



**Citation: Albion Building Consultant Inc. v. Registrar, Home Construction
Regulatory Authority, 2023 ONLAT NHCLA 13954**

**Date: 2023-01-27
File Number: 13954/NHCLA**

Appeal from a Notice of Proposal to refuse to renew registration pursuant to the *New Home Construction Licensing Act, 2017*, S.O. 2017, c. 33, Sched.1

Between:

Albion Building Consultant Inc.

Appellant

and

Registrar, Home Construction Regulatory Authority

Respondent

DECISION AND ORDER

ADJUDICATOR: Colin Osterberg, Member

APPEARANCES:

For the Appellant: Zamal Hossain, Director and Officer of Appellant

For the Respondent: Demetrios Yiokaris, Counsel

Katherine Ferreira, Counsel

Heard by Videoconference: January 12, 13, 16 and 17, 2023

REASONS FOR DECISION AND ORDER

A. OVERVIEW

- [1] Pursuant to a Notice of Proposal dated March 15, 2022 (“NOP”), the Registrar proposed to refuse to renew the licence of Albion Building Consultant Inc. (the “appellant”) as a vendor and builder under the *New Home Construction Licensing Act, 2017*, S.O. 2017, c. 33, Sched.1 (the “Act”).
- [2] The Registrar bases its NOP on the grounds that:
- I. it has been demonstrated that the past and present conduct of the appellant’s officers and directors, Zamal Hossain and Farida Haque, does not afford reasonable grounds for belief that its business will be carried on in accordance with the law and with integrity and honesty;
 - II. an officer or director of the appellant has made false statements with respect to the conduct of the appellant’s business;
 - III. the applicant or interested person in respect of the applicant has carried on or is carrying on activities that are in contravention of the *Act* or its regulations; and
 - IV. granting the appellant a licence is contrary to the public interest having regard to its past selling new homes without being registered under s. 6 of the *Act* and failing to enrol under s. 12 of the *Ontario New Home Warranties Plan Act*, R.S.O. 1990, c. O.31 (the “*ONHWP Act*”).
- [3] With respect to the first ground, the Registrar takes the position that the test under the *Act* is whether it has been demonstrated that the past and present conduct of the appellant’s officers and directors affords reasonable grounds for belief that its business will not be carried on in accordance with the law and with integrity and honesty rather than as it is set out above.
- [4] The appellant appeals the Registrar’s NOP to the Tribunal on the basis that the Registrar has not demonstrated that the appellant is disentitled to licensing under the *Act*.

B. ISSUES

- [5] The first issue to be decided is whether the past and present conduct of the appellant’s officers and directors affords reasonable grounds for belief that its business will be carried on in accordance with the law and with integrity and honesty according to s. 38(1)(b)(iii) of the *Act*. In order to disentitle the appellant to a licence under that section, the Registrar must prove that the past conduct of the appellant’s officers and directors does not afford reasonable grounds for belief that the appellant’s business will be carried on in accordance with the law and with integrity and honesty.

- [6] The second issue to be decided is whether an officer or director of the appellant has made any false statement with respect to the conduct of the appellant's business according to s. 38(1)(b)(iv) of the *Act*.
- [7] The third issue to be decided is whether the appellant or interested person in respect of the appellant has carried on or is carrying on activities that are in contravention of the *Act* or its regulations according to s. 38(1)(c) of the *Act*.
- [8] The fourth issue to be decided is whether granting the appellant a licence is contrary to the public interest having regard to its past selling new homes without being registered under s. 6 of the *Act* and failing to enroll under s. 12 of the *ONHWP Act*, according to s. 38(1)(g) of the *Act*.
- [9] If the answer to any of the above issues is "yes" then the appellant is not entitled to a licence renewal and the Tribunal must determine whether the appellant's licence should be renewed with conditions.

C. RESULT

- [10] For the reasons which follow, I find that the appellant is not entitled to the renewal of its licence. I order that the Registrar renew the appellant's licence as a builder on the condition that the licence is only valid with respect to homes already under construction as of the date of this Order. The licence is subject to a further condition that it be revoked immediately after the completion of the homes under construction as of the date of this Order or after a period of one year after the temporary licence is issued, whichever date is earlier.

