



Citation: Andalibi v. Registrar, *Trust in Real Estate Services Act, 2002*, 2024 ONLAT TRESA 15735

File Number: 15735/TRESA

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

Between:

Farzad Andalibi also known as Alan Andalibi

Appellant

and

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

Respondent

DECISION AND ORDER

Adjudicator: Avril A. Farlam, Vice-Chair

Appearances:

For the Appellant: Mostafa Hosseini, Counsel

For the Respondent: Shane Smith, Counsel

Heard by Videoconference:
September 3, 4, 5, and 6, 2024

REASONS FOR DECISION AND ORDER

BACKGROUND

- [1] Farzad Andalibi, also known as Alan Andalibi, (the “appellant”) appealed from a Notice of Proposal to Revoke Registration (“NOP”) to revoke his registration as a Broker issued by the Registrar (“Registrar”) under the *Trust in Real Estate Services Act, 2002*, S.O. 2002, Chapter 30, Schedule C (the “Act”) dated February 15, 2024.
- [2] The NOP states that the appellant is not entitled to registration as a broker under s. 10(1)(a)(ii) of the Act because the appellant’s past conduct affords reasonable grounds for the belief that he will not carry on business in accordance with the law and with integrity and honesty, and under s. 10(1)(g) of the Act because it would be contrary to public interest.

PRELIMINARY MATTERS

- [3] At the hearing, appellant’s counsel confirmed that it is appropriate to refer to the appellant’s name as “Farzad Andalibi, also known as Alan Andalibi” in this decision.
- [4] At the beginning of the hearing, the Registrar corrected paragraph 14 of the NOP to reflect that it was Saeid Rostamibookani and Zahra Abedi (the “Estate Garden purchasers”), not the appellant, that offered money to Cila Alam to not report the matter.

ISSUES

- [5] Notwithstanding the Tribunal’s Case Conference Report and Order dated May 17, 2024, both parties confirmed at the start of the hearing that Mr. Andalibi is the appellant in this appeal, and that the issues before me are correctly framed as follows:
- (a) Is the appellant disentitled to registration as a broker under the Act pursuant to s. 10(1)(a)(ii) because the appellant’s past conduct affords reasonable grounds for the belief that he will not carry on business in accordance with law and with integrity and honesty?
 - (b) Is the appellant’s continued registration contrary to public interest pursuant to s. 10(1)(g) of the Act?

RESULT

[6] For the reasons set out below, I direct the Registrar to carry out the NOP.

LAW

- [7] Section 10(1)(a) of the Act provides that an applicant is entitled to registration, if in the Registrar's opinion, certain requirements are met. Section 10(1)(a)(ii) provides that, for an applicant who is not a corporation, 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.
- [8] Section 10(g) of the Act provides that the Registrar must be of the opinion that granting the registration or the renewal, as the case may be, would not be contrary to the public interest.
- [9] 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 s. 10. Notice must be given under s. 14 of the Act. The Notice may be appealed to the Tribunal within 15 days.
- [10] If the decision of the Registrar is appealed, the Tribunal shall hold a hearing and under s. 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.
- [11] 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 appellant will not operate in accordance with the law and with integrity and honesty.
- [12] 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 Registrar does not have to establish that the conduct of the appellant makes it more likely than not that the appellant will not carry on business as required. The Registrar must only

establish that there are reasonable grounds for belief that the appellant will not carry on business in accordance with the Act and with honesty and integrity.

[13] There must also be a nexus between the past conduct in issue and the appellant's ability to conduct business as a realtor serving the interests of consumers. See for example, *CS v. Registrar, Real Estate and Business Brokers Act, 2002*, 2019 ONSC 1652 (Div.Ct.) at paragraph 32.

Facts

[14] During the hearing the parties largely agreed that the following facts are true, and I make them as findings of fact.

- a. Zahra Abedi ("Zahra") purchased 10 Alice Avenue, Georgina ("10 Alice") in 2017.
- b. Zahra listed 10 Alice for sale in the spring of 2021 with a real estate brokerage which employed Cila Alam as a real estate salesperson.
- c. In April, 2021, using the appellant as their real estate salesperson on the purchase, the Estate Garden purchasers agreed to purchase 140 Estate Garden Drive, Richmond Hill ("Estate Garden") for a purchase price of \$1,350,000.00, subject to a financing condition.
- d. The completion date of the Estate Garden purchase was June 22, 2021.
- e. By June 1, 2021, 10 Alice had not sold.
- f. The Estate Garden purchasers were desperate to sell 10 Alice in order to finance the Estate Garden purchase and told the appellant so.
- g. Zahra's husband, Saeid Rostamibookani ("Saeid"), told the appellant that his mother wished to buy 10 Alice.
- h. The appellant wrote all typewritten parts of a seven page APS (the "Fake APS") on Ontario Real Estate Association Form 100, Revised 2021 ("OREA form") specifically:
 - (i) Date of June 1, 2021;
 - (ii) Buyer is Rabeh Nezamisavojbolaghi ("Rabeh");
 - (iii) Seller is Zahra Abedi;

