



Citation: Berger v. Registrar under the *Condominium Management Services Act, 2015*, 2024 ONLAT CMSA 15341

Licence Appeal Tribunal File Number: 15341/CMSA

In the matter of an appeal from a Notice of Proposal to revoke a General Licence issued by the Registrar under the *Condominium Management Services Act, 2015*, S.O. 2015, c. 28, Sched. 2.

Between:

Norbert Berger

Appellant

and

Registrar under the *Condominium Management Services Act, 2015*

Respondent

DECISION

VICE-CHAIR: Colin Osterberg

APPEARANCES:

For the Appellant: Colin Pye, Counsel

For the Respondent: Erica Richler, Counsel

Heard by Videoconference: February 5, 7 and 8, 2024

OVERVIEW

- [1] Norbert Berger, the appellant, appeals from a Notice of Proposal (“NOP”) to revoke the General Licence issued to him by the respondent, the Registrar under the *Condominium Management Services Act, 2015*, (“Registrar”), on October 12, 2023.
- [2] The hearing in this matter commenced on November 9, 2023 in order to consider whether the Immediate Suspension Order, also issued October 12, 2023, should be extended until the conclusion of the hearing. The Immediate Suspension Order was extended until the conclusion of the hearing which was continued February 5, 2024.
- [3] The Registrar alleges that the past or present conduct of the appellant affords reasonable grounds for the belief that the appellant will not perform the activities of a licensee in accordance with the law and with integrity and honesty and is disentitled to a licence under s. 37(1)(a)(ii) of the *Condominium Management Services Act, 2015* S.O. 2015, c. 28, Sched. 2 (the “Act”).
- [4] The Registrar also alleges that the appellant has carried on activities in contravention of ss. 52, 55, and 56 of the *Act* and s. 32 of O. Reg. 123/17 under the *Act* (the “Regulation”), and is therefore disentitled to a licence pursuant to s. 37(1)(c) of the *Act*.
- [5] The appellant appeals the NOP to the Tribunal. He denies that his conduct warrants revocation of his licence.

ISSUES

- [6] The issues in dispute are:
 - i. Has the appellant carried on activities that are in contravention of the *Act* or the regulations?
 - ii. Does the past or present conduct of the appellant afford reasonable grounds for belief that he will not perform the activities of a licensee in accordance with law and with integrity and honesty?
 - iii. If the answer to either question is “yes” then what is the appropriate disposition?

RESULT

- [7] The Registrar has established that the appellant carried on activities that are in contravention of the *Act* and the Regulation.
- [8] The Registrar has established that the past or present conduct of the appellant afford reasonable grounds for belief that he will not perform the activities of a licensee in accordance with law and with integrity and honesty.
- [9] The Tribunal directs the Registrar to carry out the NOP to revoke the appellant's licence.

ANALYSIS

The appellant has carried on activities that are in contravention of the Act

Conflict of interest – Notice and approval

- [10] I find the appellant contravened s. 52 of the *Act* and s. 32 of the Regulation.
- [11] Section 52 of the *Act* provides that, if a licensee has an interest in a contract or transaction to which a client is a party or a proposed contract or transaction to which the client will be a party, they must disclose in writing to the client the nature and extent of the interest in accordance with the prescribed requirements.
- [12] Section 32(4) of the Regulation provides that a licensee shall not enter into a contract or transaction to which s. 52 of the *Act* applies unless the licensee has disclosed the interest to the client and obtained the written approval of the client to enter into the contract or transaction.
- [13] The appellant was, at all material times, the holder of a condominium manager General Licence under the *Act* and the principal condominium manager of L & H Property Management Inc. In that capacity, the appellant managed York Condominium Corporation #25 ("YCC#25").
- [14] The parties agree, and the evidence confirms, that by cheque dated October 24, 2022, YCC#25 transferred \$500,000 from its reserve fund to The Vellum Group Inc. ("Vellum"), which is a company in respect of which the appellant is the sole shareholder and only director and officer.
- [15] According to the appellant, he later caused Vellum to transfer the same \$500,000 to Pink Piggy Investment Group Incorporated ("Pink Piggy") for investment purposes. The appellant is listed in documents issued by Pink Piggy as its

“Chairman of the Board” and the appellant admits that he is a shareholder of Pink Piggy.

