

THE REAL ESTATE COUNCIL OF ALBERTA

IN THE MATTER OF s. 39(1)(b) and s. 41 of the *Real Estate Act*, R.S.A. 2000, c. R-5, as amended

AND IN THE MATTER OF an appeal of an Administrative Penalty concerning the conduct of Perry Gereluk, Appraiser.

Hearing Panel Members: Cindy Dubray
Jim Kerrison
Marjorie King

Hearing Date: March 2, 2011

Appearing: Mark Lancaster on behalf of the Executive Director
Perry N. Gereluk, Appraiser, on his own behalf

Witnesses: None

**DECISION OF A HEARING PANEL OF THE REAL ESTATE COUNCIL OF ALBERTA
ON CONDUCT DESERVING OF SANCTION**

I) INTRODUCTION

This is an appeal of an Administrative Penalty issued to Mr. Gereluk. The Administrative Penalty was issued under s.39 and s.83 of the Real Estate Act on October 13, 2010. This appeal is made by Mr. Gereluk under s.83.1 of the Act.

No witnesses appeared. The hearing received an Agreed Statement of Facts into evidence and the parties made submissions on the issue of whether there was conduct deserving of sanction.

II) ALLEGATIONS

The allegations are set out in the Notice of Hearing attached as Schedule "A" to these reasons.

Briefly, the Executive Director alleges that Mr. Gereluk contravened s.41(g) of the Rules made under the *Real Estate Act* when he signed 5 appraisal reports prepared by a candidate who was unlicensed at the time of writing those reports.

III) FINDINGS OF FACT

The Panel accepts the facts as set out in the Agreed Statement of Facts entered as Exhibit 6.

A.M. was an authorized candidate appraiser employed with Colliers International Realty.

He was authorized from August 15, 2006 until September 30, 2007, when his license required annual renewal. A.M. completed his application online and printed the licensing documents for the renewal. He also paid the fee for renewal and obtained a receipt from RECA.

Mr. Gereluk was an authorized appraiser and also employed by Colliers. He was a supervisor of A.M. and responsible for signing A.M.'s candidate appraisal reports. Mr. Gereluk was not a broker at Colliers.

After completing his application and obtaining a receipt for his renewal payment A.M. informed Mr. Gereluk that he had renewed his authorization. Mr. Gereluk was aware that A.M. had obtained a receipt for his payment and had printed licensing documents for the 2007/2008 licensing period.

Mr. Gereluk did not check online to confirm that A.M. was licensed.

In making his application for renewal A.M. failed to correctly complete his renewal through the RECA Online system and was in fact unauthorized to conduct appraisal services in Alberta as of October 1, 2007.

A.M. learned that he was not authorized on November 5, 2007. He advised the broker at Colliers on or before November 7, 2005. There is no evidence Mr. Gereluk was informed of this.

A.M. rectified the renewal problem and was again licensed as an appraiser candidate on November 21, 2007.

During the time A.M. was unauthorized he prepared 5 appraisal reports signed by him on the following dates:

October 1, 2007
October 31, 2007
November 13, 2007
November 22, 2007
November 22, 2007

The first three reports were signed by Mr. Gereluk on the same day they were prepared. The final two were not signed.

On October 13, 2010, Mr. Gereluk was issued an Administrative Penalty for breach of section 41(g) of the Rules made under the Real Estate Act. The contravention was described as failing to “confirm A.M.’s candidate licensing status but instead signed and accepted responsibility for 5 real estate appraisal reports prepared by an unlicensed candidate.”

IV) SUBMISSIONS RE CONDUCT DESERVING OF SANCTION

In his appeal Mr. Gereluk admits signing the reports and not confirming online whether A.M. was authorized. He submits however that this is not a breach of s.41(g).

Mr. Gereluk submits that he had several reasons for believing that A.M. was licensed: A.M. had been previously licensed by RECA and was able to demonstrate to Mr. Gereluk that he had completed the renewal forms and submitted payment to RECA. Further there was no notice about failure of the renewal in what A.M. showed to Mr. Gereluk. Mr. Gereluk received advice about the renewal from A.M. and relied on that advice as confirmation that A.M. was renewed.

Mr. Gereluk argued that s.41(g) did not create a duty on him to verify independently that A.M. was licensed and that the current Rules 80 (1.2) and (2.2) which do require an appraiser to confirm that a candidate is licensed before signing an appraisal were not in force at the time of these events and do not apply retroactively.

Mr. Gereluk also argued that it was a “simple mistake” and the public was never put at risk.

Counsel for the Executive Director argued that s.41(g) was a broad provision meant to cover situations not expressly addressed in the Rules, that the objective of the legislation is to protect the public and that the licensing requirements under the legislation, so fundamental to self regulation, require reading into this section a duty on those who supervise to ensure that important provisions of the legislation are complied with.

In this case it was argued that s.41(g) required Mr. Gereluk, as an industry member in a supervising position, to ensure that A.M. was licensed.

