

**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: Secret Agent Realty Inc. and Adegbenro Adeoba v. Registrar, Real Estate and Business Brokers Act, 2002, 2019 ONLAT REBBA 11839

Date: 2019-11-28

File Number: 11839 REBBA

Appeal from a Proposal of the Registrar, Real Estate and Business Brokers Act, 2002 to Refuse Registration of Secret Agent Realty Inc. as a brokerage and of Adegbenro Adeoba as a broker

Between:

Secret Agent Realty Inc. and Adegbenro Adeoba

Appellants

-and-

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

Respondent

Reasons for Decision and Order

ADJUDICATOR: Patricia Conway, Member

APPEARANCES:

For the Appellant: Adegbenro Adeoba

For the Respondent: Jay Blair, legal counsel

Reporter: Christopher Delic
Hearing dates: October 3 and 4, 2019

Overview

1. This is an appeal to the Licence Appeal Tribunal (the “Tribunal”) of a Notice of Proposal issued by the Registrar, *Real Estate and Business Brokers Act, 2002* (the “Registrar” and the “Act”, respectively). The Notice of Proposal dated November 15, 2018 proposes to refuse to register Secret Agent Realty Inc. (“SAR”) as a brokerage under the Act, and to refuse the registration of Adegbenro Adeoba as a broker under the Act. To clarify: the Registrar is prepared to register Mr. Adeoba as a broker subject to conditions but proposes to refuse his application for registration as the broker of record for SAR.
2. The facts are not in dispute. Mr. Adeoba was first registered as an agent under the Act in 2008. He worked as an agent with Remax 2000 Inc. until it was purchased by Remax Premier Inc. (“RPI”) after which he worked for RPI. In 2012 he was registered as a broker and continued to work for RPI in that capacity. He resigned from RPI in August 2016 in order to start his own brokerage. He applied to register SAR and to register himself as its broker of record in November 2016. Those applications led to the Registrar’s Notice of Proposal in 2018.
3. The Registrar cites two statutory grounds for refusing Mr. Adeoba’s registration. These are set out in section 10(1)(a) of the Act, and are as follows:
 - a. He made a false statement in his application for registration.
 - b. Having regard to his financial position, he cannot reasonably be expected to be financially responsible in the conduct of business.
4. With respect to SAR, Mr. Adeoba is its president and sole director and shareholder. The Registrar asserts that pursuant to s.10 (1)(d) of the Act, findings made against Mr. Adeoba also apply to the brokerage. Mr. Adeoba does not agree with this assertion. He stated that SAR is a separate legal entity and should be assessed as such. I will consider this issue below as a preliminary issue.
5. Under section 14 of the Act, I may direct the Registrar to carry out its Notice of Proposal or substitute my opinion for that of the Registrar. Should I determine that the appellants are entitled to registration, I may attach conditions to their registration, if appropriate.
6. The parties conducted themselves with dignity and courtesy throughout the hearing. I note this particularly with respect to Mr. Adeoba who represented his interests and those of SAR. Although he has no legal training, and although the issues before me are of great importance to him, he was composed and focussed on the issues throughout, and accepted my rulings calmly and without argument.

Result

7. After hearing and considering the testimony of the witnesses and submissions on behalf of the parties, I have determined that the Registrar has not made out its case. Accordingly, I set aside the Order of the Registrar and direct that the appellants' applications for registration as a broker of record and as a brokerage be granted, on terms set out at the end of these reasons.

8. At the commencement of the hearing, Mr. Adeoba raised an issue with respect to the Registrar's two witnesses, Angela Volpe and Jackie Foster. He submitted that he did not receive disclosure of the names of the Registrar's witnesses nor a brief summary of their evidence until September 25, 2019, in breach of the *Licence Appeal Tribunal, Animal Care Review Board and Fire Safety Commission Common Rules of Practice and Procedure, Version 1 (October 2, 2017)* (the "Rules"), s. 9.1, 9.2, and 9.3. These require names of witnesses and summaries of their evidence to be provided to all parties at least 10 days before the commencement of the hearing. As this was not done, Mr. Adeoba submitted that the Registrar's witnesses should not be allowed to testify.

