

THE REAL ESTATE COUNCIL OF ALBERTA

IN THE MATTER OF Section 83.1 of the *REAL ESTATE ACT*, R.S.A. 2000, c.R-5
(the "*Act*")

AND IN THE MATTER OF a Hearing regarding the conduct of AZHER HALEEM CHAUDHARY, AKA
AZHER HALEEM, AKA AZHER CHAUDHARY carrying on business as Dreamland Homes and/or
Nawab Homes & Real Estate Consulting, currently unregistered

Case Numbers: 010955.002, 010956.002, 008985.002, 009226.002, 11478.02, 11480.002,
013920.002

Hearing Panel Members: [J.G], Chair (Public Member)
[W.R], Panel Member (Licensee Member)
[K.M], Panel Member (Licensee Member)

Appearances: Azher Haleem Chaudhary, represented by their agent, Sayed Azher
G.Z, Counsel for the Registrar of the Real Estate Council of Alberta

Hearing Date(s): October 25-27, 2023, October 30-31, 2023, November 3, 2023,
November 6-7, 2023, November 23-24, 2023, January 22, 2024, by
video conference

DECISION OF HEARING PANEL

A. Background

This is the hearing of the Appeal filed by Azher Haleem Chaudhary, AKA Azher Haleem, AKA Azher Chaudhary carrying on business as Dreamland Homes and/or Nawab Homes & Real Estate Consulting (the "**Appellant**") under section 83.1 of the *Real Estate Act*, RSA 2000, c.R-5 (the "*Act*") of six (6) administrative penalties imposed by the Registrar, specifically:

Case Number 11480.002 Dated November 19, 2021 Violation of section 17 (a) section 17(b) of the *Act* relating to [Property A] Calgary, AB. Penalty imposed - \$25,000 and \$25,000, respectively ("**Case 1**").

Case Number 008985.002 Dated November 19, 2021 Violations of section 17(a) and section 17(b) of the *Act* relating to [Property B] in Calgary, AB. Penalty imposed - \$25,000 and \$25,000, respectively ("**Case 2**").

Case Number 009226.002 Dated November 19, 2021 Violations of section 17(a) and section 17(b) of the *Act* relating to [Property C] in Calgary, AB. Penalty imposed - \$25,000 and \$25,000, respectively ("**Case 3**").

Case Numbers 010955.002/010956.002 Dated November 19, 2021 Violation of section 17(a) of the Act. Penalty imposed - \$25,000 ("**Case 4**").

Case Number 013920.002 Dated April 3, 2023 Violations of section 17(a) and section 17(b) the Act relating to [Property D] in Calgary, AB. Penalty imposed - \$25,000 and \$25,000, respectively (" **Case 5**")

(collectively Case 1 to Case 5 the "**Cases**").

Case Number 11478.02 Dated November 19, 2021 Violation of section 17 (a) section 17(b) of the Act relating to [Property E] in Calgary, AB. Penalty imposed - \$25,000 and \$25,000, respectively (the "**Withdrawn Case**").

The Notice of Intent to Appeal Administrative Penalty was filed on February 23, 2022. The Notice of Hearing was filed September 27, 2023, and included six (6) allegations. An Amended Notice of Hearing, including only five (5) allegations, was filed October 19, 2023.

The hearing of this matter proceeded on October 25, 26, 27, 30, 31, 2023, November 3, 6, 7, 23, 24, 2024 and January 22, 2024 ("**Hearing**").

B. Preliminary Matters

The Appellant's Representation

The Hearing Panel confirmed at the commencement of the Hearing that the Appellant was entitled to be represented at the Hearing by legal counsel. The Appellant confirmed that they were not going to have legal counsel but instead requested the assistance of SA ("**Agent**") in the Hearing. Counsel for the Registrar raised its concern the Agent may be the party who was also subject to administrative penalties in relation to the same allegations being addressed in the Notice of Hearing presently before the Hearing Panel, specifically SHN. The Hearing Panel questioned the Agent and he asserted he was not SHN. Following this investigation by the Panel, Counsel for the Registrar confirmed they did not oppose the Agent assisting the Appellant in the proceedings and the Hearing Panel permitted the Agent to appear on behalf of the Appellant throughout the Hearing.

Hearing Panel Composition

The Hearing Panel confirmed at the commencement of the Hearing that neither party objected to the Hearing Panel composition. This lack of objection to the Hearing Panel composition was reconfirmed later in the Hearing after a witness, SP(B), who spoke the same first language as the Appellant and the Agent, overheard the Appellant and the Agent speaking in their first language and indicated that the Appellant had expressed an issue with the Hearing Panel to the Agent. The Hearing Panel again had the Agent confirm the Appellant did not object to the composition of the Hearing Panel.

Withdrawal of Case No. 11478.02

As identified on the Amended Notice of Hearing, Counsel for the Registrar indicated that they would not be proceeding with the allegation relating to case no. 11478.02 and applied to withdraw that matter.

The Appellant did not object to the withdrawal but did request an adverse inference be drawn against the Registrar on the basis of the withdrawal. The Hearing Panel considered the request for an adverse inference and declined to draw one. The Registrar has the discretion to determine the matters it chooses to proceed with and the Hearing Panel is not and should not be privy to its reasons. The Hearing Panel confirmed that the case was withdrawn.

Further, the Appellant's position was that the Registrar was not permitted to proceed on multiple counts for the same misconduct. The Hearing Panel rejects this position and finds that the Registrar has the discretion to proceed on separate counts for different transactions, notwithstanding that the transactions involve breaches of the same sections of *the Act*.

Jurisdiction

The Appellant's position, argued on several occasions in the Hearing, was that the Real Estate Counsel of Alberta ("**RECA**") did not have jurisdiction over, and could not administer administrative penalties against, an individual who was not registered. The Hearing Panel finds that RECA and the Hearing Panel have jurisdiction over the Appellant. The mandate to protect the public applies to licensees and those who engage in activities regulated by RECA, specifically real estate brokers, mortgage brokers, condominium managers and property managers, who do so without a license. Inherent in sections 17(a) and (b) is the prohibition from engaging in conduct that is described above without being licensed with RECA.

Section 81 of the *Act* prescribes offences and specifically applies to "a person" not "a licensee". This section provides that it is an offence to contravene section 17 of the *Act*. This establishes RECA's jurisdiction to initiate proceedings and administer penalties against unregistered individuals who engage in activities that RECA regulates and, consequently, the Hearing Panel's jurisdiction over those who are alleged to have engaged in these activities while unlicensed.

Identity

It was confirmed at the beginning of the Hearing that the individual appearing before the Hearing Panel was Azher Chaudhary. The Appellant did not dispute that they were the individual identified by the witnesses during the Hearing. The Hearing Panel is satisfied that Azher Chaudhary is also Azher Haleem Chaudhary and Azher Haleem and that they are the individual who was the subject of the Administrative Penalties and named on the Notice of Hearing and Amended Notice of Hearing and who filed the Notice of Appeal.

Hearsay Evidence

The Appellant raised issues in the Hearing regarding reliance by the Hearing Panel on hearsay evidence. As an administrative decision-maker, the Hearing Panel is permitted to rely on hearsay evidence. The strict rules of evidence do not apply, and the Hearing Panel is entitled to determine what evidence is accepted and the weight to be given to the evidence that has been heard. The Hearing Panel has done so in this case.

Fraud Allegations

Considerable time was spent at the Hearing, and in the submissions by the Registrar, leading evidence relating to allegations that the Licensee acted fraudulently. Fraud is not a component of section 17(a) or section 17(b) of the *Act* and for the purposes of this Hearing is not relevant to a determination by the Panel of whether there has been a breach of section 17(a) or section 17(b) in connection with any of the cases. The evidence of fraud and the fraud allegations will not be addressed at this phase of the Hearing.

Application to Quash a Summons

The Appellant served a Notice to Attend to compel the RECA Registrar to testify in the hearing as a part of their case. Counsel for the Registrar made an application to quash/set aside the Notice to

Attend (“**Quash Application**”). The parties provided written and oral submissions on the Quash Application. The Hearing Panel dismissed the Quash Application with reasons to follow. These reasons are provided below.

Counsel for the Registrar's argued the Appellant calling the Registrar would serve no purpose in terms of a) enhancing the fairness of the proceedings or b) deducing relevant evidence as the Appellant has not established that the Registrar would have relevant evidence related to this matter and the purpose for calling the Registrar was unclear.

The Appellant provided written submissions, but the submissions did not relate to the Quash Application and the Hearing Panel did not consider the written submissions in reaching their decision. In oral submissions, the Appellant's position was that the evidence of the Registrar is relevant because the Registrar failed to follow the law, and the Appellant intended to challenge the credibility and competency of the Registrar.

The Hearing Panel was not provided with a legal test nor any guidance as to the factors that should be considered when determining if a Notice to Attend should be quashed/set aside. Neither party provided any law for the Panel to review.

The Hearing Panel finds that Counsel for the Registrar has not met their burden to establish that the Notice to Attend should be quashed/set aside. The Hearing Panel has determined the principles of natural justice and the interests of procedural fairness support allowing the Appellant to call the Registrar as a witness.

This decision is not intended to be used as a precedent that the Registrar is in some or all cases a compellable witness. The Hearing Panel finds that in this specific case, with these facts and parties, without benefit of any law or legal guidance being provided, and having heard the arguments made by both parties, the Registrar failed to show sufficient grounds to quash/set aside the Notice to Attend.

Evidence of the Registrar

The Appellant questioned the Registrar and Counsel for the Registrar did not cross-examine. While the Hearing Panel heard and considered all the evidence, it has been determined that there was no relevant evidence provided in relation to the matters as outlined in the Amended Notice of the Hearing. The evidence of the Registrar is not relied upon by the Hearing Panel.

