

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

AND IN THE MATTER OF a hearing regarding the conduct of
Danh Ngoc Tran, real estate associate registered Re/Max Real Estate
Edmonton Ltd. at all material times

Hearing Panel members: Rob Telford, Chair
Wendy Robson
Doug Singleton

Appearing: Greg Sim, legal counsel on behalf of the Executive Director
Danh Ngoc Tran on his own behalf

Hearing Date: June 2, 2011

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

I) Introduction:

The Hearing Panel held a hearing into the conduct of Danh Ngoc Tran, real estate associate registered Re/Max Real Estate Edmonton Ltd. The Hearing Panel was composed of Rob Telford, Chair, Wendy Robson and Doug Singleton

The Hearing took place on June 2, 2011 at the Real Estate Council of Alberta. Greg Sim appeared on behalf of the Executive Director. Danh Ngoc Tran appeared on his own behalf. All parties attended by teleconference.

II) Allegations:

The Notice of Hearing set out 6 allegations of misconduct, regarding Mr. Tran.

III) Evidence:

The Notice of Hearing was entered as Exhibit 1. An Admission of Conduct Deserving of Sanction was entered as Exhibit 2. A Joint Submission on Sanction was entered as Exhibit 3.

Legal counsel for the Executive Director withdrew Allegations 2 and 4 as set out in the Notice of Hearing. Allegations 1, 3, 5, were admitted subject to the modifications as laid out in the Admission of Conduct Deserving of Sanction. Allegation 6 was admitted in its entirety.

IV) Submissions

Legal counsel on behalf of the Executive Director requested that the Hearing Panel accept the Admission of Conduct Deserving of Sanction as stated. He also presented a Joint Submission on Sanction.

Counsel for the Executive Director submitted that by the nature of a s. 46 Admission of Conduct Deserving of Sanction, there was no need to call witnesses. He indicated that the purpose of the hearing was to explain the documents and how the submissions on sanction were arrived at.

Counsel for the Executive Director submitted four cases for the panel to review -- Jaswal, Birch, Hagerty and Rault. He reviewed the facts of the Rault case and pointed the panel to para. 28. The case was a matter where there was a joint submission on sanction before a panel of the Law Society of Saskatchewan. The panel did not accept the joint submission and imposed a more severe penalty. The matter went to the Saskatchewan Court of Appeal. The court indicated that a panel has an obligation to give serious contemplation to the submission, unless the submissions are contrary to the public interest, unfair or inappropriate. The court went on to say that if a panel did not agree to a joint submission, it must give reasons.

Counsel for the Executive Director also referred to the Hagerty and Birch cases as examples of previous sanctions.

Counsel for the Executive Director then explained that allegations 2 and 4 were withdrawn because the evidence was equivocal in the matter. Counsel also explained the changes in allegations 1, 3 and allegation 5.

Counsel for the Executive Director then went over the sentencing factors in the Jaswal decision and applied them to the facts here. He stated that the aggravating factors in this matter were the fiduciary obligations that Mr. Tran had towards his clients, and the fact that Mr. Tran had previously been advised to correct his practice regarding misleading information. The mitigating factors in the matter were that Mr. Tran ultimately cooperated with the investigation and admitted to his conduct. Mr. Tran also expressed that he had learned from this matter. By entering an agreed statement of fact, Mr. Tran saved the time and expense of a full hearing and saved witnesses the trouble and stress of appearing. Counsel also applied the facts of this matter to the other factors listed in Jaswal – seriousness of the allegation, age and experience of the industry member, vulnerability of the clients, the impact on the parties, deterrence and public confidence factors.

Counsel for the Executive Director submitted a joint submission on both facts and sanction.

There were no submissions from Mr. Tran. Mr. Tran indicated that he was in agreement with the submissions made by Counsel for the Executive Director.

The panel was asked to consider a fine of \$7,500 on four breaches. The breakdown of the fines was:

Section 5(a) of the Code of Conduct	\$1,500
Section 6(c) of the Code of Conduct	\$ 500

Section 2(k) of the Code of Conduct	\$1,500
Section 2(e) and or 4(e) of the Code of Conduct	\$4,000

The panel was asked to consider investigation costs of \$ 500.

The panel was asked to make an order that within 6 months of the Hearing Panel's decision Mr. Tran complete the Ethical Practice in Real Estate course offered by the Alberta Real Estate Association, or if unavailable, a similar course at the discretion of the Executive Director.