9. After hearing argument, I decided that in the interests of a fair and expeditious hearing, I should give the rule a liberal interpretation as provided in Rule 3.1 and allow the witnesses to testify. My reasons are as follows:
 - a. The hearing was originally scheduled for July 2019 and in preparation for the hearing the Registrar sent to Mr. Adeoba the names of these two witnesses and a brief summary of their expected evidence. I agree with Mr. Adeoba that the title of the proceeding under which this information was sent to him was incorrect. proceeding; however, I conclude that Mr. Adeoba would have been in no doubt that the witness list was meant for this appeal, despite the title of proceeding, given that he has had dealings with both witnesses and is familiar with the role each has played in his application process.

 - b. Mr. Adeoba did not identify any prejudice he has experienced from receiving the witness list late. While it is not always necessary to demonstrate prejudice depending on the nature of the case, its presence or absence is an important factor to consider when deciding whether strict adherence to the Rules regarding time should be required. Given the absence of prejudice and the overall minor nature of the failure to comply,

and in the interests of affording procedural fairness to the Registrar, I denied Mr. Adeoba's request.

10. I wish also to deal with Mr. Adeoba's submission that SAR should be regarded as a separate legal entity so that findings made against him should not also apply to SAR. Mr. Adeoba did not offer any substantive argument on this issue other than to point out, as is clearly the case, that the corporation is a separate legal person and thus should be treated separately.
11. However, s. 10(1)(d) of the Act states that where an applicant is a corporation, the financial position or conduct of an interested person or its officers or directors may disentitle the applicant corporation to registration. Mr. Adeoba is the sole officer and director and beneficial owner of SAR and as such, his conduct is relevant to the corporation's entitlement to registration. A finding against him will also be a finding against and interested party of SAR.

Issues to be determined:

- a. Did Mr. Adeoba make a false statement in his application for registration in November 2016?
- b. Having regard to Mr. Adeoba's financial position, can he reasonably be expected to be financially responsible in the conduct of business?

Evidence and Analysis

Issue a: Did Mr. Adeoba make a false statement in his application for registration in November 2016? The statement alleged to be false is the failure of Mr. Adeoba to state in his application that he had an outstanding judgment against him.

Jackie Foster

12. Jackie Foster, a registration officer for RECO, gave evidence on behalf of the Registrar on Mr. Adeoba's registration history. She explained that a registrant must apply every two years to renew their registration. On his first renewal application in 2010, Mr. Adeoba disclosed that he had a pending criminal charge for an alleged assault against his wife. As a result of the charge, the Registrar put conditions on his registration which he complied with and the conditions were withdrawn.
13. In September 2012, RECO learned that Mr. Adeoba's employer, Remax 2000, ("Remax") had received a requirement to pay ("RTP") from the Canada Revenue

Agency (“CRA”) demanding it pay to CRA 50% of any commissions Mr. Adeoba earned to pay his accumulated tax arrears for failing to file tax returns for 2009 and 2010. Remax complied with the RTP and Mr. Adeoba’s tax arrears had been paid by the time RECO learned of this.

14. Ms. Foster testified that RECO was concerned about the tax liability because Mr. Adeoba failed to notify RECO within 5 days of his receiving notice that he was in arrears to CRA, as he was required to do by Regulation 567/05, s. 34(1) under the Act which states that any change in the information given in an application for registration must be communicated to the Registrar within 5 days
15. As a result of learning about this debt, RECO added voluntary conditions, to which Mr. Adeoba agreed, to his renewed licence. These voluntary conditions included using best efforts to pay CRA, and a requirement to notify RECO of any changes in the amount of the debt within 5 days of receipt of notice from CRA. These conditions remained in place until Mr. Adeoba resigned from RPI in 2016 to start his own brokerage. Mr. Adeoba thereafter did notify RECO of changes in the amount of his debt to CRA. He did so in October 2012 when his arrears were recalculated at \$33,431.00, presumably as a result of CRA having received Mr. Adeoba’s latest tax return. Ms. Foster stated that he did not always notify RECO of changes within the stipulated 5-day period from receiving notification from CRA of any change in his indebtedness. The amount of the debt fluctuated up and down as payments were made to CRA through Mr. Adeoba’s employer, and as the CRA reassessed the amount owing based on Mr. Adeoba’s tax returns. The Registrar admits that in each of his applications for renewal of his registration, Mr. Adeoba informed the Registrar of the changes in his indebtedness to CRA. Nonetheless, the Registrar’s position in its Notice of Proposal is that Mr. Adeoba was less than forthcoming in his reporting. Mr. Adeoba’s response, as is set out more fully below, is that he received no indication from RECO that it was unhappy with his disclosure of his CRA indebtedness. I see nothing in the documentary evidence indicating that RECO informed Mr. Adeoba that it was dissatisfied.
16. After Mr. Adeoba’s applications in 2016 to register his company SAR as a brokerage and himself as its broker of record, RECO undertook a further investigation of Mr. Adeoba’s affairs. Ms. Foster said that this is normal practice when an initial application to register a brokerage or a broker of record is made. RECO found that a judgment was registered in late 2014 against Mr. Adeoba. The judgment arose from two loans he took from Agents’ Equity in 2012 in the total amount of \$13,700.00. The loans were advances on commissions on firm real estate deals. When the deals did not close, Mr. Adeoba was obliged under the

