



Citation: Embleton and 2571595 Ontario Inc. v. Registrar, *Trust in Real Estate Services Act (2002)*, 2025 ONLAT 16516/TRESA

Licence Appeal Tribunal File Number: 16516/TRESA

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

Between:

Wendy Embleton and 2571595 Ontario Inc. o/a Exit Realty by Design

Appellants

and

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

Respondent

DECISION

ADJUDICATORS:

Rupinder Hans
Michael Beauchesne

APPEARANCES:

For the Appellants:

No one attended

For the Respondent:

Maya Sabharwal, Counsel
Angela Volpe, Representative

Heard by videoconference:

April 15, 2025

OVERVIEW

- [1] Wendy Embleton (“Embleton”) and 2571595 Ontario Inc. o/a Exit Realty by Design (“EXIT”) (collectively the “appellants”) appealed the Notice of Proposal (“NOP”) issued by the Registrar (the “respondent”) on November 8, 2024, to suspend her registration as a broker, and EXIT’s registration as a brokerage, under the *Trust in Real Estate Services Act, 2002*, 2002, S.O. 2002, c. 30, Sched. C and Regulations thereto (the “Act”).
- [2] The NOP states that Embleton’s registration as a broker should be suspended per section 10(1)(a)(ii) of the *Act* because her 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, and under section 10(1)(e) of the *Act* because she failed to take reasonable steps to address non-compliant actions per section 30(1) of Regulation 567/05.
- [3] The NOP further states that EXIT’s registration as a brokerage should be suspended because Embleton’s past conduct as an officer and director affords reasonable grounds for belief that EXIT’s business will not be carried on in accordance with the law and with integrity and honesty pursuant to section 10(1)(b)(iii) of the *Act*, and under section 10(1)(e) of the *Act* given its failure to prepare and provide trust account reconciliation statements from January 2022 through May 2023, along with the full real estate trust account bank statements.

SUBSTANTIVE ISSUES

- [4] The substantive issues to be decided at this hearing are:
 - i. Whether the NOP should be confirmed or set aside against one or both of the appellants, or whether the respondent should be directed to take such action as the Tribunal considers appropriate.

RESULT

- [5] Having considered all the evidence, we find that the respondent has proven the allegations made against the appellants with regards to the past conduct of Embleton affording reasonable grounds for the belief that the appellants will not carry on business in accordance with the law and with honesty and integrity pursuant to section 10(1)(a)(ii) and 10(1)(b)(iii) of the *Act*.
- [6] We further find that the appellants are not entitled to registration pursuant to section 10(1)(e) of the *Act* given Embleton’s failure to take reasonable steps to address

non-compliance, and EXIT's failure to prepare and provide trust account reconciliation statements from January 2022 through May 2023, along with the full real estate trust account bank statements.

- [7] We direct the respondent to carry out the NOP to suspend the registrations of the appellants.

PROCEDURAL ISSUES

The appellants failed to appear at the hearing

- [8] The appellants failed to appear at the hearing on April 15, 2025, and we ordered the hearing to proceed in their absence.
- [9] Pursuant to the *Licence Appeal Tribunal Rules, 2023* (the "*LAT Rules*")—and specifically *LAT Rule 3.7.1*—where a party who has been given notice of a hearing does not attend the hearing within 30 minutes of the scheduled start time, the Tribunal may proceed with the hearing in the absence of that party.
- [10] On February 26, 2025, the Tribunal sent the parties a Notice of Videoconference Hearing that stated the videoconference hearing was scheduled for April 15 and 16, 2025, commencing at 9:30 a.m. This date was agreed to by the parties as indicated in the case conference report and order ("CCRO") for this matter, released on February 20, 2025.
- [11] On April 14, 2025, the Tribunal sent a reminder notice of the videoconference hearing to the parties. Both the initial and reminder notices were sent to the email address provided by the appellants in the Notice of Appeal ("NOA") dated November 26, 2024. The Tribunal received no indication that the notices were not received at that email address. We are therefore satisfied that the appellants were given notice of the hearing in accordance with *LAT Rule 3.7.1*.
- [12] The hearing commenced at 9:30 a.m. on April 15, 2025. The appellants did not attend the hearing at that time. The Tribunal waited the requisite 30 minutes for the appellants to appear, during which time the case management officer at the Tribunal attempted to contact the appellants by email and Ms. Embleton by phone without success. After 30 minutes had elapsed, the Tribunal ordered the hearing to proceed. At no point during the entirety of the hearing did the appellants appear.

