



Citation: Bryan v. Registrar, *Trust in Real Estate Services Act, 2002*, 2024 ONLAT TRESA 15263

Licence Appeal Tribunal File Number: 15263/TRESA

In the matter of an appeal from a Notice of Proposal to Refuse Registration by the Registrar under the *Trust in Real Estate Services Act, 2002*, S.O. 2002, c. 30, Sched. C

Between:

Christopher Bryan

Appellant

and

Registrar, *Trust in Real Estate Services Act, 2002*

Respondent

DECISION

ADJUDICATOR: Rebecca Hines

APPEARANCES:

For the Appellant: Christopher Bryan, Appellant (Self-represented)

For the Respondent: Angela Volpe, Director of Registration
Maya Sabharwal, Counsel

Heard by Videoconference: January 30, 2024

OVERVIEW

- [1] Christopher Bryan (the "appellant") appeals the Notice of Proposal ("NOP"), dated September 15, 2023, to refuse his registration as a salesperson, which was issued by the Registrar, *Trust in Real Estate Services Act, 2002* ("Registrar") pursuant to sections 13 and 14 of the *Trust in Real Estate Services Act, 2002*, S.O. 2002, c. 30, Sched. C (the "Act").
- [2] The NOP to refuse the appellant's registration was made on the basis that his past and present conduct affords reasonable grounds for the belief that he will not carry on business in accordance with the law and with integrity and honesty.
- [3] Pursuant to s. 14 of the *Act*, following a hearing the Tribunal may by order direct the Registrar to carry out the NOP or substitute its opinion for that of the Registrar and the Tribunal may attach conditions to its order or to a registration.

ISSUE IN DISPUTE

- [4] The issues in dispute are as follows:
 - (a) Does the past and present conduct of the appellant afford reasonable grounds for belief that he will not carry on business in accordance with the law and with honesty and integrity?

RESULT

- [5] The appellant's past and present conduct affords reasonable grounds for belief that he will not carry on business in accordance with the law and act with honesty and integrity. I therefore direct the Registrar to carry out its NOP.

ANALYSIS

There are reasonable grounds for belief that the appellant will not carry on business in accordance with the law and act with honesty and integrity.

- [6] Section 4 of the *Act* prohibits a person from trading in real estate unless they are registered under the *Act*.
- [7] Section 10(1)(a) of the *Act* states that an applicant that in the Registrar's opinion meets the prescribed requirements is entitled to registration or renewal of registration by the Registrar. One of the prescribed requirements is that "the past and present conduct of the applicant affords reasonable grounds for belief that the applicant will carry on business in accordance with law and with integrity and

honesty.” An applicant who is notified via a NOP that the registrar proposes to refuse registration is entitled to a hearing by the Tribunal. The respondent relied on the Divisional Court’s recent decision in *Yarco Developments Inc. v. Home Construction Regulatory Authority (Registrar)*, 2024 ONSC 93, which supports that the onus of proof in a hearing by the Tribunal is on the appellant to prove the non-existence of reasonable grounds for belief supporting the Registrar’s denial of registration of a licence.

- [8] The standard of “reasonable grounds for belief” was set out by the Court of Appeal in *Ontario (Alcohol and Gaming Commission of Ontario) v. 751809 Ontario Inc. (Famous Flesh Gordon’s)*, 2013 ONCA 157 (CanLII). “Reasonable grounds for belief” require something more than mere suspicion but less than proof on a balance of probabilities. Reasonable grounds will exist where there is an objective basis for the belief which is based on compelling and credible information. Further, there must also be a nexus between the conduct in issue and the appellant’s ability to conduct business under the *Act* serving the interests of the public. See *CS v. Registrar, Real Estate and Business Brokers Act, 2002*, 2019 ONSC 1652 (Div. Ct.) at para. 32.
- [9] The Registrar presented evidence to support its NOP denying the appellant’s registration. For example, the evidence supports that the appellant’s past conduct includes a 15-year pattern of non-compliance with the law between 2001 and 2017, resulting in convictions for trafficking drugs, assault, possession of illegal firearms and ammunition, and breach of court orders. The evidence also showed that the appellant was previously registered as a salesperson from April 2012 to April 2014, with conditions. However, during his brief time of registration he breached the conditions of his registration by failing to report new criminal charges to the Registrar.
- [10] The Registrar noted that the appellant has remained unemployed from 2014 to date, with the result that there are no recent references from employers who can vouch for the appellant. The Registrar relies, in submitting that there are reasonable grounds for belief supporting denial of licensure, on the Real Estate Council of Ontario’s records regarding the appellant’s previous licence and conditions, criminal reference checks, and a progress report from Corrections Services (“Corrections”).
- [11] The appellant readily acknowledges and takes responsibility for his past criminal conduct. However, he submits that following his incarceration he has been rehabilitated, and he is a changed man who is worthy of a second chance in pursuing his passion for real estate. Further, he has been fully transparent

