

**LICENCE APPEAL
TRIBUNAL**

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



**Safety, Licensing Appeals and
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**Tribunaux de la sécurité, des appels en
matière de permis et des normes Ontario**

Citation: Winniefred Lee and Prospective Realty Inc. and Registrar, *Real Estate and Business Brokers Act 2002*, 2018 ONLAT REBBA 11482

Date: 2018-08-22

File Number: 11482 REBBA

Appeal from a Notice of Proposal and Decision of the Registrar, *Real Estate and Business Brokers Act, 2002*, c. 30, Sch. C - to Revoke Registrations and Immediately Suspend Registrations

Between:

Winniefred Lee and Prospective Realty Inc.

Appellants

and

Registrar, *Real Estate and Business Brokers Act 2002*

Respondent

DECISION & ORDER

ADJUDICATOR: Stephen Scharbach, Member

APPEARANCES:

For the Appellants: Bradman Lee, Agent

For the Respondent Shane Smith, Counsel

Heard at Toronto, Ontario: July 31, 2018, September 6, 7, 2018, and July 4, 2019

INTRODUCTION

[1] Ms. Winniefred Lee and Prospective Realty Inc. (“appellants”) are registered as a broker and a brokerage respectively under the *Real Estate and Business Brokers Act, 2002*, c. 30, Sch. C (“Act”).

- [2] They are appealing a June 28, 2018 notice of proposal issued by the Registrar, *Real Estate and Business Brokers, Act 2002* (“Registrar”) to revoke, and an order to immediately suspend, their registrations, pursuant to sections 14(2) and 15 of the Act.
- [3] The hearing commenced on July 31, 2018 and the appellants consented to the extension of the immediate suspension order until the hearing concluded.
- [4] The hearing continued in September 2018 but was delayed because of the illness of the appellants’ representative.
- [5] The hearing concluded on July 4, 2019. For the reasons set out below I direct the Registrar to carry out his proposal to revoke the registrations of both appellants.

OVERVIEW OF PROCEEDINGS

- [6] This hearing was commenced on July 31, 2018 and continued on September 6 and 7, 2018. On September 7, 2018 the appellants requested an adjournment due to the illness of their representative, Mr. Bradman Lee. That request was not opposed by the Registrar and the hearing was adjourned until the September 13, 2018, the next scheduled hearing date.
- [7] On September 11, 2018, Mr. Lee informed the Tribunal and the Registrar that he had been admitted to a hospital and was awaiting test results. Pending those test results, Mr. Lee requested an adjournment of the September 13, 2018 hearing date. The Registrar did not object and the hearing was adjourned until September 20, 2018.
- [8] On September 18, Mr. Lee informed the Tribunal and the Registrar that medical testing was not yet complete and that he would not be able to attend the September 20 scheduled date. The Tribunal asked the parties to communicate with a view to agreeing on new hearing dates and inform the Tribunal.
- [9] In September and October, 2018, Registrar’s counsel emailed Mr. Lee asking about his availability. On October 4, Mr. Lee replied saying that medical testing is not yet complete but he will be in touch as soon as possible to arrange dates for the continuation of the hearing.
- [10] Registrar’s counsel followed up with Mr. Lee on December 19, 2018 but received no response.

- [11] On January 2, 2019 the Tribunal emailed the parties to inquire about the status of new hearing dates. Mr. Lee responded saying that he continued to be ill and would provide an updated schedule as soon as he was able.
- [12] On February 27, 2019 Registrar's counsel filed a motion requesting that the Tribunal issue an Order dismissing the appeal as abandoned pursuant to the Tribunal's Rules.
- [13] That motion was withdrawn when the appellants representative agreed to new hearing dates.
- [14] The hearing was re-scheduled for July 4 and 5, 2019 with the agreement of the parties, and all parties were notified of those dates.
- [15] At the outset of the hearing on July 4, 2019 the Registrar's counsel and witnesses were present and ready to proceed. However, the appellants were not in attendance and had not communicated their intention to be absent to either Tribunal staff or the Registrar's counsel.
- [16] Tribunal staff attempted to contact the appellants' representative by telephone. There was no response.
- [17] The hearing continued as scheduled in the appellants' absence and was concluded on July 4, 2019.

