



Citation: *Mardare v. Registrar, Condominium Management Services Act, 2015, 2023 ONLAT 14051 CMSA*

Licence Appeal Tribunal File Number: 14051/CMSA

Date: 03/10/2023

In the matter of an appeal from a Notice of Proposal under the *Condominium Management Services Act, 2015*, S.O. 2015, c. 28, Sched. 2 to revoke a limited licence and to refuse a general licence

Between:

Andreea Mardare

Appellant

and

Registrar, *Condominium Management Services Act, 2015*

Respondent

DECISION

VICE-CHAIR: Colin Osterberg

APPEARANCES:

For the Appellant: Andreea Mardare, self-represented

For the Respondent: Erica Richler, Counsel

HEARD: February 6-10, 2023

OVERVIEW

- [1] Andreea Mardare (the “appellant”) appeals from a Notice of Proposal dated May 12, 2022 (“NOP”) issued by the Registrar, *Condominium Management Services Act, 2015* (the “Registrar”) to revoke the appellant’s limited licence and to refuse to grant the appellant a general licence, under s. 40(1) of the *Condominium Management Services Act, 2015*, S.O. 2015, c. 28, Sched 2 (the “Act”).
- [2] The Registrar alleges that the appellant is not entitled to a licence because her past or present conduct affords reasonable grounds for belief that she will not perform the activities of a licensee in accordance with law and with integrity and honesty.
- [3] The appellant argues that she is entitled to licensing according to s. 37 of the *Act* and has requested a hearing by the Tribunal under section 41(2) of the *Act*.
- [4] Under s. 41(8) of the *Act*, the Tribunal may 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 licence.

ISSUES

- [5] The issues in dispute are:
- i. whether the Registrar proven that the appellant’s past or present conduct affords reasonable grounds for belief that she will not perform the activities of a licensee in accordance with law and with integrity and honesty; and
 - ii. if so, then the second issue to be decided is whether the public interest can be adequately protected through the licensing of the appellant with conditions.

RESULT

- [6] I find that the Registrar has satisfied the onus on it to show that the appellant’s past or present conduct affords reasonable grounds for belief that she will not perform the activities of a licensee in accordance with law and with integrity and honesty. The appellant is therefore disentitled to licensing pursuant to s. 37 of the *Act*.

- [7] I also find that that there are no terms and conditions that would sufficiently protect the public if the appellant is licensed under the *Act*, and I direct the Registrar to carry out the NOP.

ANALYSIS

The appellant's past and present conduct

- [8] I find that the Registrar has satisfied the onus on it to show that the appellant is not entitled to a licence under s. 37(1)(a)(ii) of the *Act*.
- [9] Section 37(1)(a)(ii) of the *Act* provides that the appellant is entitled to a licence or renewal of a licence unless the past or present conduct of the appellant affords reasonable grounds for belief that she will not perform the activities of a licensee in accordance with law and with integrity and honesty.
- [10] To establish that the appellant is disentitled to registration, the onus is on the Registrar to prove reasonable grounds for belief. The Registrar does not have to show that the appellant's past or present conduct makes it more likely than not that she will not perform the activities of a licensee as required, but only that its belief to that effect is based on more than mere suspicion and on compelling and credible information: see *Ontario (Alcohol and Gaming Commission of Ontario) v. 751809 Ontario Inc.*, 2013 ONCA 157 at paras. 18-19; and *Mugesera v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at para. 114.
- [11] Further, the Registrar must also show that there is a nexus between the past or present conduct and the appellant's ability to perform the activities of a licensee under the *Act* serving the interests of the public: see *CS v. Registrar, Real Estate and Business Brokers Act*, 2002, 2019 ONSC 1652 at para. 32.
- [12] The Registrar alleges that the appellant acted as a licensee with respect to the management of a condominium corporation when she was in a conflict of interest due to her business relationship with, and interest in, businesses which provided services to the condominium she was managing, and that the conflict was not disclosed to her client or her supervising general licensee.
- [13] The Registrar also alleges that the appellant approved expenditures by her client condominium corporation in excess of the amount she was authorized by her licence to make, and that she attempted to interfere with a complaint that was made against her to the Condominium Management Regulatory Authority ("CMRA") contrary to the *Act*.

