

**DECISION AND ORDER OF THE DISCIPLINE COMMITTEE OF THE CONDOMINIUM
MANAGEMENT REGULATORY AUTHORITY OF ONTARIO**

Frank Gallo, Chair and Public Member)
Nadia Freeman, Condominium Manager)
Dan Fried, Principal Condominium Manager)

October 28, 2021

BETWEEN:

CONDOMINIUM MANAGEMENT REGULATORY AUTHORITY OF ONTARIO

- and -

LARLYN PROPERTY MANAGEMENT LTD.

DECISION AND REASONS

This matter came before a Panel of the Discipline Committee and Appeals Committee of the Condominium Management Regulatory Authority of Ontario (the “**CMRAO**”) on October 26, 2021 for a hearing.

MANNER OF PROCEEDING

On consent of the parties, this matter proceeded by electronic (videoconference) hearing, in accordance with the *Condominium Management Services Act, 2015* (the “**CMSA**”), Ontario Regulation 3/18 (Code of Ethics and Discipline and Appeals Committees), the *Hearings in Tribunal Proceedings (Temporary Measures) Act, 2020* and the Rules of Practice before the Discipline Committee and Appeals Committee (the “**Rules of Practice**”).

THE ALLEGATIONS

The Notice of Hearing (**entered as Exhibit 1**) contained the following Statement of Allegations, including these particulars and allegations:

The Licensees

1. At all material times, Larlyn Property Management Ltd. (“**Larlyn**”) held a Condominium Management Provider Licence issued under the *Condominium Management Services Act, 2015*.

2. Larlyn provided condominium management services to a condominium corporation in Burlington, Ontario (the “**Corporation**”).

Failure to Provide Timely Transfer of Documents

3. The Corporation terminated its agreement with Larlyn effective on or about December 31, 2019.
4. Larlyn was required to transfer to the Corporation all documents and records relating to the Corporation by January 15, 2020, pursuant to section 54 of the *Condominium Management Services Act, 2015* and section 35 of Ontario Regulation 123/17.
5. It is alleged that Larlyn failed to transfer the documents and records to the Corporation in a timely manner.
6. Although Larlyn transferred certain documents and records to the Corporation in January and February 2020, the records were incomplete.
7. It is alleged that Larlyn failed to adequately respond to the Corporation’s requests relating to the transfer of documents and records.
8. The Corporation subsequently initiated a complaint with the Condominium Management Regulatory Authority of Ontario. After receiving notice of the complaint, Larlyn transferred documents and records to the Corporation in or around March 2020.

Bank Accounts & Failure to Provide Timely Return of Funds

9. While Larlyn provided condominium management services to the Corporation, Larlyn held one or more bank accounts in Larlyn’s name for the benefit of the Corporation.
10. It is alleged that Larlyn used the bank accounts as the Corporation’s operating and reserve accounts.
11. Pursuant to section 115(2) of the *Condominium Act, 1998*, condominium corporations are required to maintain one or more accounts in the corporation’s name designated as general accounts and one or more accounts in the corporation’s name designated as reserve fund accounts.
12. Pursuant to section 115(4) of the *Condominium Act, 1998*, a person who receives money for the benefit of a corporation shall deposit the money into the corporation’s operating or reserve account.

13. It is alleged that Larlyn failed to provide the funds from the bank accounts to the Corporation until in or around March 2020.

Alleged Violations of the Code of Ethics

14. It is alleged that the above conduct constitutes a failure to comply with the Code of Ethics under clause 58(1) of the *CMSA*, and as defined in one or more of the following sections of Part I of Ontario Regulation 3/18 to the *CMSA*:

- a. **Section 5:** In providing condominium management services, providing conscientious, courteous and responsive service and demonstrating reasonable knowledge, skill, judgment and competence; and/or
- b. **Section 8:** A licensee shall be financially responsible in providing condominium management services; and/or
- c. **Section 11:** Engaging in any act or omission that, having regard to all of the circumstances, would reasonably be regarded as disgraceful, dishonourable, unprofessional or unbecoming a licensee.

