

## THE REAL ESTATE COUNCIL OF ALBERTA

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

**AND IN THE MATTER OF** a Hearing concerning the conduct of Monica McLeod, a mortgage associate registered with Westhills Mortgage Centre at all material times

### **DECISION OF A HEARING PANEL**

Hearing Panel Members: Wayne McAlister (Chair)  
Kevin Clark  
Richard Parker

Parties: Monica McLeod  
Sarah King, Legal Counsel for the Executive Director

Hearing Date: August 25, 2011

#### **I) INTRODUCTION**

The Real Estate Council of Alberta ("RECA") held a hearing into the conduct of Monica McLeod, a mortgage associate who at all material times was registered with the Westhills Mortgage Centre mortgage brokerage. The Hearing Panel was composed of Wayne McAlister (Chair), Kevin Clark, and Richard Parker.

#### **II) ALLEGATIONS**

Ms. McLeod was called before the Hearing Panel to answer to the following allegations set out in the Notice of Hearing:

1. In the period of June, 2006 to September, 2006, contrary to Rule 23(e) of the Real Estate Act Rules, 1999 then in force (hereinafter the "Rules"), you failed to provide all documentation or trade records to your broker. This is conduct deserving of sanction, the particulars of which are as follows:

(a) Your clients, D.C. and Mr. P. wished to secure mortgage financing for the purchase [sic] a home located at 20 Whitaker Close N.E. ("Property") and first consulted with you in or around June, 2006, in conjunction with their real estate associate, J.R.

(b) On or about July 7, 2006, D.C. and V.H. represented by J.R., entered into a purchase contract for the Property.

(c) On or about the same date, you prepared a letter advising that D.C., Mr. P., and their acquaintance, V.H. had secured unconditional financing in the amount of \$300,000.00, despite there being no financing in place.

(d) With respect to these matters, you failed to provide copies of letters, mortgage applications, credit bureau checks, and mortgage applications to your brokerage.

2. In the period of June, 2006 to September, 2006, contrary to Rule 23(f) of the Rules, you failed to keep your broker informed of the activities you were performing, the particulars of which are contained in paragraphs 1 and 3 herein.

3. In the period of June, 2006 to September, 2006, contrary to Sections 2(d) and 2(f) of the Code of Conduct, 1999, then in force (hereinafter "Code of Conduct") you failed to keep your clients' information confidential, disclosed confidential information to others without obtaining your clients' prior consent, failed to disclose all relevant information to your clients, and used confidential information for purposes other than for which that information was obtained. This is conduct deserving of sanction, particulars of which include the following:

(a) On or about August 30, 2006, you created a mortgage application listing D.C.'s friend, M.C. as the sole mortgage applicant. You pulled information with respect to M.C. from records pertaining to an earlier real estate transaction.

(b) You failed to speak with M.C. about the August 30, 2006 mortgage application, and you failed to meet with him during the process of preparing the mortgage application.

(c) On or about September 1, 2006, you created another mortgage application naming V.H. and M.C. as co-applicants. You submitted this mortgage application to a potential lender. You failed to advise V.H. and M.C. that they would be listed together on the mortgage application.

4. In the period of June, 2006 to September, 2006, contrary to Section 4(a) of the Code of Conduct, you knowingly or recklessly made representations in the course of attempting to secure mortgage financing that were untrue. This is conduct deserving of sanction, particulars of which are set out in paragraph 1 herein, and include the following additional information:

(a) You knew that D.C. and V.H. were not married, yet you represented to potential lenders that they were married with the hope of securing financing.

(b) You provided lenders with untrue information in respect of M.C. and V.H., including incorrect information relating to rental income, and concerning their relationship, by way of notes and mortgage applications, and you failed to verify that the information was true.

5. In the period of June, 2006 to September, 2006, contrary to Sections 6(a) and 6(c) of the Code of Conduct, you failed to render competent service, and you participated in the creation of contracts or documents that you knew were not legally binding, were confusing, or that did not reflect that agreements that were already in place. This is conduct deserving of sanction, particulars of which are set out in paragraphs 1, 3, and 4 herein.