- (iv) Property address is 10 Alice Ave, Georgina, Ontario, L4P 3C8;
- (v) Property frontage of 50 feet and depth of 150 feet;
- (vi) Legal description showing the Lot and Plan number;
- (vii) The typewritten price of \$695,000.00;
- (viii) The Buyer's deposit of \$30,000.00 is due "upon acceptance" and payable to Homelife/Bayview Realty Inc. to be held in trust;
- (ix) Irrevocable date is 11:59 p.m. June 1, 2021;
- (x) Completion date is September 20, 2021;
- (xi) Chattels included are fridge, washer & dryer, microwave, stove, AC, All Lights and Window Coverings, Hot Water Heater (rental), and a Large Garden Shed;
- (xii) HST is included in the purchase price;
- (xiii) Listing Brokerage is Homelife/Bayview Realty Inc., Brokerage, telephone number 905-889-2000, Cila Alam (Salesperson/Broker/Broker of Record Name);
- (xiv) Co-op/Buyer Brokerage is Re/Max West Realty Inc., Brokerage, telephone number 905-731-3948, Alan Andalibi (Salesperson/Broker/Broker of Record);
- (xv) Page two has the email for delivery of documents to the buyer as alan.andalibi@gmail.com.
- (xvi) Schedule A to the Fake APS comprised of two typewritten pages, which show Rabeh as Buyer, Zahra as Seller of 10 Alice, and a date of June 1, 2021;
- (xvii) Page one of Schedule A contains Buyer's agreement to payment terms for completion described, Seller's acknowledgement that there may be a penalty to discharge existing Charge/Mortgage, Buyer's condition about home inspection, Buyer's condition on financing, Seller's representation and warranty about the chattels and fixtures, Seller's agreement to provide an existing survey and to provide a declaration on completion confirming no additions since the date of the survey, Seller's agreement to allow Buyer

access to the property two times prior to closing, and Seller's agreement that Seller will leave the premises, including the floors, in a clean and broom swept condition;

- (xviii) Page two of Schedule A contains the Seller's representation and warranty about the use of the property during the time the Seller has owned it. Page two also contains a Seller's warranty that there are no work orders or deficiency Notice outstanding against the property, and if so, will be complied with at Seller's expense on or before closing.
- i. The appellant signed the Commission Trust Agreement on behalf of the Co-operating Brokerage on page 5 of the APS.
- j. The OREA form contains a Commission Trust Agreement addressed to the Co-operating Brokerage and provides: "In consideration for the Co-operating Brokerage procuring the foregoing Agreement of Purchase and Sale, I hereby declare that all money received or receivable by me in connection with the Transaction as contemplated in the MLS Rules and Regulations of my Real Estate Board shall be receivable and held in trust. This agreement shall constitute a Commission Trust Agreement as defined in the MLS Rules and shall be subject to and governed by the MLS Rules pertaining to Commission Trust."
- k. The appellant gave the APS to the Estate Garden purchasers.
- l. 10 Alice was actually sold by Zahra to a third party purchasers pursuant to an APS dated September 14, 2021 for \$692,000.00, with a scheduled completion date of September 14, 2021. The appellant was not the listing or selling salesperson.
- m. The appellant has been licenced under the Act since 2013.
- n. Prior to the NOP, there had been no disciplinary action against the appellant by the Registrar.

Positions of the Parties

Registrar's Position

[15] The Registrar's position is based on the appellant's apparent effort to assist the Estate Garden Purchasers to secure financing for the Estate Garden purchase by creating the Fake APS, putting Ms. Alam's name on it without her knowledge or

consent, making at least one harassing/threatening call to her to try and dissuade her from making a complaint once the APS was discovered to be fake, and attempting to falsely implicate Ms. Alam in the scheme during RECO's investigation into the matter.

Appellant's Position

[16] The appellant disputes the opinion of the Registrar in his Notice of Appeal. The appellant's position is that his conduct and actions were an attempt to protect members of the public from the "oppressive, unlawful and dishonest actions" of Ms. Alam who lodged a false and fraudulent complaint against him when he refused to comply with her "blackmail demands". The appellant also states that RECO's investigation was "insufficient, negligent, and failed to thoroughly review" Ms. Alam's actions and role in the matter.

[17] The appellant denies committing any fraudulent actions, states that he complied with the Act and the Code of Ethics set out in O. Reg. 365/22 and states that he was "only attempting to assist the Clients, who were in a position of losing their deposit and suffering greater damages as a result of Alam's actions...".

[18] The appellant states that he "suggested to the Clients that if they had a friendly party who wanted to assist them and would be financially able to purchase the Alice property from them, that they could enter into an agreement with that person in order to both help them out from under Alam's oppressive actions and refusal to market the property, and to satisfy their lender. In proposing this possible resolution, Andalibi emphasized that any sale would still have to be legitimate with a real deposit, down payment and financing, as well as an actual transfer to the buyer."

[19] The appellant states that "At no time did the appellant represent to anyone that the Draft Offer [was] a real agreement to purchase the Alice Property, nor was he aware that it was being put forward as such, if this was the case. It was drafted to assist the Client if they decided to proceed with a sale in accordance with its terms, given the hardship placed upon them by Alam".

ANALYSIS

(a) Is the appellant disentitled to registration as a broker under the Act pursuant to s. 10(1)(a)(ii) because the appellant's past conduct affords reasonable grounds for the belief that he will not carry on business in accordance with law and with integrity and honesty?

