

**LICENCE APPEAL
TRIBUNAL**

**Safety, Licensing Appeals and
Standards Tribunals Ontario**

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

**Tribunaux de la sécurité, des appels en
matière de permis et des normes Ontario**



Tribunal File # 11058/REBBA

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

Aram Tokmak

Appellant

-and-

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

Respondent

DECISION

ADJUDICATOR: D. Gregory Flude, Vice-Chair

APPEARANCES:

For the Appellant: Self-represented

For the Respondent: Jonathan Miller, Counsel

Heard in Toronto: May 4, 2018

OVERVIEW:

- [1] The appellant, Aram Tokmak, was registered as a real estate agent up until July 20, 2014 when his registration lapsed due to his failure to complete a mandatory update course. He reapplied in July 2016. The Registrar under the

Real Estate and Business Brokers Act, 2002, S. O. 2002 c. C-30 Sched. C (the “Act”) has refused registration and the appellant has appealed to this Tribunal.

- [2] The Registrar denied the appellant’s registration because of criminal and *Provincial Offences Act* convictions, unpaid debts and failure to disclose outstanding charges on an application for renewal, and for failing to comply with the Act by notifying the Registrar within five days of criminal charges being laid against him.
- [3] The appellant admits the allegations set out in the Registrar’s Notice of Proposal to Refuse a Registration (the “Notice”). He submits that at the time of the events he was experiencing difficult personal circumstances and that he has now changed such that, looking forward, he will not repeat the impugned behaviour. Given the admission of the facts, the major focus of this decision is on the appellant’s explanations for his behaviour.

ISSUES

- [4] The issues in the case flow from s. 10 of the Act. They are set out in the Notice as follows:
 - a. Under s. 10(1)(a)(i) of the Act, given the appellant's financial position, he cannot reasonably be expected to be financially responsible in the conduct of business;
 - b. Under s. 10(1)(a)(ii) of the Act, the appellant's past conduct affords reasonable grounds for belief that he will not carry on business in accordance with the law and with integrity and honesty; and
 - c. Under s. 10(1)(a)(iii) of the Act, the appellant provided a false statement in an application for registration.
- [5] Section 14 of the Act defines my powers on an appeal from a proposal to refuse a registration. I may direct the registrar to carry out the proposal or substitute my opinion for that of the Registrar and I may attach conditions to my order or to a registration.

RESULT

- [6] The onus lies with the Registrar to show that the appellant falls within the exclusions set out in s. 10(1)(a) of the Act. I find that the Registrar has satisfied that onus. This is particularly true as the appellant has admitted all of the material facts, but in light of the court records it is clear that the tests in ss. 10(1)(a)(i) and (ii) would have been satisfied even if the matter proceeded to a full disputed hearing.
- [7] I find that the appellant's explanation that he has turned his life around and that he is now a suitable candidate to be trusted to act with integrity and honesty and in a financially responsible way in real estate transactions lacks sufficient substance to overcome his history of financial wrongdoing. Other than his representations that he has undergone a lifestyle change and is now "in a better place," there is no other supporting evidence to show that it is safe to place the public trust in him once again. I direct the Registrar to carry out the proposal and deny the appellant registration as a sales person under the Act.

ADMITTED FACTS

- [8] To the appellant's credit is the fact that he admitted the material facts. In doing so he provided some evidence that he recognizes the serious nature of his past infractions and that he may have turned an important corner in putting these infractions behind him. As stated above, this recognition is insufficient, on its own, to regain the public trust. It needs to be backed up by a substantial history of honest dealings.
- [9] The facts admitted by the appellant start with civil judgments against him in December, 2009. The TD Bank took out two judgments against the appellant for default on two loans. The total amount of both judgments is approximately \$36,000 plus interest.¹ He has made no payment on these debts. The appellant did not disclose that these judgments to the Registrar, contrary to s. 34(1) of O. Reg. 567/05.

¹ One judgment bears interest at 8.15% and the second at 4%. A simple calculation would indicate that interest now totals in the region of \$18,000 to \$20,000.