THE ALLEGATIONS

- [18] The Registrar's proposal to revoke the appellants' registrations relies on several grounds.
- [19] With respect to Winniefred Lee, the Registrar alleges that her broker registration should be revoked because:
- She breached a condition of her registration to provide the Registrar with quarterly real estate trust account reconciliations for a three-year period starting on September 1, 2016. Breach of a condition is potentially a reason for revocation of a broker registration pursuant to s. 10(1)(f) of the Act.
 - Having regard to Ms Lee's financial position, she cannot reasonably be expected to be financially responsible in the conduct of her business. That is potentially a reason for revocation of a broker registration pursuant to s. 10(1)(a)(i) of the Act.

- Ms Lee's past conduct affords reasonable grounds for belief that she will not carry on business in accordance with law and with integrity and honesty. Past conduct is potentially a reason for revocation of a broker registration pursuant to s. 10(1)(a)(ii) of the Act.

[20] With respect to Prospective Realty Inc. ("Prospective"), the Registrar alleges that its brokerage registration should be revoked on essentially the same grounds. Ms Lee is Prospective's sole officer and director and is an "interested person" as defined in s. 10(4) of the Act. The Registrar states that Prospective's registration should be revoked because:

- Prospective breached a condition of its registration to provide the Registrar with quarterly real estate trust account reconciliations for a three-year period starting on September 1, 2016 – potentially a reason for revocation of a brokerage registration pursuant to s. 10(1)(f) of the Act.
- Having regard to Ms Lee's financial position, Prospective cannot reasonably be expected to be financially responsible in the conduct of its business - potentially a reason for revocation of a brokerage registration pursuant to s. 10(1)(d)(i) and(ii) of the Act.
- The past conduct of Ms Lee affords reasonable grounds for belief that Prospective will not carry on business in accordance with law and with integrity and honesty - potentially a reason for revocation of brokerage registration pursuant to s. 10(1)(d)(iii) of the Act.

ANALYSIS AND FINDINGS

[21] The allegations against Ms Lee and Prospective are very similar and rely on the same underlying facts. The condition that the Registrar alleges both appellants breached is identical and was placed on both registrations at the same time. The other two allegations apply primarily to Ms Lee but also apply to Prospective because Ms Lee is Prospective's sole officer, director and an "interested person". Since the relevant facts in respect of the allegations are identical for both appellants they are dealt with together below.

A. Breach of a Condition of Registration

(i) The Condition

[22] The condition of registration that the Registrar alleges was breached was placed on the registrations of both appellants by Order of this Tribunal on August 23, 2016. The condition provides that:

For a period of three years from the date of this Order [August 23, 2016], on a quarterly basis commencing on September 1, 2016, Prospective Realty Inc. shall provide to the Registrar...within the previous three months, with real estate trust account reconciliation statements (signed and dated by the Broker of Record)

[23] That condition was attached to the appellants' registration on consent to resolve an earlier immediate suspension order and a notice of proposal to revoke dated July 26, 2016 ("2016 proposal"). The 2016 proposal mainly alleged that Ms Lee failed to provide the Registrar with accurate contact information and failed to respond to many requests by the Registrar's inspection staff to inspect Prospective's books and records.

[24] The appellants appealed the 2016 proposal to this Tribunal. A hearing was scheduled to start on August 23, 2016 but the parties reached an agreement at the outset of the hearing.

[25] Under that agreement, the parties consented to a Tribunal Order dated August 23, 2016 that imposed 5 conditions, including the one above, on the registration of both appellants.

(ii) Non-Compliance with the Condition

[26] I find that Prospective failed to submit the trust account reconciliations as required by this condition and consequently both appellants are in breach of this condition.