- [14] The appellant denies the allegations of misconduct. She argues that the Registrar has failed to establish that she had a conflict of interest which should disentitle her to a licence. She says that payments made which exceeded her licence authority were few and minor. She denies trying to interfere with the complaint made against her.

The conflicts of interest

- [15] I find that the Registrar has established that the appellant acted as the condominium manager with respect to Toronto Standard Condominium Corporation 2345 (“TSCC 2345”) when she had conflicting interests in its suppliers and that she failed to disclose those conflicting interests to TSCC 2345, or her employer, Crossbridge Condominium Management Services Ltd. (“CCMS”) which was the condominium management provider for TSCC 2345.
- [16] The appellant has held a limited licence since April 4, 2018. Among other things, the limited licence provides that the appellant was prohibited from approving expenditures of more than \$500 without first getting the approval of her supervising general licensee. She applied for a general licence on January 22, 2019. She was employed with CCMS from August 14, 2017 to June 29, 2018 and from December 9, 2019 to August 6, 2021. During her latest employment with CCMS, the appellant was assigned to manage TSCC 2345. Since she held a limited licence, the appellant worked under the supervision of Ellen Mahon who is a licenced general manager and is a regional manager of CCMS.
- [17] In addition to her employment as manager of TSCC 2345, the Registrar alleges that the appellant was involved with three businesses: Enhanced Cleaning & Maintenance Ltd. (“ECM”); General Maintenance (“GM”); and HVAC Air Systems Inc. (“HVAC”). HVAC also operates in the name of Universal Contracting (“UC”). The Registrar alleges that the appellant never disclosed her connection to these businesses to TSCC 2345 or to CCMS and that TSCC 2345 paid those businesses over \$250,000 from 2019 to 2021.

ECM

- [18] The appellant admits that she was an owner and director of ECM from January 22, 2021 until June 1, 2021. ECM’s corporate documents, which the appellant acknowledges are accurate, show that Steven Wagdi Ibrhim was also director and officer of that corporation, and continued to be its sole director and officer after June 1, 2021.

- [19] Based on CCMS's record of expenditures for TSCC 2345, during the time the appellant was an officer and director of ECM, four cheques were issued to ECM by CCMS on TSCC 2345's account totalling about \$2,536. The records show that the appellant approved and requisitioned those payments without seeking prior approval of TSCC 2345's Board of Directors or the supervising general manager, Ms. Mahon. Because some of these cheques were more than \$500, she was required by the terms of her limited licence to have those expenditures approved by the supervising general manager.
- [20] The banking records for ECM were presented in evidence through Lan Lam, who is employed as a documents specialist at Scotiabank where ECM's business account is located. The appellant does not dispute the authenticity of the records presented by Mr. Lam. According to the Scotiabank records, the appellant was a joint owner of the ECM business account starting in January 2021 until at least January 2022. ECM continued to provide, and be paid for, services to TSCC 2345 after the appellant was no longer a director of ECM but while she was still joint owner of the bank account at Scotiabank.
- [21] The appellant testified that she removed herself as a director of ECM in June 2021 because he knew she was in a conflict of interest. She did not report the conflict to the condominium's Board of Directors or to CCMS and she did not remove herself from ECM's bank account.
- [22] I find that the appellant was in a conflict of interest by virtue of her directorship in ECM and by being a joint owner ECM's bank account at Scotiabank. She benefitted financially from TSCC 2345's retainer of ECM by virtue of being the joint owner of the bank account into which payments for ECM's services were deposited. She should have disclosed the conflict to the Board of Directors of TSCC 2345 and to CCMS. I find that the appellant's conduct relating to ECM supports the Registrar's belief that she will not perform the activities of a licensee in accordance with law and with integrity and honesty.

GM

- [23] GM is a proprietorship owned and operated solely by the appellant. GM was registered as a proprietorship on May 13, 2019.
- [24] The CCMS records disclose that TSCC 2345, through CCMS, paid GM a total of \$9,831 for the period December 2019 to December 2021. The records show that the appellant approved and requisitioned those payments without seeking prior approval of TSCC's Board of Directors or the supervising general manager, Ms.

