Appeal, establishing “reasonable grounds for belief” requires more than “mere suspicion”, but less than proof on a balance of probabilities.<sup>2</sup>
15. In other words, the Registrar is not required to show that the appellant’s past conduct makes it more likely than not that he will not carry on business in accordance with law and with integrity and honesty. The Registrar need only

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<sup>2</sup> *Registrar, Alcohol and Gaming Commission of Ontario v. 751809 Ontario Inc. operating as Famous Flesh Gordon’s*, 2013 ONCA 157, para. 18

demonstrate that there are “reasonable grounds for belief” that the appellant will not carry on business as required.

### **C. Findings**

16. The Registrar’s NOP alleges that the following conduct affords reasonable grounds for that belief:
- (i) The appellant’s conduct as an IIROC registered trader from approximately March 2014 to June 2018.
  - (ii) The appellant’s failure to pay the fines and costs orders made against him by IIROC.
  - (iii) The appellant’s failure to provide full and honest answers in his Real Estate Council of Ontario (“RECO”) registration application about his IIROC regulatory history.
17. With respect to (i) and (ii) above, I conclude that the appellant’s past conduct as an IIROC registered trader, and his failure to pay the IIROC fines and costs orders until collection proceedings were started, affords reasonable grounds for belief that the appellant will not carry on business as a real estate salesperson in accordance with law and with integrity and honesty.
18. With respect to (iii) above, I accept the appellant’s evidence that he answered the questions on his application honestly and did not attempt to conceal his history with IIROC. I do not take this conduct into account in coming to my overall conclusion in this case.

#### **(i) Conduct as IIROC Registered Trader**

19. The appellant was previously registered as a trader with IIROC for several years. That registration enabled him to trade on IIROC-regulated equity markets on behalf of a dealer member.
20. Between March and December 2014, the appellant engaged in “manipulative and deceptive activities” that are prohibited under IIROC’s Rules<sup>3</sup>. On many occasions he placed non-*bona fide* trading orders that were intended to create a false appearance of trading activity or artificially influence the sale price of equities to the appellant’s advantage.

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<sup>3</sup> Universal Market Integrity Rules (“Rules”).

21. After IIROC's enforcement staff investigated, it sought sanctions against the appellant. In August 2016, an IIROC hearing panel issued a Decision in which it accepted a settlement between the appellant and IIROC.
22. The appellant agreed to the allegations made against him including engaging in "manipulative and deceptive activities" prohibited under the Rules.
23. The appellant also agreed to a fine (\$10,000) and costs (\$1,000) payable to IIROC, and a suspension of his access to IIROC-regulated marketplaces from August 15 to September 15, 2016.
24. However, the appellant willfully contravened the suspension and did not pay the fine. In late August 2016, while suspended and without telling his employer, he took employment as a trader at another firm and used that firm's access to trade on IIROC-regulated marketplaces. Once his suspension was over, he returned to his original employer.
25. In October 2017, IIROC enforcement staff directed the appellant to attend an interview regarding non-compliance with the suspension. The appellant responded that he was no longer in the financial industry (he had earlier resigned from his employment) and would not attend the interview. The appellant was informed that under IIROC's Rules he remained subject to IIROC's jurisdiction for 6 years after he ceased to be a registered member and was therefore required to attend. The appellant still did not attend.
26. IIROC enforcement staff commenced a second disciplinary proceeding against him alleging that he contravened the suspension, engaged in trading activity with another dealer without informing his current employer, and failed to co-operate with IIROC enforcement staff by refusing to attend the interview.
27. A hearing was held before an IIROC hearing panel to consider those allegations. The appellant was given notice of the hearing but did not attend.
28. In its June 5, 2018 Decision, the hearing panel stated:

The Hearing Panel has determined that the Respondent willfully disregarded the terms of the settlement agreement arising out of his prior market manipulations. He exacerbated his offence by engaging in outside activities, without the knowledge of his employer, to wrongfully access the IIROC-regulated marketplace while under suspension. He brazenly flaunted the Rules governing his professional activities, and then failed to cooperate with the ensuing investigation as required by the Rules.

