



**Citation:** Jhamtani and Simsons Management Inc. v. Condominium Management Regulatory Authority of Ontario, **2022 ONLAT CMSA 13072**

**Date:** 2022-05-26

**File Number:** 13072/CMSA

An appeal from a Notice of Proposal of the Condominium Management Regulatory Authority of Ontario, S.O. 2015, c.28, Sch. 2 – to Revoke Registration.

**Between:**

**Anil Jhamtani and Simsons Management Inc.**

**Appellants**

-and-

**Condominium Management Regulatory Authority of Ontario**

**Respondent**

## **DECISION & ORDER**

**ADJUDICATOR:**

Raymond C. Ramdayal, Member

**APPEARANCES:**

For the Appellant:

Lisa Freeman, Counsel

For the Respondent:

Erica Richler, Counsel

**Heard by teleconference:**

March 9, 2022

## Background

- [1] The individual appellant, Anil Jhamtani, holds a condominium manager General Licence under the *Condominium Management Services Act, 2015*, S.O. 2015, c.28, Sch. 2 (the “Act”). The corporate appellant, Simsons Management Inc., holds a Condominium Management Provider Licence issued under the Act.
- [2] From on or about December 1, 2016 to on or about February 19, 2020, the appellants managed a condominium corporation, but their management service was terminated effective February 19, 2020. The condominium corporation later filed a complaint with the Registrar of the Condominium Management Regulatory Authority of Ontario (“CMRAO” or the “respondent”) about the appellants’ conduct.
- [3] By letter dated December 12, 2020, the respondent issued a notice of proposal to revoke the appellants’ licences (NOP). The respondent is of the opinion that the appellants are not entitled to their licences because:
1. The past or present conduct of the appellants affords reasonable grounds for belief that the appellants will not perform the activities of licensees in accordance with the law and with integrity and honesty, more particularly, the appellants caused a condominium corporation to transfer \$10,000 to the individual appellant without authorization; and/or
  2. The appellants are carrying on activities that are in contravention of the Act or the regulations, more particularly, section 35 of Ontario Regulation 123/17, and section 6 of Ontario Regulation 4/18.

## Issue

- [4] The issue to be determined is whether the respondent has reasonable grounds for revoking the appellants’ licences. In order to make this determination, I must consider the following:
1. Whether the appellants’ past or present conduct affords reasonable grounds for belief that they will not perform the activities of licensees in accordance with the law and with integrity and honesty; and
  2. Whether the appellants are carrying on activities that are in contravention of the Act or the regulations.

## Result

- [5] For the reasons set out below, I confirm the respondent's decision that the appellants should be disentitled to their licences.

## Law

- [6] The CMRAO regulates condominium managers and management firms in accordance with the principle of promoting the protection of the public interest. Part of their oversight function is to determine whether licensees continue to meet the requirements to be licenced. These requirements are set out in the Act and the General Regulation made under the Act (Ontario Regulation 123/17).

- [7] Section 37 (1) of the Act states:

An applicant that meets the prescribed requirements is entitled to a licence or a renewal of a licence by the registrar unless,

(a) The applicant is not a corporation and,

- (i) having regard to the applicant's financial position or the financial position of an interested person in respect of the applicant, the applicant cannot reasonably be expected to be financially responsible in engaging in the activities of a licensee,
- (ii) the past or present conduct of the applicant or of an interested person in respect of the applicant affords reasonable grounds for belief that the applicant will not perform the activities of a licensee in accordance with law and with integrity and honesty,

or

- (iii) the applicant or an employee or agent of the applicant makes a false statement or provides a false statement in an application for a licence or for a renewal of a licence.

(b) the applicant is a corporation and,

- (i) having regard to its financial position or the financial position of an interested person in respect of the corporation, the applicant cannot reasonably be expected to be financially responsible in engaging in the activities of a licensee,

(ii) having regard to the financial position of its officers or directors or an interested person in respect of its officers or directors, the applicant cannot reasonably be expected to be financially responsible in engaging in the activities of a licensee,

(iii) the past or present conduct of its officers or directors or of an interested person in respect of its officers or directors or of an interested person in respect of the corporation affords reasonable grounds for belief that it will not perform the activities of a licensee in accordance with the law and with integrity and honesty,

or

(iv) an officer or director of the corporation makes a false statement or provides a false statement in an application for a licence or for a renewal of a licence.

