

In the Matter of the *Real Estate Agents Act*  
S.N.B. 2011, c.215, as amended

And in the Matter of

**Jonathon Rasenberg**  
(Respondent)

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**REASONS FOR DECISION**

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**Date of Opportunity to be Heard: 05 May 2017**

**Date of Decision: 17 May 2017**

**Date of Reasons for Decision: 18 July 2017**

**Heard Before**

Rick Hancox  
As Director of Consumer Affairs

**Counsel**

Brian Maude                      For Staff of the Financial and Consumer Services Commission

Frank McBrearty                For Jonathon Rasenberg

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## REASONS FOR DECISION

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### BACKGROUND

[1] This matter involves a request by Staff (Staff) of the Financial and Consumer Services Commission (Commission) to the Director of Consumer Affairs (Director) to review Mr. Jonathon Rasenberg's suitability to hold a real estate salesperson's licence pursuant to section 10(1) of the *Real Estate Agents Act*. Staff were concerned that significant misstatements on Mr. Rasenberg's licence affected his suitability to hold a real estate salespersons licence.

[2] Section 10(1) of the *Real Estate Agents Act* states as follows:

*10(1) On receipt of an application for a licence and on payment of the prescribed fee, if the Director is satisfied that the applicant is suitable to be licensed and that the issuing of the proposed licence is not objectionable for any reason, the Director may issue to the applicant a licence authorizing the holder during the term of the licence to carry on the business of an agent or act as a manager or salesperson within the Province, but if, after due investigation made by the Director, the Director is, for any reason, of the opinion that the applicant should not be granted a licence, the Director may refuse a licence to the applicant.*

[3] Staff requested that the Director either consider terms and conditions on the licence pursuant to section 10(1.1) or a suspension or cancellation of the licence pursuant to section 10(2) as appropriate.

*10(1.1) The Director may at any time restrict a licence by imposing any terms and conditions that he or she considers appropriate on the licence.*

*10(2) The Director may suspend or cancel a licence if he or she is of the opinion it is in the public interest to do so.*

[4] Mr. Rasenberg submitted his sworn application, dated 16 December 2016, for a real estate salespersons licence on 19 December 2016.

[5] The New Brunswick Real Estate Association (NBREA) granted membership in their association effective 19 December 2016. This fulfilled the remaining requirement needed for the Director to issue a real estate salesperson licence to Mr. Rasenberg.

[6] The Director issued Mr. Rasenberg that licence without restriction on 22 December 2016.

[7] Subsequent to that Staff became aware of outstanding legal proceedings against Mr. Rasenberg that were not disclosed as required on his application.

[8] Mr. Rasenberg was advised about concerns of misstatements on his application by letter from the Acting Director of Consumer Affairs on 17 March 2017. The letter referenced outstanding judgements registered against him in separate proceedings on behalf of two external parties. The letter provided reference to the court file numbers. The letter made reference to the answers he provided on his sworn application in which he responded 'No' to the questions about court judgements and legal proceeding against him. The letter also advised Mr. Rasenberg of his opportunity to be heard before a decision was made, his right to counsel and his right to disclosure of information.

[9] The right to have an opportunity to be heard is in accordance with sections 10(1.3) and (2.1) of the *Real Estate Agents Act*. These sections are as follows:

*10(1.3) The Director shall not refuse an application for a licence or impose terms and conditions on the licence without giving the applicant or licensee an opportunity to be heard.*

*10(2.1) The Director shall not suspend or cancel a licence without giving the licensee an opportunity to be heard.*

[10] Mr. Rasenberg acknowledged the judgements and provided an explanation of the judgements against him and against the company that he was involved in as a director and shareholder in a letter to the Acting Director on 11 April 2017. He also provided his reasoning for why he answered the way his did on his application.

[11] Mr. Rasenberg was advised by letter of 28 April 2017 of the purpose for the opportunity to be heard; the matters under consideration as related to suitability; and the concern over specific misstatements and incomplete responses on his licence application. In addition, the letter identified the specific information that formed the basis of the concerns. Mr. Rasenberg was advised that this was an opportunity for him to provide any additional information or rationale to aid the Director in reviewing his suitability.

[12] An Opportunity to be Heard was set for 10 am on 5 May 2017 at the Commission's offices in Saint John.

[13] The Director was advised by letter of 25 April 2017 that Mr. Rasenberg would be appearing along with his counsel.

