



**Citation: Toughlouian v. Registrar, *Real Estate and Business Brokers Act, 2002*,
2022 ONLAT REBBA 13256**

**Date: 2023-01-23
File Number: 13256 REBBA**

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

Between:

Susan Toughlouian

Appellant

and

Registrar, Real Estate and Business Brokers Act, 2002

Respondent

REASONS FOR DECISION AND ORDER

ADJUDICATOR: Avril A. Farlam, Vice-Chair

APPEARANCES:

For the Appellant: Susan Toughlouian, Self-represented

For the Respondent: Shane Smith, Counsel

**Heard by Videoconference: September 13, 14, 16, 21, 22, October 20, 27, 28,
December 12, 13, 16, 2022**

REASONS FOR DECISION AND ORDER:

BACKGROUND

- [1] Susan Toughlouian (the “appellant”) appealed to the Licence Appeal Tribunal (the “Tribunal”) from a Notice of Proposal to Revoke Registration dated March 25, 2021 (“NOP”) issued by the Registrar, *Real Estate and Business Brokers Act, 2002*, (the “respondent”) under the *Real Estate and Business Brokers Act, 2002*, S.O. 2002, c. 30, Sch. C (the “Act”) to revoke the appellant’s registration as a salesperson under the Act. The appellant also appealed the respondent’s order for immediate temporary suspension of her registration as a salesperson under the Act of the same date (the “suspension order”).

APPELLANT’S LICENCE SUSPENDED PENDING THIS HEARING

- [2] At the appellant’s request, the Tribunal held a hearing under s. 14 of the Act (the “suspension order hearing”) to determine whether the suspension order should be extended until the hearing of the NOP. In its Order released December 11, 2021 the Tribunal found the extension of the suspension order to be in the public interest, and under s. 15(3)(b) of the Act, extended the suspension order until the conclusion of this hearing.

POSITIONS OF THE PARTIES AT THIS HEARING

Respondent’s Position

- [3] In summary, the respondent’s position as set out in the NOP is that the appellant’s past conduct affords reasonable grounds for the belief that she will not carry on business in accordance with the law and with integrity and honesty under subparagraph 10(1)(a)(ii) of the Act. The past conduct alleged is:
- a. Abuse and harassment of former business partners Roy and Amit Bhandari (the “Bhandaris”), who are also registrants, which resulted in her being charged in March, 2020 with criminal offences which remain outstanding, and
 - b. Breach of release conditions placed on her release after arrest on the above criminal charges, specifically, the condition which was a prohibition on contacting/communicating with any known family member or business associate of the Bhandaris, and

- c. Abuse of others, including registrant Brian Persaud who attempted to reach out to the appellant in January, 2020 after seeing some of her postings/communications regarding the Bhandaris, and communications in February, 2020 with registrants Ian Serota and Gloria Racioppo (the “Racioppo”), regarding commissions from an old transaction. The communications with the Racioppo resulted in the appellant resigning/being asked to leave her then-brokerage because of her conduct, and
- d. Further actions to attempt to harm the Bhandaris, including in 2020 offering registrant Mike Klassen \$200,000.00 and registrant David Vu \$1,000,000.00 and later \$2,000,000.00 to testify against the Bhandaris and indicating to another registrant that she was considering making a sexual assault complaint against Roy Bhandari to “get back at him”, and
- e. Failing to disclose criminal charges to the respondent, as required by the Act, including that on March 23, 2020 the appellant was arrested and charged with four charges of criminal harassment and two charges for uttering threats relating to her abuse and harassment of the Bhandaris. These charges were only reported to the respondent in June 2020 after she was advised to do so by an investigator with the Real Estate Council of Ontario (“RECO”).

[4] The respondent alleges continuing abuse and harassment toward individuals who have provided information to RECO and are likely to be witnesses in this hearing in Further Particulars In Support of the NOP dated January 12, 2022.

Appellant’s Position

[5] In summary, the appellant denies all allegations in the NOP and takes the position that she carries on business in accordance with the law and with integrity and honesty, has had an exemplary 16 year career as a real estate salesperson until “this dispute with the Bhandaris”¹, and never had a client complaint. The appellant’s position is that since 2014 the “Bhandaris, her former business associates, have continually harassed her, caused her significant financial and mental suffering, slandered her to friends and colleagues, sabotaged her business, taken steps to discredit her and ruin her reputation, including using RECO to help them to do so, and ignored her request to cease doing so.

¹ Appellant’s Notice of Appeal dated April 8, 2021, Schedule A, para 14.

- [6] The appellant's position is that RECO dismissed her concerns without any proper investigation when she reached out to RECO on five occasions starting in 2019. As a result of RECO's response to her that "it did not get involved in disputes between realtors"² the appellant states that "this matter is outside of RECO's jurisdiction".³
- [7] The appellant further denies that she abused and harassed the Bhandaris, Larry Sage of Sage Real Estate Ltd., Brian Persaud, or any other individuals involved in the real estate industry as alleged by the respondent and denies she ever offered payment to individuals in return for testifying against the Bhandaris or threatened to make sexual assault allegations against Roy Bhandari as alleged in the NOP. The appellant states that she has not contacted the Bhandaris, Persaud or Sage since March 23, 2020.⁴
- [8] Lastly, the appellant alleges that she was honest and forthright with RECO's investigator about the charges against her and never attempted to conceal them. However, she was not aware that she was required to inform RECO of the charges and the failure to do so, even taken together with the other allegations in the NOP, if proven, does not merit suspension or revocation of her licence. The extreme measure of revocation is used for the purpose of protecting the public from fraud or illegal activities and this is not such a case. Revocation of her licence would create financial hardship for her family. There are no allegations that other real estate agents or clients are at risk, no risk to the general public or other realtor in allowing the appellant to continue to act as a realtor. "Her transgressions, if proven, solely relate to her dealing with her former partners and ... have not occurred for over a year."⁵

RESPONDENT'S PRELIMINARY MOTION TO DISMISS THE APPEAL

- [9] On September 9, 2022, the respondent by email, advised that the respondent would be seeking to have this appeal dismissed at the outset of the hearing based on the appellant's conduct in relation to persons who were identified as being called as witnesses against her which the respondent views as an abuse of process and has negatively impacted the fairness of the hearing. On September 13, 2022, the respondent filed a book of documents on the motion and copies of legal authorities.