- [16] The specific investment into which YCC#25’s money was allegedly placed was titled a “Guaranteed Investment Certificate” issued by Pink Piggy (the “GIC”) and signed by the appellant as Chairman of the Board of Pink Piggy.

Did the appellant have an interest in the transaction?

- [17] The Registrar asserts that the appellant had an interest in the transaction which YCC#25 entered into with Vellum and Pink Piggy in accordance with s. 52 of the *Act*. The appellant denies that he had an interest in the transaction or that his interest in the transaction was material.
- [18] I find that the appellant had an interest in the subject transaction and that it was material.

Appellant’s interest in transfer to Vellum

- [19] On the face of it, the appellant, as the sole shareholder, director, and officer of Vellum had an interest in the transfer of \$500,000 to Vellum. However, the appellant alleges that he neither expected nor received any monetary benefit through Vellum from structuring the transaction in this way. The appellant says that Vellum is a “flow-through” and did not receive any compensation for the transaction. The appellant says that he “wanted control of the information” and wanted evidence of where the money was coming from and where it was going. The appellant does agree that it was possible that Pink Piggy might give him a small “honorarium” for having referred this investment, but says it was not obligated to.
- [20] In my view an “interest” in a transaction can include, but is not limited to, an expectation of profit. The fact that Vellum, a corporation entirely controlled by the appellant, was in receipt of a significant amount of money belonging to YCC#25 and coming from its reserve fund amounts to a material interest in the transaction and is subject to s. 52 of the *Act*. The *Act* is consumer protection legislation and the clear intent of s. 52 is to ensure that condominium managers disclose to their clients their interest in transactions so that the client’s money is not potentially used in the manager’s interest rather than the interest of the client.
- [21] Vellum is clearly interested in YCC#25’s \$500,000 while it is in its bank account. Vellum has an interest in ensuring that the monies are transferred to Pink Piggy and in securing the return of those funds on behalf of YCC#25. The fact that

\$500,000 out of its reserve fund is being transferred into a corporation that is wholly owned and controlled by the appellant is information which YCC#25 clearly would want, and have a right, to know.

- [22] In addition, I find the appellant, through Vellum, did have a financial interest in the transaction. The appellant admits that he might receive some money from Pink Piggy for referring the investment. The appellant did not produce any documentation as to the formal relationship between Vellum and Pink Piggy although there must be some given that Vellum transferred \$500,000 of YCC#25's money to Pink Piggy. The failure to provide this evidence negatively impacts the reliability of the appellant's assertion that he expected no financial benefit as the result of the transaction.
- [23] Also, the appellant failed to adequately explain why the funds needed to be transferred to Vellum before the purchase of the GIC from Pink Piggy. The appellant gave no reasonable explanation which satisfies me that the transfer to Vellum was intended to benefit YCC#25 in any way. The fact that the GIC was purchased through Vellum rather than by YCC#25 directly, raises the concern that the appellant might realize a financial benefit from the transaction without being as easily identified than if the purchase of the GIC was done directly.
- [24] Finally, Robert Watterson, Pink Piggy's only officer and director, and the person who helped the appellant found Vellum, was called as a witness by the appellant. Mr. Watterson testified that, although Vellum and the appellant have not made money from the operations of Pink Piggy until now, the intention is that the investments it is involved in, including the investment made by YCC#25 as part of the subject transaction, was expected to make money for Vellum and therefore the appellant in the future.
- [25] I find that the appellant had a material interest in the transaction by virtue of Vellum's involvement in the transaction and was subject to the requirements set out in s. 52 of the *Act* and s. 32 of the Regulation as a result.

Pink Piggy

- [26] As noted above, the appellant is the Chairman of the Board of Pink Piggy and is also a shareholder in that company. Despite this, the appellant alleges that he had no financial interest in the subject transaction. The appellant says that he receives no compensation as Chairman of the Board and that his shares do not entitle him to any financial benefit.