C. The Parties Positions

Position of the Registrar

The Registrar provided both oral and written submissions. The Hearing Panel has read and considered all of those submissions. The Registrar's position was:

1. The Registrar has established the breaches of section 17(a) and section 17(b) of the *Act* on a balance of probabilities, specifically;
 - a) To not find a breach of section 17(a) and 17(b) of the *Act* due to limited evidence of monetary compensation would lead to an absurdity;
 - b) The *Act* should be interpreted broadly and liberally and in accordance with its purpose of providing consumer protection to the public;
 - c) The Registrar has proven compensation or consideration. Compensation can be anything of value, such as a promise to do something or a gain of affluence in the community, not just monetary compensation; and
 - d) In the alternative, the breaches can also be established on the basis that the Appellant was "holding out" that they were licensed to trade in real estate or deal in mortgages, which was supported by the evidence of the carrying on of business by the Appellant.

Position of the Appellant

The Appellant provided both oral and written submissions. The Hearing Panel has read and considered all their submissions. The Appellant's position was that they were not in violation of s. 17(a) and 17(b) in connection with any of the cases for the following reasons:

1. The *Act* does not apply to them as they are not registered as a Licensee and consequently, neither RECA nor the Hearing Panel has jurisdiction;
2. Alternatively, if the *Act* does apply to them, they did not at any time engage in acts contrary to section 17(a) or 17(b) of the *Act*:

- (a) The standard of balance of probabilities does not apply to a determination of the breaches of sections 17(a) and 17(b);
- (b) The Registrar's evidence of those violations of 17(a) and 17(b) was not credible;
- (c) The Appellant did not provide services as a Mortgage Broker or Real Estate Agent in accordance with sections 17(a) or 17(b) of the Act because they could not provide real estate or mortgage services, being that they were unlicensed;
- (d) The Appellant engaged in the business of construction and renovations, not trading in real estate or negotiating mortgages; and
- (e) They did not receive compensation or consideration as required under sections 17(a) and 17(b).

3. The nature of the investigation of the cases rendered any finding of violation void.

Burden and Standard of Proof

This hearing is a trial *de novo*. The Hearing Panel is considering the evidence presented in the hearing without regard to the previous decisions of the Registrar. The Appellant bears no burden. It is established law as set out by the Supreme Court of Canada in *F.H v. McDougall*¹ that the Registrar is required to establish its case on a balance of probabilities:

"Like the House of Lords, I think it is time to say, once and for all in Canada, that there is only one civil standard of proof at common law and that is proof on a balance of probabilities. Of course, context is all important and a judge should not be unmindful, where appropriate, of inherent probabilities or improbabilities or the seriousness of the allegations or consequences. However, these considerations do not change the standard of proof. I am of the respectful opinion that the alternatives I have listed above should be rejected for the reasons that follow."²

The Hearing Panel rejects the arguments of the Appellant in relation to the Standard of Proof.

¹ 2008 SCC 53 (CanLII)

² *Ibid*, para. 40

D. Hearing Panel's Decision

The Hearing Panel has heard and considered all the evidence presented during the Hearing as well as the submissions of the parties. For the reasons outlined below, the Hearing Panel finds the following with regard to the breaches alleged:

Case #1- The Hearing Panel finds that the Appellant breached section 17(a) of the *Act* by trading in real estate without holding the appropriate licence for that purpose issued by the Industry Council relating to that industry– **breach established.**

The Hearing Panel finds that the Appellant breached section 17(b) of the *Act* by dealing as a mortgage broker without holding the appropriate licence for that purpose issued by the Industry Council relating to that industry– **breach established.**

Case #2- The Hearing Panel finds that the Appellant breached section 17(a) of the *Act* by trading in real estate without holding the appropriate licence for that purpose issued by the Industry Council relating to that industry– **breach established.**

The Hearing Panel finds that the Appellant breached section 17(b) of the *Act* by dealing as a mortgage broker without holding the appropriate licence for that purpose issued by the Industry Council relating to that industry– **breach established.**

Case #3- The Hearing Panel finds that the Appellant breached section 17(a) of the *Act* by trading in real estate without holding the appropriate licence for that purpose issued by the Industry Council relating to that industry – **breach established.**

The Hearing Panel finds that the Appellant breached section 17(b) of the *Act* by dealing as a mortgage broker without holding the appropriate licence for that purpose issued by the Industry Council relating to that industry– **breach established.**

Case #4- The Hearing Panel finds that the Appellant breached section 17(a) of the *Act* by trading in real estate without holding the appropriate licence for that purpose issued by the Industry Council relating to that industry– **breach established.**

Case #5 - The Hearing Panel finds that the Appellant breached section 17(a) of the *Act* by trading in real estate without holding the appropriate licence for that purpose issued by the Industry Council relating to that industry– **breach established.**

The Hearing Panel finds that the Appellant breached section 17(b) of the *Act* by dealing as a mortgage broker without holding the appropriate licence for that purpose issued by the Industry Council relating to that industry– **breach established.**

E. Reasons for Decision

Unlicensed Individual

Sections 17(a) and (b) of *the Act* require that:

Licence required

17. No person shall

(a) trade in real estate as a real estate broker,

(b) deal as a mortgage broker,

(c) act as a property manager, or

(d) advertise himself or herself as, or in any way hold himself or herself out as, a mortgage broker, real estate broker or property manager

unless that person holds the appropriate licence for that purpose issued by the Industry Council relating to that industry.

The Appellant acknowledged, and the evidence during the hearing was uncontested, that at all material times they were not registered or licenced to trade in real estate as a real estate broker or deal as a mortgage broker.

It was the Appellant's position that they did not trade in real estate as a real estate broker, deal as a mortgage broker or advertise themselves as, or in any way hold themselves out as, a real estate broker or a mortgage broker.

The *Act* defines a real estate broker as:

(i) a person who, for another or others and for consideration or other compensation, either alone or through one or more persons, trades in real estate, or

- (ii) a person who holds out that the person is a person referred to in subclause (i).

The Act further defines "trade" to include:

- (i) a disposition or acquisition of, or transaction in, real estate by purchase or sale;
- (ii) an offer to purchase or sell real estate;
- (iii) an offering, advertisement, listing or showing of real estate for purchase or sale;
- (iv) repealed 2020 c10 s4;
- (v) holding oneself out as trading in real estate;
- (vi) the solicitation, negotiation or obtaining of a contract, agreement or any arrangement for an activity referred to in subclauses (i) to (v);
- (vii) repealed 2020 c10 s4;
- (viii) any conduct or act in furtherance or attempted furtherance of an activity referred to in subclauses (i) to (vi).

The Act defines a "mortgage broker" as:

- (i) a person who on behalf of another person for consideration or other compensation
 - (A) solicits a person to borrow or lend money to be secured by a mortgage,
 - (B) negotiates a mortgage transaction,
 - (C) collects mortgage payments and otherwise administers mortgages, or
 - (D) buys, sells or exchanges mortgages or offers to do so,
- (ii) a person who holds out that the person is a person referred to in subclause (i).

The Evidence of the Appellant

While the Appellant did not testify during the hearing, there was evidence from the Appellant provided through their response to the Production Order dated December 6, 2022, and the interview of the

Appellant in connection with Case 5 by RECA investigators, JG and AB, on December 8, 2022 (“**Interview Transcript**”) both of which were submitted into evidence by the Registrar.

The Interview Transcript includes the following evidence of the Appellant:

1. Their phone number is [PHONE NUMBER] and their email was [EMAIL]. They used WhatsApp but was not certain they had done so in one of the cases identified.
2. They were aware of the need to be licenced to trade in real estate and deal in mortgages but that they did not do so. They engaged in the renovation business. They had done so through Dreamland Homes until 2, 3 or 4 years prior and now did so through Costplan Professional Consultants. They sometimes connected interested buyers and sellers for homes in which they were doing construction and made some referrals for the purchase of properties as community leaders.
3. They knew HS and KK, the complainants in Case 5, because they came to see the Appellant to speak about business. They expressed that they wanted to buy a house so the Appellant referred them to a realtor. They denied being involved with Property D, the property at issue in Case 5.
4. They acknowledged that West Coast Transport was their company but denied knowledge of Lifestyle Custom Interiors.

While the Appellant provided alternate arguments challenging the evidence from the hearing in their written and oral submissions, these arguments were unsupported by evidence and where not supported by evidence are not accepted by the Hearing Panel.

Evidence from the Hearing

Dreamland Homes and the Appellant

The Hearing Panel heard evidence from a senior investigator with RECA (“**HC**”), who was involved in the investigation of the Appellant. HC testified that the Appellant was registered as a licenced real estate associate from October 1, 2002 to April 3, 2003 but never as a Mortgage Broker. They also identified the phone number of the Appellant as [PHONE NUMBER] and their email as [EMAIL], a fact not contested by the Appellant and accepted by the Hearing Panel.

The HC confirmed the content of images of the outside of a business with the name "Dreamland Homes" on the awning at [DREAMLAND HOMES OFFICE] ("**Dreamland Homes Office**"). They further gave uncontested evidence about a website for "Dreamland Homes" that included a photograph of the Appellant who is described as a member of the team ("**Dreamland Website**"). The RECA Investigator's evidence, which is accepted by the Hearing Panel, is that the Dreamland Website was accessible on November 26, 2020 and July 1, 2021. The Appellant's argument was that the Dreamland Website was not active on the internet during the material time period as it related to the allegations, but the Appellant did not lead evidence on this point and the RECA Investigator's evidence is accepted.

In addition to the Appellant's photograph on the Dreamland Website, it also contained the following statements,

"Azher Haleem has been Calgary's number one selling real estate agent consecutively in Alberta for the past fifteen years."

"Azher has consistently shown the ability to satisfy clients in the buying and selling of their homes."

"Azher's extensive knowledge of Calgary's residential real estate market is unparalleled."

The Dreamland Website further indicated that they had 814 home mortgages and listed mortgage financing as a service that was offered by Dreamland Homes.

The Registrar entered into evidence an online search for the Dreamland Website from Website Informer but the Hearing Panel has given little weight to the results of this search as there was very limited information provided to confirm the nature of the evidence from the Website Informer.

