

THE REAL ESTATE COUNCIL OF ALBERTA

A Hearing Under Part 3 of the *Real Estate Act*, R.S.A. 2000, c. R-5

AND IN THE MATTER OF a Hearing regarding the conduct of Licensee, Angela Tracy Norman, a licensed Condominium Management Broker

Hearing Panel Members: [K.S], Chair
[C.N]
[S.R]

Appearances: [I.N], Counsel for the Registrar of the Real Estate Council of Alberta

Spencer Marks, Counsel for the Licensee Angela Tracy Norman

Hearing Date: November 18, 2024

Introduction

1. This decision arises out of a conduct hearing held pursuant to section 41(1)(b) of *Real Estate Act* (the *Act*).
2. [L.P] (the Complainant) is the owner of a condominium unit (the Unit) in Calgary, Alberta.
3. Angela Tracy Norman (the Licensee) is a licensed Condominium Management Broker. She founded her brokerage, Catalyst Condo Management Ltd. (Catalyst), in 2015. Catalyst and the Licensee manage the condominium corporation for the condominium in which the Complainant's Unit is located (the Condo Corp).
4. In April 2023, the Complainant submitted an online complaint (the Complaint) to the Real Estate Council of Alberta (RECA) alleging the Licensee engaged in conduct deserving of sanction during her management of the Condo Corp.
5. The Registrar for RECA (the Registrar) investigated and determined that the Complaint did not rise to the level of a breach of the *Act*. The Registrar then refused the Complaint pursuant to section 38.1 of the *Act*.

6. The Complainant appealed the Registrar's decision under section 40 of the Act (the Appeal). The Appeal was reviewed by a hearing panel (the Complainant Appeal Panel) who determined that there was sufficient evidence of conduct deserving of sanction to warrant a hearing. The Complainant Appeal Panel determined that there was evidence that the Licensee did not use best efforts to manage a condominium corporation, contrary to Rule 80.88 of the Real Estate Act Rules. Pursuant to section 40(2)(b) of the Act, Appeal Panel determined that a hearing should proceed, and the matter was directed to this Hearing Panel for a hearing under Part 3 of the Act.
7. Hearings under Part 3 of the Act involve two phases. In the first phase, the Hearing Panel determines whether the Licensee has engaged in conduct deserving of sanction. If the Hearing Panel finds that the Licensee engaged in conduct deserving of sanction, the matter proceeds to the second phase, where the Hearing Panel determines the appropriate sanction and/or costs.
8. This is the Hearing Panel's phase one decision. For the reasons that follow, the Hearing Panel finds that the Licensee did not engage in conduct deserving of sanction as alleged. The Complaint is dismissed.

Issues

9. Rule 80.88 of the Real Estate Act Rules states:

80.88 The basic obligations of a licensee to the condominium corporation are:

- (a) to use best efforts to manage the condominium corporation;
- (b) to obey all lawful instructions of the condominium corporation;
- (c) to exercise reasonable care and skill in the performance of the service agreement;
- (d) to assist the condominium corporation in negotiating favourable terms and conditions with third party contractors;
- (e) to provide, in a timely manner, all reports to the condominium corporation;
- (f) to advise the condominium corporation to obtain expert advice on matters of importance to the condominium corporation;
- (g) before signing a contract on behalf of a condominium corporation, the licensee must obtain written authorization for this from the condominium corporation or its authorized agent. This authorization may be provided in a written service agreement or separate document; and
- (h) to comply with the provisions of the Act, Regulations, Rules and Bylaws.

10. With the exception of Rules 80.88(a), (c), and (h), Rule 80.88 sets out a licensee's obligations to the condominium corporation. The Complainant in this case is not a condominium corporation. She is a condominium owner. Accordingly, the Complaint does not engage Rules 80.88(b), (d), (e), (f), and (g).
11. Similarly, as no evidence of a service agreement was provided, the Complaint does not engage Rule 80.88(c).
12. Finally, no failure to comply with the provisions of the Act, Regulations, Rules or Bylaws, other than the Licensee's failure to use best efforts to manage the Condo Corp. as required by Rule 80.88(a), was identified.
13. Based on the above, the question for the Hearing Panel in this matter is whether the Licensee engaged in conduct deserving of sanction by failing to use her best efforts to manage the Condo Corp.