- [27] I do not accept the appellant's position. The appellant agrees that he has some interest in the success of Pink Piggy simply by virtue of his position as Chairman. Although the appellant testified that he would not benefit financially as a shareholder of Pink Piggy, this seems unlikely on its face. It is not believable that the appellant would take on the responsibilities of being a member of Pink Piggy's Board of Directors and be issued shares in the company without some expectation of a benefit, financial and otherwise.
- [28] Moreover, as noted above, Mr. Watterson testified that, although the appellant may not have so far benefitted financially from his involvement in Pink Piggy, the expectation is that he and the appellant will profit in the future.
- [29] I find that the appellant had a material interest in the transaction by virtue of his involvement with Pink Piggy and was subject to the requirements set out in s. 52 of the *Act* and s. 32 of the Regulation as a result.

Notice of interest

- [30] The Registrar argues that, given that the appellant had an interest in the subject transaction, he was required by s. 52 of the *Act* to disclose to YCC#25 in writing the nature and extent of the interest in accordance with s. 32 of the Regulation. The Registrar also submits that s. 32(4) of the Regulation prohibited the appellant from entering into this transaction without disclosing the interest and obtaining the written approval of YCC#25 to enter into the transaction. With that background, the Registrar alleges that the appellant did not disclose to YCC#25 in writing the nature and extent of his interest in the transaction and did not obtain the written approval of YCC#25 to enter into the transaction.
- [31] The appellant argues that he disclosed his involvement in Vellum and Pink Piggy to the Board of Directors of YCC#25 before entering into the transaction and that various written documents presented in evidence are sufficient to satisfy s. 52 of the *Act* and s. 32 of the Regulation with respect to the written notice and written approval requirements.
- [32] The cheque written by YCC#25 to the order of Vellum for the purchase of the GIC is dated October 24, 2022, and was signed by two members of the Board, Nisam Nagooradumay ("Nisam") and Imraan Khan ("Imraan"). According to the bank statement for YCC#25's reserve account, the \$500,000 was transferred out of that account, and presumably transferred to Pink Piggy, November 10, 2022. The GIC is dated November 15, 2022 and is signed by the appellant as Chairman of the Board of Pink Piggy.

- [33] Nasreen Musa was a Director on the Board of Directors of YCC#25 (the “Board”) at the time of the subject transaction. She has owned a unit in YCC#25 since 2015. Ms. Musa testified at the hearing that she first learned that YCC#25 was considering investing in a GIC issued by Pink Piggy sometime in November 2022. This was at a Board meeting and at that time the discussion was whether or not the investment should be made. Up until that time, Ms. Musa was not aware that such an investment was being contemplated.
- [34] According to Ms. Musa and David Mendel, another Director on the Board who also testified at the hearing, the Board was not advised that \$500,000 was going to be transferred from the reserve fund and paid to Vellum or that the money was to be invested in a GIC issued by Pink Piggy until long after those events took place. Further, it was their evidence that the appellant never advised the Board of the nature and extent of his interest in either Vellum or Pink Piggy.
- [35] In support of the allegations of Ms. Musa and Mr. Mendel, various documents which were presented in evidence. The Minutes of a Board meeting held August 25, 2022 made no mention of the GIC investment. The Agenda for the September 29, 2022 Board meeting did not mention the GIC investment.
- [36] The next Board of Directors meeting was not until October 27, 2022, after the cheque to Vellum was given to the appellant. The Draft Minutes of that meeting were produced and state that the Board was advised that the purchase of the GIC had occurred before that meeting.
- [37] The Draft Minutes of the October 27, 2022 Board meeting were not approved by the Board at the next meeting November 24, 2022, because Mr. Mendel did not recall that the GIC had already been purchased when the October meeting took place. According to the November Minutes, at the November meeting the appellant told the Board that the GIC had been purchased before the meeting in October.
- [38] At the hearing, the appellant testified that at the October 27, 2022 meeting, he told the Board that Nisam and Imraan had written a cheque to Vellum for the investment and that the cheque was in Vellum’s account. He says that none of the Board members expressed a concern at that time. The appellant agreed at the hearing that the draft October 27, 2022 Minutes were not accurate and that the GIC was actually purchased November 15, 2022. However, this was not the appellant’s position at the November 24, 2022 Board meeting. At that meeting the appellant maintained that the GIC had been purchased before the October 27 meeting and it was only Mr. Mendel who raised a disagreement about that.