V) Findings:

The Hearing Panel accepts the Admission of Conduct Deserving of Sanction, and the facts as laid out in the Joint Submission on Sanction. The Hearing Panel finds that there was Conduct Deserving of Sanction. The Hearing Panel also accepts the proposed fine amount as well as the proposed costs.

With respect to the issue of education, the Hearing Panel accepts that education would be most beneficial to Mr. Tran.

The panel accepts the submission that Mr. Tran take an ethics course. The panel orders that Mr. Tran take the "Ethics, Professional Conduct and Risk Reduction" (Unit 9) portion of the current MAP course which is available online from the Real Estate Council of Alberta.

The Panel expresses concern regarding Mr. Tran's understanding of the concepts of agency and representation as set out in the facts of the matter. However, the panel notes that the matter took place in 2006 and Mr. Tran has subsequently completed the required Agency courses.

The panel also expresses concern regarding Mr. Tran's understanding of the nature of contracts. This was evidenced in para. 11 through 25 of the Joint Submissions. The panel believes that Mr. Tran needs to have the proper tools for understanding the legal obligations and requirements of a contract and for carrying on his business in a clear and transparent way with the proper documentation. To this end, the panel orders that Mr. Tran take the Contract Law portion (Unit 3) of the current MAP course which is available online from the Real Estate Council of Alberta.

VI) Orders:

The Hearing Panel orders that:

1. Mr. Tran pay a total fine of \$7,500.
2. Mr. Tran pay total costs of \$500.
3. Mr. Tran successfully complete the Contract Law portion (Unit 3) of the current MAP course, available from the Real Estate Council of Alberta, within 6 months of this decision.
4. Mr. Tran successfully complete the "Ethics, Professional Conduct and Risk Reduction" (Unit 9) portion of the current MAP course, available from the Real Estate Council of Alberta, within 6 months of this decision.

This decision was made on June 10th , 2011.

Rob Telford, Chair

Wendy Robson

Doug Singleton

cc: Danh Ngoc Tran

Greg Sim,
Counsel for the Executive Director

IN THE MATTER OF THE *REAL ESTATE ACT*, s. 46, R.S.A. 2000, c. R-5

AND IN THE MATTER OF *Danh Ngoc Tran*, real estate associate,
registered to Re/Max Real Estate Edmonton Ltd. o/a Re/Max Real Estate at all
material times

ADMISSION OF CONDUCT DESERVING OF SANCTION

1. I, *Danh Ngoc Tran* of the City of Edmonton in the Province of Alberta, hereby acknowledge that I have been given an opportunity to seek the advice of legal counsel. I hereby agree to the execution of this Admission of Conduct Deserving of Sanction voluntarily and of my own free will.

2. I, *Danh Ngoc Tran*, admit to the allegations of fact and breach(es) of provisions of the *Real Estate Act*, Rules and Code of Conduct as set out in the Notice of Hearing attached as Schedule "A" as follows:

Allegation 1 is admitted subject to the deletion of paragraphs 1(j) and 1(m) of the Notice of Hearing;

Allegation 2 is not admitted;

Allegation 3 is admitted subject to the amendment of paragraph 3(h) of the Notice of Hearing to state "You did not suggest or recommend that C.L. and P.N. consult with independent advice, whether industry member or legal counsel with respect to the NPC."

Allegation 4 is not admitted;

Allegation 5 is admitted subject to the amendment of paragraph 5(b) of the Notice of Hearing to state "You did not suggest or recommend that C.L. and P.N. consult with independent advice, whether industry member or legal counsel with respect to the NPC."

Allegation 6 is admitted.

3. I, *Danh Ngoc Tran* admit that my conduct in this regard is conduct deserving of sanction pursuant to section 46 of the *Real Estate Act*.

DATED this 31 day of May, 2011

Signed and delivered
in the presence of

J.L.
Witness to the signature
of Danh Ngoc Tran

Danh Ngoc Tran

AFFIDAVIT OF EXECUTION

CANADA) I, J.L. of
)
)

PROVINCE OF ALBERTA) the City of Edmonton, in the
)
)
) Alberta

TO WIT:) MAKE OATH AND SAY:

1. THAT I was personally present and did see Danh Ngoc Tran named in the annexed instrument, who is personally known to me to be the person named therein, duly sign and execute the same for the purpose named therein.

4. THAT the same was executed at the City of Edmonton in the Province of Alberta, and that I am the subscribing witness thereto.