[20] I find that the evidence brought forward by the Registrar, considered in totality, clearly establishes that the appellant's past conduct affords reasonable grounds for the belief that he will not carry on business in accordance with law and with integrity and honesty for the reasons set out below.

The Appellant Wrote the Fake APS For 10 Alice To Assist His Purchasers

[21] Ms. Alam, an experienced real estate salesperson at HomeLife/Bayview Realty Inc. brokerage, learned of the Fake APS bearing her name and purporting to contain her signature on September 15, 2021 when the law firm handling the sale of 10 Alice asked for a commission statement based on the Fake APS in the law firm file. Ms. Alam testified that she was surprised to be asked for a commission statement because her brokerage had already released Zahra from the listing agreement for 10 Alice earlier in the summer, for the last time on August 11, 2021.

[22] Ms. Alam testified that when she saw the Fake APS, she knew Rabeh to be Saeid's mother because, in addition to having had previous business dealings with the Estate Garden purchasers and Rabeh herself, Ms. Alam's mother and Rabeh were friends in Iran. To her knowledge, Rabeh had not been to Canada in the last four years and did not sign the Fake APS in Canada.

[23] Ms. Alam testified that although her name is on the Fake APS together with handwriting that purports to be her signature on the Commission Trust Agreement, this is not her signature, she had never seen the Fake APS until September 15, 2021, did not know the appellant, and she had no communication from him about the Fake APS until September 15, 2021 when she called him after discovering the Fake APS and doing an internet search on him.

[24] Ms. Alam telephoned the appellant to confront him about submitting the Fake APS under her name. Ms. Alam testified that the appellant totally denied he did this and told her he didn't know what she was talking about. Later on September 15, 2021, Ms. Alam testified that the appellant called her and begged her not to report this to anyone. The appellant told her they had to co-operate together and not to do anything without him. When the conversation deteriorated into foul language by the appellant, Ms. Alam said she hung up on him.

[25] Ms. Alam shared the Fake APS with her office and also called Saeid. Saeid also denied everything. Ms. Alam testified that her broker told her this is fraud.

[26] Ms. Alam testified that she found out that the Estate Garden purchasers had purchased the Estate Garden property through the appellant and saw that the

Estate Garden purchasers had obtained a \$1,000,000.00 mortgage from Scotiabank.

- [27] Ms. Alam testified that Saeid offered her \$10,000.00 and later \$50,000.00 to not complain about the Fake APS. Ms. Alam testified that she told Saeid that she would not sell her licence, did not take the money and reported this incident to the police, to RECO, and Scotiabank. Ms. Alam testified that the Fake APS was in her view made for purposes of mortgage fraud.
- [28] Ms. Alam testified that she is aware that the appellant will say she tried to blackmail him and this is not true, and the appellant is a liar. Ms. Alam testified that she believes the appellant used her name and put her “signature” on the Fake APS.
- [29] Ms. Alam described the usual process for co-operation between realtors in a real estate transaction which typically includes: the buyer’s agent asks the listing agent for a showing of the property; the buyer’s agent drafts an offer; the buyer signs the offer; the offer is sent to the listing agent by the buyer’s agent; the seller accepts the offer or not; there will be calls between the two agents about deposit, conditions, closing date, likely some negotiation and then execution of the offer by both parties; deposit is sent to the listing brokerage and receipt issued; waiver or fulfillment of conditions; all documents go to the financier and to the lawyer. Ms. Alam testified that none of this occurred here. This is a fake APS in which the property is “sold”.
- [30] Ms. Alam testified that she has been victimized and has lost time and money dealing with the police and others about this.
- [31] Ms. Alam testified that she filed a written complaint to RECO on September 16, 2021, one day after learning of the Fake APS. Ms. Alam’s testimony at the hearing was substantially the same as her written complaint and her interview with Candice Burkholder, the respondent’s investigator. I find her evidence credible and reliable, it being substantially consistent with her complaint and interview, withstood cross-examination. In cross-examination Ms. Alam testified that she fully respects the appellant and hopes that he will not lose his licence but that is not her decision to make, tending to indicate that Ms. Alam’s complaint and testimony were not motivated by ill will toward the appellant. I accept her testimony.
- [32] Ms. Burkholder, an experienced investigator and former police officer, testified that she investigated Ms. Alam’s complaint for the respondent. Ms. Burkholder testified that she is familiar with conducting investigations and how to gather evidence. Ms. Burkholder testified that she spoke with Ms. Alam, obtained the police report for

this matter, interviewed with another investigator the Estate Garden purchasers, the appellant, Ms. Alam, and obtained documents from Scotiabank by way of search warrant. Ms. Burkholder also obtained five trade files for the Estate Garden property and 10 Alice being:

- (i) the trade file of HomeLife Golconda - seller of Estate Garden,
- (ii) the trade file of ReMax West - buyer of Estate Garden,
- (iii) the trade file of Homelife Bayview - cancelled listings for 10 Alice,
- (iv) the trade file of Royal LePage Signature - seller of 10 Alice,
- (v) the trade file of Royal LePage Maximum - buyer of 10 Alice.