- [39] I find that it is most probable that at the October 27, 2022 meeting, the Board was told that the GIC investment was a possibility only and that the Board was not told at that time that the investment was going to be made. I also find that at the October 27, 2022 meeting the Board was not told that the \$500,000 had been already transferred to Vellum. This was the evidence of Mr. Mendel and Ms. Musa, both of whom I found to be credible witnesses. It also is consistent with the documentary evidence set out above.
- [40] I also find that the appellant determined to proceed with the investment either before the October 27, 2022 or shortly after that, but certainly before November 10, 2022 when the documents show that the funds were transferred to Pink Piggy. It is most likely that the decision to invest was made before October 27, 2022 by Nisam, Imraan and the appellant without notice to the full Board. The cheque to Vellum signed by Nisam and Imraan was dated October 24, 2022. Also at the November 24, 2022 meeting, the appellant told the Board, according to the Minutes of that meeting, that the investment had been made prior to the October Board meeting. At the hearing, although the appellant's evidence on the subject was inconsistent, when asked to comment on Mr. Mendel's concerns expressed to him on October 28, 2022, the appellant said those concerns did not matter because the investment had already been made.
- [41] Based on the evidence, I find that the decision to make the investment was made prior to the October 27, 2022 Board meeting, that the investment was actually made between November 10 and November 15, 2022, and that the only Board members who actually participated in the decision to make the investment, or who had actual knowledge that the decision was going to be made, were Nisam and Imraan.
- [42] On October 28, 2022, Mr. Mendel sent an email to the Board and the appellant stating that, before investing in the GIC, the Board should be satisfied that the investment complies with the *Condominium Act*, that the investment is confirmed by YCC#25's accountant and lawyer to be sound and secure, and that its bank manager at TD should be asked his opinion. Mr. Mendel clearly was of the understanding that the decision to make the investment had not been made at that time and that the Board members' input was still being sought.
- [43] On November 8, 2022, the appellant responded to Mr. Mendel, copying the Board, by providing a sample GIC from Pink Piggy and stating that Pink Piggy is a registered financial institution in Ontario, that it is insured by CDIC and is Fintrac certified, none of which were true (as set out further below). The letter also says that the GIC is "fully compliant with Section 115 of the Condominiums

Act of Ontario,” which was also untrue (similarly set out below). The material provided to the Board also includes what appears to be a promotional letter from the appellant describing that the appellant and Mr. Watterson had founded Vellum and that Mr. Watterson is the President and CEO of Pink Piggy. The sample GIC shows the appellant as Chairman of the Board.