[27] The Registrar's witnesses testified that Prospective provided trust account reconciliations for the months from September, 2016 until November, 2017. Most of those reconciliations were incomplete in that they did not include any bank/financial institution statements to verify the reported amounts/transactions in the trust account.

[28] The Registrar's inspection staff were required to repeatedly request the bank statements from Ms Lee and, after some delay, the required reconciliations and accompanying bank statements were eventually provided that covered the months from September, 2016 to November 2017.

- [29] However after that, compliance with the condition ceased and Prospective has failed to submit trust reconciliations in respect of all of the months from December, 2017 to the present.
- [30] On April 17, 2018 RECO inspection staff emailed Ms Lee asking for the reconciliations for December 2017 to February 2018. No response was received.
- [31] Follow up emails were sent on April 24 and 27, and May 3, 2018. On May 4, 2018, Ms Lee responded and stated that correspondence was dropped off at RECO's office on April 30, 2018. However, according the testimony of the Registrar's staff, that correspondence mainly consisted of a notice of completed change of address form and did not include reconciliations or bank statements.
- [32] On July 26, 2018 the Registrar issued an immediate suspension order and the present notice of proposal to revoke the registrations of both appellants.

(iii) Conclusion

- [33] The condition attached to the registration of both appellants required to Prospective to submit monthly trust account reconciliations on a quarterly basis from September 2016 until August, 2019.
- [34] The evidence is clear that the last month for which a reconciliation was submitted is November, 2017. Monthly trust account reconciliation have not been submitted in respect of any of the months from December, 2017 to the present.
- [35] I therefore conclude that both Ms Lee and Prospective are in breach of a condition of their registration.

B. Financial Position and Financial Responsibility

- [36] The Act allows for revocation of an individual registrant in circumstances where:
- “...having regard to the [individual's] financial position, the [individual] cannot reasonably be expected to be financially responsible in the conduct of business.”
(Act, s. 10(1)(a)(i))
- [37] Similarly, the Act allows for the revocation of a corporate registrant where:

“... having regard to the financial position of the registrant, an officer or director of the registrant, or an interested person, the corporate registrant cannot reasonably be expected to be financially responsible in the conduct of business (Act, s. 10(1)(d)(i),(ii)).

- [38] In this case the Registrar argues that the registrations of both Ms Lee and Prospective should be revoked on the basis that Ms Lee cannot reasonably be expected to be financially responsible in the conduct of her business.
- [39] The Registrar points to Ms Lee’s apparent financial irresponsibility in the operation of Prospective’s trust account as indicated by her failure to provide complete trust reconciliations in a timely way, and not at all after November, 2017.
- [40] I agree that the appellants’ failure to provide trust account reconciliations as required seriously impedes the Registrar’s ability to regulate the appellants in the public interest and warrants a decisive regulatory response.
- [41] However, based on the wording of the Act and the evidence presented, I cannot conclude that the appellants’ failure meets the test set out in s.10(1)(a)(i) and 10(1)(d)(i),(ii) and I therefore decline to find that the appellant’s registration should be revoked on this basis.
- [42] Those provisions appear to be directed to situations where a registrant’s financial position will likely impact the registrant’s ability or willingness to conduct business in a financially responsible way. They may apply for example in situations where a registrant is in financial difficulty, cannot meet its financial obligations, or is approaching bankruptcy.
- [43] Application of those provisions in this case would require evidence that Ms Lee’s financial position is such that she and Prospective cannot be expected to be financially responsible in the conduct of their real estate business.
- [44] In this case I have no information about Ms Lee’s financial position. I am therefore not in a position to conclude that having regard to Ms Lee’s financial position, the appellants cannot reasonably be expected to be financially responsible in the conduct of their business.

C. Past Conduct

- [45] The Act allows for revocation of the licence of an individual registrant whose past conduct affords reasonable ground for belief that he/she will not carry on business in accordance with the law and with integrity and honesty (Act, s. 10(1)(a)(ii)).

