

REAL ESTATE COUNCIL OF ALBERTA
NOTICE OF ADMINISTRATIVE PENALTY

To: DANIEL YEUNG KWONG TSUI
6603 DALCROFT HILL NW
Calgary, Alberta T3A 1N3

In accordance with section 83 and the Bylaws of the *Real Estate Act* (RSA 2000 c R-5, hereinafter the "**Act**"), the Executive Director of the Real Estate Council of Alberta (hereinafter "**RECA**") is of the opinion that you, Daniel Tsui (hereinafter "**Mr. Tsui**"), broker and Dream Home Mortgage Ltd. (hereinafter "**DHML**"), have jointly and severally contravened section 17(b) of the *Real Estate Act* and hereby assesses an Administrative Penalty in the amount of **\$2,500.00**. The evidence giving rise to the Executive Director's decision is as follows:

Notwithstanding prior warnings respecting the requirements and use of the RECA on-line system, you commenced an on-line application for renewal of DHML's license, but failed to complete the process. Notwithstanding that monies were paid on August 12th, 2008 and a hard copy of the application executed on or about September 25th, 2008, the on-line process was not completed nor was the license printed.

On or about October 8th, 2008, you informed RECA that the licence and registration certificates for yourself, the brokerage and your associate were not completed as a result of your failure to conclude the on-line process. You admitted that you had traded in Real Estate by soliciting or negotiating 3 mortgages between October 1st, 2008 and October 8th, 2008.

On or about October 09, 2008, you took corrective action by completing, in paper form, the Brokerage Licence Application for Renewal and Associate/Associate Broker Registration forms for the period 2008/2009.

Notwithstanding that the Brokerage Licence Application for Renewal clearly instructs that you "not trade in real estate or deal in mortgages until you confirm your authorization on www.reca.ca". DHML, through your actions completed a mortgage application on behalf of clients and obtained their signatures on a mortgage commitment form on or about October 14th, 2008. DHML, through your actions, further submitted documents in support of a mortgage, on the client's behalf to the lender on October 15th, 2008.

RECA received and processed the Brokerage Licence Application for Renewal and the Associate/Associate Broker Application on October 15, 2008. Yourself and DHML were authorized to trade in mortgages on October 16, 2008.

The Executive Director is of the opinion that the above noted conduct is in violation of section 17(b) of the Act which sets out that:

17 No person shall

(b) deal as a mortgage broker,

unless that person holds the appropriate authorization for that purpose issued by the Council.

In accordance with section 83 of the Act and Part 4 of the Act's Bylaws, the Executive Director hereby assesses an Administrative Penalty in the amount of **\$2,500.00** against you and DHML jointly and severally.

In determining the amounts outlined herein, the following aggravating and mitigating factors were considered:

Aggravating Factors

- Mr. Tsui was previously licensed and knew the requirements to be licensed;
- This was a matter of recklessness;
- This was not a victimless crime. The participants to the trade were not protected by the assurance fund during the relevant time;
- This unauthorized activity has an effect on public confidence;
- This activity harms the integrity of the industry;
- Mr. Tsui had previous intervention from RECA respecting the online filing process;
- Mr. Tsui became aware of concerns respecting his authorization but carried out trade activities without confirming his authorization, and
- Mr. Tsui's activities as a broker potentially impacted the associate registered with the brokerage, though there is no evidence that the associate conducted any trade activities.

Mitigating Factors

- Mr. Tsui admits that he was unauthorized and that he forgot
- There is no previous RECA disciplinary history
- The allegation was not the result of a complaint
- The period of unauthorized activity was 15 days
- Mr. Tsui paid his licensing fee on August 12, 2008. He initially failed only to complete the application online renewal process. He demonstrated an intention to be licensed.

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 offence in respect of those contraventions.

This sum of **\$2,500.00** 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 Mark Lancaster, Conduct Enforcement Counsel, at the Real Estate Council of Alberta.

DATED this 21st day of June, 2010.

REAL ESTATE COUNCIL OF ALBERTA

Per:

Bob Myroniuk
Executive Director