6. In the period of June, 2006 to September, 2006, contrary to Section 7(b) of the Code of Conduct, you failed to act fairly, honestly and with integrity when dealing with non-clients. This is conduct deserving of sanction, particulars of which are set out in paragraphs 1, 3, and 4 herein.

7. In the period of June, 2006 to September, 2006, contrary to Section 7(c) of the Code of Conduct, you participated in fraudulent or unlawful activities in connection with real estate or mortgage transactions. This is conduct deserving of sanction, particulars of which are set out in paragraphs 1, 3, and 4 herein.

### **III) EVIDENCE**

The Hearing Panel received an Admission of Conduct Deserving of Sanction pursuant to section 46 of the *Real Estate Act* from Ms. McLeod. In the document signed by her, she admitted to the allegations set out in the Notice of Hearing and to breaching the provisions of the *Real Estate Act Rules* and *Code of Conduct* (as it then was) as contained in the Notice of Hearing and admitted that her conduct in this regard was conduct deserving of sanction. Three documents were entered into evidence at this

Hearing, the Notice of Hearing (Exhibit 1), the signed s. 46 Admission of Conduct Deserving of Sanction (Exhibit 2), and the Affidavit of Service (Exhibit 3).

#### **IV) SUBMISSIONS**

The Hearing Panel advised both Ms. McLeod and counsel for the Executive Director that it wished to receive submissions in writing in relation to sanction and costs. Both parties provided the written submissions as requested.

Ms. King advised that the Executive Director was seeking the following sanction in relation to this matter:

- That Ms. McLeod pay a fine in the amount of \$7000;
- That Ms. McLeod's authorization to deal in mortgages be suspended for a period of 4 months;
- That Ms. McLeod be required to complete the following educational course: Reducing Risk and Ethical Practice; and
- That Ms. McLeod pay reasonable costs associated with her conduct matter amounting to \$10 927.37.

Counsel for the Executive Director provided the Hearing Panel with the following RECA Hearing Panel decisions dealing with similar issues:

- Luis Benavides (Inv. File # 2012-05)
- Prem Dave (Inv. File # 1805-05)
- Shailend Sharma (Inv. File #b1499-03)
- Brandon Antonini (Inv. File # 1972-05)

In her written submissions, Ms. King submitted the following:

- She characterized Ms. McLeod's actions as lacking competency and a failing on her end to protect the interests of her clients. She also submitted that Ms. McLeod knowingly or recklessly misled other non-clients.
- That Ms. McLeod was relatively experienced when these events took place between June - September 2006 as she first became authorized as a mortgage associate in 2004.
- That the impugned conduct occurred in the context of one real estate transaction.
- That Ms. McLeod did have a previous disciplinary history. Specifically, on July 28, 2010, she was issued 2 Administrative Penalties. One pursuant to s. 40(1) of

the *Real Estate Act Rules* for failing to immediately notify the Executive Director that a corporation she was a director of had a judgment rendered against it; and one pursuant to s. 40(1)(e) of the *Real Estate Act Rules* for failing to immediately notify the Executive Director that she was the subject of bankruptcy proceedings. As well, on December 3, 2010, Ms. McLeod's authorization to deal in mortgages was suspended pursuant to s. 38.1(1)(c) of the *Real Estate Act Rules* for her failure to pay these Administrative Penalties. Her authorization was reinstated on December 20, 2010 after she paid these penalties.

