Citation: Moazzani v. Registrar, *Real Estate and Business Brokers Act 2002*, 2023 ONLAT REBBA 12406

Licence Appeal Tribunal File Number: 12406/REBBA

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

Between:

Sepideh Moazzani

Appellant

and

Registrar, *Real Estate and Business Brokers Act 2002*

Respondent

DECISION and ORDER

ADJUDICATOR:	**Stephen Scharbach, Member**
APPEARANCES:	
For the Appellant:	Jennifer Hewlett, Counsel Michael Katzman, Counsel
For the Respondent	Shane Smith, Counsel Shaun Chu-A-Kong, Counsel
Heard by Videoconference:	**November 19, 29, 2019, December 6, 13, 2019, February 16, 2021, June 1, 3, 4, 14, 16, 2021, October 3, 2022, January 9, 10, 2023, February 9, 21, 2023, March 9, 28, 30, 2023, April 13, 20, 27, 2023.**

OVERVIEW

[1] Ms. Sepideh Moazzani ("appellant") is registered as a salesperson under the *Real Estate and Business Brokers Act, 2002* ("Act").

[2] The Registrar appointed under the Act concluded that the appellant was no longer entitled to registration and, on October 17, 2019, issued both a notice of proposal to revoke her registration and an immediate suspension order, pursuant to ss. 14 and 15 of the Act.

[3] The notice of proposal was followed by four notices of further particulars and a supplemental notice of proposal to revoke (collectively, the "NOP"). The immediate suspension order was extended by the Tribunal until the present proceedings concluded, and the appellant's registration has remained under suspension since October 2019.

[4] The appellant requested a hearing before this Tribunal to consider the Registrar's proposal. That hearing is now complete, and this is my final decision and order.

DECISION

[5] For the reasons set out below and pursuant to s. 14(5) of the Act, I direct the Registrar to carry out the proposal to revoke the appellant's registration.

LEGAL CONTEXT

[6] The Act is a consumer protection statute which regulates the business of trading in real estate in Ontario. Its main objective is to ensure that the public receives honest, ethical, and competent services from real estate brokers and salespersons.

[7] The Act prohibits anyone from acting as a real estate salesperson unless they hold a registration granted by the Registrar under the Act.

[8] Once registration is granted, the Registrar may revoke, suspend, or attach conditions to a registration on any of the several grounds specified in s.10. In this case, the Registrar relies on four of those grounds. They are:

- The appellant is in breach of a condition of her registration (s.10(1)(f));

- The appellant's past conduct affords reasonable grounds for belief that she will not carry on business in accordance with law and with integrity and honesty (s.10(1)(a)(ii));

- The appellant has carried on activities that are in contravention of the Act or the regulations (s.10(1)(e)); and

- Having regard to the appellant's financial position, the appellant cannot reasonably be expected to be financially responsible in the conduct of her business (s.10(1)(a)(i)).

[9] Before revoking a registration, s.14 of the Act requires the Registrar to give written notice to the registrant of the Registrar's proposal to revoke, and the registrant may then request a hearing before this Tribunal.

[10] If a hearing is requested, s.14(5) of the Act requires the Tribunal to hold a hearing to determine whether the Registrar's proposal should be carried out, not carried out, or whether conditions should be placed on the appellant's registration. At a hearing, the onus is on the Registrar to prove the facts that support the proposal on a balance of probabilities.

[11] One of the grounds the Registrar relies upon in this case is the appellant's past conduct which the Registrar alleges affords reasonable grounds for belief that the appellant will not carry in business in accordance with law and with integrity and honesty (s.10(1)(a)(ii)). To establish that ground the Registrar must establish facts that support a finding that the appellant's past conduct "affords reasonable grounds for belief" that the appellant will not conduct business as required.

[12] According to the Court of Appeal of Ontario's decision in *Registrar, Alcohol and Gaming Commission of Ontario v. 751809 Ontario Inc. operating as Famous Flesh Gordon's*, 2013 ONCA 157 at paras. 18-19, "reasonable grounds for belief" requires something more than mere suspicion but is less than proof on a balance of probabilities. Further, there must be a factual nexus between the alleged misconduct and the registrant's ability to conduct business as a real estate salesperson (see *CS v. Registrar, Real Estate and Business Brokers Act, 2002*, 2019 ONSC 1652 at para. 32).

[13] The Registrar bears the onus of establishing that revocation is warranted considering the proven conduct. The Tribunal owes no deference to the Registrar's position as set out in the notice of proposal.

FINDINGS AND ANALYSIS

A. Breach of Conditions Attached to Registration in 2016 – s. 10(1)(f)

(a) The Conditions – Background

[14] The appellant filed for bankruptcy in August 2010. In late 2016, while reviewing the appellant's 2016 renewal application, the Registrar became aware that the appellant had remained an undischarged bankrupt for over six years and had incurred new unpaid debts in the meantime. Three garnishment orders (referred to collectively as the "garnishments") had been served on her brokerage - Chestnut Park Real Estate ("CP") - by new creditors:

- Royal Bank ("RBC") obtained a judgement and served CP with a Notice of Garnishment on November 12, 2015, for $90,110;
- The Canada Revenue Agency ("CRA") served CP with a "Requirement to Pay" ($20.778) on or about May 16, 2016. Requirements to Pay have the same effect as a garnishment; and
- Accesseasyfunds Ltd. ("Access") obtained a judgement and served CP with Notice of Garnishment on or about May 25, 2016, for $66,974.

[15] The Register was concerned about the appellant's ability to be financially responsible in the conduct of her business. The appellant explained that she was attempting to settle all three debts. She told the Registrar that she planned to settle all of her judgements and garnishments immediately upon a mutually accepted settlement amounts, and intended to apply for a discharge as soon as her tax arrears were settled. She anticipated being discharged from bankruptcy in early 2017.

[16] To address the Registrar's concerns, the Registrar and the appellant agreed to several conditions that were attached to the appellant's registration as of December 16, 2016. They required the appellant to:

(i) "Use her best efforts" to satisfy all three garnishments;

(ii) If the garnishments were satisfied by her next renewal in 2018, the appellant was required to provide the Registrar with supporting documentation from the creditors as proof; and

(iii) If the garnishments were not satisfied by renewal in 2018, the appellant was required to "provide the office of the Registrar with a full progress report of the efforts made, to include payments and current balance owing confirmed in writing by the creditor".

(b) Finding on Breach of Conditions

[17] As set out below, I find that the conditions were breached as follows.

[18] Rather than using her "best efforts" to satisfy the garnishment debts, the appellant took steps to avoid the collection efforts of the creditors by:

(i) funnelling her commissions through her brother (another licenced salesperson at CP) so that no amounts were payable under garnishments; and

(ii) The appellant delayed and frustrated the efforts of Access to collect on its judgement and refused to comply with a court order to attend a judgment debtor examination.

[19] When she submitted her renewal application in 2018, the appellant failed to provide the Registrar with proof that the debts were satisfied, or proof of her best efforts to satisfy them as confirmed by creditors.

(c) Changed Compensation Arrangement to Avoid Garnishment

[20] Before the first garnishment was served by RBC in November 2015, the appellant listed as the sole agent on her trades and the commissions earned on those trades were paid directly from CP to the appellant.

[21] Those commission payments would have been subject to the garnishment orders. However, by January 2016, just after the RBC garnishment was served, the appellant no longer listed as a sole agent. She only listed as a co-agent with her brother Peter Moazzani ("Peter") who was also a registered salesperson at CP. The trade record sheets that were submitted to CP by the appellant and Peter (from which CP determines which agent shall be paid the commission) indicated in all cases that the commission should be paid solely to Peter.

[22] The result was that CP no longer paid commissions to the appellant and no amounts were payable under the garnishments. According to the Registrar, the appellant's conduct in this regard breached the conditions - she not only

failed to use her best efforts satisfy the debts, but she also actively dodged paying them through this arrangement with her brother.

[23] The appellant testified that the change in her compensation arrangement had nothing to do with the garnishments. She testified that when she and Peter moved from Sotheby's to CP in August 2015, they were hired as a team – it created some efficiencies and was attractive to clients. She stated that it is not uncommon for agents to work together as a team and typically the commission is paid to one who shares it with the other according to their private arrangement. She testified that co-listing exclusively with Peter simply reflected the team approach that she, Peter and CP had decided would be a useful sales strategy when they joined CP.

[24] According to her, directing all commissions payable on her co-listed trades to Peter exclusively was something worked out between Peter and Mr. Chris Kapches (CP's Broker of Record, President, and CEO) without her input, and reflected Peter's role as the senior member of the team.

[25] I reject that explanation. While at Sotheby's, the appellant and Peter occasionally acted as co-listing agents for some trades but for others they listed independently. That arrangement continued when they both started working at CP in August 2015. From August to December 2015, the appellant and Peter listed trades separately and they received commissions separately.

[26] The RBC garnishment was served on November 12, 2015, and by January 2016, the appellant's compensation arrangement had changed. From then until her employment with CP was terminated in August 2019, all the appellant's sales activity took place as a co-agent with Peter, while Peter maintained some listings in his name only.

[27] In my view, the timing of the change suggests that it was a response to the garnishment order. If the change truly reflected a team approach it seems likely that it would have been put in place when they started working at CP in August 2015, not in January 2016 just after the first garnishment order was served.

(d) <u>The Appellant's Explanation for the Change of Compensation Arrangement is Not Credible</u>

[28] The appellant was directly asked in cross-examination who decided to change the compensation arrangement. The appellant's responses were evasive. She

stated that she was working for Peter as his "assistant", so it was up to Peter and CP to structure compensation how they saw fit. She insisted that she did not know how that decision was made. She suggested that Peter and Mr. Kapches likely decided on that arrangement, but she was not involved.

[29] I do not accept that explanation. The appellant is clearly an experienced real estate professional who is financially astute and capable of looking after her own financial interests. I do not believe that she would allow her compensation arrangement with CP to change in January 2016 in such an important way without being involved in that decision and agreeing to it.

[30] Also, the appellant's testimony on this point conflicts with that of both Mr. Kapches and Peter. Mr. Kapches testified that at CP the agents themselves decide which of the co-listed agents shall receive the commission and they indicate that on the trade record sheet they submit to the brokerage on every trade. CP does not get involved in that decision. I accept his testimony on that point.

[31] Peter's testimony was revealing. He appeared reluctant to testify in a way that was unfavourable to his sister but at the same time he answered questions directly put to him in an apparently straightforward manner. When asked why the appellant's compensation arrangement changed as of January 2016, he stated that the appellant:

> *… suggested that we have this arrangement 'til she can work through her bankruptcy…she was in an undischarged bankrupt, so - - and she was constantly trying to work through this, so I - - that's - - that's what I thought the reason being was.*

[32] In summary, I reject the appellant's evidence that she was unaware of the change and had nothing to do with it. I accept Mr. Kapches' testimony that CP made commission payments to one of co-listing agents as directed by the agents themselves. I also accept Peter's evidence that he agreed to the appellant's suggestion that she co-list her trades with him so that her commissions would be paid to Peter which he then shared with her. I find on a balance of probabilities that this arrangement was intended to frustrate RBC's November 2015 garnishment and it was still in place when the two later garnishments were served in May 2016.

[33] I conclude that the appellant breached the condition requiring her to use her best efforts to satisfy the three garnishment orders. She had an arrangement

in place to avoid the garnishment orders when she agreed to that condition, and she kept it in place after the condition was attached. The result was that none of the garnishment orders resulted in any payments being made to the appellant's creditors.

(e) Refusal to Comply with Court Order or Attend Judgement Debtor Examination

[34] One of the three garnishments served on CP was issued by Access. Access is a commission advance company – it provides loans to real estate salespersons in advance of commissions on trades not yet closed. Its loans are supposed to be re-paid when the trade closes and the commission is available. According to the appellant, she took a commission advance of $25,000 based on a transaction that did not close, and she was left owing that amount to Access.

[35] Access obtained a judgment on May 1, 2015, for $48,256 - the amount of the advance plus interest up to that point. The judgement provided for post-judgment interest at a very high rate of 36.5%. Access made efforts to collect on its judgement - it filed a garnishment with CP in May 2016 and took steps to compel the appellant to attend a judgment debtor examination.

[36] A judgment debtor examination was scheduled by Access for March 2017, after the appellant had agreed to the condition requiring her to use her best efforts to ensure that Access' garnishment was fully satisfied by her next renewal.