(c) the applicant or an interested person in respect of the applicant is carrying on activities that are, or will be if the applicant is licensed, in contravention of this Act or the regulations, other than the code of ethics established under section 77.

[8] Section 40 (1) of the Act states:

Subject to section 41, the registrar may refuse to licence an applicant or may suspend or revoke a licence or refuse to renew a licence if in his or her opinion, the applicant or licensee is not entitled to a licence under section 37.

[9] Section 35 of Regulation 123/17 states that a licensee that is required to transfer documents and records to their client no later than 15 days after the termination of a condominium management services contract or, if the required document does not exist and the services contract requires the licensee to create it, then the licensee shall create it, copy it and transfer it to their client no later than 30 days after the services contract is terminated.

[10] Section 6 of Regulation 4/18 states that a licensee who holds records on behalf of their client shall ensure that the records are maintained securely, accurately and with care and due regards to their client's obligations; to make those records available to the client for inspection as soon as reasonably possible; and to transfer as soon as reasonably possible to the client any records held by the licensee, upon the client's request.

[11] In *Ontario (Alcohol and Gaming Commission of Ontario) v. 751809 Ontario Inc.*, 2013 ONCA 157, the Ontario Court of Appeal found that, as a standard of proof, “reasonable grounds for belief” is lower than “balance of probabilities.” It requires more than mere suspicion and an objective basis for the belief which is based on compelling and credible information. The Court of Appeal also noted that, when looking at past conduct, the Registrar is entitled to look at conduct outside of the four corners of the licence, which includes both criminal and noncriminal conduct.

### **Evidence and Analysis**

[12] The parties appeared at the hearing with an Agreed Statement of Fact (ASF), dated February 21, 2022 (Exhibit #1). The respondent provided evidence outlined in the ASF. I have relied heavily on this signed ASF as it provides an accurate account of the circumstances surrounding the case including the failure to return corporation records, the unauthorized transfer of \$10,000, the failure to manage common element fees, the failure to pay invoices, the failure to pay CAO fees, the failure to maintain complete and accurate financial records and maintenance record, the failure to cooperate with CMRAO inspection, and the failure to comply with undertaking provided to CMRAO.

[13] Overall, I find that the ASF supports the NOP and the reasons that underly the proposal. Furthermore, I find that it provides clarity and confirms that the respondent issued the NOP having reasonable grounds for revoking the appellants’ licences.

### **CMRAO Position**

[14] Most of the respondent’s testimony arose from the ASF. I find that there are several items contained in the ASF which cumulatively support the respondent’s position on a balance of probabilities.

[15] The agreed facts are that up until on or about October 6, 2021, Anil Jhamtani was the principal condominium manager of Simsons. They had provided condominium management services to TSCC 2084 from on or about December 1, 2016 to on or about February 19, 2020 when they were terminated by TSCC 2084’s Board.

[16] The Board delegated to the managers the responsibility to collect common element fees from unit owners, arrange for cleaning of the premises, arrange garbage pickup, conduct sprinkler tests, check gas meters, arrange for snow clearing in the winter, supervise vendors, receive invoices from vendors and arrange payment on behalf of the corporation, prepare financial statements for the

Board, arrange an audit, schedule Board meetings, and organize an Annual General Meeting, among other things.

[17] From the ASF, the following item numbers confirm:

Failure to Return Corporation Records

14. It is agreed that Mr. Jhamtani and Simsons did not return any records to the Board or Capitalink Property Management Ltd. (the new management company) until March 2021.
16. It is agreed that the failure to return records had a serious impact on the operation of TSCC 2084...
20. Mr. Jhamtani and Simsons did not provide any records of account balances, accounts receivable, post-dated cheques or pre-authorized payments, or a unit ledger statement at the time of turnover...

Unauthorized Transfer of \$10,000

22. It is agreed that on or about January 2, 2020, Mr. Jhamtani made an online transfer in the amount of \$10,000 from TSCC 2084's bank account to himself. It is agreed that Mr. Jhamtani transferred this money to himself without the Board's authorization or knowledge.
24. It is agreed that this online transfer was not made to cover Mr. Jhamtani's or Simson's management fee...
25. It is Mr. Jhamtani's position that he transferred the \$10,000 to himself as reimbursement for amounts that Mr. Jhamtani or Simsons had paid to vendors on behalf of TSCC 2084.
30. The parties agree that Mr. Jhamtani and Simsons should not have paid vendors out of pocket for services that were not approved or authorized by the Board or for services that were not yet rendered.