- [33] A waiver of conditions on OREA form 123 dated June 8, 2021 waives the inspection and financing conditions, contains an unwitnessed signature above the buyer's signing line confirming that the conditions were waived at "Richmond Hill, Ontario at 4:45 on June 8th, 2021. Zahra appears to have signed the receipt acknowledging this waiver at 5:30 p.m. on June 8, 2021.
- [34] Ms. Burkholder testified that as a result of her investigation, review of documents, the recorded interviews she and fellow investigator Derek Wilson conducted on April 18, 2024 at an Official Examiner's office with Ms. Alam, the Estate Garden purchasers, and the appellant, she reached the following conclusions.
- [35] The Fake APS created June 1, 2021 for 10 Alice was a fraudulent document created to bridge the mortgage the Estate Garden purchasers needed to purchase Estate Garden because they needed the funds from 10 Alice to purchase Estate Garden. The Fake APS was submitted to Scotiabank for the sole purpose of obtaining financing for the Estate Garden purchasers' acquisition of Estate Garden.
- [36] The appellant was a party to creating the Fake APS for the Estate Garden purchasers. 10 Alice had not sold by June, 2021, thus prompting the need for the Fake APS.
- [37] Scotiabank documents confirm that the funds from the sale of 10 Alice were needed for the Estate Garden purchasers to qualify for the mortgage they needed to purchase Estate Garden.
- [38] The Fake APS was in the files of Scotiabank as well as the APS for the September, 2021 actual sale of 10 Alice.

- [39] During his interview, the appellant confirmed that he represented the Estate Garden purchasers on the purchase of Estate Garden which was scheduled to close on June 22, 2021, and that they were required to sell 10 Alice to make the financing work according to their mortgage broker. The appellant admitted that he was asked by the Estate Garden purchasers to create the Fake APS and that his role would be to represent Saeid's mother as the purchaser. The appellant said he created the typewritten part of the Fake APS but not what is handwritten, signed it and gave it to the Estate Garden purchasers.
- [40] In his interview the appellant also said that Saeid told him what to write, told him the closing date, the amount of the deposit and name of the purchaser.
- [41] The appellant said he never spoke to Rabeh, never met her, never discussed the Fake APS with her, never asked for contact information for her, and was aware that she was not in Canada but was in Iran. The appellant also confirmed that he knew that Rabeh's purchase price was in excess of the listing price at the time.
- [42] The appellant confirmed he did not have any communication with Ms. Alam but did show her as the listing agent on the Fake APS because he was given this information by Saeid and from the appellant's conversations with Zahra knew they were having problems with Ms. Alam.
- [43] After preparing the Fake APS, the appellant said he heard nothing back, had no follow-up conversations with Ms. Alam or Rabeh in Iran. The appellant said he believed the Fake APS was a genuine APS because he believed Rabeh was going to purchase 10 Alice. The appellant also said that Ms. Alam was aware that this transaction was happening but he provided no basis for this belief.
- [44] The appellant also said in his interview that Ms. Alam contacted him after finding out about the Fake APS and was yelling at him and trying to blackmail him but Ms. Burkholder testified that the appellant did not point to any grounds for blackmail. Ms. Burkholder did not consider Ms. Alam going to the police and RECO about the Fake APS as blackmail.
- [45] Ms. Burkholder testified that the Estate Garden purchasers were interviewed together. They confirmed they were desperate to sell 10 Alice and needed to do so in order to purchase Estate Garden. Otherwise, they would have lost the Estate Garden property and could have been sued by the seller. They said that the Fake APS was created by Ms. Alam, then said by the appellant, and then said they were not sure where it came from. They said they faxed it to Rabeh in Iran for signing. The price was countered at \$705,000.00. but they could not explain why.

- [46] When asked why Ms. Alam's signature was on the Fake APS, they said she must have signed it even though they were shown Ms. Alam's driver's licence where her signature appears to be very different. They said they gave the Fake APS to their mortgage broker because it is a real agreement who they assumed gave it to the bank as part of their application for financing. They said the purchase didn't happen because Rabeh could not sell her properties in Iran.
- [47] Ms. Burkholder concluded that there are no documents to support this version of events and Further the Fake APS was a firm deal which is what was required to use it for bridge financing.
- [48] The Estate Garden purchasers acknowledged in their interview that Ms. Alam is the only one who didn't stand to benefit financially from the Fake APS.
- [49] When asked in cross-examination whether she believes the appellant intentionally committed fraud, Ms. Burkholder testified that she is unable to tell what the appellant's specific intentions were but based on his actions as revealed in her investigation, her conclusion is that the appellant intentionally provided the Estate Garden purchasers with the Fake APS and then attempted to withdraw himself from knowing what was going to happened with it. He didn't follow up about the offer. He knew that the Fake APS was required for financing of the Estate Garden purchasers so that the Estate Garden purchase could close. If the Estate Garden purchasers could get financing and close, the appellant would receive commission on this purchase of over one million dollars, and his buyers would receive the home they wanted.
- [50] Rebecca Knowles, senior fraud analyst with Scotiabank's Mortgage Security Group testified that she does enhanced due diligence to determine if fraud has been committed on certain mortgage files. Ms. Knowles testified that she reviewed the 2021 mortgage file of the Estate Garden purchasers regarding the purchase of Estate Garden including their mortgage application, and she confirmed that the documents filed by the Registrar were provided by Scotiabank in response to a search warrant.
- [51] Ms. Knowles testified that Zahra's April 12, 2021 mortgage application was submitted by mortgage broker Afshin Baghaei ("mortgage broker"). Scotiabank was given the following documents:
- A. The April, 2021 APS for the purchase of Estate Garden closing June 22, 2021.
 - B. Fake APS for 10 Alice dated June 7, 2021 showing it sold to Rabeh for \$705,000.00, the listing agent as Ms. Alam and the appellant as the buyer's agent.