- [44] The November 8, 2022 communication from the appellant to Mr. Mendel and the Board does not mention that the funds had already been transferred to Vellum or that the decision had already been made to purchase the GIC. The communication appears to have been intended to give the Board the impression that no decision had been made and that the Board was still in the process of considering whether or not to purchase the GIC.
- [45] As noted above, it appears that the appellant transferred the \$500,000 from Vellum to Pink Piggy on November 10, 2022 without any further communication to or from the Board.
- [46] The GIC was allegedly purchased on November 15, 2022, although that is not entirely clear. The appellant never notified the Board that it had been purchased on that date until he provided Mr. Mendel with a GIC document in March 2023; he advised the Board of Directors at the November 24, 2022 meeting that it was purchased in October, before the previous Board meeting; the documents presented in evidence at the hearing indicate that the money was transferred to Pink Piggy November 10, 2022.
- [47] On November 21, 2022, Mr. Mendel responded to the appellant’s November 8 email, which he also copied to the Board. Mr. Mendel stated that professional financial investment advice should be obtained in addition to receiving input from YCC#25’s accountant and lawyer. He stated that the Board should be cautious. Mr. Mendel, and likely the rest of the Board other than Nisam and Imraan, were clearly not aware that the GIC had already been purchased or that any of the other transactions noted above had taken place. Despite that, the appellant did not respond to Mr. Mendel telling him what had been going on. Instead, the October 27, 2022 Draft Minutes were circulated stating that the GIC had been purchased before the October Board meeting.
- [48] According to the appellant, sometime prior to the October 27, 2022 Board meeting, he discussed the possibility of YCC#25 investing in the GIC with Nisam. According to the appellant, Nisam was the Board member who had dominated the Board for years – he “ruled the roost” and everyone else did what he wanted them to do. Nisam has since passed away and his version of events is not available to the Tribunal. The appellant says he assumed Nisam advised the

other Board members of the plan before the October 27, 2022 Board meeting. I do not accept the appellant's evidence. Mr. Mendel's emails to the appellant and the Board of October 28, 2022 and November 21, 2022 clearly show that he was unaware of the plan and the appellant did nothing to inform Mr. Mendel after receiving those emails. The appellant's communication on November 8, 2022 shows the appellant knew at that time that the Board did not know what was actually happening. I find that the appellant likely knew that the Board was in the dark regarding the specifics of the plan to invest in the GIC and did nothing to communicate the true state of affairs. He then appears to have actively tried to mislead the Board at the November 24, 2022 Board meeting into thinking that the purchase of the GIC had been discussed at the October Board meeting.

- [49] The appellant testified that at the October 27, 2022 meeting he told the Board of Directors that he (Vellum) had been given the cheque to invest in Pink Piggy and after that, the only Board member he heard from was Mr. Mendel who expressed the above concerns. No one else responded according to the appellant. The appellant says that YCC#25 "operates on silence" and that if he waited for approval from the Board, nothing would ever get done. He testified that, for him, "silence is approval". To be clear, I find that silence is not approval. Section 52 of the Act and s. 32 of the Regulation are clear with respect to written notice and authorization with respect to transactions in which the manager has an interest.
- [50] The appellant produced no document which indicates that the Board gave written approval to enter into the contract to transfer the funds to Vellum or to invest in the GIC with Pink Piggy. Moreover, there is no evidence that the Board made a decision to enter into the transaction.
- [51] In cross examination, the appellant agreed that he never received written authorization from the Board to make the GIC investment with Pink Piggy. He acknowledged that after the October 27, 2022 meeting, Mr. Mendel was going to conduct some investigation but the appellant did not take that as a concern. He also agreed that Mr. Mendel's subsequent emails gave his views on what should be done before making the investment, but the appellant described these comments as "the rantings and ravings of one Board member" and he did not consider them important to deal with.
- [52] In any event, the appellant says that there was no written authorization regarding the investment because that is simply the way this Board operates and has operated for years. He says sometimes the Board makes decisions, but they never make resolutions. Other times one or two members of the Board give him instructions and the other Board members go along with it without comment. He

says millions of dollars in building repairs have been made with only the approval of Nisam.

[53] It is clear that the appellant breached s. 32(4) by failing to obtain the written approval of YCC#25 before transferring \$500,000 from the reserve account into the Vellum account or before purchasing the GIC with that money. I do not accept the appellant's evidence that this is the way things are always done and I do not find that Nisam's alleged dominance of the Board mitigates the appellant's actions in any way. In this instance, Mr. Mendel and Ms. Musa did express concerns which the appellant simply disregarded and in some instances ridiculed. He mocked Mr. Mendel's suggestion that TD be consulted as being like asking GM what they think of Ford vehicles. He described the Board's later attempts to remove Nisam as president of the Board as a "coup".

