

THE REAL ESTATE COUNCIL OF ALBERTA

IN THE MATTER OF a Hearing under Part 3 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 John Wade, Real
Estate Associate, currently with Real Broker AB Ltd. o/a Real Broker and conduct
brokerage with Irealty Calgary Inc. o/a Re/Max Irealty Innovations

Hearing Panel Members: [J.A], Chair
[J.P]
[H.Y]

Appearances: T. Leonardo and A. Bone, Counsel for the Registrar
of the Real Estate Council of Alberta

Charles Fair, Counsel for John William Wade

Hearing Date: June 3,4, 10, July 8, August 12 and September 18,
2024 via video conference

DECISION ON CONDUCT DESERVING OF SANCTION

I. Introduction

- [1] This decision follows a hearing conducted by the Hearing Panel (“the Panel”) into allegations that John William Wade, an associate broker (“Licensee”) licensed with the Real Estate Council of Alberta (“RECA”) is deserving of sanction in relation to alleged breaches of the *Real Estate Act* Rules.

- [2] The parties did not object to the composition of the Hearing Panel.
- [3] The Licensee was alleged to have committed five breaches of the *Real Estate Act Rules* ("the Rules") as set out in the Notice of Hearing. The Registrar advised that they would not be proceeding with one of the allegations, leaving four allegations for the Panel to decide.
- [4] The Panel found that all four of the allegations have merit, and the Licensee breached sections 41(d), 42(d), 42(a), 42(b) and 43(1) of the Rules. Accordingly, this matter is remitted to a Phase II hearing to determine the issue of sanction.
- [5] To aid in reviewing this decision the following is an outline of how the decision is organized:
- Introduction
 - Notice of Hearing
 - Preliminary Application
 - Witnesses and Exhibits
 - Timeline of Events
 - Allegation 2: Section 41(d) of the Rules
 - Evidence and Argument Summary
 - Analysis and Findings
 - Allegation 3: Sections 41(d) and 42(d) of the Rules
 - Evidence and Argument Summary
 - Analysis and Findings
 - Allegation 4: Sections 42(a) and 42(b) of the Rules
 - Evidence and Argument Summary
 - Analysis and Findings
 - Allegation 5: Sections 43(1) of the Rules
 - Evidence and Argument Summary
 - Analysis and Findings
 - Conclusion and Order

II. Notice of Hearing

- [6] The specific allegations against the Licensee are set out in the Notice of Hearing of April 5, 2024. The text of paragraphs 2 through 5, as they appear in the Notice of Hearing, follow:

2. Between March 2020 and May 2020, you failed to fulfil your fiduciary obligations to your clients contrary to s. 41(d) of the *Real Estate Act Rules*:
 - a. You recommended an individual to [M.P & J.P] that could help them qualify for a mortgage.
 - b. You represented, in ambiguous terms, that this individual was a licenced mortgage broker.
 - c. You created an amendment to the Purchase Contract that directed that \$20,000 be directed to [M&M Inc.] ("M&M"), the unlicensed individual's company, without creating a condition that the money would be used to renovate the property.
 - d. You waived the financing condition on the Purchase Agreement without confirming that your clients had secured a mortgage.
 - e. You did not advise your clients about paying a deposit within 5 business days of acceptance of the Purchase Agreement and neglected to explain to the clients that the purchase would collapse if the deposit was not paid.
 - f. You failed to advise your clients that they would lose their deposit if the transaction collapsed.
3. On or around May 10, 2020, you discouraged a client from seeking legal counsel or expert advice, contrary to s. 42(d) of the *Real Estate Act Rules* or you failed to fulfil your fiduciary obligations to your clients contrary to s. 41(d) of the *Real Estate Act Rules*:
 - a. You told your client, [W.S], not to contact AISH when she questioned whether her benefits would be affected by purchasing the property.
 - b. You directed [W.S] to only speak with the unlicensed individual about her AISH benefits.
4. Between March 2020 and June 2020, you participated in fraudulent or unlawful activities in connection with the provision of services or in any dealings, contrary to s. 42(b) of the *Real Estate Act Rules* and/or you made representations or carried on conduct that was reckless or intentional and that misleads or deceives any person or is likely to do so, contrary to s. 42(a) of the *Real Estate Act Rules*:
 - a. You introduced your clients, [M.P & J.P], to an individual that could help them obtain a mortgage, knowing that this individual was not a licensed mortgage broker.

- b. You communicated regularly with the unlicensed individual and [M.P & J.P], and [W.S], assuring the clients that they could obtain a mortgage, despite knowing that they were not dealing with a mortgage broker.
 - c. You did not disclose to your clients that the individual was not licensed to deal in mortgages.
- 5. Between September 2019 and May 2020, when trading in residential real estate, you failed to enter into a written service agreement with a prospective client contrary to s. 43(1) of the *Real Estate Act* Rules:
 - a. In September 2019, the prospective clients, [M.P & J.P] told you about what they were seeking in a residential real estate purchase and their financial position thereby establishing a client relationship.
 - b. In March 2020, you showed properties to [M.P & J.P], further establishing a client relationship.
 - c. You did not enter into a Consumer Relationship Guide or Exclusive Buyer Representation Agreement on behalf of the brokerage with [M.P & J.P] at any time.

- [7] The Registrar advised the Panel that it would not be proceeding with the allegation contained in paragraph 1. For that reason, it is omitted above and, in this decision, the allegations will be referred to as allegations 2 through 5.

