

**THE REAL ESTATE COUNCIL OF ALBERTA**

**IN THE MATTER OF** s. 83.1 of the *Real Estate Act*, R.S.A. 2000, c. R-5  
and Part 5, section 35 of the *Real estate Act* Bylaws

**AND IN THE MATTER OF** an Appeal of an Administrative Penalty  
concerning a contravention by Andre Michaud, Appraiser.

**Hearing Panel members:** Pat Cooper, Chair  
Gord Graydon  
Andrew Huntley

**Hearing Date:** April 19, 2011

**Appearing:** Aruna Marathé, legal counsel on behalf of the Executive Director  
Andre Michaud on his own behalf

**Witnesses:** None

**DECISION OF A HEARING PANEL OF THE REAL ESTATE COUNCIL OF ALBERTA**

**I) Introduction:**

On June 11, 2010 the Executive Director of the Real Estate Council of Alberta, in accordance with s.83 of the *Real Estate Act*, determined that Andre Michaud contravened s.17(c) of the *Act* and issued Mr. Michaud an Administrative Penalty in the amount of \$4,000.00. This matter came before the Hearing Panel via a teleconference held on April 19, 2011 as a result of an appeal of that Administrative Penalty.

The Hearing Panel received an Agreed Statement of Facts into evidence and received submissions on contravention of the *Real Estate Act*, and fine quantum.

**II) Allegations:**

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

Briefly restated, the Executive Director alleges that Mr. Michaud acted as a real estate appraiser without holding the appropriate authorization, contrary to s. 17(c) of the *Real Estate Act*. The Administrative Penalty appealed from alleges a breach of s.17(c) of the *Real Estate Act*.

The Panel notes that "real estate appraiser" is a defined term in the *Real Estate Act*, and includes at section 1(u.1)(ii) " a person who holds himself or herself out as a [appraiser]". The Administrative Penalty alleges that "... Mr. Michaud acted as a licensed real estate appraiser", which activity, by virtue of the definition referenced, includes holding himself out as an appraiser in Alberta.

### **III) Evidence:**

The Panel received into evidence a total of 10 exhibits, which included an Agreed Statement of Facts (Exhibit 5) from Mr. Michaud and Counsel for the Executive Director. In addition to the Agreed Statement of Facts, the Hearing Panel accepted a number of documents provided by Mr. Michaud in support of his position. No objection was raised by counsel to the Executive Director, and therefore the documents were marked collectively as exhibit 9, by consent.

In addition to the documentary evidence, Mr. Michaud provided additional, unsworn information at hearing. In particular, Mr. Michaud provided statements regarding his place of residence at the relevant time, statements indicating that all impugned appraisals occurred in Vernon, British Columbia. He acknowledged that, despite residing in Vernon British Columbia, he maintained a business in Alberta. No objection was raised by Counsel to the Executive Director, nor was evidence to the contrary submitted. The evidence was therefore accepted and considered by the Hearing Panel.

### **IV) Findings of Fact:**

The Panel accepts the facts as set out in the Agreed Statement of Facts entered as Exhibit 5.

Mr. Michaud was a real estate appraiser, licenced in the province of Alberta from November 4, 2005 to September 30, 2006. He was further authorized on November 23, 2006 to September 30, 2007.

Mr. Michaud was not authorized to act as a real estate appraiser or perform appraisals in the Province of Alberta between October 1, 2007 and January 8, 2009.

On December 31, 2008, in response to an enquiry from RECA, Mr. Michaud provided a sworn letter, indicating all of the appraisals performed by him between the period of October 1, 2007 and December 22, 2008. The list of appraisals performed totaled 50 commercial and 17 residential valuations.

In addition, the Panel heard the oral statements of Mr. Michaud at the hearing. In particular, he stated that all of the 50 commercial and 17 residential valuations he admitted to have conducted between October 1, 2007 and January 8, 2009, occurred in the Province of British Columbia.

Additionally, it was admitted that Mr. Michaud maintained the business, AM Valuations Ltd in the province of Alberta, between October 1, 2007 and January 8, 2009 utilizing letterhead for "AM Valuations" which disclosed a Grande Prairie address and Alberta telephone numbers. His applications for licensing during the relevant time frame also disclose an Alberta address and telephone number.

The Panel further finds that Mr. Michaud intended to seek licensing and took some steps to obtain it, however his lack of success in obtaining licensing went unnoticed, as a result of his failure to confirm his licensing status.

### **V) Submissions**

Mr. Michaud stated that the enquiry by RECA into appraisals completed during the unlicensed period lacked specificity regarding the location of the subject properties, and he therefore never advised them that they did not occur in Alberta.

Mr. Michaud further asserts that he intended to be licensed in the province of Alberta at all times, and it was for that reason that he maintained a business in Alberta. He asserted that the documentary evidence demonstrated his attempts at renewing his authorization, but admits he should have, but did not, check to assure he was authorized.

Mr. Michaud submits that the fine amounts are excessive in light of the fact that he had a demonstrated intention to renew his licence which was not renewed through inadvertence. Further he argues that he encountered communication issues with RECA, had no prior disciplinary history, and suffered damage to his reputation and lost employment opportunities as a result of issuance and publication of the Administrative Penalty.

Finally, Mr. Michaud raises a concern respecting the publication policy of RECA, respecting this matter. He asserts that as a result of the publication of the Administrative Penalty, he has suffered, or may have suffered economic losses as a result of publication of the Administrative Penalty pending a hearing of the appeal and subsequent thereto.