5. THAT I know the said Danh Ngoc Tran and he is in my belief of the full age of eighteen years.

SWORN BEFORE ME at the City)
of Edmonton, in the Province of)
Alberta this 31st day of)
May, 2011.)

signature

A Commissioner for Oaths in and)
for the Province of Alberta)

J.L.
(signature of witness)

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 a Hearing concerning the conduct of Danh Ngoc Tran, real estate associate, registered at all material times to Re/Max Real Estate Edmonton Ltd.

NOTICE OF HEARING

TO: **Mr. Dahn Ngoc Tran**
Re/Max Real Estate
#102, 4245 – 97th Street
Edmonton, Alberta
T6E 5Y7

TAKE NOTICE THAT you are required to attend a hearing before a Hearing Panel at 9:30 a.m. on Tuesday March 29, 2011, in the City of Calgary, in the Province of Alberta, at the offices of the Real Estate Council of Alberta, located at 350, 4954 Richard Rd SW in Calgary, Alberta.

AND FURTHER TAKE NOTICE that you will be required to answer the following allegations:

1. **THAT**, on or about December 2005 to May 2006, you failed to fully and clearly inform your clients what your fees for providing services would be, or to provide a reasonable estimate with an explanation disclosing the factors impacting the estimate, contrary to section 5(a) of the Code of Conduct (as it then was, in force from October 1, 1999 to September 30, 2006). This conduct is conduct deserving of sanction, the particulars of which include the following:

- a) In or about December 2005 C.L. sought your assistance in selling her home, located at 12707 – 77 Street N.W., Edmonton, Alberta (the "12707" property), which C.L. owned with her husband, P.N. C.L. also sought your assistance in purchasing a new home.
- b) In or about January 2006, C.L. asked you to list the 12707 property and provided you with a key to show the 12707 property to prospective buyers.
- c) C.L. provided you an old, 2003 MLS listing for the 12707 property with a list price of \$163,500 and sought your opinion regarding the appropriate list price in January 2006.
- d) You did not have C.L. or P.N. execute a Residential Real Estate Listing Contract ("Listing Contract") at that time, nor did you inform C.L. or P.N. what your fees for providing services would be or provide a reasonable estimate with an explanation disclosing the factors impacting the estimate.
- e) Despite not having a Listing Contract, in or around January 2006 to February 2006, you showed the 12707 property to prospective purchasers. You did not list the property on the Multiple Listing Service, as C.L. and P.N. expected.
- f) In or around January or February 2006, you showed the 12707 property to L.C. L.C. elected to make an offer to purchase the 12707 property.
- g) On or about February 2, 2006, you prepared and arranged for L.C. to sign a Dual Agency Disclosure Consent form and an Offer to Purchase the 12707 property in the form of a Residential Real Estate Purchase Contract (the "REPC"). In the REPC, you described the buyer as "L.C. and/or nominee."
- h) The REPC was presented to C.L. and P.N. On February 3, 2006 a counter offer was presented to L.C. After two further counter-offers the terms of the REPC were agreed upon and C.L. and P.N. signed their Acceptance of the Offer to Purchase on February 3, 2006.
- i) The REPC provided for a purchase price of \$160,000 with a first deposit of \$5,000, new financing of \$140,000 and a balance owing of \$15,000.
- j) You did not give C.L. or P.N. a copy of the REPC.

- k) On or about March 3, 2006, you prepared a Listing Contract for the 12707 property and presented it to C.L. and P.N. The Listing Contract provided that the list price for the property would be \$163,500 with a real estate commission fee payable at 5% of the first \$100,000 and 3% of the balance. The Listing Contract also had the words "Exclusive Listing" handwritten on the top of the first page.
 - l) You asked C.L. and P.N. to sign the Listing Contract but did not explain the real estate commission calculation or the fact that the listing was to be an exclusive listing that would not appear on the Multiple Listing Service.
 - m) You did not give C.L. or P.N. a copy of the Listing Contract.
 - n) Final signing of the REPC occurred on March 5, 2006.
2. **THAT**, on or about March 3, 2006, you failed to render a competent service by participating in the creation of a contract or document that you knew, or ought to have known was not legally binding, confusing or not representative of an agreement already in place, contrary to section 6(c) of the Code of Conduct (as it then was, in force from October 1, 1999 to September 30, 2006). This conduct is conduct deserving of sanction, the particulars of which include the following:
- a) You failed to have C.L. and P.N. execute a Listing Contract prior to showing their home in January 2006.
 - b) You failed to have C.L. and P.N. execute a Listing Contract before soliciting L.C.'s Offer to Purchase the 12707 property, on February 2, 2006, and before C.L. and P.N. accepted the Offer to Purchase on February 3, 2006.
 - c) On or about March 3, 2006, you prepared a Listing Contract for the 12707 property and presented it to C.L. and P.N. The Listing Contract provided that the list price for the property would be \$163,500 with a real estate commission fee payable at 5% of the first \$100,000 and 3% of the balance. The Listing Contract also had the words "Exclusive Listing" handwritten on the top of the first page.
 - d) You asked C.L. and P.N. to sign the Listing Contract but you failed to explain the real estate commission calculation or that it was an exclusive

