



Citation: *Lamba and Whitehill Realty International Inc. v. Registrar, Real Estate and Business Brokers Act, 2002*, 2022 ONLAT REBBA 13294

Date: 2022-03-03
File Number: 13294/REBBA

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

Between:

Amarjot Lamba and Whitehill Realty International Inc.

Appellants

and

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

Respondent

DECISION AND ORDER

Adjudicator: Colin Osterberg, Member

Appearances:

For the Appellants: Amarjot Lamba, Self-represented and as broker of record for Whitehill Realty International Inc.

For the Respondent: Jonathan Miller, Counsel
Jonathan Hurler, Counsel

Heard by Videoconference: January 17, 18, 19, 20, 21, 24, 26, 27, 28, 31,
February 3 and 8, 2022

REASONS FOR DECISION AND ORDER

A. OVERVIEW

- [1] Pursuant to a Notice of Proposal dated April 20, 2021 (the “NOP”), the Registrar proposed to revoke the registration of Amarjot Lamba (“Mr. Lamba”) as a broker under the *Real Estate and Business Brokers Act, 2002*, S.O. 2002, c. 30, Sched. C (the “*Act*”) and Regulations. Pursuant to the NOP, the Registrar also proposed to revoke the registration of Whitehill Realty International Inc. (“Whitehill”) as a registered brokerage under the *Act*.
- [2] The Registrar seeks to revoke Mr. Lamba’s registration on the grounds that:
- a. under s. 10(1)(a)(ii) of the *Act*, the past conduct of Mr. Lamba affords reasonable grounds for belief that he will not carry on business in accordance with law and with integrity; and
 - b. under s. 10(1)(a)(iii) of the *Act*, Mr. Lamba provided a false statement in an application for registration.
- [3] The Registrar seeks to revoke Whitehill’s registration on the grounds that:
- a. under s. 10(1)(d)(iii) of the *Act*, the past conduct of Mr. Lamba, who is a director and interested person in respect of Whitehill, affords reasonable grounds for belief that Whitehill’s business will not be carried on in accordance with law and with integrity and honesty.
- [4] In its NOP with respect to Whitehill, the Registrar listed an additional ground for revocation, namely that under s. 10(1)(d)(i) of the *Act*, having regard to the financial position of Whitehill, it cannot reasonably be expected to be financially responsible in the conduct of business. The Registrar withdrew this ground at the hearing.
- [5] Mr. Lamba and Whitehill (the “appellants”) appeal the Registrar’s NOP to the Tribunal.
- [6] Section 10(1) of the *Act* establishes a presumptive right to registration if the prescribed requirements are satisfied. The presumption may be rebutted if the Registrar can prove, on a balance of probabilities, that the appellants fall within one of the grounds outlined in s. 10(1)(a) or s. 10(1)(d).
- [7] Under s. 10(2) of the *Act*, a registration is subject to such conditions that are either consented to by the applicant, applied by the Registrar under s. 13 of the *Act*, as ordered by the Tribunal, or as are prescribed. Section 14 of the *Act* provides that the Registrar may propose to apply conditions to a registration, and that the Tribunal may direct the Registrar to carry out its proposal or substitute its opinion for that of the Registrar and attach conditions to its order or to a registration.

- [8] For the reasons which follow, I find that the Registrar has satisfied the onus on it to show that there are reasonable grounds for belief that Mr. Lamba and Whitehill will not carry on business in accordance with law and with integrity and honesty and that Mr. Lamba has made a false statement in an application. I find that that there are no terms and conditions that would sufficiently protect the public and I direct the Registrar to carry out its proposal to revoke the registration of Amarjot Lamba as a registered broker and Whitehill as a registered brokerage.

B. PRELIMINARY/COLLATERAL MATTERS

- [9] In his submissions, Mr. Lamba has raised a number of issues which should be addressed.
- [10] First, Mr. Lamba argues that he is not on a level playing field with the Registrar and that there is inherent unfairness in the system. Mr. Lamba points to the fact that the Registrar did not request that the hearing be recorded and did not provide him with a list of lawyers qualified to act for him in this appeal.
- [11] The first case conference in this appeal was held July 16, 2021. Mr. Lamba was represented by legal counsel at that case conference. No request was made by either party that they be allowed to record the hearing. A second case conference was held November 16, 2021. Mr. Lamba appeared at this case conference without counsel. No request was made by either party that they be allowed to record the hearing. The hearing commenced January 17, 2022. Mr. Lamba was represented by counsel and no request was made that the appellant be allowed to record the hearing.
- [12] It is not the Registrar's obligation to request that a hearing be recorded, and Mr. Lamba was made aware of the Tribunal's policy with respect to the recording of hearings when he raised the issue part way through the hearing. Also, it is not the Registrar's obligation to recommend which lawyer Mr. Lamba should retain for the hearing. In fact, given the adversarial nature of an appeal, it would be improper for the Registrar to recommend which counsel an appellant should use. Mr. Lamba was represented by competent counsel at the commencement of the hearing and elected to proceed without a lawyer after the first day of evidence. Mr. Lamba's submissions in this regard are without substance and not relevant to the issues the Tribunal must determine.
- [13] Mr. Lamba also suggests that the Registrar had improper motives for issuing the NOP. He alleges that the Real Estate Council of Ontario ("RECO") is corrupt, mismanaged, or both and that his history of outspoken criticism of RECO in the past is behind its proceeding against him. Mr. Lamba's allegations in this regard are not issues that are within the mandate of the Tribunal. The Registrar's motives are not relevant to the issues before the Tribunal. The issues to be decided by the Tribunal are restricted to those enumerated below.

C. ISSUES

- [14] The first issue to be decided is whether the past conduct of Mr. Lamba affords reasonable grounds for belief that he will not carry on business in accordance with law and with integrity and honesty. The determination of this issue will impact the entitlement of Mr. Lamba and Whitehill to registration under the *Act*.
- [15] The second issue to be determined is whether Mr. Lamba provided a false statement in an application for registration. The determination of this issue will impact the entitlement of Mr. Lamba to registration under the *Act*.
- [16] If the answer to either of these questions is in the affirmative, then the third issue to be decided is whether revocation is the only outcome or whether the public interest can be adequately protected through maintaining registration but attaching conditions.

D. EVIDENCE AND ANALYSIS

- [17] Mr. Lamba is the broker of record of Whitehill and is the only person employed at Whitehill who is registered under the *Act*. He was registered as a salesperson from March 14, 2006 to January 31, 2013. He was registered as a broker on January 31, 2013. Since then, he has operated real estate brokerages through two corporations, 5022131 Ontario Inc. (“502 Inc.”) and 2307439 Ontario Inc. (“230 Inc.”). 502 Inc. was incorporated on October 1, 2019 and has carried on business as Whitehill Realty International Inc. and Safron Realty Group Inc. 230 Inc. was incorporated November 28, 2011 and has carried on business as Whitehill Real Estate Team Inc., Century 21 Legends Inc., Lamba’s Whitehill Real Estate Team Inc., Team Lamba Real Estate Inc., Lamba Realty Group Inc., and AJ Lamba Realty Group Inc.
- [18] Mr. Lamba was registered as the broker of record at all of the above-named corporations including Whitehill, which is the corporate name Mr. Lamba’s brokerage has been operating under most recently. The parties agree, and the evidence demonstrates, that Mr. Lamba is a director and interested person in Whitehill for the purposes of s. 10(1)(d) of the *Act*.