29. The Hearing Panel imposed a permanent ban on registration of the appellant with IIROC in any capacity, a fine of \$80,000, and an order for costs of \$10,000 payable to IIROC.

**(ii) Failure to Pay Fines and Costs Orders**

30. IIROC's 2016 Decision imposed a fine of \$10,000 and costs of \$1,000. The appellant has made no payments on those amounts.
31. IIROC's 2018 Decision imposed a fine of \$80,000 and costs of \$10,000. No payments were made and, in November 2019, IIROC issued a Notice of Garnishment to collect payments from the appellant's employer. Payments continue to be paid under that garnishment.
32. According to the appellant, he has now paid approximately \$17,000 toward the 2018 Order. He also states that he has paid amounts in addition to those collected under the garnishment, but I was provided with no documentary support of that.

**(iii) Failure to Provide Full and Honest Answers on Application Form**

33. On January 29, 2021, the appellant submitted an application to Real Estate Council of Ontario for registration as a real estate salesperson. According to the Registrar, the appellant "failed to provide full and honest answers to questions 4 and 5" in the application.
34. As set out below, I conclude on a balance of probabilities that although the appellant's answers to question 4 and 5 were incomplete, they were provided honestly and not in an attempt to conceal his past regulatory history with IIROC. I therefore do not take this aspect of the appellant's conduct into consideration in determining whether there are "reasonable grounds for belief" to support refusal the appellant's application.
35. Question 4 asked whether there were any unpaid judgements or debts outstanding. The appellant answered "yes" and disclosed his outstanding debt and garnishment relating to the 2018 IIROC Decision. He did not disclose the unpaid fine and costs award from the 2016 IIROC Decision.
36. Question 5 asked whether the appellant ever had a registration or licence suspended, revoked or cancelled. The appellant answered "yes" and disclosed the 2018 IIROC Decision barring him from future IIROC registration. However, he did not disclose the 2016 IIROC Decision which imposed the 30-day suspension.

37. The appellant states that his answers were honestly given and there was no intention to mislead the Registrar.
38. With respect to question 4, he was under the impression that the garnishment order – which he disclosed – related to his total debt to IIROC and included the amounts owing under both the 2016 and 2018 IIROC Decisions.
39. With respect to question 5, the appellant states that his failure to specifically disclose the 2016 suspension was an honest oversight and not an attempt to conceal the suspension from the Registrar. He points out that he disclosed the 2018 IIROC Decision which clearly noted the 2016 IIROC Decision imposing the suspension and described the conduct that led to it.
40. Having heard the appellant's testimony, I cannot conclude on balance of probabilities that his answers were dishonestly provided.
41. The appellant disclosed the 2018 IIROC decision to ban him permanently from registration. That decision clearly summarises and considers the 2016 Decision which imposed the earlier fine and suspension. If the appellant wanted to conceal his IIROC history from the Registrar, it seems unlikely that he would disclose the 2018 Decision and not the 2016 Decision. I consider it more likely that the appellant neglected to disclose the 2016 fine and suspension through carelessness or inadvertence.

#### **D. Appellant's Position**

42. The appellant does not dispute his previous regulatory history with IIROC. He acknowledges his conduct, admits that he made mistakes, and states that he has taken full responsibility for them. By way of context, he testified that during the relevant time he was going through a divorce and was under severe financial and emotional pressure. That was partially confirmed by evidence that in February 2015 the appellant made a consumer proposal under the *Bankruptcy and Insolvency Act*.
43. The appellant states that when IIROC investigators asked him to submit to an interview in October 2017 he had left the financial industry and resigned from his position with his employer. He declined the interview - in his view he was out of the industry and did not intend to return.
44. The appellant points out that the conduct that led to the fines and ultimately a permanent bar to registration took place several years ago. Since then he has

been working in another field and there is no allegation of further questionable conduct. A CPIC check came back clear.