Counsel for the Executive Director drew our attention to the case of *Golko v. Alberta Real Estate Assn.* 1995 CarswellAlta 177. The judge in that case found that the licensing legislation at the time, which was replaced by the *Real Estate Act*, was broadly worded in order to apply to a range of industry situations and must be given a broad interpretation.

Counsel for the Executive Director also argued that given the remedial nature of the present *Real Estate Act*, s.41(g) should be interpreted broadly so that public protection can be achieved. In this case the importance of licensing following a period of required renewal imposed a duty on Mr. Gereluk to confirm independently that A.M. was in fact licensed before signing the candidate reports.

(V) FINDINGS RE CONDUCT DESERVING OF SANCTION AND ORDERS

We find no contravention of s.41(g) and therefore no conduct deserving of sanction.

S.41(g) of the Rules states as follows:

- 43 Industry members must
 - (g) practice in strict accordance with the Act, Regulations, Rules and Bylaws and any other laws that govern trading in real estate, mortgage transactions or appraisals in Alberta;

We accept the requirement for broad and remedial interpretation of this section as described in the *Golko* case. We have considered the legislation and Rules as a whole and note the importance of licensing in the regulation of the industry and protection of the public.

We find that there was a duty on Mr. Gereluk, who supervises A.M. and who is required to review and sign A.M.'s appraisal reports, to confirm that A.M. was authorized. This duty is found in a broad and purposeful interpretation of section 41(g) within the Act and Rules as a whole and considering the objectives to protect the public.

However we find that this duty did not require Mr. Gereluk to inquire beyond what was demonstrated to him by A.M. in this case. Without a duty to go further, Mr. Gereluk did not breach the duty and therefore did not breach the section.

Before signing the reports at issue, Mr. Gereluk received information from A.M. and relied on this information as confirming that A.M. was authorized.

A.M. was not a new applicant for authorization and he was known to Mr. Gereluk and worked with him. A.M. was also able to demonstrate to Mr. Gereluk that he had completed what he needed to do in order to renew his license.

We find it was reasonable that Mr. Gereluk believed A.M. was renewed in these particular circumstances. This met the duty imposed on Mr. Gereluk.

The duty to confirm does not impose a duty of perfection or correctness in all cases. A.M. was mistaken and this mistake was the reason Mr. Gereluk was mistaken. A duty on A.M. to confirm further may exist but Mr. Gereluk met the

duty on him by his reliance on what A.M. demonstrated to him. We find that his reliance was reasonable.

We also find that no duty to re-check or to go behind the original confirmation arose subsequently for Mr. Gereluk during the period A.M. was unlicensed. No new information was brought to his attention which would trigger a duty to confirm again. Had Mr. Gereluk been advised of the failure of the renewal when A.M. found out about it and signed the November 13, 2007, report this would have been a contravention of s.41(g). But there is no evidence Mr. Gereluk learned during the relevant time that there was a problem with A.M.'s renewal.

Mr. Gereluk argued that he did not intend to contravene any section of the Act or Rules. It is not a requirement for the alleged contravention that Mr. Gereluk have any intent to contravene or intend harm or fraud. The contravention can occur through failure to meet the duty required. Lack of intent in this case would be a mitigating factor on sanction if the Panel were to find a contravention and therefore conduct deserving of sanction.

VI ORDERS

Having found no contravention of s.41(g) and therefore no conduct deserving of sanction this Panel hereby quashes the Administrative Penalty.

This decision was made on March 8, 2011.

Cindy Dubray, Panel Chair

Jim Kerrison, Panel Member

Marjorie King, Panel Member

Schedule "A" to the decision of the Hearing Panel in the Matter of An Appeal of an Administrative Penalty concerning the conduct of Perry Gereluk, Appraiser

THE REAL ESTATE COUNCIL OF ALBERTA

IN THE MATTER OF section 83, 83.1 and section 41 of the *Real Estate Act*, R.S.A. 2000, c. R-5, as amended

AND IN THE MATTER OF an appeal of an Administrative Penalty concerning the conduct of **Perry Gereluk**, Appraiser.

**NOTICE OF HEARING OF AN APPEAL OF AN
ADMINISTRATIVE PENALTY**

TO: Perry N, Gereluk, Appraiser
c/o Colliers International
Suite 3555, 10180 101 Street
Edmonton, AB T5J 3S4

TAKE NOTICE that an appeal of an Administrative Penalty assessed against you is to be heard before a Hearing Panel at 9:30 a.m. on Wednesday, March 2nd, 2011, in the City of Calgary, in the Province of Alberta, at the offices of the Real Estate Council of Alberta, located at Suite 350, 4954 Richard Road SW.

AND TAKE NOTICE that as set out in the Notice of Administrative Penalty attached as **Schedule "A"** hereto, that you will be required to answer the following allegations:

1. THAT, contrary to section 41(g) of the Rules made pursuant to the *Real Estate Act*, R.S.A. 2000, c. R-5, you failed to practice in strict accordance with the Act, Regulations, Rules and Bylaws and any other laws that govern trading in real

estate, mortgage transactions or appraisals in Alberta. This is conduct deserving of sanction, particulars of which are as follows:

- (a) From October 1, 2007 to November 21, 2007, in your capacity as a licensed real estate appraiser, you assisted an unlicensed candidate appraiser, through review and execution of 5 real estate appraisal reports.
- (b) At no time during the noted period of October 1, 2007 to November 21, 2007 did you confirm the licensing status of the unlicensed candidate appraiser, but instead signed and accepted responsibility for 5 real estate appraisal reports prepared by the unlicensed candidate.