D. EVIDENCE AND ANALYSIS

The statutory scheme

- [11] Anyone who acts as a vendor or builder of a new home must be licensed to do so in accordance with the *Act*. The Home Construction Regulatory Authority ("HCRA") administers the licensing provisions in the *Act*.
- [12] The *ONHWP Act* sets out statutory warranties which vendors and builders are required to provide for new homes and establishes a guarantee fund to protect purchasers in the event that a vendor or builder fails to honour those warranties. Tarion Warranty Corporation ("Tarion") is the organization which administers the warranty plan. All new homes built in Ontario are required to be enrolled with Tarion so that the new home has warranty protection.
- [13] Tarion was previously responsible for licensing new home builders and vendors under *ONHWP Act*. On February 1, 2021, The *ONHWP Act* was amended to remove Tarion's licensing function, and the *Act* came into force placing that function with the HCRA.

[14] The *Act* and the *ONHWP Act* are consumer protection legislation. The Court of Appeal stated in *Ontario New Home Warranty Program v. Lukenda*, 1991 CanLII 7167:

The major purpose of the Plan Act is to protect purchasers of new homes by requiring that vendors and builders be screened for financial responsibility, integrity and technical competence.

[15] The Tribunal has reaffirmed the consumer protection purpose of the *ONHWP Act* on numerous occasions since then and has confirmed that to be the *Act's* purpose recently in *1957922 Ontario Ltd. V. Registrar, New Home Construction Licencing Act, 2017*, 2022 CanLII 49929 (ONLAT), in which the Tribunal stated that “the *Act* is consumer protection legislation, and the stakes are high for homebuyers.” I agree.

I. The past and present conduct of the appellant

[16] Section 38 of the *Act* sets out the circumstances in which the appellant is entitled to a builder's licence or a vendor's licence and provides the bases upon which the Registrar may refuse to issue or renew its licence.

[17] Under s. 38(1)(b)(iii) of the *Act*, the appellant is entitled to a licence or a renewal of a licence by the Registrar if the past and present conduct of the appellant's officers and directors affords reasonable grounds for belief that its business will be carried on in accordance with the law and with integrity and honesty according to s. 38(1)(b)(iii) of the *Act*.

[18] It follows that, to satisfy the onus on it to prove that the appellant is not entitled to a licence based on s. 38(1)(b)(iii) of the *Act*, the Registrar must prove that the past conduct of the appellant's officers and directors does not afford reasonable grounds for belief that the appellant's business will be carried on in accordance with the law and with integrity and honesty.

[19] This is consistent with Tribunal's interpretation of that section in *Yarco Developments Inc. v. Registrar, Home Construction Regulatory Authority*, 2022 CanLii 84678 (affd on reconsideration at 2022 CanLii 20031) and with the principles of statutory interpretation set out in *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLii 837 (SCC), which states that the words of a statute be read “in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.”

[20] In the *Act*, the words “reasonable grounds for belief” are applied to whether the appellant's business will be carried on in accordance with the law and with integrity and honesty. As stated by the Court of Appeal in *Ontario (Alcohol and Gaming Commission of Ontario) v. 751809 Ontario Inc. (Famous Flesh Gordon's)*, 2013 ONCA 157, at 18-19, “reasonable grounds for belief” means something less than a balance of probabilities. The Supreme Court of Canada in *Mugesera v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at

para. 114 states that the reasonable grounds to believe standard requires 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.

- [21] Further, the Divisional Court held in *CS v. Registrar, Real Estate and Business Brokers Act, 2002*, 2019 ONSC 1652 at 32-33 that there must be a nexus between the appellant's past conduct and its ability to conduct business in the relevant regulated industry.
- [22] The Registrar argues that the past and present conduct of Mr. Hossain and Ms. Haque includes charges and convictions under the *ONHWP Act* and the *Real Estate and Business Brokers Act, 2002*, S.O. c. 30, Sched. C ("*REBBA*"), and does not afford reasonable grounds for belief that the appellant's business will be carried on in accordance with the law and with integrity and honesty.
- [23] The appellant, Mr. Hossain and Ms. Haque do not dispute the charges and convictions but argue that, despite those charges and convictions, their past and present conduct does afford reasonable grounds for belief that the appellant will act as required by s. 38(1)(b)(iii).