The Hearing Panel finds that the Appellant offered services through the Dreamland Website that included trading in real estate as a real estate broker and dealing as a mortgage broker. The Hearing Panel finds that the Appellant, through the Dreamland Website, advertised themselves as offering services that can only be offered by individuals licenced with RECA.

Common Narrative

The Hearing Panel heard evidence from several witnesses relating to their interactions with the Appellant and the purchase and financing (or attempts at either) of a residential property. The Hearing

Panel recognizes that there are commonalities in the evidence heard. There was no evidence that there was any connection between the witnesses, with the exception of their interactions with the Appellant. Even the Appellant acknowledged that the witnesses were all from various "communities".

All of the witnesses who purchased (or attempted to purchase) a residential property and obtained a mortgage (or attempted to obtain a mortgage) were newcomers from various countries, including Philippines, India, and Africa. They all testified as to their referral to the Appellant by their community, family or friends to assist in obtaining a "zero down mortgage" or a mortgage and/or buying a house. Throughout the hearing, all the witnesses who purchased (or attempted to purchase) properties identified the Dreamland Homes Office as the office at which they met with the Appellant. The witnesses also communicated with the Appellant through the email [EMAIL].

The Hearing Panel further considered the Residential Purchase Contracts that the witnesses testified were signed with the Appellant. All of the Residential Purchase Contracts had the Alberta Real Estate Association ("**AREA**") logo in the top left corner and at the bottom indicated:

"This form was developed by the Alberta Real Estate Association (AREA) for the use of its members only. Trademarks are owned or controlled by the Canadian Real Estate Association (CREA) and identify real estate professionals who are members of CREA (REALTOR) and/or the quality of service they provide (MLS)."

Each of the Residential Purchase Contracts listed MI and [MI BROKERAGE] as the Buyers Real Estate Agent and MF and [MF BROKERAGE] as the Sellers Real Estate Agent, notwithstanding that all the buyers testified that they did not know MI and [MI BROKERAGE] or MF and [MF BROKERAGE]. Their evidence was corroborated by SP(B), the broker/owner of [MI BROKERAGE] who testified that [MI BROKERAGE] was not involved in the purchase of any of the properties by the buyers.

The contracts also all had the same typographical errors, specifically:

- a) UP ON CLOSING instead of Upon closing
- b) window covring instead of window covering

The evidence of the witnesses also included attributes of the Dreamland Homes Office that are consistent with a business, including a computer and printer.

The Hearing Panel has considered these commonalities, not in relation to the likelihood that the Appellant engaged in the conduct, but in assessing credibility and in corroborating the evidence that was provided.

Consideration or Other Compensation

Both parties raised the issue of the necessity for consideration or other compensation as it relates to section 17(a) and 17(b). The definition of both a real estate broker and a mortgage broker requires that the person act for consideration or other compensation or alternatively that they hold themselves out to receive same.

The Hearing Panel finds that while the receipt of financial compensation such as the payment of a fee or commission would meet the requirement of compensation, the inclusion of consideration in the definition recognizes that a person can receive something of value other than monies to satisfy the requirement. The Hearing Panel can rely on the expertise of its licensee panel members, and does so in this case, to recognize that those who engage in the trading of real estate or brokering of mortgages, even if not licenced, often receive consideration and not only financial compensation. Consideration can include but is not limited to referrals, loyalty, building relationships with other professionals, good will, or gaining influence in the community. This is particularly important for real estate brokers and mortgage brokers, who rely on referrals and relationships in the community to build their businesses. These benefits can constitute consideration.

The evidence of the witnesses has established, and the Hearing Panel finds that the Appellant was operating a business, Dreamland Homes, for which he was well known. All the witnesses who were purchasing properties and obtaining mortgages were referred by others who had also used or knew of the real estate and mortgage services that the Appellant offered. Even without the receipt of financial compensation, which was shown to have occurred in some cases, the Appellant additionally had a clear history of receiving consideration in the form of referrals, loyalty and relationships in the community.

The Hearing Panel has determined that, in relation to the definition of real estate broker and mortgage broker, consideration and other compensation includes more than the payment of monies and includes other benefits that are of value. As was described in many of the cases, the Hearing Panel finds that even when there was not financial compensation provided to the Appellant, the evidence has established that the Appellant received consideration in the form of future referrals, good will, the building of relationships with other professionals such as lawyers and gaining influence in the community.

Case 1

a) The Evidence

FS and their spouse, LF, immigrated from Philippines to Canada. FS wanted to obtain a mortgage and buy a home. They were referred to the Appellant by their friend JD. JD told FS that they knew someone who could help them and that person, the Appellant, had helped JD get a mortgage as well.

FS and JD went to the Dreamland Homes Office together. FS described the office as being located in the Northeast quadrant of Calgary and identified the photos of the Dreamland Homes Office as being the location at which they met the Appellant on numerous occasions. FS was shown the photo of the Applicant from the Dreamland Website and identified them as the person who assisted them to buy a home and obtain a mortgage. The Appellant told FS that he would help him purchase a house and obtain a mortgage.

From about December 2018, FS and LF viewed several residential properties for sale, including Property A, for which the Appellant provided the address and the information to allow them to view the properties. The Appellant did not attend the viewings.

In January 2019, FS made an offer to purchase on Property A, which was one of the properties the Appellant had arranged for FS to view. FS attended at the Dreamland Homes Office and signed a Residential Real Estate Purchase Contract (the **"FS RP Contract"**) provided by the Appellant. The FS RP Contract had the AREA logo and disclaimer as well as the typographical errors identified above. FS testified that they paid \$5000 as a deposit by way of a cheque to the Appellant although they later testified that they did not have to provide a downpayment. On cross-examination, FS confirmed that they did not have bank statements or cheques to prove the \$5000 deposit was made but maintained that they paid the \$5000.00 although they were uncertain as to how it was paid. The FS RP Contract identified MI of [FPR BROKERAGE] as the seller's real estate broker and MF of [MI BROKERAGE] as the buyer's real estate broker. FS confirmed that they did not know either of these individuals and no one other than the Appellant assisted them with the purchase of Property A.

SP(B) confirmed in their evidence that [MI BROKERAGE] was not involved in the sale or purchase of Property A.

When FS met with the Appellant, they discussed the process to obtain a mortgage, including checking their credit and the required paperwork. The Appellant assisted FS gather and prepare the necessary

documents to apply for a mortgage, some which were false, and complete the mortgage application. FS provided the Appellant with bills, bank transactions, and documents by email to [EMAIL]. The Appellant advised FS that they would be approved for a mortgage of \$330,000.00.

At no time did FS speak to anyone at CIBC or anyone else about obtaining a mortgage. FS did not know why CIBC was used for the mortgage as their bank was RBC. The mortgage was ultimately approved with CIBC and the Appellant referred FS to a lawyer for them to use to complete the mortgage documents.

FS obtained a "cashback mortgage" which resulted in FS receiving a payment of \$15,000.00. FS testified that they were supposed to pay the Appellant the \$15,000.00 for their services but ultimately FS paid \$12,000.00 to the Appellant by cheque and kept \$3000.00.

B. Hearing Panel's Analysis

The Hearing Panel accepts most the evidence of FS as outlined above and finds them credible. Their testimony was supported by the documentary evidence and is consistent with the evidence of other witnesses. The evidence of FS that was unsupported or contradictory is not necessary for the Hearing Panel to make the determination of the breaches. The inclusion of false documents in the mortgage application has not negatively affected FS's credibility. The Hearing Panel finds FS's evidence in relation to their knowledge of the false documents was contrary to their interest and was not self serving, lending to their credibility. For the reasons stated below, the Hearing Panel has determined that the Registrar has established on a balance of probabilities that the Appellant has breached section 17(a) of the *Act* by trading in real estate as a real estate broker without holding the appropriate licence for that purpose issued by the Industry Council relating to that industry and section 17(b) of the *Act* by dealing as a mortgage broker without holding the appropriate licence for that purpose issued by the Industry Council relating to that industry .

Section 17(a) of the *Act*

The Hearing Panel finds the Appellant, at all material times that they were dealing with FS, traded in real estate as a real estate broker and held themselves out to be a person who trades in real estate. The Appellant coordinated the viewing of residential real estate properties that were for sale then met with FS and provided the FS RP contract for FS to sign to further the purchase of Property A. The definition of "trade" in the *Act* includes:

- (iii) an offering, advertisement, listing or showing of real estate for purchase or sale;
- (vi) the solicitation, negotiation or obtaining of a contract, agreement or any arrangement for an activity referred to in subclauses (i) to (v);
- (viii) any conduct or act in furtherance or attempted furtherance of an activity referred to in subclauses (i) to (vi).

The Hearing Panel finds Appellant's acts of coordinating the viewing of residential properties for sale by FS and providing a Residential Purchase Contract to be signed constituted acts that are included in the definition of trade identified above. The Hearing Panel finds that the Appellant received compensation from FS in the amount of \$12,000 for their services, which in addition to the use of the lawyer referred by the Appellant, constituted consideration or other compensation. The Hearing Panel finds that the Appellant was trading in real estate as a real estate broker and, as indicated above, was not licenced to do so.

Further, the Hearing Panel finds that at all material times the Appellant held themselves out as a real estate broker. The Appellant reassured FS of their ability to help them purchase a home, facilitated the viewing of residential properties for sale by FS and provided an AREA residential purchase contract. These acts, in addition to the Appellant's presentation as a business (Dreamland Homes), including having an office, and the website were acts of the Appellant holding themselves out to be a real estate broker and was doing so in a manner that would suggest it was for the purpose of receiving consideration or other compensation.

The Hearing Panel finds on a balance of probabilities that between December 2018 and April 2019 the Appellant contravened section 17(a) of the *Act* in relation to Case 1.

