



Citation: 2062617 Ontario Inc. o/a Jamieson Travel & Tours v. Registrar, *Travel Industry Act, 2002*, 2024 ONLAT TIA 15261

File Number: 15261/TIA

In the matter of an appeal under Section 11(2) of the *Travel Industry Act, 2002*, S.O. 2002, c. 30, Sched. D and Ontario Regulation 26/05 from a Proposal of the Registrar under that Act to Revoke Registration.

Between:

2062617 Ontario Inc. o/a Jamieson Travel & Tours

Appellant

-and-

Registrar, *Travel Industry Act, 2002*

Respondent

DECISION AND ORDER

ADJUDICATOR: Jeffery Campbell, Vice-Chair

APPEARANCES:

For the Appellant: Cindy Jamieson
Cameron J. Scott, Counsel

For the Respondent: Husein Panju, Counsel
Karan Sharma, Counsel

Heard by videoconference: February 5, 2024

OVERVIEW

- [1] The appellant, 2062617 Ontario Inc. o/a Jamieson Travel & Tours (the “Appellant”), appeals a Notice of Proposal to Revoke Registration as a travel retailer (the “NOP”), issued by the Registrar, *Travel Industry Act, 2002* (the “Registrar”) on September 13, 2023.
- [2] The Appellant filed an appeal with the Licence Appeal Tribunal (the “Tribunal”) on September 26, 2023.

THE LAW

- [3] The *Travel Industry Act, 2002* (the “Act”) and Ontario Regulation 26/05 (the “Regulation”) made under the Act prescribe registration requirements for travel industry salespersons.
- [4] Section 10 of the Act provides that the Registrar may revoke a registration if, in his or her opinion, the registrant is not entitled to registration under s. 8.
- [5] Section 8 of the Act sets out a number of factors which may disentitle an applicant from registration. The factors relied on by the Registrar in this case are that:
 - 8(1)(d)(ii) 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 the conduct of its business;
 - 8(1)(d)(iv) the past 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 its business will not be carried on in accordance with the law and with integrity and honesty;
 - 8(1)(e) the applicant or an interested person in respect of the applicant is carrying on activities that are, or will be if the applicant is registered, in contravention of this Act or the regulations, other than the code of ethics established under section 42; or
 - 8(1)(f) The applicant is in breach of a condition of the registration.
- [6] With respect to the grounds that are being relied upon by the Registrar, grounds s. 8(1)(d)(ii) and s. 8(1)(d)(iv) are subject to the “reasonable grounds to believe” standard while s. 8(1)(e) and s. 8(1)(f) are subject to the standard of a balance of probabilities.

ISSUES IN DISPUTE

[7] The Issues in Dispute are:

- a. Has the Registrar established reasonable grounds for belief that the past conduct and financial position are inconsistent with the intention and objective of the Act, and therefore warrants disentitlement to registration under the Act

Has the Registrar established on a balance of probabilities that the Appellant is in contravention of this Act or the regulations?

Has the Registrar established on a balance of probabilities that the Appellant has breached a condition of its registration?

- b. If the answer to one or more of the above is yes, what is the appropriate outcome?

RESULT

[8] For the reasons that follow and pursuant to s. 11(5) of the Act, I direct the Registrar not to carry out its proposal to revoke the Appellant's registration as set out in the Notice of Proposal of September 13, 2023. Further, I direct the Registrar to impose certain conditions on the Appellant's registration as outlined below.

EVIDENCE AND ANALYSIS

- a) **The Registrar has established reasonable grounds to believe that the Appellant's past conduct and financial position are inconsistent with the intention and objective of the Act. The Registrar established on a balance of probabilities that the Appellant is in contravention of this Act or the regulations. The Registrar established on a balance of probabilities that the Appellant has breached a condition of its registration.**

[9] According to the Court of Appeal in *Registrar, Alcohol and Gaming Commission of Ontario v. 751809 Ontario Inc. operating as Famous Flesh Gordon's*, 2013 ONCA 157, once the relevant facts are determined on a balance of probabilities, the issue is whether those facts afford reasonable grounds for belief that the business will not be carried on in a manner consistent with the objective of the Act.