ONHWP Act convictions

- [24] The appellant has carried on business as a home builder and vendor since its incorporation in 2015. According to Mr. Hossain and Ms. Haque, they were both active in managing the business although Mr. Hossain was primarily responsible for its construction activities.
- [25] Until 2016, Mr. Hossain was a shareholder, director and officer of another company, Albion Builders Inc. (the "predecessor company"). The predecessor company had other officers and directors in addition to Mr. Hossain, but Mr. Hossain says he was actively involved in its operations.
- [26] On February 22, 2016, the predecessor company pled guilty and was convicted of building a new home without being registered and for failing to enrol a home contrary to sections 6 and 12 of the *ONHWP Act*. On that same date, Mr. Hossain pled guilty and was convicted under sections 6 and 12 of the *ONHWP Act* of acting as an officer or director who knowingly concurred with the predecessor company in the building of a home without being registered and for failing to enrol a home with Tarion in breach of the *ONHWP Act*.
- [27] On February 20, 2019, the appellant pled guilty and was convicted of four counts of building homes without being registered under section 6 of the *ONHWP Act*.
- [28] On February 11, 2022, the appellant was convicted of 11 counts of failing to enrol homes with Tarion as required by section 12 of the *ONHWP Act*. On that same date, Mr. Hossain pled guilty and was convicted under section 12 of the *ONHWP Act* for acting as officer and director who knowingly concurred with the appellant by failing to enrol eleven homes with Tarion.

- [29] Also on February 11, 2022, Ms. Haque pled guilty and was convicted of acting as a vendor of a new home which was built by the appellant without being registered pursuant to section 6 of the *ONHWP Act*.
- [30] According to Mr. Hossain, the first house that he and the predecessor company built resulted in the 2016 convictions. He says that he did not know at the time that he was required to register as a builder and enrol the house with Tarion before he could build and sell that home.
- [31] I do not find Mr. Hossain's evidence credible. He has been a real estate agent since at least 2008 and agrees that he had to take a number of courses in residential real estate in order to become licensed. He also had to take a course in residential real estate every two years in order to maintain his real estate licence. Mr. Hossain had, by his own estimate, been involved as a real estate agent in about 10-15 transactions each year since he started in 2008. Given this experience, it is unlikely that Mr. Hossain did not know that a builder of new homes was required to be licensed or that new homes had to be enrolled with Tarion.
- [32] Moreover, after Mr. Hossain and the predecessor company were charged and convicted of the *ONHWP Act* offences in 2016, he continued to build and sell houses through the appellant while it was unlicensed to do so, and without enrolling those homes with Tarion. He says he did this because it was taking a long time to become registered as a builder/vendor and he wanted to stay in business. By the time the appellant was registered in 2019, it and Mr. Hossain had been charged with four more counts each in connection with building homes while unregistered and failing to enrol those homes with Tarion. The fact that Mr. Hossain and the appellant continued to build homes while unlicensed after the 2016 convictions casts doubt on his allegation that he only engaged in that activity before 2016 because he failed to understand the licensing requirements of the *ONHWP Act*.
- [33] It is not reasonable to believe that Mr. Hossain was not aware of the requirements that a builder be licensed and that new homes be enrolled with Tarion before he and the predecessor company were charged and convicted in 2016 given his experience as a real estate agent and as the operator of a home renovations company. The fact that he continued to commit those offences through the appellant after the 2016 convictions supports the Registrar's position that he simply disregarded the licensing and enrollment requirements.
- [34] As noted above, Mr. Hossain says the charges and convictions in 2019 occurred because it took a long time to finish the courses required for registration and for Tarion to issue the builder/vendor licence to the appellant. Mr. Hossain says it was not reasonable to expect him to wait for a licence before building those homes because he had employees who needed to be paid, a family that needed an income, investors who expected a return, and customers who wanted him to build houses for them. Mr. Hossain and Ms. Haque say they continued to build

homes during this period when they knew the appellant was not licensed to do so and that the homes were not enrolled with Tarion. They both knew that they were in breach of the *ONHWP Act* by doing so.