III. Preliminary application

- [8] At the outset of the hearing, counsel for the Licensee made an application to postpone the hearing as he considered disclosure between the parties to be incomplete.
- [9] Counsel for the Registrar responded to say that she had confirmed on May 30, 2024, that there was no additional documentary disclosure available. No relevant documents were withheld. She had not disclosed the draft questions prepared by the RECA investigator, but she had provided the final questions. She could not provide disclosure of bank documents that RECA did not have. Insofar as the Licensee's counsel may have wanted bank documents, it rested with him to compel production or attendance of witnesses to support his case.

- [10] In reply, the Licensee's counsel asserted that information to prove one of his theories of the case was that [W.S] may have been aware of the fraudulent activity that was occurring. The proof would be in the mortgage application and the records of [W.S]'s employment and income that were submitted to the mortgage lender prior to issuing a mortgage committal and instructions to a conveyancing lawyer.
- [11] The Panel denied the application for an adjournment, noting that there was no evidence that the Registrar had failed to provide complete disclosure. The Panel provided the following reasons for denying the application:
- a. The Registrar provided its disclosure to the Licensee's counsel in December 2023.
 - b. The additional documents sought were not in the possession of the Registrar. As such, it could not be compelled to produce documents that it did not have.
 - c. Paragraph 4 of the Notice of Hearing clearly set out the allegation of fraud that the Licensee had to meet.
 - d. Sufficient time had elapsed for the Licensee to call witnesses and marshal evidence to respond to the allegations.

IV. Witnesses and Exhibits

- [12] The following individuals appeared and gave evidence before the Panel:

[A.B]
[M.P]
[J.P]
[W.S]
J.W. Wade

- [13] The following exhibits were entered during the hearing:

1. Notice of Hearing
2. Affidavit of Service

3. Licensee's License History
4. Brokerage file – [ADDRESS]
5. CORES – [M&M Inc.]
6. DocuSign information for [ADDRESS] documents
7. Bank of Montreal documents
8. Transcript of RECA interview with Licensee
9. Text messages between [R.M] and [M.P]
10. Text messages between Licensee and [M.P]
11. Email between [R.M] and [M.P] with TMG form
12. Email between [R.M] and [M.P] with Scotiabank consent
13. Email between [R.M] and [M.P] with TMG form signed
14. Recording of meeting with [R.M]
15. [W.S] employment letter and T4

V. Timeline of events

[14] The timeline of major events, supported by evidence that is set out below, follow:

- (a) September 2019 – [J.P & M.P] meet the Licensee
- (b) March 2020 – [J.P & M.P] renew contact with the Licensee
- (c) May 6, 2020 – [W.S] signs Consumer Relationship Guide (CRG) and Exclusive Buyer Representation Agreement (EBR)
- (d) May 7, 2020 – [W.S] re-signs residential purchase contract (RPC) with amended seller's name; sellers accept a purchase price of \$329,000.00. Stated conditions that are relevant to this decision:
 - Clause 4.3: a deposit of \$1,000 by draft within 5 business days of acceptance
 - Clause 4.5: if the buyer fails to pay the deposit by the agreed date, the seller may void the contract.
 - Clause 8.2(a) Financing: subject to the buyer securing new financing not to exceed 95% of the purchase price before 9:30 pm May 21, 2020
- (e) May 26, 2020 – Amendment to purchase contract:
 - Clause 2.1 Price – deleted purchase price of \$329,000.00 and inserted \$340,000.00
 - Clause 8.2(a) Financing – deleted approval on or before 9:30pm May 21, 2020, and inserted on or before May 26, 2020 at 9:30pm.
- (f) May 26, 2020 – Amendment to purchase contract:

Clause 8.2(a) Financing: buyer to apply for and be approved for financing on or before May 27, 2020 at 9:30pm
Term: Seller agrees to a direction to pay [M&M Inc.] the sum of \$20,000.00 upon closing

(g) May 26, 2020 – Notice

Clause 8.2(a) Financing – Buyer has applied for and been approved for financing as per the agreement

(h) May 27, 2020 – Licensee contacts [M.P], directing him to pay deposit

(i) June 3, 2020 – [W.S] meets with BMO to sign mortgage documentation

(j) June 8, 2020 – [W.S] and [J.P] meet with BMO to cancel mortgage

VI. Evidence and Argument, Analysis and Findings

[15] The evidence and argument, analysis and findings, are organized to address the alleged breaches of the *Real Estate Act Rules* ("the Rules") following the order in which they appear in the Notice of Hearing.

A. Allegation 2: Section 41(d) of the Rules

Evidence and Argument Summary

[16] Section 41(d) of the Rules provides as follows:

41. Licensees must:

(d) fulfill their fiduciary obligations to their clients; ...

[17] The Notice of Hearing alleges that the Licensee breached Rule 41(1)(d) between March and May 2020.

[18] The first and second alleged breaches of section 41(1)(d) are related. They allege that the Licensee recommended an individual ([R.M]) to [J.P & M.P] ([J.P & M.P]) to help them qualify for a mortgage and that he represented in ambiguous terms that the individual was a licensed mortgage broker.