Issue I: Past conduct of Mr. Lamba

- [19] The Registrar argues that the past conduct of Mr. Lamba affords reasonable grounds for belief that he and Whitehill will not carry on business in accordance with law and with integrity and honesty. With respect to the standard of proof, in interpreting similar wording in another regulatory statute, the Ontario Court of Appeal stated as follows:

The standard of proof provided by s. 6(2)(d) of the *Act* is that of “reasonable grounds for belief”... As applied to this case, s. 6(2)(d) of the *Act* required the Registrar simply to show that Mr. Barletta’s past or present conduct provides *reasonable grounds for belief that he will not carry on business in accordance*

with law and integrity and honour. The Registrar does not have to go so far as to show that Mr. Barletta's past or present conduct *make it more likely than not* that he will not carry on business as required.¹

- [20] The standard of proof must be more than "mere suspicion" and will be found to exist "where there is an objective basis for the belief which is based on compelling and credible information."²
- [21] The Registrar referred to several issues which it says establishes that it has reason for belief that Mr. Lamba will not carry on business in accordance with law and with integrity and honesty. I will deal with those issues individually.

i. Breach of trust in March 2020

- [22] The evidence establishes, and it is not disputed, that on March 12, 2020, \$5,000 was removed from Whitehill's real estate trust account without authorization and deposited into its general account. The general account was low on funds at that time and at least some of the \$5,000 was used to cover Whitehill's operating expenses. The parties agree that this was improper and not in compliance with the *Act*.
- [23] The evidence also establishes, and it is not seriously disputed, that in October 2020, RECO was investigating an allegation that Whitehill's trust account had been mishandled. Bank statements submitted to RECO by Mr. Lamba, supporting Whitehill's account reconciliations for the relevant time period, were altered to conceal the improper transfer.
- [24] The Registrar argues that Mr. Lamba either authorized the improper transfer or performed it himself. The Registrar also argues that Mr. Lamba authorized the creation of the false bank statements or falsified them himself. The Registrar argues that as Whitehill's broker of record Mr. Lamba was responsible for all transfers involving the trust account and was responsible for submitting accurate reconciliations to RECO and he is ultimately responsible for the improper transfer and the submission of the false bank statements.
- [25] Mr. Lamba denies that he made the improper transfer or that he authorized it to occur. He also denies that he falsified the bank statements in October 2020. Mr. Lamba says that he did not become aware that the improper transfer had occurred until January 2021. Further, Mr. Lamba argues that \$5,000 is a "petty" amount in comparison to the millions of dollars that have passed through the trust account without incident. He says that this incident does not establish reasonable grounds for belief that he will not act in accordance with the law or with integrity and honesty.

¹ *Ontario (Alcohol and Gaming Commission of Ontario) v. 751809 Ontario Inc. (Famous Flesh Gordon's)*, 2013 ONCA 157 at 18-19.

² *Mugesera v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at para. 114.

The improper transfer

- [26] The evidence presented shows that only three people had access to the trust account in March 2020 - Mr. Lamba, his wife Chand Lamba, and Jayesh Kumar Shah. Chand Lamba was a director of Whitehill at that time and worked in its accounting department. Mr. Shah was a contractor with Whitehill performing bookkeeping services.
- [27] Mr. Shah testified that on March 12, 2020, Mr. Lamba asked him to transfer \$5,000 from the trust account to the general account because the general account balance was low. Money in the trust account can only be dispersed to pay commissions owing on completion of a transaction or as directed by the beneficiary of the trust monies, typically the client. Such a transfer must be properly documented. The transfer Mr. Shah says was requested by Mr. Lamba was not documented and would be improper. Mr. Shah says he refused to make the transfer.
- [28] Later the same day, Mr. Shah saw that the transfer had occurred. At the end of March, Mr. Shah prepared a reconciliation report for the trust account which showed the improper transfer and he provided that, along with the relevant bank statements, to Mr. Lamba. Mr. Shah's contract was terminated on March 27, 2020 although he continued to do some work for Whitehill in the first week of April 2020.
- [29] Section 13 of O. Reg. 579/05 under the *Act* requires that a brokerage's trust account must be reconciled monthly. It must be reviewed and signed by the broker of record. The reconciliation report prepared by Mr. Shah was not in evidence and there is no evidence that it was ever produced to RECO or the Registrar. In October 2020, Mr. Shah reported the improper transfer to RECO.
- [30] Mr. Lamba denies that he asked Mr. Shah to transfer money from the trust account to the general account. Mr. Lamba alleges that Chand Lamba transferred the money from the trust account to the general account on March 12, 2020, without telling him and without his authorization. He says that he did not become aware of the transfer until Chand Lamba told him about it in January 2021. Mr. Lamba says that he did not have access to Whitehill's accounts and is not trained as an accountant in order to assess the accuracy of reconciliation reports.
- [31] Mr. Shah's version of events is consistent with the evidence presented at the hearing and I accept that Mr. Lamba either transferred the \$5,000 from the trust account to the general account or that he directed that transfer.
- [32] Mr. Lamba was the broker of record for Whitehill at the time of the transfer. Section 19 of O. Reg. 567/05 under the *Act* provides that a brokerage shall not engage in any transaction involving trust money unless the transaction is authorized by the broker of record. Mr. Lamba confirmed that he knew this and required that all transactions involving the trust account were to be approved by him in writing. Further, Mr. Lamba acknowledged that he knew he was required to review the reconciliation reports monthly. He must have seen the \$5,000 transfer on the report

prepared by Mr. Shah at the end of March 2020. I do not accept Mr. Lamba's suggestion that he is not trained as an accountant and does not understand reconciliation statements. He has been selling real estate for more than 15 years, has been broker of record for 8 years, and has participated in over 2000 transactions during that time. As broker of record, it was his obligation to review reconciliations monthly and sign them to verify he had done that. For him to suggest he did not understand those reconciliations, is not credible and I do not accept that evidence.

- [33] At the hearing, Mr. Shah and another bookkeeper, Dipak Acharya, confirmed that Mr. Lamba's written authorization was required before any transfer from trust could be made. Mr. Lamba alleges that Chand Lamba was new, had no accounting training, and did not understand this requirement. However, I do not find it credible to suggest that Chand Lamba would have been given charge of the brokerage's bank accounts, including the trust account, without being instructed on the importance of the proper handling of trust monies. There was no evidence presented which shows that any other transactions were done involving the trust account without Mr. Lamba's written authorization. Mr. Lamba's allegation that Chand Lamba did not understand that his written authorization was required for transactions involving the trust account is inconsistent with his argument that she was Whitehill's Director of Finance and that she was placed in charge of all banking related matters.
- [34] Mr. Lamba argues that Mr. Shah was disgruntled because Mr. Lamba had failed to pay him monies owed under Mr. Shah's contract for bookkeeping services and that is why he has made this allegation. Emails between Mr. Lamba and Mr. Shah were produced which show Mr. Shah threatening to inform the government about Mr. Lamba's bookkeeping irregularities, and Mr. Lamba threatening to hire a detective agency to obtain damaging information about Mr. Shah and his son and to provide that information to Mr. Shah's employers and clients, as well as his son's employer.
- [35] While Mr. Shah's motives for disclosing the improper trust transfer to RECO may not have been pure, there is no dispute that the improper trust transfer took place. Mr. Shah's evidence that Mr. Lamba's authorization was required to transfer money from the trust account is not in dispute, and his allegation that the money was transferred to cover a shortfall in the general account is supported by the evidence at the hearing.
- [36] On the other hand, Mr. Lamba's version of events does not stand up to scrutiny. Mr. Lamba says that, in January 2021 Chand Lamba told him that she made the March 12, 2020 transfer and that she created false bank statements in October 2020 to cover that up. However, as noted above, Mr. Lamba's review of the March reconciliation report of Mr. Shah would have alerted him to the transfer. Also, Mr. Lamba never told RECO about Chand Lamba's alleged admission in January 2021. In fact, Mr. Lamba never told anyone that Chand Lamba made the improper transfer or that she created the false bank statements until January 24, 2022, six days into this hearing. At that time, Mr. Lamba presented an affidavit dated January 24, 2022, e-signed by Chand Lamba, which contained the allegation.