² Appellant's Notice of Appeal dated April 8, 2021, Schedule A, para 7.

³ Appellant's Notice of Appeal dated April 8, 2021, Schedule A, para 8.

⁴ Appellant's Notice of Appeal dated April 8, 2021, Schedule A, para 18.

⁵ Appellant's Notice of Appeal dated April 8, 2021, Schedule A, para 27.

- [10] The appellant filed some material in response.
- [11] I allowed the late filing of motion materials and heard the motion on September 14, 2022, even though the motion was not filed at least 10 prior to the hearing, contrary to Rule 15 of the *Licence Appeal Tribunal, Animal Care Review Board, Fire Safety Commission Common Rules of Practice and Procedure, Version 1 (October 2, 2017)*, (the “Rules”). Rule 3.1 of the Rules provides that the rules should be liberally interpreted and applied and may be waived or varied to facilitate a fair, open and accessible process to allow effective participation by the parties and also to ensure efficient, proportional and timely resolution of the merits of the proceeding before the Tribunal. Here, the appellant was able to file some documents responding to the motion, even though she was served late, and to cross-examine the respondent’s witness on the motion.
- [12] The respondent called Paul Mackrell as a witness on this motion. Mr. Mackrell, respondent’s investigator and former police officer for many years, testified about his review of Roy Bhandari’s complaint, email communications, text messages, posts on websites and other social media and messages sent by the appellant to various persons (the “messages”) which indicate she is harassing and intimidating the respondent’s witnesses Amit Bhandari, Roy Bhandari, Serge Younan, Mike Klassen and Heidi Kurien with an apparent intention to dissuade them from appearing as witnesses at this hearing. One of the proposed witnesses has indicated he does not want to testify because he does not want to expose his family members to harassing conduct from the appellant. The appellant has engaged in this behaviour despite having been specifically cautioned by the respondent not to threaten or intimidate any witnesses and despite having engaged in similar conduct while a May 2021 hearing was underway before the Tribunal about whether the appellant’s licence should be suspended pending the outcome of this appeal
- [13] The respondent submits that this appeal should be dismissed without a hearing on the merits because the appellant’s conduct amounts to an abuse of process and has negatively impacted the fairness of the hearing for the respondent. The respondent relies on s. 23 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22 and several cases in support of the proposition that the Tribunal has the power to dismiss this appeal without a hearing on the merits as a result of the appellant’s conduct.
- [14] The appellant opposed the motion on the basis that it is her licence which may be taken away at the end of this hearing and she should be allowed to answer the allegations against her which she indicates may be lies. The appellant

submitted that some of the witnesses do not want to testify because they are afraid she will expose what she sees as their own wrongful behaviour. The appellant also submitted that the social media postings relied on by the respondent are taken from her accounts which are “private” and the criminal charges against her are the result of others going to the police before she did.

- [15] Having considered the evidence on the motion and the submissions of both parties, the respondent’s motion is denied for the following reasons.
- [16] This is not a case which should be dismissed without a hearing on the merits. It is up to the respondent to establish the grounds of the NOP at the hearing. The appellant is entitled to an opportunity to fully and fairly respond to the allegations against her. Whether or not the appellant’s licence is revoked is not a matter that should be decided on a preliminary motion, especially considering that the appellant is self-represented. While intimidation and harassment of proposed witnesses of any party before the Tribunal is always a matter of concern, I am not persuaded at this stage in the proceeding that the conduct of the appellant has risen to the level of abuse of process sufficient to warrant dismissal of her appeal without a hearing on the merits.

APPELLANT’S ADJOURNMENT REQUEST ON SEPTEMBER 21, 2022

- [17] On September 21, 2022, the appellant requested an adjournment for the day because she is tired, and her children are home from school. The respondent opposed the adjournment request on the basis that the appellant had not put forward a valid reason for not proceeding today and the respondent had a witness present to give testimony.
- [18] After considering the positions of both parties, I denied the appellant’s request for an adjournment for reasons to follow. These are my reasons. I denied the appellant’s mid-hearing request for an adjournment because her reasons, specifically that she is tired, and her children are home from school are not sufficient reasons for an adjournment mid-hearing. The respondent had the next witness present to testify. The hearing proceeded as scheduled.

ISSUES

- [19] The issues to be decided are as follows:
- a. Does the appellant’s past conduct afford reasonable grounds for the belief that she will not carry on business in accordance with the law and with integrity and honesty?

- b. If so, is revocation of the appellant's registration as a real estate salesperson appropriate?

RESULT

- [20] The respondent has established that the appellant's past conduct affords reasonable grounds for the belief that she will not carry on business in accordance with the law and with integrity and honesty. I am not satisfied that allowing the appellant to retain her registration with terms or conditions would adequately protect the public.
- [21] Pursuant to section 14(5) of the Act, I order the respondent to carry out the NOP to revoke the registration of Susan Toughlouian.
- [22] No costs are awarded to either party.

