Licence Appeal Tribunal
Tribunal d'appel en matière de permis

Ontario

DATE: 2014-01-08
FILE: 8181/RHA
CASE NAME: 8181 v. Registrar, Retirement Homes Regulatory Authority

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Appeal from a Notice of Decision to Refuse a Licence made by the Registrar of the Retirement Homes Regulatory Authority under Section 41 of the Retirement Homes Act, 2010 S.O. 2010, c. 11

1753359 Ontario Ltd. O/A/ Brookside Manor

Applicant

-and-

Registrar, Retirement Homes Regulatory Authority

Respondent

DISMISSAL ORDER

ADJUDICATOR: Patricia L. Cassidy, Vice-Chair

For the Applicant: Not Appearing

For the Respondent: Jordan Glick and Evelyn Spence, Counsel

Received Time Jan. 8. 2014 9:03AM No. 2240

DISMISSAL ORDER

This matter came on for hearing on December 5, 2013. Five days were set aside for the hearing of this matter, specifically December 5, 6, 13, 16 and 17, 2013. At the opening of the hearing on that date, the Applicant was not present and nobody appeared as agent to address the Tribunal on the Applicant's behalf. After waiting 30 minutes and having a staff member of the Licence Appeal Tribunal attempt, unsuccessfully, to reach the Applicant, at the telephone number provided by him, the hearing began. When the hearing resumed, following the 30 minute recess, Counsel for the Registrar made an oral motion asking that the appeal be dismissed, as abandoned.

Correspondence between the parties indicated that the Applicant might have a Mr. Rajeev Naik attend the hearing, as agent, but neither Mr. Naik nor anyone else purporting to represent the Applicant in any capacity, attended or contacted the Tribunal on December 5, 2013. While there was evidence that the Applicant might be in the process of transferring ownership of Brookside Manor to Mr. Naik and to a Mr. Johnston, the evidence is that such a transfer has still not been completed. The evidence is that Mr. Mario Milano, the principal of the Applicant Corporation is still the owner of Brookside Manor. While the Tribunal understands and appreciates that the prospective purchasers made an application for licence late on December 4, 2013, the fact is that ownership of Brookside Manor continues to be vested in Mr. Milano. Consequently, Mr. Milano continues to hold the licence for Brookside Manor and there is no mechanism by which that licence can be transferred. On the evidence, Mr. Milano is fully aware and has been advised numerous times that Retirement Home licences are not transferrable.

By Order released December 9, 2013, this Tribunal issued an Order and Notice of Intent to Dismiss which provided that:

1. Pursuant to the *Statutory Powers Procedure Act* R.S.O. 1990 c.S.22 and the Tribunal's Rules of Practice, the Tribunal hereby gives notice to the Applicant that it intends to dismiss this proceeding as abandoned unless, within the time frame specified below, the Applicant provides sufficient reasons why the proceeding should not be dismissed;

2. Further, and in any event, the Registrar shall have its costs, fixed at $800.00, paid by the Applicant before the Applicant may take any further steps in this proceeding; and,

3. The Applicant may, within ten (10) days of the release date of this Order, provided the costs awarded herein have been paid, provide written submissions to the Tribunal as to why the appeal should not be dismissed, including an explanation of the Applicant's failure to attend at the hearing on December 5, 2013. If the Applicant fails to provide sufficient reasons why the appeal should be continued, the appeal shall be deemed to be abandoned and will be dismissed.

Mr. Milano submitted material to the Tribunal via facsimile transmission sometime, after the close of business on December 19, 2013 which this Tribunal has reviewed. The material was received by Tribunal staff on the morning on December 20, 2013. While it might be argued that the material was received outside the time frame prescribed by the Order issued on December 9, 2013, leaving that issue aside, the Applicant still has not provided particulars of the alleged deal between Mr. Milano and Mr. Naik and Johnston. There still is no evidence that the alleged transfer of the business has ever been concluded. In fact, the material provided by Mr. Milano in the facsimile transmission he forwarded sometime between the close of business on December 19, 2013 and the start of business on December 20, 2013, states, "I can't imagine the formal transfer will take more than 40 to 60 days." The evidence of the Applicant, therefore, is that the transfer has not yet been concluded and may never be.

On the evidence, Mr. Milano is still the owner of Brookside Manor and the licence for that facility is still in his name. Mr. Milano did not attend the hearing, despite having ample notice and full knowledge of what was at stake in this proceeding. Neither did Mr. Milano ensure that anyone would attend the hearing on behalf of the Applicant, even though he was fully aware of the dates for the hearing and the fact that the Registrar intended to seek an Order dismissing the appeal as abandoned in the event the hearing could not proceed on December 5, 2013. The Applicant has been given a great deal of latitude since the onset of this proceeding but he does not seem to appreciate that the rules and regulations apply to everyone, including Brookside Manor. Mr. Milano continues to seek extensions with the promise that certain things will occur, including the sale of the home and application for licence being made by prospective purchasers. The sale has not happened and no particulars have ever been provided.

Notwithstanding the provisions of the Order released on December 9, 2013, the Applicant has failed to provide any reasons why the Appeal should not be dismissed. Neither has the Applicant paid the costs of $800.00 which were ordered to be paid before he could take any further steps in this proceeding, including the provision of written submissions on why the Appeal should not be dismissed and an explanation of his failure to attend the hearing on December 5, 2013. He has done none of those things. He has failed to comply with the Order of December 9, 2013.

Accordingly, the Tribunal orders that the Applicant's appeal is dismissed and the Tribunal's file shall be closed as of the date of this order.

LICENCE APPEAL TRIBUNAL

Patricia Cassidy, Vice-Chair

Released: January 8, 2014