[19] [A.B], a RECA investigator, testified that RECA has no licensing history for [R.M]. [A.B] testified that there were separate investigations for [R.M] and the Licensee. On cross examination [A.B] confirmed that RECA is not alleging that the Licensee had any involvement with the preparation of the documents submitted to the Bank of Montreal ("BMO") (Exhibit 15). The allegation against

the Licensee is that he knew that [R.M] was not licensed and that the Licensee did not take due care when the purchase contract was amended to add the \$20,000 for renovations with the funds payable to M&M. Also on cross examination, [A.B] stated that the investigation was centered on the Licensee and there was no indication that either [J.P & M.P]'s or [W.S] were involved in the preparation of the documents submitted to the bank (Exhibit 15).

- [20] [M.P] testified that he found the Licensee through Facebook. He and his spouse, [J.P], then met him in with him in September 2019 at his office in downtown Calgary. They were interested in home ownership. [M.P] is wheelchair dependent and they were seeking barrier free housing.
- [21] According to [M.P], they advised the Licensee that they were engaged in an orderly payment of debts (OPD) program and they were nearing completion of the repayment obligation. However, based on conversations with family friends, they were concerned that their OPD involvement could present a problem with qualifying for a mortgage.
- [22] [J.P] testified concerning that meeting with the Licensee. She recalled discussing the potential of purchasing a condominium, the issues with the OPD, the need for barrier free accommodation, and the possibility of using a co-signer to qualify for a purchase.
- [23] [J.P & M.P] did not move forward with purchasing a property or applying for mortgage financing in 2019.
- [24] In March 2020, when they felt that their financial situation had improved, they contacted the Licensee again.
- [25] [M.P] testified that the Licensee told them about [R.M], describing him as a mortgage broker. He placed them in touch with one another.
- [26] A text message exchange took place between [R.M] and [M.P] on March 27, 2020, starting at 2:41p.m. (Exhibit 9):

2020-03-27 14:41:55 Received

Hi [M.P] may (sic) name is [R.M], John gave me your number to discuss assistance with a Mortgage

2020-03-27 14:41:06 Received

Give me a call when u have a chance

[27] It was not disputed that "John" refers to the Licensee.

[28] On March 27, 2020, [M.P] also received an email from [R.M] attaching a service agreement from The Mortgage Group ("TMG"). The text of the email follows (Exhibit 9):

Hello [M.P]

Can all 3 of you initial each page and sign the last page and scan back. And also please send copies your (sic) all your ID and your SIN Numbers.

Talk soon

[29] A transcribed text exchange initiated from [M.P] to the Licensee on March 28, 2020, follows. It indicates messages received from the Licensee and sent by [M.P] (Exhibit 10):

Name: John

Phone Number: (withheld)

Contents

...

2020-03-28 10:44:35 Received

Did you speak with [R.M]?

2020-03-28 10:46:38 Sent

Yes we did and we sent in the application and identifications yesterday

2020-03-28 10:46:27 Sent

[R.M] said by the end of the weekend we might know something.

2020-03-28 10:46:36 Received

Oh awesome. He sounded positive?

2020-03-28 10:48:05 Sent

Yes he did at (sic) had questions about the application and he said I don't see why we couldn't get you a mortgage we'll make something happen

2020-03-28 10:48:36 Sent

[R.M] said they will do there (sic) best

2020-03-28 10:49:47 Sent

We didn't have any red flags from [R.M] where as the other mortgage broker didn't even do an application with us

2020-03-28 10:50:11 Sent

All 3 of us are applying.

[30] [M.P] testified that [J.P & M.P] and [W.S] were applying for the mortgage together as they were worried that [J.P & M.P] OPD would affect their ability to qualify.

[31] The exchange of text messages with [R.M] continued on March 29, 2020 (Exhibit 9):

2020-03-29 12:31:41 Received

Hi [M.P]

*Can you email or text me your sin number as well as your wife and her moms
Also please email the full consent form signed by all 3 of u as I only received one
page of it*

Thank you

2020-03-29 19:36:01 Sent

Hey [R.M], we spoke with our credit counselor for our ODP and we will officially be out of the program by the end of next week and our student loans will go back in good standing.

2020-03-29 19:37:46 Sent

We also saw a place with John and we loved it, it even has a platform lift to get into the house

2020-03-29 19:47:20 Received

Sounds (sic) I will do everything I can to help u

[32] On March 30, 2020, [M.P] returned the TMG service agreement, completed by [J.P & M.P] and [W.S], to [R.M]. [M.P] testified that he understood the purpose was to allow the three of them to jointly apply for a mortgage. [R.M] did not provide debt counselling to them.

[33] On March 30, 2020, [R.M] again contacted [M.P] by email, attaching a blank Customer Authorization from Scotiabank and a request for [W.S] to sign it. The text of the email stated (Exhibit 12):

Hello [M.P]

I need just your mom to sign the following form and scan back

Thank you

[34] [M.P] explained his understanding that [W.S] had to sign it because she was the one who could "get the mortgage to work."

[35] On March 30, 2020, the following exchange of texts took place between [M.P] and the Licensee (Exhibit 10):

Name: John

Phone Number: (withheld)

Contents:

2020-03-30 13:37:35 Sent

Hey John [R.M] said he can't use [J.P]. or I for the mortgage and is trying to go with [W.S]'s credit and such.

I'm feeling super discouraged and getting hopeless that house would 100 percent works for us and would financially work better and be less than we're paying for rent now.

I'll keep you posted but I think it's going to be a no from B. (sic) all though he ensured we could make something work.

Not feeling good about this at all.