The Parties' Positions

14. The Notice of Hearing states:

There is evidence that you did not use best efforts to manage the condominium corporation, contrary to Rule 80.88 of the Real Estate Act Rules:

- a. On or about January 30, 2023, [the Complainant] requested that the intercom for the condominium unit that she owned be connected.
 - b. On or about February 6, 2023, [the Complainant] inquired into why she had not received a response to her January 30, 2023 email and indicated that she had not been connected to the intercom for "a long time."
 - c. During this period, you refused or ignored [the Complainant]'s request to connect her intercom.
 - d. [The Complainant] was without intercom access, to your knowledge, for some period of time beyond February 6, 2023.
15. Given the Registrar's previous decision under section 38.1 of the Act, the Registrar took a neutral position during the phase one hearing and simply facilitated the Complainant's presentation of her evidence in support of the Complaint.
16. The Complainant testified that she has owned the Unit in the condominium managed by the Licensee since 2014. She resides in the Unit on occasion. At times she has had tenants and at other times the Unit has been vacant. She says that,

for a time she had access to the condominium's intercom system on her phone which allowed her to use her phone to let visitors and delivery personnel into the building. However, at some point, she stopped having access.

17. The Complainant says she tried to get access to the intercom on her phone, as well as the phones of tenants she had at the time, but was unable to do so. She says the communication from the Licensee on this point was very poor. First, she was told there was an issue with the intercom panel, then she was told the phone numbers she provided were not compatible with the system (only numbers with "403" or "587" area codes would be compatible).
18. The Complainant says that Catalyst created an online portal for condominium owners to access documents – such as those relating to connecting to the intercom – but that the portal did not work for her. She testified that, every time she ends a session in the portal, she needs to contact Catalyst again to request a link to change her password so that she could log back in. The Complainant says that she finds this unfair and does not like having to constantly contact Catalyst to get a link to be able to access the portal. She says she asked for an easier way to access the portal. Catalyst responded that she should contact them to get a link to create a new password. On cross-examination, the Complainant also testified that she had not yet requested the link or tried to use it.
19. The Complainant testified that she also made the Licensee aware that she was having difficulty connecting to the intercom when she contacted the Licensee by phone and email. The Complainant referred to a January 30, 2023 email sent to a Catalyst email address as well as to RECA and other parties which reads:

Good afternoon

Should I include everyone? To have the problem solved?

I was refused for too long to access the portal as well as the interphone connection. My condo fees go to waste and it is disturbing behavior.

This condo board members including Catalyst, have no care except for taking money. That is abuse, discrimination, harassment, bullying, humiliation, and definitely powerful discrimination that should be punished and stopped but not encouraged.

These individuals should be held accountable, but not supported to grow racism, abuse, discrimination, bully, and harassment.

If Catalyst is bullies as usual, then RECA or the minister reply on their behalf and connects the interphone.

Angie Norman has lied that I have access, when actually for a few years I never was able to access this page to see anything or any information, or post anything. I asked her to fix the issue, but she became aggressive, abusive, intimidating, bully that I can access and she sees it.

Dear RECA, how can you allow abusers, racists, haters, and harassers, to be part of jobs where their abuse does hurt immensely people? How can you let such individuals for years be abusers and never held accountable?

20. The Complainant says she did not receive a response from the Licensee, so she sent a second email, again to a Catalyst email address as well as to RECA and others, on February 6, 2023 stating:

Good morning

I sent the email on January 30, 2023, and today is already February 6, 2023.

I want to know when the abuse and harassment will stop and I will have the services provided equally as the nepotism and friends get.