listing contract, and that, as a result, it would not appear on the Multiple Listing Service.

- e) C.L. did not understand the commission calculations, and you did not explain them. In addition, C.L. did not understand why you required that they execute a Listing Contract after the offer to purchase was accepted. Finally, C.L. did not know that the Listing Contract was for an exclusive listing.

3. **THAT**, on or about March 14, 2006, you failed to render a competent service by participating in the creation of a contract or document that you knew, or ought to have known was not legally binding, confusing or not representative of an agreement already in place, contrary to section 6(c) of the Code of Conduct (as it then was, in force from October 1, 1999 to September 30, 2006). This conduct is conduct deserving of sanction, the particulars of which include the following:

- a) On or about March 10, 2006, you learned that L.C. would not qualify for the required financing.
- b) On the same date, your spouse, N.L., expressed her willingness to assume the buyer's interest in the REPC in order to purchase the 12707 property as an investment property.
- c) On or about March 14, 2006, you prepared a Notice to Purchase Contract ("NPC"). In the NPC, you described the parties to the transaction as C.L. and P.N. and substituted N.L. for L.C. You also handwrote a purported amendment to the purchase price of the 12707 property in the NPC so that it read:
 - i. In the Contract, the condition(s) that I now unilaterally waive/release is(are):
 1. Deposit will be forwarded to lawyer W.S.'s trust account instead of Re/Max Real Estate.
 2. Buyer N.L. is wife of license realtor in Alberta.
 3. Selling price is \$152,754 (no real estate fees commission or GST).

- d) Although you intended the NPC to amend certain portions of the REPC, including the identity of the parties to the transaction, the payment of the deposit and the selling price, it referred to a waiver of conditions and did not specify that any such terms were amended.
 - e) You did not prepare any proper assignment agreement to assign the buyer's interest in the REPC to your wife, N.L., or any clear or proper amendment of the terms of the REPC.
 - f) On March 14, 2006, you called C.L. and P.N. while they were shopping to solicit a meeting. You met C.L. and P.N. at a café in Ikea, where you told C.L. that L.C. could not qualify for financing, and that you wanted to help her by waiving your real estate commission and the goods and services tax on your commission to lower the overall purchase price.
 - g) C.L. and P.N. signed the NPC but neither C.L. nor P.N. understood that N.L. was taking over as the buyer of the 12707 property or that N.L. was your spouse. You omitted to ensure that C.L. and P.N. understood that N.L. was taking over as buyer and that N.L. was your spouse.
 - h) You did not leave a copy of the NPC with C.L. or P.N. and you did not suggest or recommend that C.L. and P.N. consult independent advice, whether industry member or legal counsel with respect to the NPC.
4. **THAT**, on or about March 14, 2006, you failed to use best efforts to ensure your role as an industry member in the real estate transaction was clearly understood by the parties to the transaction by disclosing your association with the buyer, who was a member of your immediate family, contrary to section 3(d) of the Code of Conduct (as it then was, in force from October 1, 1999 to September 30, 2006). This conduct is conduct deserving of sanction, the particulars of which include the following:
- a) On or about March 10, 2006, you learned that L.C. would not qualify for the required financing.
 - b) On the same date, your spouse, N.L. expressed her willingness to assume the buyer's interest in the REPC in order to purchase the 12707 property as an investment property.