- [37] On February 5, 2021, Mr. Lamba was interviewed by Paul Mackrell, a RECO investigator, with respect to the trust account. Mr. Lamba told Mr. Mackrell that he had done a thorough investigation and determined that the transfer was done by Mr. Acharya. This allegation was reiterated by Mr. Lamba's lawyer in a letter to Mr. Mackrell dated April 21, 2021. However, the evidence demonstrates that Mr. Acharya was not working for Whitehill at the time the transfer took place and had no access to Whitehill's trust account. Mr. Acharya could not have done the transfer.
- [38] Mr. Lamba's position is that: he knew in January 2021 that Chand Lamba had made the transfer and created the false bank statement; knowing that, he blamed Mr. Acharya for those actions in February 2021 and again in April 2021; he then maintained that Mr. Acharya had committed those actions until six days after the hearing had started; he now says that the actions were committed by Chand Lamba. This is not credible.
- [39] The Registrar objected to the filing of Chand Lamba's affidavit based on its late delivery and because Chand Lamba was not going to be presented for cross-examination at the hearing. I decided to allow the affidavit to be filed and to consider the Registrar's concerns when it came to the weight to be given the affidavit.
- [40] Having reviewed the evidence, I place no weight on Chand Lamba's affidavit as to the truth of its contents. The affidavit contradicts Mr. Lamba's previous statements to RECO that Mr. Acharya was responsible for the trust transfer in March 2020. The affidavit was served six days into the hearing with no explanation for the delay in presenting this evidence. Chand Lamba was not presented for cross-examination and the Registrar was given no opportunity to summon her to the hearing themselves.
- [41] Moreover, the Chand Lamba affidavit is internally incoherent. Chand Lamba says that she was the Director of Finance of Whitehill and was responsible for ensuring that all funds deposited and withdrawn from the trust accounts and general account were recorded. However, the affidavit says that she did know that she had done anything wrong when she did make transfer on March 12, 2020. Further, the affidavit says that Chand Lamba altered bank statements in October 2020 in order to hide the fact that she had transferred the money. If she did not know the transfer was wrong, why would she have altered the banking documents?
- [42] The affidavit claims that Mr. Lamba asked Chand Lamba to submit the reconciliations and bank statements to RECO and that she did so. There was no explanation presented as to why Mr. Lamba would ask her to do this when it was Mr. Lamba's responsibility to do so and there is no evidence that she had done so in the past. The affidavit states that it is Chand Lamba's understanding that Mr. Lamba had advised RECO of her involvement whereas this was not the case.
- [43] For these reasons, I find that the affidavit of Chand Lamba is unreliable and not credible, and I give it no weight with respect to the truth of its contents. As a result, there is no evidence presented at the hearing that supports Mr. Lamba's claim that

Chand Lamba made the improper transfer without Mr. Lamba's knowledge or authorization.

[44] Several times during the hearing, Mr. Lamba described the transfer out of the trust account as "petty". He uses the same word in his closing submissions. He argues that many millions of dollars have passed through the trust account over the years without any issues and that a \$5,000 "blunder" is insignificant. I disagree, and I find it concerning that Mr. Lamba considers this issue to be a trivial one.

[45] The transfer of the trust monies was not an accident. The evidence demonstrates that the intention was to use the trust monies to cover the brokerage's operating expenses at a time when the general account had insufficient funds. In my view, any use of trust monies for the benefit of the holder rather than the beneficiary is a serious matter. The misappropriation of \$5,000 held in trust to cover the brokerage's operating shortfall is not "petty".

[46] As the Divisional Court stated in *Lapcevich v. Registrar, Real Estate and Business Brokers Act*, 2010 ONSC 1145 (CanLII) para. 8:

...interfering with trust accounts is a wrongful act, in and of itself, and the fact that the Tribunal may be of the view that no one was hurt is irrelevant and such an approach would amount to serious error.

[47] I find that trust monies were improperly transferred from the trust account to the general account in March 2020 and that Mr. Lamba either transferred the money himself or authorized the transfer. I find that this is evidence that he will not act in accordance with law, with integrity and with honesty.

[48] I find that Mr. Lamba accused Mr. Acharya of responsibility for the transfer when he knew that accusation to be false. This is evidence that Mr. Lamba will not act with integrity and honesty.

[49] I find that Mr. Lamba submitted into evidence the affidavit of Chand Lamba in which Chand Lamba claims that she made the transfer without Mr. Lamba's knowledge or authorization, claims which Mr. Lamba knew to be false. This is evidence that Mr. Lamba will not act in accordance with law, with integrity and with honesty.

The altered bank statements

[50] Mr. Acharya worked as a bookkeeper for Mr. Lamba from January 2019 to January 2020, and again from April 2020 until approximately April 2021. On May 26, 2020, Mr. Acharya noticed the March 12, 2020 transfer of the \$5,000 out of the trust account and into the general account and brought this to the attention of Chand Lamba. He later saw that \$5,000 was returned to the trust account from the general account. Mr. Acharya then prepared March reconciliation statements which did not show the \$5,000 transfer in either the trust account or the general account. He also prepared May reconciliation statements which, similarly, did not show the \$5,000

being transferred back into the trust account. He left the reconciliations and their respective bank statements (unaltered) on Mr. Lamba's desk for review.

- [51] Mr. Acharya says that he knew the reconciliations he prepared were incorrect but thought that, since the money had been returned, and since the bank statements he submitted accurately showed the transfers, there was no harm in preparing the reconciliations as he did.
- [52] There was no evidence presented at the hearing that the reconciliations prepared by Mr. Acharya or the bank statements were not reviewed by Mr. Lamba as he was required to do. Mr. Lamba did not deny reviewing the documents and those documents, in particular the bank statements, showed the transfer out of trust in March and the transfer back into trust in May.
- [53] In October 2020, Debbie Timoon, an inspector at RECO, was assigned to review Whitehill's account reconciliations for March, April, and May 2020. These accounts were being reviewed because RECO had received a report from Mr. Shah that money had been removed from the trust account without proper authorization. On October 22, 2020, Ms. Timoon emailed Mr. Lamba requesting the reconciliations for those three months as well as the trust ledger and bank statements.
- [54] Ms. Timoon's email was forwarded by Mr. Lamba to Mr. Acharya who was told that the reconciliation statements he had prepared in May had been lost and that he was to print another copy. He did so and delivered them to Mr. Lamba. Mr. Acharya says he did not make a copy of the bank statements at that time. When he delivered the reconciliation statements to Mr. Lamba's office, Mr. Acharya was asked to sign them before he left. He was not told why he, rather than Mr. Lamba, was to sign them. Section 13 of O. Reg. 579/05 provides that the reconciliation statement is to be signed by the broker of record.
- [55] The reconciliations and supporting bank statements were then sent to Ms. Timoon along with a letter signed by Mr. Lamba stating in part as follows:
- I have reviewed this submission and attest to its authenticity. I am aware that furnishing false information is a contravention of Section 40, REBBA 2002.
- [56] Neither the reconciliations nor the bank statements provided to Ms. Timoon by Mr. Lamba showed the \$5,000 transfer from the trust account to the general account on March 12, 2020, or the \$5,000 transfer from the general account to the trust account on May 26, 2020. RECO later obtained the bank statements for those three months directly from the bank, and those statements did show the \$5,000 transfers.
- [57] The only reasonable conclusion that can be drawn is that someone altered the bank statements that Mr. Lamba supplied to Ms. Timoon so that they would match the information contained in the reconciliations by removing any reference to the \$5,000 transfers. The Registrar alleges that the bank statements were altered by, or at the instruction of, Mr. Lamba.

