



Citation: JOVANKA JOVIC O/A ZORA SRPSKI DOM v. REGISTRAR, RETIREMENT HOMES REGULATORY AUTHORITY, 2023 13975/RHA

Date: 2023-03-31
File Number: 13975/RHA

Appeal of Registrar Orders under s. 95 of the *Retirement Homes Act, 2010*, S.O. 2010, c. 111

Between:

Jovanka Jovic o/a Zora Srpski Dom

Appellant

and

Registrar, Retirement Homes Regulatory Authority

Respondent

ORDER - [REDACTED TO REMOVE PERSONAL INFORMATION]

ADJUDICATOR: Geoff Pollock, Vice Chair

APPEARANCES:

For the Appellant: Richard Mwangi, Counsel (only for the Adjournment Motion, and submissions on the interpreter)
Jovanka Jovic, Self-represented

For the Respondent: Jordan Glick, Karen Heath, Counsel

Heard by videoconference: November 28 – December 2, December 5-9, December 19, 2022

BACKGROUND

- [1] Jovanka Jovic (the "Appellant") is the owner/operator of Zora Srpski Dom ("ZSD"), a retirement home in Kitchener. The Appellant appeals the revocation of her licence to operate a retirement home, by an order issued by the Deputy Registrar of the Retirement Homes Regulatory Authority (the "RHRA", or the "Respondent"), pursuant to Section 95(1) of the *Retirement Homes Act, 2010* ("the Act"). The Order was issued on March 22nd, 2022.
- [2] The Respondent issued the order on the basis that it does not believe that the Appellant meets the criteria set out in s. 35 of the Act, specifically with respect to her competency to operate a retirement home in a responsible manner in accordance with the Act and its related Regulations; that the Appellant's past conduct affords reasonable grounds to believe that the home will not be operated in accordance with the Act, regulations and municipal by-laws, and with honesty and integrity; and that the home will not be operated in a manner that is not prejudicial to the health, safety or welfare of its residents.

PRELIMINARY ISSUES

MOTION TO ADJOURN

- [3] Prior to the commencement of the hearing on the merits, Counsel for the Appellant brought a motion to adjourn. The grounds for this motion were identical to the grounds for a motion to adjourn brought the week prior (November 22, 2022). This motion was denied on November 23, 2022. No new evidence was presented, nor were any new grounds given, save and except that the Appellant had retained Counsel on a limited scope retainer to argue this motion. Counsel for the Appellant was clear that he had not been retained for the wider matter. Counsel also made submissions on the second preliminary issue below.
- [4] As a practical matter, due to availability of the witnesses and Counsel for the Respondent and as well as Counsel for the Appellant (should he be in fact retained), then the matter would effectively need to be adjourned until the fall of 2023.
- [5] Given that there were no new grounds for the motion, nor was there any new evidence that was tendered, the motion for adjournment was denied.

SERBIAN LANGUAGE INTERPRETER

- [6] At the October 18, 2022 case conference, the Tribunal ordered that a Serbian language interpreter would be arranged and paid for by the Tribunal. The extent of

the requirement for the interpreter was to be decided by the presiding member of the Tribunal.

- [7] Submissions on this subject were given by both parties. The position of the Appellant was that, since her native language was Serbian, in order to be able to fully participate in the hearing she required an interpreter for the entirety of the proceedings. Whilst she absolutely has the right to have an interpreter, it was her position that, since she could not afford to pay for this service for the 10 day hearing, that it was the responsibility of the Tribunal to provide this to her. Counsel for the Appellant was unable to point to any cases on point in which this Tribunal paid for language interpreter services for the entirety of the hearing. Indeed, Counsel was unable to provide any cases in which the Tribunal was paying for the interpreter even on a limited basis.
- [8] The position of the Respondent was that the Tribunal paying the costs of an interpreter for even a portion of the hearing was unprecedented. Further, the Respondent made the submissions that all correspondence between the RHRA, and the Appellant were in English. These included all of the materials that were initially filed in order for the Appellant to obtain her licence as an operator of a retirement home. In addition, all inspections of the home were conducted in English. The Respondent submitted that not once, in over half a decade of being a licensee, had the Appellant had issues communicating with the Registrar in English. I found these submissions to be persuasive.
- [9] I ordered that the services of the interpreter be limited to the examination in chief and the cross examination of the Appellant.
- [10] Through the hearing, the Appellant's comprehension of English, as well as her spoken English were very good. The interpreter was completely unnecessary. Indeed, the Appellant communicated far more effectively when the interpreter was no longer present.