LAW:

- [23] Section 4 of the Act prohibits a person from trading in real estate unless they are registered under the Act.
- [24] Section 10(1)(a) of the Act provides that an applicant that meets the prescribed requirements is entitled to registration or renewal of registration by the respondent unless
- (a) the applicant is not a corporation and,
 - (b) the past conduct of the applicant or of an interested person in respect of the applicant affords reasonable grounds for belief that the applicant will not carry on business in accordance with the law and with integrity and honesty.
- [25] Section 10 (1) of the Act means that if the appellant meets the requirements, she has a presumptive right to registration. The presumption may be rebutted if the respondent can prove that the appellant falls within one of the grounds outlined in section 10 (1) (a) (i), (ii) or (iii). The application of the statutory test under section 10(1)(a)(ii) requires the Tribunal to examine the appellant's past conduct as a whole.
- [26] Section 13 of the Act sets out that the respondent may refuse to register an applicant or may suspend or revoke a registration or refuse to renew a registration if, in his or her opinion, the applicant or registrant is not entitled to registration under section 10.

- [27] The registrant may appeal the proposed revocation or refusal to the Tribunal. At the Tribunal hearing, the onus is on the respondent to prove one or more of the grounds under section 10(1) of the Act.
- [28] Section 14 of the Act provides that, following a hearing, the Tribunal may by order direct the registrar to carry out the registrar's proposal or substitute its opinion for that of the registrar and the Tribunal may attach conditions to its order or to a registration.

ANALYSIS

a. Does the appellant's past conduct afford reasonable grounds for the belief that she will not carry on business in accordance with the law and with integrity and honesty?

- [29] I start my analysis by articulating the standard of proof for this "reasonable grounds for belief." While describing it in the context of another regulatory regime, I apply the Court of Appeal's reasoning in this real estate licensing context, which states as follows:

The standard of proof provided by s. 6(2)(d) of the Act is that of "reasonable grounds for belief"... As applied to this case, s. 6(2)(d) of the Act required the Registrar simply to show that Mr. Barletta's past or present conduct provides reasonable grounds for belief that he will not carry on business in accordance with law and integrity and honour. The Registrar does not have to go so far as to show that Mr. Barletta's past or present conduct make it more likely than not that he will not carry on business as required.⁶

- [30] At the same time, the "reasonable grounds for belief" must be more than "mere suspicion and will be found to exist "where there is an objective basis for the belief which is based on compelling and credible information."⁷ Further, there must be a nexus between the appellant's past conduct and his ability to conduct business as a motor vehicle salesperson serving the interests of the public.⁸

⁶ Ontario (Alcohol and Gaming Commission) v. 751809 Ontario Inc. (Famous Flesh Gordon's), 2013 ONCA 157 at paras. 18-19.

⁷ Mugesera v. Canada (Minister of Citizenship and Immigration), 2005 SCC 40 at para. 114

⁸ CS v. Registrar, Real Estate and Business Brokers Act, 2002, 2019 ONSC 1652 at para. 32.

[31] I find that the respondent's evidence establishes that the appellant's past conduct affords reasonable grounds for the belief that she will not carry on business in accordance with the law and with integrity and honesty for the following reasons.

Ample Evidence of Abuse of the Bhandaris and Others

[32] Many witnesses testified about the appellant's abuse and harassment of Roy and Amit Bhandari, and others. Roy Bhandari, a registrant, testified that he and his brother Amit (the "Bhandaris") sent a 364 page complaint to RECO on June 26, 2020 through their lawyer about the appellant's abusive conduct toward them including some of the messages. Although the Bhandaris had not been in a business relationship with the appellant since 2014, they received a letter from the appellant in 2018 primarily complaining that the Bhandaris had been bad mouthing her in the real estate industry.

[33] The appellant's campaign of abusive behaviour escalated to the point where she sent the Bhandaris over 100 messages in January, 2020 alone filled with aggression, hate, profanities and veiled threats against them and their families. Roy Bhandari testified about the message he received and that he found their content to be vile and, in some instances, racist. In January 2020 the messages had increased in volume, frequency and vileness and he sought the involvement of the police who he understands contacted her to say the communications are not wanted and she should stop. Some of the messages sent to the Bhandaris and others contained the appellant's wishes of death, disease and suffering of the Bhandaris and their families. In one of the most vile messages the appellant prays that Roy Bhandari's "kid gets bullied so badly...to the point that she commits suicide. You can tell him if he reaches out to mike [sic] Klassen again I'm going to SHOW up to his office". Roy Bhandari's child was four years old at the time. The Bhandaris testified that the messages became increasingly more hateful, this caused fear for their families and they have had to increase personal security measures.

[34] Amit Bhandari's testimony substantially corroborated that of Roy Bhandari. He also testified that the appellant has extremely violent thoughts and some of the messages indicate that she is willing to pay people to carry out threats. One of the messages sent by the appellant states "hope you make it home safe". Both Bhandaris testified that the appellant has called their broker Larry Sage and has tried to involve him in her perceived dispute with them.