[10] In March 2010 the appellant was the listing agent on a property in Whitby. The listing agreement called for a commission of 4%. It was the appellant's evidence that his employing broker would be liable to pay 2.5% of the commission to the brokerage acting for the purchaser. The appellant unilaterally changed the listing agreement to 1.5%. He failed to notify his brokerage of the change. He then had the seller pay the commission to him directly in cash. When the brokerage called the seller to follow up on the non-payment of the 4% commission, the seller said the commission had been paid directly to the appellant in cash. The brokerage terminated the appellant's employment and reported the matter to the Registrar's office, the Real Estate Council of Ontario (RECO). The applicant's employing broker remained liable to pay the 2.5% commission to the purchaser's brokerage.

[11] The Registrar laid charges against the appellant under the Act because of the commission issue and failure to report the judgments. In January 2013 the appellant pleaded guilty to three charges and was assessed three fines totalling \$13,500 to be paid within one year. He was also required to pay restitution to his client, the seller, in the amount of \$2,900 within six months. He paid the restitution on time but has not paid the fines.

[12] In the spring of 2013 the appellant made 144 claims to Sun Life Insurance Company for medical and dental services that he did not, in fact, receive. He was paid a total of \$17,306. Sun Life discovered the fraud and criminal charges were laid. In 2016 the appellant was convicted of 1 count of uttering a forged document comprising the 144 false claims and sentenced to 90 days conditional sentence and one year probation. He completed his probation in August 2017. He was ordered to repay the \$17,306 to Sun Life in a stand-alone restitution order enforceable as a civil judgment.

[13] In summary, as of the date of the hearing before me the appellant owed approximately \$36,000 plus interest to TD Bank. The judgment debt had been outstanding for over nine years and the underlying failure to pay the outstanding loan for a longer period than that. He owed \$13,500 in unpaid fines levied in 2013 and payable within one year. He owed \$17,306 to Sun Life from 2016. His current total indebtedness is approximately \$67,000 plus interest. He has not made any payments, or even attempted to make payments. The only court ordered repayment he has made was restitution of \$2,900 to his client for the illegal commission transaction. This repayment was supervised by RECO and he made payment directly to RECO to be forwarded to the client.

- [14] The appellant advanced two reasons for not paying the other debts. Firstly he argued that there was no time limit on the requirement to repay them. He distinguished the \$2,900 because it had a six-month time limit. In cross-examination he acknowledged that the \$13,500 in fines was to be paid in one year. His second reason was that he had no income from which to make payments. He did not feel that making occasional lump sum payments of \$20 or \$50 would stand for much.
- [15] The appellant renewed his real estate registration in 2012. At that time the charges under the Act relating to the improperly paid commission were pending and he was renewed on consent terms. One of the charges under the Act involved the appellant's failure to notify the Registrar of a change of the information in his application. The conditions clearly set out the applicable regulation, s. 34(1) of O. Reg. 567/05, in an italicized note. He applied in 2014 to renew his registration. He failed to disclose the criminal charges.
- [16] The applicant attempted to justify the second failure to disclose in two ways. He testified that, although he knew he was charged criminally, there was a chance the charges would be dropped if he made restitution. The judge notes in his sentencing reasons that the criminal trial was held up for an extended period to give the appellant the opportunity to make restitution. The judge notes that, despite that lapse in time, and his expectation that some restitution effort would have been made, that the appellant had paid nothing. Indeed, it was the appellant's evidence that he did not have the funds to make repayment and was hoping his estranged brother would make the payment. He testified that, when his brother learned that payment would not result in a dismissal of the charges, he declined to pay the money.
- [17] The second reason the appellant gave is that his failure to disclose should not be counted against him because he ultimately withdrew the application. I give this argument no weight. The appellant filed his application fully intending the Registrar to rely on it. He did not withdraw it to correct wrong answers. He withdrew it because he wanted to take steps to address his life situation.

THE APPELLANT'S POSITION

- [18] The appellant described how, at the time of the offences he was in a bad frame of mind. He had been divorced and he had a gambling addiction. He has since taken counselling for his gambling addiction at CAMH. The counselling was a

year-long course. He states that he was depressed and suffering from anxiety but has come to terms with those issues, including his addiction. When he was a real estate agent between 2004 and 2010 he had no complaints made against him. He sold over 100 houses and made a good living. He asks that I recognize that he is not the person he was when he committed the criminal offences and the offences under the Act and grant him a registration.