- [46] The Act also allows for revocation of the licence of a corporate registrant where the past conduct of an officer, director or interested person of the corporation affords reasonable grounds for belief that its business will not be carried on in accordance with the law and with integrity and honesty (Act, s. 10(1)(d)(iii)).
- [47] The Registrar's position is that Ms Lee's broker registration should be revoked because her past conduct affords reasonable grounds for belief that she will not carry on business in accordance with law and with integrity and honesty.
- [48] Since she is Prospective's sole officer, director and an interested person, the Registrar takes the position that Prospective's brokerage registration should also be revoked based on Ms Lee's past conduct.
- [49] These provisions require that the Registrar establish that Ms Lee's past conduct provides reasonable grounds for belief that she will not carry on business in accordance with law and with honesty and integrity.
- [50] "Reasonable grounds for belief" requires something more than mere suspicion but something less than the standard applicable in civil matters (proof on a balance of probabilities).
- [51] Reasonable grounds will exist where there is an objective basis for the belief which is based on compelling and credible information. (*Ontario (Alcohol and Gaming Commission of Ontario) v. 751809 Ontario Inc.* ("Famous Flesh Gordon's") 2013 ONCA 157).
- [52] Applying those principles to the facts of this case, I conclude that Ms Lee's past conduct does provide more than a mere suspicion. It provides an objective basis for belief that she will not carry on business in accordance with law and with integrity and honesty.
- [53] That past conduct consists of Ms Lee's:
- breach of the condition that Prospective provide trust account reconciliations,
 - failure to respond to the Registrar's many requests to examine Prospective's books and records between January 2015 and July 2016 and,
 - unwarranted and extravagant written accusations against the Registrar and his staff indicating a fixed animosity likely to interfere with her ability to comply with regulatory requirements in the future.

[54] The reasons for my findings are set out, below.

(i) Breach of Condition

[55] As noted above, Ms Lee consented to a condition of registration that required her to ensure that Prospective submitted monthly trust account reconciliations on a quarterly basis for a three-year period starting in September, 2016.

[56] That condition was imposed by this Tribunal on consent to resolve an earlier notice of proposal to revoke and an immediate suspension order that was issued after Ms Lee failed to respond over a prolonged period to repeated requests by the Registrar to examine Prospective's books and records.

[57] Ms Lee initially complied with the condition although the Registrar's inspection staff had to repeatedly request and wait for the supporting bank/financial institution records. Compliance with the condition ended entirely by December, 2017 and Ms Lee and Prospective remain in non-compliance up to the present.

[58] Non-compliance with that condition is a serious matter. The proper management of a brokerage trust account and the responsibility of registrants to be transparent to the Registrar about accounting for trust funds is a crucial component of regulating the real estate sector. Few requirements so obviously go to the heart of protecting the public as the proper management of funds held in trust.

[59] The facts indicate that Ms Lee has been unable or unwilling to allow the Regulator to effectively scrutinise Prospective's operation of its trust account, even after that was made a specific condition of registration.

[60] In these circumstances I conclude that Ms Lee's past conduct in that regard does afford a reasonable ground for belief that the appellants will not carry on business in accordance with law and with integrity and honesty.

(ii) Failure to Comply with Requests for Inspection (2015-2016)

[61] The Registrar also relies on Ms Lee's past conduct in failing to effectively respond to repeated requests from the Registrar's inspection staff between January 2015 and July 2016 to make Prospective's books and records available for inspection.

[62] This conduct formed the basis for the Registrar's 2016 proposal to revoke and immediate suspension order.