C. The mortgage was approved on April 16, 2021 subject to satisfactory confirmation of the sale of 10 Alice.

D. Rabeh's waiver of the inspection and financing conditions on June 9, 2021 making the sale of 10 Alice firm and binding.

- [52] The mortgage was funded June 22, 2021 on the closing of the purchase of Estate Garden.
- [53] The existing Royal Bank of Canada ("RBC") mortgage of \$430,000.00 was required to be paid out and the sale proceeds of 10 Alice had to cover the existing mortgage, debts, commissions, legal fees. The net proceeds needed to be sufficient to be a downpayment to be the downpayment on the purchase of Estate Garden. Ms. Knowles testified that because the closing of 10 Alice was after the purchase of Estate Garden, there was a gap in the financing and Scotiabank was asked for and granted a bridge loan of \$220,000.00 based on the estimated net sale proceeds of 10 Alice. The lawyer handling the sale of 10 Alice was instructed to pay out the RBC mortgage and the Scotiabank bridge loan on the sale of 10 Alice.
- [54] Scotiabank was advised by the lawyer sometime between September 16 and October 14, 2021 that the sale of 10 Alice did not close as presented and that Zahra had received a second APS showing buyers named Franco with Nimal Khadem as listing agent and buyer's agent Pat Pisanti. This APS is signed September 14, 2021 and has a closing date of October 14, 2021.
- [55] Although Scotiabank was made whole because the second APS was not significantly different from the Fake APS, Scotiabank determined that a fraudulent sale had been presented to it, will decline to future business with the Estate Garden purchasers and the mortgage broker, and Ms. Knowles reported this as an "unusual transaction" through a system that shares this information with other banks.
- [56] Ms. Knowles testified that she did not determine whether the Estate Garden purchasers or the real estate agents perpetrated the fraud but she determined that the mortgage broker stood to benefit from submitting the Fake APS to Scotiabank and the mortgage broker has been cut off. Ms. Knowles testified that "obviously" there is a problem with the realtor but Scotiabank cannot control realtors.
- [57] Angela Volpe, Director of Registration at RECO, testified that she supports the Deputy Registrar and Registrar in administering the Act. Ms. Volpe testified that in her experience it is very rare to issue an NOP seeking to revoke registration but in

this case the appellant crossed a line. The appellant put his own financial interest ahead of his duty to do business in accordance with the law, and with honesty and integrity.

- [58] Ms. Volpe spoke about the grounds set out in the NOP. Ms. Volpe testified that the Registrar has grounds to believe that the appellant will not carry on business in accordance with the law, honesty and integrity based on his past conduct, specifically participating in the creation of fraudulent document by creating the Fake APS, and putting his interests ahead of others.
- [59] Ms. Volpe also testified that none of the usual communications between registrants in a real estate transaction described by Ms. Alam took place here. At the very least the appellant should have known he is responsible for a document he created and released out of his control without ensuring its proper use and execution.
- [60] Ms. Volpe also spoke of s. 10 (1)(g) of the Act and how the appellant's continued registration would be contrary to public interest. Ms. Volpe testified that the public, including banks, rely on registrants to be ethical. As in this case, banks rely on documents prepared by registrants to advance large amounts of money. To be involved in the creation of a document that may be used for nefarious purposes is dishonest. Ms. Volpe agreed with the description of Ms. Knowles of the difficulties the appellant's Fake APS created for the Scotiabank including resources expended on investigation, and the stress and difficulties created for Ms. Alam when she found out her name and her purported signature were on the Fake APS.
- [61] Ms. Volpe explained that either the appellant had made the wilful decision to provide the document he created to be used for nefarious purposes, or was irresponsible in creating a document that could be used improperly. Ms. Volpe testified that only registrants have access to these documents. Here, the appellant facilitated the creation of a document used for nefarious purposes, from which he benefitted financially. The fact that this was an APS created supposedly for his client Saeid's mother does not absolve the appellant of doing due diligence for his potential client Rabeh, and as a registrant since 2013 the appellant should have known his responsibilities.
- [62] The appellant testified that he knew the Estate Garden purchasers from previous business dealings with them dating back years. They were happy with the Estate Garden purchase on which the appellant acted for them as buyers' agent.