ISSUE TO BE DETERMINED

- [11] Has the Registrar demonstrated under s. 35 (1-2) of the Act:
- a. that the Appellant is no longer competent to operate the home in a responsible manner in accordance with the Act and the regulations and is no longer in a position to provide or facilitate the provision of care services to its residents; and
 - b. that the past conduct of the Appellant does not afford reasonable grounds to believe that the home will be operated:

- i. in accordance with the Act and the Regulation and all other applicable Acts, regulations and municipal by-laws;
- ii. with honesty and integrity; and
- iii. in a manner that is not prejudicial to the health, safety or welfare of its residents.

RESULT

[12] For the reasons set out below, the appeal is dismissed and the revocation of the licence is confirmed.

EVIDENCE AND ANALYSIS

[13] Both the Appellant and the Respondent presented extensive documentary evidence, with 30 documents being made exhibits. The Appellant called 6 witnesses, whilst the Respondent called 11 witnesses. Having considered the evidence and arguments, the Tribunal is satisfied that:

- A. there are reasonable grounds to believe that the Appellant was no longer competent to operate the home in a reasonable manner in accordance with the Act and its regulations and is no longer able to provide or facilitate the provision of care services to its residents; and
- B. the past conduct of the Appellant does not afford reasonable grounds to believe that the home will be operated:
 - i. in accordance with the Act and the regulations and all other applicable Acts, regulations and municipal by-laws;
 - ii. with honesty and integrity; and
 - iii. in a manner that is not prejudicial to the health, safety or welfare of its residents.

THE STANDARD OF PROOF

[14] In the Order to Revoke a Licence, the Registrar is relying on both s. 35(1), as well as s. 35(2). The two sections have different standards of proof. In s. 35(2), the legislature was explicit that the standard of proof is "reasonable grounds to believe", whilst s. 35(1) is silent on the matter. Thus, the standard of proof that the Registrar

needs to reach in s. 35(1) is on the balance of probability, and s. 35(2) is that of reasonable grounds for belief.

- [15] The standard that the Respondent needs to meet for s. 35(2), is that of reasonable grounds for belief. 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 (CanLII), "the requirement for reasonable grounds for belief is a standard of proof that is lower than a 'balance of probabilities.' It requires "something more than mere suspicion", and an "objective basis for the belief which is based on compelling and credible information."

THE APPELLANT IS NOT OPERATING THE HOME IN A RESPONSIBLE MANNER

- [16] Throughout the course of the hearing, much evidence was tendered about the myriad of deficiencies in the home. Three examples are illustrative of the Appellant's failure in this regard. These three instances impacted the health, the safety, the welfare, as well as the fundamental and the dignity of the residents.
- [17] The first example deals with the care provided to the residents. In her testimony, the evidence of the Appellant was that she was the only person that was properly trained to administer medication to ZSD's residents. Further, the Appellant did not have adequate contingency plans in place, should she be incapacitated or otherwise unavailable. The consequences of this omission came to light during an inspect by Pamela Hand, an employee of the RHRA, on July 2, 2021. At that time, ZSD was suffering through a COVID-19 outbreak. Both the Appellant and her son [redacted]. Whilst [redacted], the Appellant continued to provide care for the residents of ZSD. However, she neglected to administer the medication for several residents, for several days.
- [18] Under Regulation 166/11 (the "Regulation"), s. 29, if one of the care services provided by a retirement home is the administration of drugs, then the licensee "shall ensure that... no drug is administered by the licensee or the staff to the resident in the home except in accordance with the directions for use." The above noted medication had specific requirements for when they needed to be administered, which the Appellant did not follow.
- [19] This was not the only incident related to medication by the Appellant. On July 2nd, 2021, an inspector found that contrary to s. 30(a)(ii) of the Regulation, the drugs stored at the retirement home on behalf of the residents were not stored in an area, or medication cart that was "locked and secure." On August 3rd, 2021, an inspector noted that the Appellant was in compliance with s. 30(a)(ii), in that the medication cart was locked. However, they found that contrary to s. 30(b) the Appellant was not

compliant with respect to the storage of narcotics, which were stored within a cardboard box within the medicine cart. On October 15th, 2021, an inspector found that the medicine cart was left unlocked and unattended. Further the narcotics box was not secured to the cart. On April 10th, 2018 an inspector found that the Appellant was not compliant with s. 32 of the Regulation by failing to maintain complete records for the administration of medicine. On July 2, 2021 and on August 3, 2021 inspectors made similar findings. These are just several incidents of the Appellant's failure to properly meet the requirements of the Act and the Regulation for the administration and storage of medicine, as well as to keep adequate records.