Failure to Manage Common Element Fees

32. It is agreed that Mr. Jhamtani failed to provide any records relating to the collection of common element fees to the Board or to Capitalink at turnover...
33. Mr. Jhamtani states that he was unable to collect fees from certain unit owners in 2017, 2018, and 2019. It is agreed that Mr. Jhamtani failed to bring the issue to the attention of the Board.

### Failure to Pay Invoices

36. Upon taking over management of the corporation, Capitalink paid...outstanding invoices that had not been paid during the time TSCC 2084 was managed by Mr. Jhamtani and Simsons...

### Failure to Pay CAO Fees

39. Mr. Jhamtani acknowledges his failure to pay the CAO Assessment Fee in a timely manner.

### Failure to Maintain Complete and Accurate Financial Records and Maintenance Record

41. Mr. Jhamtani and Simsons agree that they did not comply with their obligations under section 6 (of Ontario Regulation 4/18). They did not return any of the corporation's records until over a year after their termination. The records that were returned were incomplete.

### Failure to Cooperate with CMRAO Inspection

47. Mr. Jhamtani agrees that he did not respond to the inspector.
49. Mr. Jhamtani travelled to India in 2020 for his mother's funeral and returned to Canada in July 2020. Mr. Jhamtani acknowledges that he did not make adequate arrangements to manage his clients or respond to CMRAO during his absence from the country.

[18] Finally, the ASF states that the appellants failed to comply with an undertaking provided to CMRAO.

### **Appellants' Position**

[19] It is the appellants' position that the respondent has not demonstrated that they will not carry on business in accordance with law. Mr. Jhamtani testified that he has been a condo manager since 2005 and has no history of discipline. Character witnesses provide a positive depiction of the appellant in support letters. While Mr. Jhamtani agrees to the questionable conduct laid out in the ASF, he wants the Tribunal to know that he had a lot going on in his personal life.

[20] I accept the difficult circumstances Mr. Jhamtani has had to endure having lost his mother, wife and cousin in close succession. I have weighed this carefully into my finding as I recognize both parties are seeking different remedies. The appellants

seek a suspension of Simsons' licence while the respondent seeks revocation of the licence.

- [21] I have taken into account that by applying conditions on Simsons, it would limit Mr. Jhamtani's involvement in the corporation. If the licence is revoked, then it would disallow Mr. Jhamtani's involvement.

### Appellants' Witnesses

#### Len Hundewsky

- [22] The appellants' witness is a retired contractor who owned his company for 35 years. He employed 6-8 employees at his busiest time. The company was shuttered when Mr. Hundewsky retired approximately 11 years ago.
- [23] The witness stated that he would return to do small jobs for his long-time customers a couple of days a week. However, he completely stopped taking jobs approximately 3 years ago.
- [24] Mr. Hundewsky initially met Mr. Jhamtani when he was servicing a large plaza. He then subsequently worked for the appellant on and off for approximately 12-15 years. He describes a positive working relationship. Although there were times when there would be bickering over the work, Mr. Hundewsky stated that Mr. Jhamtani was "a great guy to work for."
- [25] The witness served as a positive character witness for Mr. Jhamtani. Mr. Hundewsky stated that Mr. Jhamtani would always follow through on his word and he would be paid on time by cheque and sometimes by cash. Mr. Hundewsky stated that he would always provide Mr. Jhamtani with an invoice but no receipt.

#### Anil Jhamtani

- [26] Mr. Jhamtani testified at the hearing. He provided a summary of his background and professional experience and explained the difficult time he has had to endure with the loss of his mother, wife and close cousin.
- [27] Mr. Jhamtani went on to describe some of the emergencies he would have to respond to as part of his role of condo manager. They include, but are not limited to, sewage back-ups, leaking roofs, floods and fires.
- [28] During his testimony, he acknowledged that his record keeping was deficient. He cited the loss of his loved ones as one of the reasons for not maintaining better records.



## Invoices

- [29] Invoices are listed on pgs. 13 and 14 of Exhibit #1. Mr. Jhamtani was asked why he did not pay certain invoices, he explained that he was terminated early in the year and simply stopped processing them. However, there are invoices which were not paid prior to his leaving. I find his lack of professionalism and accountability in this regard to be concerning. It would appear that Mr. Jhamtani was non-compliant with his duties as a manager and was unwilling to cooperate with numerous requests made by the respondent.
- [30] Nonetheless, during his testimony Mr. Jhamtani stated: “I take full responsibility. I don’t want to blame anyone. I am the one who should have made some arrangements in providing the missing documents which were being requested by CMRAO. I was dealing with this personal loss.”