The respondent seeks to enter new evidence

- [13] We declined to admit new documentary evidence that the respondent sought to enter as an exhibit at the hearing which was filed with the Tribunal after the hearing had commenced. For context, the documentary evidence consisted of emails that were sent to the appellants by the respondent between March 10, 2025, and March 26, 2025. The emails concerned the process for an inspection that was scheduled to occur at EXIT's location on April 8, 2025.
- [14] The respondent submitted that this evidence was intended to show that multiple attempts to schedule the inspection went unanswered. The respondent explained that owing to the appellants' unresponsiveness to its inspection notice, it had waited to file this evidence because it was not known whether the appellants would comply until the day of the inspection on April 8, 2025.
- [15] We find this documentary evidence is untimely and that admitting it into the proceeding would breach the procedural fairness owed to the parties by the Tribunal. The CCRO orders the parties to exchange copies of all the documents they intend to rely on, and file them with the Tribunal, no later than 10 days before the hearing. In addition, at the outset of the hearing, the respondent confirmed that the Tribunal had all the evidence it was relying on. However, the respondent then attempted to introduce this new documentary evidence later in the hearing without: (1) confirming it had been served upon the appellants in accordance with the time period set forth in the CCRO and *LAT Rule 9.5.2(c)*; and (2) showing it was filed with the Tribunal at any point prior to 11:30 a.m. on the day of the hearing. While we accept that the relevance of this evidence was tied to the inspection date as argued by the respondent, we note this does not mitigate its untimely disclosure because almost a week had elapsed since then to the hearing date, during which time the evidence could have been served and filed.
- [16] Notwithstanding the appellants' failure to appear at the hearing, the Tribunal owes them a duty of procedural fairness. We find the respondent may not rely on the new documentary evidence it sought to introduce because it would be procedurally unfair to the appellants when the circumstances of its disclosure are considered.

ANALYSIS

The respondent has established that Embleton's past conduct affords reasonable grounds for belief that the appellants will not carry on business in accordance with the law and with integrity and honesty pursuant to sections 10(1)(a)(ii) and 10(1)(b)(iii) of

the Act, and that the appellants do not meet the requirements for registration under section 10(1)(e).

- [17] We find Embleton's past conduct provides reasonable grounds to believe that the appellants will not carry on business in accordance with the law and with integrity and honesty pursuant to sections 10(1)(a)(ii) and 10(1)(b)(iii) of the *Act*. We further find that the appellants are not entitled to registration pursuant to section 10(1)(e) of the *Act* given Embleton's failure to take reasonable steps to address non-compliance, and EXIT's failure to prepare and provide trust account reconciliation statements from January 2022 through May 2023, along with the full real estate trust account bank statements.
- [18] Section 10(1) of the *Act* provides that an applicant is entitled to registration or renewal if in the Registrar's opinion, certain requirements are met. Section 10(1)(a)(ii) applies where the applicant is not a corporation and specifies that the Registrar must be of the opinion that the past and present conduct of the applicant and of all interested persons in respect of the applicant affords reasonable grounds for belief that the applicant will carry on business in accordance with law and with integrity and honesty.
- [19] Section 10(1)(b)(iii) applies where the applicant is a corporation, and specifies that the Registrar must be of the opinion that the past and present conduct of its officers and directors, of all interested persons in respect of its officers and directors, and of all interested persons in respect of the corporation, affords reasonable grounds for belief that its business will be carried on in accordance with the law and with integrity and honesty.
- [20] Section 10(1)(e) provides that an applicant is entitled to registration or renewal of registration if it meets any requirements, including any requirements to obtain education, as may be specified under the Regulations. Section 13 of Regulation 579/05 outlines the monthly reconciliation requirements for trust accounts that correspond to section 27 of the *Act*.
- [21] Section 13(1) provides that the Registrar 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 of the *Act*. Notice must be given under section 14 of the *Act*. The notice may be appealed to the Tribunal within 15 days. In this case, the respondent's written notice to the appellants is dated November 8, 2024, and the appellants' NOA indicates the NOP was issued three days later on November 11, 2024. The appellants' NOA is dated November 25, 2024.