Section 17(b) of the *Act*

To find that the Appellant was acting as a mortgage broker, the Hearing Panel must conclude they are:

- (i) a person who on behalf of another person for consideration or other compensation
 - (a) solicits a person to borrow or lend money to be secured by a mortgage,
 - (b) negotiates a mortgage transaction,
 - (c) collects mortgage payments and otherwise administers mortgages, or

(d) buys, sells or exchanges mortgages or offers to do so,

or

(ii) a person who holds out that the person is a person referred to in subclause (i);

There is no evidence that the Appellant engaged in soliciting a person to borrow or lend money to be secured by a mortgage, collecting mortgage payments and otherwise administers mortgages, or buying, selling or exchanging mortgages or offering to do so for compensation or consideration or held themselves out to do so. The Hearing Panel must determine if, on a balance of probabilities, the Appellant was negotiating a mortgage transaction for consideration or other compensation or held themselves out to be doing so.

The Hearing Panel finds that the Appellant told FS that they could assist them with obtaining a mortgage. The Appellant requested documents from FS that were required for the mortgage applications and assisted FS to complete the mortgage application. These are acts that one would expect from a Mortgage Broker. FS did not communicate with CIBC or anyone other than the Appellant to obtain a mortgage. The Hearing Panel finds that while there is not direct evidence that the Appellant communicated with CIBC to negotiate a mortgage on behalf of FS, the circumstantial evidence supports the conclusion that it is more likely than not that the Appellant was doing so. FS provided the Appellant \$12,000, as described above, which was compensation for the services provided by the Appellant. The Hearing Panel has found on a balance of probabilities that the acts engaged in by the Appellant constituted dealing as a mortgage broker and, as indicated above, the Appellant was not licensed to do so.

The Hearing Panel further finds that at all material times the Appellant held themselves out as a mortgage broker as described in (ii) of the definition of a mortgage broker. The Appellant reassured FS of their ability to obtain a mortgage for them, assisted with the gathering of documents and the completion of the mortgage application. These acts, in addition to the Appellant's presentation as a business (Dreamland Homes), including having an office, and website were acts of the Appellant holding themselves out to be a mortgage broker and they did so in a manner that would suggest the Appellant received consideration or other compensation for doing so.

The Hearing Panel has found on a balance of probabilities, between December 2018 and April 2019, that the Appellant contravened section 17(b) of the Act in relation to Case 1.

Case 2

(a) The Evidence

SP and SR immigrated from India to Canada. They are married and testified that they reside in Property B, which they purchased in 2019. SP was intimidated by the process of purchasing a house and getting a mortgage in part because SR had a consumer proposal, and they did not have a downpayment. SP and SR wanted someone who could assist them with the process and were referred to the Appellant by members of their community. They met with the Appellant to see if they could help them. The Appellant told SP that they could help them find a property. SP thought the Appellant was an expert.

SP testified that they had a strict budget but did not have many criteria for a home. From the end of 2018 until the spring of 2019, the Appellant would text message with SR and the Appellant provided them with information about properties that were for sale. These text messages were entered as exhibits and showed the addresses, lock box and day codes that allowed SP and SR to view the properties, including Property B. The Appellant did not attend at the viewings of the properties. Once SP and SR selected Property B, they attended the Dreamland Homes Office on February 11, 2019 and the Appellant provided SP with the Residential Purchase Contract ("**SP RP Contract**") to sign. The SP RP Contract had the AREA logo and disclaimer as well as the typographical errors identified above. The SP RP Contract indicated there was a \$5000 deposit, and that the seller's and buyer's representatives were MI of [MI BROKERAGE] and MF of [MF BROKERAGE]. SP and SR both testified that did not pay that deposit and did not know MI and [MI BROKERAGE], or MF and [MF BROKERAGE]. SP's evidence was that the Appellant told her no down payment would be required.

SP(B) confirmed in their evidence that [MI BROKERAGE] was not involved in the sale or purchase of Property B.

SP met with the Appellant several times, including to sign the SP RP Contract at the Dreamland Home Office. SR attended the meetings with the Appellant as SP did not drive and it was SR who primarily communicated with the Appellant.

SP testified that the Appellant gave them the phone number for TM from Scotiabank for the purpose of obtaining a mortgage. SP did not know TM before the Appellant gave them the contact information. The Appellant told them to call TM and SP made that call from the Dreamland Homes Office. SP received a form to fill out, the Appellant assisted SP to complete that form and had SP email TM the supporting documents, including bank statements, their credit score and an employment letter from

the Appellant's computer at the Dreamland Homes Office. Some of the documents were false. As the mortgage application progressed, SP and SR contacted the Appellant to ask how to respond to questions by TM. They met with a lawyer to execute the mortgage documents at the Appellant's instruction. SP and SR both testified they had to pay the Appellant, although they were unsure of the amount and how the payment was made.

SR and SP were interviewed by RECA investigators. SR and SP both testified that they initially lied to the investigators. SR indicated that when they were contacted by RECA investigators, they contacted the Appellant who told them to blame everything on MF. SP explained that they initially lied to the RECA investigator and described MF as their realtor out of loyalty to and upon instruction from the Appellant. They testified that they ultimately provided truthful information to the investigators. SP expressed extreme remorse and regret over the use of false documents and lying to the RECA investigators.

The Appellant did not testify but did dispute the evidence of SP and SR and questioned their credibility.

B. Hearing Panel's Analysis

The Hearing Panel accepts most of the evidence of SP and SR as outlined above and finds them both credible. As outlined above, their testimony was supported by the documentary evidence and is consistent with the evidence of other witnesses. This transaction occurred in 2019 and the Hearing Panel recognizes memories may not be accurate due to the passage of time. Despite both SP and SR's earlier contradictory evidence given to the investigators, the Hearing Panel found SP and SR to be credible witnesses and their evidence, particularly where it was consistent with the documents and records and the common pattern between the cases, was accepted. Further, the Hearing Panel finds their evidence was contrary to their interest and was not self serving, lending to their credibility.

The Hearing Panel has determined that the Registrar has established on a balance of probabilities that between December 18, 2018 and April 2019 the Appellant breached sections 17(a) and 17(b) of the *Act*.

Section 17(a) of the *Act*

The Hearing Panel finds the Appellant, at all material times that they were dealing with SP and SR, traded in real estate as a real estate broker. The Appellant coordinated the viewing of residential real estate properties that were for sale then met with SP and SR and provided the SP RP Contract for SP

to sign to further the purchase of Property B. The Hearing Panel finds that the Appellant received compensation from SP and SR for their services, notwithstanding the exact amount is undetermined.

The definition of "trade" in the *Act* includes

- (iii) an offering, advertisement, listing or showing of real estate for purchase or sale;
- (vi) the solicitation, negotiation or obtaining of a contract, agreement or any arrangement for an activity referred to in subclauses (i) to (v);
- (viii) any conduct or act in furtherance or attempted furtherance of an activity referred to in subclauses (i) to (vi).

The Hearing Panel finds Appellant's acts of coordinating the viewing of residential properties for sale and providing a SP RP Contract to be signed in furtherance of the purchase of a Property B not only constituted trading pursuant to section (iii) and (iv) but also constituted conduct in furtherance of the acts that are included in the definition of trade identified above. The Hearing Panel finds that the Appellant was trading in real estate as a real estate broker and, as indicated above, was not licensed to do so.

Further, the Hearing Panel finds that, at all material times, the Appellant held themselves out as a real estate broker. Even if the Appellant did not receive the monetary compensation as found by the Hearing Panel, their reassurance to SP and SR of their ability to help them purchase a home, facilitating viewings of residential properties for sale and providing an AREA residential purchase contract to further the purchase of the property, together with the Appellant's presentation as a business (Dreamland Homes), including their office, and the website were acts of the Appellant holding themselves out to be a real estate broker and was doing so in a manner that suggested the Appellant was receiving consideration or other compensation for doing so.

The Hearing Panel finds on a balance of probabilities that between December 2018 and April 2019 the Appellant contravened section 17(a) of the *Act* in relation to Case 2.

Section 17(b)

As described above, to find that the Appellant was acting as a mortgage broker, the Hearing Panel must conclude they were;

- (i) a person who on behalf of another person for consideration or other compensation,
 - (a) solicits a person to borrow or lend money to be secured by a mortgage,
 - (b) negotiates a mortgage,
 - (c) collects mortgage payments and otherwise administers mortgages, or
 - (d) buys, sells or exchanges mortgages or offers to do so,
- or
- (i) a person who holds out that the person is a person referred to in subclause (ii);

There is no evidence that the Appellant engaged in soliciting a person to borrow or lend money to be secured by a mortgage, collecting mortgage payments and otherwise administers mortgages, or buying, selling or exchanging mortgages or offering to do so for compensation or consideration or held themselves out to do so. The Hearing Panel must determine if, on a balance of probabilities, they find that the Appellant was negotiating a mortgage transaction for consideration or other compensation or held themselves out to be doing so.

The Hearing Panel finds that the Appellant told SP and SR that they could assist him in obtaining a mortgage. The Appellant requested documents from SP that were required for the mortgage applications. The Appellant directed SP to a specific person, TM, at Scotia Bank and assisted SP complete the mortgage application while in the Dreamland Homes Office including the gathering and sending of information to TM. Significant steps were taken in relation to the process of obtaining a mortgage, with the assistance of the Appellant, including directing SP as to how to respond to TM. The Hearing Panel finds that the Appellant was negotiating the mortgage transaction as he not only assisted with the completion of an application, but provided the contact information for TM, gathered documents, sent documents to TM and directed SP as to how to respond to TM during the process. As identified above, the Hearing Panel finds that the Appellant received compensation for their services. The Hearing Panel has found on a balance of probabilities that the acts engaged in by the Appellant constituted dealing as a mortgage broker and, as indicated above, they were not licensed to do so.

The Hearing Panel further finds that at all material times the Appellant held himself out as a mortgage broker as described in subclause (ii) of the definition of a mortgage broker. The Appellant reassured SP and SR of their ability to obtain a mortgage for them, assisted with the gathering of documents and the completion of the mortgage application. These acts, in addition to the Appellant's presentation as a business (Dreamland Homes), including having an office and the website were acts

of the Appellant holding themselves out to be a mortgage broker and was doing so in a manner that would suggest the Appellant was receiving consideration or other compensation for doing so.

