

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

Jeff Donnelly, Chair

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April 29, 2022

B E T W E E N:

CONDOMINIUM MANAGEMENT REGULATORY AUTHORITY OF ONTARIO

- and -

DOWNING STREET PROPERTY MANAGEMENT INC.

DECISION AND REASONS

This matter came before the Chair of the Discipline Committee and Appeals Committee on April 5, 2022 for disposition without a hearing.

MANNER OF PROCEEDING

The parties served and filed a Consent to Draft Order and Waiver of Hearing Requirements document which states that the CMRAO and the Licensee:

1. Consent to the disposition of the matter without a hearing in accordance with Rule 2.04 of the Rules of Practice before the Discipline Committee and Appeals Committee (the “**Rules of Practice**”); and
2. Waive the requirement for a hearing in accordance with section 4.1 of the *Statutory Powers Procedures Act*, RSO 1990, c. S.22, and the requirement for a full Panel in accordance with section 4.2.1 of the *Statutory Powers Procedures Act*, RSO 1990, c. S.22 (the “**SPPA**”).

After considering the Consent to Draft Order and Waiver of Hearing Requirements Document, the Agreed Statement of Facts and Admission to Failing to Comply with the Code of Ethics, the Joint

Submission as to Penalty, the written submissions of the CMRAO and the relevant provisions of both the Rules of Practice and the SPPA, I determined that this matter could be disposed of without a hearing. In particular, for the reasons set out below, I determined that the proposed disposition appears to be in the public interest and consistent with the Act and regulations, and ordered accordingly.

THE ALLEGATIONS

The Statement of Allegations contained the following particulars and allegations:

The Licensee

3. At all material times, Downing Street Property Management Inc. ("**Downing**") held a condominium management provider licence issued under the *Condominium Management Services Act, 2015* (the "**CMSA**").

The Condominium Corporations

4. Downing provided condominium management services to two condominium corporations in Woodbridge, Ontario ("**Corporation 1284**" and "**Corporation 1307**").
5. Corporation 1284 and Corporation 1307 were located in close geographic proximity to each other.
6. A third condominium ("**Corporation 1319**") was located in close geographic proximity to both Corporation 1284 and Corporation 1307. Corporation 1284, Corporation 1307, and Corporation 1319 (collectively, the "**Corporations**") all shared certain facilities.
7. Downing was not contracted to provide condominium management services to Corporation 1319.

The Energy Rebate

8. In or around August 2019, on behalf of Corporation 1284 and Corporation 1307, Downing applied to the Independent Electricity System Operator (the “**IESO**”) for a rebate as part of an energy savings incentive program (the “**Application**”).
9. The Application was successful, and the IESO indicated that it would award a rebate in the approximate amount of \$21,454.60 (the “**Rebate**”).
10. On or about November 10, 2020, Downing issued two invoices to the IESO to obtain the Rebate. The first invoice was issued to the IESO by Downing on behalf of Corporation 1284 in the amount of \$10,727.30. The second invoice was issued to the IESO by Downing on behalf of Corporation 1307 in the amount of \$10,727.30.
11. At the time that Downing issued the invoices for the Rebate to the IESO, Downing no longer provided condominium management services to Corporation 1307; Downing had stopped providing condominium management services to Corporation 1307 on or around October 31, 2020.
12. The IESO paid the Rebate through a cheque made out to Downing on or about February 24, 2021, and Downing accepted the cheque from the IESO for the full Rebate amount.
13. A portion of the Rebate that was paid by the IESO to Downing had been allocated for Corporation 1319, even though the Application had not been made on behalf of Corporation 1319 and Downing had not issued an invoice to the IESO on behalf of Corporation 1319.
14. In particular, the IESO indicated that the Rebate was intended to be allocated between the Corporations as follows:
 - a. Approximately \$9,716.74 was to be allocated to Corporation 1284;
 - b. Approximately \$11,308.67 was to be allocated to Corporation 1307; and

- c. Approximately \$429.09 was to be allocated to Corporation 1319.

- 15. It is alleged that Downing failed to properly remit to Corporation 1307 and Corporation 1319 the portions of the Rebate that had been allocated to Corporation 1307 and Corporation 1319.

- 16. Pursuant to section 115(1) of the *Condominium Act, 1998*, a person who receives money on behalf of or for the benefit of a condominium corporation shall hold the money in trust for the performance by the corporation of its duties and obligations.

- 17. 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.

Alleged Violation of the Code of Ethics

- 18. 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 10:** In offering or providing condominium management services, a licensee shall use the licensee's best efforts to prevent error, misrepresentation, fraud or any unethical practice; 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; and/or

d. **Section 13:** A licensee shall promote and protect the best interests of the licensee's clients.

