Home Construction Regulatory Authority
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July 31, 2024

Delivered by email to: mvininsky@ksvadvisory.com

2363823 Ontario Inc.
c/o KSV Advisory
220 Bay Street, 13th Floor, PO Box 20,
Toronto, Ontario, M5J 2W4

**RE: ADMINISTRATIVE PENALTY ORDER**

**Pursuant to section 76 of the *New Home Construction Licensing Act, 2017* ("NHCLA") the Home Construction Regulatory Authority ("HCRA") orders 2363823 Ontario Inc. to pay an administrative penalty of $400,000 for four contraventions of section 3 of the NHCLA's Code of Ethics. This is comprised of a base penalty of $33,000 and a monetary benefit amount of $367,000.**

## REASONS

### Overview

1. The HCRA received multiple complaints regarding 2363823 Ontario Inc. o/a Mariman Homes' ("Mariman") conduct. Following a lengthy inspection, the HCRA discovered, among other things, that Mariman had allowed its creditors to improperly seek price increases from four purchasers. These purchasers' Agreements of Purchase and Sale ("APS") did not allow Mariman or its creditors to unilaterally change the purchase price. Mariman was unwilling or unable to honour the original purchase price of the agreements for each of these four properties resulting in four contraventions of section 3 of the Code of Ethics.

2. As a result of these improper price increases, and many other issues, the HCRA issued a Notice of Proposal to Refuse to Renew Mariman's licence.

3. The parties reached a resolution on the Notice of Proposal. One component of that resolution was that the HCRA would issue, on consent, this administrative penalty order against Mariman.

4. The base administrative penalty amount of the order is $33,000. The monetary benefit amount of the administrative penalty is $367,000. These amounts were agreed to by Mariman.

**Mariman's Conduct**

*50 Augustus Street*

1. On December 19, 2016, Mariman entered into an agreement of purchase and sale to build and sell a new home located at 50 Augustus Street, Scotland, ON. The agreed price was $732,000.

2. The project was significantly delayed.

3. Approximately five years later, on December 24, 2021, the purchasers moved into the property pursuant to an occupancy agreement.

4. In January 2023, the purchasers were contacted by Mariman's lenders to discuss a possible resolution before they moved to sell the property under power of sale. They did so even though the purchasers had made all scheduled payments to Mariman.

5. The purchasers were forced to pay $900,000 for this home under threat of losing the home through power of sale proceedings by Mariman's lenders.

*51 Augustus Street*

6. On December 7, 2016, Mariman entered into an agreement of purchase and sale to build and sell a new home located at 51 Augustus Street, Scotland, ON. The agreed price was $684,000.

7. The project was significantly delayed.

8. Approximately four-and-a-half years later, on August 18, 2021, the purchasers moved into the property pursuant to a verbal occupancy agreement.

9. Eight months later, in April 2022, Mariman contacted the purchasers and advised that, despite the signed agreement they had with Mariman and having made all scheduled payments, Mariman was having issues with its lenders and one of the lenders was going to sell the property under power of sale. Mike Bettiol (Mariman's directing mind) advised the purchasers that the reason the property could not close was because of his difficulty in working with the lenders.

10. Six months after that, in October 2022, Mariman told the purchasers that the lenders were making all of the decisions and that they should work out a deal with the lenders if they wanted to complete the transaction. This was not true. The power of sale process had not been completed for this property. Mariman was still the owner and still responsible for completing the sale it agreed to in 2016.

11. The purchasers were forced to pay $850,000 for this home under threat of losing the home through power of sale proceedings by Mariman's lenders.

*54 Augustus Street*

12. On January 6, 2020, Mariman entered into an agreement of purchase and sale to build and sell a new home located at 54 Augustus Street, Scotland, ON. The agreed price was $850,000.

13. Approximately two-and-a-half years later, in August, 2022, Mr. Bettiol advised the purchasers that Mariman had “an issue” with the lenders of the project and the sale could not close as planned.

14. Three months later, in November 2022, despite having entered into a purchase and sale agreement with Mariman and having made all scheduled payments, Mariman’s lenders approached the purchasers about paying more money for their home.

15. Three months after that, in February 2023, the purchasers agreed to pay more money to close the sale but Mariman was still unable or unwilling to do so.

16. After two additional extensions, the sale closed in March 2023 for a purchase price of $1,050,000 which was $200,000 more than the original agreement price.

*56 Augustus Street*

17. On May 23, 2020, Mariman entered into an agreement of purchase and sale to build and sell a new home located at 56 Augustus Street, Scotland ON. The agreed price was $900,000.

18. Two-and-a-half years later, in October 2022, Mariman’s lenders approached the purchasers about paying more money for their home. The lenders advised that all of the homes in the Scotland project were under power of sale and they wanted to negotiate a new agreement.

19. Two months later, Mariman advised the purchasers that despite a binding agreement between the purchasers and Mariman, Mariman would not close until the lenders reached a new agreement with the purchasers.

20. The purchaser agreed to pay more money to close the sale but Mariman was still unable or unwilling to do so.

21. Two months after the purchaser agreed to pay more money, the sale closed in March 2023 for a purchase price of $1,100,000 which was $200,000 more than the original agreement price. The purchasers were clear that they only paid the additional $200,000 because Mariman’s lenders told them they would only discharge their mortgages if the lenders received the additional amount. Mariman refused to pay this amount so the lenders sought it from the purchasers.

## Administrative Penalty Amount

*Base Penalty Amount*

5. The base administrative penalty amount for these four contraventions is $33,000.

6. In determining this amount, the HCRA has considered: the impact of the contraventions on the HCRA's ability to carry out its purpose, the impact of the contraventions on purchasers of new homes, Mariman's compliance history, Mariman's refusal to remedy the contraventions, and whether the contraventions were deliberate.

*Monetary Benefit Amount*

7. The monetary benefit amount of the administrative penalty is $367,000.

8. This monetary benefit amount represents a portion of the increased prices that the four purchasers had to pay as a result of Mariman's contraventions.

*Request to Consider Additional Information*

9. As a result of the parties' resolution, Mariman waived the typical notice and response period set out in the NHCLA and consented to this Order being issued.

## Grounds for Imposing Administrative Penalties

10. The HCRA is satisfied that imposing administrative penalties on Mariman will accomplish the following purpose(s) under section 76(4) of the NHCLA:

    a. To prevent a person from deriving, directly or indirectly, any economic benefit as a result of contravening the NHCLA.

## Payment Information

11. Pursuant to section 9 of O. Reg. 573/22, payment of the administrative penalty must be paid within 30 days. As a result of the resolution agreement, the HCRA has agreed to accept payment in four quarterly payments of $100,000 each. These quarterly payments are due on September 30, 2024, December 31, 2024, March 31, 2025, and June 30, 2025.

12. The HCRA accepts payments through:

    **1) Online or Telephone Banking with your financial institution**

    **For online banking, add the Home Construction Regulatory Authority (HCRA) as a Payee and enter your licence number** (**B#####**) when asked for the account number to which payment is being remitted.

    **OR**

**2) Cheque by regular mail**

**Please make the cheque payable to the Home Construction Regulatory Authority and mail it to the following address:**

40 Sheppard Avenue West
Fourth Floor, Suite 400
Toronto, ON
M2N 6K9

Please note: HCRA operates remotely and cannot accept couriered mail.

**<u>Contact Information</u>**

13. If you have any questions about this Order please contact legal@hcraontario.ca.

Dated at Toronto this 31st day of July, 2024.

Wendy Moir
Wendy Moir (Jul 31, 2024 16:44 EDT)
Wendy Moir
Assessor/Registrar, HCRA