The Hearing Panel finds on a balance of probabilities that between December 2018 and April 2019 the Appellant dealt as a mortgage broker contrary to section 17(b) of the Act in connection with Case 2.

Case 3

(a) The Evidence

BDB, one of the purchasers of Property C, had a prior relationship with the Appellant as they had purchased another home with the Appellant's assistance. BDB had been referred to the Appellant by a co-worker as a person who could get them a "zero down home" and BDB understood the Appellant was a realtor. BDB obtained a mortgage through CIBC with the assistance of the Appellant.

BDB met with the Appellant in connection with purchasing Property C to assist their friend/"cousin" ABB purchase their own home. BDB and ABB both immigrated from Africa to Canada. ABB could not qualify for a mortgage, so BDB agreed to be a co-signer but has never lived in the house.

BDB and ABB met with the Appellant at the Dreamland Homes Office where the Appellant showed ABB available homes. The Appellant attended residential properties that were for sale to view with ABB, including Property C. The Appellant provided access to the properties they viewed.

Both ABB, ABB's spouse JMA, and BDB attended the Dreamland Homes Office on November 2018 to sign a Residential Purchase Contract for Property C (the "**ABB RP Contract**"). The ABB RP Contract had the AREA logo and disclaimer as well as the typographical errors identified above. The ABB RP Contract was given to ABB, ABB's spouse and BDB by the Appellant. No one else assisted with viewing the properties or completing the ABB RP Contract or the subsequent amendment. BDB and ABB did not know MF and [MI BROKERAGE] or MI and [MF BROKERAGE], who were listed in the ABB RP Contract as the sellers and buyers' real estate agents.

SP(B) confirmed in their evidence that [MI BROKERAGE] was not involved in the sale or purchase of Property C.

The original purchase contract named ABB, JMA and BDB as the buyers. Ultimately, JMA was removed as a buyer and PA was added as a purchaser with ABB and BDB on the advice of the Appellant due to JMA not qualifying for a mortgage. The amendment to the ABB RP Contract adding a new buyer was

signed at the Dreamland Homes Office with the Appellant on December 20, 2018. The Residential Purchase Contract noted a \$5000 deposit was to be paid but the Appellant advised BDB and ABB that the deposit was not required, and none was paid by either BDB or ABB. ABB understood the \$5000 deposit amount was added to the mortgage financing.

HC testified that LR and DDM were mortgage brokers and there are several emails between LR, DDM and the Appellant. These emails were obtained from LR pursuant to a production order. The emails were between LR, DDM and the Appellant at their email [EMAIL]. The emails included discussions relating to required documents, issues with the application, updates, and the ultimate mortgage approval for Property C. BDB and ABB were never included in any of the emails. While there was a Service Agreement between the mortgage brokerage and BDB and ABB, neither BDB nor ABB recalled signing it.

ABB and BDB testified that neither of them met or communicated with LR or DDM relating to the mortgage transaction and did not know who they were. Their only contact in relation to the mortgage was the Appellant who asked for their financial information, including tax assessments, employment letters, statement of earnings, and bank records. ABB and BDB also attended at the Dreamland Homes Office and provided financial records to the Appellant and accessed some of their financial records on the Appellant's computer in the Dreamland Homes Office for the mortgage application. The Appellant completed all the paperwork for the mortgage. Some of the documents that were submitted in support of the mortgage were false.

The Appellant communicated with DBD and ABB by phone and confirmed with them that they had been approved for a mortgage.

(b) Hearing Panel's Analysis

The Hearing Panel accepts the evidence of BDB and ABB as outlined above. Their testimony was supported by the documentary evidence and is consistent with the evidence of other witnesses. The Hearing Panel heard from ABB as they described their issues with testifying, particularly given their cultural differences and at times they were an openly hostile witness. The Hearing Panel acknowledges the cultural differences and considered this in determining credibility and adopts their evidence noted above and in particular where it is consistent with the documents, the common pattern and the evidence of BDB.

Section 17(a)

The Hearing Panel finds that the Appellant coordinated and attended the viewing of residential real estate properties that were for sale for ABB. The Appellant further met with BDB, ABB, JMA and PA and provided the ABB RP Contract and the amendment for them to sign to further the purchase of Property C. The Hearing Panel finds that the Appellant received consideration for assisting with the purchase of Property C as identified above. There was not sufficient evidence to determine payment of funds as consideration but there was evidence of benefits received by the Appellant including the development of the Dreamland Homes business, influence in the Appellant's community and potential referrals from clients.

The definition of "trade" in the *Act* includes

- (iii) an offering, advertisement, listing or showing of real estate for purchase or sale;
- (vi) the solicitation, negotiation or obtaining of a contract, agreement or any arrangement for an activity referred to in subclauses (i) to (v);
- (viii) any conduct or act in furtherance or attempted furtherance of an activity referred to in subclauses (i) to (vi).

The Hearing Panel finds Appellant's acts of coordinating the viewing of residential properties for sale and providing a ABB RP Contract to be signed in furtherance of the purchase of a Property C are not only acts of trading pursuant to subclause (iii) and (vi) but also constituted conduct in furtherance of those acts described above and included in the definition of trade pursuant to subclause (viii). The Hearing Panel finds that the Appellant was trading in real estate as a real estate broker and, as indicated above, was not licensed to do so.

The Hearing Panel further finds that the Appellant held themselves out as a real estate broker. Their previous dealings with BDB, telling BDB they were a real estate agent, the reassurance of their ability to help ABB purchase a home, facilitating viewings of residential properties for sale and providing an AREA residential purchase contract to further the purchase of the property, together with the Appellant's presentation as a business(Dreamland Homes), including their office and a website were acts of the Appellant holding themselves out to be a real estate broker. The Hearing Panel finds the Appellant was holding themselves out as a real estate broker and was doing so in a manner that would suggest it was for the purpose of receiving consideration or other compensation, which constitutes trading in real estate as defined by the *Act*.

The Hearing Panel finds on a balance of probabilities that between December 2018 and April 2019 the Appellant contravened section 17(a) of the Act in connection with Case 3.

Section 17(b)

The Hearing Panel finds that the Appellant told BDB and ABB that they could assist them in obtaining a mortgage. The Appellant requested documents from BDB and ABB that were required for the mortgage application and assisted BDB and ABB to complete the mortgage application. Following the completion of the application and the collection of the documents, the Appellant provided the documents to LM and DDM and communicated with them to obtain a mortgage for BDB and ABB. Only the Appellant communicated with LM and DDM. The Appellant, with the assistance of LM and DDM, negotiated a mortgage transaction on behalf of BDB and ABB and dealt as a mortgage broker.

The Hearing Panel further finds that the Appellant dealt as a mortgage broker by holding themselves out as a mortgage broker. The evidence of BDB and ABB was clear that they were unaware of anyone else being involved in obtaining their mortgage except the Appellant. The Appellant was the individual who told them when they qualified for the mortgage. The Appellant reassured BDB and ABB of their ability to obtain a mortgage, assisted with the gathering of documents and the completion of the mortgage application. These acts, in addition to the Appellant's presentation as a business (Dreamland Homes), including having an office and the website, were acts of the Appellant holding themselves out to be a mortgage broker and was doing so in a manner that would suggest the Appellant was receiving consideration or other compensation.

The Hearing Panel finds on a balance of probabilities that between December 2018 and April 2019 the Appellant contravened section 17(b) of the Act in connection with Case 3.

Case 4

(a) The Evidence

SP(L) is a licensee with RECA and they belonged to the same community as the Appellant. On or about October 6, 2021, they received a phone call from an individual identifying themselves as "Azher Haleem." During that call, Azher Haleem requested a day code for the lockbox on behalf of a client to view one of SP(L)'s listings. The caller identified themselves as a realtor and indicated they wanted to show the property to a client.

SP(L) considered it unusual for a licensee to request a day code as licensees use the "Showtime" application to book viewings of properties. During the phone call, SP(L) recognized the name "Azher Haleem" from a RECA public alert, and as a result, SP(L) declined to provide the day code. SP(L) called their broker, SP(B), and informed them of the call from "Azher Haleem". SP(L) sent an email to SP(B) confirming the phone call and the information discussed. SP(B) also gave evidence and confirmed SP(L)'s version of events and testified that he sent an email to RECA outlining what had occurred. HC confirmed receiving an email from SP(B) outlining what had occurred between SP(L) and the Appellant.

(b) Hearing Panel's Analysis

The Hearing Panel accepts the evidence of SP(L) and SP(B), parts of which were further corroborated by HC. The Appellant provided an alternate argument about the conversation with SP(L) in their written and oral submissions in which they do not deny making the call but simply provide a different purpose for same. However, no evidence of that alternate purpose was provided. The Appellant's version is not accepted by the Hearing Panel.

Section 17(a)

It was not contested and there was no evidence presented that the person who called SP(L) was not the Appellant. SP(L) clearly testified that during the phone call with the Appellant, the Appellant identified themselves as a real estate agent and requested the day code to show a property. The call to SP(B) and the subsequent emails all corroborate SP(L)'s version of events.

The Hearing Panel finds that the Appellant identified themselves as a real estate broker and attempted to show a property that SP(L) had listed for sale to a client. In suggesting that they were a real estate broker and the viewing was for a client, the Hearing Panel finds that it follows that the Appellant was doing so for their business and with an expectation of consideration or other compensation.

The definition of "trade" in the *Act* includes

- (iii) an offering, advertisement, listing or showing of real estate for purchase or sale;
- (viii) any conduct or act in furtherance or attempted furtherance of an activity referred to in subclauses (i) to (vi).