AGREED STATEMENT OF FACTS

By Agreed Statement of Facts and Admission to Failing to Comply with Code of Ethics, signed April 5, 2022, the parties to this proceeding agree that the facts may be accepted as true by me and by the Discipline Committee and the parties agree that the Licensees breached the following section(s) of the Code of Ethics:

19. **Section 5:** In providing condominium management services, providing conscientious, courteous and responsive service and demonstrating reasonable knowledge, skill, judgment and competence; and/or
20. **Section 10:** In offering or providing condominium management services, a licensee shall use the licensee's best efforts to prevent error, misrepresentation, fraud or any unethical practice; and/or
21. **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; and/or

MEMBER'S PLEA

22. By the Agreed Statement of Facts, the Licensee admits to the truth of the facts referred to in paragraphs 3 to 17 above (the "Agreed Facts"). The Licensee admits that the Agreed Facts constitute a failure to comply with the Code of Ethics under clause 58(1) of the *CMSA*, and as defined in the following sections of Ontario Regulation 3/18;

- (a) Admits to the truth of the Agreed Facts and that the Agreed Facts constitute a failure to comply with the Code of Ethics;

- (b) Understands that by signing the Agreed Statement of Facts it is consenting to the evidence as set out in the Agreed Statement of Facts and Admission of Failing to Comply with the Code of Ethics being presented to the Discipline Committee;
- (c) Understand that the decision of the Discipline Committee, the Agreed Statement of Facts, any reasons of the Discipline Committee, including reference to their names, will be published on the CMRAO's website and will be made available to the public in any other manner that the Registrar considers appropriate;
- (d) Understand that any agreement between them and the CMRAO with respect to the proposed penalty does not bind the Discipline Committee; and
- (e) Understand and acknowledge that they executed the Agreed Statement of Facts and Admission of Failing to Comply with the Code of Ethics voluntarily, unequivocally, free of duress, free of bribe, and that they have received legal advice.

23. In light of the Agreed Facts and the admission of the Licensee, the CMRAO and the Licensee submit that the Discipline Committee should find that the Licensee failed to comply with the Code of Ethics.

DECISION ON FINDING

24. Having reviewed and considered the Statement of Allegations, the Agreed Statement of Facts and Admission to Failing to Comply with Code of Ethics, and the submissions of counsel for the CMRAO, the Chair of the Discipline Committee considers that the facts in the Agreed Statement of Facts (acknowledged by the Licensee and counsel for the CMRAO to be accurate) the Licensee's admission and plea, support a finding that the Licensee breached subsections 5, 10, 11 of the Code of Ethics under clause 58(1) of the CMSA, and as defined in Ontario Regulation 3/18. In summary, I find that the Licensee failed to comply with the Code of Ethics under the CMSA, as alleged in the Statement of Allegations.

PENALTY

25. The parties submitted a Joint Submission as To Penalty in which the parties agreed and submitted that an appropriate order to make as a penalty would be for the Licensees to pay the CMRAO a fine in the amount of \$4,500 within one (1) month of the date of this Order in this case.
26. The parties also submitted a Consent to Draft Order and Waiver of Hearing Requirements, which included a Draft Order imposing the above penalty.

REASONS AND DECISION ON PENALTY

27. Having reviewed and considered the Joint Submission as to Penalty, the Consent to Draft Order and Waiver of Hearing Requirements and the submissions of counsel for the CMRAO, I agree to accept and to impose the Penalty requested by the parties. In accepting and imposing the penalty proposed by the parties, I 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.” I am of the view that the proposed disposition in this case is in the public interest.
28. The proposed penalty is appropriate having regard to the primary principles of sanction that apply to any order on penalty. Those principles are public protection, specific deterrence, general deterrence, as well as the potential for remediation. Specific deterrence is intended to ensure that the specific licensee will not engage in misconduct again, while general deterrence is intended to inform other licensee of the type of penalty that may be ordered should they commit similar acts.
29. The proposed penalty is also 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. A 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 their misconduct.

30. In accepting the proposed penalty, I have also noted the supporting case law cited by counsel for the CMRAO in her submissions (*Condominium Management Regulatory Authority of Ontario v Bruno Zaffino, and New City Property Management, Inc. (2021)*, *Condominium Management Regulatory Authority of Ontario v Dumitrescu (2020)*, *Condominium Management Regulatory Authority of Ontario v Scheider (2021)*, and *Condominium Management Regulatory Authority of Ontario v Larlyn Property Management Ltd. (2021)*), which demonstrates that, under these specific circumstances, the quantum of the fine is appropriate, in light of the specific aggravating and mitigating factors (as outlined in CMRAO's written submissions), and falls within the range of fines ordered by the Discipline Committee for similar conduct.
31. Accordingly, I make the following Order: The Licensee is required to pay the CMRAO a fine in the amount of \$4,500 within one (1) month of the date of this Order.

Date: April 29, 2022



Jeff Donnelly, Chair