AND TAKE FURTHER NOTICE that the Hearing Panel may make one or more decisions outlined in section 83.1(5) of the *Real Estate Act*, including, but not limited to a decision to quash, vary or confirm the Administrative Penalty and to award costs of the investigation and hearing resulting in the Administrative Penalty and the appeal.

AND TAKE FURTHER NOTICE that the decision of the Hearing Panel on an appeal of an administrative penalty shall be final.

AND TAKE FURTHER NOTICE that the following Hearing Panel members will hear the charges against you:

1. Cindy Dubray
2. Jim Kerrison
3. Angus MacInnes
4. Marjorie King (alternate)

If you have any objections to the composition of the Hearing Panel, you must notify the Real Estate Council of Alberta of your objection together with the reasons for your objections, within 14 days of receipt of this Notice of Hearing. If you fail to object to the

composition of the Hearing Panel within 14 days, the proposed Hearing Panel will hear the appeal against you.

AND TAKE FURTHER NOTICE that the Hearing Panel will accept oral or written submissions or both and, unless otherwise ordered by the Hearing Panel, written submissions must be received by the Hearing Panel within 15 days after the date on which all evidence has been received by the Hearing Panel.

AND TAKE FURTHER NOTICE that the Hearing Panel may proceed with the hearing in your absence and the Hearing Panel may dismiss or reschedule a hearing if you do not attend the hearing.

DATED at the City of Calgary, in the Province of Alberta, this 2nd day of February, 2011.

REAL ESTATE COUNCIL OF ALBERTA

Per:

Bob Myroniuk
Executive Director

Schedule A

**REAL ESTATE COUNCIL OF ALBERTA
NOTICE OF ADMINISTRATIVE PENALTY**

To: Perry N Gereluk, Appraiser
Suite 3555, 10180 101 Street
Edmonton, AB T5J 3S4

In accordance with s. 39 and s. 83 and the Bylaws of the *Real Estate Act*, R.S.A. 2000 c. R-5 (the "*Act*"), the Executive Director of the Real Estate Council of Alberta has determined that there is sufficient evidence of conduct deserving of sanction in regard to you, Perry N. Gereluk (hereinafter "Mr. Gereluk"), at all relevant times, a licensed appraiser pursuant to the Act and is hereby assessing an Administrative Penalty for such misconduct. The evidence giving rise to the Executive Director's decision is as follows:

From October 1, 2007 to November 21, 2007, A.M. was not licensed as a candidate real estate appraiser pursuant to the *Act*. While unlicensed and contrary to s.17 of the *Act*, A.M. acted as a candidate real estate appraiser and prepared and presented 5 real estate appraisal reports to you, in your licensed real estate appraiser capacity, for your review, signature and responsibility. At no time during A.M.'s unlicensed period, did you confirm A.M.'s candidate licensing status but instead signed and accepted responsibility for 5 real estate appraisal reports prepared by an unlicensed candidate.

The Executive Director is of the opinion that the above noted conduct is in contravention of s.41(g) of the Rules made pursuant to the *Act* which provides:

41 Industry members must

(g) practice in strict accordance with the Act, Regulations, Rules and Bylaws and any other laws that govern trading in real estate, mortgage transactions or appraisals in Alberta;

In accordance with s. 39 and s. 83 of the *Act* and Part 4 of the *Act's* Bylaws, an Administrative Penalty in the amount of **\$1,500.00** has been assessed against you for this contravention.

Payment of this Administrative Penalty shall be accepted by the Executive Director as complete satisfaction of the amount of the penalty and no further proceedings under Part 6 of the *Act* will be taken against you in respect of the contravention. A person who pays an Administrative Penalty may not be charged under the *Act* with an offense in respect of those contraventions.

This sum of **\$1,500.00** is payable to the Real Estate Council of Alberta within thirty (30) days of the date of issuance of this Notice of Administrative Penalty. If you fail to pay the amount set out in this Notice, the Executive Director may commence legal action against you to recover the amount owing in respect of the Administrative Penalty as a debt due to the Real Estate Council of Alberta.

If you dispute this Notice of Administrative Penalty in accordance with s. 83.1 of the *Act*, you may appeal it to a Hearing Panel. You will be given a full opportunity consistent with procedural fairness and natural justice to present evidence before the Hearing Panel and make representations in relation to the contravention.

If you have any questions in regard to this Notice of Administrative Penalty, please contact Veronica Rosito, Investigator, at the Real Estate Council of Alberta.

DATED this 13 day of October, 2010.

REAL ESTATE COUNCIL OF ALBERTA

Per:

Bob Myroniuk
Executive Director