throughout the application process with the Registrar, which he submits supports that he has acted with honesty and integrity in disclosing all of his past criminal convictions. He also relies on the above-noted progress report from Corrections, which he submits notes many improvements, and court transcripts from his various convictions which he says support that he was accountable for his actions because he pled guilty. In addition, he depends on various character reference letters in support of his appeal. The appellant also relies on the testimony of a business manager at the previous real estate brokerage firm he was employed with who despite being fully aware of his criminal history, supports the issuance of his licence. Further, the business manager has also agreed to employ the appellant as a salesperson if his licence is reinstated.

- [12] For the following reasons, I find the appellant has not met his onus. Reasonable grounds exist for belief that he will not carry on business in accordance with the law and act with honesty and integrity. He has not shown otherwise.
- [13] First, the appellant's 15-year history of criminal activity and convictions is undisputed. The RCMP criminal record checks support that between 2001 to 2017, the appellant was charged with and convicted of numerous serious criminal offences including drug trafficking, possessing illegal firearms and ammunition, assault, uttering threats, and breach of recognizance on three occasions. I find that the appellant's history of criminal convictions demonstrates a long period of non-compliance with the law and court orders. Such non-compliance is directly relevant to the reasonableness of the Registrar's belief that he will not carry on business in accordance with the law and act with honesty and integrity.
- [14] Ms. Angela Volpe, Director of Registration, testified that the *Act* is consumer protection legislation to ensure the safety of the public in the trading of real estate in Ontario. She testified that a real estate salesperson regularly meets with clients and others in their homes, often alone and often outside of standard business hours, and is in a position of trust. Members of the public must be able to be safe, and also have trust and confidence in their real estate salesperson to handle what is to most people the biggest investment of their lives, purchasing a home. She stated that the Corrections progress report, dated January 18, 2018, notes that that the appellant has a pattern of resorting to crime when faced with financial stressors which supports an entrenched criminal value system. Further, the report noted that the appellant made moderate improvements under all risks identified versus good or excellent. Ms. Volpe testified that selling real estate involves high pressure situations involving large financial transactions with huge commissions. Although she acknowledged that the report supports that the appellant made improvements, she stated her concern that his past pattern of illegal conduct presents too much of a risk.