[37] The appellant attended the examination, but she did not bring the relevant financial documents, and on March 8, 2017, a court order was made compelling her to produce the documents. The examination had to be postponed pending their receipt.

[38] The appellant failed to comply with the court order to produce and a continuation of the judgement debtor examination was eventually scheduled for the morning of October 18, 2017. The appellant initially attended but, again, without all the relevant documents. The examination was postponed until the afternoon to give her another opportunity to produce the documents.

[39] The appellant did not attend the examination when it re-convened that afternoon and the judgement debtor examination had to be postponed again. The court issued a Notice of Contempt Hearing requiring the appellant to

attend before a judge on December 6, 2017, to show cause why an order committing the appellant to custody should not be made.

[40] There is no evidence of whether that contempt hearing took place or what the outcome was. However, on October 10, 2017, Access' counsel wrote to CP and pointed out that it served its garnishment on CP in May 2016 and, although the appellant had advertised and conducted sales activity since then, Access received no payment whatsoever on its garnishment. Access suggested that the appellant was funnelling her commissions through her brother to avoid the garnishment (I have found that to be the case) and stated that it intended to file a complaint with the Real Estate Council of Ontario (RECO).

[41] Access was eventually paid, and it served CP with a Notice of Termination of Garnishment. According to Mr. Kapches, CP facilitated payment of the Access debt by paying Access directly and then reimbursing itself from commissions payable to Peter on one of the co-listed transactions that closed later. That arrangement was made with the agreement of Peter and the appellant.

[42] According to the appellant, when she was working with Sotheby's she was making payments to Access but shortly before she moved to CP in the summer of 2015, Access obtained a judgement and took steps to enforce it including serving CP with the garnishment and requiring her to attend the judgment debtor examination. The appellant testified that she always intended to pay that debt, but the interest rate was very high, and she was trying to reach a reasonable settlement. Eventually, with the co-operation of Peter and CP, the debt was fully resolved when CP advanced her the money to pay off the debt.

[43] I understand the appellant's wish to negotiate a reasonable settlement with Access. However, the evidence establishes that the appellant frustrated and delayed Access' legal efforts to collect on its judgement and likely significantly increased Access' costs. She failed to attend and comply with the court orders to the point where the Court scheduled a contempt hearing.

[44] I conclude that the appellant thereby breached the conditions that had been placed on her registration in 2016. In 2016, she told the Registrar that she planned to settle all three garnishments immediately upon a mutually accepted settlement amount. As a result, the conditions required her to use her "best efforts" to satisfy the debts. Instead of using her best efforts to satisfy Access'

debt, she took steps to avoid paying it by delaying and frustrating Access' legal attempts to collect.

(f) Failure to Provide Registrar with Confirmation of Payment or Best Efforts on Renewal

[45] The appellant submitted her renewal application to the Registrar in November 2018 but none of the information required by the conditions was included.

[46] The Registrar requested the information in an email dated November 19, 2018, and the appellant responded that she will provide it as soon as possible. When nothing followed, the Registrar sent another email on December 12, 2018, asking again for the information. The appellant's lawyer, then Mr. Symon Zucker, responded on December 14, 2018. He stated that the Access debt had been paid, he was in the process of negotiating a settlement with RBC, and the CRA debt had been reduced. He stated that he expected the CRA debt to be paid by the spring of 2019 and he intended to bring a motion to discharge the bankruptcy as soon as the appellant's taxes were up to date.

[47] The Registrar responded in an email to the appellant (not to Mr. Zucker) on December 17, 2018. The Registrar again asked the appellant for the documentation required by the condition - supporting documents from the creditors (including RBC) detailing payments made and current balance owing, details about then CRA debt, and whether tax returns have been filed and whether there were further amounts owing.

[48] The appellant responded that Mr. Zucker was away until January 7, 2019, but she included a statement of account from the CRA showing that the current balance of the CRA debt was $17,500 and that she had made three payments totalling $2,000 between September and November 2018. Mr. Zucker also emailed RECO to say he was unavailable until January 7 and asked for an opportunity to meet and work out a timetable for responding to RECO's requests.

[49] However, on January 7, 2019, the Registrar informed the appellant that her application for renewal would be refused, and a notice of proposal would be prepared and forwarded to her in due course.

[50] The appellant testified that the conditions requiring her to provide confirmation of her best efforts to satisfy the garnishments were not breached in substance and she did her best to provide RECO with the information it required.

[51] I conclude that the appellant failed to comply with the conditions requiring her to provide full information, confirmed by the creditors, of her efforts to satisfy the garnishments at the time of her renewal application in 2018. The appellant's renewal application was submitted without any of the information required. Later requests by the Registrar resulted in the appellant sending in some additional information but in the end, it was inadequate and incomplete. No information was provided regarding progress made on the RBC debt. The CRA debt had been reduced by $2,000 but there was no "full progress report of efforts made".

[52] The intent of these reporting conditions was to require the appellant to provide the Registrar with a complete and transparent picture of progress that she had made in satisfying the garnishments. In my view, she failed to do so and thereby breached those conditions.

(g) Summary - Breach of Conditions

[53] I conclude that the appellant breached the conditions that were placed on her registration in 2016. The breaches were substantive and not minor or trivial. The appellant agreed to use her best efforts to satisfy the garnishments, however at the same time she had an arrangement in place to funnel her commissions through her brother to avoid the garnishments. She took steps to frustrate and delay the legal efforts of one of her creditors to the point where the Court scheduled a contempt hearing. She further failed to provide the Registrar with the required information about the progress of her garnishments upon her renewal application.

[54] Section 10(1)(f) of the Act provides that the Registrar may revoke a registration if the registrant is in breach of a condition of registration. In my view, the Registrar has proven on a balance of probabilities that the appellant breached the conditions of her registration and, accordingly, this breach forms an independent basis to support the Registrar's proposal to revoke. the appellant's registration.

B. Appellant's Past Conduct vis-à-vis Compliance with Law, Integrity and Honesty – s. 10(1)(a)(ii)

[55] According to the Registrar, the appellant's past conduct affords reasonable grounds for belief that she will not carry on business in accordance with law and with integrity and honesty. The Registrar relies on her failure to comply with the 2016 conditions, her efforts to frustrate and avoid the collection efforts of her creditors, and the appellant's conduct in seven separate financial transactions.

[56] The complainant in one of those transactions (Thacker) did not testify and the Registrar made no submissions in connection with it. I therefore make no conclusions on the Thacker transaction. Of the remaining six transactions, three involved real estate transactions in which the appellant is alleged to have misappropriated funds from clients (Gautum, Kiani and Sikder transactions). The fourth was a private transaction in which the appellant is alleged to have misappropriated money from a Florida company with whom she was trading in expensive watches and handbags (Maison Prive transaction). The last two transactions involved private residential rental agreements between the appellant as tenant and two separate landlords to whom the appellant paid little or no rent, causing them a substantial loss (Zhu and Hannah-Shmouni transactions).

[57] The evidence with respect to each transaction was detailed and my findings and analysis with respect to each are set out below.

(a) Gautam Transaction

(i) The Allegation

[58] The Registrar alleges that the appellant misappropriated $296,000 from Mr. Shivon Gautam ("Gautam"), a client who purchased a $2.75 million home on Edwalter Ave. in Toronto in November 2018.

[59] The Registrar relies primarily on the evidence of Gautam who testified that he gave to the appellant $296,000 in five separate payments to fund part of the purchase price – two were cash payments, 2 were PayPal transfers, and one was a bank draft. They was given to the appellant at her suggestion so that she could arrange for the funds to be converted into a certified cheque or bank draft that would be acceptable for deposit into the trust account of Blaney McMurtry ("BM"), the law firm handling the purchase for Gautam.

[60] According to the Registrar and Gautam, the appellant received a total of $296,000 from Gautam and in return she provided BM with an uncertified cheque that was later returned “NSF”. The purchase was delayed but Gautam was able to secure replacement funds and the purchase closed. However, none of the $296,000 was recovered and the Registrar alleges that the appellant misappropriated those funds from Gautam.

(ii) Appellant’s Position

[61] The appellant agrees that she acted as Gautam’s agent on the Edwalter purchase. She testified that Gautam was an IT consultant, and a significant part of his income came from out of country clients and was undeclared for tax purposes.

[62] He wanted to use his undeclared income as well as a mortgage to fund the purchase. She assisted with the mortgage by recommending him to Mr. Joseph Falconeri, the CEO of Greenpath Capital Partners (“Greenpath”), a private mortgage lender whose lending criteria were broad enough to accommodate Gautam. Greenpath provided a mortgage, but the rest of the purchase funds were provided by Gautam - either directly by him, or at his direction from clients who owed him money.

[63] According to the appellant, Gautam wanted to convert some of his undeclared income (including cash) into a form that would be accepted for deposit into BM’s trust account and could be used as part of the purchase price. She referred Gautam to Mr. Arash Izadi (“Izadi”), a “currency exchange” dealer who could arrange that. She testified that Gautam dealt with Izadi. She denies having anything to do with Gautam’s dealings with Izadi beyond recommending him. She testified that she knows nothing about the NSF cheque delivered to BM and assumes that it was issued by Izadi.

[64] With respect to the five payments that Gautam claimed he made to her, the appellant acknowledges that she received the three payments that were verified by banking or PayPal transfer records but denies receiving the two cash payments. She testified that the three verified transfers had nothing to do with Gautam’s purchase of real estate, they were payments that Gautam made to purchase two expensive luxury watches from her.

(iii) Decision and Analysis

[65] I accept Gautam's evidence that he provided the appellant with the funds in five separate payments as set out below. There is documentary confirmation of all the payments being made to the appellant except the cash payments. The five amounts add up to $295,943—just shy of $296,000.

- $65,000 in cash delivered to the appellant in early November 2018. According to Gautam, by that time, he and the appellant were working together to purchase a suitable home. The appellant was aware he had cash he wanted to use to purchase, and she suggested he provide her with $65,000 of that cash. She would borrow it for a short term, and he would receive back $78,000;

- $34,917 US (then equivalent to approximately $39,943 CAN) transferred from one of Gautam's US clients directly to the appellant's PayPal account on November 15, 2018;

- $66,000 transferred directly from Gautam's PayPal account to the appellant's PayPal account on November 16, 2018;

- $47,000 bank draft made out to the appellant on November 16, 2018;

- $78,000 in cash given to the appellant on November 16, 2018, at the same time as the bank draft. According to Gautam, it was given to the appellant at her suggestion so that it could be consolidated by the "exchange company" with all the above amounts into one certified cheque or bank draft for $296,000 – the remaining funds that BM required to complete the purchase of the Edwalter property.

[66] I conclude, on the totality of the evidence available to me, that the appellant convinced Gautam to provide her with those five payments for the purpose of consolidating them into a certified cheque or bank draft suitable for deposit into BM's trust account and, instead of doing that she misappropriated the funds. That conclusion is based on the following.

(iv) Credibility of the Witnesses

[67] Where Gautam's evidence conflicts with the appellant's, I prefer Gautam's. I find his evidence to be generally credible and consistent with the documentary evidence. The appellant's evidence lacks credibility and lacks corroboration on key points where I consider reasonable to expect it.

[68] Gautam testified that he provided a total of $143,000 in cash to the appellant without requiring receipts or creating any record to document it. While that seems initially surprising, this was Gautam's first real estate purchase, and he was attempting to find a way to use his undeclared income. The appellant's brother - Peter - referred the appellant to him as someone who could assist with that, and it appears that Gautam trusted the appellant to guide him how to use his undeclared income to purchase real estate. Creating a paper trail of the cash payments would be contradictory to his goal of using undeclared funds. His account of the transaction was also significantly supported by the documentary record (described more fully below).

[69] On the other hand, the appellant's testimony was contradicted in significant ways by the documentary record and her explanations for those contradictions were unconvincing (also described more fully below).

[70] The appellant's assertion that she sold two watches to Gautam for a total of approximately $153,000 was unsupported by any documentary evidence. Apart from being a real estate salesperson, the appellant was in the business of trading in luxury watches, and it generated significant income for her. It seems unlikely that an experienced businessperson would sell two very expensive watches without producing an invoice, bill of sale, warranties, a record of previous registered ownership, confirming emails, or some other documentary record of the sale.

[71] The appellant called Falconeri to testify about an introductory lunch meeting she arranged with Gautam and Falconeri during which the possibility of Greenpath providing mortgage financing was discussed. Mr. Falconeri testified that the appellant occasionally offered him luxury watches for sale and recalled a discussion over this lunch about a Rolex watch that she offered for sale However, Falconeri could not confirm or verify the appellant's claim that she sold any watches to Gautam.