- c) On or about March 14, 2006, you prepared the NPC. You described the parties to the transaction as C.L. and P.N. and substituted N.L. for L.C. You also handwrote a purported amendment to the purchase price of the 12707 property in the NPC so that it read:
 - i. In the Contract, the condition(s) that I now unilaterally waive/release is(are):
 1. Deposit will be forwarded to lawyer W.S.'s trust account instead of Re/Max Real Estate.
 2. Buyer N.L. is wife of license realtor in Alberta.
 3. Selling price is \$152,754 (no real estate fees commission or GST).
- d) Although you intended the NPC to amend certain portions of the REPC, including the identity of the parties to the transaction, the payment of the deposit and the selling price, it referred to a waiver of conditions and did not specify that any such terms were amended.
- e) You did not prepare any proper assignment agreement to assign the buyer's interest in the REPC to your wife, N.L., or any clear or proper amendment of the terms of the REPC.
- f) On March 14, 2006, you called C.L. and P.N. while they were shopping to solicit a meeting. You met C.L. and P.N. at a café in Ikea. You told C.L. that L.C. could not qualify for financing, and that you wanted to help her by waiving your real estate commission and the goods and services tax on your commission to lower the overall purchase price.
- g) C.L. and P.N. signed the NPC but neither C.L. nor P.N. understood that N.L. was taking over as the buyer of the 12707 property or that N.L. was your spouse. You omitted to ensure that C.L. and P.N. understood that N.L. was taking over as buyer and that N.L. was your spouse.
- h) You did not leave a copy of the NPC with C.L. or P.N. and you did not suggest or recommend that C.L. and P.N. consult independent advice, whether industry member or legal counsel with respect to the NPC.

- i) On or about March 16, 2006, you prepared a NPC signed by N.L. purporting to waive the buyer's conditions. You did not provide a copy of this NPC to C.L. or P.N.
 - j) On or about April 29, 2006, W.S., legal counsel for both the buyer and the sellers of the 12707 property advised C.L. that N.L. was the new buyer of the property. C.L. was upset to learn this fact and she sought to terminate the transaction.
5. **THAT**, on or about March 14, 2006, you failed to use best efforts to ensure a client has independent advice when a prudent industry member would conclude a client may lack the ability to understand the nature or consequences of entering into a real estate transaction, contrary to section 2(k) of the Code of Conduct (as it then was, in force from October 1, 1999 to September 30, 2006). This conduct is conduct deserving of sanction, the particulars of which include the following:
- a) When, on March 14, 2006, you had C.L. and P.N. execute the NPC, you failed to ensure that they were aware N.L. was taking over the REPC and that N.L. was your spouse.
 - b) You did not leave a copy of the NPC with C.L. or P.N., nor did you suggest or recommend that C.L. and P.N. consult independent advice, whether an industry member or legal counsel, regarding the NPC.
6. **THAT**, on or about December 2005 to May 2006, you failed to disclose all relevant information to a client, or made a representation that was reckless or intentional and that misled, or was likely to mislead your clients as to the potential market value of a property, contrary to sections 2(e) and 4(e) of the Code of Conduct (as it then was, in force from October 1, 1999 to September 30, 2006). This conduct is conduct deserving of sanction, the particulars of which include the following:
- a) In or around December 2005 and January 2006, you advised C.L. that the 2003 MLS listing price for the 12707 property, which stated a list price of \$163,500, was an appropriate price at which to list the property in January 2006.

- b) You failed to perform, or provide C.L. with, a reasonably diligent Comparative Market Analysis of the 12707 property's market value before reaching that conclusion.
- c) An appraisal of the 12707 property disclosed a market value of \$195,000 as of May 11, 2006, and that average selling prices for single family residences increased 7% between February and May 2006. The appraisal confirmed that the expected value of the 12707 property in February 2006 would have been between \$180,000 and \$185,000.

AND FURTHER TAKE NOTICE that the Hearing Panel may make one or more orders outlined in section 43 of the *Real Estate Act*, including but not limited to an Order cancelling or suspending any authorization issued to you by the Real Estate Council of Alberta, an Order requiring you pay a fine, and an Order that you pay the costs of the Hearing.

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

1. Wendy Robson
2. Doug Singleton
3. Pat Cooper
4. Robert Telford (alternate)

If you have any objections to the composition of the Hearing Panel, you must notify the Real Estate Council of Alberta of the objections, together with the reasons for the 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 allegations against you.

AND FURTHER TAKE 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 FURTHER TAKE NOTICE that the Hearing Panel may proceed with the hearing in the absence of the industry member who is the subject of the hearing or if the industry member initiated an appeal, the Hearing Panel may dismiss or reschedule a hearing if the industry member does not attend the hearing.

DATED at the City of Calgary, in the Province of Alberta, this 10th day of February 2011.

REAL ESTATE COUNCIL OF ALBERTA

Per:

Bob Myroniuk
Executive Director

Cc: Patrick Rudier
Re/Max Real Estate

Cc: Gregory Sim
Field Law