- [20] The second example deals with the welfare of the residents. Over the period of four years, the Appellant was cited seven times during inspections on April 10th, 2018, January 9th, 2020, July 2nd, 2021, August 25th, 2021, August 31st, 2021, October 15th, 2021 and May 25th, 2022, for failing to adhere to the requirement of the Act for infection prevention and control, as required under s. 60(4) of the Act by failing "to have an infection control program that meets prescribed requirements", as set out in s. 27(5) of the Regulation. The failings include misleading, or entirely missing, records of cleaning; improper cleaning of soiled undergarments; and numerous failings around COVID-19 screening, prevention and control measures, including during an outbreak in the home.
- [21] The third example deals with the health, the safety and the welfare of the residents of the home. Nancy Thomson, is an employee of St. Joseph's Church, which is immediately across the street from ZSD. Ms. Thomson gave compelling and distressing evidence about an incident that she observed, when she was leaving her work. Ms. Thomson saw the Appellant take an elderly female resident outside, strip off her soiled clothing, then proceed to wash her and her clothes with a sponge and a bucket against an iron gate, in full view of everyone on the street. Further, the Appellant then left the female resident naked, outdoors and alone with a male resident. So appalled was Ms. Thomson that she then notified the police of what she had witnessed. It would be difficult to overstate the gravity of this assault upon the basic human dignity of the victim, which goes directly to the health, the welfare and the safety of the residents.
- [22] In the context of these examples, as well as several others in evidence, I find that the Appellant has failed to show that she is competent to operate the home in a responsible manner in accordance with the Act and the regulations and is in a position to provide or facilitate the provision of care services to its residents. I find that the Respondent has proven that the Appellant is not entitled to licensing under paragraph 1 of section 35 of the Act.

THE APPELLANT OPERATES THE HOME WITHOUT HONESTY AND INTEGRITY

- [23] Throughout her testimony, the evidence given by the Appellant strained credulity. Shortly after the commencement of her cross-examination, the Appellant's reputation for veracity of statement was seriously impugned. I find that she was untruthful throughout her testimony.
- [24] One example of the Appellant failing to operate the home with honesty and integrity and follow the requirements of the Act was that ZSD was licenced for only 8 residents, whilst it sometimes exceeded this. In the summer of 2017, ZSD listed on its website that it could accommodate up to 15 residents. During an inspection on July 11, 2021, the inspector noted that 11 residents were living in the home, in contravention of the licence.
- [25] A second example of the lack of honesty and integrity revolves around the injuries sustained by XX. Mr. Y testified that the Appellant told him that the injuries were due to a fall that happened when she was bathing. Mr. Y then testified that the Appellant later admitted to him that XX's injuries were the result of an assault by another resident. Notwithstanding cross-examination of Mr. Y, his evidence was compelling and unshaken.
- [26] A third example is that in the August 3rd, 2021 inspection, Ingrid Boiago found that the Appellant had completed the documentation showing the cleaning of the residence had been done for the month of September--in other words pre-filling in the report.
- [27] A fourth example is during the July 2nd, 2021 inspection, the Appellant told Pamela Hand, the inspector, that she would don PPE prior to entering the room of any resident and would immediately doff PPE gear upon leaving the resident's room. Ms. Hand testified that this was an absurd statement to make, as there was not a single shred of evidence that ever took place. Lacking was any storage of PPE anywhere near the rooms of any resident. Further there was no receptacle for disposing of PPE, either inside, or outside the room of any resident.
- [28] I note that these are but four examples from a long list of actions which vividly demonstrate the lack of honesty and integrity of the Appellant.
- [29] I find that the Respondent has demonstrated that the past conduct of the Appellant does not afford reasonable grounds to believe that the home will be operated with honesty and integrity.

THE APPELLANT OPERATES THE HOME IN A MANNER PREJUDICIAL TO THE HEALTH, SAFETY OR WELFARE OF ITS RESIDENTS

[30] Throughout the hearing much evidence was given about the myriad of ways in which ZSD operated that was prejudicial to the health, safety or welfare of its residents. Three areas are illustrative of the Appellant's neglect towards the residents in her care:

- Inaccurate and misleading information provided to EMS technicians upon resident XX's transfer to hospital;
- Neglecting the basic hygiene of the residents; and
- The entire approach to COVID-19.