2020-03-30 13:59:02 Received

[R.M] spoke with me about it. Let's give him time to figure stuff out.

- [36] On March 31, 2020, [M.P] sent the following text and received this response from the Licensee (Exhibit 10):

Name: John

Phone Number: (withheld)

Contents:

2020-03-31 19:09:08 Sent

[R.M] said he's trying to get something under [W.S]'s application. Few weeks he said

2020-03-31 19:22:47

OK

- [37] On March 31, 2020, [M.P] received the following text message from [R.M] (Exhibit 9):

2020-03-31 19:05:17 Received

Hey [M.P]. I received your email with your mother-in-law laws (sic) form I am working with the bank now to try an (sic) get her a mortgage (sic) It will take a few weeks I will let u know once I get an answer

- [38] A further exchange initiated by [M.P] occurred on April 7, 2020 (Exhibit 10):

Name: John

Phone Number: (withheld)

Contents:

2020-04-07 19:53:20 Sent

Hey John how well do you know [R.M] and the work he does? He asked for [W.S]'s information all over again yesterday and asked about spunging (sic) finances and then said it could take upto (sic) a month. We thought he already applied and he said a few weeks last time I talked to him.

2020-04-07 19:56:39 Received

I will speak with him

2020-04-07 19:57:29 Sent
OK

[39] [M.P] explained that he was asking the Licensee about [R.M] because the Licensee had connected [J.P & M.P] and [R.M]. He stated that the [J.P & M.P] were feeling frantic.

[40] Following is an excerpt from a text message exchange between [M.P] and the Licensee on May 2, 2020 (Exhibit 10):

2020-05-02 14:26:19 Sent
[J.P] needs more clarification with rent to own contacts (sic). Seems like it's quite a gamble, you can lose everything including the deposit you put down if you can't get a mortgage at the 3 year mark.

2020-05-02 19:01:12 Received
Don't sign an1 (sic) year lease.

2020-05-02 19:01:48 Received
Yes, there can be risk. The people you would be dealing with are myself and possibly [R.M].

...

2020-05-02 19:07:39 Sent
[R.M] said he'll connect with you before Monday.

2020-05-02-19:09:36Sent
I asked if we got pre approved he didn't answer yet

2020-05-02 19:25:22 Received
Ok. Let's touch base on Monday.

[41] In cross-examination, [M.P] was asked whether the Licensee had referred him to other mortgage brokers, naming [L.B] and [S.A] among them. [M.P] denied receiving any referral from the Licensee to a mortgage broker other than to [R.M].

- [42] [W.S] also provided evidence. She testified that [M.P] provided the main point of contact with the Licensee. She recalled that the Licensee tried to distance himself from financial questions, saying that they were for [R.M].
- [43] [W.S] reviewed the transcribed text messages exchanged between [M.P] and the Licensee on March 28, 2020 (Exhibit 10). She confirmed that the three applicants to whom it referred were [J.P & M.P] and herself. She was unable to say who recommended this approach, but she offered to help as she had good credit. [W.S] testified that she just went along with things. She understood TMG to be the brokerage where [R.M] worked. All dealings went through [R.M] and she was sent documents to sign. The purchase was for [J.P & M.P] and not for her.
- [44] [W.S] stated that the Licensee never explicitly told her that [R.M] was not a mortgage broker although he represented that he was. She recalled him recounting the story of a woman from Dubai and how he and [R.M] eventually secured a mortgage for her. This occurred during a viewing of a property they were considering. She remembered this occurring as they were looking at a glass door that was being measured to install a ramp. She remembered the Licensee encouraging them to let [R.M] "work his magic" to secure financing. She denied that the Licensee referred her to any other mortgage broker.
- [45] When [W.S] received documents from [R.M] appearing to be from TMG, she was left strongly believing that he was a mortgage broker with TMG. [R.M] later directed her to attend the Bank of Montreal. He set up the appointment for June 3, 2020, and gave her the address.
- [46] [J.P] also testified concerning a meeting with the Licensee in March 2020. [J.P & M.P] felt that mortgage interest rates were favourable and by this time, they had gathered sufficient funds to reconsider a purchase. She recalled the Licensee telling them that he would have his "mortgage guy" reach out.
- [47] [J.P] confirmed that most of the communication with the Licensee and [R.M] was directed to [M.P]. She identified the TMG service agreement provided by [R.M]. She understood it allowed [R.M] to work on their behalf as a mortgage broker.

- [48] According to [J.P], [R.M] told [J.P & M.P] that the OPD was creating issues for securing a mortgage. They would have a better chance if the property were placed in [W.S]'s name alone. [J.P & M.P] shared this information with Licensee. [J.P] understood the Licensee was also communicating directly with [R.M].
- [49] She testified that the Licensee knew that [J.P & M.P] would be responsible for the downpayment and the mortgage, although [W.S] would be shown as the buyer.
- [50] When asked in examination in chief whether the Licensee had told her that [R.M] was a debt specialist, she responded that they did not need a debt specialist as they had been working with Money Mentors for six to seven years.
- [51] In cross-examination, [J.P] was asked whether the Licensee provided [J.P & M.P] with documentation or the names of mortgage brokers at the time of their initial meeting in September 2019. She denied receiving any documents or names. She recalled that when informed that a 20% downpayment would be required or a co-signer would be needed, [J.P & M.P] decided to wait for a better time. They returned to the Licensee in March 2020.
- [52] [J.P] maintained that the Licensee referred [J.P & M.P] to only one person as a mortgage broker, and that was [R.M]. She denied that she had ever heard of [L.B].
- [53] The Licensee testified on his own behalf. He stated that [M.P] reached out to him in response to a Facebook advertisement. His assistant then contacted them to arrange a meeting in September 2019. When they attended, his assistant was responsible for giving [J.P & M.P] blank copies of the EBR and CRG.
- [54] The Licensee maintained that during the meeting, he went over the fiduciary responsibilities on the CRG with [J.P & M.P].
- [55] The Licensee testified that [J.P & M.P] had questions about qualifying for a mortgage due to an OPD. He did not understand what an OPD was and referred them to a mortgage broker. [J.P & M.P] asked whether they could take the documents with them and he agreed.