terms of the loan agreements to repay the loans plus interest at 18%, within 60 days after the deals aborted.

17. Ms. Foster acknowledged that as soon as the judgment debt was brought to his attention by RECO Mr. Adeoba admitted that he owed the money but denied any knowledge of the judgment against him. Ms. Foster testified that RECO was kept apprised of Mr. Adeoba's efforts to track down the creditor and arrange a payment plan to satisfy the amount owing. He did offer to pay the amount owing in monthly installments, but the offer was not accepted and some of the debt remains outstanding, with interest accruing. RECO's position is that Mr. Adeoba should have disclosed the loans as soon as they went into default, and that his failure to list them under "outstanding debts" on his November 2016 applications was a false statement that disentitles him and SAR to registration.

Mr. Adeoba

18. Mr. Adeoba's testimony is he has always been completely transparent with RECO. He has disclosed everything he understood he was supposed to disclose. When he was in doubt, he called RECO to find out whether a particular piece of information had to be disclosed and followed what he was told to do. He also stated that whenever RECO asked him for information regarding his indebtedness to CRA and later to Agents' Equity, he asked CRA or Agents' Equity to give him the information RECO wanted and submitted it to RECO as soon as he received it.
19. He stated that if RECO was not satisfied with the documentation he gave them, he was not made aware of this. All RECO had to do was to say they wanted more, and he would have tried to get whatever more they wanted. I note that there is no documentary evidence of RECO's making any request for information that Mr. Adeoba did not respond to, nor is there any suggestion in the Notice of Proposal at issue here of any unanswered demand for information. Neither witness for the Registrar testified that they made a request for information and received no response. This history of transparency is markedly at odds with the Registrar's position that Mr. Adeoba falsely stated that he had no other outstanding debts, or knowingly hid the judgement against him.
20. Mr. Adeoba's evidence is that he has always disclosed his CRA debt. He certainly did so on his 2016 applications. He testified that in his view, the debt to Agent's Equity did not have to be disclosed. He told the hearing that he called RECO in 2014 to ask if he had to disclose the loan from Agent's Equity. He told an "agent" there that he had a debt to Agent's Equity and that he was making payments

through his brokerage. He was told that he did not need to report it. However, he was not able to recall the name of the person he spoke to, so I do not give this evidence much weight.