[14] Mr. Rasenberg and his counsel met with the Director on 5 May 2017. Counsel for Staff of the Commission was also present.

[15] There, staff provided a summary of their concerns and the basis for them. Mr. Rasenberg and his counsel spoke and provided an explanation and rationale for his actions. In addition, they responded to the Director's questions. No additional documentation was provided.

## THE FACTS

[16] After reviewing the information submitted by Staff and the Respondents, I find the following as facts:

[17] Mr. Rasenberg and his counsel confirmed at the Opportunity to be Heard that they were aware of and had all the documents relied upon by staff as listed in Commission letter of 28 April 2017.

[18] The standard Application for Licence under the *Real Estate Agents Act* asks, among others, the following two questions:

12h. Are there any court judgments against you that have not been satisfied? and

12i. Are there any legal proceedings pending against you?

[19] Mr. Rasenberg responded 'No' to both these questions in his 16 December 2016 sworn application.

[20] Two outstanding judgements exist against Mr. Rasenberg:

- Court File No. FC-110-2015 – Royal Bank of Canada v. Teneo Properties Ltd. & Jonathon Peter Rasenberg
- Court File No. MC-701-2015 J.D. Irving Ltd. V. v. Teneo Properties Ltd. & Jonathon Rasenberg

[21] In his explanation at the Opportunity to be Heard, Mr. Rasenberg advised that he was not clear on questions 12h and i. His view was that although the judgements named him, they were related to the company and not against him. In addition, his interpretation was that since he had met with the creditors and worked out a repayment plan going forward that seemed to satisfy the creditors that therefore the judgements were 'satisfied'.

[22] Mr. Rasenberg advised that he had discussed this with both his manager and the commissioner of oaths when he signed the application. He advised that both had said to answer the questions with a "No". These responses were not verified with either the manager or the commissioner of oaths.

[23] Mr. Rasenberg provided incomplete residential history information in response to Question 9 and incomplete employment history in response to Question 10 on this same sworn application. His explanation was that since he was at the residences and different occupations for short periods of time that he missed them.

## THE COMMISSION'S MANDATE

[24] The *Financial and Consumer Services Act*, in Section 2(a) provides that the purpose of the Act is to '*enable the Commission to provide regulatory services that protect public interest and enhance public confidence in the regulated sectors...*'.

[25] The *Financial and Consumer Services Act*, in Section 12(2)(b) provides that *the Commission shall administer the financial and consumer services legislation, which as per subsection 1(q) includes the Real Estate Agents Act.*

[26] Prior to suspending, cancelling or imposing terms and conditions on a licensee, the Director must consider the appropriateness of any action taken. In making this determination it is necessary to consider the mandate of the Commission and whether or not the Respondent is suitable to hold a licence and that the issuance of a licence is not objectionable for *any* reason.

[27] Consumer protection is a fundamental consideration and a key purpose of the Commission's mandate. It is a key responsibility of the Director, as the gatekeeper to the industry to determine suitability of an applicant or a licensee and allow that person to operate in the sector.

### **THE PROCESS OF DETERMINING SUITABILITY**

[28] Section 10(1) of the *Real Estate Agents Act* requires that 'the Director is satisfied that the applicant is suitable to be licenced'. The review of suitability covers a number of aspects including education, qualifications, financial stability and integrity. These all have a significant bearing on a candidate's suitability to hold a salesperson's licence and operate in the real estate sector.

[29] Financial stability is important in that a salesperson's decision-making should not be influenced or appear to be influenced by that person's own poor or unstable financial situation. The significance of outstanding financial judgements is a consideration in determining financial stability. In addition, the failure to report outstanding judgements is another factor in determining suitability.

[30] Integrity is an essential character for a salesperson in order for consumers to have confidence in the industry. Consumers need to know that their real estate agent will be honest and act with integrity when acting on their behalf in what may be one of the largest financial transactions in their life. An applicant's ability to respond truthfully and not be misleading in their answers on their application is a significant factor in determining their integrity and therefore their suitability to operate in the industry.

[31] Another determination that the Director must make under Section 10(1) is that the issuing of a proposed licence "is not objectionable for any reason". While this provides wide latitude, in this situation it is viewed from the perspective of consumer protection. If a licence is issued or continued does it leave consumers exposed to harm or exploitation?