I have been unable to see any information, as well as connect to the interphone for a very long time, to buy a key from the management company cost a hell, not an honest price which should cost a few dollars.

Why my condo fees are used inappropriately?

Who should be responsible to hold accountable the condo board, Catalyst? Years and years lot of information was exposed but nothing was done to correct this abuse, harassment, intimidation from board members, and management companies that over the years stole money, abused owners, and intimidated.

It is unacceptable that these condos to be a bully when actually it is a house, that is mortgaged and not paid for by abusers, liars, and haters, and the government knew very well but slept working hand in hand with dishonest lawyers, the condo board, and management companies.

How many years do you need to have this email answered knowing that we can't access the place?

False invoices, made-up invoices, made-up charges, name it.

I asked to have provided all the invoices, and bank statements but nothing.

Who will deal with this debauchery? Show that we got the best place on this earth as Mr. Kenney lied, other politicians, knowing what such debauchery just in Alberta, Canada can find. Such hate and abuse can find just in mines in Africa or India where kids are enslaved and abused without ever having any rights, same attitude, and behavior shows Alberta, at least these countries don't lie to the world.

When do I get the interphone connected?

When do I get to see the abusers punished and no longer harassing, abusing, and discriminating?

Discrimination is the unjust treatment of people based on the groups or classes they belong to. Often, discrimination stems from biases or ignorance: when we fear or misunderstand someone who is different from us, we treat them differently.

This definition is known to all of you but none of you did anything to stop it for years. How can you provide false statements that want to stop discrimination, racism, etc when actually you encourage it?

Not a single reply or explanation.

This is the abuse we experiment with for years, where we are abused by RECA that ignores, the government, lawyers, law, and police when these things should never be allowed and stopped.

That is the most shameful attitude as a Canadian you have, and you got no shame, as your behavior speaks very loudly, your actions proved everything and now you are racist and discriminative.

ignorance

noun

ig-no-rance 'ig-n(ə-)rən(t)s

Synonyms of ignorance

*:the state or fact of being **ignorant**: lack of knowledge, education, or awareness*

This definition is an explanation of how certain management company act, but posting untrue information about employees that is below expectations.

21. The Complainant also provided information about the fees paid by the Condo Corp in relation to "Security Monitoring Telephone & Intercom". She expressed frustration that her condo fees were paying for intercom services that she had not been able to access.
22. On cross-examination, the Complainant acknowledged that she had not accessed the portal prior to January 2023, but did access it once in February 2024 when Catalyst sent her a link. She also confirmed that she is currently engaged in other litigation involving the Condo Corp.
23. In reply, the Licensee argues that Catalyst provides multiple methods for unit owners to set up their intercoms and access important information. For the people who use the portal, if they are having difficulty logging in, there is a button to click that sends a link to the owner's email address. The owner can then go in and reset their password to get access to the portal.
24. She says she also understands that some people are not good with technology and struggle with the portal. She will tell people who don't want to use the portal to send Catalyst an email that states: "I [name], need the intercom sent to this telephone number." Catalyst then compares the information in that email to the information that they have on file for the unit owner to make sure that they are not giving access to the intercom to a person who is not the unit owner or an approved tenant. If Catalyst cannot verify that the person is an owner or approved tenant, they will not add that person to the intercom. It is up to the unit owner to ensure that their information, including with respect to tenants, is up to date. The Licensee says that Catalyst never received the required documentation regarding the Complainant's tenants.
25. The Licensee testified that Catalyst has never received a request to update the intercom from the Complainant, either through the portal or in the form of an email as set out above.
26. The Licensee denied ignoring the Complainant or harassing or discriminating against her. She provided an alternate explanation for her failure to respond to the January Email and the February Email directly. She testified that she began managing the Condo Corp in 2019. At that time, the Complainant was suing the former president of the Condo Corp. The Condo Corp's insurance company had

stepped in to defend the former president and the Licensee was tasked with being the liaison between the Condo Corp and the lawyer provided by the insurance company.