WITHDRAWAL OF ALLEGATION ON CONSENT

At the commencement of the hearing, CMRAO counsel sought to withdraw (on consent of both parties) the allegation that the Licensee failed to comply with Section 8 of Part 1 of Ontario Regulation 3/18 to the *CMSA*, which provides that:

Section 8: A licensee shall be financially responsible in providing condominium management services

After hearing the submissions of counsel for the parties and the advice of Independent Legal Counsel, the Panel approved the withdrawal of that allegation in accordance with its authority under section 25.0.1 (a) of the *Statutory Powers Procedure Act*, R.S.O. 1990, Chap. S. 22 to control its own process and, in particular, to make orders with respect to the procedures and practices that apply in any particular proceeding.

AGREED STATEMENT OF FACTS

By Agreed Statement of Facts and Admission to Failing to Comply with Code of Ethics, signed October 25, 2021 (entered as Exhibit 2), the parties to this proceeding agree that the following facts may be accepted as true by the Discipline Committee of the CMRAO:

The Licensee

1. At all material times, Larlyn Property Management Ltd. ("**Larlyn**" or the "**Licensee**") held a Condominium Management Provider Licence issued under the *Condominium Management Services Act, 2015* ("*CMSA*").
2. Larlyn provided condominium management services to a condominium corporation in Burlington, Ontario (the "Corporation").

Failure to Provide Timely Transfer of Documents

3. The Corporation terminated its agreement with Larlyn effective on or about December 31, 2019.
4. Larlyn was required to transfer to the Corporation all documents and records relating to the Corporation by January 15, 2020, pursuant to section 54 of the *Condominium Management Services Act, 2015* and section 35 of Ontario Regulation 123/17.
5. It is agreed that on or around January 2, 2020, Larlyn delivered to the Corporation documents and records with additional documents and records delivered in February 2020.
6. Although Larlyn transferred certain documents and records to the Corporation in January and February 2020, the records were incomplete.
7. The Corporation subsequently initiated a complaint with the CMRAO. After receiving notice of the complaint, Larlyn transferred documents and records to the Corporation in or around March 2020.
8. It is therefore agreed that Larlyn failed to initially transfer all documents and records and to adequately respond to the Corporation's requests relating to the transfer of documents and records.

Bank Accounts & Failure to Provide Timely Return of Funds

9. While Larlyn provided condominium management services to the Corporation, Larlyn held one or more bank accounts in Larlyn's name for the benefit of the Corporation.
10. It is agreed that Larlyn used the bank accounts as the Corporation's operating and reserve accounts.

11. Pursuant to section 115(2) of the *Condominium Act, 1998*, condominium corporations are required to maintain one or more accounts in the corporation's name designated as general accounts and one or more accounts in the corporation's name designated as reserve fund accounts.
12. Pursuant to section 115(4) of the *Condominium Act, 1998*, a person who receives money for the benefit of a corporation shall deposit the money into the corporation's operating or reserve account.
13. It is agreed that Larlyn failed to provide all the funds from the bank accounts to the Corporation until in or around March 2020.
14. Larlyn has entered into an Acknowledgement and Undertaking attached as Tab A to ensure that any accounts that are set up for condominium corporations are maintained in accordance with sections 115(2) and 115(4) of the *Condominium Act, 1998*.

Admission to Failing to Comply with the Code of Ethics

15. By this document, the Licensee admits to the truth of the facts referred to in paragraphs 1 to 14 above (the "**Agreed Facts**").
16. The Licensee admits that the Agreed Facts constitute a failure to comply with the Code of Ethics under clause 58(1) of the *CMSA* (the "**Code of Ethics**"), and as defined in the following sections of Ontario Regulation 3/18:
 - a. Section 5: In providing condominium management services, providing conscientious, courteous and responsive service and demonstrating reasonable knowledge, skill, judgment and competence; and
 - b. Section 11: Engaging in any act or omission that, having regard to all of the circumstances, would reasonably be regarded unprofessional.