The Hearing Panel finds that by the Appellant calling SP(L), telling them they were a real estate agent and requesting a day code to show the property to a client, the Appellant was engaging in the trade of real estate by engaging in conduct that was in attempted furtherance an activity referred to in subclause (iii), specifically showing of real estate for sale.

Further, the Hearing Panel finds that the Appellant was holding themselves out to trade in real estate as a real estate broker by identifying themselves as a real estate broker and requesting the day code to show real estate to a client.

The Hearing Panel finds on a balance of probabilities that in or around October and November 2021 the Appellant contravened section 17(a) of the Act in connection with Case 4.

Case 5

(a) The Evidence

HS (aka HV) testified with the aid of an interpreter. HS was referred to the Appellant by a third party. The third party told them the Appellant helped them get a mortgage and they could help them purchase a house as well. HS also testified the Appellant was quite famous in Northeast Calgary as the person who could get people mortgages and the Appellant had helped a few people they knew get mortgages.

HS met with the Appellant, at both a Tim Horton's and at the Dreamland Homes Office, to obtain assistance in purchasing a house and securing a mortgage. At the first meeting they discussed HS's desire to purchase a house. The Appellant asked what type of house they were interested in and their budget. At that time, HS had a spouse who was not employed and a son who lived with them. They worked as a truck driver with Company C and did not work for any other employers.

HS testified that the Appellant told him that he was a real estate agent and a mortgage broker and that they had helped lots of people get mortgages. The Appellant told HS to follow their instructions and they would take care of everything and assist them with buying a house. The Appellant then arranged for HS to view multiple properties by providing the addresses to HS. HS and the Appellant used an application called "WhatsApp" to communicate. A printout of the WhatsApp communication with entries from October 2021 through March 2022 was provided by HS and they confirmed the printout was an accurate reflection of their communication on WhatsApp with the Appellant ("HS

WhatsApp Record"). The HS WhatsApp record confirmed the Dreamland Homes Office address and the Appellant's email address as [EMAIL].

The HS WhatsApp Record included several properties for HS to view and details to facilitate the viewing of those properties. HS ultimately used a licenced real estate agent to make an offer on Property D, which they purchased.

The HS WhatsApp Record and an email showed a Residential Purchase Contract for Property D was sent to the Appellant by HS so the Appellant could assist in obtaining a mortgage for HS. The Appellant assisted HS by preparing the mortgage application. The HS WhatsApp Record included requests by the Appellant for documents from HS, including government identification, employment documents, bank statements, their car loan statement, a credit score check and tax documents for both HS and their spouse. HS testified that these documents were requested by the Appellant and were provided to obtain a mortgage.

The Appellant sent an email on HS's behalf to CIBC to submit the mortgage application and supporting documents. Some of the documents were false. The Appellant set up the email address and password for HS. HS was adamant that the Appellant submitted the documents and had a contact, N, at CIBC. The Appellant gave HS N's phone number. Included with the application were several documents that HS testified were not authentic. These included an employment letter, pay cheques and a T4 slip from West Coast Transportations Ltd. ("**West Coast**") for HS as well as an employment letter, pay cheques and a T4 slip from [LIFESTYLE INC.] for HS's spouse. HS testified he had never worked for West Coast, nor had their spouse ever worked for [LIFESTYLE INC.]. CIBC did not approve HS's mortgage and HS had to obtain a private mortgage, which he did without the Appellant.

Throughout the material time, HS was providing payments to the Appellant as requested by the Appellant. The payments were deposited to the bank account for West Coast, of which the Appellant has acknowledged he was the Director. After HS's deposits, HS would receive cheques of a lesser amount from West Coast. The WhatsApp communication documented HS confirming that the Appellant received the funds provided by HS and the Appellant indicating that HS could pick up their cheque.

HS testified that the Appellant told him that the bank would pay them.

(b) Hearing Panel's Analysis

The Hearing Panel accepts the evidence of HS. The Appellant cross examined HS thoroughly and HS was unwavering in their testimony. As outlined above, HS's testimony was supported by the documentary evidence, including but not limited to, the HS WhatsApp record. The inclusion of false documents in the mortgage application has not negatively affected HS's credibility. The Hearing Panel finds HS's evidence in relation to their knowledge of the false documents was contrary to their interest and was not self serving, lending to their credibility.

Section 17(a)

The Hearing Panel finds that the Appellant coordinated the viewing of residential real estate properties offered for sale and provided HS with the addresses and the means to view the properties. The Hearing Panel recognizes that HS ultimately purchased Property D with a licensed Real Estate Associate and not the Appellant. The Appellant coordinated the viewing of properties that were for sale, which the Hearing Panel finds is an act that constitutes trading in real estate as a real estate broker. Further, the Hearing Panel finds that the Appellant having arranged for properties for HS to view and providing the addresses and information about the properties to HS were acts in furtherance of showing residential real estate that constitutes trading in real estate as defined by the *Act*.

The Hearing Panel finds that the exchange of funds between HS and the Appellant, specifically the payment of money by HS to West Coast, then the cheques issued by the Appellant through West Coast, in a lesser amount, were not only to support the false claim of HS's employment with West Coast but also amounted to compensation to the Appellant for their services. The Hearing Panel finds that the Appellant was trading in real estate as a real estate broker

The definition of "trade" in the *Act* includes holding oneself out as trading in real estate as a real estate broker. The Hearing Panel finds Appellant's act of identifying themselves as a real estate agent to HS, advising HS that they could assist them in purchasing a home and the facilitating viewings of residential properties for sale, together with the Appellant's presentation as a business (Dreamland Homes), including their office, were acts of the Appellant holding themselves out to be a real estate broker. The Hearing Panel finds the Appellant was holding themselves out as a real estate broker and was doing so in a manner that would suggest it was for the purpose of receiving consideration or other compensation., which constitutes trading in real estate as defined by the *Act*.

The Hearing Panel finds on a balance of probabilities that between October 2021 and April 2022 the Appellant contravened section 17(a) of the *Act* in connection with Case 5.

Section 17(b)

The Hearing Panel finds that the Appellant told HS that they could assist them in obtaining a mortgage. The Appellant requested documents from HS that were required for the mortgage application and assisted HS to complete the mortgage application. Following the completion of the application and the collection of the documents, the Appellant submitted the mortgage application and documents to CIBC and the Appellant's contact, N. The Appellant attempted to negotiate a mortgage transaction on behalf of HS and dealt as a mortgage broker, notwithstanding they were not successful. The Hearing Panel finds that success in obtaining a mortgage is not necessary to negotiate a mortgage transaction. The Hearing Panel finds that the exchange of funds between HS and the Appellant, specifically the payment of money by HS to West Coast, then the cheques issued by the Appellant through West Coast, in a lesser amount, were not only to support the false claim of HS's employment with West Coast but also amounted to compensation to the Appellant for their services.

The Hearing Panel further finds that the Appellant dealt as a mortgage broker by holding themselves out as a mortgage broker. The Appellant reassured HS of their ability to obtain a mortgage for them, told them they were a mortgage broker, assisted with the gathering of documents, the completion of the mortgage application and submitted the application to CIBC. These acts, in addition to the Appellant's presentation as a business (Dreamland Homes), including having an office, were acts of the Appellant holding themselves out to be a mortgage broker and was doing so in a manner that would suggest the Appellant received consideration or other compensation.

The Hearing Panel finds on a balance of probabilities that between October 2021 and April 2022 the Appellant contravened section 17(b) of the *Act*.

F. Conclusion

For the reasons set out above, the Hearing Panel finds, on a balance of probabilities, that the following violations have been established as against the Appellant:

Case Number 11480.002

- a) The Appellant did trade in real estate as a real estate broker, without holding the appropriate licence for that purpose issued by the Industry Council relating to that industry, contrary to section 17(a) of the *Act*.
- b) The Appellant did deal as a mortgage broker, without holding the appropriate licence for that purpose issued by the Industry Council relating to that industry, contrary to section 17(b) of the *Act*.

Case Number 008985.002

- a) The Appellant did trade in real estate as a real estate broker, without holding the appropriate licence for that purpose issued by the Industry Council relating to that industry, contrary to section 17(a) of the *Act*.
- b) The Appellant did deal as a mortgage broker, without holding the appropriate licence for that purpose issued by the Industry Council relating to that industry, contrary to section 17(b) of the *Act*.

Case Number 009226.002

- a) The Appellant did trade in real estate as a real estate broker, without holding the appropriate licence for that purpose issued by the Industry Council relating to that industry, contrary to section 17(a) of the *Act*, and
- b) The Appellant did deal as a mortgage broker, without holding the appropriate licence for that purpose issued by the Industry Council relating to that industry, contrary to section 17(b) of the *Act*.

Case Numbers 010955.002/010956.002

- a) The Appellant did trade in real estate as a real estate broker, without holding the appropriate licence for that purpose issued by the Industry Council relating to that industry, contrary to section 17(a) of the *Act*.

Case Number 013920.002

- a) The Appellant did trade in real estate as a real estate broker, without holding the appropriate licence for that purpose issued by the Industry Council relating to that industry, contrary to section 17(a) of the *Act*.
- b) The Appellant did deal as a mortgage broker, without holding the appropriate licence for that purpose issued by the Industry Council relating to that industry, contrary to section 17(b) of the *Act*.