[72] The appellant's narrative was also made less credible by the lack of any concrete information about Izadi. Izadi is central to the appellant's response to this allegation. According to her, it was Izadi who likely received Gautam's funds, produced the NSF cheque, and misappropriated Gautam's money.

[73] Mr. Izadi was not called as a witness. His phone number, office location, place of business, or contact information were never described in the appellant's testimony. In my view, the lack of any substantiating factual detail concerning

Izadi - an important pillar in the appellant's defence - reduced the credibility of her account and raised doubts about whether Izadi actually existed.

(v) Gautam's Account Supported by Documentary Record

[74] Gautam's account of the transaction is supported in significant ways by the documentary evidence. Gautam provided a photo of the NSF cheque that was later deposited into BM's account. He testified that it was sent to him by the appellant when he pressed her for confirmation that the cheque had issued.

[75] He also provided photos of a screen shot of a bank account statement showing a withdrawal of $296,000 from an unknown account, and a receipt indicating a deposit of $296,000 into BM's account. Gautam testified they were sent to him by text from the appellant to confirm that she deposited the $296,000 cheque. The texts are no longer available, but the photos remained on Gautam's iCloud account. Since the texts are unavailable it is not possible to verify that they were sent to Gautam by the appellant, but they are consistent with and support his testimony.

[76] More significantly, the November 16, 2018, bank draft for $47,000 made payable to the appellant that the appellant says Gautam gave her as part of the purchase price for two watches, states the purpose of the bank draft on its face. The memo line states: "FUNDS FOR CLOSING – 5 EDWALTER". This is unambiguously consistent with Gautam's account, and directly contradicts the appellant's claim that the bank draft was partial payment for watches.

[77] In response, the appellant testified that she was present with Gautam at the bank when the $47,000 bank draft was prepared. According to her, Gautam had a business partner, and he didn't want the draft to show that he was buying expensive watches. So instead, he indicated the purpose of the draft was to fund the Edwalter purchase.

[78] I find that explanation unconvincing, in part because it was raised for the first time during the appellant's cross-examination. It was not put to Gautam when he was cross-examined, and the appellant did not mention it in her examination in chief.

[79] It also seems unlikely. The customer paying for the bank draft can enter anything they like in the memo line or leave it blank. If the intent was to

obscure from a business partner a personal purchase of watches, it seems unlikely the memo line would refer to another personal purchase – in this case a $2.5 million home.

[80] In my view, the notation in the memo line clearly contradicts the appellant's evidence that the bank draft was partial payment for two watches and supports Gautam's evidence that the bank draft and the other payments were given to the appellant as funds for the Edwalter purchase.

(vi) Appellant Linked to $296,000 NSF Cheque

[81] The appellant states that the three documented transfers to her (two PayPal transfers and the bank draft) were payment for two watches, and she had nothing to do with dealings Gautam had with Izadi or the NSF cheque for $296,000.

[82] However, the Registrar demonstrated that the $296,000 NSF cheque was not drawn on an account linked to Izadi or to a currency exchange business. It was drawn on an account linked to Ali Moghtadaei ("Ali"), the appellant's boyfriend.

[83] The cheque was drawn on an account at a TD bank branch in Toronto. According to testimony from the branch manager, the account was registered to a company called "Atlas Rolex FZE Incorporated" and the sole owner of that company was recorded in bank records as "Mohammad Ahsan Syed".

[84] However, the address and telephone number listed on the TD bank account information for Atlas Rolex was Ali's residential address and Ali's cell phone number.

[85] Ali testified that he had no knowledge of "Mohammad Ahsan Syed" and could provide no explanation for the fact that his cell phone number and address corresponded to that of the account holder that issued the NSF cheque. The appellant testified that she had nothing do with the cheque and suggested that it must have come from Izadi.

[86] However, in my view it is strikingly unlikely that by coincidence the alleged currency dealer issued a cheque from an account whose contact information corresponded to the appellant's boyfriend. In the present context I consider it far more likely that the appellant and Ali are directly connected to that account

and the appellant issued or caused to be issued the NSF cheque to BM for $296,000.

(vii) Conclusion

[87] In summary, based on the totality of the evidence, I conclude that Gautam gave to the appellant five payments totalling $296,000 for the purpose of converting the funds into a cheque that could be deposited into BM's trust account. Instead, she delivered or caused to be delivered to BM a cheque that turned out to be worthless. Gautam's money has never been recovered and I conclude, on a balance of probabilities that it was misappropriated by the appellant.

(b) Kiani Transactions

(i) The Allegation

[88] The Registrar alleges that the appellant misappropriated approximately $20,700 from Nadim Kiani ("Kiani"), one of her clients.

[89] Kiani lives in California but owns two properties in Toronto – a condominium on Elizabeth St., and a house on Shuter St. In the summer of 2018, Kiani retained the appellant to find tenants for both properties. She successfully found tenants, and in both cases the tenants pre-paid a portion of the rent as a deposit: Elisabeth St. – 2 months' rent or $4500, and Shuter St. - 4 months' rent or $16,000.

[90] According to the Registrar, in both cases the appellant kept that money. Kiani repeatedly requested, over several months, that the appellant pay him his money. The appellant provided many excuses and explanations but no money. Eventually, after more than a year, Kiani recovered his funds, but only after starting a court action against both CP and the appellant.

(ii) Appellant's Position

[91] The appellant denies misappropriating any funds from Kiani. She testified that Kiani lived in California, and she assisted him in managing his two properties. She acknowledged that she acted as Kiani's agent in leasing the properties but testified that since she and Kiani were related by marriage, she did not charge him a fee for renting either property. However, she spent money out of her own pocket ("close to $20,000 or more") to clean up and repair the

properties (especially Shuter St.) and she expected to be reimbursed for those expenses.

[92] The appellant states that in the case of the Elizabeth St. rental, she deposited into her own account a cheque payable to Kiani for the tenant's deposit funds that was issued by CP after the transaction was complete. However, she did so at Kiani's suggestion as partial reimbursement for her out of pocket expenses.

[93] In the case of the Shuter St. property, the appellant states that the tenants gave her four cheques totalling $16,000 for the first three and the last month's rent. One cheque was payable to her, and she cashed it. She either gave the three other cheques (totalling $12,000) to Kiani, or deposited them into his account. She denies keeping his deposit funds.

(iii) Decision & Analysis

1. Elizabeth Street Condo Rental

[94] The tenants of the Elizabeth St. property signed a one-year lease commencing on August 1, 2018. The rent was $2,500/month and the tenants' agent provided the appellant with a deposit cheque payable to CP for the first and last months' rent ($4,500).

[95] Normally, CP would keep those funds in trust until the transaction closed. At that point CP would pay to the agents for the landlord and the tenant their fees – normally half of a month's rent each. In other words, Kiani would pay a month's rent for the services of both agents and the remaining amount – one month's rent in this case - would be paid by CP to Kiani.

[96] According to Kiani, in this case the appellant told him that if he transferred $1,900 to her as payment for her services, CP would send him a cheque for the full two months' deposit funds. By paying her directly, he would save $700. Kiani agreed and interac e-transfer records confirm that on June 29, 2018, he transferred $1,900 to the appellant.

[97] The tenants' deposit cheque was deposited into CP's account. After the deal closed, CP paid the tenant's agent the commission due to him ($1,271), and issued a cheque dated July 30, 2018, payable to Kiani for the remainder ($3,225). Although the cheque was made payable to Kiani, the appellant

endorsed the back of that cheque and deposited it into her own account on August 1, 2018.

[98] The appellant acknowledges that Kiani transferred $1,900 to her but says that was not payment for her services in renting the Elizabeth Street property; rather, that was partial payment in respect of her out of pocket expenses.

[99] With respect to cashing Kiani's cheque and keeping the tenant's deposit funds, the appellant testified that Kiani told her to endorse the cheque to herself and keep the money as partial payment for her expenses.

Finding

[100] I accept Kiani's version of this transaction in all material respects and reject the appellant's version. That is based on a totality of the evidence which includes banking records, confirmation slips and, most significantly, text messages and emails between Kiani and the appellant that extend from June 2018 when the transaction was being arranged, to May 2019 when Kiani stopped communicating and sued instead.

[101] The appellant testified that she did not charge Kiani any fees for renting the property and the $1,900 transferred to her was reimbursement for her out of pocket expenses. I do not accept that. There is virtually nothing in the texts that relates to work that the appellant now claims she did on the premises, out-of-pocket expenses that she claims she paid, or any discussion that confirms that the $1,900 transfer and the deposit cheque were intended by either of them to reimburse the appellant for work previously done on Kiani's premises.

[102] To the contrary, the text exchanges make it clear that the purpose of the $1,900 payment was - as Kiani testified - to compensate the appellant for renting Elizabeth St and, as a result, Kiani would receive the full deposit without any deduction for agent fees:

June 27, 2018

Appellant:	*Deposit is paid to my office so you will get the balance of the deposit after the closing*
Kiani:	*By closing you mean July 31st?*
Appellant:	*Yes, after that date*

June 28, 2018

Appellant: *Hi Nadim Jan I have to send in the paperwork for Elizabeth. If I submit it will be $2600 if u want u can transfer me $1900 so u can save $700*

Kiani: *So for Elizabeth Street it'll be $1900 and then I will get the full two months deposit from your firm?*

Appellant: *Yes*

[103] The appellant's claim that she cashed the tenant's deposit cheque on Kiani's instructions as payment for expenses is also contradicted by the text messages. The evidence is clear that the appellant cashed CP's cheque payable to Kiani on August 1, 2018. If, as the appellant claims, the cheque was cashed at his suggestion, Kiani would know from that date that CP had issued the cheque and it had been cashed by the appellant.

[104] Yet, the text messages make it clear that Kiani was unaware that the appellant had cashed his cheque. He asked the appellant frequently and repeatedly for the cheque long after it was cashed on August 1, 2018. The appellant's responses to him are clearly meant to give the false impression that the cheque has been delayed but will come soon. For example:

August 11, 2018

Kiani: *A couple of our friends are coming to Hamilton Monday night. Do you think they could get the cheque from you before they come or will it take longer?*

August 13

Appellant: *Hi Nadim Jan sorry just saw this. Cheque isn't ready yet will let u know once they give me.*

August 28

Kiani: *Mona is flying out Saturday and I was wondering if your office prepared the cheque for[Elisabeth St.]? I'm going to cash the tenant's September rent soon as well so it would be nice to have it all together.*

Appellant: *Hi Nadim Jan yes they have, I will pick up and send to Mona, what's her address? I will courier it.*

August 31

Kiani: *Btw, no cheque arrived. Mona flies out tomorrow so if it's already mailed we'll figure something out*

Appellant: *Yes cheque is already probably w get there Tuesday due to long weekend.*

September 17

Kiani: *I haven't received any funds from your office yet. Can you please follow up with them?*

Appellant: *Hi Nadim Jan will be deposited tomorrow*

September 19

Kiani: *Hi nothing has been deposited yet can you follow up with your office*

Appellant: *Hi Nadim Jan my assistant was supposed to deposit yesterday. Will call her now*

September 20

Kiani: *Hi no money deposited yet :)*

September 20

Kiani: *Hi did you get a chance to follow up with your assistant on the deposit? I'm getting a little nervous since the tenants moved in almost 2 months ago*

Appellant: *Hi Nadim Jan sorry for the delay my assistant has the funds and she had an accident she couldn't go to the bank… deposit personally tomorrow.*

[105] On November 12, 2018, Kiani set out in a text messages the precise amount that he was expecting to receive as follows:

$16,000 for [Shuter St]

$4,500 for [Elizabeth St]

$200 key deposit for [Elizabeth St]

_____

$20,700 Thanks

[106] Kiani repeated his calculation and references that figure - $20,700 - in texts sent to the appellant on February 8 and 19, 2019. At no point does the appellant dispute that amount or provide what would be the obvious response if her present account was true – that the $4,500 is no longer owing because she cashed the deposit cheque on Kiani's instructions.

[107] In fact, on February 19, 2019, the appellant deposited $20,700 into Kiani's account. That deposit was quickly reversed because the appellant sent the funds from a closed US account. However, that payment reflected Kiani's calculation of what was owed (including $4,500 for Elisabeth St.) and in my view amounts to an acknowledgment by the appellant that she owed $4,500 to Kiani in respect of Elizabeth St. It contradicts her present testimony that she had cashed his deposit cheque in August 2018 with his knowledge and consent.