## Conclusion

- [31] The onus is on the respondent to show that there are reasonable grounds to revoke the licence. This standard of proof is reasonable grounds for belief. The CMRAO is consumer protection legislation and there are clear regulatory requirements on becoming licenced. One of those is to act in accordance with law, integrity and honesty.
- [32] I find that the appellants did not act with honesty and integrity given the inappropriate financial record keeping and no clear accounting for the \$10,000 in question. The poor record keeping brings into question whether the money which the appellant transferred to himself was actually intended to pay back vendors. There was nothing during the hearing that clearly satisfied me that this was the intent.
- [33] I also find that the appellants were not always forthcoming with TSCC 2084’s Board. In some instances, Mr. Jhamtani worked independently and made decisions that ought to have been brought to the Board’s attention. Overall, there appears to be a lack of honesty and candor with the Board. As an example, I received testimony regarding one of the vendors (Pure White) where it was stated that the appellant paid \$6,000 as a “relief payment.” It is not clear what this payment was intended to cover. There was also no invoice for this amount describing what a “relief payment” is.
- [34] I have taken into consideration that the appellants’ actions had a serious impact on the condo corporation. Due to the poor record keeping, they do not have any idea

of which unit owners paid monthly fees and who are in arrears. As a result, the corporation lost its lien rights under s. 85 of the *Condominium Act*, 1998.

- [35] I find that there is a disregard of professional obligations. I also find that the appellants' lack of cooperation with the inspection impeded the regulator's ability to act in the public interest. I have taken the difficult period that Mr. Jhamtani was going through as a mitigating factor, however, he did sign an undertaking with CMRAO and had ample time to at least place someone in charge in the interim to address any concerns from the Board and meet his obligations to the Board. It is in times of great personal stress that compliance with regulation is at its most important.
- [36] Mr. Jhamtani's inability to meet the conditions of the undertaking is akin to failing to agree to a condition of a licence. This does not support their position that a suspension and/or conditions on the licence is the most appropriate resolution.
- [37] Although the appellants have not been subject to discipline in the past, revocation is still appropriate in this case. This is due to the fact that there are multiple issues involved and numerous examples of non-compliance with CMRAO directives.
- [38] I did take in account that Mr. Jhamtani has signed up for courses to improve his knowledge and to demonstrate some recognition of his past poor decisions. While he is commended for doing this, the courses lack specificity and there was not sufficient evidence to clearly articulate the courses that would be taken and how they would prevent this situation from occurring again.
- [39] I also believe that the revocation would send a clear message to the appellants should he successfully reapply in the future, as well as other condo managers and corporations that this type of conduct is unacceptable.
- [40] I took into account the six (6) reference letters that were submitted to comment on Mr. Jhamtani's character. I also considered that Mr. Jhamtani is no longer principal manager for Simsons. He acknowledged his mistakes and expressed remorse.
- [41] In considering the totality of the evidence, there is no question that the appellants failed to meet their obligations to CMRAO and the Board they were serving.
- [42] I find that there are reasonable grounds to revoke the licence and the respondent has shown this by demonstrating that the appellants' past or present conduct affords grounds for belief that they will not perform the activities of licensees in accordance with the law and with integrity and honesty. There is a rationale

connection between the misconduct to which the appellants committed and the kind of activities that licensees are to carry out.

[43] I further find that the appellants are carrying on activities that are in contravention of the Act or the regulations. This was also confirmed in the ASF.

[44] I take adjudicative notice of the fact that the Act is consumer protection legislation and adherence to the requirements serve to protect the public. Based on a careful consideration of all the evidence before me and the parties' submissions, I am satisfied that reasonable grounds exist for the revocation of the appellants' licence. I am not satisfied that licencing with conditions is suitable. Therefore, the respondent's NOP is confirmed.

**I ORDER AS FOLLOW:**

[45] For the reasons set out above, the respondent's decision to revoke the appellants' licences is confirmed.

LICENCE APPEAL TRIBUNAL

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Raymond C. Ramdayal, Member

*Released: May 26, 2022*