- [22] If the decision of the Registrar is appealed, the Tribunal shall hold a hearing and under section 14(5) of the *Act* may by order direct the Registrar to carry out the NOP, or substitute its opinion for that of the Registrar, and the Tribunal may attach conditions to its order or to a registration.
- [23] As set out by the Ontario Court of Appeal in *Registrar, Alcohol and Gaming Commission of Ontario v. 751809 Ontario Inc. operating as Famous Flesh Gordon's*, 2013 ONCA 157, the determination required is whether the facts afford reasonable grounds for belief that the appellants will not operate in accordance with the law and with integrity and honesty.
- [24] The Supreme Court of Canada said in *Mugesera v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at paragraph 114, that 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. While this standard is more than mere suspicion, it is less than proof on a balance of probabilities. In other words, the respondent does not have to establish that the conduct of the appellants makes it more likely than not that the appellants will not carry on business as required. The respondent must only establish that there are reasonable grounds for belief that the appellants will not carry on business in accordance with the *Act* and with honesty and integrity.
- [25] There must also be a connection between the past conduct at issue and the appellants' ability to conduct business serving the interests of consumers [see, for e.g., *C.S. v. Registrar, Real Estate and Business Brokers Act*, 2022, 2019 ONSC 1652 (Div. Ct.) at paragraph 32.]
- [26] We find that the evidence presented establishes that Embleton is a director of EXIT. In the Notice of Brokerage/Sole Proprietor Change form, signed by Embleton on April 13, 2022, she lists her title as director of EXIT. Similarly, in the Corporate Resolution of the board of directors of EXIT designating her as the broker of record, she signed and her title is listed as director. We further note that she is the person that was communicating with the Real Estate Council of Ontario ("RECO") with regards to producing the records requested. She is also the person who filed the NOA on behalf of herself and EXIT. She also attended the case conference before the Tribunal and represented herself and EXIT.

Submissions of the parties

- [27] The respondent submits that the appellants have consistently failed to act in accordance with the law by withholding financial documents despite multiple

requests for this information made between June 2022 to July 2023. More specifically, the appellants failed to provide a copy of the original real estate trust account reconciliation, including a list of pending deals that constitute the trust liability each month from January 2022 through May 2023, along with the full real estate trust account bank statement, and a copy of the real estate trust ledger for January 2022 through June 12, 2023. The respondent also submits that the appellants failed to act with integrity by not responding to several communication attempts by RECO inspectors, and further, that they ignored compliance deadlines provided by RECO and failed to take corrective action.

- [28] Although Embleton did not appear nor testify, we note (for her benefit) that in the NOA filed with the Tribunal, Embleton argues that she sent all requested information via email to RECO inspector Maureen McDaniels in April 2022. Embleton further submits she made a second submission of documents to RECO via Canada Post in response to a July 2023 request for information.

The nature of Embleton's conduct

- [29] In our view, the facts of this case are compelling and credible, and weigh against the appellants' entitlement to registration under the *Act*. We are satisfied that Embleton was the broker of record for EXIT from April 2022 onwards given the Notice of Brokerage/Sole Proprietor Change form signed by her. Section 30(1)(a) and (c) of Regulation 567/05 requires the broker of record to actively participate in the management of the brokerage and take reasonable steps to deal with any failure to comply with the *Act* or the Regulations. We accept the respondent's position that "actively participating" includes maintaining records of trust money transactions and the monthly reconciliation of the brokerage trust account as stipulated at sections 12 and 13 of Regulation 579/05.
- [30] We find the respondent's evidence shows the first request to obtain documents from Embleton was on June 12, 2023, when Ms. Linda Jung, RECO compliance officer, performed a physical inspection of the EXIT location. Ms. Jung's report of that inspection dated June 28, 2023, states that Embleton was unable to produce a copy of the original real estate trust reconciliation for the months of January 2022 through May 2023, together with a copy of the entire real estate trust account bank statement. According to Ms. Jung, Embleton also failed to produce the real estate ledger for January 2022 through June 12, 2023.
- [31] From this point onwards, we find Embleton repeatedly failed to respond to ongoing requests for this missing information and correct non-compliance. In her report, Ms. Jung indicates that multiple post-inspection attempts to contact Embleton by phone

went unanswered. Ms. Jung gave Embleton until June 30, 2023, to produce this information. Embleton did not respond, and the matter was escalated to Ms. Michelle Plucas, RECO's manager of audit and inspection. Ms. Plucas sent Embleton an email on July 18, 2023, that requested the outstanding documents no later than July 26, 2023. We give little, if any, weight to Embleton's claim that she responded to this request because it is an unsupported allegation set forth in the NOA, and Embleton did not attend the hearing to provide testimony in this regard or particulars on her compliance efforts.