- [56] The Licensee stated that he wrote the names of three mortgage brokers on the documents: [L.B], [S.A], and a third person whose name he could not remember.
- [57] The Licensee testified that he next heard from [J.P & M.P] in March 2020, when [M.P] telephoned him to follow up on their earlier conversation. He told the licensee that they wanted to move forward to purchase a home and they had the funds for a downpayment. The licensee assumed they must have contacted a mortgage broker for some answers.
- [58] The Licensee agreed in cross-examination that he had been licensed by RECA for almost 20 years. He stated that he was aware of how a general real estate contract is done.
- [59] The Licensee recounted details of his relationship with [R.M]. He described him as a real estate investor to whom he had given assistance with a 2010 car wash deal in Airdrie. The Licensee was "struck" with [R.M]'s level of understanding when putting together a commercial deal. Between 2010 and 2020, the Licensee had occasionally encountered [R.M].
- [60] In 2020, the Licensee and [R.M] spoke about an option that was coming up for the same carwash. During that conversation, [R.M] asked the Licensee what he was working on. The Licensee described [J.P & M.P] situation and their needs. He recalled that [R.M] told him he had worked on handicapped access for buildings. The Licensee also shared that [J.P & M.P] had financing concerns and spoke of the names he had given them for mortgage brokers. According to the Licensee, [J.P & M.P] offered to introduce [J.P & M.P] to some mortgage brokers that he knew.
- [61] The Licensee testified that he contacted [M.P] and asked whether he could introduce [J.P & M.P] to a "sophisticated investor" who might know someone who could help them out.
- [62] He also agreed that to trade in mortgages in Alberta, an individual must be licensed. He confirmed his knowledge that [R.M] was not licensed, but he recommended him to [J.P & M.P] because he is a sophisticated investor who understood accessibility construction and had different contacts with mortgage brokers and banks. He only provided [R.M]'s name to [J.P & M.P], indicating that

he did so for help finding a mortgage broker because he had different contacts than the Licensee.

- [63] The Licensee acknowledged the exchange of text messages with [M.P] on March 28, 2020, and the mortgage related inquiries that [R.M] was making. Concerning any impression held by [M.P] that [R.M] was a mortgage broker, the Licensee stated that he was looking at it as if [R.M] had introduced [M.P] to a broker or a banker.
- [64] The Licensee confirmed that he spoke with [R.M] on March 30, 2020. He understood that [R.M] was speaking with bankers and brokers and would "get on it."
- [65] The Licensee denied that he described [R.M] as a mortgage broker. He knew that he wasn't licensed as a mortgage broker and would not have "used that lingo" to describe him.
- [66] The Licensee denied any knowledge of [R.M] gathering financial information from [J.P & M.P] or [W.S]. He recalled that he later contacted [R.M] when [M.P] and [W.S] were experiencing difficulty reaching him.
- [67] The Licensee stated that he did not tell [J.P & M.P] that [R.M] was unlicensed as a mortgage broker because they did not ask. On April 7, 2020, when [M.P] asked him "...how well do you know [R.M] and the work he does?...", the phrase "work he does" could have been a reference to another mortgage broker and not [R.M] (Exhibit 10). Moreover, any time the Licensee contacted [R.M], it was just to tell him to call [M.P] or to speak with him about renovations to the [ADDRESS].
- [68] The third alleged breach of s. 41(1)(d) is that the licensee created an amendment to the RPC that directed that \$20,000 be directed to [M & M Inc.], the unlicensed individual's company, without creating a condition that the money would be used to renovate the property.
- [69] [W.S] testified concerning the attempt to purchase. She recalled visiting [ADDRESS] ("[ADDRESS]") with [J.P] and the Licensee on May 6, 2020. She remembered that they were in the property for at least an hour. [M.P] remained

outside and could not access the property with them because of his wheelchair. They used their mobile phones to share the visit with him.

- [70] [W.S] identified the RPC she signed as the purchaser of the property. The RPC was signed May 6, 2020, but as the Licensee had mistaken the name of the seller, it was re-signed on May 7, 2020 (Exhibit 4).
- [71] She stated that [J.P & M.P] set the purchase price of \$329,000.00 and they were responsible to provide the down payment. It was their home. She merely signed whatever was required.
- [72] According to [W.S], the Licensee did not explain the RPC to her point by point. She also signed the CRG and EBR on May 6, 2020 (Exhibit 4). She had no recollection of seeing them prior to that date.
- [73] [W.S] identified an amendment to RPC signed by [W.S] on May 26, 2020 at 7:42pm, providing for the following terms to be inserted into the RPC to change the price and the date for financing:

2.1 PRICE \$340,000

8.2(a) FINANCING – Buyer to apply for and be approved for financing on or before 9:30 PM on May 27, 2020.