Counsel for the Executive Director did not provide evidence to refute the position of Mr. Michaud that the 50 commercial and 17 residential appraisals reported by Mr. Michaud to RECA occurred in British Columbia. She clarified that RECA would have no way of knowing that the appraisals disclosed arose outside of Alberta.

It was further argued that, while the intention of Mr. Michaud may have been to renew his licence, it is a matter of personal responsibility under the *Act* that all members assure that they are adequately licensed for the activities they perform in Alberta.

Counsel for the Executive Director points out that Mr. Michaud was unlicensed for a period of approximately 1 year and 4 months, admits a failure to confirm his licensing, and while there is no disciplinary history, previous related behavior was identified. She emphasizes that unlicensed conduct goes to the heart of a self regulatory industry, and is a matter of significant importance to the Executive Director and Council. The Executive Directors counsel does however agree that certain mitigating factors in this matter may be considered, including that no concern was identified with the quality of the services provided by Mr. Michaud; that Mr. Michaud cooperated throughout the investigation and hearing; this matter did not arise from a public complaint; and that Mr. Michaud self reported.

The Executive Director, through counsel asserts that while the Hearing Panel has jurisdiction to determine the matter of publication, RECA policies are designed to maintain transparency as part of RECA's statutory duty to protect the public and therefore ought to be respected.

### Costs

With respect to costs, Counsel for the Executive Director submitted information to the Panel indicating that the costs associated with both the investigation and this subsequent Appeal totaled \$3,296.20, itemized as follows:

Panel Costs:	\$850.00
Investigation Costs:	\$301.20
Legal Costs	\$2,100.00
Hearing Secretary Costs	\$45.00

Legal costs were further particularized in a detailed schedule, which establish the aggregate amount noted.

Mr. Michaud raised no issue with the schedule of costs provided to bring this matter before the Hearing Panel and made no submissions on costs.

## **VI FINDINGS RE CONTRAVENTION OF THE ACT**

We find there is a contravention of s.17(c) of the *Real Estate Act*, which reads as follows:

**17** No person shall

(c) act as a real estate appraiser, or

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

In reaching this conclusion, the Hearing Panel is mindful of the definition of real estate appraiser in the *Act* which reads:

1(u.1) “real estate appraiser” means

(i) a person who, for consideration or other compensation

(A) estimates the defined value of an identified interest in real estate,

(B) signs a real estate appraisal report that makes an estimate referred to in paragraph (A) that is prepared by another person, and accepts responsibility for the report, or

(C) provides real estate appraisal consulting services within the meaning of the regulations,

or

(ii) a person who holds himself or herself out as a person referred to in subclause (i);

Mr. Michaud admits that at all relevant times he maintained the business “A.M. Valuations” in the province of Alberta, the purpose of which was to provide real estate consultation and appraisal services. In addition to his admissions Mr. Michaud provided documents disclosing a business office and Alberta contact information for the business. On a review of the totality of the evidence provided we find that Mr. Michaud was holding himself out as a real estate appraiser, in the Province of Alberta at the relevant time, whether or not appraisals were performed.

For the reasons stated, it is determined that the holding out by Mr. Michaud was established on the evidence and was a contravention of section 17(c) of the *Act* when understood in context of the definition afforded that term by the *Act*.

## **VI FINDINGS RE s.83.1(5)**

Having found that Mr. Michaud was not licensed between October 1, 2007 and January 8, 2009, and that this is a contravention of s.17(c) of the *Act*, the Panel believes a fine is appropriate.

The Panel determines however that as a result of certain mitigating factors and findings made at hearing, the fine amount in the Administrative Penalty made June 11<sup>th</sup>, 2010 is excessive. It is noted that Mr. Michaud self reported and was cooperative with the investigation and hearing process. In addition it was found that Mr. Michaud intended to remain authorized and believed he was until alerted to the contrary. While the Panel is mindful of the responsibility of all industry members to assure compliance with the *Act*, and that a failure to do so is the foundation of a contravention, we believe in this case the inadvertence mitigates when compared with some other matters where unlicensed activity occurred more intentionally or recklessly.

Finally it is noted that the original Administrative Penalty relied predominantly on appraisal assignments which were believed to have occurred in Alberta. We have found that whether or not the assignments were in Alberta, Mr. Michaud held himself out as an appraiser in Alberta. While it is not the intention of this Panel to trivialize or diminish the severity of holding out when compared to providing appraisal services to the public, in this case it seems likely that the actual provision of service in Alberta was an important factor in the fine amount issued in the Administrative Penalty. As that fact has not been established at hearing, the fine quantum must be carefully revisited in absence of that fact.

The Panel heard submissions respecting the publication of the Administrative Penalty appealed from, and the subsequent order of this Panel. Notwithstanding submissions made by the Executive Director through counsel in this regard, we are not convinced that this Panel has any jurisdiction to deal with this matter, as the remedies available to the Panel are constrained by s.83.1(5) of the *Act* which is silent on this issue. In the event that we are wrong on this point, we are not inclined to make an order in this respect, even if available, as the facts of this case are neither sufficiently unique nor compelling to warrant a departure from the publication policies adopted by Council.

## **VII Order**

The Panel orders that the Administrative Penalty be varied to the extent that Mr. Michaud pay an Administrative Penalty of \$3000.00 for the contravention of s.17(c).

It is further ordered that Mr. Michaud pay investigation and hearing costs in the total amount of \$3,296.20

This decision was made on 4th May, 2011.

*Pat Cooper, Chair*

*Gord Graydon*

*Andrew Huntley*

cc: Aruna Marathé, legal counsel on behalf of the Executive Director