HOSPITAL VISIT OF XX

[31] On December 5, 2021, the Appellant called an ambulance to take one of ZSD's residents to hospital. The resident, XX, was suffering from diarrhea and vomiting. She was XX years of age at the time and had been a resident of ZSD for the previous X years.

[32] When the EMS technicians arrived at the ZSD, in addition to being given details about the acute issue that was the genesis of the request for assistance, they also took XX's medical history. The Appellant told the technicians that XX suffered from bi-polar disorder, schizophrenia, and depression. The following day, the hospital called ZSD to take in further details of XX's history. At that time the Appellant stated that XX also suffered from Down syndrome.

[33] There are two significant issues with the patient history given by the Appellant. First, XX was not actually diagnosed with any of the chronic conditions listed by the Appellant. Mr. Y testified that the Appellant omitted the one chronic condition that XX did suffer from: dementia. Further, Mr. Y also testified that XX had an allergy to penicillin. The omission from the Appellant informing the EMS technicians (and later the hospital when it called to take a fuller medical history) that XX was allergic to penicillin, could have had catastrophic consequences. Since XX only spoke Serbian and was suffering from significant dementia, she was not in a position to be able to give this information to the EMS technicians, nor to the hospital. She was extremely fortunate that her treatment regime did not involve the use of antibiotics.

BASIC HYGIENE

- [34] One constant and recurring theme throughout the hearing was the deficiencies in the Appellant providing basic hygiene for her residents. Three examples are characteristic of the approach taken by the Appellant to this most fundamental of services for the residents that were in her care.
- [35] AA testified that her mother, BB, had recurring mouth infections. BB suffered from dementia and was unable to be responsible for her own oral hygiene. The Appellant told BB that the infections were caused because the dentures were ill-fitting. However, BB's dentist rebutted this assessment. The evidence showed that BB's mouth infections were caused because her dentures were not removed at night, nor were they cleaned regularly. When BB left the home and moved to ZZ, her issues with mouth infections were resolved.
- [36] Evidence was given by Dana Khan, the Director of Quality and Risk Management of the Waterloo Wellington Region Home and Community Care Support Services ("WWHCCSS"), Andrea Prasad, the CBI Health Care Manager (which was contracted by WWHCCSS to provide support services to residents of ZSD, and Ingrid Boiago, that residents of the home would be wearing the same clothes for one or even two weeks. The same clothes would be worn during the day and the night and would be visibly soiled, including with feces.
- [37] The Appellant was unable to provide a reasonable standard of care for her incontinent residents. Evidence was given by Ms. Khan, Ms. Prasad and Ms. Boiago, that to reduce or eliminate the need to change the briefs of her incontinent residents during the night, the Appellant had them wear multiple sets of briefs when they slept. Further, the Appellant covered the beds of incontinent residents with plastic tablecloths to protect the beds from urine. The Appellant would also use a sponge to clean urine off the floor and later use that same sponge to wash down counters.

COVID-19

- [38] While the Appellant's COVID-19 procedures, especially as related to hygiene, were woefully inadequate, two policies and one incident in particular were problematic and put her residents at risk.
- [39] The first policy was that during the height of the pandemic, the Appellant refused to allow the residents any visitors whatsoever. In addition, she refused to allow her residents to leave the facility. The reason for the policy was laudable: reducing, or eliminating, contact with the outside world, which in turn significantly reduces the

risk of infection spreading to a vulnerable community. However, this prohibition extended not simply to visitors such as family or friends, but to essential caregivers. The prohibition on leaving the facility also applied to visits to health care professionals such as dentists. These policies were directly contradictory to the directive of the Chief Medical Officer of Health. This was a violation of s. 27(5)(0.b)(ii) of the Regulation that retirement homes were required to take all reasonable steps to follow any directive issued by the Chief Medical Officer of Health.