21. He said that he did not regard the unrepaid loan as an “outstanding debt” because he was making payments on account. When he was unable to make a payment, he requested relief from Agent’s Equity. He did not receive notice that the creditor was unsatisfied with this arrangement. When he filed his applications in November 2016, he was unaware that Agent’s Equity had filed a claim and obtained default judgment against him. The first time he learned of it was from RECO in December 2016.
22. No evidence was presented at the hearing to suggest that Mr. Adeoba was aware of the judgment before December 2016 when RECO’s online search found it. There is no evidence that a demand for payment was made on Mr. Adeoba before the creditor’s action was started or indeed at any other time. The evidence indicates that the claim was served substitutionally, i.e., not personally on Mr. Adeoba. Mr. Adeoba noted in his evidence that at the time service was being attempted he was not living at his address and had no knowledge of any claim. There is no evidence to cast doubt on Mr. Adeoba’s testimony that the first he knew of the judgment was when he received notification of it from RECO.
23. He pointed out that on being questioned by RECO regarding the judgment, he immediately admitted that he owed the money. He told the hearing that he needed help from RECO to find the registration of the judgment online. He put forward a proposal for payment and notified RECO that he had done so. The proposal was not accepted. He sent RECO this refusal as well. He points out that the original amount of the loans was \$13,700 and that interest had been accumulating for 2 years at 18% at the time of the judgment. Yet the principal amount of the judgment was \$9,900. This, he stated, indicates clearly that he had made payments on account totalling \$3,800. Because he was making payments that to his knowledge were satisfactory to the creditor, he did not think that the debt to Agent’s Equity needed to be disclosed.
24. Considering all of this, I find that Mr. Adeoba’s belief that payment of the debt was being dealt with in a manner satisfactory to the creditor is reasonable and credible. In addition, I find that from his experience with RECO, Mr. Adeoba would not have thought that disclosing the Agent’s Equity debt on his applications would negatively impact their success. Rather he would have expected that disclosure of the debt would lead to a condition on his registration requiring him to repay the

loan, which he was willing and working to do. This is how RECO reacted to his indebtedness to CRA. Based on this experience, Mr. Adeoba had no reason not to disclose the loans, if he believed he was required to.

25. All of this supports my finding that Mr. Adeoba did not knowingly make a false statement on his applications for registration. I find that he did not think that he was obliged to report his obligation to Agent's Equity on his application form as an "outstanding debt". I find that the Registrar has failed to prove on the balance of probabilities that Mr. Adeoba made a false statement on his application.
26. I am supported in my conclusion by a collateral fact: RECO has made it clear that it is prepared to register Mr. Adeoba as a broker, provided he agrees to work for a different brokerage, unrelated to him. I certainly do not fault RECO in any way for this. It does, however, expose an inconsistency in its position.

Issue b.

Having regard to Mr. Adeoba's financial position, can he reasonably be expected to be financially responsible in the conduct of business?

Angela Volpe

27. Ms. Volpe, RECO's manager of registration for almost 13 years, gave evidence that during her time with RECO, the number of registrants under the Act has doubled. RECO must therefore rely very heavily on the integrity of brokers and brokerages. She stated that RECO's practice is to investigate people who apply to be brokers of record. If the financial position of an applicant for registration as a broker of record is a cause for concern, RECO suggests that they bring in a manager until they are in better financial shape.
28. She explained that RECO's fundamental concern with Mr. Adeoba's wanting to operate his own brokerage is his financial position. Mr. Adeoba, she stated, is not meeting his own personal financial obligations. It is not wise for the Registrar to permit someone with financial difficulties to manage someone else's money. She stated that in RECO's view, it is not safe for the public to have Mr. Adeoba in charge of a brokerage. She noted that there is "big money" involved in deposits and stated that in the public interest, the applications ought to be denied.
29. More specifically, Ms. Volpe stated that the concern with Mr. Adeoba is that the CRA debt goes back a long time, and the amount to be paid increased. In addition, the Agent's Equity loan was advanced in 2012 and still has not been repaid. In her

view, Mr. Adeoba is not showing responsibility in paying his debts. He does not have a regular repayment plan in place with his debtors.

30. Ms. Volpe stated that in RECO's view, his debt history indicates that he is not very good at dealing with money. The Registrar is not comfortable with the risk it believes Mr. Adeoba presents if he is running his own brokerage.
31. Ms. Volpe also testified regarding the serious obligations of a broker of record. To list a few: they must open and maintain a trust account. The account must be kept up to date; those entitled to be paid out of the account must be paid on time. The broker of record must sign off on every deal.
32. Ms. Volpe did not relate these onerous obligations directly to RECO's concerns about a broker of record who has debts. What she said explicitly is that because Mr. Adeoba has debts, he seems to be bad with money and may be bad with record-keeping and may misplace money or put it in the wrong account. Further, because he has not paid off his debts, he may not be responsible in dealing with other people's money. She offered the following concern: if Mr. Adeoba was a broker of record and had a garnishment order against him, he would be in a conflict of interest. She did not elaborate on this last statement.
33. There is no evidence that Mr. Adeoba is dishonest or lacking in integrity, and the Registrar did not rely on past conduct (s.10 (1)(a)(ii) of the Act) as a ground in the Registrar's Proposal. Nor is there any statutory requirement that one must be debt-free in order to be a broker of record. At issue, and what the Registrar must establish, is that Mr. Adeoba will not likely carry on business in a financially responsible way given his financial condition.