[35] David Vu, a registrant, testified that he received messages from the appellant starting in approximately 2020. Mr. Vu testified that in a February 18, 2020 message to him, the appellant stated "David answer the phone Or else I'm going

to show up to your office tomorrow. Tell Roy I am going to fuck him up for reaching out to Michael Klassen. He really doesn't know me. Cops won't stop me. Believe me." In another message the appellant stated "Your friends are not safe...nobody is safe. Having acid thrown on your Face is horrible." Mr. Vu assumed the appellant was talking about the Bhandaris. He also received a message from the appellant stating, "I'll pay you \$1M TO COME FORWARD and stop being a coward So I can sue someone for damages." Later she increased this offer in a message to \$2,000,000.00. Mr. Vu said he has no idea what she was asking him to testify about and doesn't know why she reached out to him.

- [36] The police charged the appellant in March 2020.
- [37] The appellant was notified of the complaint on July 15, 2020, and also advised that the respondent had become aware of the criminal charges and she had not delivered notification of the charges to the respondent as required by the Act and its Regulation 567/05. The appellant sent in details of her criminal charges, release, and undertaking which confirmed charges of criminal harassment, communication and watching and besetting, and uttering threats.
- [38] Paul Mackrell testified that in 2020 he did an investigation at the request of RECO after it received the Bhandaris' complaint about the appellant. After interviewing some 14 witnesses and reviewing documents and many messages, some of which are excerpted in his report, Mr. Mackrell delivered a written report to the respondent dated August 10, 2020.
- [39] Mr. Mackrell reported that the appellant stated in some messages that she is just getting started and will continue her abusive attacks and harassment and that she will do so publicly. Mr. Mackrell reported that in a message to registrant, David Vu, the appellant stated that she does not mind getting an assault charge and asked that this message be passed to Roy Bhandari. The appellant also sent a message to Serge Younan that she hoped Roy Bhandari "rots with disease". Mr. Mackrell also discovered that on March 23, 2020, the appellant had been arrested and charged with six criminal offences.
- [40] In his report, Mr. Mackrell concluded that, given that the appellant had been charged by the police as a result of her conduct toward the Bhandaris, the appellant failed to comply with s. 34(1) of O. Reg. 567/05 under the Act which requires a registrant to notify the respondent in writing, within five days, of any change in information included in the registrant's application. Mr. Mackrell also concluded that he had reasonable grounds to believe that the appellant had not abided by the respondent's Code of Ethics (Regulation 580/05), particularly ss. 3, 39 and 40 which require a registrant to treat other registrants within the course of

a trade in real estate fairly, honestly and with integrity, not to engage in acts that could reasonably be regarded as disgraceful, dishonourable, unprofessional or unbecoming a registrant, and not abuse or harass any person in the course of trading in real estate. Mackrell's testimony at this hearing was consistent with his report, consistent with the messages he referred to, consistent with his testimony on the respondent's preliminary motion, and is generally consistent with the testimony of the respondent's other witnesses and documents, was not shaken on cross-examination, and I accept it.

- [41] Brian Persaud, a registrant, testified that he has known the appellant since approximately 2006. He knew she had been in business with the Bhandaris and testified that he never heard them say anything negative about the appellant after their business breakup. Starting in approximately 2019 the appellant had been posting messages on social media "tagged" to him and other colleagues indicating she thought they had blocked her from doing business. In January 2020 he saw the appellant post really negative things on the Bhandaris' business page and felt he had to speak up because it got to the point of harassment. Mr. Persaud testified that he "posted" that this was harassment and had to stop, following which posting he has been the target of many messages with profanities, abuse and disturbing language which is highly disturbing to him and his young family. Mr. Persaud described the appellant's behaviour as highly unprofessional and damaging to his business as social media is important in growing one's business. Mr. Persaud denied ever describing the appellant as the "bottom of the barrel" in conversations with others.
- [42] Larry Sage is real estate broker who has been a registrant since 1977. He sold the Bhandaris a Sage franchise. He testified that he had no dealings with the appellant until 2019 when she sent him an email about the Bhandaris. Mr. Sage testified that he did not wish to become involved with the appellant because although their first conversation was rational at first, it degenerated, and her demands quickly became unreasonable and unhinged. Mr. Sage said that the appellant wanted him to have the Bhandaris apologize to her. After this he stopped taking her calls. When he no longer took her calls, she left a fake name and a different phone number. When Mr. Sage called the different name and phone number, she lambasted him. Mr. Sage said it was awkward for him and embarrassing for the Bhandaris to have the appellant make demands of him. Mr. Sage testified that he has never received a complaint about the Bhandaris except from the appellant, this took up a lot of time and he wanted nothing more to do with the appellant. Mr. Sage advised Roy Bhandari to involve the police because this is harassment, and one never knows where there is going to go and could turn tragic.