- [74] [W.S] explained her understanding that the actual house price remained \$329,000.00. However, due to the need to renovate the house to accommodate [M.P], the Licensee and [R.M] said they could add to the price to get extra money to pay for the renovations. [R.M] would be responsible to tell the mortgage lender.
- [75] [W.S] identified a second amendment on May 26, 2020 at 7:59pm. It provided for the following amended terms to be inserted into the RPC, extending the date for financing and directing the renovation proceeds:

8.2(a) FINANCING – Buyer to apply for and be approved for financing as per the agreement on or before May 27th, 2020 at 9:30 PM

TERMS Seller agrees to have their lawyer upon final closing to have a direction to pay [M & M Inc.] a sum total of \$20,000 CDN

- [76] [W.S] testified that she advised [J.P] not to direct the funds to M&M as "he could take off with that cash."
- [77] [M.P] first stated that Licensee advised him to include the renovation cost in the price for the property and correspondingly in the mortgage so that they could use mortgage proceeds to pay for the renovations. During cross-examination, he clarified that he asked the Licensee whether this could be done. It was not the Licensee's suggestion.
- [78] [M.P] stated that he did not know the company name M&M, but he assumed the entire amount of \$20,000.00 would be held for [J.P & M.P] and available to them to pay for the renovations. This was proposed by the Licensee in telephone calls and they trusted him. He stated, "I was asking the professional what we could do and we moved forward with what John said."
- [79] When referred to the amendment of May 26, 2020, 7:59pm, and the term directing \$20,000.00 to M&M, [J.P] stated that the Licensee told them to add the term, telling them that this was how it was done. He further explained money would be placed in a holding account with M&M to pay contractors for the renovation.
- [80] On June 3, 2020, [W.S] signed mortgage loan documents with BMO.
- [81] [J.P & M.P] then spoke with [R.M] to determine when they would have access to the \$20,000 so that they could schedule the renovations. According to [J.P], [R.M] said that it would be paid directly to contractors. He explained that [J.P & M.P] would have \$10,000.00 plus an additional \$5,000.00 from a line of credit that would be opened for [W.S].
- [82] [J.P] testified that they protested that they should have \$20,000 from the mortgage according to the paperwork. [R.M] told them that they were only receiving \$10,000 as the remaining \$10,000 was his fee. When [J.P] said she thought the mortgage broker was paid by the bank, [R.M] told them he was not a mortgage broker.

- [83] [J.P] testified that this was the moment when she discovered [R.M] was not licensed as a mortgage broker. She then telephoned TMG and confirmed that [R.M] was unknown to them and the service agreement he had presented to them was not currently used.
- [84] [W.S] testified that she remembered [J.P] then contacting her by telephone. She was sobbing and said that [R.M] was taking a \$10,000.00 fee. [W.S] then contacted him and asked for an itemized breakdown of his fee. He asked to meet them that evening.
- [85] An audio recording of a meeting held at [J.P & M.P]'s residence on June 8, 2020, was entered into evidence (Exhibit 14). The meeting was attended by [J.P & M.P], [W.S], and [R.M]. [R.M] was confronted about not being a mortgage broker and expecting the additional \$10,000.00 for the service he had given. He said that he was not a mortgage broker but a middle person who specialized in difficult transactions.
- [86] [W.S] testified that she and [J.P] then went to see BMO to review the supporting documents for the mortgage. Among the documents they discovered a false T4 and a letter verifying [W.S]'s income from a company she had never worked for. The T4 included her address and social insurance number. [J.P] confirmed in evidence that she, too, saw the documents (Exhibit 15).
- [87] Under cross-examination, [W.S] denied that she knew of these documents before seeing them at BMO.
- [88] [W.S] testified that until she saw the false documents, she still supported completing the purchase. Her concern was the \$20,000.00 being provided to M&M. Once she found the documents in the mortgage file, she responded by cancelling everything and making a police report.
- [89] [M.P] testified that he received text messages from [R.M], but never spoke with him again. He called the Licensee after the meeting and told him the police and a lawyer were going to become involved. He recalled the Licensee then saying for the first time that [R.M] was not a mortgage broker but a debt consolidation specialist. [J.P] stated that [J.P & M.P] had no need of a debt consolidation specialist.

- [90] The Licensee testified that [J.P & M.P] and [W.S] really liked the [ADDRESS] that was shown to them on May 6, 2020. They spoke outside about the need to make the property barrier free for [M.P] and asked whether this could be put in the mortgage. According to the Licensee, he directed them to speak with their mortgage broker.
- [91] The Licensee stated that he had his laptop on the hood of his car to go over the CRG, EBR, and RPC with [W.S]. Due to concern for physical distancing during the time of Covid-19, they agreed that he would email the documents and explain them by telephone.
- [92] The Licensee recalled later speaking with [W.S] who told him that she was going over the documents and asking her whether she had any questions.
- [93] The Licensee continued to communicate principally through [M.P]. He knew that the home was being purchased for his needs and [W.S] had given him permission to speak with him directly.
- [94] The parties agreed that in order for the property to accommodate [M.P], it required retrofitting to make it barrier free.
- [95] The Licensee testified that he became aware of a quote for \$43,000.00 for the renovations. [R.M] offered to review the quote, stating that he was experienced and could get the work done for \$20,000.00. According to the Licensee, [M.P] gave permission for the quote to be shared.
- [96] The Licensee denied that he recommended the amendment to provide \$20,000 to M&M. He stated that [W.S] provided the instruction that that the funds were to go to M&M, he said "okay", and drafted the amendment for [W.S]'s signature. He knew that [R.M] was a principal in M&M and that he had provided a quote to retrofit the [ADDRESS] for [M.P]. He maintained that [J.P & M.P] understood that.
- [97] The Licensee stated that he had never before created a RPC with a term like this. He understood that the money would be spent to provide a door, a ramp and a bar in the bathroom. He did not add a condition to state that the money would be used for home renovations because that would have "lengthened the deal so it was not coming to a conclusion."