Mr. Adeoba

34. Mr. Adeoba testified that before becoming a real estate agent, he worked as an employee and income tax was deducted from his pay at source. As a result, he did not fully appreciate the importance of making quarterly payments and filing annual returns when he became a real estate agent in 2009. Because he did not make quarterly payments and did not file returns for his first two years as a real estate agent, he got into debt to CRA. Since 2011 he has filed returns but has not been able to get ahead of his debt. By 2011 and 2012 he was generating as much as \$75,000 to \$100,000 in commissions. However, Remax took 35% off the top, and he had in addition to pay CRA 50% of earned commissions, with the result that he was not actually netting much money.

35. He explained that in 2013 he became ill. He was unable to work the long hours required to be successful and his income went down as a result. He provided CRA documentation to substantiate that in 2013 his income was \$23,000 before tax; in 2014 it was \$8,040. In 2015 it went up to \$50,000, which he explained was because some preconstruction deals closed, but he was still ill. In 2016 his gross income was \$30,435. I bear in mind that during this time, 50% of this income was being paid to CRA, and between 2012 and 2014 a further amount was being paid to Agent's Equity. I find that it would not have been possible for him to reduce his debt beyond what was being taken out of his commissions by his employer for CRA and Agent's Equity. He stated that he always paid whatever he could, either through his employer, or directly. When he was very ill and making very little money, he asked for relief from repayment from his debtors. He asserted that he kept in communication with his debtors. His explanation for not being aware of Agents' Equity's claim was that he was not living at his own apartment at the time the claim against him was filed. He explained that he had to give up his apartment and stay with friends or family because he did not have enough income to pay rent and was ill and needed help to take care of himself. In his evidence he stated repeatedly that he has never denied his debts, and that he has paid down his indebtedness, but the interest on the debt keeps accumulating. He stated that he is now healthy and can return to full time work and his first priority is to pay the money he owes as quickly as possible.
36. I have considered Mr. Adeoba's explanation and find it credible. His is not a case where he has ignored his debts or shown irresponsibility to warrant the Registrar's concern. He has acknowledged them and has been paying them off as income allowed him to do. There is no evidence to the contrary. His inability to work full time while ill is most unfortunate, but it does not suggest any lack of financial responsibility. In my view, he has been conscientious and consistent in his efforts to address his debts, in that an amount of 50% or more of any income he was entitled to, went to his creditors. In my view these debts are not large. I agree with Ms. Volpe that because the interest rates charged are so high on CRA arrears, it is imperative to deal with them quickly, but I do not see realistically how Mr. Adeoba could have paid more quickly while he was unwell. This is not a situation where the debtor has ignored his debt.
37. Mr. Adeoba stated that he wants to have his own brokerage in part so that he can pay down his debt more quickly. He pointed out that while employed with Remax and RPI, 35% of his commission was taken off the top by his employer. This was acceptable while he was learning, first as an agent and then as a broker, because he wanted to learn from the "best" as he described these brokerages. By August 2016, he felt confident in his abilities as agent and broker and was once again well

enough to work long and hard hours. By earning 100% of commissions as broker of record, he would have more money at his disposal and be able to pay off his debts more quickly. In his evidence, he denied that he is financially irresponsible. He pointed out that he was making payments to CRA and Agent's Equity through his employer until he resigned in August 2016. He stated that he has no other debt. He testified that he stopped using credit cards when his income went down because he did not want to get further into debt. He told the hearing that he has been waiting since November 2016 to be able to start making money again and implied that he has been frustrated in his wishes to pay his debts by what he regards as RECO's slow pace in dealing with his applications.