### **ANALYSIS**

[32] Mr. Rasenberg indicated that he had been working in property management and real estate related work since he was 24. He currently covers commercial and residential real estate. He indicates that his work covers the full spectrum of real estate dealings and of clients, including seniors and hospital employees.

[33] The questions asked on the real estate salesperson licence application are fairly straightforward and clear. It is concerning that Mr. Rasenberg arrived at a different interpretation as to the meaning of some of the questions. It raises questions as to his ability to operate in real estate. His work as a salesperson involves, among other things, taking his clients through real estate forms, agreements and contracts. Part of his job is to explain the technicalities of these documents to his clients. Providing guidance and interpretation of real estate documentation is a significant responsibility for a salesperson. It is important that proper information is passed on, particularly when considering the wide range of potential clientele that Mr. Rasenberg could have. Proper understanding is important to ensure that clients are not led astray nor have false expectations.

[34] Mr. Rasenberg's application had a number of misstatements and incomplete information. It is unclear whether the incomplete information was a result of carelessness or lack of attention to detail. Thoroughness and attention to detail are important attributes for a salesperson undertaking a financially significant transaction on behalf of a client. Clients are relying on the salesperson to see that details are looked after, agreements and contracts are properly completed. When these attributes are missing from the salesperson's work on his own application, it does not lend confidence to how he will conduct business on behalf of others.

[35] Honesty and integrity are essential characteristics for those working in the real estate sector. Consumers need to have confidence that the professionals they deal with and for whose services they are paying for will behave in a proper and ethical manner. While there is no evidence that how Mr. Rasenberg completed his application was meant to intentionally mislead, it does raise the question.

[36] It is clear that Mr. Rasenberg's misleading and incomplete answers on his salesperson's licence application are of concern and reflect on his suitability to hold a licence. The circumstances warrant a regulatory response. The *Real Estate Agents Act* provides that the Director can either place terms and conditions on the licence as appropriate, or suspend or cancel the licence if it is in the public interest to do so.

[37] A determining consideration is whether Mr. Rasenberg's conduct is so objectionable that he should not be allowed to operate in the real estate sector at all, or whether he, with the appropriate training and supervision can conduct himself in a suitable manner.

[38] Mr. Rasenberg and his counsel reiterated that Mr. Rasenberg recognized that he made an error in how he completed his application and that he responded quickly to the concerns raised by staff. They felt that Mr. Rasenberg's efforts to reach a satisfactory settlement with his creditors in his failed business venture as opposed to declaring bankruptcy was a positive reflection on his character.

[39] After careful consideration, it is felt that with appropriate training and supervision that Mr. Rasenberg can conduct himself in a suitable manner as a real estate salesperson. The placement of specific terms and conditions on his licence are intended to provide the appropriate training and supervision to address the concerns identified. The *Real Estate Agents Act* requires Mr. Rasenberg to comply with any terms and conditions imposed.

[40] The *Real Estate Agents Act* provides that:

*'10(1.1) The Director may at any time restrict a licence by imposing any terms and conditions that he or she considers appropriate on the licence.'*

*10(1.2) 'A licensee shall comply with the terms and conditions imposed by the Director on the licence'.*

## **DECISION**

I have concluded that the best course of action is that Mr. Rasenberg's licence be restricted with the following terms and conditions:

- He be placed under supervision by Re/Max Professionals Saint John Inc. for the remainder of the period for his current licence.
- Supervision will continue for a period of 12 months under any subsequent licence issued.
- Supervision will consist of, at a minimum, any contract, agreement or other binding document relating to any real estate transaction be reviewed and approved by his manager before a commitment is made by him or any party to the transaction.
- Re/Max Professionals Saint John Inc. may place any other supervisory conditions that they consider appropriate and will advise the Director of Consumer Affairs.
- He is required to take and pass an approved Ethics course as offered or approved by the NBREA within three months and proof is to be provided to the Director of Consumer Affairs.
- He is required to notify the Director of Consumer Affairs of any change in status of the current judgements outstanding against him.
- He is required to notify the Director of Consumer Affairs of any new judgements issued in which he is named.

If satisfactory progress has been made and at least six months of supervision have passed on a subsequent licence, an application can be made to have the terms and conditions reviewed by the Director of Consumer Affairs.

**DATED** at Saint John, New Brunswick this 18<sup>th</sup> day of July 2017.

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Kenrick G. Hancox  
Director, Consumer Affairs  
Financial and Consumer Services Commission