[108] In an email to the appellant dated March 23, 2019, Kiani states:

> *It's been over a week since you said your bank manager wired the money yet nothing has been deposited. It has also been over three weeks since your cheque bounced. The rent deposit (CAD 4700) for [Elizabeth St] should have been delivered to us directly 9 months ago as well as the rent deposit (CAD 16,000) for [Shuter St] over 8 months ago, Because of your bounced cheque you also owe us CAD 747.39*

[109] These are just samples of the exchanges that took place between the appellant and Kiani on the issue of his missing deposit funds. They extend from June 2018 to May 2019 and are similar in content. During that time, the appellant provided Kiani with promises to arrange for payment followed by excuses as to why it was not made.

[110] At no point throughout their months' long exchange does she respond to Kiani's frequent and increasingly anxious inquiries about the money by pointing out - as she now claims - that she cashed the cheque and kept the money on his instructions to pay for her expenses. Instead, she led him to falsely believe that the money would be coming.

[111] In my view, the text messages are consistent with Kiani's description of his interaction with the appellant, and they conflict with the appellant's testimony. I conclude that the appellant suggested that Kiani pay $1,900 to her for her

services in renting the Elizabeth St. property and in return he would receive a cheque from CP for the full amount of the tenant's deposit - $4,500. A cheque for the tenant's deposit was issued to Kiani by CP but the appellant cashed that cheque without Kiani's knowledge or permission and misappropriated the funds.

2. Shuter St. House Rental

[112] The Shuter St. tenant signed a lease with a one-year term which commenced on September 4, 2018. The lease was negotiated by the appellant, and she acted as agent for both Kiani and the tenant. According to the lease, the rent was $4,000/month for the first three and the last month, and $4,300/month for the remaining months. Upon acceptance of the lease, the tenant was required to provide a cheque payable to Kiani for the first three and the last month's rent (total $16,000) as a "deposit and prepaid rent".

[113] The tenant testified that he negotiated the lease with the appellant, and she directed him to provide four bank drafts in the amount of $4,000 each. According to him, the appellant told him that that one month's rent would be paid to her as her fee for renting the property. The tenant testified that he did not remember who the bank drafts were made payable to (and no bank records are now available), but he believed that he provided one payable to the appellant, and the other three payable to Kiani.

[114] According to Kiani, his arrangement with the appellant was that he would pay her $2,500 directly as payment for her services in renting Shuter St. As a result, he was to receive from the appellant the full $16,000 deposit paid by the tenants. He transferred $2,500 to the appellant on July 18, 2018, as confirmed by interac e-transfer records. However, the appellant never provided Kiani with the tenant's cheques, or the $16,000 to which he was entitled.

[115] Kiani testified that just as with the Elizabeth St. property, he spent months repeatedly requesting that the appellant return his $16,000 and she responded with assurances that the money would be forthcoming and excuses when it did not. Ultimately, he started a lawsuit against both the appellant and CP which resulted in recovery of his money in November 2019, more than a year after the tenant had given the funds to the appellant.

[116] The appellant denies taking and keeping Kiani's $16,000. She states that since Kiani was a relative she did not charge him a fee. The $2,500 payment

to her was not, as Kiani claimed, payment for her services in renting Shuter. Rather, it was meant to reimburse her for her out of pocket expenses.

[117] She acknowledges that she received four bank drafts from the tenant - one payable to her and the other three payable to Kiani. According to the appellant, she deposited the bank draft payable to her and either deposited the other three into Kiani's account or gave him the bank drafts directly in person when he visited Toronto within a month or two of the property being rented.

Finding

[118] I accept Kiani's evidence over that of the appellant's and conclude that at the appellant's suggestion, Kiani paid the appellant $2,500 as her fee for renting Shuter St. As a result, Kiani expected to receive the full $16,000 paid by the tenant. I conclude that the appellant did not provide those funds to Kiani and instead kept them. Although apparently three of the bank drafts were made payable to Kiani, I find that the appellant likely cashed/deposited those to her own account, just as she did with the CP cheque payable to Kiani in connection with the Elizabeth St. property. Kiani then spent from September 2018 until May 2019 repeatedly asking the appellant for the return of that $16,000 which he did not fully recover until November 2019 after he commenced a lawsuit. Those findings are based on the following.

[119] Firstly, the appellant's account of what happened to the tenant's bank drafts was contradictory and lacked credibility. Kiani testified that he did not receive any bank drafts from the appellant. In response, the appellant testified in chief that she obtained one bank draft payable to her (which she deposited into her own account), and three bank drafts payable to Kiani which she deposited into his account because he was in California.

[120] In cross-examination, she stated that she gave the three bank drafts to Kiani in person within a month or two of the rental agreement (September 2, 2018). In my view that inconsistency on a vital point (how she returned Kiani's money that the Registrar alleged she misappropriated) reduced the credibility of her account.

[121] Secondly, the appellant repeatedly asserted that she did not charge the appellant any commission. The $2,500 payment was not her fee for renting Shuter St., it was reimbursement for her expenses. That conflicts with her testimony that she requested from the tenant a bank draft for one month's rent

payable to her as payment for her services. In my view that inconsistency further reduces the credibility of her account.

[122] Thirdly, no evidence substantiating the appellant's claimed out of pocket expenses, such as invoices and work orders, was provided. The appellant testified that a substantial amount of her outlay was in cash, but I find it difficult to accept that significant amounts were paid by her with the expectation of reimbursement without some documentary support for the amounts claimed.

[123] Fourthly, the text messages regarding the $2,500 payment are more consistent with Kiani's version of the events. The request for the $2,500 payment makes no mention of out-of-pocket expenses or reimbursement and is instead linked to her finding a tenant for the property. The relevant text exchange is as follows.

***July* 18, 2018**

Appellant:	*Hey Nadim Jan I have an offer for u for Shuter will send u shorty for final signature. I have to send in the paperwork to my office, would u mind sending me the $2,500. Thanks*
	Price $4,800
	Possession August 1
	Term 1 year
Kiani:	*Amazing! Thank you! I'll do it today as soon as possible ….*

[124] Kiani transferred $2,500 to the appellant on that day. As it turned out, that deal fell through, and the appellant later found the tenant who agreed to rent Shuter St. from September 4 at a lower rent. However, when the texts are read in context and in their totality, they are consistent with Kiani's claims that he paid the $2,500 to the appellant to find a suitable tenant, and that both he and the appellant proceeded in the shared understanding that he was entitled to all the tenant's prepaid rent - the full $16,000.

[125] Lastly, and most significantly, the text messages exchanged between the appellant and Kiani in the months after the lease was signed make it clear that Kiani did not receive any of the funds paid by the tenant to the appellant despite months of repeated requests.

[126] Kiani specifically references the $16,000 that he is owed for Shuter St. and at no point throughout their exchanges does the appellant dispute that amount or provide what would be the obvious response if her present account was true – that the $16,000 is no longer owing because she either gave him the cheques or deposited the funds into his account.

[127] In fact, on February 19, 2019, the appellant deposited $20,700 into Kiani's account. It was quickly reversed because it was sent from a closed US account. However, it amounted to the appellant's acknowledgment that she owed $16,000 to Kiani in respect of the Shuter St. property and contradicts her present testimony that she had already given the funds to him.

[128] In summary, I reject the appellant's account of this transaction. Kiani's account of what occurred is confirmed in all material respects by the tenant's testimony, the banking records, and especially the text messages exchanged between Kiani and the appellant before and after the Shuter St. lease was finalised. I conclude that the appellant received bank drafts totalling $16,000 from the Shuter St. tenant which were payable to Kiani, and she misappropriated those funds. I find the Registrar has proven the allegations about the Kiani transactions on a balance of probabilities.

(c) Sikder Transaction

(i) The Allegation

[129] The Registrar alleges that the appellant misappropriated $13,700 from one of her clients, Ms. Sylvana Sikder ("Sikder"). That allegation is based on a written complaint submitted by Sikder to RECO in January 2020. Sikder did not testify at this hearing, but her complaint was investigated by RECO, and the Registrar presented the evidence gathered in its investigation.

[130] While I appreciate the dangers of putting weight on hearsay evidence, section 15(1) of the *Statutory Powers Procedure Act* allows me to receive and consider such evidence if it is relevant to the subject-matter to this proceeding. I assign more weight to the hearsay evidence outlining the Sikder transaction where it conflicts with the appellant's evidence, because the former has internal consistency and support of documentary evidence whereas the appellant's evidence lacks both.

[131] Sikder lives in Bangladesh but owned a condominium on University Ave. in Toronto. She retained the appellant to find a tenant for her unit. The appellant

found tenants and they signed a rental agreement on August 20, 2019. The tenants' agent provided the appellant with four prepaid rent/deposit cheques ($6,850 each), payable to Sikder and dated October 1, November 1, December 1, 2019, and January 1, 2020.

[132] Since Sikder was out of the country, she and the appellant agreed that the appellant would deposit the cheques each month into Sikder's Toronto bank account. The October and November cheques were deposited as agreed. However, the December and January cheques were deposited into the bank account of Ali, the appellant's boyfriend. The December cheque was deposited on December 5, and the January cheque was deposited on January 1. According to Sikder's complaint, the appellant kept the money ($13,700).

[133] On January 17, 2020, the same day that Sikder contacted RECO, she also contacted the Toronto Police. According to the Registrar, a police investigator got in touch with the appellant. She agreed to deposit the funds into Sikder's account and the police investigator gave her a deadline to do so. The appellant did return the $13,700 owing to the appellant on January 22, 2020. However, according to the Registrar, she only returned the money because the police became involved.

(ii) Appellant's Position

[134] According to the appellant, she agreed to deposit Sikder's four rent cheques into Sikder's Toronto account. She deposited the October and November cheques, but Sikder's bank held the funds for several days until the cheques cleared. That caused a problem for Sikder who required immediate access to the money to pay her mortgage and other expenses. According to the appellant, Sikder asked the appellant to somehow arrange for the funds to be deposited without a hold.

[135] That could only be achieved by depositing cash or a bank draft. So, according to the appellant, to avoid the hold and facilitate Sikder's quick access to the money, she cashed the December and January rent cheques using Ali's account. She used his account because his bank did not normally place a hold on cheques, even personal cheques. Ali testified and confirmed that the appellant asked him to cash the cheques and he did so. According to Ali, the cheques were deposited into his account, and he gave the cash to the appellant.

[136] The appellant testified that she cashed Sikder's cheques with the intention of depositing the funds into Sikder's account. However, she did not deposit right away because Sikder was thinking of opening another business account and she was waiting for Sikder to tell her which account the deposit should be made. Also, on January 8, 2020, a Ukrainian passenger plane taking off from Tehran with many Iranians and Iranian Canadians on board was shot down by Iranian armed forces. According to the appellant, a relative of hers was killed in that incident and she went to the US to spend time with family.

[137] The appellant claims that when Sikder started asking about her money she was in the US, and she told Sikder she would deposit the funds when she returned.

[138] The appellant agrees there was a telephone conference call involving the appellant, Sikder, and a Toronto police investigator. The appellant testified that she told the investigator that she would deposit the money into Sikder's account when she returned to Toronto. She denies that she was given a deadline to deposit the funds, or that she deposited the funds only because the police became involved. She returned on or about January 22, 2020, and deposited the funds into Sikder's account.

(iii) Decision and Analysis

[139] I conclude that the appellant misappropriated the December and January rental payments that belonged to Sikder. The appellant returned the money to Sikder in late January 2020, only after the Toronto police became involved, and likely because the police imposed a deadline. I come to that conclusion for the following reasons.

[140] It is not disputed that the four rent cheques were given by the tenant's agent to the appellant, she agreed to deposit them into Sikder's account, and she deposited the October and November cheques. It is also undisputed that the appellant did not deposit the December and January cheques into Sikder's account; she instead arranged for Ali to cash the cheques using his account, and the appellant obtained $13,700 of Sikder's money in cash.

[141] The appellant's explanation for cashing the last two rent cheques was that she was doing Sikder a favour - she was attempting to avoid the bank's hold by converting the cheques into cash that could be deposited into Sikder's account and would be immediately available.

[142] I reject that explanation. Firstly, the appellant cashed cheques made out to Sikder without telling her or asking her permission. If the appellant was honestly and openly trying to assist Sikder, she would have told Sikder that she intended to cash her cheques before doing so. The text messages between the appellant and Sikder make it clear that when Sikder started asking the appellant about her money in late December, she had no idea that her December cheque had not been deposited into her account and the appellant had been holding onto $6,850 of her cash.