38. Mr. Blair, counsel for the Registrar, suggested in his questioning of Mr. Adeoba and in argument that Mr. Adeoba demonstrated financial irresponsibility by not accepting RECO's offer to register him if he worked for another brokerage until he had paid off his debts. Mr. Blair said that Mr. Adeoba could become a top salesperson and thereby negotiate a lower percentage payment to his brokerage. Mr. Adeoba gave evidence that his dream is to have his own brokerage, and he believes that this is where he will be best suited. He has taken the time to be well qualified by obtaining his accreditation as a broker and learning from a broker of record who is highly regarded in the industry.
39. He pointed out that one of the conditions RECO sought to impose on him if he took up their offer to reregister with another brokerage was that he would have to pay off his debt and remain debt-free for an additional three years before he could renew his application for his own brokerage. Ms. Volpe's contention was that this condition was necessary to ensure Mr. Adeoba's financial stability. In my view, this is an unusual and overly harsh condition to impose. Mr. Adeoba is not a spendthrift. He did not realize the importance of making quarterly payments to CRA when his status changed from employee to real estate agent. He was unfortunate in encountering illness that impacted his ability to earn income in 2013 but he has not accumulated any other creditors since 2012. He does not use credit cards. He pays as he goes or, to use his own expression derived from his birthplace culture, he "cuts his coat to fit his size." I understand Mr. Adeoba's unwillingness to give up his application and face another at least five years of working for another brokerage rather than having his own and I do not accept the submission that refusing RECO's offer demonstrates financial irresponsibility. He believes, given his education, experience, and determination, that he is entitled to registration as a broker of record for his own brokerage.
40. Mr. Blair also referred to Mr. Adeoba's other credential, as a property manager. Mr. Adeoba disclosed his property management company to RECO, as is

required. He told the hearing that this is a very small business with just one customer which grosses him about \$350 a month. He hoped to grow the business but has not been able to do so. Mr. Blair suggested that if Mr. Adeoba really wanted to pay his creditors, he could have turned to this business. Mr. Adeoba's response was that this is not what he wants to do, nor is it something that he is good at. He believes his chances for success are in the real estate brokerage business. Mr. Blair's point has some resonance. It does appear that if Mr. Adeoba's prime objective was to pay his debts, he would find work to enable him to do so. Instead, he has chosen to push forward with his applications. I am not prepared to find that this suggests he would not be financially responsible in the conduct of his business. It is not an easy task to set about building a business in property management. Mr. Adeoba was not successful when he tried earlier. He was successful as an agent and broker. It is reasonable, in my view, that he would want to concentrate his energies on a field he knows he is good at.

Application delays

41. Further, Mr. Adeoba was expecting to receive a response from RECO on his applications from the beginning of 2017 once he had addressed the Agent's Equity loan issue. He asked RECO for news in February 2017. Ms. Foster responded in June 2017 that he was unlikely to be approved and suggested he withdraw his application and apply to be registered as a broker with another brokerage. He asked that his application be reconsidered. He offered to be registered with conditions to pay off his debts within two years and promised to do so. RECO responded that it would take a long time to come to a decision, and during that time he could not sell real estate.
42. At the end of 2017, having waited a year, he wrote to an executive at RECO and asked to be registered, stating that he would agree to the conditions set out in a recent decision of this Tribunal where revocation of registration under s. 10(1)(a)(i) had been proposed, but reregistration on terms had been agreed: (1039 v REBBA, 08-30-2016). I note this because it illustrates how hard Mr. Adeoba was trying to cooperate with RECO, to reach a successful resolution.
43. In February 2018 RECO communicated with him but sent the same message: you are not likely to be approved, but it will take a long time to decide. He heard nothing more. The Proposals were finally issued in November 2018, two years after the applications. Getting to the hearing has taken another year.
44. While Ms. Volpe and Ms. Foster both testified that the process is long, and that a year is not an unusual length of time, they offered no explanation for why the proposal took two years, especially since RECO had all of the evidence by the end

of 2016, and a very good idea of what it would do by early 2017. I note that in another case, *Beseiso* (9854 v REBBA), decided in 2016, Ms. Volpe, giving evidence as manager of registration for RECO, described that application as having “underlying complexities” and described its having been processed in four months as “quite quickly”. I am at a loss to understand how the case before me, which is relatively simple and where all the facts were known in January 2017, could have taken until November 2018 to process.