- [15] The appellant testified that his improvement rating on the Corrections report was moderate because they do not give out higher scores, given that it was a moderate intensity program. What I find lacking in this case was evidence from the author of this report to explain the improvement ratings. In my view, neither Ms. Volpe nor the appellant was the most appropriate witness to testify about this report and its meaning. Only the author could have testified directly to this. I have considered the report but have given it limited weight. As it states on its face, the report supports that the appellant made moderate improvements while incarcerated.
- [16] Second, I find the evidence supports that the appellant breached the conditions of his previous licence registration between 2012 to 2014, in that he failed to report criminal charges to the Registrar stemming from incidents in 2013 and 2014. Although I accept the appellant's testimony that he did not do this deliberately and he was not intentionally trying to deceive the Registrar, nonetheless it demonstrates that he has not abided by agreed upon conditions of his registration previously which I find consistent with his pattern of non-compliance with the law.
- [17] Third, although the evidence supports that the appellant has not been charged or convicted with any offences since 2017 (a period of approximately six years), three of these years included periods of incarceration, ending in 2019. Although the Tribunal will consider an appellant's positive conduct since criminal convictions, the number of convictions, seriousness of offences, the period of time over which criminal conduct took place, and the length of time since the appellant last engaged in criminal activity are important factors in considering whether there no longer is reason for belief supporting the denial of licensure based on past criminal activity. In this case, only four years have elapsed since the appellant's last period of incarceration. I agree that not enough time has passed under the circumstances for the appellant to prove that his past conduct no longer gives rise to reasonable grounds for belief supporting denial of licensure. Gaps with no convictions in the appellant's criminal record check are insufficient to show there are no reasonable grounds for belief.
- [18] Fourth, I also agree with the Registrar that the appellant's lack of employment over the most recent ten-year period does not help his position. The appellant testified that he was not able to obtain employment because he was under house arrest between 2014 to 2017 and was incarcerated between 2017 to 2019. Further, when he was released, he focused his energy on studying to regain his real estate licence as opposed to obtaining employment. While this explains the lengthy gap in the appellant's employment history, I find that it does not rebut the Registrar's concern that evidence demonstrating that he is a positive, reliable employee over almost a ten-year time span is lacking in this case. The appellant relied on a letter of reference by Troy Walczak dated October 11, 2023, which indicated that the appellant had been volunteering with his employment agency and that he assisted with registering individuals and fulfilling orders. The letter indicates that the

appellant was reliable and punctual and was professional and positive with clients and colleagues. I find this letter of reference vague, as it does not specify the time period, duration, and frequency of the appellant's volunteer work with this organization. Further, the nature of the appellant's volunteer work does not appear to involve a position of trust. In light of the appellant's history of criminal convictions, more supportive information from documented employment or long-term, consistent volunteer work could have been helpful in support of his appeal and to show no reasonable grounds for belief that he will not carry on business in accordance with the law or with honesty and integrity, including being a potential risk to public safety.

[19] Finally, it is important to note that I found the appellant's testimony to be genuine and commend that he has made many positive changes in his life. The appellant's former manager from the real estate brokerage firm he had been employed with from 2012 to 2014 testified that, despite being fully aware of the appellant's history of criminal convictions, he fully supports the reinstatement of the appellant's licence as a salesperson. He stated that has no concerns with the appellant's ability to carry on business in accordance with the law and ability to act with honesty and integrity and is willing to employ him should his licence be reinstated. Further, no complaints were made against the appellant when he was previously employed as a salesperson. The appellant also submitted numerous positive character reference letters from his family and friends which speak to the many positive changes he has made and supporting the reinstatement of his licence. However, although I accept that the appellant has made many positive improvements and has a solid support network, I find the appellant's evidence does not demonstrate the non-existence of reasonable grounds for belief in support of the NOP. The Registrar has a gatekeeping role in order to protect the public interest. The appellant's positive conduct over the short period of time that he has not been incarcerated, while encouraging, has not disproved the Registrar's concerns.

[20] For these reasons, I find that there are reasonable grounds for belief that the appellant will not carry on business in accordance with the law and act with integrity and honesty.

The Registrar's refusal to register the appellant as a real estate salesperson is appropriate.

[21] The Registrar and the Tribunal have the statutory discretion to consider the appellant's circumstances and determine whether the public interest requires outright refusal of registration or whether the public interest can be adequately protected through granting registration with conditions. However, in this case, I do not find that conditions are an appropriate alternative to refusal to register because given the appellant's prior breach of conditions of registration and neither party

made submissions as to what conditions may be appropriate to ensure the public interest is protected.

ORDER

[22] Pursuant to s. 14 of the *Act*, the Tribunal directs the Registrar to carry out its proposal to refuse registration of the appellant as a salesperson.

LICENCE APPEAL TRIBUNAL

A handwritten signature in black ink, appearing to read "Rebecca Hines", written over a horizontal line.

Rebecca Hines, Member

Released: March 13, 2024