- [58] The only three people who had access to the bank statements in October and November 2020 were Mr. Lamba, Chand Lamba, and Mr. Acharya. Mr. Acharya had no reason to alter those statements. He denied providing the bank statements to Mr. Lamba at that time. He provided the unaltered statements along with the original reconciliations he prepared in May 2020. Further, it makes little sense that Mr. Acharya would provide altered bank statements to Mr. Lamba when Mr. Lamba and Chand Lamba had access to the online statements and could easily see if he provided false statements. Although in February 2021 Mr. Lamba told RECO that Mr. Acharya had prepared the false bank statements, and although he maintained that position until the sixth day of the hearing, he now says that he has known since January 2021 that they were actually prepared by Chand Lamba, not Mr. Acharya.
- [59] Mr. Lamba gave no explanation as to why he had Mr. Acharya print a copy of the reconciliations and sign them in October. Presumably, Mr. Lamba could have printed them himself and then signed them himself as he is required to do by the *Act*. The fact that Mr. Lamba later misrepresented to RECO investigators that Mr. Acharya performed the improper transfer, suggests that Mr. Lamba was attempting to deflect responsibility for the transfer, and the altered bank statements, toward Mr. Acharya.
- [60] In her affidavit dated January 24, 2022, Chand Lamba claims that she altered the bank statements without Mr. Lamba's knowledge. For the reasons set out above, I find that the Chand Lamba affidavit is unreliable, and I do not accept that evidence.
- [61] I accept Mr. Acharya's evidence that, in October 2020 he provided Mr. Lamba with a copy of the reconciliations he prepared in May 2020 and I find on a balance of probabilities, that Mr. Lamba altered, or instructed the alteration of, the bank statements he provided to RECO along with the reconciliations.
- [62] In summary, I find on a balance of probabilities: that Mr. Lamba altered, or caused to have altered, the bank statements he submitted to RECO in order to hide the improper use of trust monies; that the attestation Mr. Lamba signed when he submitted the reconciliations and bank statements was, to his knowledge, false; and that Mr. Lamba represented to RECO that Mr. Acharya had altered the bank statements when he knew that was not true.
- [63] These actions are evidence that Mr. Lamba will not carry on business in accordance with law, and with integrity and honesty. While mistakes may be made which are innocent, and even trust fund discrepancies do not necessarily disentitle a registrant from registration, I find that this improper transfer was not a mistake but was done intentionally to deal with a low balance in the general account. Further, the registrant in the present case knowingly delivered altered bank statements and false reconciliation statements to the regulator. When that did not work, Mr. Lamba blamed Mr. Acharya and then Chand Lamba when he knew that they were not responsible. These actions go directly to Mr. Lamba's likely future compliance with the law and the likelihood he will act with integrity and honesty.

[64] Based on the above, I find that the Registrar has satisfied the onus on it to prove that there are reasonable grounds for belief that Mr. Lamba and Whitehill will not carry on business in accordance with law and with integrity and honesty. This finding and these circumstances are sufficiently serious on their own to warrant an order that the Registrar should carry out its NOP.

ii. Sale of 4988 Eramosa

[65] The Registrar alleges that Mr. Lamba has improperly retained deposit monies that he was holding in trust for his client, and that he has used those monies in order to negotiate and secure commissions to which he is not entitled. Mr. Lamba alleges that he is justified in holding the deposit pending the outcome of a lawsuit between himself and his client.

[66] On November 1, 2020, Deni Jankovic retained Mr. Lamba and Whitehill to sell his farm property located at 4988 Eramosa-Erin Townline, in Guelph. After meeting in Mr. Jankovic's home, a Listing Agreement ("LA") was executed between Whitehill as the listing brokerage and Mr. Jankovic as the Seller. Mr. Lamba signed the agreement for Whitehill. The agreement was to offer the property for sale for \$1,400,000 and provided for commissions in the total amount of 3.5%, with 2.5% payable to the purchaser's agent and 1% payable to Whitehill. The LA expired May 31, 2021.

[67] On the same date, Whitehill and Mr. Jankovic entered into a Buyer Representation Agreement ("BRA") whereby Whitehill undertook to assist Mr. Jankovic in locating and purchasing a home for which Whitehill would be entitled to a commission in the amount of 2.5% of the purchase price. This BRA was to expire October 31, 2021.

[68] On December 3, 2020, the first LA was canceled, and a new LA entered into with a sale price of \$1,350,000. The remaining terms of the LA were unchanged.

[69] Mr. Lamba argues that the LA and the BRA constituted one agreement since they were negotiated at the same time and they were sent to Mr. Jankovic as attachments in the same email. Mr Lamba argues that he and Mr. Jankovic verbally or impliedly agreed that Mr. Lamba would reduce his commission in the LA from 2.5% to 1% on the understanding that Mr. Jankovic would buy a house under the BRA.

[70] I do not accept Mr. Lamba's argument that the two documents are one agreement. Moreover, I do not accept that he thought they were.

[71] The LA specifically states that:

This Agreement, including any Schedule attached hereto, shall constitute the entire Agreement between the Seller and the Listing Brokerage. There is no representation, warranty, collateral agreement or condition which affects this Agreement other than as expressed herein.

[72] The BRA specifically states that:

This Agreement, including any provisions added to this Agreement, shall constitute the entire Agreement between the Buyer and the Brokerage. There is no representation, warranty, collateral agreement or condition, which affects this Agreement other than as expressed herein.

- [73] According to these provisions, the two agreements do not include any other collateral agreements and stand alone, absent provisions to the contrary, of which there are none. There is nothing in writing suggesting that one agreement was dependent on the other, and simply attaching the two agreements to the same email does not result in their becoming one agreement as is suggested by Mr. Lamba.
- [74] In any event, the LA which was sent with the BRA was cancelled on December 3, 2020, and a new LA entered into. Mr. Lamba's position that the two agreements became one by way of their inclusion in the same email is without substance. Moreover, even if I were to accept this argument, which I do not, there is nothing in either agreement which *requires* Mr. Jankovic to make a purchase as a condition of taking advantage of the 1% commission in the LA.
- [75] Mr. Lamba acknowledges that there is no agreement in writing which obligates Mr. Jankovic to purchase a property as a condition paying the LA commission rate at 1%. There is nothing in writing requiring Mr. Jankovic to purchase a property at the same time he sells the property under the LA. Rather, by providing that the term under the BRA should end in October 2021 while the term under the LA ended in May 2021, the parties specifically contemplated that the purchase might take place after the sale and, as Mr. Lamba acknowledged at the hearing, the purchase and resulting commission may not happen at all.
- [76] On December 13, 2020, the house was sold in accordance with an Agreement of Purchase and Sale ("AOPS") for the amount of \$1,300,000. The AOPS provided for a deposit toward the purchase price of \$100,000 to be paid by the purchaser and to be held by Whitehill in trust pending completion of the sale. The closing date was set for February 15, 2021 and later changed to February 12, 2021. Based on the LA, after commissions and HST were paid there would be \$48,585 remaining from the \$100,000 deposit which would be payable to Mr. Jankovic.
- [77] In the meantime, Mr. Jankovic entered into a one-year lease agreement on December 23, 2020 for a house for he and his family to live in. There is significant disagreement between Mr. Lamba and Mr. Jankovic as to the implications of this development. Mr. Lamba found out about the lease in January 2021 and assumed Mr. Jankovic no longer intended to purchase a house under the BRA. Mr. Lamba believes that Mr. Jankovic tricked him into agreeing to a 1% commission in the LA by entering into the BRA when he had no intention of buying house. Mr. Jankovic denies this and says that he intended to buy a house through Mr. Lamba but needed a place for his family to live while the search was ongoing.
- [78] Mr. Lamba demanded that the LA be amended. On January 20, 2021, Mr. Lamba sent an email to Mr. Jankovic asking for 2.5% commission on the sale since Mr.

Jankovic no longer intended to buy. Mr. Lamba suggested that Whitehill could keep the extra 1.5% over the amount agreed on in the LA and then refund that amount when Mr. Jankovic eventually buys a house. No reading of the LA and BRA supports such an outcome, and it is clear that Mr. Lamba was seeking an amendment to the LA which was in place at the time. Mr. Jankovic refused to agree to the proposed amendment and reiterated that he still intended to buy a home through Mr. Lamba.