G. Phase 2- Sanction and Costs

Having made the finding of conduct deserving of sanction outlined above, Phase 1 of the Hearing is now concluded. For Phase 2 and the determination of sanctions and costs, the Hearing Panel is prepared to proceed by way of written submissions by the parties. Should either party prefer to have an oral hearing in relation to Phase 2, they are to advise the Hearing Coordinator within 5 business days of the service of this decision. If neither party indicate a preference for an oral hearing, the Hearing Panel requests the parties to provide written submissions, as follows:

- a) The Registrar will provide their written submissions by March 17, 2025.
- b) The Appellant will provide their written submission by March 31, 2025, and
- c) If the Registrar chooses to file a Reply to the written submissions of the Appellant, they will do so by April 7, 2025

Dated at the City of Calgary in the Province of Alberta, this 28th of February, 2025

Hearing Panel of the Real Estate Council
of Alberta

"Signature"

[J.G], Panel Chair

THE REAL ESTATE COUNCIL OF ALBERTA

IN THE MATTER OF Section 83.1 of the *REAL ESTATE ACT*, R.S.A. 2000, c.R-5

(the "*Act*")

AND IN THE MATTER OF a Hearing regarding the conduct of AZHER HALEEM CHAUDHARY, AKA AZHER HALEEM, AKA AZHER CHAUDHARY carrying on business as Dreamland Homes and/or Nawab Homes & Real Estate Consulting, currently unregistered

Case Numbers: 010955.002, 010956.002, 008985.002, 009226.002, 11478.02, 11480.002, 013920.002

Hearing Panel Members: [J.G], Chair (Public Member)
[W.R], Panel Member (Licensee Member)
[K.M], Panel Member (Licensee Member)

Appearances: Azher Haleem Chaudhary, represented by their agent, Sayed Azher
G. Zha, Counsel for the Registrar of the Real Estate Council of Alberta

Hearing Date(s): October 25-27, 2023, October 30-31, 2023, November 3, 2023, November 6-7, 2023, November 23-24, 2023, January 22, 2024, by video conference

DECISION OF THE HEARING PANEL

A. Background

In the Hearing Panel's written decision dated February 28, 2025 ("**merits decision**"), the Hearing Panel found, on a balance of probabilities, that the Appellant had engaged in the following contraventions of the *Real Estate Act*, RSA 2000, c.R-5 (the "**Act**"):

Case Number 11480.002 ("**Case 1**")

- a) The Appellant did trade in real estate as a real estate broker, without holding the appropriate licence for that purpose issued by the Industry Council relating to that industry, contrary to section 17(a) of the *Act*.

- b) The Appellant did deal as a mortgage broker, without holding the appropriate licence for that purpose issued by the Industry Council relating to that industry, contrary to section 17(b) of the Act.

Case Number 008985.002 ("**Case 2**")

- a) The Appellant did trade in real estate as a real estate broker, without holding the appropriate licence for that purpose issued by the Industry Council relating to that industry, contrary to section 17(a) of the Act.
- b) The Appellant did deal as a mortgage broker, without holding the appropriate licence for that purpose issued by the Industry Council relating to that industry, contrary to section 17(b) of the Act.

Case Number 009226.002 ("**Case 3**")

- a) The Appellant did trade in real estate as a real estate broker, without holding the appropriate licence for that purpose issued by the Industry Council relating to that industry, contrary to section 17(a) of the Act.
- b) The Appellant did deal as a mortgage broker, without holding the appropriate licence for that purpose issued by the Industry Council relating to that industry, contrary to section 17(b) of the Act.

Case Numbers 010955.002/010956.002 ("**Case 4**")

- a) The Appellant did trade in real estate as a real estate broker, without holding the appropriate licence for that purpose issued by the Industry Council relating to that industry, contrary to section 17(a) of the Act.

Case Number 013920.002 ("**Case 5**")

- a) The Appellant did trade in real estate as a real estate broker, without holding the appropriate licence for that purpose issued by the Industry Council relating to that industry, contrary to section 17(a) of the Act.

- b) The Appellant did deal as a mortgage broker, without holding the appropriate licence for that purpose issued by the Industry Council relating to that industry, contrary to section 17(b) of the Act.

B. Legislation

The Hearing Panel's authority to impose a penalty following the appeal of an administrative penalty is provided at section 83.1 of the Act:

Section 83.1 - Appeal of an Administrative Penalty

83.1 (5) The Hearing Panel on an appeal may

- (a) Quash, vary or confirm the administrative penalty, and
- (b) Make an award as to costs of the investigation that resulted in the administrative penalty and of the appeal in an amount determined in accordance with the bylaws

Schedule 5 of the *Real Estate Act Rules* provides that individuals contravening section 17 of the Act can be subject to a penalty up to a maximum of \$25,000 per breach.

C. Position of the Parties

The administrative penalty imposed by the Registrar was \$25,000 for each contravention.

The Registrar's position is that the administrative penalties should be confirmed in the amount of the maximum penalty of \$25,000 for each contravention for a total of \$225,000 and the maximum costs award of \$10,000 should be awarded as against the Appellant.

The Appellant's position is that the administrative penalties should be quashed and there should be no costs awarded.

D. Hearing Panel Decision

Having reviewed and considered the written submissions of both parties, it is the Hearing Panel's unanimous decision that:

Penalty

The Hearing Panel varies the administrative penalties in relation to the following contraventions:

- | | | |
|---------------|----|---|
| Case 1 | a) | Breach of section 17(a) of the Act - Penalty imposed: \$17,500 |
| | b) | Breach of section 17(b) of the Act - Penalty imposed: \$17,500 |
| Case 2 | a) | Breach of section 17(a) of the Act - Penalty imposed: \$17,500 |
| | b) | Breach of section 17(b) of the Act - Penalty imposed: \$17,500 |
| Case 3 | a) | Breach of section 17(a) of the Act - Penalty imposed: \$17,500 |
| | b) | Breach of section 17(b) of the Act - Penalty imposed: \$17,500 |

The Hearing Panel confirms the administrative penalties in relation to the following contraventions:

- | | | |
|---------------|----|---|
| Case 4 | a) | Breach of section 17(a) of the Act - Penalty imposed: \$25,000 |
| Case 5 | a) | Breach of section 17(a) of the Act - Penalty imposed: \$25,000 |
| | b) | Breach of section 17(b) of the Act - Penalty imposed: \$25,000 |

The global penalty imposed is **\$180,000**.

Costs

The Hearing Panel awards cost in the amount of **\$7,500** as against the Appellant.

E. Reasons for Decision

Penalty

Appellant's Submissions

As indicated above, the Hearing Panel reviewed and considered the written submissions of the parties in relation to penalty and costs. In doing so, the Hearing Panel identified that most of the Appellant's submissions related to their contesting the merits decision and not penalty or costs. The Hearing Panel is not reconsidering the merits decision and has considered only the submissions that related to penalty and costs.

Fraud

The Hearing Panel identified in the merits decision that fraud was not a component of section 17(a) or section 17(b) of the *Act* and it was not relevant to a determination by the Hearing Panel of whether there has been a breach of section 17(a) or section 17(b) of the *Act* in connection with any of the cases. Consequently, there are no findings that the Appellant engaged in real estate or mortgage fraud and the allegations made by the Registrar relating to same are not considered for the purpose of determining the appropriate penalty.

Jaswal Factors

The Hearing Panel considered the facts of this case in relation to the contraventions of the *Act* and the relevant factors as outlined in *Jaswal v. Newfoundland (Medical Board)*¹ ("*Jaswal*"). These factors include:

- a. the nature and gravity of the proven allegations;
- b. the age and experience of the licensee;
- c. the previous character of the offender and, in particular, the presence or absence of prior complaints or convictions;
- d. the number of times the offence was proven to have occurred;

¹ 1996 CanLII 11630 (NL SC)

- e. the role of the licensee in acknowledging what occurred;
- f. whether the licensee had already suffered serious financial or other penalties as a result of the allegations having been made;
- g. impact of the incident on the victim, if any;
- h. mitigating circumstances;
- i. aggravating circumstances;
- j. the need to promote specific and general deterrence and thereby protect the public and ensure the safe and proper conduct of the profession;
- k. the need to maintain the public's confidence in the integrity of the profession;
- l. the degree to which the offensive conduct that was found to have occurred was clearly regarded, by consensus, as being the type of conduct that would fall outside the range of permitted conduct; and
- m. the range of sentence in other similar cases.

The Hearing Panel recognizes that we are not dealing with a licensee but finds that the factors outlined in *Jaswal* equally apply to an individual who is found to have contravened section 17(a) and section 17(b) of the *Act*.

a) The nature and gravity of the proven allegations

The Hearing Panel found that the Appellant traded in real estate as a real estate broker on five occasions and dealt as a mortgage broker on four occasions while unlicensed to do so contrary to section 17(a) and section 17(b) of the *Act*. Inherent in the mandate of RECA is the necessity of licensing to facilitate the regulation of those who work with the public while trading in real estate and dealing in mortgages.

RECA establishes the requirements for entry into the profession and the standards required to be met by those entrusted with the privilege to be a Licensee. These requirements and standards are in place to protect consumers.

The Appellant had previously been licensed as a real estate associate and acknowledged that they knew the licensing requirements. The Appellant deliberately engaged in activities they knew required a licence. Further, the Appellant was made aware of the requirement of a

licence to deal in mortgages in 2017 when he was subject to an administrative penalty for dealing as a mortgage broker without a licence contrary to section 17(b) of *the Act* for similar conduct.

The Appellant engaged in the unlicensed activities through their business, Dreamland Homes, which had a website and an office where clients attended. The Hearing Panel found that they were well known for offering real estate and mortgage services, neither of which the Appellant was licensed to offer.

The Hearing Panel found that, with the exception of Case Number 4, the Appellant engaged in these activities with newcomers. The Hearing Panel did not assess the status of the individuals as newcomers based on a finding of the number of years they had resided in Canada. Instead, the Hearing Panel did so after hearing their evidence during which each of them testified they moved to Canada from abroad, reflected varying degrees of comfort in the English language and described their lack of experience with the purchasing of real estate and obtaining a mortgage in Canada. The Hearing Panel was able to observe their language skills, level of commercial sophistication and vulnerability, which the Hearing Panel finds led to their significant reliance on the Appellant.

Notwithstanding that the Hearing Panel did not find that the Appellant engaged in fraudulent real estate and mortgage transactions, the Hearing Panel did find that false documents were used during the transactions.

The findings of the Hearing Panel outlined above are very aggravating. Consequently, the nature and gravity of these contraventions of section 17(a) and section 17(b) of the *Act* are extremely serious.

b) The age and experience of the Appellant

The Appellant is 53 years of age and had been previously licensed to trade in real estate. This is aggravating as they had experience in the industry and were aware of the requirement of licensing with RECA.