ANALYSIS

[19] It is clear from the recital of the facts above, that there is ample evidence upon which I can find, given the appellant's financial position that he cannot reasonably be expected to be financially responsible in the conduct of business. He has over \$67,000 of debt and no immediate prospect of repaying it. He has committed fraudulent acts to get money. He has breached the Act to get money and left his employing broker with a bill for 2.5% commission. I find that the Registrar has satisfied the test in s. 10(1)(a)(i) of the Act.

[20] The same facts give ample grounds for the belief that the appellant will not carry on business in accordance with law and with integrity and honesty. On two separate occasions the appellant diverted funds for his own use in a planned, premeditated manner. On the first occasion, he prepared a new listing form to divert commissions to his own use without regard to the impact on his employer. On the second he made 144 false insurance claims that required forethought. First he had to recognize that the flaw in the insurance company's on-line billing process was that it relied on the honesty of claimants, then he exploited that flaw 144 times. I find the Registrar has satisfied the test in 10(1)(a)(ii) of the Act.

[21] In addressing the question of making a false statement, I note that, despite the appellant's statement that he thought the charges would be dropped when his brother paid restitution, he was well aware of his obligation to make full disclosure. He had been convicted of non-disclosure a year earlier. He had signed conditions in 2012 that specifically cited the applicable regulation. I do not accept his protestations that the lack of certainty about the future of the charges relieved him of the requirement to make full disclosure on the 2014 application form. I find that the appellant knowingly made a false statement in his 2014 application.

- [22] Nor do I accept that the withdrawal of the 2014 application negates the failure to disclose. At the time the applicant submitted the form, he intended all of the statements contained in it to be relied on by the Registrar. His withdrawal was not to correct his non-disclosure, but for other, unrelated personal issues. I find that the appellant provided a false statement in an application for registration contrary to s. 10(1)(a)(iii) of the Act.
- [23] As stated above, other than his statements that he is now trustworthy, there is no other evidence to support the appellant's position. In order to overcome such a period of financial dishonesty, the appellant needed to show that he was trustworthy by actions, not words. It is impossible to delineate what those actions might be with any specificity, but evidence that he had occupied a position of trust for some time and that his discharge of his duties in that position had been above reproach would go a long way. In the absence of such evidence, or other equally convincing evidence, the appellant has failed to convince me that he should be registered as a real estate sales person.
- [24] I have also considered the fact that the appellant was given a second chance in 2012. At that time he was facing charges for industry related offences that included diverting money to his own account. The Registrar registered him on terms. Instead of embracing his second chance, a few months after consenting to terms, the appellant committed 144 fraudulent acts that resulted in his latest criminal charge.

CONDITIONS

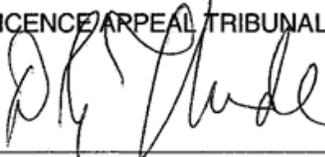
- [25] The appellant argues that he could be registered on conditions. There were conditions on his 2012 registration and he would welcome similar conditions.
- [26] The Registrar argues that the nature of the appellant's past behaviour is financial misdealing. It is the nature of the real estate industry that sales agents cannot be supervised in any meaningful way because of their work tends to be solitary. They conduct most of their business out of the office. They are the ones who deal with client needs and prepare the necessary documents. They handle funds and honesty and integrity are core requirements of their profession. In the Registrar's submission, the appellant has a record where he has shown a lack of honesty and integrity in financial dealings such that there are no workable conditions that can guarantee the appellant's future conduct.

[27] I agree with the Registrar's position. Honesty cannot be legislated. Either a registrant acts in the position with the utmost honesty or no conditions can protect the public. In diverting funds from a client into his own pocket and leaving his employing broker to pay the bill for his wrongdoing, the appellant has demonstrated that in the past he has lacked the requisite honesty. He then compounded that wrongdoing by defrauding Sun Life. Without a much fuller record of honest dealings, I cannot consider conditions.

ORDER

[28] Having heard the evidence and submissions of the parties, I direct the Registrar to carry out his proposal dated October 18, 2017 and refuse the appellant registration as a real estate sales person.

Released: June 22nd, 2018

LICENCE APPEAL TRIBUNAL

D. Gregory Flude, Vice Chair