Ms. McLeod provided written submissions to the Hearing Panel as well on what she felt an appropriate sanction ought to be in this instance. She asked the Hearing Panel to consider a sanction that involved no suspension of her authorization to deal in mortgages. She submitted the following in support of her position:

- She was relatively new in the industry when these events took place and at the time they took place, she had no training, coaching or supervision;
- She was pressured into arranging the mortgage in question by fellow industry member J.R. (who has already been the subject of discipline before a different Hearing Panel in relation to his part in these events) and D.C. She further submitted that she was subject to verbal abuse by both of these individuals because they wanted to ensure that the mortgage was approved.
- With respect to the allegation involving her sharing her clients' information with lenders and real estate associates, she acknowledged doing this but advised that she did so because she did not realize that she needed to have her clients' written consent. She stated that she thought that verbal consent was enough as this is what her broker, S.Z., had told her.
- The Executive Director is seeking the exact same penalty for her that fellow industry member J.R. received for his involvement in this same matter. She submitted that she felt this to be unfair as J.R. was the one who instigated and perpetrated the entire event. She stated that he was the one who pressured the client into purchasing the property and that he then pressured her into arranging a mortgage for the client "at all costs".
- She indicated that due to her personal circumstances, a period of suspension would pose great hardship on her. She advised the Hearing Panel that she is a single parent, her family's sole means of support, and that she is completely dependent on her career to provide for her children. She advised that two of her children would not be able to graduate from university this year if her authorization were to be suspended. She also submitted that she would be forced to go onto social assistance if her authorization were to be suspended.

## **V     DECISION**

After reviewing the written submissions from both counsel for the Executive Director and Ms. McLeod and after carefully reviewing the facts of this case, the Hearing Panel has determined that for her conduct as admitted to in the Notice of Hearing, Ms. McLeod will be subject to the following sanction:

- Ms. McLeod will pay a fine in the amount of \$7000;
- Ms. McLeod will pay costs in the amount of \$7000; and
- Ms. McLeod will be required to take the following educational course within 6 months from the date of receipt of this decision: Risk Reduction and Ethical Practice.

The Hearing Panel is of the view that a period of suspension in addition to the financial penalties that the Panel has imposed is not warranted in this case for the following reasons: Ms. McLeod was a relatively inexperienced member of the industry as the time of the actions that were found to be conduct deserving of sanction and with respect to the mortgage deal in question, she appears to have received very little guidance or supervision on this file. All of these transgressions relate to one transaction in which Ms. McLeod appears to have been under considerable pressure from other parties to secure mortgage financing as soon as possible.

The Hearing Panel does not believe that that Ms. McLeod was the author of the events that transpired; rather the Panel believes that she was a participant who got caught up in a situation where she felt that her actions were acceptable given that the other parties involved appeared to encourage her to pursue them.

With respect to Ms. McLeod's previous disciplinary history, the Panel notes that these events took place in 2010, after the events relating to this matter which took place in 2006. The Panel also notes that the disciplinary history involves matters unrelated to the conduct at hand.

Because of these factors that are particular to this case, the Panel is not imposing a period of suspension. That being said, the Panel does not wish to minimize in any way the actions of Ms. McLeod. Dishonest activity on the part of an industry member is extremely serious and would normally be sanctioned by way of a suspension. This is in order to prevent the industry member from engaging in this type of conduct in the future and to discourage the industry as a whole from engaging on this type of behaviour.

The Panel is of the view that Ms. McLeod has learnt a lesson from these events and that imposing a significant fine on her will have the effect of deterring her from misconduct in the future, even if she is under pressure to make a deal happen.

In terms of costs, the Panel believes that Ms. McLeod should pay a significant portion of the costs incurred in relation to this conduct matter given that it was only after the Notice of Hearing was issued and within days of when the hearing was supposed to commence that she entered into the s. 46 agreement. The Panel is of the view that given the circumstances, Ms. McLeod ought to pay costs in the amount of \$7000.

The Panel is of the view that this sanction involving a significant fine, substantial costs, and an education requirement will send a message to the industry that participating in this type of conduct will have serious consequences and the Panel is also of the view that this sanction will deter industry members from engaging in this type of conduct while at the same time taking into account the factors particular to this case.

This decision was made on October 6, 2011.

*Wayne McAlister (Chair)*

*Kevin Clark*

*Richard Parker*