- [79] The dispute continued and on January 21, 2021, Mr. Lamba told Mr. Jankovic in an email that he intended to hold the deposit in trust until “the Court can make a final determination.”
- [80] On February 10, 2021, Scott Allison, Mr. Jankovic’s real estate lawyer, wrote Mr. Lamba requesting a commission statement and asking that the balance of the deposit be paid to Mr. Jankovic on closing. Mr. Lamba responded by telling Mr. Allison that Mr. Jankovic was cheating him. Mr. Lamba did not provide the requested commission statement. Mr. Allison then wrote to Mr. Lamba demanding that the deposit funds be delivered to Mr. Jankovic as per the terms of the trust and threatened to file a complaint with RECO should Mr. Lamba fail to comply with his obligations.
- [81] After the transaction closed on February 12, 2021, Mr. Allison requested that Jankovic be given the remainder of the trust funds. Mr. Lamba ignored the request and has not released the trust funds to Mr. Jankovic as of the hearing date. He says that they are still in Whitehill’s trust account. Mr. Jankovic has commenced a court action to recover the monies being held in trust. Although Mr. Lamba says in his closing submission that there is now an agreement to have the money paid into court pending resolution of the court action, there was no evidence of this presented at the hearing and no indication that the monies have been paid into court.
- [82] I find Mr. Lamba’s actions to be improper. I find that Mr. Lamba’s retention of the monies held in trust was done for two reasons. The first was to secure his own ability to recover commissions he alleges were owing above those provided in the LA. If commissions of an additional \$48,585 were actually owing under the LA, then Mr. Lamba would have sent the commission statement to Mr. Allison when he was asked to do so and taken the commission.
- [83] The second reason for holding the money was to force Mr. Jankovic to agree to pay Mr. Lamba a higher commission than the LA provides for. If security for commissions owing were the only reason for holding the money, then Mr. Lamba would have only kept \$19,500 (1.5% of \$1,300,000) and not \$48,585 as he did. Mr. Lamba’s communications before the completion date were mainly focussed on convincing Mr. Jankovic to agree to pay 2.5% on the sale, not on convincing him that he had already agreed to pay that amount.
- [84] I conclude that the trust money was not only being held as security for what Mr. Lamba thought he was entitled to, but also as leverage in his negotiations with Mr. Jankovic for a higher commission than the one agreed to in the LA.

- [85] Mr. Lamba says that he offered to pay the money to RECO to hold pending the outcome of the court action and said that he would be willing to have the monies paid into court. He says that the *Act* is unclear as to who the monies are required to be dispersed to. Mr. Lamba is wrong and misses the point. Under the AOPS, the deposit was to be credited toward the purchase price of the home on completion and the LA provides that the only commission to which the deposit may be applied are those set out in the LA, which in this case totalled 3.5% of the sale price.
- [86] It would be improper to pay the money to RECO since it belongs to Mr. Jankovic. Further, whether it is being held by RECO, the court, or Whitehill, it is being used by Mr. Lamba for his own purposes, as security for his claim to a higher commission and as leverage in negotiating a settlement with Mr. Jankovic. Both of those uses amount to misappropriation by Mr. Lamba of monies held in trust for Mr. Jankovic.
- [87] I find that Mr. Lamba's actions, provide ample grounds for the belief that he and Whitehill will not carry on business in accordance with law and with integrity and honesty.

iii. Disputes involving employee AG

- [88] The Registrar alleges that, while she was working as an unlicensed employee at Mr. Lamba's brokerage, Angela Graci was trading in real estate to the knowledge of Mr. Lamba and contrary to the *Act*.
- [89] Ms. Graci did not appear at the hearing despite being summonsed by the Registrar. In the circumstances, I find that the Registrar has not satisfied me on a balance of probabilities that Ms. Graci was trading in real estate with the knowledge of Mr. Lamba.

iv. Mr. Lamba's communications with clients and RECO

- [90] Evidence was presented of Mr. Lamba's interaction with clients, Mr. Jankovic, Anish and Rakhee Bhandari, Randeep Butalia, Donald and Diane Waltho, and Marzena Wawrzyniak. Further evidence was presented with respect to some of Mr. Lamba's interactions with persons employed by RECO. Evidence was also presented with respect to Mr. Lamba's clients Nisha and Sanjay Sharma, however I am concerned about the credibility of their evidence and am not prepared to rely on it for the purposes of this appeal.

Mr. Jankovic

- [91] In his attempt to convince Mr. Jankovic to agree to amend the LA, Mr. Lamba sent the following communication:

I have spoken so highly of you in front of the Buyer who was planning on giving you some deals to build a few homes but now I will have to warn him

too and others I know in the industry and my Community because I can no longer vouch for you with my reputation!

[92] It is unprofessional and lacking in integrity to threaten to disparage a client to contacts who may have business with that client, particularly when the purpose is to force the client to pay more commission than is required under the LA.

[93] Mr. Lamba sent the following in response to Mr. Jankovic's real estate lawyer's request to disburse the monies held in trust:

We will wait to meet in Court Mr. Allison as you are well aware that it is you lawyers that are the billing machines and not hard working real estate agents.

If you harass me or anyone in my team any further I will be compelled to file a formal complaint against you to the Law Society! Kindly govern yourself accordingly and STOP all communication.

I am happy to take this to Court if I have to because your client had no intention of Buying and we will prove it. In fact I hope he pays you guys as well because he has become quite a known fraud now the more I investigate him.

[94] I find these communications to be unprofessional and lacking in integrity. Mr. Allison had a professional obligation to request the commission statement and to demand the payment of trust monies to Mr. Jankovic. Calling that harassment and threatening to report Mr. Allison to the Law Society lacks integrity. Telling his client's legal counsel that Mr. Jankovic is a fraud and suggesting that he may not pay his legal fees is dishonest and lacks integrity.

Mr. and Mrs. Bhandari

[95] Mr. Lamba and the Bhandaris entered into a listing agreement for the sale of their home. The Bhandaris and Mr. Lamba agreed to add a clause to the agreement allowing the Bhandaris to cancel the agreement at any time if they were not satisfied with Mr. Lamba's services. The Bhandaris became unhappy with the way the listing was proceeding and informed Mr. Lamba they wished to cancel the agreement. Mr. Lamba agreed to the cancellation.

[96] Mr. Lamba had spent money getting the Bhandaris' home ready for sale and demanded to be reimbursed for those costs due to the early cancellation of the agreement. Mr. Bhandari asked for a list of the costs Mr. Lamba was claiming and Mr. Lamba agreed to provide that. He never did so. After seeing a negative review posted anonymously on a website called "Rate my Agent", Mr. Lamba threatened to sue the Bhandaris and to report Mrs. Bhandari to her employer. There is no evidence

that the Bhandaris posted the message on Rate my Agent and they deny that they did.

[97] Mr. Lamba then demanded that the Bhandaris pay \$4,268 in order to cancel the listing. When the Bhandaris refused to pay the \$4,268 without any supporting documentation, Mr. Lamba threatened to sue them and refused to cancel the listing despite agreeing to do so in the Listing Agreement. He again brought up Mrs. Bhandari's employment and also brought up Mr. Bhandari's employment as a teacher.

[98] On May 24, 2019, Mr. Lamba threatened to suspend the listing unless the Bhandaris paid his costs which still had not been documented. The Bhandaris did not consent to the suspension of the listing but Mr. Lamba proceeded to do that anyway. The Bhandaris wanted to sell their home quickly and would be prevented from doing so while the listing was suspended, so they agreed to pay the amount Mr. Lamba was demanding.

[99] However, when the Bhandaris, along with another couple, showed up at Mr. Lamba's office to pay the agreed amount, Mr. Lamba was not there. The Bhandaris took a picture of the office to show that they had tried to tender payment. When Mr. Lamba heard about this, he became upset with the Bhandaris. He threatened to report Mrs. Bhandari to the Law Society and demanded the names of the friends who accompanied the Bhandaris to the office along with written apologies from all four as a condition of settling the cancellation of the listing agreement.

[100] I find that Mr. Lamba's actions in refusing to cancel the listing as agreed, suspending the listing without the Bhandari's consent, and using the Bhandaris' need for cancellation in order to extract money and apologies from the Bhandaris were unethical, abusive, dishonest, and lacking in integrity.

[101] I find that Mr. Lamba's communications were unprofessional and abusive. In addition to threatening to contact Mrs. Bhandari's employer and the Law Society, the following appear in his emails to the Bhandaris:

From the 1st day I realized how demanding, rude and ungrateful you were irrespective of what we did...I hate to work with ungrateful people."