- [63] The appellant learned that the Estate Garden purchasers told him 10 Alice had not sold and Saeid said his mother would buy it and asked the appellant to do the Fake APS.
- [64] The appellant testified that he didn't pay as much attention as he should have. He didn't see anything wrong at this point. The appellant testified that he prepared the Fake APS and gave it to Saeid who said he would send it to his mother and the mother would call the appellant.
- [65] The appellant testified that there is nothing wrong with providing the Fake APS to Saeid's mother. He would have to verify that Rabeh was his client before or at the time of signing.
- [66] The appellant testified that his commission on Estate Garden was only \$26,000.00, not \$30,000.00 but he would not sell himself for \$30,000.00. The appellant said he did not submit the Fake APS without verification. He just gave it to Saeid to send it to Rabeh because she is old and may not be familiar with technology. He was waiting for them to call him back about the Fake APS but there was no call. Then a few days later the appellant followed up with Saeid who said they didn't need to sell anymore. The appellant did not ask why. The Estate Garden purchasers didn't tell him any details.
- [67] The appellant admitted he signed the Fake APS before giving it to Saeid but doesn't know why the price was changed in handwriting, had nothing to do with the mortgage and not aware of the other signatures on the Fake APS except his.
- [68] The appellant said the first time he saw the fully signed Fake APS was at the RECO investigators interview. Ms. Alam had called him September 15, 2021 about it and that is when he found out what went on. The appellant said he didn't ask Saeid to return the Fake APS to him because it doesn't make sense to ask them to return it if it was not needed. RECO does not require this. The accusations against him do not make sense at all.
- [69] The appellant testified that he spoke to Ms. Alam three or four times or more on September 15, 2021. At first she was polite but in the second call she was screaming, yelling and said he had to give her his commission. He produced a text to Ms. Alam asking her to stop calling him which the appellant's counsel agreed had not been put to Ms. Alam in cross-examination.
- [70] The appellant testified that Ms. Alam blackmailed him or "offered him something".

- [71] When he was interviewed by Ms. Burkholder and another investigator he thought he did something wrong because of the way they were talking to him. The appellant explained that it is “normal practice” to prepare blank offers. The appellant testified that he did not do this for money and would not risk his career for a \$26,000.00 commission which is not a big commission to him.
- [72] In cross-examination the appellant admitted that he knows today that the Fake APS was used as part of a mortgage fraud and he knew that when he was interviewed by Ms. Burkholder. He guessed as much when he found out about it in September, 2021.
- [73] In cross-examination the appellant testified that he “did not do anything wrong”. There is no rule that says a realtor has to get identification before doing an APS. He intended to verify Rebah’s identification at the time she signed the Fake APS. Later on, the appellant said maybe it was “better” to get Rebah’s identification first but she lives in a different time zone and is elderly and vulnerable.
- [74] When asked why he told the RECO investigators at the interview numerous times that he made a mistake by not identifying his client first, the appellant said that he did not understand the RECO investigators and could not hear the questions well. The appellant testified at the hearing that “it was not a mistake but he has learned now and will not do this again”. The appellant also said that nothing requires him to identify a client before writing an APS.
- [75] When asked why in the interview the appellant agreed that the person the Estate Garden purchasers told him was purchasing 10 Alice was a complete fake, the appellant said there might have been a language barrier or misunderstanding in the interview. Now he says there is no possibility the purchase transaction was fake because it was Saeid’s mother. He trusted the Estate Garden purchasers and believed them.
- [76] When asked why in the interview the appellant did not say that he expected Saeid’s mother to call him and he could explain everything to her as he testified to in the hearing, the appellant said the investigators were “putting him off and not letting him answer.”
- [77] When shown page 10 of the transcript of his interview, in which the appellant told them “you have to get rid of the house...because they were about to lose their downpayment”, the appellant denied this is what he said. The appellant testified that the investigators were cutting him off and he shortened his sentences because of this.

- [78] The appellant testified that the Estate Garden purchasers asked him if he knew anyone who could buy 10 Alice because they were desperate to sell it and they knew they could lose their deposit on Estate Garden, and possibly more, if they couldn't sell 10 Alice.
- [79] The appellant confirmed that he prepared the Fake APS with an irrevocable date of June 1, 2021.
- [80] The appellant admitted that when the Fake APS left his hands, he delivered it to Saeid by hand and all the information the Fake APS contained including the price, closing date and Rebah's name as buyer were all based on what Saeid said.
- [81] The appellant testified that he considers it "bad practice" to contact the listing agent, in this case Ms. Alam, before an APS is signed. For this reason he did not contact Ms. Alam before creating the Fake APS.
- [82] The appellant testified that the RECO interviewers lied to him about what others said, made mistakes, the interview was done in a way that they didn't want him to tell his story, told him he was lying, doing this deliberately, it was not a proper interview, and many other important things were not discussed with him in the interview, and he thought the interview was not finished because they said that they will "see each other again".
- [83] The appellant admitted that he would earn a commission if the Fake APS went through because it would allow the Estate Garden purchase to close. The appellant denied that he cared about the commission.
- [84] The appellant testified that he read his NOA before it was filed by his lawyer. Later on, he testified that he doesn't recall reviewing some parts of the NOA before it was filed. When shown paragraphs 17 and 18, of his NOA the appellant denied that this is what he told his lawyer to say.
- [85] The appellant said Ms. Alam blackmailed him.
- [86] The appellant admitted he didn't complete a buyer representation agreement for the Fake APS but he doesn't remember if he prepared the Offer Summary document or Confirmation of Co-operation and Representation form for Rebah regarding the Fake APS. Later on the appellant testified that the he "probably" prepared a buyer representation agreement for Rebah but admits there is no signed one.
- [87] The appellant admitted that he is aware of the Code of Ethics, O. Reg. 580/05 and follows it 100% as far as he knows. In his view he was not dealing with the client of

another registrant because 10 Alice was owned by Zahra, not Saeid, and he was doing the Fake APS for Saeid.