[63] Testimony from the Registrar's inspection staff established that throughout the 18-month period between January 2015 and July 2016, Ms Lee failed to respond to the Registrar's many requests for meetings to inspect Prospective's books and records. In summary:

- In January 15, 2015 Ms Linda Kim, an inspector, left telephone messages and sent emails to Ms. Lee to schedule a meeting to inspect Prospective's records. Ms Kim used the contact information provided to the Registrar by the appellants but received no response.
- In August 2015, a registration officer sent an email to Ms. Lee indicating that several attempts had been made to contact her. Ms Lee was provided with a notice of change of address form to ensure that her current contact information was on file.
- Ms Lee completed and submitted the form. The registration officer attempted to reach Ms Lee by telephone to let her know that the inspection staff had been trying to contact her. The registration officer received no response.
- Ms Kim tried to contact Ms Lee again in August 2015. Ms Kim sent Ms Lee an email outlining her repeated attempts to contact her and gave Ms Lee a deadline of August 31, 2015 to respond. No response was received.
- On September 30, 2015, the Manager of Inspections and Investigations sent a letter to both appellants requesting that they get in touch to set up an inspection. Ms Lee was given a deadline of October 15, 2015 to respond. No response was received.
- In October, 2015, the manager requested that an investigator attempt to contact Ms Lee. The investigator attended at Prospective's business address as filed but was informed by the landlord at that address that Prospective did not maintain an office there, and that the location simply provided a mailing address and a phone service.
- The landlord also informed the investigator that he had not seen Ms Lee for several months, mail had piled up and was not collected, and Ms Lee still owed him for 6 months' rent.

- The inspector also attended at Ms Lee's reported residential address. There was no answer at the door and all windows were covered with blinds or drapes.
- In July 2016, Ms Kim telephoned Prospective using the telephone number Prospective had filed with the Registrar and again left a message asking to set up an appointment. There was no response.
- Ms Kim also telephoned Ms Lee but was informed that the number was out of service. She then sent an email to Ms Lee inquiring about setting up an inspection but again there was no response.
- On July 26, 2016, the Registrar issued an immediate suspension order and a notice of proposal to revoke, which as noted above, was eventually withdrawn when the appellants agreed to conditions attached to their registrations.

[64] The Act (s. 20), provides that the Registrar or his/her designate may conduct an inspection and may enter and inspect the business premises of a registrant to, among other things, ensure compliance with the Act and Regulations.

[65] The Registrar's inspection power is crucial to carrying out his mandate of protecting the public by ensuring that registrants comply with the Act and regulations.

[66] Compliance cannot be confirmed and non-compliance cannot be exposed unless the Registrar has an unobstructed ability to inspect. Registrants have a duty to comply with reasonable requests made by the Registrar to inspect books and records. Ignoring those requests obviously obstructs the Registrar's ability to regulate the industry in the public interest.

[67] In this case, Ms. Lee clearly failed, over a prolonged 18-month period, to comply with the Registrar's many requests to examine Prospective's books and records. Ms Lee only effectively responded after the Registrar ordered an immediate suspension and issued his 2016 notice of proposal to revoke.

[68] In my view, Ms Lee's past conduct obstructed the Registrar's legitimate efforts to examine Prospective's books and records and also affords reasonable grounds for belief that Ms Lee and Prospective will not carry on business in accordance with law and with integrity and honesty.

(iii) Unwarranted Accusations Directed at Registrar's Staff

- [69] Ms. Lee has alleged in several written communications that the Regulator and his staff have demonstrated bias, acted in a racist, rude, and abrasive manner toward her, manufactured false accusations and allegations against her, and that some members of the Registrar's staff are "fraught with collusion, corruption, malice, vitriol and hate".
- [70] According to the Registrar, those communications were in response to the Registrar's legitimate attempts to inspect Prospective's books and records and later to obtain compliance with the condition requiring trust account reconciliations. The Registrar states that the content and tone of the communications are highly unprofessional, offensive, inappropriate and strikingly disproportionate.
- [71] The Registrar argues that Ms Lee's communications indicate an excessive animosity toward the regulator and that animosity likely contributed to Ms Lee's prolonged unwillingness to comply with the Registrar's requests to access the brokerage's books and records and submit the required trust account reconciliations.
- [72] According to the Registrar, Ms Lee's communications suggest that she will not likely co-operate with the Registrar's attempts to inspect and monitor her business in the future and thus affords another reasonable ground for belief that she will not carry on business in accordance with law and with integrity and honesty.
- [73] I agree. I have reviewed the communications in question. They are extensive, but the following quotes are representative of their content and tone:

Please note. Winniefred Lee and Prospective Realty Inc. are requesting a different inspector at RECO to oversee the Real Estate Trust Account Bank Statements...We do not believe that there is impartiality being conveyed to us as there appears to exist a platform of bias, prejudice and collusion. We also have reason to believe that there is an atmosphere of linked corruption and clandestine activities directed toward Winniefred Lee and Prospective Realty Inc. Brokerage.

(letter dated June 22, 2017 to Registration RECO)

[RECO staff member] ...used deception, tricks and underhanded tactics to create a deceptive situation to create false slander and defamation against... [the appellants]

I have noticed a propensity at RECO to keep changing documents and information at their whim to demonise, demoralise, and degrade myself and the brokerage with specific intent to cause damage... These certain employees at RECO are fraught with collusion, corruption, malice, vitriol and hate in conjunction with the CRA tax scammer group, a group that RECO shamelessly frolic with.

Allegations and accusations were manufactured to cause specific and widespread damage, these false allegations stem from maliciousness, prejudice and bias. Based on the magnitude and collusion against myself and the brokerage, I believe and it is my opinion this is a hate crime and should be treated as a hate crime without complaint.

(letter dated October 4, 2017 to Tracey McCharles, Minister of Government and Consumer Services)

- [74] I heard no evidence from the appellants and thus was not provided with any supporting information, explanation or context that would illuminate these apparently extravagant allegations.
- [75] Many of Ms Lee's written communications that were placed into evidence suggest an animosity toward the Registrar and the Registrar's staff. I acknowledge that intemperate remarks are sometimes made when tempers are high and by themselves those remarks may not amount to past conduct that would justify revocation.
- [76] However, when considered along with the evidence of Ms Lee's prolonged failure to respond to the Registrar's many requests for access to books and records, and later her failure to submit trust account reconciliations, they suggest that Ms Lee harbours an antipathy toward the Registrar that has interfered with her ability or willingness to comply with regulatory requirements.
- [77] I therefore conclude that Ms Lee's past conduct in sending these and similar communications indicates that she will not readily cooperate with or facilitate the Registrar's regulatory efforts in the future. When viewed together with her failure to respond to the Registrar's requests for access to Prospective's books and records and her failure to comply with the condition requiring trust account reconciliations, those communications afford additional reasonable grounds for belief that both she and Prospective will not conduct business in accordance with the law and with integrity and honesty.

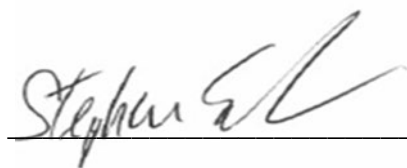
SUMMARY

[78] I conclude that the Registrar has established on a balance of probabilities that;

- Ms Lee and Prospective are in breach of a condition attached to their registrations that require Prospective to submit monthly trust reconciliations on a quarterly basis from September, 2016 to August 2019.
- Ms Lee's past conduct affords reasonable grounds for belief that she and Prospective will not carry on business in accordance with law and with integrity and honesty. That past conduct consists of:
 - o Ms Lee's failure to comply with the condition of her registration that Prospective submit monthly trust reconciliations,
 - o Ms Lee's failure to respond to the Registrar's many requests between January, 2015 and July 2016 to examine Prospective's books and records.
 - o Ms Lee's unwarranted written accusations against the Registrar and his staff indicating a fixed animosity is likely to interfere with her ability to comply with regulatory requirements in the future.

ORDER

[79] Pursuant to s. 15(5) of the Act, I direct the Registrar to carry out his proposal dated June 28, 2018 to revoke the broker registration of Winniefred Lee and the brokerage registration of Prospective Realty Inc.



Stephen Scharbach, Member

Released: August 22, 2019