27. The Licensee added that, in early 2023, the Condo Corp was also involved in other litigation with the Complainant in relation to outstanding condo fees and that she was similarly the liaison with legal counsel in respect of that matter. The Licensee stated that her communications with the Complainant in respect of these matters have been extensive (she asserts she has received hundreds of emails from the Complainant, many of which were unpleasant). She stated that legal counsel wants correspondence with the Complainant to go through them to resolve the outstanding legal issues.
28. The Licensee testified that she did not respond to the Complainant's emails in January and February 2023, in part, because of legal counsel's direction. She also observed that, through Catalyst, she manages 7,000 condominium units and receives a significant volume of emails. In this context, she was not able to keep up with responses to the Complainant's lengthy emails.
29. In sum, the Licensee argued that she acted reasonably in the circumstances. Through Catalyst, she made best efforts to manage the Condo Corp by giving owners (including the Complainant) multiple methods for connecting to the intercom. The Complainant did not access these methods and, instead, sent lengthy, antagonistic emails to Catalyst and others. Given the other ongoing litigation involving the Condo Corp and the Complainant, declining to respond to these inappropriate communications should not be considered conduct deserving of sanction.

Decision

30. In a hearing under Part 3 of the *Act*, the onus is on the Registrar to demonstrate, on a balance of probabilities, that the licensee has engaged in conduct deserving of sanction. As this is the first complaint alleging a breach of Rule 80.88 as conduct deserving of sanction that has gone to hearing, the Hearing Panel must begin by considering what the obligation to "to use best efforts to manage the condominium corporation" requires of a licensee.
31. The Complainant and the Registrar made no submissions as to the meaning of the obligation "to use best efforts to manage the condominium corporation". The Registrar simply observed that it would be up to the Hearing Panel to make such a determination. The Licensee argued that the obligations placed on licensees under Rule 80.88(a) should be viewed through a lens of fairness.

32. To determine what the obligation to "to use best efforts to manage the condominium corporation" requires of a licensee, the Hearing Panel begins by considering the meaning of "best efforts".
33. The Hearing Panel observes that the term "best efforts" is frequently used in other legal contexts. For example, in *Atmospheric Diving Systems Inc v International Hard Suits*, 1994 CanLII 16658 (BCSC), the Court summarized the principles extracted from cases considering the meaning of the promise to use "best efforts" in contracts as follows (at para 71):
1. *"Best efforts" imposes a higher obligation than a "reasonable effort".*
 2. *"Best efforts" means taking, in good faith, all reasonable steps to achieve the objective, carrying the process to its logical conclusion and leaving no stone unturned.*
 3. *"Best efforts" includes doing everything known to be usual, necessary and proper for ensuring the success of the endeavour.*
 4. *The meaning of "best efforts" is, however, not boundless. It must be approached in the light of the particular contract, the parties to it and the contract's overall purpose as reflected in its language.*
 5. *While "best efforts" of the defendant must be subject to such overriding obligations as honesty and fair dealing, it is not necessary for the plaintiff to prove that the defendant acted in bad faith.*
 6. *Evidence of "inevitable failure" is relevant to the issue of causation of damage but not to the issue of liability. The onus to show that failure was inevitable regardless of whether the defendant made "best efforts" rests on the defendant.*
 7. *Evidence that the defendant, had it acted diligently, could have satisfied the "best efforts" test is relevant evidence that the defendant did not use its best efforts.*
34. The Hearing Panel concludes that, in the context of Rule 80.88(a), "best efforts" means taking, in good faith, all reasonable steps to achieve the objective, carrying the process to its logical conclusion and leaving no stone unturned. It includes doing everything known to be usual, necessary and proper for ensuring the success of the endeavour. It is a more onerous standard than simply making "reasonable efforts" to do something.