LICENSEE'S UNDERTAKING

Included as Schedule "A" to the Agreed Statement of Facts (**Exhibit 2**) is the following Acknowledgement and Undertaking of Larry Holmes on behalf of Larlyn Property Management Ltd., signed October 25, 2021:

On behalf of Larlyn Property Management Ltd. ("Larlyn"), I, LARRY HOLMES, hereby acknowledge and undertake as follows:

1. Larlyn Property Management Ltd. ("Larlyn") holds a Condominium Management Provider Licence issued under the *Condominium Management Services Act, 2015*

("CMSA") by the Condominium Management Regulatory Authority of Ontario (the "CMRAO").

2. I am the Chief Executive Officer of Larlyn. I hold a Condominium Manager General Licence issued under the *CMSA*.
3. Larlyn faces allegations that it failed to comply with the Code of Ethics under clause 58(1) of the *CMSA* (the "Code of Ethics") in CMRAO Discipline Case File CAS-142268-G8S7S (Case File: CN-001953). These allegations are contained in a Notice of Hearing dated May 11, 2021 (the "Notice of Hearing").
4. Among other things, it is alleged in the Notice of Hearing in paragraphs 9 through 12 that in the course of providing condominium management services to a condominium corporation (the "**Corporation**"), Larlyn held one or more bank accounts in Larlyn's name for benefit of the Corporation and used the bank accounts as the Corporation's operating and reserve accounts.
5. It is also alleged in the Notice of Hearing that Larlyn failed to comply with the Code of Ethics as defined in section 8 of Part I of Ontario Regulation 3/18 to the *CMSA* related to a licensee being financially responsible in providing condominium management services.
6. The hearing regarding the allegations contained in the Notice of Hearing is being held on October 26, 27, and 28, 2021 before the Discipline Committee of the CMRAO (the "**Hearing**").
7. In exchange for the CMRAO seeking to withdraw the allegation contained in the Notice of Hearing (as described in paragraph 5 above) at the Hearing, Larlyn undertakes to, within six months of signing this Acknowledgement and Undertaking, make the necessary arrangements to maintain any bank accounts for any condominium corporation to which it provides condominium management services in Ontario in accordance with the *Condominium Act, 1998* and sections 115(2) and 115(4) of the *Condominium Act, 1998* in particular.
8. I acknowledge that if Larlyn breaches this Acknowledgement and Undertaking, the CMRAO will be entitled to rely on this Acknowledgement and Undertaking to assess whether Larlyn remains entitled to a licence with the CMRAO or has violated the Code of Ethics. I understand that the CMRAO may conduct one or more inspections to ensure Larlyn's compliance with this Acknowledgement and Undertaking.
9. I agree that this Acknowledgement and Undertaking shall be filed with the Discipline Committee of the CMRAO at the Hearing.
10. I acknowledge that I have had an opportunity to seek legal advice prior to signing this Acknowledgement and Undertaking.

11. I acknowledge that I am entering into this Acknowledgement and Undertaking freely, voluntarily and without duress.

LICENSEE'S PLEA

The Licensee's plea and plea inquiry are included in the Agreed Statement of Fact. In addition, the Panel took the Licensee's plea and administered a plea inquiry orally at the hearing. The Licensee stated that:

- a. It understands the nature of the allegations made against it;
- b. It admits to the truth of the facts contained in this Agreed Statement of Facts and that the admitted facts constitute a failure to comply with the Code of Ethics;
- c. It understands that by signing this document it is consenting to the evidence as set out in the Agreed Statement of Facts being presented to the Discipline Committee;
- d. It understands that by admitting the allegations, it is waiving its right to require the CMRAO to prove the allegations against it at a contested hearing;
- e. It understands that the decision of the Discipline Committee, a summary of the agreed facts, and any reasons of the Discipline Committee, including reference to its name, will be published on CMRAO's website and will be made available to the public in any other manner that the Registrar considers appropriate;
- f. It understands that any agreement between it and the CMRAO with respect to the penalty proposed does not bind the Discipline Committee; and
- g. It understands and acknowledges that it is executing this document voluntarily, unequivocally; free of duress, free of bribe, and that it has been advised of its right to seek legal advice.