[143] Secondly, according to the appellant, the whole point of cashing Sikder's cheques was to allow Sikder to get access to the funds as soon as possible. Yet the appellant obtained $6,850 of Sikder's money in cash on December 5, and another $6,850 in cash on January 1. None of that money was deposited into Sikder's account until January 22, 2020, and only after the Toronto police became involved. If the appellant was genuinely attempting to help Sikder get quick access to the rental payments, she would have deposited the funds as soon as she cashed the cheques. The appellant's explanation for cashing the cheques is contradicted by her conduct.

[144] The appellant claimed in cross-examination that she did not deposit the December funds because Sikder was thinking of opening a second account and the appellant was waiting for her to provide instructions about where to deposit the funds.

[145] However, that explanation is inconsistent with the text messages exchanged between the appellant and Sikder concerning return of the funds. The appellant knew that Sikder needed the funds urgently. If the appellant was waiting for Sikder's banking instructions before depositing the cash she had held onto since December 6, her obvious response to Sikder's repeated requests for the money in late December would be to tell Sikder that she has the cash, but is still waiting for Sikder's deposit instructions.

[146] However, as the texts reproduced below make clear, the appellant did not ask Sikder for deposit instructions. Instead, on December 23, 2020, she told Sikder that she will text the deposit slip "as soon as I'm back", falsely implying that the deposit had been made, and concealing the fact that the cheque had been cashed by her.

December 22

Sikder: *Hi Sepedeh, did you deposit the cheque for the month of December? Can you send me a deposit slip please? Thank you.*

Hi please call me

I'm calling you

Appellant: *Hi will do*

Sikder: *Can you send me the deposit slip?*

December 23

Sikder: *Hi I called you several times yesterday and asked you to kindly text me the deposit slip of the rent for the month of December. Can you please do that?*

I am calling you

Are you there?

Appellant: *Hi yes as soon as I'm back I will*

December 25

Sikder: *When are you back?*

January 4

Sikder: *Hi, I texted you to send me the deposit slip for the rent of December 2019. I guess you are already back. Please send me the deposit slip of both December and January. It's very urgent.*

January 5

Appellant: *Hi Sylvana I'm back on Tuesday*

Sikder: *Did you deposit the cheque?*

[147] The appellant also attributes some of the delay in paying Sikder the funds to the January 8, 2020, Ukrainian airline incident. She stated that she was out of the country and pre-occupied with that tragedy. However, at that point she had Sikder's cash from the December rent cheque for about a month, and the cash

from the January rent cheque for about a week. The fact that she was out of the country at that point does not explain her failure to return Sikder's cash to her before that date.

[148] In summary, based on the totality of the evidence presented, I conclude on a balance of probabilities that the appellant misappropriated $13,700 from her client by cashing two rent cheques payable to her client without the client's knowledge or consent and keeping the funds. She eventually paid Sikder her money, but only after the Toronto police became involved.

(d) Maison Prive Transaction

(i) Allegation

[149] The Registrar alleges that in July/August 2020, the appellant agreed to sell several expensive luxury watches to Maison Prive ("MP"), a company located in Florida that trades in luxury handbags and watches. MP is operated by Michelle Berk ("Michelle") and Jeffrey Berk ("Jeffrey"), who both reside in Florida.

[150] In exchange for the watches, MP agreed to pay the appellant two wire transfers totalling $133,500, three Hermes handbags (valued by MP at $61,000), and a credit of $20,000 from a related transaction involving a Chanel handbag that the appellant supposedly bought at a Christie's auction in London, UK (all references to cash in this transaction are in US funds).

[151] MP transferred cash and handbags to the appellant with a combined value of $194,500 as payment for the watches. The appellant did not provide MP with the watches and kept MP's payment.

[152] The Registrar alleges that the appellant acted dishonestly by falsely claiming that she had the watches and the Chanel handbag to sell, accepting payment for watches she did not actually possess, and keeping the money and handbags she received under false pretences.

(ii) Appellant's Position

[153] The appellant admits that she received two wire money transfers and handbags from MP with a total value of approximately $194,500 and she did not provide MP with anything in return.

[154] However, according to the appellant, the deal was not to sell watches that she had in her possession. She had only one of them - an Audemars-Piguet watch ("AP"). The rest she was going to source using her connections in Toronto. Most of the payment made by MP was intended as a down payment that the appellant would use to negotiate and secure the remaining watches. Additional funds from MP would be required once the purchases and prices were finalised.

[155] With respect to the Chanel bag, the appellant acknowledges that she told Michelle that she was the successful bidder but claims she thought it was true after being mistakenly told by Christie's that she had won.

[156] The appellant states that she had the AP watch and was in the process of acquiring the additional watches when Michelle abruptly assumed she was being cheated and demanded her money and bags back. Before the appellant could attempt to resolve things with Michelle, Michelle started sending threatening messages and posting defamatory statements about her on social media. That resulted in the appellant commencing a lawsuit, all communications stopped, and no money was returned.

(iii) Finding

[157] The Registrar has proven these allegations on a balance of probabilities. I find that MP paid the appellant cash and handbags with a total value of $194,500 for watches and a Chanel bag, all of which the appellant claimed to have and were available to ship to MP.

[158] In fact, she did not have them (with the possible exception of the AP watch) and she accepted MP's payment under false pretences. When it became clear to Michelle that the appellant did not possess either the watches or the Chanel bag, she demanded the return of the money and handbags. The appellant refused. I conclude that the appellant misappropriated cash and valuables worth $194,500 from MP for the following reasons.

(iv) Credibility Issues

[159] MP is in the business of buying and selling luxury handbags and watches. It conducts its business primarily through its website and Instagram account. Michelle negotiated the transaction with the appellant but she did not testify at the hearing. According to Jeffrey, Michelle's doctor considered it medically inadvisable. As a result, Jeffrey was the only witness from MP to testify.

[160] The appellant and Michelle did not create a formal written contract concerning their transaction. The details of their agreement were communicated and worked out between them in some telephone conversations but mainly in texts, and WhatsApp messages (together the “messages”).

[161] The appellant placed all her available messages with Michelle from approximately February to August 2020, into an affidavit filed in a court action arising from this same transaction. That affidavit was made part of the evidentiary record at this hearing. Consequently, although there is no written agreement between Michelle and the appellant, a detailed record of their communications concerning the transaction was available in the messages and I have reviewed them in detail.

[162] Jeffrey did not directly participate in the communications between the appellant and Michelle. His testimony about the evolution of the transaction, its eventual terms, the breakdown of the agreement and its aftermath, was based mainly on the messages between the appellant and Michelle. In any case where I have accepted his evidence regarding this transaction, it was supported by those messages or elsewhere in the documentary record.

[163] Two other matters concerning the credibility of Jeffrey and Michelle were raised. Firstly, Michelle has been convicted of criminal offences in the US. In 2013 she pled guilty to one count of “operating an unlicensed boiler room” in Florida. Before that she was convicted of unspecified criminal offences related to her operation of an escort business in California. According to the appellant, those convictions raise questions about Michelle’s credibility and suggest that information originating from her is unreliable.

[164] Secondly, after the transaction came to an end, the Berks felt that they had been cheated out of $194,500 by the appellant. Michelle sent threatening messages to the appellant and started a bitter social media campaign to expose what she considered to be the appellant’s fraud. Insulting and derogatory comments about the appellant were posted by Michelle on MP’s Instagram page and elsewhere. Jeffrey made complaints about the appellant to the police – first in Florida, then in Ontario, and submitted written complaints to RECO and to the Office of the Superintendent of Bankruptcy. The Berks and the appellant are currently in litigation arising out of this transaction. The appellant suggests that given all these circumstances, Jeffrey’s evidence is not objective and likely unreliable.

[165] I agree that all those factors are relevant, and I have taken them into account in assessing the weight and credibility to be given to Jeffrey's testimony. As mentioned, in any case where I have accepted Jeffrey's evidence regarding this transaction, it was supported by the messages or elsewhere in the documentary record.

(v) The Transaction

[166] Like MP, the appellant buys and sells luxury watches and handbags. She followed MP's Instagram account and occasionally communicated with Michelle to discuss details, price, and resale potential of items that MP was selling, or that the appellant was exploring selling to MP.

[167] The transaction between the appellant and Michelle evolved over several months leading up to August 2020. The appellant told Michelle that she owned and had in her possession the AP watch. The watch is diamond encrusted, rare, and collectible. The appellant suggested that she may be willing to sell it for an attractive price and Michelle was interested in acquiring it.

[168] Michelle and the appellant discussed the sale of that watch in their messages and during those discussions the appellant told Michelle that she had several other watches available for sale. Michelle was interested in buying them and eventually, and after one personal visit in Florida and many messages involving prices, different watches, re-sale potential, and trades involving handbags for watches, Michelle and the appellant landed on a deal.

[169] According to Jeffrey, the transaction worked out between the appellant and Michelle involved two related deals:

> **Deal A** - MP would purchase from the appellant six watches - the AP, a Patek Phillippe, and four Rolex watches (various models) for $214,500 US that the appellant had claimed she had and were available to ship.
>
> The $214,000 purchase price would be paid by MP by a combination of:
>
> - two cash wire transfers totalling $133,500,
> - three Hermes handbags (total value $61,000),
> - $20,000 credit to the purchase price as a result of Deal B
>
> **Deal B** - The appellant would send to MP a Chanel bag worth $55,000 that she claimed she had purchased at an auction at Christie's in London. In

return, MP would send to the appellant a Chopard watch valued at $75,000. The $20,000 difference would be credited toward MP's purchase of the six watches.

[170] Banking records confirm that Michelle sent the two wire transfers totalling $133,500 to the appellant - $53,000 on July 27, 2020, and $80,500 on August 6, 2020. According to Jeffrey, after the second transfer Michelle expected to start receiving the six watches.

[171] According to the messages, Michelle asked the appellant to first send the boxes and paperwork (warranty cards, instruction booklet, purchase receipts, dealer warranties, etc.) for the watches in advance of sending the actual watches. The value of the watches depended on that paperwork and Michelle needed it when the watches were shipped to be able to readily establish ownership.

[172] She sent Fed Ex labels to the appellant making it convenient for her to send the boxes in advance of the watches. The texts make it clear that the appellant made promises, provided assurances, made excuses, and eventually shipped only two boxes without the paperwork or the watches themselves.

[173] Around this same time (early August 2020) the appellant confirmed to Michelle that she was the successful bidder on the Chanel bag at the Christie's auction and owned the bag (part of Deal B). Michelle thought she would receive the bag shortly. She tentatively sold it to one of her customers and was anxious to receive the bag and complete the sale. Eventually she had someone contact Christie's to find out its status. Michelle learned that although the appellant had bid on the bag, she was not the successful bidder and did not own it.

[174] According to Jeffrey, when Michelle found out she had been misled about the Christie's auction she looked into the appellant's background. The appellant had given the Berks the impression that she was wealthy and traded in high end real estate in Toronto. Michelle learned that the appellant was an undischarged bankrupt and her real estate registration in Ontario was under suspension.

[175] Michelle became convinced that the appellant lied about owning the watches and the Chanel bag to induce her to send her $194,500 in cash and handbags. She demanded her money and bags back, became upset and angry, and started sending threatening and insulting texts to the appellant.

[176] Jeffrey became involved and tried to resolve things directly with the appellant. However, the appellant stopped communicating, claiming that the social media campaign that had been started against her by Michelle was defamatory and the money paid to her would be partial compensation for the damages she suffered.

[177] The money and bags worth $194,500 were not returned, and it is undisputed that to this day, Michelle has recovered nothing from the appellant.

(vi) Analysis

[178] After carefully reviewing the testimony of both the appellant and Jeffrey, the related documents, and especially the messages exchanged in the days and weeks before the transaction, I conclude that the transaction between Michelle and the appellant involved, as Jeffrey testified, a sale of six watches – the AP, a Patek Phillipe and four Rolexes of various models. Michelle wired cash and handbags worth $194,500 US to the appellant as payment for those watches and received nothing in return.

[179] The payment was not, as the appellant now claims, intended by the parties to be a down payment for watches that the appellant would source at some future date. Michelle agreed to buy the watches and paid the appellant for them based on the appellant's false assurance that all six watches were in her possession or readily accessible and were ready to be shipped.