Mahon. The evidence shows that GM's bank account was, at all times, solely in the appellant's name.

- [25] At no time did the appellant disclose her interest in GM to CCMS or to TSCC 2345.
- [26] At the hearing, the appellant refused to discuss her conduct as it relates to GM. She says she is involved in a civil action with respect to that business and did not want to prejudice her civil case by testifying in this appeal hearing.
- [27] Based on the evidence presented at the hearing, I find that the appellant was in a conflict of interest by virtue of her ownership of GM and by owning GM's bank account at Scotiabank. She benefitted directly from the payments made to GM by TSCC 2345 and she should have disclosed the conflict to the Board of Directors of TSCC 2345 and to CCMS. I find that the appellant's conduct relating to GM supports the Registrar's belief that she will not perform the activities of a licensee in accordance with law and with integrity and honesty.

HVAC and UC

- [28] HVAC was incorporated in 2010 with its sole director being Wagdi Ibrhim as listed the corporate documents filed. Wagdi Ibrhim was called as a witness by the appellant. Wagdi Ibrhim testified that HVAC also operates business as UC and that UC is wholly owned by HVAC. He also testified that he often goes by the name George Azir in his business activities.
- [29] The evidence is that, while the appellant was managing TSCC 2345, HVAC and UC performed various services and was paid over \$250,000 by TSCC 2345, through CCMS, for those services. This evidence was not contested by the appellant at the hearing.
- [30] The appellant and Wagdi Ibrhim both deny that the appellant has any connection with HVAC, UC, or Wagdi Ibrhim, other than as it relates to the services provided by them as a supplier hired to work for TSCC 2345.
- [31] As noted above, the appellant's business partner in ECM was Steven Wagdi Ibrhim. The appellant denies that is the same person as Wagdi Ibrhim. Wagdi Ibrhim also denies that he is Steven Wagdi Ibrhim and denies knowing who Steven Wagdi Ibrhim is. In my view, neither the appellant nor Wagdi Ibrhim are credible with respect to this evidence.
- [32] In her evidence at the hearing, the appellant initially denied that Wagdi Ibrhim is the same person as George Azir, the name Wagdi Ibrhim later testified he uses

in most of his business dealings. She also denied that Steven Wagdi Ibrhim and Wagdi Ibrhim were the same person. The Appellant knew the Registrar was alleging that there was a connection between the two Ibrhims and that they were likely the same person, and yet she did not call Steven Wagdi Ibrhim as a witness and she did not provide any evidence to show that they were, in fact, different people. In fact, it was not until she testified at the hearing that the appellant alleged that George Azir, Wagdi Ibrhim, and Steven Wagdi Ibrhim were not the same person

- [33] It is unlikely that the appellant had a business partner named Steven Wagdi Ibrhim and a business associate named Wagdi Ibrhim, and that the two Wagdi Ibrhims did not know each other or that they did not even know who the other is as is alleged by Wagdi Ibrhim. This is rendered unbelievable by the fact that, in ECM's incorporating documents, Steven Wagdi Ibrhim lists his address as 217 Hill Farm Rd, Nobleton, the very same address as HVAC registered as its business address and shows on the invoices it provided to TSCC 2345 for payment.
- [34] Moreover, despite their denial of a personal or business relationship, a cheque to the appellant from HVAC for \$4,000 dated May 14, 2020 was submitted in evidence. The appellant denied knowledge of why the cheque was written. Mr. Ibrhim said that the money was a personal loan to the appellant and her husband because they were buying a house and were short on money. He volunteered, without anyone suggesting it, that this was not a bribe.
- [35] In my view, Steven Wagdi Ibrhim is likely the same person as Wagdi Ibrhim. The appellant acknowledges that she and Steven Wagdi Ibrhim were business partners in ECM and, based on the above, she and Wagdi Ibrhim probably have a business, or personal, relationship aside from their business relationship by virtue of HVAC and UC being a regular service provider of TSCC 2345.
- [36] I find that the appellant was in a conflict of interest by virtue of her relationship with Wagdi Ibrhim either as a partner in ECM or otherwise. I find that the appellant may have benefitted financially from the payments made to HVAC and UC by TSCC 2345 and she should have disclosed the conflict to the Board of Directors of TSCC 2345 and to CCMS. I find that the appellant's conduct relating to HVAC and UC supports the Registrar's belief that she will not perform the activities of a licensee in accordance with law and with integrity and honesty.