- [98] The Licensee stated that he drafted the amendment to show to the bank, to have them approve the direction to pay, and to protect the purchaser. In his view, if the bank did not approve, then the deal would collapse and no one would be hurt. He wanted to make sure [W.S] understood that [R.M] was doing the work and that [J.P & M.P] understood the price.
- [99] He viewed it as safer to keep the money from moving into the hands of the buyer. When asked why he directed it to an unlicensed individual's unregulated account, he responded that he complied with the "lawful order" of [W.S]. He denied that he was aware that [R.M] intended to pay himself \$10,000 and stated he was unaware of him doing work on a mortgage.
- [100] No conditions regarding the use or application of that sum are expressed in the amendment.
- [101] A Government of Alberta corporation search dated October 29, 2020, shows that M&M was an Alberta corporation struck off the registry on November 5, 2019 for failure to file annual returns. [R.M] was a 50% shareholder and a director. (Exhibit 5)
- [102] The fourth alleged breach of s. 41(1)(d) is that the licensee waived the financing condition on the Purchase Agreement without confirming that his clients had secured a mortgage.
- [103] Documents provided during the hearing show that on May 26, 2020, at 7:59 pm, [W.S] gave notice of waiving the financing condition. The notice stated, "Buyer has applied for and been approved for financing as per the agreement." (Exhibit 4)
- [104] She testified that on May 26, 2020, she knew financing was not yet in place. She believed the Licensee knew as well because he was communicating directly with [R.M]. She understood that both of them were providing assurance to [M.P] that a mortgage would be approved. She signed because [J.P & M.P] needed the house badly.
- [105] According to [M.P], the Licensee provided no information about the consequences of waiving the financing condition with no financing in place.

[106] [J.P] stated that they understood that they were waiving the finance condition on May 26, 2020, but had been told by the Licensee and [R.M] that it was all approved. The Licensee told them nothing about them being in a binding contract or losing their deposit if it was not fulfilled.

[107] On June 1, 2020, [M.P] sent a text message to the Licensee, saying, "[R.M] called he said we are approved! Just drawing up some final papers." The Licensee responded, "Perfect!" (Exhibit 10)

[108] The Licensee stated that before preparing the notice to waive financing, he asked [W.S] whether she had mortgage approval and she indicated that she could waive the condition. He did not know whether she had approval or not. He stated that there is no requirement for a client to give him documentation to confirm that financing is in place. Moreover, it made sense to him that three weeks after signing the RPC, she would have a mortgage in place. He also knew she had owned houses in the past.

[109] The Licensee agreed that when [M.P] contacted him June 1, 2020, to indicate that the mortgage was approved, he was only concerned about the approval and not that this occurred days after [W.S] had waived financing. He agreed that the mortgage commitment letter was issued by BMO on June 3, 2020, six or seven days after the waiver of the financing condition.

[110] The fifth alleged breach of s. 41(1)(d) is that the licensee did not advise his clients about paying a deposit within 5 business days of acceptance of the Purchase Agreement and neglected to explain to the clients that the purchase would collapse if the deposit was not paid. It overlaps substantially with the sixth alleged breach of s. 41(1)(d) which states that the Licensee failed to advise the clients that they would lose their deposit if the transaction collapsed.

[111] Article 4.3 of the RPC provided as follows (Exhibit 4):

4.3 The buyer will pay a deposit of \$1,000, which will form part of the Purchase Price, to the trustee by Draft, on or before within (sic) 5 business days of acceptance.

- [112] The RPC was accepted May 7, 2020. As described below, the deposit was not paid until May 27 or May 28, 2020, significantly more than 5 business days following May 7, 2020.
- [113] The documents provided during the hearing included a photograph of a bank draft for \$1,000. [M.P] identified it as the deposit for the purchase. It refers to the [ADDRESS] and it is payable to Remax Key.
- [114] A transcribed series of text messages exchanged between [M.P] and the Licensee on May 27, 2020 shows that the Licensee instructed [M.P] to obtain a bank draft in the sum of \$1,000 payable to Remax Key, to be held in trust for the [ADDRESS] (Exhibit 10). He provided the address for Remax Key, asked for a photograph. He stated that it would be better for [J.P & M.P] to deliver it. There is no mention of a consequence for failure to pay the deposit within five days of acceptance.
- [115] The date on the photograph of the bank draft is not clearly legible. However, on May 28, 2020, [M.P] confirmed by text message that the draft had been delivered, adding that [J.P & M.P] were shown as the payors and not [W.S]. In evidence, he indicated that he understood this was a mistake as it would have been important to show [W.S] as the payor given that she was shown as the buyer of the [ADDRESS].
- [116] [M.P] testified that the Licensee told him [J.P & M.P] would lose the deposit of \$1,000 if things did not happen in a timely way. He acknowledged that the purchase collapsed. When asked what happened to the deposit, [M.P] stated only that it was gone.
- [117] When questioned, [W.S] stated that she could not honestly say what the Licensee told her about losing the deposit if the purchase fell through.
- [118] [J.P] recalled the Licensee contacting them at the end of May to ask whether they had paid the deposit. They did not know it was due [J.P] left work to get it and drop it off.
- [119] [J.P] identified the deposit, drawn on the Canadian Imperial Bank of Commerce and showing [J.P & M.P] as the payors. She stated that the Licensee told them nothing about the possibility of losing their deposit.