- [32] In fact, Embleton's unresponsiveness is underscored by yet another written request for information—this one from Mr. Shahin Rehmtulla, RECO registration officer, on August 22, 2023. Mr. Rehmtulla asked Embleton to provide the required response to Ms. Jung and Ms. Plucas no later than August 29, 2023. This request immediately follows an inspection deficiency notice completed by Ms. Jung a day earlier on August 21, 2023, which reiterates the required information for compliance that remained outstanding from the June 2023 inspection and asks that Embleton acknowledge receipt of the notice by signing and returning a copy to Ms. Jung via email. We are satisfied that these requests too went unanswered by Embleton and remain unresolved to date.
- [33] During the hearing, Ms. Plucas and Ms. Angela Volpe, registration director at RECO, offered persuasive testimony. Ms. Plucas corroborated the unsuccessful attempts made by RECO to obtain the missing information from Embleton. Ms. Volpe testified that the missing records were a serious compliance issue, and we agree this weighs heavily on Embleton's registration entitlement. By ignoring the respondent's requests, Embleton engaged in conduct that effectively frustrated the respondent's ability to protect consumers because it was unable to assess her regulatory compliance with broker-of record responsibilities, records of trust money transactions, and monthly reconciliations of trust account activity. Ms. Volpe went on to testify that RECO was unable to determine if EXIT was financially sound because the missing documentation made it impossible to determine if money held in trust on behalf of consumers was being dispersed in accordance with their agreements of purchase and sale.
- [34] Taken together, we find the testimony of Ms. Plucas and Ms. Volpe and documentary evidence in this case supports the respondent's position. The appellants ignored multiple and repeated requests for information and documentation that the *Act* requires them to maintain, and that the respondent needs to ensure regulatory compliance. We accept that this conduct is inconsistent with the expectations of a broker of record as set out at section 30(1)(a) of Regulation 567/05. Further, we agree that Embleton's failure to produce the records

she is required to maintain under sections 12 and 13 of Regulation 579/05—combined with her subsequent and repeated failure to take reasonable steps to resolve these compliance issues per section 30(1)(c) of Regulation 567/05—is at odds with conduct characterized by honesty, integrity, and accordance with law. Given that Embleton’s compliance issues relate directly to a trust account associated with real estate trades, we find a clear connection exists between her conduct and her ability to transact business as a broker serving the interests of consumers.

- [35] We further find that the respondent has met its burden in establishing that the appellants’ failure to produce the trust account records requested by the respondent demonstrates that EXIT cannot meet the requirements set out for trust account reconciliation at section 13 of Regulation 579/05. In our view, it is clear that the appellants have not maintained open communication with RECO and have disregarded repeated outreach and governance attempts that undermines confidence in EXIT’s business practices.
- [36] We are therefore satisfied the respondent has met its burden to show the appellants’ past conduct affords reasonable grounds to believe the appellants will not carry on business in accordance with the law and with integrity and honesty pursuant to sections 10(1)(a)(ii) and 10(1)(b)(iii) of the *Act*. To the extent that Ms. Embleton is a director of EXIT, we are satisfied that her conduct in that role has the commensurate impact on EXIT’s suitability to be licenced within the meaning of the *Act*.
- [37] We are further satisfied that the respondent has meet its burden with regards to section 10(1)(e) of the *Act* that the appellants are not entitled to registration given the appellants’ failure to take reasonable steps to address actions that are not in compliance with the *Act*, and EXIT’s failure to prepare and provide the trust account reconciliation statements from January 2022 through May 2023, along with the full real estate trust account bank statements.

OUTCOME

- [38] The respondent sought suspension of Embleton’s and EXIT’s respective registrations under the *Act*. We are not bound to accept that automatically. As no one appeared for either appellant, we heard no submissions to suggest that an outcome other than suspension was appropriate under the circumstances. We have considered the nature of the appellants’ conduct that was proven by the respondent

as they relate to the appellants' governability and find that suspension of their respective registrations is appropriate.

ORDER

- [39] Pursuant to s. 14(5) of the *Act*, the Tribunal directs the respondent to carry out its NOP to suspend the appellants' registrations.

LICENCE APPEAL TRIBUNAL



Rupinder Hans, Member



Michael Beauchesne, Member

Released: May 6, 2025