- [10] The “reasonable grounds to believe” standard requires something more than mere suspicion but less than proof on a balance of probabilities. In other words, the Registrar does not have to show that the conduct of a registrant makes it more likely than not that they will not carry on business as required. The Registrar need only show that there are reasonable grounds for belief that their business will not be carried on in a manner consistent with the Act.
- [11] According to the Supreme Court of Canada in *Mugesera v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at para. 114, 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.
- [12] Further, there must be a nexus between the past conduct in issue and the appellant’s ability to conduct business as a seller serving the public interest: see *CS v Registrar, Real Estate and Business Brokers Act, 2002*, 2019 ONSC 1652 (Div. Ct.) at para. 32.
- [13] At issue in this appeal is the past conduct of directors and officers of the appellant, Cindy Lee Jamieson (“Ms. Jamieson”) and Arthur Allan Jamieson as well as the financial position of the appellant.
- [14] The Registrar submits that Ms. Jamieson’s past conduct disentitles the appellant to registration as a travel retailer, specifically with respect to a pattern of late filings regarding the same (s. 8(1)(d)(iv)). The Registrar also submits that conduct impedes its ability to evaluate the appellant’s financial condition (s. 8(1)(d)(ii)).
- [15] The Registrar also submits that the pattern of late filings speaks to the honesty and integrity of the appellant (s. 8(1)(d)(iv)) and that the late filings are a breach of conditions pursuant to Conditions of Continued Registration earlier imposed on the appellant (s. 8(1)(f)).
- [16] The Appellant submits that the circumstances which created the late filings have now been rectified. It submits that there are only two late filings as of the date of the hearing, that of the Form 1 for the six months which ended December 31, 2022, due March 31, 2023 and the financial statements or verification statement due for the year 2022, also due March 31, 2023.

Testimony and Evidence of the Registrar

- [17] Ms. Dorian Werda, the Chief Operating Officer for the Travel Industry Council on Ontario (“TICO”) testified on behalf of the Registrar. Ms. Werda testified that the Appellant has been registered as a TICO-registered travel retailer since February 3, 2005. Ms. Werda testified that under s. 22 of the Regulation 26/05 (the “Regulation”) all registrants are required to submit a financial statement or verification statement once annually within three months after their fiscal year end. The fiscal year end of the Appellant of December 31st necessitates the financial statement of verification statement must be file no later than March 31st.
- [18] Ms. Werda also testified that all registrants are required to file a Form 1 twice annually, 90 days after the registrant’s year end, then 90 days after their half year end; in the Appellant’s case by March 31st and September 28th.
- [19] Ms. Werda testified that the timeliness of the financial statement or verification statement is required in order for TICO to be able to assess the overall financial position of the registrants, including ensuring a positive working capital as well as ensuring that no deficits occur in the registrant’s trust accounts. Ms. Werda testified that untimely financial filings undermine TICO’s ability to ensure consumer protection. The filing of the Form 1 is for the purpose of assessing the registrant’s income during the six-month period in order to calculate the registrant’s required payment to TICO’s compensation fund.
- [20] Ms. Werda presented evidence which outlined late filings by the Appellant which resulted in a previous Notice of Proposal to revoke the Appellant’s registration, dated October 11, 2022. That Notice of Proposal was subsequently withdrawn upon the Appellant agreeing to conditions pursuant to Conditions of Registration signed by the Appellant on December 30, 2022 and the Registrar on January 3, 2023. The conditions are as follows:
1. The Registrant shall take care to ensure that annual Financial Statements or Verification Statements are filed with TICO in a timely manner in accordance with the applicable legislation.
 2. The Registrant shall take care to ensure that Form 1 is filed with TICO in a timely manner in accordance with the applicable legislation.
 3. The Registrant shall respond to any and all requests for information, forms or documents from the Registrar or the Registrar’s designate (hereinafter “TICO staff”) in a fulsome and timely manner and is responsible for ensuring that any and all Directors and Officers and

Supervisor/Managers of the Registrant respond in a fulsome and timely manner. The Registrant shall respond to all requests for information, forms or documents from TICO staff by the due date or time indicated or, if no specific due date or time is indicated, within 5 business days after the request.