- [43] Michael Klassen, a registrant, has known the appellant since approximately 2008. Mr. Klassen testified that the appellant would rant at him about the Bhandaris and he told her to forget them and move on. Mr. Klassen said the appellant had ability and talent but became obsessed with the idea that the Bhandaris were badmouthing her. Mr. Klassen testified that when he met the Bhandaris they told him that the appellant said she had a recording of him saying the Bhandaris were badmouthing her. Mr. Klassen said that it was upsetting to him that he had to be introduced to the Bhandaris with a lie.
- [44] Mr. Klassen testified that the appellant offered him \$100,000.00 to testify about the Bhandaris and when he asked where the money was coming from, the appellant said she would get it from damages in the court action. Mr. Klassen did not take the appellant up on her offer and said if he were to testify as she asked him, it would be false.
- [45] Mr. Klassen said that he has received messages from the appellant in a threatening tone telling him to stop lying and saying she will embarrass him in court with these recordings. He has found this to be upsetting as the broker of his own real estate company and that the appellant's bullying of him is ridiculous in volume. Mr. Klassen said he does not want to have anything to do with the appellant anymore. She has threatened to come to his office and continues to harass him. Mr. Klassen said that in June 2021 he got a call from a pay phone during which a man told him that he should not tell lies and the next time he does...followed by sounds like gunshots.
- [46] Mr. Klassen said he continued to receive many phone calls, sometimes as many as 12 in one day until August 2021 when he changed his phone number. Mr. Klassen testified that he doesn't have any enemies in the real estate industry, has never received calls from a pay phone before and believes the appellant made these calls herself or hired others to do so. Mr. Klassen testified that the appellant has also called his client and told them he is going to be charged with pedophilia and contacted his wife and office manager to allege cheating. The week before he testified, Mr. Klassen said the appellant posted his picture on social media with a note that he is another individual who lied to the "board". Mr. Klassen said this has taken a toll on his personal life and his family is not happy about it. Mr. Klassen admitted he didn't want to testify at this hearing and be subject to harassment from the appellant.
- [47] Serge Younan, a registrant, has known the appellant since about 2010. He testified that in approximately 2018, he started receiving messages from the appellant about the Bhandaris. Mr. Younan said he asked the appellant to stop

talking to him because all she wanted to do was criticize the Bhandaris and he didn't want to hear it anymore. He believes she has become obsessed with the Bhandaris. Then the appellant turned on him with multiple messages. The appellant contacted his mother, brother, cousins on social media, contacted the school where his wife works and told the principal that he molests children. In doing this, Mr. Younan said the appellant gave a different name but used her own phone number, so he knows that it was her.

- [48] The appellant has driven by his house and honked her horn excessively. He was at home at the time and photographed her. Others observed this behaviour too. Mr. Younan said he was concerned about how she found out where he lived. Mr. Younan contacted the police in September 2021 which resulted in her arrest and the appellant not being allowed to be near him or his house. At the end of August 2022, the appellant started posting documents and photos of him on the internet and telling others he is involved in mortgage fraud and identity theft. In October 2022 the appellant was arrested by the police for breach of the requirement not to be near him and was released on conditions. Mr. Younan says he doesn't know why she is doing this to him. Her business break up with the Bhandaris is none of his concern. He has asked her many times to stop involving him and just leave him alone.
- [49] Heidi Kurien is a registrant. She met the appellant in 2006 when they did a deal together. Ms. Kurien testified that in 2018 and 2019 when the appellant saw her at industry events, the appellant would ask if Roy and Amit Bhandari were there. Ms. Kurien testified that she does not know the Bhandaris. The appellant told her that the Bhandaris are badmouthing her. Ms. Kurien has seen some disturbing messages about the Bhandaris on social media. In 2020, the appellant told Ms. Kurien that she had been arrested for harassment and she had agreed to a peace bond but if it took 25 or 30 years, she would get Roy Bhandari on sexual assault. Mr. Kurien testified that she told the appellant that it was not right to bring a fake sexual assault complaint after which the appellant said she would get him on "mortgage fraud". This was followed up with a message from the appellant in May 2021 that she would go after the Bhandaris. Ms. Kurien testified that she was upset by this. Ms. Kurien believes that the appellant has turned on her because the appellant has contacted a colleague and told her that Ms. Kurien is a criminal. Prior to her testimony at this hearing, Ms. Kurien testified that the appellant called her and hung up. Mr. Kurien has made a report to the police.

Respondent's Concerns About Appellant's Conduct

- [50] Angela Volpe, Manager of Registration, testified that the Act is to be administered in the public interest because it is consumer protection legislation for the trading of real estate in Ontario. She said that there are two primary concerns about the appellant's registration. Firstly, the appellant's past conduct shows reasonable grounds for the belief that she will not carry on business in accordance with the law and with integrity and honesty, as does her continuing conduct as set out in the NOP and the Further Particulars, and secondly, the failure to disclose her 2020 criminal charges within five days as required by the Act and its regulations, her continuing failure to report criminal charges arising in 2021, and further criminal charges in 2022 arising from her failure to comply with conditions of release on the prior charges. Since she has failed to disclose her criminal charges as required in 2020, 2021 and 2022, there are reasonable grounds for the belief that the appellant will not disclose criminal charges as required in the future.
- [51] When pressed in cross-examination about the "five complaints" the appellant said she filed with RECO about the Bhandaris, Ms. Volpe confirmed that the appellant had sent five emails which were not formal complaints, and which were appropriately responded to by the respondent. Ms. Volpe agreed that the respondent had not received any client complaints about the appellant prior to the matters in issue at this hearing.
- [52] Ms. Volpe testified that past conduct in the context of suitability for registration could include conduct related to trade in real estate, a registrant's personal life, criminal charges or convictions, financial issues or any other matters that could affect suitability for registration and that based on the appellant's past and continuing conduct, on both grounds set out in the NOP, it is her view there are reasonable grounds for the belief that she will not carry on business in accordance with the law and with integrity and honesty.

Appellant's Witnesses

- [53] The appellant's witnesses provided little relevant evidence to support her submissions. I give the evidence of Roupen Garabedian, Ravindra Singh, Karim Khan, Balraj Joshi, Amit Puri and Dr. Stephen Wolman little weight except as set out below.
- [54] Roupen Garabedian, a registrant, testified that in the summer of 2021 he had a website for a project that received an inquiry from a woman who works with Serge Younan. He testified that he called the woman back, gave her information

and referred her to the builder. Mr. Garabedian testified that this was a typical call for the most part. Mr. Garabedian had no evidence relevant to the matter before me.