- [40] The second and even more concerning policy was related to the first. The reason why the Appellant was so zealous to guard against COVID-19 exposure was that [redacted]. Initially, the residents were unvaccinated as well. The Appellant refused to let the residents get vaccinated as she believed that the vaccination process involved exposing people to the actual virus, which could in turn lead them to infect others. Ms. AA testified that in order to have her mother vaccinated, she needed to contact public health, which in turn wrote to the Appellant. The Appellant eventually relented and allowed Ms. AA's mother to become vaccinated. It is worth noting that ZSD suffered through a prolonged outbreak, with [redacted].
- [41] The incident that put both residents and the wider community at risk was the Appellant's failure to follow s. 27(5)(a) and 27(5.1) of the Regulation by reporting the Covid-19 outbreak to both the Chief Medical Officer of Health, as well as to the Registrar.
- [42] I find that the Respondent has clearly and convincingly demonstrated that the past conduct of the Appellant gives reasonable grounds to believe that the home will not be operated in a manner that is not prejudicial to the health, safety or welfare of its residents.

THE IMPORTANCE OF ZSD TO THE SERBIAN COMMUNITY

- [43] As the only Serbian language retirement home in the Province of Ontario, ZSD has an important place in the Serbian community. Mr. E E . testified about his father's extremely positive experience in the home. Living in a community in which everyone spoke his native tongue, where they ate traditional Serbian foods and where everyone had access to Serbian language television was extremely important and comforting to his father. So strongly did Mr. E E feel that, even though he lived in Toronto, he put his father into ZSD in Kitchener so he could be part of this special community. Other witnesses also testified about ZSD's importance to the Serbian community.

[44] Notwithstanding its importance to the community, the health, welfare and safety of the public—especially the residents—trump the nevertheless important value of receiving services in their native language and culture.

CONCLUSION

[45] The Respondent demonstrated conclusively that the Appellant is no longer competent to operate ZSD in a responsible manner. The Respondent convincingly showed it is not reasonable to believe that the Appellant can operate ZSD in accordance with the Act and the regulations and that she is no longer in a position to provide or facilitate the provision of care to its residents. Further, the Respondent gave overwhelming evidence that the Appellant's past conduct does not give reasonable grounds to believe that the home will be operated with honesty and integrity; and in a manner that is not prejudicial to the health, safety or welfare of its residents.

[46] The Appellant's submissions were that all of the above transgressions were minor and that her conduct was getting better. She gave no submissions on conditions upon her licence in lieu of revocation. The Respondent made submissions that the Appellant has shown herself to be ungovernable and that there is no other alternative to revocation. I agree. The Appellant's conduct has shown that she has been given opportunity after opportunity, which she has squandered. She has demonstrated convincingly that she is ungovernable and there is no alternative to revocation.

COSTS

[47] Under Rule 19 of the Common Rules of Practice and Procedure, this Tribunal may order costs against a party that has acted unreasonably, frivolously, vexatiously or in bad faith. The amount of costs shall not exceed \$1,000 for each full day of attendance at a motion or hearing. The Respondent sought costs of \$2,500. Costs were sought on the basis that the Appellant:

- failed to meet all of the documentary filing deadlines ordered at multiple Pre-Hearing Conferences;
- was unprepared throughout the hearing, leading to unreasonable delays; and
- Her counsel brought a motion to adjourn the hearing, identical to the motion that was denied a week earlier.

[48] All of the above factors were manifestly prevalent.

[49] In addition, Counsel for the Appellant failed to advise the Tribunal of a scheduling conflict that required he leave the hearing before final submissions were made on his motion. Counsel literally gave a warning that he would need to leave within the next sixty seconds to attend a bail hearing. Whilst he advised he would be back shortly, the delay stretched from minutes to hours. This was an entirely unnecessary and unreasonable delay.

[50] Throughout the entirety of the hearing, the Appellant consistently acted unreasonably. She advanced frivolous lines of argument and acted in bad faith. A good illustration of her bad faith was the fact that for the entirety of the hearing, the Appellant was onsite at the home without either her son or her daughter-in-law, which were requirements of the stay order of this Tribunal.

[51] I therefore find that costs are warranted.

ORDER

[52] For the reasons set out above, pursuant to s. 103(1) of the Act, the Registrar's order is affirmed, excepting that the order is effective as of December 19, 2022.

[53] Costs in the amount of \$1,750.00 payable by the Appellant to the Respondent are hereby ordered. Costs are to be payable within 1 year from December 19, 2022. Pursuant to s. 17 and s. 17.1(1-4) of the *Statutory Powers Procedure Act*, on the December 20, 2023, interest on any outstanding balance shall accrue pursuant to s. 129(1) of the *Courts of Justice Act*.

LICENCE APPEAL TRIBUNAL



Geoff Pollock, Vice Chair

Released: March 31, 2023