- [35] After the appellant was issued a builder/vendor licence in February 2019, the appellant was approved by Tarion to enrol seven houses, including the four that were the subject of the 2019 convictions. In 2020, the appellant applied to enrol 12 homes and were approved for five. In 2021, the appellant applied to enrol 12 homes and were approved for 12 homes. By 2022, the appellant's licence had been revoked and no homes were approved for Tarion enrollment that year.
- [36] In addition to the homes that were enrolled with Tarion from 2019 through 2021, the Mr. Hossain admits that the appellant built 11 more homes which were not enrolled with Tarion. This resulted in the convictions in 2022 noted above.
- [37] Mr. Hossain says that the reason that the appellant continued to build homes without enrolling them from 2019-2021 was that Tarion would not authorize the appellant to enrol more. He says that since the appellant had to use four of its seven enrollments on homes that were already under construction, and which were the subject of the 2019 convictions, he only had three left and that this was not enough given the company's capacity and the number of clients he had.
- [38] Mr. Hossain says that in 2020 the appellant was only authorized to enrol five houses and, given that he was already behind due to the inadequate enrollment authorization in 2019, this exacerbated the problem. This continued into 2021 when, even though Tarion authorized 12 of the 12 enrollments requested, the appellant was already behind and had no choice but to continue to build houses without enrolling them.
- [39] Mr. Hossain says that the appellant desperately wants to comply with the *Act* but Tarion's refusal to authorize it to build more houses each year has made that impossible. He says that the appellant has many obligations including to its employees, investors, and customers and the appellant has effectively been forced to build houses which it was not authorized to enroll. Mr. Hossain says that the appellant has never been given the opportunity to show that it can comply with the *Act*.
- [40] It is concerning that the appellant, Mr. Hossain, and Ms. Haque have been convicted of regulatory offences with respect to 16 homes over a six-year period. Those convictions and the reasons that Mr. Hossain and Ms. Haque committed the offences that resulted in those convictions, as set out above, are significant factors in determining whether there are reasonable grounds for belief that the appellant's business will be carried on in accordance with the law and with integrity and honesty.
- [41] That the appellant, built and sold homes when its directors and officers knew it was not licenced to do so and that those homes were not enrolled with Tarion, is

a significant indication that the appellant will continue to do so in the future. The explanations for this conduct given by Mr. Hossain and Ms. Haque - that they caused the appellant to build homes without a licence because it took a long time to go through the licensing process, and that they caused the appellant to build homes without enrolling them with Tarion because Tarion would not authorize the appellant to build more homes – does not mitigate the concern that the appellant will engage in these activities in the future.

- [42] Mr. Hossain and Ms. Haque made it clear during their testimony that they have no intention to stop building homes without enrolling them unless Tarion approves enough enrollments to accommodate the number of homes the appellant is able to build. In Mr. Hossain's words, "if Tarion gives me 25 homes I will comply." This was offered by Mr. Hossain as evidence that he would like to abide by the *Act* and regulations but this evidence does not persuade me that the appellant's conduct is likely to change should it be granted a licence.

False statements in RECO applications

- [43] The evidence at the hearing demonstrates that Mr. Hossain and Ms. Haque made false statements to the Real Estate Council of Ontario (RECO) on multiple occasions in various applications for licence renewal. In each of their RECO renewals from 2016 to 2021, Mr. Hossain and Ms. Haque answered "no" to the following question contained in their licence renewal disclosure statement:

Are there currently any charges pending, or have you been found guilty, pleaded guilty to, or been convicted of an offence under any law, or are you an officer, director, majority shareholder of a corporation or partner of a partnership to which the preceding statement applies?