35. However, the licensee's obligation to use "best efforts" is not boundless. It must be considered in the context of the licensee's relationship to the condominium corporation. Rule 80.88(a) requires the licensee to use best efforts "to manage the condominium corporation". Accordingly, the licensee must, in good faith, take all reasonable steps to achieve the management of the condominium corporation. This includes doing everything known to be usual, necessary and proper for ensuring the successful management of the condominium corporation.
36. The reference to management of the condominium corporation places significant boundaries around the licensee's obligations under Rule 80.88(a). The condominium corporation is a separate legal entity from the individual condominium unit owners, who may each have their own interests, preferences, and objectives. The licensee is not obligated to take all reasonable steps to achieve the preferences or objectives of the individual unit owners. Rather, the interests, preferences, and objectives of the individual unit owners collectively inform the management of the condominium corporation.
37. It is in this context that we now consider the actions of the Licensee in this case.
38. We find that, in this matter, enabling unit owners and their approved tenants to connect to the building's intercom is an aspect of the management of the Condo Corp. The evidence before the Hearing Panel demonstrated that the Condo Corp uses a portion of the condo fees collected from unit owners to pay for and provide "Security and Monitoring Telephone & Intercom". Unit owners need access to the intercom to be able to let guests and other visitors (such as delivery personnel) into the property. Thus, part of the management of the Condo Corp involves making sure unit owners can access the intercom system provided by the Condo Corp.
39. However, the Hearing Panel also finds that, in the context of this property, the management of the Condo Corp involves other obligations, such as ensuring the security of the property by only providing access to unit owners and approved tenants. The evidence before the Hearing Panel also demonstrates that the management of the Condo Corp involves many other aspects beyond simply connecting unit owners to the intercom (such as overseeing landscaping, snow removal, pest control, window cleaning, and other repair and maintenance projects). Significantly, in this case, management of the Condo Corp also involved assisting with ongoing litigation and complying with the advice of legal counsel.
40. The evidence is that, as part of her management of the Condo Corp's various projects, the Licensee (through Catalyst) made multiple options for connecting to the intercom available to unit owners. First, Catalyst created the portal which unit owners could use to make the request for connection. Second, Catalyst monitored the portal and provided assistance (in the form of a password reset

link) for those unit owners having difficulty connecting. Finally, Catalyst accepted emails directly from unit owners who were not able to make a request via the portal.

41. At the same time, the Licensee fulfilled another important aspect of the management of the Condo Corp by comparing requests for connection to the intercom with the information on file about the unit owner and any approved tenants. She also complied with the instruction to leave communication with the Complainant in the hands of legal counsel.
42. The Hearing Panel acknowledges that the Complainant was not able to access the intercom for some period of time. However, the Hearing Panel is not satisfied, on a balance of probabilities, that this means the Licensee failed to make best efforts to manage the Condo Corp. Rather, it appears that the Complainant was unable to access the intercom at times because she failed to take the necessary steps on her end. Prior to January 2023, the Complainant did not try to access the portal. Subsequently, she failed to request a link to assist with her access to the portal for nearly a year – first accessing the portal in February 2024.
43. The Complainant also failed to provide the necessary information regarding her tenants to allow the Licensee to ensure that the request for access to the intercom matched the approved tenants.
44. Likewise, although the Complainant did send emails requesting access to the intercom, they did not contain the relevant information and were unnecessarily antagonistic in tone. Given the ongoing litigation and the instructions from legal counsel, the tone of the January and February 2023 emails, and the lack of relevant information in them, it was not unreasonable for the Licensee to delay responding to them.
45. Finally, we note that the Complainant provided no evidence supporting her allegations that she had been harassed, bullied, or discriminated against.
46. In the context of this Complaint, we are satisfied that, in giving unit owners multiple methods to connect to the intercom, while also safeguarding the security of the property, the Licensee took the usual, necessary, and proper steps to manage the Condo Corp. The Registrar has not demonstrated, on a balance of probabilities, that the Licensee engaged in conduct deserving of sanction as alleged.

Order

47. The Complaint is dismissed.

Signed and dated this 28th day of April 2025 at the City of Edmonton in the Province of Alberta.

"Signature"

[K.S],
Hearing Panel Chair