[54] I also find that the appellant entered into transactions without disclosing in writing to YCC#25 the nature and extent of his interest in those transactions. He transferred \$500,000 from YCC#25's reserve account into Vellum's account without advising the Board, either verbally or in writing, about the nature and extent of his interest in Vellum. He then transferred the \$500,000 from Vellum to Pink Piggy on November 10, 2022. At that time the only information the Board had access to was the fact that the appellant and Mr. Watterson had founded Vellum and that the appellant was the Chairman of the Board of Pink Piggy. They were not provided with information as to the nature and extent of the appellant's interest in either Vellum or Pink Piggy. The appellant then participated in the purchase of the Pink Piggy GIC between November 10, 2022 and November 15, 2022, having provided the Board with no further information.

Conclusion regarding disclosure and approval of transaction

[55] I find that the appellant breached s. 52 of the Act and s. 32(4) of the Regulation by failing to disclose in writing to YCC#25 the nature and extent of his interest in the transaction resulting in the purchase of the GIC.

[56] I find that the appellant breached s. 32(4) of the Regulation by failing to obtain the written approval of YCC#25 to enter into the contracts or transactions resulting in the purchase of the GIC.

Illegal investments

[57] The Registrar alleges that the appellant breached s. 55(2) of the Act by furnishing or counselling another person to furnish false or deceptive information and documents related to the appellant's providing of condominium management

services. In this regard, the Registrar alleges that the appellant provided YCC#25 with documents falsely stating that the GIC issued by Pink Piggy was compliant with the *Condominium Act, 1998*, S.O. 1998, c. 19 (the "*Condominium Act*") when that was not true.

[58] The Registrar alleges that the appellant breached s. 56 of the *Act* by assisting a person to contravene the *Act* by participating in YCC#25's purchase of the GIC which was not compliant with the *Condominium Act*.

[59] Section 115(7) of the *Condominium Act* authorizes the board of directors of a condominium corporation to invest monies in the reserve fund accounts in eligible securities that are:

- i. Registered in the name of the corporation; or
- ii. Held in a segregated account under the name of the corporation by a member of the Investment Industry Regulatory Organization of Canada and covered by the Canadian Investor Protection Fund.

[60] Eligible securities are defined by s. 115(5) of the *Condominium Act* as:

- i. Issued or guaranteed by the Government of Canada or government of any province;
- ii. Issued by an institution located in Ontario and insured in accordance with the regulations by the Canada Deposit Insurance Corporation or the Financial Services Regulatory Authority of Ontario; or
- iii. Is a security of a prescribed class.

[61] The parties both agree that the GIC issued by Pink Piggy is not an eligible security under s. 115 of the *Condominium Act*, and nor was it at the time of its purchase by YCC#25.

[62] While the appellant agrees that the GIC was not compliant with the *Condominium Act*, he alleges that at the time the GIC was purchased, he was under the honest, but mistaken, understanding that the GIC was compliant with the *Condominium Act*.

[63] The documents contained in the package of documents the appellant provided to the Board on November 8, 2022 with respect to the GIC make a number of statements that are not correct. The documents state in various places:

- i. "Vellum Wealth programs are fully compliant with Section 115 of the *Condominium Act of Ontario*";
- ii. "Fully compliant with Section 115 of *The Condominium Act of Ontario*";

- iii. “The company issuing the GIC is Pink Piggy Investment Group Incorporated, a registered financial institution in the Province of Ontario, who are insured by CDIC and are Fintrac certified”.

[64] All of the above claims are false.

[65] The GIC itself states:

- i. “Compliant with Section 115 of the Condominium Act of Ontario”;
- ii. “Pink Piggy Investment Group Incorporated is “Fintrac” certified and covered by “CDIC””.

[66] Those statements are also false.

[67] The GIC itself contains a statement that “Condo Investments does not participate in the CDIC plan as all funds provided to us are fully insured to their full face value. CDIC only insures up to \$100,000”. This statement is misleading since the funds invested are not insured at all, but allegedly protected by a bond according to the appellant and Mr. Watterson. It also shows that the appellant knew the GIC was not insured by CDIC and knew, or ought to have known, that it was not an “eligible security” according to s. 115(5) of the *Condominium Act*.