...

In terms of our Agreement and your decision to cancel the Listing we are equally shocked at the level of ungratefulness after everything we have done for you.

...

You guys are truly the most ungrateful people ever and I am shocked that you are a teacher Mr Bhandari who actually teaches kids."

[102] In my view, Mr. Lamba's communications are unprofessional and lack integrity. Threatening to contact a client's employer concerning a contractual dispute is unprofessional and shows a lack of integrity.

Mr. Butalia

[103] On November 20, 2019, while represented by Mr. Lamba, Mr. Butalia entered into an agreement to purchase a home at 40 Connie Street West in Toronto. The agreement required Mr. Butalia to make a deposit in the amount of \$100,000. Mr. Lamba and Mr. Butalia also entered into Listing Agreements with respect to Mr. Butalia's home in Fort Erie and two rental properties he owned. Because Mr. Butalia was unable to arrange financing, the purchase of 40 Connie Street did not proceed. As a result of the efforts of Mr. Lamba and Mr. Butalia's lawyer, Mr. Butalia was able to recover his deposit.

[104] After the Connie Street purchase fell through, Mr. Butalia decided not to sell his home in Fort Erie. Mr. Lamba demanded to be paid a commission for the purchase of the Connie Street property which did not proceed and a commission with respect to the sale the home in Fort Erie which Mr. Butalia decided not to proceed with. Mr. Butalia refused to pay Mr. Lamba those commissions. Mr. Lamba sent the following communications to Mr. Butalia in an effort to convince Mr. Butalia to accede to his demands for payment:

Yes well in that case I will have to sue you for Commissions bc you have absolutely no right to fool with people's time!!! I have been blacklisted by Luxor bc of you and do you even understand how the world operates bc I think you are surprising me every day with how scattered you are.

...

If I don't have a choice as you have begun to really upset me with how extremely confused and messed up you are!!! I am ashamed to even give you a recommendation now bc I don't want to ruin my reputation. I have to work with these guys every single day and they jump on my one word!!! Pls don't push it...!

...

Again with all due respect the huge mess in your home reflects the mess in your mind and confusion that has resulted in so much wasted time and money!

...

[Y]our illegal construction and renovations in your home including the Main beam of the home you have cut are dangerous to the occupants of the home including your son. Please contact the city by end of day today or I will be

compelled to do so I have informed you many times but you refuse to do so.

...

Please ensure that the manner in which I saw your home is inhabitable and the smell of dog poop just beside your son's bedroom is nothing less of insane. I'm sure if Child Services were called they would not only take MB away but would also shut down the entire home.

...

A young son living all alone with an unstable alcoholic father is not good for the future of a child and unless you can fix this immediately I would have to take the initiative to inform child services and your job tomorrow.

...

You are such a shameful human being which is why you are in such a mess! Always fear GOD bc if this is what you do to people who busy their ass and spoil their own reputation for you, there is a GOD!

...

YOU OWE ME FOR THE DEAL AND THAT IS CLEAR SO PLS DO WHATEVER YOU LIKE! I will be connecting with your employer as well so they see how messed up and confused you are!

[105] When Mr. Butalia continued to refuse to pay Mr. Lamba, he emailed Mr. Butalia's ex-wife who lives in India as follows:

Hope you are doing well and still remember me?

...

I must confess that initially I was surprised to hear from Randeep (Mr. Butalia) what you had done to him but I can now realize that everything he said must have been a lie because he has not only become an alcoholic but also a compulsive liar as he lies about everything.

...

He has got to be the most confused and messed up person I have ever met in my life and I feel terrible that your son MB has to live in such circumstances with the intense smell of Dog poop that I could not even tolerate for 5 seconds! I vomited as soon as I left the home so I cannot imagine how your son is living there?

[106] Mr. Lamba sent Mr. Butalia's ex-wife another email which states as follows:

Sonia.... I can tell you that if child services came to know the way Randeep was living and a child like MB was living in such a pungent smell and mess, child services would take him away from the parents in Canada!

This guy is the biggest mess I have seen in all my years in Canada and is a disgrace to our community!

He even texted my Stager at 11pm inviting her for a conversation!!!!

He goes out to buy a \$1.6M property without money in his account and I had to land him money to make a deposit.

Then he shows MB the dream of the world and ends up not getting the Mortgage and declined by all banks here. Imagine the plight of that little boy and what his mental state of mind is?

MB is an amazing kid and I think he needs to be in a better environment and not a weird Dad who is a loner and is becoming more weird by the day....

He needs to be brought up in a good Indian & Cosmopolitan environment and not under an Alcoholic.

If you had seen video pics of the property 2 mths ago you would have been shocked.

[107] Mr. Lamba then sent a further barrage of text messages to Mr. Butalia including:

You should know better!!! You have got to be the biggest liar and cheat I have met in my 15 years! All of your alcohol rehab programs etc will all be disclosed now! I will take you thru the courts like you have never seen bc you have no place in our Canadian society!

You have no right to stop me from going anywhere as I will tell the cops to keep an eye out on the Alcoholic in their neighbourhood!

[108] Mr. Lamba testified at the hearing that he sees nothing wrong with these communications. I do. Mr. Lamba never suggested to Mr. Butalia that he was concerned about the living conditions in the house until the dispute about Mr. Lamba's commissions arose. To threaten to contact child services in order to force a client to pay money that is in dispute, as Mr. Lamba did, is dishonest and lacks integrity. To threaten to report to a client's employer that the client is an alcoholic to force the client to pay money, as Mr. Lamba did, is dishonest and without integrity.

To use the abusive language that is contained in the communications to the client is unprofessional and lacks integrity.

[109] That Mr. Lamba contacted Mrs. Butalia as is described above, is difficult to comprehend and impossible to justify. I do not accept that Mr. Lamba was sincerely concerned about Mr. Butalia's son, or he would not have waited until after the dispute about commissions arose to take action. Telling a client's ex-spouse that the client is an alcoholic and has financial problems is extremely unprofessional and lacking in integrity.

[110] I find that Mr. Lamba's communication with Mrs. Butalia was an attempt to bully Mr. Butalia into acceding to his demands for payment, or to deliberately harm Mr. Butalia, or both. These communications are grossly inappropriate, unprofessional, dishonest, and demonstrate a complete lack of integrity.

Mr. and Mrs. Waltho

[111] The Walthos listed their home for sale with Mr. Lamba. They had already put an offer to purchase in on another property and, when that did not proceed, the Walthos became disinterested in selling. At one point, Mr. Lamba suggested to the Walthos that he might have an interested buyer if they were willing to take significantly less than the price contemplated in the listing agreement. The Walthos declined. After that happened, and with no real provocation, Mr. Lamba sent Mr. Waltho the following messages:

Your sarcasm makes a man look very very weak which is what psychologists always say. Sarcasm is the weak man's tool to pretend to look strong! You have all the facts wrong right from the start which is probably why people like you go to sell Purple Brick commissions because they grossly under estimate the value of real estate experts! You have got to be one of the most unique and thankless individuals that I have ever met in my 17 years...do you have a number we should get back with???

...

I think you don't even realize how pathetically sarcastic you are!!! I pity all the people around you that have to suffer around you each and every day of their lives!

[112] When the Walthos continued to maintain their asking price, Mr. Lamba said they would never get that price, that he would ask his stager to unstage the house and that he would send Mr. Waltho a suspension so that no more money would be wasted. Mr. Waltho took this to mean Mr. Lamba was cancelling the listing.

[113] Despite the fact that Mr. Lamba made it clear to the Walthos he no longer intended to act for them he demanded to be paid \$9,285 toward expenses he allegedly incurred to that date. He provided the Walthos with no documentation in support of that demand.

[114] I find that Mr. Lamba's communications with Mr. Waltho lack integrity. His cancellation of the listing agreement and demand to be paid his expenses is dishonest and lacks integrity.