- [88] The appellant testified that the problem was not with him but with RECO and others who don't understand how the process works.
- [89] Jason Colatosti, the principal of the appellant's broker of record Re/Max West Realty Inc. testified that he coaches his agents to sign the Commission Trust Statement on an APS after they prepare it. He also testified that from what he knows of this case, it sounds like a scheme put together by a mortgage broker because one would have to be familiar with financing and real estate agents are not that familiar. Mr. Colatosti confirmed that the appellant has a good record with his brokerage and there are no complaints with his work.
- [90] However, Mr. Colatosti admitted on cross-examination that the fact that the proposed buyer in the Fake APS is out of the country, was prepared for a person the appellant didn't know and didn't discuss the Fake APS which is definitely a concern and this is not his brokerage's policy or procedure. Mr. Colatosti testified that he personally wouldn't do that and that taking instructions for the buyer from someone else is a "recipe for trouble" because you don't even know if that person even exists.
- [91] Mr. Colatosti admitted that if the son of the buyer is anxiously trying to sell so he can close on another piece of real estate, then the son has a significant personal interest in the transaction and if there is any kind of financial pressure, one needs to be more aware.
- [92] Mr. Colatosti testified that anyone who is not licensed should not be delivering offers or presenting offers even though he likes to see kids involved if parents are buying real estate. Mr. Colatosti testified that he would want to speak to the mother who was buying and would set up a Zoom call with her.
- [93] Mr. Colatosti testified that it is improper for an agent to prepare an APS and give it to a non-registrant to be signed. Once the APS is out of the possession of the registrant it is gone and he would not encourage this. Mr. Colatosti said that clearly there were a lot of errors, mistakes, shortcuts and cutting corners here but he is not sure that the appellant was aware of the intent of others and it is plausible that the appellant was duped. This is not the way he trains his agents and it is not best practices. The policy of his brokerage is to be compliant with the legislation.
- [94] Mr. Colatosti testified that the way to identify a person in a different county that an agent has never met before is to obtain government identification and a sworn

documents from someone in the other country, preferable an agent in a local ReMax office. A translator would be needed if there is a problem with speaking English. Even if a phone call had taken place between the buyer and the appellant, this would not meet the Fintrac standards for documentation which requires copies of government identification for entering into a contract. For an individual in Iran, these are his brokerage's requirements and there may be other requirements for Iran.

[95] I find that the weight of Mr. Colatosti's evidence is that the appellant fell short of his brokerage's best practices and policies by releasing the Fake APS to a non-registrant. This is supportive of the Registrar's NOP and evidence at this hearing.

[96] Although both Estate Garden purchasers signed an affidavit putting forward their version of events, I give no weight to this because neither Zahra nor Saeid attended the hearing so that the truth of the statements in the affidavit could be tested.

[97] The appellant does not dispute that he wrote all typewritten parts of the seven page Fake APS. The Fake APS detailed and specific as set out above. In paragraph 16 of his Notice of Appeal the appellant states that if they had a "friendly party" who wanted to assist them and would be financially able to purchase the Alice property, that they could enter into an agreement with that person "to satisfy their lender". It is clear that the appellant was using his knowledge, experience and skills in the real estate industry to both propose that there be an APS written to help them "satisfy their lender" and to write the Fake APS.

[98] Further, the appellant states in paragraph 28 of his Notice of Appeal that "At no time did the appellant represent to anyone that the Draft Offer as a real agreement to purchase the Alice Property, nor was he aware that it was being put forward as such, if this was the case" tending to indicate that the appellant knew that the Fake APS was not a "real agreement" but would be used to obtain financing. This is consistent with the evidence of Ms. Alam who testified that she was not advised by the appellant at the time about the Fake APS which bore her name, involved her brokerage's listing of 10 Alice and showed Zahra, her vendor of that property.

The Appellant Put the Listing Agent's Name on the Fake APS Without Her Knowledge or Consent

[99] Based on the testimony of Ms. Alam, I find that the appellant more likely than not, put Ms. Alam's name on the Fake APS without her knowledge and consent, or facilitated that this could be done by others without his further involvement.

[100] The appellant does not deny that he prepared all typewritten parts of the Fake APS. This includes Ms. Alam's name and brokerage information.

[101] Ms. Alam testified that although her name is on the Fake APS together with handwriting that purports to be her signature on the Commission Trust Agreement, this is not her signature, she had never seen the Fake APS until September 15, 2021, did not know the appellant, and she had no communication from him about the Fake APS until September 15, 2021 when she called him after discovering the Fake APS and doing an internet search on him.

The Appellant Did Not Provide the Fake APS to His Brokerage

[102] Although the appellant suggested in his testimony that he discussed the Fake APS with his broker, Mr. Colatosti testified that he does not recall the appellant coming to him in September, 2021 about the Fake APS but he might have. Mr. Colatosti did not produce any brokerage written record of the Fake APS for September, 2021, or any other time. I accept Mr. Colatosti's evidence on this point and I so find.

The Fake APS Was Relied on By Appellant's Customer's Bank in Financing

[103] Ms. Knowles provided specific and detailed information about the reliance of Scotiabank on the Fake APS to provide bridge financing on the purchase of Estate Garden, a transaction from which the appellant was paid significant commission as the buyers agent. I accept her evidence and so find.