- [55] Ravindra Singh, a registrant who works with the appellant, testified that he overheard Brian Persaud say to a group of approximately ten real estate agents at an industry event in the summer of 2020 that Mr. Persaud would never work at a certain real estate brokerage because it scrapes the bottom of the bucket and would even take the appellant Susan Toughlouian. I find this remark, even if it had been proven to be made by Mr. Persaud which I do not given that he denied it in his testimony and no corroboration of it was provided by any other eyewitness, to be, at its highest, unkind and insufficient to justify the appellant's conduct toward anyone, including Mr. Persaud.
- [56] Karim Khan is employed at Toronto Dominion ("TD") bank helping customers with personal banking and applying for credit cards. Mr. Khan testified that the appellant asked him to meet with Balraj Joshi, a former TD bank employee, about a mortgage pre-approval letter and to secretly record their conversation for her. Mr. Khan testified that he did so because he the appellant is his friend. Mr. Khan testified that he did not contact Mr. Joshi ahead of time. He went to Mr. Joshi's printing business, told Mr. Joshi his name, but did not say that he works for TD or that he was recording their conversation. Mr. Khan testified that the recording contained certain information but, when the recording was played during the hearing, the referenced information was not on the recording. The record was muffled and ended partway through according to Mr. Khan. Mr. Khan testified that he was recording his conversation with Mr. Joshi not for TD but as the appellant's friend. The appellant submitted that this recording is relevant to her theory that others in the real estate business are committing what she calls "mortgage fraud" and therefore this justifies her conduct toward them. Mr. Khan's testimony and the recording have little relevance to the issue before me except to demonstrate that the appellant is willing to involve a member of the public in her campaign of harassment and abuse of others.
- [57] Balraj Joshi worked at TD until late 2013 and issued mortgage pre-approval letters in the course of his employment at TD. Mr. Joshi testified that pre-approval letters have no value except to indicate that a person is a good candidate for a mortgage because when the time comes for a mortgage, a person has to apply and qualify for a mortgage in order to be approved. Mr. Joshi testified that he has informed the appellant that he does not remember the mortgage pre-approval letter she is concerned about, and he does not recognize the signature on it as his. Following this, the appellant telephoned him, left some

ten messages, went to his home and took photos of his home when his wife and children were at home. Mr. Joshi testified that his main concern is about what the appellant is trying to drag him into and that he feels she is harassing him.

- [58] Amit Puri, a mortgage broker, testified that a mortgage pre-approval letter is not a confirmed indication that a person will qualify for a mortgage. Mr. Puri testified that the appellant called him on the telephone to discuss the mortgage pre-approval letter she is concerned about, but he didn't feel comfortable talking to her because he heard sounds that indicated she may be recording their conversation. The appellant denied she was recording the conversation when he asked her about it.
- [59] Dr. Wolman, the appellant's gastroenterologist, has treated the appellant for ulcerative colitis. Dr. Wolman testified that he has no knowledge of the appellant's business life, no knowledge about whether the appellant's pregnancies were "high risk" and could not attest to the appellant's mental health. Dr. Wolman said he noted that in his view the appellant was doing extremely well when he saw her on December 20, 2013, post-pregnancy.

Appellant's Testimony Regarding the Messages Not Credible

- [60] During her testimony, the appellant denied that she sent the messages. The appellant said they were sent by others, that her accounts were hacked and also that she had an assistant who had access to her account. The appellant brought forward no corroborating evidence of hacking, no evidence that she has an assistant, and no testimony from any assistant. No witness other than the appellant said this.
- [61] I find as a fact, on a balance of probabilities, that the appellant sent or caused to be sent all the messages because the appellant's testimony on this point is not credible. Not only does her denial conflict with the fact that her name and/or her phone and/or social media contact information number appears on many of the messages, her denial conflicts with that of the Bhandaris, Paul Mackrell and several other witnesses who testified that they received the messages from the appellant. Most importantly, her denial conflicts with her own admissions under oath in May 2021 during the suspension order hearing. At the suspension order hearing, the appellant testified that after she didn't have success with Mr. Sage, she started emailing Roy Bhandari "hundreds" of emails which she agreed are "vile", and although Mr. Bhandari never responded to any of the text and email messages, she kept sending them and then also started to get other people involved because "...they were all basically more or less ignoring me".

No Justification for the Appellant's Abusive and Harassing Conduct

- [62] The appellant states that since 2014 the Bhandaris have harassed her, caused her significant financial and mental suffering, "slandered" her to friends and colleagues, sabotaged her business, taken steps to discredit her and ruin her reputation, including using RECO to help them to do so, and ignored her request to cease doing so. The appellant brought forward no persuasive evidence to establish any of these statements and I find that the respondent's evidence establishes otherwise.
- [63] The Bhandaris testified that after their business relationship with the appellant ended, they focussed on their business and did not "slander" her to friends and colleagues, sabotage her business or badmouth her. The evidence of the Bhandaris was consistent with the testimony of Brian Persaud and others who testified they did not hear the Bhandaris badmouth the appellant. No persuasive evidence was put forward by the appellant to the contrary.
- [64] The appellant's photos of the Bhandaris and other registrants having meals, trips, golf or other gatherings together does not establish that any of these activities were other than typical business or social gatherings of colleagues. As the appellant herself admitted at the hearing, these registrants are free to associate with whomever they wish. The fact that she was not invited to these gatherings does not excuse the appellant's abusive and harassing behaviour toward the Bhandaris and others.
- [65] Although the appellant testified that she was asked to leave a luncheon meeting at a Toronto restaurant, I find this evidence not to be credible as it is not corroborated by the testimony of any other witness. To the contrary, several attendees at the same luncheon denied that she had been asked to leave.
- [66] Although the appellant submits that RECO dismissed her concerns without any proper investigation when she reached out to RECO on five occasions starting in 2019, the evidence simply does not support this. RECO acknowledged the appellant's five emails and advised on November 5, 2019 that "*As noted in the previous emails sent to you, RECO address concerns regarding conduct of registrants during a trade in real estate. In your email, you outline concerns that fall outside of a trade in real estate and are regarding civil matters that RECO does not have jurisdiction to assist you with. Should you receive a court ruling or judgement that indicates conduct concerns regarding the registrant identified, you may send the same to RECO to review the matter*". I find that RECO's jurisdiction is not derived from its correspondence to the appellant but from the Act. The fact that RECO has yet to take any regulatory action against any of the