45. I do understand and believe that Mr. Adeoba was waiting for and expecting a decision from week to week, if not from day to day. Perhaps had he known that he was looking at two years and more of unemployment, he would have sought other ways of earning money. I do not think he could have anticipated having to wait so long. I do not accept that his not having tried to pursue a different career path in these circumstances demonstrates that he would not be financially responsible in conducting his brokerage business.

Ability to carry out the obligations of a broker of record

46. Mr. Adeoba told the hearing that his intention is to start his brokerage small. He will work from a home office and will have no employees. He has already set up the requisite trust account for deposit money. He will not have any office staff nor any agents working at the brokerage. He told the hearing that he is familiar with a number of brokers of record who run such brokerages from their own homes, and he has talked to them about their operations. He is confident that he will be successful in this size of operation to start.
47. Considering his experience as an agent and as a broker, this appears reasonable. Working for himself, he will have no oversight responsibility for agents working for him nor for non-registered employees. The Registrar has expressed no concerns about him or his performance or record keeping in the past. His evidence is that he took the mandated brokerage course which he described as detailed and intense. He testified that he learned and understands all the responsibilities of a broker under the Act. This is substantiated by the fact that he earned an 89% on the brokerage qualification examinations. Following completion of the course, he worked for two years for Remax and RPI. He described these as the “best” in terms of their reputation in the industry, and neither Ms. Foster nor Ms. Volpe suggested otherwise. Taking this education and experience into account, I find good reason to believe that Mr. Adeoba both understands the importance of being financially responsible in carrying on his business and will be able to carry out his duties responsibly.

Record keeping

48. Ms. Volpe emphasized that a broker of record must be good with record keeping and careful with money. They manage other peoples' money. The trust account must be meticulously kept and reconciled. If any money goes missing, it is the responsibility of the broker of record to make good the loss. Mr. Adeoba told the hearing that in addition to his accreditation and experience as a broker, he has a qualification in accounting management from Humber College, passing with a 96% average. He thus has training in accounting as well as several years' experience keeping the accounts necessary for a real estate agent and broker. With this education and experience, I am satisfied that he has the knowledge and capability to operate and maintain a trust account, effect timely reconciliations and ensure that money is not lost or placed in the wrong account.
49. As I have noted earlier, the Registrar has grounded its Proposal on s. 10(1)(a)(i) and (iii) of the Act with respect to Mr. Adeoba, and 10(1)(d) with respect to SAR. I have earlier in this decision rejected RECO's argument under s. 10(1)(a)(iii). I have considered the evidence presented by RECO and have listened and considered carefully the arguments made by counsel with respect to s. 10(1)(a)(i) I conclude that the Registrar has not proven that having regard to the Mr. Adeoba's financial position he cannot reasonably be expected to be financially responsible in the conduct of business. To summarize: his debts are moderate; he has made consistent efforts to pay them down; his proposal for his brokerage a modest one. In addition, his education and training indicate that he is familiar with and versed in the financial aspects of operating a brokerage. In all of the circumstances noted, and on the totality of the evidence before me, I find that the Registrar has not made out its case.

DECISION AND ORDER

50. I therefore direct the Registrar not to carry out its Proposals to refuse to register the appellants as a brokerage and a broker under the Act. During the hearing, counsel for the Registrar set out conditions that the Registrar would wish to have in place should this be my decision. I therefore direct that the registrations of the appellants be subject to the following conditions:
- a. Use best efforts to fully satisfy the judgment debt to Agent's Equity and to the CRA at the time of your next applications under the Act.

- b. Provide to RECO quarterly reports of statements of account from Agent's Equity and CRA.
- c. If any amount is still owing when applications for reregistration are filed, provide an explanation for this and provide any other documentation the Registrar asks for in connection with the explanation.
- d. Notify the Registrar of any new requirement to pay or debt that is in default or judgments that are registered against either appellant, within 10 days of receipt of notice of such, or within 10 days of such default or registration, whichever first occurs.
- e. Perform a writ of execution search against both Mr. Adeoba and SAR and provide results of the search together with application for reregistration, at the time of the application for reregistration.

LICENCE APPEAL TRIBUNAL



Patricia Conway, Member

Released: November 28, 2019.