Conclusion regarding conflicts of interest

- [37] The Registrar has established that the appellant was in a conflict of interest when she participated in hiring ECM, GM, HVAC, and UC to perform services for TSCC 2345, for which they were paid more than \$250,000 while she was managing that condominium corporation. Further, I find that the appellant failed to disclose that she was in a conflict of interest to the Board of Directors of TSCC 2345 or to her employer CCMS.
- [38] The appellant's position is that the Board of Directors for TSCC 2345 was satisfied with the work done by the vendors retained by the appellant. She says the Board of Directors were aware of the expenditures that were made and approved them. In my view, this is not the point. The appellant benefitted financially from the fact that companies she had an interest in were retained to perform services for TSCC 2345 and she had an obligation to disclose any potential conflict of interest to the Board of Directors and to her employer. She did not.
- [39] The appellant also argues that other condominium managers have committed acts of misconduct which are more serious than the acts those committed by the appellant and have been allowed to continue to be licensed. In my view, that is not the test for eligibility under the *Act*. The *Act* requires a belief that the appellant will perform the activities of a licensee in accordance with the law and with integrity and honesty. This requirement is not satisfied by showing that there are licensees whose conduct is more blameworthy than the appellant's. That would not be in keeping with the consumer protection purposes of the *Act*.
- [40] A condominium manager is in a position of trust and has significant influence with respect to suppliers who are hired by the condominium corporation. She also has control over a condominium corporation's money and how that money is spent. By acting as a condominium manager while in the above conflicts of interest were in existence, and failing to disclose those conflicts, the appellant committed serious breaches of her obligations as a licensee under the *Act*.
- [41] The appellant's misconduct goes directly to whether or not she can be trusted to perform the activities of a licensee in accordance with law and with integrity and honesty and I find that this misconduct, by itself, affords reasonable grounds for belief that she will not.

Approval of expenditures in excess of her authority as limited licensee

- [42] According to the conditions of the appellant's licence, and the *Act*, she was prohibited from approving expenditures above \$500 on behalf of TSCC 2345

without obtaining the prior approval of her supervising general licensee, Ms. Mahon.

- [43] The Registrar submitted in evidence several cheques approved by the appellant on TSCC 2345's account which were in excess of \$500 and which Ms. Mahon testified she did not approve in advance. The appellant acknowledged at the hearing that she did not always seek approval for these expenditures. Most, if not all, these expenditures were in the \$700-\$1,500 range and Ms. Mahon conceded that, had the appellant sought approval, it would have been given.
- [44] At the hearing, the evidence provided by Ms. Mahon made it clear that CCMS did not strictly require the appellant to seek approval for expenditures in excess of her authority and that this had occurred on many occasions without any significant action being taken by CCMS to encourage the appellant to change that behaviour.
- [45] Although the appellant was technically in breach of the condition of her licence, I do not find that her conduct in this regard, on its own, affords reasonable grounds for belief that she will not perform the activities of a licensee in accordance with law and with integrity and honesty. It is, however, evidence that the appellant may not have a full understanding of her obligations to comply with the *Act* and regulations. It is of particular concern that some of the payments made in excess of her authority were to businesses in which she had an interest.
- [46] I find the appellant's conduct in making payments in excess of the amount authorized by her licence to be relevant in determining whether there are grounds for belief that she will not perform the activities of a licensee in accordance with law and with integrity and honesty.

Interference with complaint

- [47] Section 60(5) of the *Act* provides that no-one shall obstruct an inspection and the Registrar alleges the appellant did so on the basis of the following.
- [48] The evidence at the hearing was that the Registrar received a complaint from a former unit owner at TSCC 2345. The complainant submitted the complaint through her lawyer, Prabhjot Badesha. The Registrar commenced an investigation into the complaint.
- [49] Sometime after the complaint was made, the appellant says she was eating in a restaurant owned by her friend, Vinod Kumar, who also testified at the hearing. Mr. Kumar says that he and the appellant were friends. The appellant and Mr.