- [44] The evidence establishes that Mr. Hossain and Ms. Haque should have answered "yes" to that question, as they both now agree.
- [45] On October 17, 2016, Mr. Hossain pled guilty to three counts of failing to notify the *REBBA* Registrar of a change in application and one count of furnishing false information in an application. The convictions stem from his failure to advise RECO of the *ONHWP Act* charges and convictions against himself and the predecessor company as he was required to do under *REBBA*.
- [46] In August 2021, Mr. Hossain was charged with three counts of failing to notify the Registrar of a change and three counts of furnishing false information under *REBBA*. These charges stem from his failure to advise RECO about the *ONHWP Act* charges against himself and the appellant as he was required to do under *REBBA*. In 2022, Mr. Hossain pled guilty to those charges.
- [47] In August 2021, Ms. Haque was charged with three counts of failing to notify the *REBBA* Registrar of a change and two counts of furnishing false information under *REBBA*. These charges stem from her failure to advise RECO about the

ONHWP Act charges against the appellant as she was required to do under the *REBBA*.

- [48] Mr. Hossain and Ms. Haque admit that the answer to the question under consideration should have been “yes”. They claim that they understood that question to only relate to charges and convictions against them personally and not to charges and convictions against their corporation, the appellant.
- [49] I do not accept the explanation given by Mr. Hossain or Ms. Haque. The question is clear and is accompanied by a prominent warning that it is an offence to provide false information in the renewal application. It is not reasonable to believe that they innocently misunderstood the question in the way they say they did.
- [50] Moreover, as set out above, Mr. Hossain was personally convicted of *ONHWP Act* charges in 2016 and even if he interpreted the question in the way he says he did, he provided no reasonable explanation for answering it incorrectly thereafter.
- [51] I find that the Registrar has proven that the officers and directors of the appellant have knowingly made false statements in their real estate licence renewal applications. This negatively reflects on whether the appellant will carry on business in accordance with the law and with honesty and integrity.

The appellant’s evidence

- [52] The appellant presented evidence from seven character witnesses. Five of those witnesses are people who purchased new homes built by the appellant. They all said that the appellant and Mr. Hossain were exemplary builders and dealt with them honestly and fairly. They all said that the appellant resolved all issues with the homes quickly and that they were more than happy with the services the appellant provided.
- [53] Several of the character witnesses gave evidence that Mr. Hossain and Ms. Haque are honoured members of the Bangladeshi community in Canada and have donated their money and their time generously in that regard. Letters of support were put into evidence which spoke in very positive terms about their contribution to the community.
- [54] In addition, the appellant called two witness who have provided architectural and land-use-planning services for the appellant for about 10 years. They both testified that their business relationship with the appellant was a good one and that they were aware that the appellant’s customers were very satisfied with the houses that were built for them. They have always been paid on time and they trust the appellant to deal with them honourably in their business relationship.
- [55] This “character evidence” is relevant to the determination as to whether there is reason for belief that the appellant will carry on its business in accordance with the law and with honesty and integrity. However, it is of limited value in my view.

The witnesses did not speak directly to whether they thought the appellant was likely to comply with the law and they had limited experience in order to assess the honesty of Mr. Hossain and Ms. Haque. One of these witnesses said that Mr. Hossain told him he would be unable to enrol the home he built for the witness with Tarion because he had exceeded his enrollment authority. This may have been honest from the perspective of that witness, but it does not support the likelihood that the appellant would carry on business in accordance with the law or with integrity.

[56] That being said, I find that the appellant has demonstrated that it has customers that are happy with the work the appellant did for them and Mr. Hossain's contribution to the community.

[57] Mr. Hossain and Ms. Haque insist that they are honest, hard-working, business people, that they provide valuable contributions to the community and to Canada, and that they will act in accordance with the law and with honesty and integrity if given the opportunity.

Conclusions with respect to s. 38(1)(b)(iii) of the Act

[58] Although past conduct involving criminal or regulatory convictions may not, in itself, preclude licensing, it is relevant in determining whether there is reason to believe a business will be carried on in accordance with the law and honesty and integrity.

[59] Under s. 38(1)(b)(iii) of the *Act*, the Tribunal must consider all of the past and present conduct and determine whether that conduct, as a whole, affords reason for belief that the appellant's business will be carried on in accordance with the law and with integrity and honesty. I find that it does not.