4. The Registrant shall enrol and complete before June 30, 2023, the following TICO webinars or equivalent:
 - a. Preparing the Verification Statement” Webinar

- [21] Ms. Werda testified that the Appellant has failed to file its financial statement or verification statement for 2022 due March 31, 2023 and the Form 1 for the six months ending December 31, 2022 due March 31, 2023. She also testified that the Appellant has failed to complete the Preparing the Verification Statement webinar.
- [22] Ms. Werda testified that, despite numerous reminders by TICO to the Appellant in 2023, and despite the conditions previously imposed upon the Appellant, the Appellant has failed to respond to any of the reminders. In this regard, Ms. Werda presented letters and emails dated April 6, 2023, July 13, 2023 and August 23, 2023 requesting the Appellant to file the late Form 1 and/or the financial statement or verification statement.
- [23] Ms. Werda testified that in 2020, the Appellant’s financial statement revealed a trust deficit, but that has since been rectified by the Appellant. Ms. Werda further testified that since its TICO registration in 2005, TICO has not received any consumer complaints with respect to the Appellant.

Testimony and Evidence of the Appellant

- [24] Testifying on behalf the Appellant. Ms. Jamieson stated that, in the past, the difficulties with filing the financial documents as well as the Form 1s were due to the Appellant’s accountant’s inability to complete the filings in a timely manner during the first three months of the calendar year. She testified that this was due to the accountant’s busyness during the personal tax season of January to March of each year. Ms. Jamieson stated that she recognizes that she should have changed accountants earlier due to that situation. Ms. Jamieson also testified that she is hoping to change the fiscal year end of the Appellant in order to push up the filing deadline of the financial statement of verification statement beyond March 31st.

- [25] Ms. Jamieson testified that her accountant passed away in early 2021 and until September, 2023 she had unsuccessfully attempted to have his accounting firm complete the Appellant's financial statements and filings. In September, 2023, the Appellant retained a different accounting firm. Ms. Jamieson testified that the verification statement for 2022 and the Form 1 for the six months ending December 2022 have now been completed. However, she has not submitted those documents to TICO as she had believed that the NOP of September 13, 2023 prevented her from submitting those documents.
- [26] While I do not doubt the Appellant's explanation for the late filings (the tardiness of her accounting firm and the death of her accountant), Ms. Jamieson was aware of the filing deadlines and should have taken proactive measures to ensure that the filings were submitted in a timely manner as prescribed by the Regulation. This is particularly pertinent in the light of the Appellant's previous Notice of Proposal and the subsequent Conditions of Continued Registration.
- [27] With respect to the condition that the Registrant enrol and complete before June 30, 2023, the "Preparing the Verification Statement" Webinar, Ms. Jamieson testified that she was not aware that it was her that had to attend the seminar. However, there is no evidence that another person representing the Registrant has attended the webinar. I do not accept Ms. Jamieson's explanation with respect to her failure to attend the webinar. Even if Ms. Jamieson believed that it was not her that was required to attend the webinar, she did not make arrangements of any other director or officer of the Appellant attend.

Conclusion

S. 8(1)(d)(ii)

- [28] The evidence and testimony clearly disclose that the Form 1 and financial statement or verification filings for the year 2022 are late, in breach of the Act and Regulation. As noted, without the timely filings, TICO is unable to assess the financial viability of the Appellant. By extension, without that necessary documentation, I conclude that the Appellant cannot be reasonably expected to be financially responsible in the conduct of its business in accordance with s. 8(1)(d)(ii).