[180] That is confirmed by the messages exchanged between Michelle and the appellant. After the appellant and Michelle made a preliminary agreement to purchase the AP, the appellant showed Michelle images of several other watches and asked if Michelle was interested in buying them as well. The appellant stated in texts to Michelle that she had the watches and they are ready to ship. There is no mention in the messages that the appellant would acquire them later.

July 15, 2020:

***Michelle**: Ok, let's make a deal on the other watches too!*

***Appellant**: Sure. which ones u want?*

***Michelle**: All of them LOL! Ok, I will have two SS Daytona ceramic one black one white, 2 Patek, one Pepsi and One Hulk.*

Appellant: *OK perfect, How much you offering for the SS rolex?*

Michelle: *Let me go through each and make you an offer. you have all ready to ship except Patek right?*

Appellant: *Yes*

July 17, 2020

Michelle*:* *Do you think you can come [to Florida] anytime soon? I want to give you cash for the watches.*

July 31, 2020

Michelle*:* *I'm going to send you a new label for the AP. Send just the watch with the links. I'll have you send the box and paperwork next week.*

Also, I'm going to be sending to you the B30 [a handbag] and wiring you the balance of $80,500 for the following so please confirm…

Patek 5711

Rolex Hulk

Rolex Pepsi

Rolex Daytona Ceramic Black

Rolex Daytona Ceramic White

Please confirm that all of the above have boxes and paperwork.

The only thing left is to trade the Chanel for the Chopard…

Appellant*:* *Yes all watches have box and papers*

Michelle*:* *Ok perfect.*

[181] Clearly Michelle was proceeding on the understanding she was sending $80,500 to the appellant as payment for the purchase of additional watches that the appellant claimed to have, complete with boxes and paperwork, and were ready to ship.

[182] The appellant testified that her agreement with Michelle was that the appellant would use Michelle's funds to procure the watches and her efforts ended when Michelle started her social media campaign. However, that is contradicted by many text messages. The appellant told Michelle that she has all the boxes and paperwork for all the watches she agreed to sell. In fact the paperwork wasn't available to send because, as the appellant admitted at the hearing, she did not actually have the watches.

[183] Michelle kept asking for the paperwork and at one point (August 10, 2020) the appellant assures Michelle that she has sent all watch boxes with "cards and paperwork". That was false – Michelle eventually received two empty boxes without any paperwork.

[184] Clearly Michelle was under the impression that she had bought watches that the appellant told her were in her possession and can ship. At no point in their numerous messages does the appellant correct that assumption or make it clear that (as she now claims), she did not in fact have the watches, and the payment was merely for her to start the process of acquiring them.

[185] By August 12, 2020, after the appellant stalled sending the boxes and failed to ship any watches, Michelle became fed up, demanded her money back and all communication between them ended. In my view, the available evidence makes it clear that the appellant induced Michelle to pay the appellant $194,500 in cash and handbags as payment for watches that she falsely claimed she owned and had available to sell.

[186] The appellant also falsely represented that she had won the Chanel bag (worth $55,000) at the Christie's auction. That misrepresentation caused Michelle to agree (as part of deal B above), to give to the appellant a $75,000 Chopard watch in exchange for the Chanel bag plus a $20,000 credit toward Michelle's purchase of the additional watches.

[187] Michelle learned through her own sources that the appellant was not the successful bidder before she shipped the Chopard to the appellant. However, I conclude on a balance of probabilities that the appellant misled Michelle about the Christie's auction to induce her to send her the Chopard.

[188] The appellant claims that she was mistakenly told by Christie's that she was the successful bidder. Her testimony on this point was:

[Michelle] was going to send me a watch for a bag that I was under the impression that I won. With auction houses it's pretty tricky because you bid, you bid, and then the bid closes and you kind of find out after the fact whether you won or not. And until the last very second, I was the highest bidder, so I was told I had won.

And this was very difficult bag to sell, they were trying to sell for a long time, so I was confident that I had won, and somebody from Christie's told me that the bag was mine. But later I found out that I didn't actually win it and somebody in-house had bid higher at the very, very last second. And I wasn't told – because of COVID restrictions, a lot of staff were not there that I knew. There was only one lady handling these things.

[189] I consider the appellant's evidence to lack credibility--it does not make sense for anyone, including the appellant, to assert ownership of an auctioned item based on an alleged representation made before the auction closed. Even if the appellant was initially under the impression that she had won the bag, she likely found out the truth shortly after the auction closed – she mentions in her messages that as soon as the auction is complete her AmEx card will be charged. Yet, from the time the auction closed on July 31, 2020, until on or around August 13, 2020, when Michelle learned on her own that the appellant was not the successful bidder, the appellant said nothing to correct her earlier false claim that she won the auction, and allowed Michelle to continue to believe that owned it.

[190] In summary, I conclude that MP paid the appellant cash and handbags with a total value of $194,500 for six watches and a Chanel bag, all of which the appellant claimed to have and were available to ship. In fact, she did not have them, and she accepted MP's payment under false pretences. That money has never been returned and I conclude that the appellant misappropriated cash and valuables worth $194,500 from MP.

(e) Zhu Rental - Failure to Pay Rent

(i) The Allegation

[191] The Registrar alleges that the appellant rented Mr. Robert Zhu's ("Zhu") condominium at 180 University Ave., in Toronto, from September 1, 2019, until August 31, 2020, for $3,500/month and paid him nothing in rent.

(ii) Appellant's Position

[192] The appellant testified that she occupied Zhu's unit from early September until the first week of December 2019. Her arrangement with Zhu was informal and there was no fixed term. Zhu knew she would only be there temporarily until she found a more suitable unit. She was there for three months – September, October, and November. She moved out during the first week of December and, according to the appellant, Zhu was aware of that – he would have found out from the concierge as soon as she booked the elevator to move. In addition, she specifically told him that she had moved during a meeting they had on January 7, 2020.

[193] According to the appellant, there was a written lease agreement prepared by her and signed by Zhu that states the term of the lease shall be for one year starting in September 2019. However, that lease was only prepared in January 2020 for show – Zhu required a written lease to show his parents who helped finance his unit.

[194] In summary, the appellant acknowledges that she has paid Zhu no rent but feels that she was only required to pay for September, October, and November. She has not paid Zhu's for those three months because Zhu has sued her and insists on receipt of rent for the full one-year term of the lease.

(iii) Decision and Analysis

[195] I conclude that the appellant occupied Zhu's unit under a one-year lease starting on September 1, 2019, and she failed to pay him any rent whatsoever. She also repeatedly provided Zhu with false assurances that the money was forthcoming, likely given to prolong her possession of the unit without paying rent. In effect she deprived Zhu of thousands of dollars of rental income to which he was entitled.

[196] Whether Zhu is entitled to a full year of rent in accordance with the written lease agreement, or three months' worth of rent is an issue that will be decided or resolved in Zhu's outstanding lawsuit against the appellant. The Registrar's allegation is that the appellant failed to pay any rent in respect of her occupancy of Zhu's unit and in my view, that allegation has been proved.

[197] The Registrar's allegation is based on Zhu's testimony concerning his dealings with the appellant from the time she moved into his unit in early September 2019 until September 2020. Zhu's text messages with the appellant during that

period were made an exhibit and Zhu's testimony was, in all material respects, consistent with and confirmed by those text messages.

[198] Based on Zhu's testimony, the text messages, and related documents placed into evidence, I conclude that the appellant rented Zhu's unit for a one-year term starting on September 1, 2019. Zhu was moving to Ottawa, and his text messages confirm that on or around that day, he moved most of his things out of the unit and the appellant moved in.

[199] The appellant and Zhu initially agreed on a monthly rent of $4,000. However, the appellant claimed to have incurred unanticipated cleaning and repair costs and in January 2020, Zhu agreed to compensate the appellant for those costs by reducing the rent to $3,500 retroactive to September 1.

[200] The Registrar alleges that the appellant failed to pay any rent to Zhu either before or after the rent was reduced, and that is substantiated by Zhu's testimony and the text messages. Zhu had never rented to anyone before, and he did not require that the appellant provide him with a deposit or pre-paid rent. The appellant agreed to deposit her rental payments into Zhu's account and on August 31, the appellant asked Zhu for his bank account information so that she could do so.

[201] However, no money was deposited. On September 16, the appellant explained to Zhu that her bank account had been frozen due to an issue with the CRA but that it would be resolved shortly.

[202] On October 8, Zhu asked the appellant for an update and received no response. Zhu followed up on October 29. He stated that he had still not received any rent and that they needed to have a "serious conversation going forward".

[203] Still no rent money was paid. The text messages indicate that throughout November Zhu asked the appellant to send him the rental payments. The appellant assured Zhu that the money would be sent by e-transfer, and later that it had been sent, but nothing was provided. The appellant explained that she attempted to e-transfer the money from a foreign bank, but her bank had system difficulties.

[204] By December 2, 2019, Zhu had still received no rental payments although the appellant had occupied his unit at that point for three months. Zhu proposed that instead of e-transfers, the appellant provide him with 12 separate personal

cheques, one for each month of the tenancy. He suggested that they meet, and she provide the post-dated cheques when he returned to Toronto in late December.

[205] The appellant and Zhu met in person in Toronto on January 7, 2020. The appellant agreed to Zhu's suggestion that she provide monthly rental cheques and she gave Zhu one cheque for $17,500 to cover the rent from September 2019 to January 2020, and postdated cheques for each month from February to August 2020.

[206] Zhu deposited the first cheque ($17,500) but by January 20 it was returned NSF. Zhu asked the appellant to check with her bank and in early February the appellant told Zhu that a "stop" had been applied to all the cheques she had given him, and they were all now invalid.

[207] On February 2, 2020, Zhu asked that the appellant arrange a bank transfer of $21,000 (rent owing from September 2019 to February 2020). She assured him that she would do so, but nothing was sent.

[208] On February 7, 2020, Zhu received information that the appellant was attempting to sublet his unit. He sent an email and text to the appellant stating that in light of this, and the fact that he had received no rent at all for six months, he wanted the appellant to vacate by the end of February and pay him $21,000 in outstanding rent. Otherwise, he would begin eviction proceedings.

[209] No rent was paid and, according to Zhu, the appellant did not vacate the premises. He commenced both eviction proceedings and a lawsuit for the recovery of non-paid rent. According to Zhu he did not get vacant possession of his unit until August 31, 2020, and the lawsuit remains unresolved.

[210] I conclude that the appellant rented Zhu's unit for a one-year term starting on September 1, 2019, for $4,000/month, later reduced to $3,500/ month. I reject the appellant's claim that she vacated the premises in early December with Zhu's knowledge and consent or that the lease signed in January 2020 was for show and intended only to satisfy Zhu's parents.

[211] The text messages make it clear that when the rental started in September, the appellant agreed to prepare a formal written lease. The texts also make it clear that Zhu repeatedly asked for the lease, but the appellant did not prepare one until January 2020. The preparation of a written lease was something that

concerned Zhu from the outset and there is no mention in the texts of Zhu's parents. I accept his evidence that the one-year lease prepared in January by the appellant reflected his agreement with her that she would rent his unit for a one-year term staring in September 2019.

[212] I also do not accept the appellant's testimony that Zhu knew that she moved out of the unit in early December. If that were true, the appellant would not have given Zhu (at their meeting on January 7, 2020) postdated rent cheques for each month until August 2020.

[213] Zhu started eviction proceedings in February 2020 when he became fed up with the nonpayment of rent and learned that the appellant was trying to sublet his unit. Based on the available information, the appellant occupied Zhu's unit from September until at least February 2020 under a one-year lease that extended to August 2020. It is not clear when she vacated the unit or whether the one-year lease came to an end before its term. However, it is undisputed that she has paid Zhu no rent whatsoever.

[214] It is also clear that from September 2019 until February 2020 Zhu repeatedly asked the appellant for the rent she owed him. Instead of paying him, the appellant delayed and deflected his requests with promises and excuses. She promised to deposit the rent payments into Zhu's account, she later promised to e-transfer the funds, she later provided postdated cheques – the first one bounced – and finally, she promised to wire the money. None of the appellant's assurances resulted in a single rent payment being made.

[215] I am satisfied on a balance of probabilities that the Zhu allegation has been proven. Zhu. The appellant not only failed to pay Zhu rent as agreed, she also repeatedly provided him with false assurances that the money was forthcoming, likely given to prolong her possession of the unit without paying rent. In effect, she deprived Zhu of thousands of dollars of rental income to which he was clearly entitled.