Kumar say that Mr. Kumar had an appointment to see a lawyer who he hoped to retain to give him advice relating to the restaurant. He invited the appellant to come with him and she agreed.

- [50] The appellant and Mr. Kumar say that neither of them realised that the lawyer who they were going to meet with was the same lawyer representing the complainant against the appellant.
- [51] Mr. Badesha testified at the hearing and says that, when he found out the appellant's identity, he asked the appellant and Mr. Kumar to leave his office. He says the appellant tried to convince him to drop the complaint against her and he refused to do so.
- [52] The appellant denies asking Mr. Badesha to drop the complaint and says that it was by pure coincidence that she ended up in Mr. Badesha's office that day. In fact, at the hearing she said she did not even know about the letter of complaint at that time. In my view, the appellant was not telling the truth about this. In the appellant's will say statement provided to the respondent before the hearing, the her evidence was that she attended Mr. Badesha's office in order to ask him to withdraw the complaint. Mr. Kumar said that the appellant told him about the complaint letter in the car after the meeting ended.
- [53] I accept the evidence of Mr. Badesha as to what transpired in his office. He has nothing to gain by being dishonest, and nothing about his testimony gave any indication that he was not being truthful.
- [54] While I am not satisfied that talking to a complainant's lawyer about withdrawing a complaint amounts to attempting to obstruct it, I am satisfied that the appellant's actions were dishonest and lacked integrity. I think it is likely that the appellant and Mr. Kumar arranged a meeting with Mr. Badesha under the false pretence of retaining him to give Mr. Kumar legal advice. I find that the appellant knew it was inappropriate for her to speak with the complainant's lawyer and that Mr. Badesha would never agree to speak with her and so she used deception to secure the meeting.
- [55] I find that the appellant's conduct with respect to the meeting with Mr. Badesha is dishonest and lacks integrity. That conduct affords reasonable grounds for belief that the appellant will not perform the activities of a licensee in accordance with law and with integrity and honesty.

Conclusion

- [56] I find that the appellant's conduct in acting as a condominium manager while in the conflicts of interest described above affords reasonable grounds for belief that the appellant will not perform the activities of a licensee in accordance with law and with integrity and honesty.
- [57] I also find that the appellant's conduct in making payments in excess of the amount authorized by her licence is evidence that she will not comply with her obligations as a licensee.
- [58] Finally, I find that her conduct in deceiving Mr. Badesha in order to try to convince him to withdraw the complaint against her is evidence that the appellant will not perform the activities of a licensee with integrity and honesty.
- [59] As a result, the appellant is not entitled to a licence under s. 37 of the *Act*.

Appropriate outcome

- [60] Where an appellant is disentitled to licensing, the Registrar and the Tribunal have the statutory discretion to consider the appellant's circumstances and determine whether the purposes of the *Act* and the public interest can be adequately protected through granting a licence with conditions. While the Registrar seeks the revocation of the appellant's limited licence and the refusal to grant a general licence to her, the Tribunal is not bound to accept the Registrar's position.
- [61] I do not find that this is an appropriate case for conditions. The appellant has presented insufficient evidence to satisfy me that conditions would address the conduct which I have found disentitles licensing. The appellant has not accepted responsibility for her conduct or taken any steps which would provide assurance that it will not be repeated in the future. The effectiveness of conditions is dependant, at least in part, on the appellant adhering to those conditions. The evidence presented at the hearing does not support a finding that the appellant can be relied on to comply with conditions.
- [62] I find that there is insufficient evidence before the Tribunal to suggest that conditions would be appropriate. I decline to impose conditions on the ground that I am not satisfied conditions would sufficiently protect the public.

ORDER

- [63] The Tribunal directs the Registrar to carry out its NOP to revoke the appellant's limited licence and to refuse to grant the appellant a general licence.

Released: March 10th, 2023

A handwritten signature in black ink, appearing to read 'Colin Osterberg', enclosed in a thin black rectangular border.

Colin Osterberg
Vice-Chair