- c) The previous character of the offender and, in particular, the presence or absence of prior complaints or convictions.

As identified above, the Appellant was subject to an administrative penalty in 2017 for dealing in mortgages while unlicensed to do so.

In addition to the prior administrative penalty, RECA issued a section 10 direction requiring the Appellant to cease unlicensed activities, failure to comply with same potentially resulting in injunctive relief from the Court of King's Bench. This was served on the Appellant on June 25, 2021.

The existence or non-existence of a criminal record is not a factor considered by the Hearing Panel, however, the prior administrative penalty and issuance of the section 10 direction by RECA are very aggravating factors.

- d) The number of times the offence was proven to have occurred

The Appellant's conduct occurred on several occasions between 2018 and 2021. There are a total of nine contraventions. This is very aggravating.

- e) The role of the Appellant in acknowledging what occurred

While the Appellant is entitled to a hearing and to have the evidence tested before the Hearing Panel, by doing so they are unable to benefit from the mitigation that comes with an acknowledgment, resulting in this factor being neither aggravating nor mitigating.

- f) Whether the Appellant had already suffered serious financial or other penalties as a result of the allegations having been made

There is no evidence of any serious financial or other penalties suffered by the Appellant as a result of the allegations having been made, making this factor neutral.

- g) Impact of the incident on the victims

The Hearing Panel was not provided evidence regarding any specific consequences experienced by any of the victims as a result of the transactions in which the Appellant was involved. There was no evidence that any of the victims had suffered credit damage, the loss of the real estate properties at issue or other financial impact including foreclosure.

However, the Hearing Panel heard some evidence from the witnesses about the emotional impact of the matters at issue on them, for example, SR and SP gave evidence of ongoing distress about the implications of the transaction on their ability to refinance their mortgage at a future date.

On the evidence led, the impact on the victims is an aggravating factor but was not considered by the Hearing Panel to be as aggravating as other factors identified above.

h) Mitigating Circumstances

The Appellant has not provided any mitigating circumstances for the Hearing Panel to consider, nor has the Hearing Panel identified any circumstances that would be considered mitigating.

i) Aggravating Circumstances

The Hearing Panel has described the aggravating circumstances in paragraphs a, b, c, d, and g above.

j) The need to promote specific and general deterrence

The Hearing Panel agrees with the Registrar that the need for specific deterrence in relation to the Appellant is very high. Notwithstanding the prior administrative penalty and section 10 direction, the Appellant continued to engage in activities for which they were required to be licensed.

The Appellant was aware that their conduct was not permitted. Despite this, they established a business, Dreamland Homes, a website and an office to trade in real estate and deal in mortgages. The Appellant willfully breached section 17(a) and section 17(b) of the Act on numerous occasions over many years, necessitating a penalty that will deter the Appellant from engaging in further acts in contravention of the Act.

The penalty must also provide general deterrence to ensure that individuals who are not licensed do not engage in those activities that are regulated by RECA and require licensing. It is important to ensure that the public can be confident that those who assist them with the purchasing of a home and obtaining a mortgage are doing so with the necessary education and are bound by the standards that are in place to protect consumers.

The Hearing Panel finds that the global penalty and costs imposed are significant enough to address both specific and general deterrence.

k) The need to maintain the public's confidence in the integrity of the profession

Integral to the public's confidence is the recognition that RECA is investigating, detecting and prosecuting individuals, such as the Appellant, who are engaging in regulated activities while unlicensed. Similarly, the penalty imposed by the Hearing Panel must reflect the need to maintain the public's confidence in the integrity of the profession, particularly contraventions that are as serious as those in this case.

l) The degree to which the offensive conduct that was found to have occurred was clearly regarded, by consensus, as being the type of conduct that would fall outside the range of permitted conduct

It is clear that contraventions of section 17(a) and section 17(b) of the Act are outside of the range of permitted conduct. In this case, the Appellant had not been licensed to trade in real estate for many years and had never been licensed to deal as a mortgage broker.

m) The range of sentence in other similar cases.

The Hearing Panel has considered the cases provided by the Registrar but recognizes that the decisions all deal with administrative penalties. The determinations resulting from administrative penalties, which are uncontested penalties, are less persuasive than a decision of a Hearing Panel. There were no Hearing Panel decisions, contested or by agreement of the parties, provided for this Hearing Panel to consider.

The precedent cases, which are not binding, include the following:

*Issa*²- violation of section 17(b) on five occasions, previously a licensee and was previously sanctioned for engaging in unlicensed activities. \$25,000 fine

*Singh*³- violation of section 17(a) on one occasion, suspended at the time of the conduct. \$25,000

*Fraser*⁴- violation of section 17(c) on one occasion, suspended at the time of the conduct. \$25,000

*Kalia*⁵- violation of section 17(d) in relation to one transaction, suspended at the time of the conduct. \$25,000

*Chen*⁶- two administrative penalties for violations of section 17(c). \$25,000 each

Totality Principle

The Hearing Panel is considering multiple penalties and in doing so must ensure the combined penalty is just, proportionate and consistent with prior decisions. While the Hearing Panel finds that the Appellant's conduct is very serious, the imposition of the maximum penalty for each contravention would result in a global penalty that is disproportionate and is not in line with prior administrative penalties. As a result, the Hearing Panel has distinguished between the penalties related to those contraventions that occurred prior to the issuance of the section 10 direction, recognizing that conduct following the section 10 direction is particularly egregious and warrants the maximum penalty. For those contraventions arising prior to the section 10 direction, a fine of \$17,500 each is imposed and for those after the section 10 direction, a fine of \$25,000 each, the maximum penalty, is imposed.

² *Issa (Re)*, January 22, 2024, Case Number 013895, Administrative Penalty

³ *Singh (Re)*, February 4, 2022, Case Number 011951, Administrative Penalty

⁴ *Fraser (Re)*, May 8, 2023, Case Number 013880, Administrative Penalty

⁵ *Kalia (Re)*, September 24, 2021, Case Number 011959, Administrative Penalty

⁶ *Chen (Re)*, March 16, 2023, Case Numbers 013464, Administrative Penalty

Costs

The Alberta Court of Appeal in *Jinnah v. Alberta Dental Association and*

*College*⁷ (“*Jinnah*”) held that costs are an “inevitable” part of self-regulation for a regulatory body but set out four compelling reasons where costs ordered against the professional may be appropriate. These four compelling reasons to order costs are serious unprofessional conduct, serial offenders, a failure to cooperate with investigators or engaging in hearing misconduct.

The Hearing Panel’s position is that this decision, while compelling, is not binding. As described above, the Hearing Panel finds that the conduct of the Appellant is very serious. Further, the Appellant had been subject to a previous administrative penalty and has been found by this Hearing Panel to have contravened section 17(a) and section 17(b) of the *Act* on nine occasions, resulting in the Appellant being a serial offender. The Hearing Panel agrees that these compelling reasons justify the awarding of costs against the Appellant.

Further, *Jinnah* involved a disciplinary hearing against a licensed member of that regulatory body. This matter involves an individual, not a licensee of RECA. The Appellant does not pay fees to contribute to the regulation of the profession by RECA and, as a result, would not have contributed over time through the payment of licensing fees to the general costs of regulating the profession that are incurred by RECA and would include disciplinary hearings. This distinguishes this matter from *Jinnah* and the Hearing Panel finds that the Appellant’s unlicensed status supports the determination that awarding of costs against the Appellant is appropriate.

The Hearing Panel has the authority to award the costs of the investigation and appeal pursuant to section 83.1(5)(b) of the *Act*. A Guide to Costs is provided under section 10.3 of the Real Estate Act Bylaws (“*Bylaws*”), subject to a panel's discretion.

⁷ 2022 ABCA 336

Section 10.4 of the *Bylaws* provides factors that may be considered by the Hearing Panel in determining any cost order:

1. the degree of cooperation by the licensee;
2. the result of the matter and degree of success;
3. the importance of the issues;
4. the complexity of the issues;
5. the necessity of incurring the expenses;
6. the reasonable anticipation of the case outcome;
7. the reasonable anticipation for the need to incur the expenses;
8. the financial circumstances of the licensee and any financial impacts experienced to date by the licensee; and
9. any other matter related to an order reasonable and proper costs as determined appropriate by the panel.

In addition to the above factors, the Hearing Panel also considered the guidance provided in *Pethick (Re)*⁸. The Hearing Panel again recognizes that we are not dealing with a licensee but finds that the factors and guidance outlined above equally apply to an individual who is being penalized for contraventions of section 17(a) and section 17(b) of the *Act*.

This matter involved a number of witnesses, and the Appellant was self-represented (although they proceeded with the assistance of an agent). There was also a need for interpreters.

While there were delays and issues throughout the hearing that resulted in a lengthy hearing, both parties could have been more efficient. The Hearing Panel finds that both parties contributed to the delays and the resulting length of the hearing.

The Registrar was successful in proving all of the allegations. The Appellant did not provide any evidence of their financial circumstances, or any financial impacts experienced to date.

⁸ 2019 ABRECA 118

The Hearing Panel has considered the written submission of both parties relating to costs. The Hearing Panel finds that a costs award as against the Appellant is appropriate. For the reasons outlined above, the Hearing Panel has determined that the maximum costs award is not appropriate and awards \$7500 costs as against the Appellant.

F. Conclusion

Having found that the Appellant engaged in five contraventions of section 17(a) of the *Act* and four contraventions of section 17(b) of the *Act* and for the reasons set out in this decision, the Hearing Panel, pursuant to section 83.1(5) of the *Act*, varies the total administrative penalty and imposes the following penalty and costs:

- a) A global penalty of \$180,000; and
- b) \$7,500 costs payable by the Appellant.

Dated at the City of Calgary in the Province of Alberta, this 9th day of May 2025

Hearing Panel of the Real Estate
Council of Alberta

"Signature"

[J.G], Panel Chair