(f) Dr Hannah-Shmouni Rental - Failure to Pay Rent

(i) Allegation

[216] The Registrar alleges that after moving from Zhu's unit, the appellant moved into another unit at 180 University Ave., owned by Dr. Fady Hannah-Shmouni ("Shmouni"). The appellant had previously acted as Shmouni's agent in his purchase of the unit. They signed a written lease for a one-year term starting

November 1, 2019, at a monthly rent of $7,000. The appellant occupied the unit until sometime in late 2021, a period of approximately 26 months.

[217] According to the Registrar, Shmouni gave the appellant a credit of the first four months' rent. After that the appellant paid no rent to Shmouni except for four to five months' rent at the end of the tenancy that the Court ordered the appellant to pay pending her appeal of an eviction order. In other words, the appellant occupied Shmouni's unit for approximately 26 months and paid no rent in respect of approximately 18 months resulting in a loss to Shmouni of approximately $126,000.

(ii) Appellant's Position

[218] The appellant acknowledges that she took possession of Shmouni's unit in November 2019. She testified that she acted for Shmouni as his real estate agent when he purchased the unit in October 2019. She waived her commission to make Shmouni's offer more attractive, and he was the successful purchaser. As a result, the appellant and Shmouni agreed that the appellant would rent the unit for $7,000 per month, and she would receive a credit for the first four months' rent.

[219] She was not expected to start paying rent until March 2020. She did not pay any rent after that because firstly, she spent approximately $40,000 repairing and upgrading the premises using her own funds. Shmouni agreed to reimburse those costs but never did. The appellant states that she withheld her rent to get Shmouni to follow through with his agreement to pay for the repairs.

[220] Secondly, Shmouni defamed her by providing false, negative information about her to Jeffrey and Michelle Berk, who distributed it on-line. Once that occurred, the appellant sued Shmouni for defamation. They were then in litigation and while that was outstanding the appellant was disinclined to pay Shmouni anything.

[221] In January 2021, Shmouni obtained an eviction order for non-payment of rent from the Landlord and Tenant Board. According to the appellant she was not given notice of the hearing that led to that order. She appealed the order to the Divisional Court and obtained a stay of the eviction pending the appeal with the proviso that she starts paying her monthly rent going forward. According to the appellant, she made 4-5 payments and then moved out of the unit in late 2021 or early 2022.

(iii) Decision and Analysis

[222] The appellant leased Shmouni's unit starting on November 1, 2019. There is a written lease (prepared by the appellant) and the lease acknowledges a credit of $28,000 to the appellant – the first four months of rent. The appellant was therefore supposed to pay Shmouni $7,000 per month in rent thereafter. I accept the appellant's testimony that she paid rent during the last 4-5 months of her occupancy. In total she paid (or was credited for) 8-9 months' rent, although she occupied the unit for approximately 26 months.

[223] I do not accept that the appellant was justified in withholding the rent she owed to offset her alleged renovation costs or because Shmouni allegedly defamed her. Other than the 8-9 months credited to or paid by the appellant, she paid no rent to Shmouni, resulting in a loss to him of about 18 months' rent or $126,000.

[224] Shmouni's evidence was in all material respects confirmed by the documentary record. He testified that after the first four months, the appellant was supposed to start paying him rent but paid nothing. He served a notice of termination of tenancy effective July 14, 2020. The appellant did not pay, and the matter went to a hearing before the Landlord and Tenant Board in January 2021.

[225] The appellant did not attend the hearing. The Board found in her absence that she had paid no rent and ordered her to vacate by February 7, 2021 ("eviction order"). The Board also determined that the amount of rent owing as of January 31, 2021, was $77,000. The Board ordered the appellant to pay Shmouni $35,000 which was the maximum amount within its monetary jurisdiction. The appellant neither vacated the unit nor paid anything to Shmouni.

[226] On February 5, 2021, the appellant requested that the eviction order be reviewed - and stayed pending the review - on the basis that she did not attend the hearing because she was not given notice.

[227] The eviction order was stayed until the Board's held a review hearing in April 2021. In a decision dated April 28, 2021, the Board found as that the appellant did in fact have notice of the hearing. It denied the request for a review and confirmed the eviction order (see 2021 CanLII 88018 (ON LTB)).

[228] The appellant still did not vacate or pay any rent. Instead, she filed an appeal of the Board's order with the Divisional Court and asked for a stay of the eviction order pending appeal. The court granted the stay but required the appellant to start making monthly rental payments of $7,000. I accept that the appellant did make 4-5 monthly rental payments before vacating the premises, sometime around the end of 2021 or early 2022. However, the appellant's appeal of the eviction order was never perfected, and the Board's order that the appellant pay Shmouni $35,000 remains unsatisfied.

[229] According to the appellant, she did not pay rent to Shmouni for two main reasons. Firstly, Shmouni did not pay her costs in repairing and upgrading the unit as he agreed, and secondly, he defamed her leading her to start a lawsuit against him.

[230] With respect to the first reason, the appellant testified that Shmouni agreed to reimburse her renovation/repair costs. Shmouni testified that he agreed to the appellant carrying out work on his unit but denies that he agreed to pay for it.

[231] The appellant testified that Shmouni owed her approximately $40,000 for that work. In support of that she referred to a document apparently prepared by "Panaco Inc." that, according to the appellant, is an invoice for the work she paid for. I place little weight on that document. It is undated and unsigned and no witness from Panaco Inc. was called to verify it. It is not clear whether the document is a preliminary estimate or an invoice. The description of the scope of work is vague. The total cost for the various repairs/upgrades is "$37,130 +tax", but there is no indication of how the amounts would be paid (i.e., a payment schedule, deposit, balance due on completion), whether a deposit was paid or, if it is an invoice, whether any amounts were actually paid.

[232] However, if the appellant did spend the amounts claimed and felt she was entitled to withhold rental payments, she could and should have raised that issue at the Board hearing. Instead, she failed to attend. She claims she was not given notice of the hearing, but the Board found as a fact that she did have notice. The appellant appealed the eviction order but did not perfect her appeal. As a result, the eviction order and the review order still stand, and I rely on them to conclude that the appellant got notice of the eviction hearing but did not attend.

[233] I also note that the amount the appellant claims to have spent (approximately $40,000), would theoretically offset about 6 months of rent. Yet the appellant

occupied the unit and paid no rent from March 2019 until sometime in the summer of 2021 when the Divisional Court required her start paying rent to avoid eviction. In other words, the appellant's claim that she was entitled to reimbursement of $40,000 worth of repairs does not justify the appellant's failure to pay any rent at all to Shmouni from March 2019 until the summer of 2021, a period of approximately 15 months.

[234] I also conclude that the appellant's second reason for not paying rent – that Shmouni defamed her resulting in litigation - does not justify her failure to pay Shmouni what he was clearly owed.

[235] This justification for non-payment was expressed by the appellant on cross-examination as follows:

> ***Question:*** *So your evidence is that whatever you claim you have spent on renovations would cover the amount of rent that you otherwise would have paid?*
>
> ***Appellant:*** *I would have paid. If Mr Shmouni, instead of talking to me and resolving his issues, did not conspire with the criminals from Florida, he would have gotten paid…*
>
> ***Question:*** *Why didn't you pay him because you were legally obliged to for those months?*
>
> ***Appellant:*** *Why didn't I pay him? Because he wouldn't [sic] on a defamation campaign on me, that's why I didn't pay him.*

[236] This explanation for non-payment has no merit. The issue of rent is clearly separate and district from any alleged defamation that may have taken place and it was not open to the appellant to unilaterally decide that she will no longer comply with her rental obligations. The appellant clearly developed an animosity toward Shmouni after his alleged communications with the Berks. She paid no rent to Shmouni before that, but afterwards she apparently became even more unwilling to pay him anything.

[237] In summary, I conclude that the appellant occupied Shmouni's unit for approximately 26 months. She paid 4-5 months of rent to avoid eviction and she was given credit for four months after waiving her commission. Other than that, she paid no rent without any legitimate justification, resulting in a loss to Shmouni of approximately 18 months' rent or $126,000. I am satisfied that the Registrar has proven the Shmouni allegation on a balance of probabilities.

(g) Summary – Past Conduct

[238] Section 10(1)(a)(ii) of the Act provides that the Registrar may revoke a registration where a registrant's past conduct affords reasonable grounds for belief that the registrant will not carry on business in accordance with the law and with integrity and honesty. In the case, I am satisfied that the appellant's past conduct affords reasonable grounds for that belief.

[239] I have found that the appellant misappropriated funds from three of her clients, misappropriated a substantial amount from a US company, and refused to pay two separate landlords almost any rent resulting in significant financial loss to them. The appellant agreed to conditions requiring her to use her best efforts to satisfy three garnishments but instead funneled her commissions through her brother to avoid the garnishments and failed to comply with court orders relating to the collection efforts of one of the creditors.

[240] There is a direct nexus between the conduct described above and the appellant's ability to conduct business in accordance with the standards expected in a regulated industry. Registered salespersons occupy a position of trust with respect to their clients. The provide advice and often handle their clients' funds. They are expected to deal with the public with honesty, integrity and in the best interests of their clients. The appellant's conduct, especially in connection with misappropriating client funds, illustrates obvious deficiencies in that regard.

[241] The appellant's conduct also calls into question the appellant's ability or willingness to comply with the requirements of the Registrar. She breached conditions of her registration by funneling her commissions through her brother and frustrating and delaying the efforts of her creditors to collect on their judgments. The appellant's conduct contravened the Act (see below) and was intended to avoid conditions to which she had agreed to satisfy the Registrar's concerns about her financial responsibility. In other words, the appellant demonstrated a willingness to circumvent and undermine the Registrar's efforts monitor and regulate her real estate business activity.

[242] In summary, the public has a right to expect that a registered salesperson will conduct business with honesty, integrity and in accordance with law. In my view, the appellant's past conduct affords reasonable grounds to believe that she will not do so.

C. Contravention of the Act.

[243] The Registrar alleges that the appellant contravened the Act in two ways:

- The appellant breached s.31(2) of the Act by accepting commissions for real estate trades from someone other than the brokerage that employed her.
- After the appellant's registration was suspended in October 2019, she traded in real estate in contravention of s. 4 of the Act.

(a) Accepting Payment for Trades Outside of Brokerage

[244] The Registrar alleges that by funnelling her commissions through Peter, the appellant accepted payment for trading in real estate from her brother and not from her brokerage in contravention of section 31(2) of the Act. That subsection provides:

> 31(2) No …salesperson … shall accept any commission or other remuneration for trading in real estate from any person except the brokerage which employs …the salesperson.

[245] As outlined above, I have determined that the appellant arranged for her commissions be paid to Peter who shared them with the appellant to avoid the garnishments. The appellant received commissions for her real estate trades from her brother and not her brokerage, and I conclude that the appellant thereby contravened the Act.

[246] The appellant pointed out that similar compensation arrangements between co-listing agents are not uncommon and suggested that co-listing agents splitting the commission paid by the brokerage to one of them is not regarded by the industry as a contravention of the Act. Mr. Kapches confirmed that at his brokerage there is a husband-and-wife team that co-list and the commissions on their trades are paid to one agent who presumably shares it with the other.

[247] It may well be that there are limits to the application of s.31(2). Each case turns on its own facts. However, the Act clearly prohibits a salesperson from receiving commissions from anyone other than the salesperson's broker. If there is a legal exception to that prohibition it was not pointed out to me. In this case the appellant's arrangement with Peter was intended to avoid the effect

of the garnishments by directing her commissions to Peter who then paid the appellant. That arrangement was created for an improper purpose – to avoid the legitimate collection efforts of creditors. In the context of this case, I conclude that the appellant thereby contravened the Act.

(b) Trading While Under Suspension

(i) Allegation

[248] The Act (s.4) prohibits any person who is not registered as a real estate salesperson from trading in real estate as a salesperson or holding themselves out as a salesperson. The Registrar alleges that the appellant contravened that section. The appellant's registration was suspended by the Registrar on October 17, 2019 and, according to the Registrar in December 2019 the appellant held herself out as a real estate agent representing the owner of a unit at 180 University Ave.

[249] That was the unit owned by Zhu which the appellant had been occupying since September 2019. According to the Registrar, the appellant negotiated a short-term rental of the unit with Ms. Mona Al Zaibak ("Al Zaibak"). However, two days later, when Al Zaibak arrived to occupy the unit, the appellant refused to proceed with the rental because, according to the appellant, the owner wanted a longer term.