[68] Not only did the appellant provide these documents to the Board around the time the GIC was purchased, according to his own testimony and according to the documents themselves, he was the person responsible for having created those documents.

[69] That the appellant presented these documents to the Board, to either encourage or justify the purchase of the GIC, makes his response to Mr. Mendel’s concerns in November 2022 even more poignant. Mr. Mendel wanted to have YCC#25’s accountant and lawyer review the GIC and provide their opinions. Presumably either or both the lawyer and the accountant would have discovered the false information contained in these documents and advised YCC#25 accordingly. Instead, the appellant dismissed Mr. Mendel’s request as the “ranting and raving of one Board member” and ignored the concern.

[70] The appellant also produced a letter from Mr. Watterson dated October 28, 2022 which states: “the investment plan for Condominiums in the Province of Ontario, by Vellum Wealth, presented to myself complies with all aspects of Section 115 of the Condominium Act of Ontario, 1998”. This is clearly not true and it is unclear what documents Mr. Watterson actually reviewed before making that statement.

[71] I find that the information the appellant provided to the Board about the GIC that he facilitated the purchase of, is demonstrably false and certainly deceptive. I

also find that the appellant likely knew the information was false when he presented the documents to the Board. He had no reasonable basis for believing that the GIC was compliant with the *Condominium Act* and he took active steps to avoid seeking the opinion of an independent professional about the truth of the statements in the documents. This is evidence that the appellant knew that the statements were false, and I so find.

[72] I find that the appellant breached s. 55(2) of the *Act* by furnishing or counselling another person to furnish false or deceptive information and documents related to the appellant's providing of condominium management services.

[73] For the same reasons, I find that the appellant breached s. 56 of the *Act* by assisting YYC#25 to contravene the *Act* by participating in its purchase of the GIC which was, to the appellant's knowledge, not compliant with the *Condominium Act*.

The past and present conduct of the appellant

[74] I find that the Registrar has proven that the past and present conduct of the appellant affords reasonable grounds for belief that he will not perform the activities of a licensee in accordance with law and with integrity and honesty.

[75] The Court of Appeal for Ontario in *Ontario (Alcohol and Gaming Commission of Ontario) v. 751809 Ontario Inc. (Famous Flesh Gordon's)*, 2013 ONCA 157 at paras. 18-19, held that the standard of proof with respect to reasonable grounds for belief does not require the Registrar to go so far as to show that the conduct makes it more likely than not that he will not carry on business as required.

[76] According to the Supreme Court of Canada in *Mugesera v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at para.114, the 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.

[77] Further, there must be a nexus between the person's past conduct and their ability to conduct business as required, considering the interests of the public: See *CS v. Registrar, Real Estate and Business Brokers Act, 2002*, 2019 ONSC 1652 (Div. Ct.) at para. 32.

[78] I have found that the appellant breached s. 32(4) by failing to obtain the written approval of YCC#25 before transferring \$500,000 from a client's reserve account into his own company's account and failed to obtain the written approval of YCC#25 before investing that money in a GIC issued by another corporation in which the appellant had an interest.

- [79] I have found that the appellant entered into the above transactions without disclosing in writing to YCC#25 the nature and extent of his interest in those transactions contrary to s. 52 of the *Act* and s. 32 of the Regulation.
- [80] Finally, I have found that the appellant breached s. 55(2) and s. 56 of the *Act* by furnishing or counselling another person to furnish false or deceptive information and documents related to the appellant's providing of condominium management services.
- [81] Any one of the listed infractions provides ample reason for belief that the appellant will not perform the activities of a licensee in accordance with law and with integrity and honesty. Among other things, the appellant explains his conduct by saying that this is his practice when dealing with YCC#25 and that, if he was required to wait for Board approval for action to be taken, then nothing would ever get done. The appellant's conduct speaks directly to the duties as a condominium manager and is consequently cause for significant concern with respect to the likelihood that the appellant will comply with the *Act* and regulations in the future.
- [82] I find that the Registrar has proven that the appellant's past and present conduct affords reasonable grounds for belief that he will not perform the activities of a licensee in accordance with law and with integrity and honesty.