persons about whom the appellant has complained to RECO does not cause RECO to lose jurisdiction in regulating the appellant. RECO's correspondence is clear and consistent with its legislative mandate. On that point and turning to the appellant, I find that RECO acted in accordance with its legislative mandate in issuing the NOP and the suspension order. The appellant has exercised her right to appeal both the NOP and the suspension order to the Tribunal which has now assumed jurisdiction for the determination of this appeal. Contrary to the appellant's suggestion, there is no lack of "RECO's jurisdiction".

- [67] The appellant denies that she abused and harassed the Bhandaris, Larry Sage of Sage Real Estate Ltd., Brian Persaud, or any other individuals involved in the real estate industry or that she continues to do so, and denies she ever offered payment to individuals in return for testifying against the Bhandaris or threatened to make sexual assault allegations against Roy Bhandari. These denials are not supported by the evidence which establishes the contrary as outlined above.
- [68] The appellant's argument that there are no allegations that other real estate agents or clients are at risk and there is no risk to the general public or other realtor in allowing the appellant to continue as a realtor is also not persuasive. To the contrary, I find that the escalating pattern of abuse and harassment toward other registrants and other individuals, her breach of release conditions, her refusal to stop this behaviour even after police involvement, and her ongoing attempts to justify and defend her past conduct affords reasonable grounds for belief that she will not carry on business in accordance with law and with integrity and honesty. The appellant seeks to continue to work in this regulated industry in which there is a public interest in having registrants act with honesty, integrity and in accordance with law. One of the purposes of the Act is protection and safety of the public. A real estate salesperson meets with clients and others sometimes in their homes, often alone and often outside of standard business hours, and is in a position of trust. The appellant's messages and conduct indicate she has vile and sometimes violent thoughts and is willing to express them and is apparently not above seeking to influence testimony. Members of the public must be able to be safe, and feel safe, and to have trust and confidence in their real estate salesperson. The respondent has proved on a balance of probabilities that the appellant's conduct affords reasonable grounds for the belief that she will not carry on business in accordance with the law and with integrity and honesty.
- [69] The appellant also submitted that other real estate agents have exhibited conduct far worse than she is alleged to have engaged in and still are allowed to retain their licences. Even if this is so, those other cases are not before me, each

case must be decided on its own merits, and the Act does not prescribe a comparative test but rather a test of whether 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 honest as set out in s. 10(1)(a)(ii) of the Act, which here the respondent has established.

- [70] I note that the appellant made allegations at the hearing and in her messages of what she called "mortgage fraud" about other registrants in an attempt to justify her behaviour toward them. The document in evidence that she relied on in support of this was not a mortgage or even a mortgage commitment, but was a mortgage pre-approval letter that Mr. Joshi and Mr. Puri testified is a conditional, preliminary indication that a member of the buying public might qualify for a mortgage, subject to further financial investigation. Nothing in this document or the testimony concerning it from any witness established that the appellant's behaviour toward other registrants was justified.

Breach of Release Conditions

- [71] The evidence of the Bhandaris, Michael Klassen, Serge Younan and the documents filed by the respondent establishes that the appellant breached release conditions in respect of the criminal charges and I so find. The appellant did not bring forward any evidence to the contrary.

Further Actions to Attempt to Harm the Bhandaris

- [72] The evidence of Mr. Klassen and Mr. Vu establishes that the appellant has offered these registrants significant sums of money in order to obtain or influence their testimony in other proceedings against the Bhandaris and I so find. Although the appellant has submitted that all she wanted them to do was "tell the truth", it is not necessary to use money to secure truthful testimony in a proceeding, except for possibly the cost of a summons.

Failure to Disclose Criminal Charges

- [73] The evidence of Mr. Mackrell and Ms. Volpe establishes that the appellant did not disclose the criminal charges in 2020 within five days as required and I so find. The appellant reported the 2020 charges only after being requested to do so by Mr. Mackrell. Further, the appellant did not report the subsequent 2021 charges within 5 days as required even though this requirement had been brought to her attention in 2020.