(ii) Appellant's Position

[250] According to the appellant, she discussed renting Zhu's unit with Al Zaibak but she was not acting as Zhu's agent or holding herself out to be an agent acting on his behalf. She was renting the unit from Zhu but since she was moving into Shmouni's unit, she was considering subletting Zhu's unit. She was not acting as Zhu's agent; she was acting in her personal capacity as a tenant considering subletting the unit.

[251] The appellant states that she showed Zhu's unit to Al Zaibak with a view to subletting it, but it became apparent that Al Zaibak was looking for a short-term rental, which was not allowed by building management. The appellant did not agree to rent the unit to Al Zaibak and, according to her, she was surprised when two days later Al Zaibak showed up in the lobby of the building with her luggage expecting to occupy the unit.

(iii) Decision and Analysis

[252] I find that the evidence is insufficient to support a conclusion that the appellant held herself out as a registered salesperson in her dealings with Al Zaibak.

[253] Al Zaibak testified that she lives between Toronto and Montreal and was familiar with 180 University Ave. because her brother owned a unit in the building. On an earlier visit, she asked the concierge about someone who could assist in securing a rental in the building and she was given the appellant's contact information.

[254] In December 2019, Al Zaibak came to Toronto for a visit. She got in touch with the appellant to inquire about a short-term rental of 2-3 weeks. She was under the impression that the appellant was acting as a real estate agent.

[255] Al Zaibak's main concern was that on December 5, 2019, the appellant showed her Zhu's unit and verbally agreed to rent it to her for a short term - two weeks for $1,400 in cash. Since the unit needed cleaning, they agreed the appellant would have it cleaned and Al Zaibak would move in on December 7. When she showed up on December 7 with her luggage, the appellant refused to rent to her on a short-term basis. Al Zaibak testified that the appellant's conduct caused her embarrassment and left her feeling manipulated.

[256] However, the Registrar's allegation is that the appellant traded in real estate or held herself out to be a real estate agent while under suspension. Al Zaibak testified that she thought that the appellant was acting as a real estate agent. That seems likely – she obtained the appellant's contact information as an agent while the appellant was still validly registered.

[257] The appellant may have contributed to Al Zaibak's impression by not clarifying that she was under suspension and making it clear that she was showing her own unit to sublet. However, the evidence falls short of establishing that the appellant held herself out to be acting as an agent on behalf of the owner.

[258] There is no evidence that the appellant provided a business card, an office address, an MLS listing, or any documentation suggesting she was acting as an agent or employed by a brokerage. The text messages exchanged between he appellant and Al Zaibak are consistent with the appellant's claim that she was considering subletting her own unit. I also note that the alleged arrangement struck between the appellant and Al Zaibak was entirely undocumented and involved a one-time cash payment directly to the appellant

of $1,400 for two weeks rent. The character of their deal suggests an informal arrangement directly between the appellant and Al Zaibak in their personal capacity, rather than a brokered transaction.

[259] In summary, the evidence is insufficient to support a conclusion that the appellant held herself out to be a registered real estate agent in her dealings with Al Zaibak in contravention of the Act.

(c) Summary - Contraventions of the Act

[260] Under section 10(1)(e) of the Act, the Registrar may revoke a registration where a registrant has carried on activities that are in contravention of the Act or the regulations. In this case I have found that the appellant contravened the Act by accepting payment for real estate trades from Peter - someone other than her brokerage.

[261] However, I do not regard that contravention as a stand alone ground for revocation. It was really a component of the appellant's effort to avoid the garnishments. The overall significance of that effort, including the contravention, is that it breached the conditions of her continued registration and affords reasonable grounds to believe that the appellant will not carry on business with honesty, integrity and in accordance with law.

[262] In other words, I do not regard this contravention as an independent ground for revocation, but I do take it into account in coming to my conclusion that the appellant's breached conditions of registration and her past conduct affords reasonable grounds for belief that she will not carry on business with integrity and honesty and in accordance with law.

D. FINANCIAL RESPONSIBILITY

[263] This ground of the Registrar's proposal is based on section 10(1)(a)(i) of the Act which provides that the Registrar may revoke a registration if "…having regard to the applicant's financial position…the applicant cannot reasonably be expected to be financially responsible in the conduct of business".

[264] The Registrar argues that the appellant's current financial position as an undischarged bankrupt since 2010 and the fact that she still has significant obstacles to overcome before obtaining a discharge afford grounds to conclude that the appellant cannot be expected to be financially responsible in the conduct of her business.

[265] Previous Tribunal decisions have determined that the test for financial responsibility requires the Tribunal to consider whether, based on the appellant's current financial position, she can reasonably be expected to be financially responsible in the conduct of business. Section 10(1)(a)(i) can be contrasted with s.10(1)(a)(ii) which refers to past conduct as opposed to a current position. In other words, the depth of the appellant's past financial difficulties is not the significant consideration under s. 10(1)(a)(i), so long as she has mitigated those difficulties by the time of the hearing (see *Singh (Re),* [2016] O.L.A.T.D No. 185, at para. 15, 16.; *9230 v. Registrar, Real Estate and Business Brokers Act*, 2015 CanLII 26079 (ON LAT) at para. 21).

[266] I agree with that analysis and applying it to the present facts, I conclude that given the appellant's continuing position as an undischarged bankrupt, she cannot reasonably be expected to be financially responsible in the conduct of business. I come to that conclusion based on the following.

[267] The appellant filed for bankruptcy on August 12, 2010. At that point she had proven liabilities of approximately $571,000 and realized assets of $2,200. According to her trustee's report, the causes of the bankruptcy were "Significant decline in income starting in 2005 due to real estate licence issues, legal costs with respect to those issues and re-assessments of income tax and GST by Canada Revenue Agency for the taxation years 2003, 2004, and 2005."

[268] In June 2012, the appellant applied to Court for a discharge. The application was opposed by the CRA to whom the appellant then owed approximately $300,000. The Court adjourned the application and stated that a discharge hearing would not to be re-scheduled until the appellant met three conditions:

- file her 2011 taxes, and file and pay all taxes to date,
- HST must be paid up to date (if applicable), and
- file monthly income and expenses statements "from January 2012 to date of hearing with trustee prior to being restored to list."

[269] To date, none of those conditions have been met and, according to Ms. Linda Stern, the appellant's present Licensed Insolvency Trustee ("LIT"), it will not be possible to schedule a new discharge hearing until they are met.

[270] Further, there is no evidence that the appellant took any meaningful steps to comply with them or obtain a discharge until 2016.

[271] In 2016 the Registrar became concerned about the appellant's ability to conduct business in a financially responsible manner when she applied for renewal. The Registrar noted that the appellant had been an undischarged bankrupt for six years and instead of meeting the conditions required to schedule a discharge hearing, the appellant had acquired new unpaid debt, and three of her creditors (including the CRA) had served garnishments on her brokerage.

[272] The appellant told the Registrar that she planned to settle all of her judgments and garnishments immediately upon mutually accepted settlement amounts. She anticipated that she would be discharged in February 2017. As a result, the Registrar and the appellant agreed to conditions designed to address concerns about the appellant's financial responsibility. They required her (among other things) to use her best efforts to satisfy the three garnishments. Instead of doing that, the appellant funneled her commissions through her brother and frustrated and delayed the collection efforts of one of the creditors to the point where the court scheduled a contempt hearing.

[273] In 2018, the appellant applied to renew her registration and her lawyer told the Registrar that he expected the CRA debt to be paid by the spring of 2019. He intended to apply for a discharge as soon as the appellant's taxes were up to date. Those assurances were not met, and the appellant has remained an undischarged bankrupt.

[274] In 2021, Linda Stern was re-appointed the appellant's LIT. She testified that given the Court order in 2012 requiring the three conditions be met before re-scheduling a discharge hearing, it would be fruitless to attempt to schedule a hearing until they are met. At this point they all remain unsatisfied. Ms. Stern stated she requires all the appellant's income tax returns, HST returns and notices of assessment up to the hearing date. At present they are all outstanding and Ms. Stern anticipates that any discharge application would be opposed by the CRA. In essence, it appears that the appellant is not significantly closer to getting discharge today than she was when she first applied in 2012.

[275] The appellant has remained an undischarged bankrupt for 13 years, an inordinately long time. There is evidence that during that time she has not

conducted business in a financially responsible manner. Her bankruptcy 13 years ago involved debts for unpaid income tax and HST and today she still owes money to the CRA. She improperly funneled her commissions through her brother to avoid the legitimate collection efforts of creditors who had judgments against her for debts incurred after her 2010 bankruptcy. I have found that while an undischarged bankrupt she misappropriated funds from clients for whom she was acting as an agent, as well as from Maison Prive, a company with whom she was doing non-real estate business. She failed to pay rent to two separate landlords for a period of over two years except for 4-5 months' rent paid to avoid eviction. She has not complied with a Landlord and Tenant Board order to pay one of those landlords $35,000.

[276] Although the appellant has remained an undischarged bankrupt, she apparently enjoys elements of an expensive lifestyle and seems to have access to substantial funds. She testified that in July 2021 (while she was not paying the agreed rent of $7,000/month to her landlord), she leased a Bentley motor vehicle for which she pays $3,500/month. Before that (from 2017 to 2021) she owned a Mercedes Benz. She sold that vehicle for almost $150,000, and before that (from 2016-2017), she leased a Porsche 911 for $2,000/month. She trades in very expensive watches, handbags, and vehicles. Such expenditures are financially irresponsible for a person who has not, after 13 years, met the conditions to discharge her bankruptcy and has incurred new unpaid debt.

[277] In my view, all of the above supports the conclusion that having regard to the appellant's position as an undischarged bankrupt for 13 years, the appellant cannot reasonably be expected to be financially responsible in the conduct of business.

E. SUMMARY OF FINDINGS & CONCLUSION

[278] The Act is consumer protection legislation. It is intended to protect the public by requiring that those who trade in real estate on behalf of the public owners be both knowledgeable and suitable to assume the trust the public places in them.

[279] In this case, the Registrar proposes revocation because the appellant's conduct in various areas has demonstrated that she is unsuitable to act on behalf of the public as a real estate agent:

Breach of Conditions: I have determined that the appellant agreed to conditions on her registration that required her to use her best efforts to satisfy garnishments. Instead, she improperly funneled her commission through her brother and refused to attend a judgment debtor examination or produce financial documents.

Past Conduct: I have concluded that the appellant's past conduct includes breaching the conditions of her registration, misappropriation of funds from clients and others, and refusal to pay two separate landlords almost any rent resulting in substantial financial loss to them. In addition, there is evidence that the appellant breached the Act, and failed to comply with both Court and Landlord and Tenant Board orders. In my view, that conduct affords reasonable grounds to believe that the appellant will not carry on business in accordance with law and with integrity and honesty.

Contravention of the Act: I conclude that the appellant contravened the Act by receiving commissions from someone other than her broker. I have taken the contravention into account in determining that the appellant's breach of conditions and her past conduct are both independent grounds that support the Registrar's proposal to revoke.

Financial Position: I have determined that having regard to the appellant's current financial position as an undischarged bankrupt, the appellant cannot reasonably be expected to be financially responsible in the conduct of her business and that this constitutes another independent ground for revocation.

[280] The appellant suggests that conditions would be appropriate in this case instead of revocation and proposes conditions that would include requiring the appellant to satisfy her outstanding debt to RBC and meet the requirements to permit the scheduling of a bankruptcy discharge hearing within 2 years.

[281] I conclude that revocation is the appropriate disposition in this case and that conditions would not be suitable for two reasons. Firstly, the appellant and the Registrar agreed to conditions in 2016 and the appellant took active steps to contravene them. There is nothing in the record that gives me confidence that the appellant will comply with new conditions. Secondly, conditions are most effective to address deficiencies in knowledge, skill, practice, or encourage fulfillment of undertakings. They are less appropriate in a case such as this where there is a deficiency in integrity, honesty, and compliance with law. Conditions would not adequately address the issues raised by my findings.

[282] The primary purpose of registration is to protect the public and given my findings, I am satisfied that directing the Registrar's proposal to be carried out is the appropriate result that serves the public interest.

F. ORDER

[283] Pursuant to s. 14(5) of *the Real Estate and Business Brokers Act, 2002*, I order the Registrar to carry out his proposal to revoke the registration of Sepideh Moazzani as a real estate salesperson.

LICENCE APPEAL TRIBUNAL

Stephen Scharbach, Member

Released: September 18, 2023