Marzena Wawrzyniak

[115] Ms. Wawrzyniak manages six dental offices. In the fall of 2020, she was looking for commercial property to open a dental office with her business partner. She saw a location on Lakeshore Boulevard which she thought might be appropriate and there was a sign on the front of the building with Mr. Lamba's name and telephone number on it. Ms. Wawrzyniak contacted Mr. Lamba's office and was shown the building by one of his employees.

[116] After seeing the building, Ms. Wawrzyniak was very interested and sought additional information from Mr. Lamba, which was provided. She and her partner wished to move forward, and Ms. Wawrzyniak spoke to Mr. Lamba by phone on October 14, 2020. During that conversation, she told Mr. Lamba that they were interested in proceeding and that she would have their real estate agent contact Mr. Lamba to negotiate the details.

[117] According to Ms. Wawrzyniak, Mr. Lamba became irate when he found out she intended to have her own real estate agent become involved in the negotiations. Mr. Lamba called her a liar and a bitch. He told her that if she dared make an offer, he would not send the offer to the building owner because she had cheated him. Ms. Wawrzyniak says she had assumed it obvious that Mr. Lamba would not be representing her as he was already representing the owner. This exchange left Ms. Wawrzyniak shocked and upset and she never contacted Mr. Lamba again.

[118] Mr. Lamba could not recall his interactions with Ms. Wawrzyniak but denied he would ever use the language attributed to him.

[119] I found Ms. Wawrzyniak to be a straightforward and credible witness. Her account of Mr. Lamba's reaction to learning that she had her own real estate agent is consistent with his reactions to feeling cheated by other clients. That he lashed out in this way is not surprising in the context of his other interactions.

[120] Mr. Lamba's conduct with Ms. Wawrzyniak was unprofessional, abusive, and lacking in integrity. His threat to withhold any offer she might make from the owner of the building is contrary to the Code of Ethics, is dishonest, and lacks integrity.

RECO

[121] Several of Mr. Lamba's clients made complaints about his behaviour to RECO and RECO wrote to Mr. Lamba requesting responses. As will be discussed below, Mr. Lamba was slow in responding and requested a number of extensions to make his submissions. When RECO became more insistent that Mr. Lamba respond, Mr. Lamba sent RECO several emails containing the following:

I am hoping you will inform these crude, impudent and arrogant officers to understand the reality on the ground as if it was them that were real estate agents trying to survive and make a living.

...

I don't want to take this before the Courts and make a big deal out of this because any rash decision will lead to a Public interest litigation on the entire REAL ESTATE BOARD's activities and I can promise you that because I am sick tired of RECO and its attitude of harassment!

...

I am in receipt of your email and am appalled at the most ridiculous time line you have provided??? I don't have a cushy job like you at RECO bc we have to work hard to pay your salaries so you can in turn have a life.

Please learn to be more respectful as all of this will get accounted in a huge class action law suit that is being prepared against RECO as we speak for typical mismanagement and destroying the entire industry!!!

...

"Omg! Are you for real??? Are you oblivious of the worst pandemic affecting us all where businesses are shut and no one in the country is leading a normal life or a normal business!!!!!!

YOU ARE DISPICABLE [*sic*] AND I WILL NOT BE RESPONDING TO OUR MESSAGES ANY MORE AS UNLIKE YOU I HAVE TO WORK TO STILL PAY THE BILLS IN THESE TRYING TIMES!!!!!!

[122] Mr. Lamba's communications with RECO are abusive, unprofessional, and lack integrity. The contempt with which he speaks to the regulator affords reasonable grounds for belief that he will not act in accordance with law.

Discussion regarding Mr. Lamba's communications

[123] Much time was spent at the hearing discussing whether or not Mr. Lamba has legitimate contractual claims involving the clients who testified. Mr. Lamba repeated many times that he and his team work very hard for his clients and that they go "over and above" what is required of them so that their clients realize the best possible results. Mr. Lamba appears sincere in his belief that he felt cheated by the actions of some of his clients and was justifiably upset when they breached their obligations under their contracts with him.

[124] There is nothing wrong with having contractual disputes with one's clients and that is to be expected when dealing with the volume of deals that Mr. Lamba conducts. It is also not discreditable on its own to disagree with the regulator of one's

profession such as RECO. However, Mr. Lamba's communications go beyond those that are acceptable in a regulated profession and are clearly in breach of the Code of Ethics which are legislated in O. Reg. 580/05. In particular, s. 39 of the Code of Ethics prohibits a registrant from engaging in any act that would reasonably be regarded as disgraceful, dishonourable, unprofessional or unbecoming a registrant. Section 40 provides that a registrant shall not abuse or harass any person in the course of trading in real estate.

[125] Mr. Lamba's communications and actions detailed above are in clear breach of both of these provisions of the Code of Ethic and cannot be justified in the context of contractual disputes or disagreements with the way the regulator is conducting itself.

[126] I find that Mr. Lamba's communications and actions detailed above afford grounds for belief that he and Whitehill will not act in accordance with law, integrity and honesty.

v. Failure to respond to RECO in a timely way

[127] The Registrar presented evidence regarding Mr. Lamba's failure to respond to several requests for responses to complaints made to RECO by consumers. Mr. Lamba made multiple requests for extensions which were granted.

[128] Section 19(3) of the Act provides that a registrant who receives a written request for information shall provide the information as soon as practicable.

[129] Mr. Lamba's explanation for his failure to respond to the Registrar's requests for information was that his office was closed because of the COVID-19 pandemic and that he did not intend to risk his own life or his employees' lives to retrieve information about "frivolous" complaints. He says that his priority during the pandemic has been to keep his business going and to ensure that his clients are taken care of.

[130] Although I am sympathetic to the difficulties being experienced by business owners caused by the COVID-19 pandemic, Mr. Lamba agreed that he continued to trade in real estate throughout the pandemic, including attending his offices to meet with clients and conducting showings and open houses. He did not explain why attending the office on his own when no one else was there in order to deal with RECO's requests would have been a problem or why he could not have dealt with those requests when he was in the office taking care of other matters. I do not accept that his explanation is reasonable.

[131] The Registrar argues that the consumer protection components of the *Act* are not effective if registrants do not comply with their reporting requirements. Mr. Lamba cannot be allowed to pick and choose which complaints are serious enough to require him to respond, and the contempt Mr. Lamba has shown for RECO and its personnel is a concern with respect to whether he can be trusted to comply with the *Act* in the future.

[132] Although not determinative, Mr. Lamba's failure to provide timely responses to RECO's requests, and his inappropriate communications with RECO employees, are evidence for the belief that Mr. Lamba and Whitehill will not act in accordance with law and with integrity.

vi. Previous disciplinary proceedings

[133] As part of its case, the Registrar presented evidence of Mr. Lamba's disciplinary history, which included a number of complaints, warnings, and disciplinary actions. There were a number of complaints in evidence with respect to advertising violations which were minor in nature and which I find do not add significant support to the Registrar's position.

[134] However, one of the warnings presented does cause concern. On August 22, 2016, RECO provided Mr. Lamba with its decision with respect to the complaint of a City of Brampton employee. The complainant worked as Brampton's Acting Manager of Property Standards and had a concern that Mr. Lamba was advertising property as having a basement apartment which was in contravention of the city's bylaws. Mr. Lamba responded that he would use the full force of his ability to remove the complainant from her job and take legal action against the city. RECO advised Mr. Lamba that this was unprofessional conduct and required him to take an anger management course. Threatening to have an employee of the city fired for doing her job is unprofessional, lacks integrity, is dishonest, and shows contempt for the law.

[135] In addition, two matters resulted in disciplinary actions taken by RECO. The first relates to a decision of the Discipline Committee dated September 6, 2013. According to an agreed statement of facts, Mr. Lamba removed the signs belonging to another realtor without their knowledge or consent and replaced those signs with his own contrary to sections 3, 7, and 39 of the Code of Ethics. Mr. Lamba was ordered to pay a penalty of \$12,500 and to take an ethics and business practice course.