45. The appellant stated that he has been making payments on the outstanding IIROC fines and costs order, as well as regular child support payments. While it is true that no payments were made until IIROC issued a garnishment, the appellant states that he has paid more than the amounts garnished.
46. Essentially, the appellant argues that the conduct upon which the Registrar relies to refuse his application took place some time ago. Since then there has been no re-occurrence of any questionable conduct and the appellant is now taking responsibility for the fines and costs awards. In the appellant's view, his past conduct no longer affords reasonable grounds to deny his application.

### **E. Decision and Analysis**

47. I conclude that the appellant's past conduct as a registered IIROC trader and his failure to make payments on the IIROC fines and costs orders until IIROC garnished his income, affords reasonable grounds for belief that the appellant will not carry on business in accordance with law and with integrity and honesty.
48. While registered with IIROC he engaged in manipulative and deceptive activities that were prohibited under IIROC's rules. When caught, he agreed to a resolution involving a fine and a 30-day suspension. He did not pay the fine and deliberately contravened the suspension. When IIROC attempted to interview him about contravening the suspension, he refused to co-operate in contravention of IIROC rules. When IIROC imposed fines and costs awards the appellant made no payment towards them until IIROC initiated garnishment proceedings.
49. From the Registrar's perspective the appellant's conduct raises several red flags. The Registrar expects and relies upon registrants to adhere to regulatory requirements governing the trade of real estate. The appellant's conduct while trading in a similarly regulated industry demonstrated a willingness to engage in prohibited deceptive activities and defy the regulator's orders when under financial pressure.
50. In my view that conduct clearly affords reasonable grounds for belief that the appellant will not carry on business in accordance with law and with integrity and honesty if registered as a real estate salesperson.

51. The appellant argues that this conduct no longer affords a reasonable basis to refuse him registration – it took place several years ago and there has been no re-occurrence of questionable behaviour since then.
52. I acknowledge that the relevant conduct occurred from 2014 to 2018, and there have been no issues since. I have considered that in arriving at my decision. However, in my view, in this case the passage of time does not by itself adequately address the concerns raised by the appellant's earlier conduct. The public interest requires some convincing assurance that the conduct is unlikely to re-occur.
53. In this case the appellant stated that the conduct occurred when he was under emotional and financial pressure related to an on-going divorce. While I sympathise, many licensees experience difficult circumstances in their personal lives without resorting to serious contraventions of regulatory requirements. I was provided with no substantive information that would allow me to conclude that the appellant has effectively addressed the earlier conduct and it is unlikely to be repeated if he finds himself under similar pressure again.
54. In summary, I conclude that notwithstanding the fact that the conduct took place a few years ago, it provides reasonable grounds for belief that the appellant will not carry on businesses as required if registered as a real estate salesperson.
55. I do not consider this to be an appropriate case for granting registration with conditions. Neither party suggested any conditions that would be suitable. While conditions involving training, monitoring, etc., may effectively address deficiencies in standards of practice, I am unaware of any realistic conditions that would effectively address an apparent willingness to contravene regulatory requirements when under financial pressure.
56. In other words, having considered the possibility of conditions, I conclude that there are none that would sufficiently protect the public in the present circumstances.

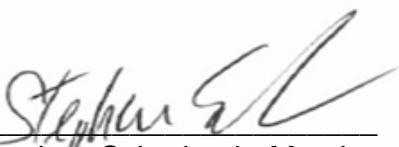
## **F. Conclusion**

57. After carefully considering the factors above, I have concluded that the appellant's past conduct does afford reasonable grounds for belief that he will not carry on business in accordance with law and with integrity and honesty.
58. I have therefore decided to direct the Registrar to carry out his proposal to refuse the appellant's application.

**G. Order**

59. Pursuant to s. 14(5) of the *Real Estate and Business Brokers Act, 2002*, I direct the Registrar to carry out his proposal dated June 1, 2021 to refuse to grant the appellant registration as a salesperson under the Act.

**LICENCE APPEAL TRIBUNAL**



Stephen Scharbach, Member

*Released January 31, 2022*