[60] The convictions involving the predecessor company, the appellant, Mr. Hossain, and Ms. Haque, are all recent and are specific to working in the industry regulated by the *Act*. That evidence, when considered along with the reasons given to explain that conduct and the evidence presented by the appellant with respect to the character of Mr. Hossain and Ms. Haque, do not afford reasonable grounds for belief that the appellant's business will be carried on in accordance with the law and with integrity and honesty.

[61] The fact that Mr. Hossain and Ms. Haque knowingly provided false information to RECO, and the resulting convictions, also supports the Registrar's position that their past conduct does not afford reasonable grounds for belief that the appellant will act in accordance with the law and with honesty and integrity.

[62] Having considered all the evidence, I find that the past and present conduct of the directors and officers of the appellant do not afford reasonable grounds for belief that the appellant's business will be carried on in accordance with the law and with integrity and honesty.

[63] Therefore, based on s. 38(1)(b)(iii) of the *Act*, the appellant is not entitled to a renewal of its licence.

II. False statements

[64] As stated above, I have found that Mr. Hossain and Ms. Haque knowingly made false statements to RECO and were convicted of offenses relating to those false statements.

[65] However, s. 38(1)(b)(iv) provides that the appellant will be entitled to a licence if no officer or director of the appellant has made any false statement “with regard to the conduct of the applicant’s business.”

[66] In the present case, the false statements proven by the Registrar were made by the appellant’s directors and officers, but they are not alleged to have been made with regard to the appellant’s business. Rather, the statements appear to have been made with respect to the real estate practices of Mr. Hossain and Ms. Haque. Although it may be that their real estate practices have some connection with the appellant’s home building and selling activities, evidence of that was not presented at the hearing and I am unable to make that finding.

[67] The Registrar did not present other evidence with respect to false statements made by Mr. Hossain or Ms. Haque with respect to the conduct of the appellant’s business and I am not satisfied that the appellant is disentitled to the renewal of its licence pursuant to s. 38(1)(b)(iv) of the *Act*.

III. Activities in contravention of the NHCLA and the Regulations

[68] Under s. 38(1)(c)(ii) of the *Act*, entitlement to a licence requires that neither the appellant, nor any interested person in respect of the appellant, has carried on or is carrying on activities that are in contravention of the *Act*.

[69] As set out above, the appellant has knowingly built homes without being licenced and without enrolling those homes with Tarion multiple times since 2016 up until the present. Mr. Hossain and Ms. Haque do not dispute that. Both these activities are in contravention of the *Act* and regulations.

[70] I find that the appellant is disentitled to licensing pursuant to s. 38(1)(c) of the *Act*.

IV. Public Interest

[71] Under s. 38(1)(g) of the *Act*, the appellant will be disentitled to a renewal of its licence if, in the Registrar’s opinion, granting the renewal would be contrary to the public interest.

[72] The Registrar made few submissions with respect to this issue and given the above findings, I need not make findings with respect to this allegation.

E. CONDITIONS

- [73] The Tribunal has the discretion to determine whether the appellant's licence should be renewed with conditions under s. 43(9) of the *Act*.
- [74] The appellant did not make submissions with respect to whether the licence should be issued with conditions, or what conditions might be suitable. After considering the evidence presented, I do not find that this is an appropriate case for renewal of the appellant's licence with conditions other than as described below. The effectiveness of conditions is dependent, 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.
- [75] The Registrar has requested that an order be made for the issuance of a licence allowing the appellant to complete construction of the homes it is currently building on the condition that it is automatically revoked when the construction of those buildings is completed. Those homes would have to be enrolled with Tarion as well.
- [76] I find the Registrar's request reasonable.

F. ORDER

- [77] For the forgoing reasons, the Tribunal orders that the Registrar renew the appellant's licence as a builder on the condition that the licence is only valid with respect to homes already under construction as of the date of this Order. The licence is subject to a further condition that it be revoked immediately after the completion of the homes under construction as of the date of this Order or after a period of one year after the temporary licence is issued, whichever date is earlier.

LICENCE APPEAL TRIBUNAL



Colin Osterberg, Vice-Chair

Released: January 27, 2023