[136] The second matter relates to a decision of the Discipline Committee released November 21, 2013. In that matter, the agreed statement of facts states that Mr. Lamba failed to present an offer received from another agent to his client, the seller, and later presented a lower offer from a buyer that Mr. Lamba also represented thus entitling Mr. Lamba to both a seller's and buyer's commission. Mr. Lamba was ordered to pay a penalty of \$10,000.

[137] These disciplinary matters are evidence that support the belief that Mr. Lamba will not act in accordance with law, integrity and honesty.

vii. Witnesses at the hearing

[138] There are two issues of concern with respect to the manner in which Mr. Lamba has behaved in respect of witnesses called at the hearing.

[139] First, Mr. Lamba sent Mr. Jankovic a text message the day before he was scheduled to give evidence at the hearing. The Registrar served a notice of Further Particulars to its NOP alleging that, by sending this text message Mr. Lamba attempted to obstruct, pervert or defeat the course of justice. The text message reads in part:

Wake up and lead an honest life and stop cheating people of their hard earned income. KARMA is there and it all comes around:) GOD BLESS

I know of all the people you and your Company have cheated of their livelihood:) Fear GOD and KARMA always!

[140] Mr. Jankovic took this as a threat. I agree with that assessment. Needless to say, threatening a witness the day before that witness is to give adverse testimony at a hearing is illegal, dishonest, and lacks integrity.

[141] The second issue is with respect to nine witnesses Mr. Lamba called to give character evidence at the hearing. These were all people who Mr. Lamba has acted as a real estate agent in the past. They all said that they will retain Mr. Lamba again in the future and that they have, and will in the future, refer their family, friends, and business associates to Mr. Lamba. However, Mr. Lamba lied to all of them regarding the nature of the hearing. To all but one he said that he was being considered for a seat on the Board of Directors at RECO and the witnesses were being asked to testify as to Mr. Lamba's character including his professionalism, honesty, and integrity. He did not tell any of his character witnesses the true purpose of the hearing.

[142] That Mr. Lamba told his clients, who may retain him in the future and who may refer other people to him, that he was being considered for a position on the Board of Directors at RECO rather than that he is appealing the Registrar's proposal to revoke his real estate licence on the basis of the Registrar's belief that he will not act in accordance with law, integrity and honesty, demonstrates a remarkable lack of honesty and integrity, as well as a remarkable lack of insight into his obligations under the *Act*. Since this issue was not made a part of the NOP, I am not relying on it for the purposes of determining whether the Registrar has satisfied its onus, but I consider it relevant when assessing Mr. Lamba's credibility.

[143] I found Mr. Lamba's character witnesses themselves to be honest and credible. They all held Mr. Lamba in high regard and it is clear that he has many clients who value his services. Mr. Lamba makes the point that the vast majority of his clients are satisfied and that the ones who were dissatisfied and appeared at the Tribunal are the exception and not the rule.

[144] I accept that most of Mr. Lamba's clients are probably satisfied with his services and that he has provided at least some of his clients with exceptional service. Some of the character witnesses gave evidence about the ways in which Mr. Lamba sacrificed his own interests in favour of the interests of his clients and they all expressed that they found him to be trustworthy and a man of integrity. The

character witnesses were all impressive people and gave their evidence honestly and sincerely.

[145] I have considered the evidence of the character witnesses in arriving at my conclusions. However, I have also taken into account that they were deceived about the purpose of the hearing. It is possible that some of their evidence might have been different if they knew that Mr. Lamba was facing revocation of his licence, or if they knew of the allegations being made about Mr. Lamba's conduct. For example, one of the witnesses agreed that he would have concerns about retaining Mr. Lamba if he knew that \$5,000 had been improperly transferred from Whitehill's trust account into its general account.

Conclusion regarding issue I

[146] Based on the above, I find that the Registrar has satisfied its onus and has proved that the past conduct of Mr. Lamba affords reasonable grounds for belief that he will not carry on business in accordance with law and with integrity.

[147] The evidence is that Mr. Lamba has misappropriated and misused trust monies on two occasions in the recent past; he has engaged in communications with his clients that included threats, insults, and profanity; he has used improper tactics to coerce his clients into paying him money he is not entitled to; he has disparaged his clients to third parties; he has failed to respond to RECO in a timely way and has engaged in insulting, abusive, and unprofessional communication with employees at RECO; and he has threatened a witness in this hearing.

[148] Mr. Lamba argues that his behaviour is justified. At the hearing he did not acknowledge any wrongdoing and consistently blamed his actions on the misdeeds of his clients, RECO, his employees, and his wife.

[149] The Registrar has presented ample evidence demonstrating that Mr. Lamba's past conduct affords reason for the belief that he and Whitehill will not carry on business in accordance with law, integrity and honesty.

Issue II: False statement in application

[150] On February 9, 2021, Mr. Lamba submitted an application for registration. In the disclosure section of that application, Mr. Lamba was asked if he had any unpaid judgments or debts against him or against a corporation where he is a majority shareholder, director, or officer, and he responded that he did not. That was not true. At that time there was an outstanding Employment Standards Act Order under which Mr. Lamba was indebted to Angela Graci in the amount of \$16,026.98. There was an outstanding judgment in the amount of \$20,135.46 for failure to pay rent. And there was an outstanding judgment in the amount of \$7,424.10 plus costs for a contractual debt with respect to unpaid advertising.

[151] Mr. Lamba acknowledges that he should have disclosed those judgments and debts, and that his answer in the application was not accurate. Mr. Lamba alleges

that he did not think that these were the types of debts that had to be disclosed in the application. I do not accept this explanation. The question on the application was clear and Mr. Lamba, an experienced real estate broker, must have known that the answer to the question that he provided was not truthful.

[152] Section 10(1)(a)(iii) of the Act disentitles an applicant who makes a false statement or provides a false statement in an application for registration or for renewal of registration. The Divisional Court in *Registrar, Motor Vehicle Dealers Act v. Vernon*, 2016 ONSC 304 (CanLII) held that the task of the Tribunal is to determine whether the applicant made a false statement to Registrar and whether he knowingly did so.

[153] In the present case, I have found that Mr. Lamba did make a false statement in his renewal application and that he knowingly did so intending to mislead the Registrar. I find that Mr. Lamba is not entitled to registration as a result.

Issue III: Appropriate Outcome

[154] Having found that there are reasonable grounds to believe that Mr. Lamba and Whitehill will not carry on business in accordance with law, and with integrity and honesty, and that Mr. Lamba has provided a false statement in his application for renewal, I must now consider the appropriate remedy. The Registrar and the Tribunal have the statutory discretion to consider the appellants' circumstances and determine whether the public interest requires outright revocation of registration or whether the public interest can be adequately protected through granting registration with conditions.

[155] I do not find that this is an appropriate case for conditions. Mr. Lamba sees nothing wrong with his actions or behaviours. There is evidence of a continuing pattern of behaviour which reasonably raises concerns with respect to his future behaviour in a regulated industry. His conduct reflects a pattern of disregard for the law, dishonesty, abusive and unprofessional behaviour, as well as failure to take responsibility for his actions. He has presented no evidence of changes he has made or any character evidence which might support registration with conditions.

[156] The findings against Mr. Lamba are serious. There is insufficient evidence before the Tribunal to suggest that conditions would be appropriate. I decline to impose conditions on the ground that I am not satisfied conditions would sufficiently protect the public.

E. CONCLUSION

[157] I find that the Registrar has satisfied the onus to show that there are reasonable grounds for belief that Mr. Lamba and Whitehill will not carry on business in accordance with law and with integrity and honesty.

[158] I find that the Registrar has satisfied the onus on it to show that Mr. Lamba has made a false statement in an application.

[159] I find that there are no terms and conditions that would sufficiently protect the public.

F. ORDER

[160] The Tribunal directs the Registrar to carry out its proposal to revoke the registration of Amarjot Lamba as registered broker and Whitehill as a registered brokerage.

LICENCE APPEAL TRIBUNAL



Colin Osterberg,
Member

Released: March 3, 2022