REASONS AND DECISION ON FINDING

The Chair and members of the Discipline Committee Panel reviewed and considered the Statement of Allegations, the Agreed Statement of Facts and Admission to Failing to Comply with Code of Ethics, heard the submissions of counsel for the CMRAO and counsel for the Licensee, and received advice from Independent Legal Counsel. Based upon that evidence and those submissions the Discipline Committee Panel considers that the facts in the Agreed Statement of Facts (acknowledged by the Licensee and the CMRAO to be accurate) and the Licensee's admission and plea support a finding that the Licensee breached subsections 5 and 11 of the Code of Ethics under clause 58(1) of the CMSA, and as defined in Ontario Regulation 3/18. In summary, we find that the Licensee failed to comply with the Code of Ethics under the CMSA, as alleged in the Statement of Allegations as amended by the withdrawal of the allegation that the Licensee breached subsection 8 of the Code of Ethics, as explained above.

The Panel's reasons for finding that the Licensee breached subsections 5 and 11 of the Code of Ethics are as follows. The Panel is satisfied that the facts set out in the Agreed Statement of Facts are sufficient to support a finding that the Licensee failed to comply with subsections 5 and 11 of the Code of Ethics, as admitted.

PENALTY

Following the Panel's determination that the Licensee breached subsections 5 and 11 of the Code of Ethics, the parties proceeded with the penalty phase of the hearing. The parties submitted a Joint Submission as To Penalty (marked as **Exhibit 3**) in which the parties agreed and submitted that an appropriate order to make as a penalty would be for the Licensee to pay the CMRAO a fine in the amount of \$5,000 within one month of the date of the Order in this case.

REASONS AND DECISION ON PENALTY

Having reviewed and considered the Joint Submission as to Penalty (**Exhibit 3**), the submissions of counsel for the CMRAO and counsel for the Licensee and the advice of Independent Legal Counsel, the Panel decided to accept and to impose the Penalty requested by the parties. In accepting and imposing the penalty proposed by the parties, the Panel applied the guidance of the Supreme Court of Canada in *R v Anthony-Cook*, 2016 SCC 43 at para 32, which establishes that joint submissions should only be rejected if the agreement "would bring

the administration of justice into disrepute or is otherwise contrary to the public interest.” The Panel was of the view that the proposed disposition in this case is in the public interest.

The proposed penalty is appropriate having regard to the overriding purpose of professional discipline proceedings, which is to protect the public interest. In addition, it is important to maintain the public’s confidence in the ability of the CMRAO and its discipline process to govern the professional conduct of its licensees. The Panel is satisfied that the penalty meets those goals.

The Panel notes that the Licensee has also provided an Acknowledgement and Undertaking (appended as Schedule “A” to the Agreed Statement of Facts), in which it undertakes to, within six months of signing the Acknowledgement and Undertaking, make the necessary arrangements to maintain any bank accounts for any condominium corporation to which it provides condominium management services in Ontario. The Undertaking also provides that the CMRAO may conduct one or more inspections to ensure Larlyn's compliance with the Acknowledgement and Undertaking. The Panel believes that such compliance inspections, allowing for monitoring by the CMRAO over the course of the next 6 months with respect to the establishment and management of bank accounts, further protect the public interest and serve as a deterrent to the Licensee, although the compliance inspection provision is not part of the proposed penalty, since it is included in the Acknowledgement and Undertaking.

In accepting the proposed penalty (and concluding that it falls within the reasonable range for penalties for analogous misconduct), the Panel considered the supporting case law cited by counsel for the CMRAO in her submissions (Including *Condominium Management Regulatory Authority of Ontario v Aurelia Dumitrescu (2020)*; *Condominium Management Regulatory Authority of Ontario v Schneider (2020)*; and *Condominium Management Regulatory Authority of Ontario v Bruno Zaffino and New City Property Management Inc.*

The proposed fine serves the goal of both specific and general deterrence, and is in the public interest. It sends a message to the public and the profession that sanctions may be ordered for this type of conduct and also sends a message to the Licensee not to engage in this type of conduct again. The proposed fine also takes into account the mitigating factors in this case,

namely that the Licensee has cooperated with the discipline process and admitted its misconduct.

Accordingly, the Panel makes the following Order. The Licensee is required to pay the CMRAO a fine in the amount of \$5,000 within one month of the date of this Order.

Date: October 28, 2021

Frank Gallo

A handwritten signature in black ink, appearing to read "Frank Gallo", written in a cursive style.