Conclusion, re reasonable grounds for belief that the appellant will not carry on business in accordance with the law and with honesty and integrity

- [74] I find that the appellant's past conduct does afford reasonable grounds for the belief that she will not carry on business in accordance with the law and with integrity and honesty. I have considered the whole of the appellant's conduct in finding that the respondent has proven its case. There is no evidence before me that the appellant has stopped her abusive and harassing conduct toward others between the NOP and the hearing. The weight of the evidence is the opposite.
- [75] Although the appellant submits that she has been honest and forthright with RECO's investigator about the charges against her, never concealed them but simply was unaware that she was required to inform RECO of the charges, I find this explanation unpersuasive in the circumstances of this case. Ms. Volpe testified that the duty to disclose criminal charges to RECO is common knowledge and is on all applications. I accept Ms. Volpe's evidence on this point. As an experienced registrant, the appellant knew or should have known of this obligation to disclose yet failed to comply. Contrary to the appellant's submission that her failure to do so, even taken together with the other allegations in the NOP, does not warrant the extreme measure of suspension or revocation of her licence, I have considered this submission and the appellant's evidence on this point and disagree. In the context of the evidence heard at this hearing, I find the failure to disclose her criminal charges to be another instance of the appellant providing reasonable grounds for belief that she will not carry on business in accordance with the law and with integrity and honesty.
- [76] The appellant's argument that revocation of her licence would create financial hardship for her family is not a factor that is relevant to the legal test under s. 10(1)(a)(ii) of the Act.
- [77] Again, one of the purposes of the Act is protection and safety of the public. A real estate salesperson meets with clients and others sometimes in their homes, often alone and often outside of standard business hours, and is in a position of trust. The appellant's messages and conduct indicate she has vile and sometimes violent thoughts and is willing to express them and is apparently not above seeking to influence testimony. Members of the public must be able to be safe, and feel safe, and to have trust and confidence in their real estate salesperson. The respondent has proved that the appellant's conduct affords reasonable grounds for the belief that she will not carry on business in accordance with the law and with integrity and honesty.

b. If so, is revocation of the appellant's registration as a real estate salesperson appropriate?

- [78] There can be situations in which the imposition of conditions can adequately protect the public interest even if the respondent has proven one or more grounds of revocation. However, here I do not find that conditions are an appropriate alternative to revocation.
- [79] Neither party made any significant submissions on any conditions that might be attached to the licence. Nevertheless, I have considered whether allowing the appellant to retain her registration with conditions might be a reasonable outcome of this hearing given the evidence, submissions and the law and I conclude that it is not.
- [80] Nothing in the evidence leads me to believe that any conditions would be appropriate or effective because the appellant has made clear her intention to continue to "defend" herself whenever and by whatever means she feels appropriate. To the contrary, the appellant has written "The police cannot stop me." The appellant has breached conditions of her release in the criminal justice system. The appellant has attempted to influence witness testimony by offering money to another registrant. The appellant has sent and caused to be sent communications expressing a wish of harm to another registrant and his family including a four year child and appearing to threaten physical violence to another registrant. Even at the end of this hearing, after having heard from numerous witnesses how her behaviour has adversely affected them, even after criminal charges have been laid, the appellant denies any obligation to stop this behaviour. Instead, she prefers to follow her own view of how and when she is entitled to "defend" herself when, from her own viewpoint, "defence" is warranted.
- [81] Here the impediment to the appellant's continued registration is the appellant's refusal to respect the law, and her perceived entitlement to engage in abusive and harassing behaviour toward others. Given this, I am not persuaded that the imposition of conditions on the appellant's registration would be likely to alter the belief that she will not carry on business in accordance with law and with integrity and honesty.
- [82] The appellant submits that she carries on business in accordance with the law and with integrity and honesty, has had an exemplary 16 year career as a real estate until "this dispute with the Bhandaris", and has never had a client complaint. The respondent has not produced any evidence that the appellant has had a client complaint or has had any other disciplinary action taken against her by the respondent prior to the issue with the Bhandaris and others raised in this

hearing. However, this is not determinative of the issues before me. I have already found that the respondent's evidence establishes that the appellant's past conduct affords reasonable grounds for the belief that she will not carry on business in accordance with the law and with integrity and honesty.

[83] Despite this, I have again considered the appellant's submissions above in the context of whether revocation of her licence is appropriate. I find that it is for the following reasons. The volume of the appellant's messages is large. The content is vile, offensive and includes wishes of death, disease and suffering of various persons including a young child that the appellant wishes is bullied at school so much she kills herself. The persons she enlisted in her abusive campaign against the Bhandaris and others includes members of the public as well as other registrants. The appellant has refused to stop her abusive campaign when asked by other registrants such as, for example, Mr. Persaud, by the police, in response to the NOP and has shown no respect for the respondent's responsibilities to protect the public in this regulated industry.

[84] Despite police involvement regarding her conduct, the appellant has made it clear that she is "just getting started" and the "police cannot stop" her. The appellant failed to disclose a criminal charge voluntarily to the respondent, as required, and only did so when confronted with this information by the respondent and failed to disclose subsequent charges. Taken as a whole, the evidence is clear that revocation of the appellant's licence is the appropriate remedy at this time and in the particular circumstances of this case.

COSTS CLAIMED BY BOTH PARTIES

[85] The respondent requested costs based on the appellant's conduct in this proceeding.

[86] The appellant disputed that her behaviour during the course of this proceeding warrants an award of costs and in return, requested costs from the respondent.

[87] I am not satisfied that either the appellant's or the respondent's conduct in this proceeding has risen to the level of acting unreasonably, frivolously, vexatiously or in bad faith as required by Rule 19 of the *Safety, Licencing Appeals & Standards Tribunal Ontario Common Rules of Practice & Procedure, Version 1 (October 2, 2017)*.

[88] No costs are awarded to the respondent.

[89] No costs are awarded to the appellant.

ORDER

[90] For the reasons set out above and pursuant to section 14(5) of the Act, I order the respondent to carry out the NOP to revoke the registration of Susan Toughlouian.

LICENCE APPEAL TRIBUNAL



Avril A. Farlam, Vice-Chair

Released: January 23, 2023