S. 8(1)(d)(iv)

- [29] As noted, s. 22 of the Regulation outlines the timetable of registrants for the financial filings and of the Form 1s. It is clear from the evidence and testimony that the 2022 filings were outside of that timetable. Based on that, coupled with

the evidence of pre-2022 late filings, I conclude from the pattern of late filings that the Registrar has established that there are reasonable grounds for believe that its business will not be carried on in accordance with the law and with integrity and honesty in accordance s. 8(1)(d)(iv).

S. 8(1)(e)

- [30] For the same reasons as for s. 8(1)(d)(iv) I conclude that the Registrar has established on a balance of probabilities that Appellant's activities, in this case its failure to file required filings in the time required by the Regulation, are in contravention of the Act and the Regulation, in accordance with s. 8(1)(e).

S. 8(1)(f)

- [31] As the evidence discloses that the Appellant has failed to ensure that the financial statements or verification statements for 2022 and the Form 1 for the six months ending December 31, 2022 have not been filed, the Appellant is in breach of items 1 and 2 of the Conditions of Registration signed by the Appellant on December 30, 2022. As it is also clear that the Appellant has failed to respond to the Registrar's requests in a timely manner, the Appellant is in breach of item 3 of the Conditions and as the Appellant has failed to attend the webinar, it is also in breach of item 4 of the Conditions. As such, I conclude that the Registrar has established on a balance of probabilities that the Appellant is in breach of its conditions of registration.

b) The appropriate outcome is the imposition of conditions

- [32] Section 11(5) of the Act specifies that the Tribunal "may by order direct the Registrar to carry out the Registrar's proposal or substitute its opinion for that of the Registrar and the Tribunal may attach conditions to its order or to a registration".
- [33] With respect to the appropriate order, I am mindful of the Tribunal's obligation to consider the possibility of an outcome other than the cancelling of the Appellant's registration (see *Joshi v. Superintendent*, 2016 ONSC 4477 (CanLII) paragraphs 13 & 14).
- [34] In order for TICO to conduct its job as a regulator, it is important that financial filings be submitted in a timely manner. The Registrar has established that the Appellant has, in the past, been late in its filings, and is, at present late in the filings of the 2022 financial or verification statement and the Form 1 for the period ending December 31, 2022.

- [35] While I find that the Appellant has indeed been late in those filings and is in breach of the Conditions for Continued Registration, I accept that she has taken meaningful steps in obtaining new accountants who have prepared those documents for filing and who will continue to do so.
- [36] With respect to the attendance at the webinar, this breach can be rectified quite easily and simply, and I expect the Appellant to do so in compliance with my order.
- [37] I do note that, in 19 years as a registrant, the Appellant has not attracted one consumer complaint. As well, in those 19 years, there has been one incident of a trust deficiency, which was rectified in a timely manner.
- [38] Given the above, I do not believe that the drastic outcome of revocation is necessary to protect the consumers of the travel industry in this particular case. The appellant is aware that any further breaches of conditions could result in a suspension of its registration.

ORDER

- [39] Pursuant to s. 11(5) of the Act, I direct the Registrar not to carry out its proposal to suspend the Appellant's registration as set out in the Notice of Proposal of September 13, 2023.
- [40] Further and instead, pursuant to s. 11(5) of the Act, I impose the following conditions on the registration of the Appellant for a period of two years effective on the date of this Order:
1. The holder of the registration shall file with TICO the financial statement or verification statement for the year 2022 within 14 calendar days of this Order;
 2. The holder of the registration shall file with TICO the Form 1 for the period ending December 31, 2022 within 14 calendar days of this Order;
 3. The holder of the registration shall file all financial statements or verification statements and Form 1s on or before the deadlines required under the Act and the Regulation.
 4. The holder of the registration shall attend and complete the webinar, "Preparing the Verification Statement" within 30 calendar days of this Order;

5. The holder of the registration shall respond to all requests for information, forms or documents from TICO staff by the due date or time indicated or, if no specific due date or time is indicated, within 5 business days after the request.

LICENCE APPEAL TRIBUNAL



Jeffery Campbell, Vice Chair

Released: February 29, 2024