Remedy

- [83] Although I found that the Registrar has met its burden, the Tribunal may order that the appellant retain its licence subject to conditions if it is satisfied that would give effect to the purposes of the *Act* and is in the public interest.
- [84] The appellant argues that revocation of the appellant's licence is not appropriate in the circumstances. He notes that he has a long record of working in the industry without any previous complaints or concerns. He argues there is no suggestion of criminal activity on the part of the appellant and no allegation of civil liability with respect to the way the investment was handled. In addition, the appellant points out that the Board was advised that the investment had been made and that there was no attempt to hide the fact that it had occurred, and the money was returned "in full" when the Board asked for it back. Finally, the appellant alleges that neither he nor Pink Piggy made any profit from the investment since it was returned to YCC#25 before the GIC had matured.
- [85] In my view, this is not an appropriate case for issuance of a licence with conditions. The breaches of the *Act* and the *Condominium Act* are serious, and they involve matters of trust and governability. The ability, and willingness, to recognize one's duty to notify a client of one's interest in a transaction, and to seek the client's approval to participate in such a transaction, are basic requirements under the *Act*. Participating in the purchase of investments which

do not comply with the *Condominium Act*, particularly where the appellant has an interest in the investment, is very significant misconduct which makes it impossible to accept that the appellant can be trusted to comply with conditions imposed by the Tribunal. The appellant understood his obligations to comply with the *Act* and Regulation but chose to ignore them, he says because that is the way things have always been done at YCC#25. That is not an acceptable explanation for non-compliance.

- [86] The fact that the Board of Directors was later advised that the investment had been made and that the appellant had some kind of interest in the other parties is not particularly relevant. Once they found out, it was too late to determine whether this was the investment they wanted to make with their reserve funds or whether there was some other, perhaps safer, investment that would be more appropriate. That was a decision for the Board, and not for the appellant.
- [87] The allegation that YCC#25 was paid back in full is neither true nor relevant. YCC#25 was paid its initial investment of \$500,000 but lost the opportunity to earn investment income during the better part of a year that the money was allegedly in the possession of Pink Piggy. That is a real cost to YCC#25. And while YCC#25 was perhaps fortunate enough to recover the money it invested, Board members were certainly justified in their concern that they might not recover their investment given the circumstances in which it was made.
- [88] Finally, although the appellant and Mr. Watterson allege they did not profit from this investment, that is an assertion which was not substantiated at the hearing and in respect of which I am not convinced. In any event, they certainly expected to profit from the investment when it was made. I do not find this to be a mitigating factor.
- [89] In my view, the appellant's conduct goes to the heart of his duties as a licensee and are such that the Tribunal can have no confidence that he is prepared to act in accordance with the law or with honesty and integrity in the future whether or not conditions were to be applied.

Conclusion

- [90] I find that the appellant breached s. 32(4) by failing to obtain the written approval of YCC#25 before transferring \$500,000 from a client's reserve account into his own company's account and failed to obtain the written approval of YCC#25 before investing that money in a GIC issued by another corporation in which the appellant had an interest.
- [91] I find that the appellant entered into the above transactions without disclosing in writing to YCC#25 the nature and extent of his interest in those transactions contrary to s. 52 of the *Act* and s. 32 of the Regulation.

- [92] I find that the appellant breached s. 55(2) and s. 56 of the *Act* by furnishing or counselling another person to furnish false or deceptive information and documents related to the appellant's providing of condominium management services.
- [93] I find that the Registrar has proven that the past or present conduct of the appellant affords reasonable grounds for belief that he will not perform the activities of a licensee in accordance with law and with integrity and honesty
- [94] I find that the appropriate disposition is the revocation of the appellant's licence.

ORDER

- [95] Pursuant to s. 41(8) of the *Act*, I direct the Registrar to carry out the NOP and revoke the appellant's licence.

Released: April 5, 2024



**Colin Osterberg
Vice-Chair**