When the Fake APS Was Discovered, the Appellant Tried to Dissuade the Listing Agent From Reporting

[104] Ms. Alam's testimony at the hearing about her telephone discussions with the appellant and how he tried to dissuade her from reporting the Fake APS to anyone is consistent with her contemporaneous written complaint and her interview with the RECO investigators. Ms. Burkholder found Ms. Alam to be credible in the course of her investigation. I also find Ms. Alam's evidence credible and reliable and on it find that the appellant tried to dissuade her from reporting the Fake APS when she discovered it in September, 2021.

The Appellant Falsely Attempted to Implicate the Listing Agent

[105] Much of the appellant's NOA, his testimony and submissions at the hearing are aimed at implicating Ms. Alam in the Fake APS and attempting to suggest that she knew of it at the time.

[106] I found Ms. Alam's testimony on this point to be both credible and reliable and I prefer it over that of the appellant. Ms. Alam maintained her denial of any involvement or knowledge of the Fake APS when it was created in cross-examination and her evidence was not shaken. Ms. Alam advised her broker, reported it to RECO and the police contemporaneous with her discovery of it in September, 2021. It does not make sense overall that Ms. Alam would risk her own registration and reputation by making these reports knowing that RECO and the police would likely be investigating further.

[107] By contrast, the appellant's testimony was inconsistent with his interview with the RECO investigators on important facts and, sometimes at odds with his own NOA and I find his testimony unreliable.

(b) Is the Appellant's Continued Registration Contrary to Public Interest Pursuant to s. 10(1)(g) of the Act?

[108] Section 10(1)(g) of the Act provides that the Registrar must be of the opinion that granting the registration or the renewal, as the case may be, would not be contrary to the public interest. Here I find that the Registrar is of the opinion that the appellant's continued registration is contrary to s. 10(1)(g) of the Act based on the evidence of Ms. Volpe. The evidence and the appellant's submissions do not dislodge this opinion. Indeed, I concur with that opinion and adopt it as my own for the following reasons.

[109] Allowing a registrant to continue to be registered after creating a Fake APS for a proposed purchaser that he never met, never spoke to, never corresponded with, never verified the existence or whereabouts of, and never gave the document to directly and was later used to induce a bank to provide financing on a purchase on which he stood to be paid a significant commission is not in the public interest.

[110] It falls to the Registrar to administer the Act. Here the appellant was willing allow his skills, experience, knowledge and access to OREA forms to facilitate what he knew or should have known was not a genuine purchase transaction. The appellant prepared, signed, put the name of another registrant on, the Fake APS and then released it out of his control to non-registrants. This is not in the public interest. The public has a right to expect that registrants in a regulated industry such as real estate are held to the standards of their registration and when they fall short, are sanctioned appropriately.

What is the appropriate outcome?

[111] I find that revocation of the appellant's registration is the appropriate outcome.

[112] In coming to this conclusion, I have considered the whole of the appellant's conduct in finding that the respondent has proven its case.

[113] Ms. Volpe testified that sometimes the Registrar will consider suspension or conditions as an alternative to revocation but not here because the appellant created the Fake APS for his own financial benefit, specifically so that the Estate Garden purchasers could obtain financing and complete their purchase of Estate Garden, a transaction on which he would be paid a significant commission. Ms. Volpe testified that it is concerning for the Registrar that a registrant would create a fraudulent document to gain a commission. In addition, Ms. Volpe testified that conditions are difficult to monitor and enforce. Most importantly, Ms. Volpe testified that the public needs to be able to trust a registrant when making what may be the biggest financial transaction of their lives. I accept the evidence of Ms. Volpe on this point.

[114] I have considered the appellant's submission that appropriate sanction would be that the appellant take more education and be supervised more closely and found this to be unpersuasive. The appellant has been registered as a broker and had worked in this regulated industry for approximately eight years in 2021, long enough to know the standard of conduct required. Further education and supervision of the appellant in my view are unlikely to correct a lack of ability or willingness to carry on business in accordance with the law, integrity and honesty.

[115] Carrying on business in accordance with law and with integrity and honesty is required of a registrant in this regulated industry.

[116] Nothing in the evidence persuades me that revocation is not the appropriate outcome here. I have already found that that the evidence brought forward by the Registrar, considered in totality, clearly establishes that the appellant's past conduct affords reasonable grounds for the belief that he will not carry on business in accordance with law and with integrity and honesty. The imposition of requirement for further education supervision, or conditions, my view, is unlikely to result in his carrying on business in accordance with law and with integrity and honesty when the evidence shows that he is willing to violate these standards for his own personal gain and because his clients asked him to create a Fake APS. A registrant must be aware of the expected standard and comply with it. Here the appellant has demonstrated he is willing to cross that line.

Conclusion

[117] For the reasons above, I find that the Registrar has met its onus to establish that the appellant's past conduct affords reasonable grounds for the belief that he will

not carry on business in accordance with law and with integrity and honesty within the meaning of s. 10(1)(a)(ii) of the Act.

[118] For the reasons above, I also find that the Registrar has established that the appellant's continued registration is contrary to public interest pursuant to s. 10(1)(g) of the Act.

[119] Revocation of the appellant's licence is the appropriate outcome.

ORDER

[120] For the reasons set out above, I direct the Registrar to carry out the NOP.



Avril A. Farlam, Vice-Chair

Released: October 25, 2024