[120] The Licensee testified that the seller's agent contacted him to say that the deposit was late and that was when he realized it had not been paid and provided instructions to [M.P].

Analysis and Findings

[121] The CRG describes an agent's responsibilities to his client in a section entitled "An agent's responsibilities to you." It is set out below:

A sole agent acts for either the buyer or the seller in a trade or possible trade, and has a duty to protect that client's interests. In this relationship, the real estate professional has the highest level of legal responsibility to you. These responsibilities include:

1. **Undivided loyalty** The agent must act only in your best interests and put them above their own and those of other people. The agent must avoid conflicts of interest and must protect your negotiating position at all times.
2. **Confidentiality** The agent must keep information confidential, even after your relationship ends. Confidential information includes your personal information, information about the property, and information about the transaction (except information the law says must be disclosed or information you agree to disclose).
3. **Full disclosure** The agent must tell you, in writing, about the services they will provide. They must also tell you everything they know that might affect your relationship or influence your decision in a transaction, even if they don't think it's important. This includes any conflict of interest, for example when they act (or are planning to act) on behalf of any other person in a transaction. The only information they can't give you is confidential information from another agency relationship.
4. **Obedience** The agent must obey all your lawful, reasonable, and ordinary instructions. If you insist on something unlawful, the agent must refuse and consider ending your relationship and the agreement.

5. **Reasonable care and skill** The agent must exercise reasonable care and skill in all their duties. They must meet the standard of a reasonable and competent member of the real estate industry.
6. **Full accounting** The agent must account for all money and property they receive while acting on your behalf. Everything a client puts in the care of an agent—for example, money, keys, or documents—is returned when the agreement ends.

[122] The EBR sets out the following responsibilities. Of note, the Licensee is named as the “designated agent” in article 2.1 of the EBR:

4. THE DESIGNATED AGENT’S RESPONSIBILITIES

4.1 The designated agent must meet their agency responsibilities to you in a timely manner.

4.2 In addition to the responsibilities described in the Guide, the designated agent must also:

(a) look for properties that match your search criteria, until you buy a property under this agreement, or this agreement ends.

(b) keep you informed during the search and any resulting transaction.

(c) tell the seller of a property you are interested in that they are your agent.

(d) take reasonable steps to find and give you information about properties and transactions you are interested in.

(e) help you prepare an offer and negotiate favourable terms and conditions with a seller.

(f) help you to comply with a contract to buy the property.

(g) present all offers and counter-offers to and from you, even when the property is already the subject of an accepted offer.

[123] The Panel accepts that the CRG and the EBR set out fiduciary responsibilities owed by a licensee to a client.

[124] The Licensee's licensing history with RECA shows that he has been a licensed associate since December 16, 2005, to present and he has worked at four brokerages. His educational history includes 17 real estate courses taken from 2005 through 2019.

[125] The Licensee acknowledged in evidence that he knew that [R.M] was not a licensed mortgage broker.

[126] In spite of the Licensee's knowledge of [R.M]'s status, the Panel is satisfied by the evidence that he recommended [R.M] to [J.P & M.P] and [W.S] as an individual who could help them qualify for a mortgage. The Panel accepts the evidence of [M.P] who stated in his testimony that the Licensee told him [R.M] was a mortgage broker. The Licensee had a clear opportunity to correct [M.P]'s understanding when he received a text from him on March 28, 2020, comparing [R.M]'s service to "other mortgage brokers" with whom [J.P & M.P] had dealt. He neglected his responsibility to exercise the reasonable care and skill of an industry licensee by failing to intervene immediately.

[127] The Panel finds that whether impliedly or expressly, the Licensee induced [J.P & M.P] and [W.S] to believe that they were dealing with a licensed mortgage broker. Referring them to an unlicensed individual was contrary to industry standards. It deprived them of the consumer protection that flows from licensing mortgage brokers. The Licensee's actions were undertaken in breach of the fiduciary obligations of care and constituted a breach of the fiduciary obligations the Licensee owed to them.

[128] The Licensee's assertion that he referred [J.P & M.P] and [W.S] to other licensed mortgage brokers was hollow. Beyond his statement, he produced no evidence to show that it was his usual practice to refer clients, or potential clients, to any of the named licensed mortgage brokers or anyone at all. The testimony of [J.P & M.P] and [W.S] was consistent. None of the three of them recalls the Licensee providing them with any name other than [R.M]'s.

[129] The Licensee defended his action of referring [J.P & M.P] to [R.M] by stating alternately that he was a debt specialist or a sophisticated investor. The Panel

was provided with no evidence to suggest that [R.M] was a debt specialist or a sophisticated investor or that [J.P & M.P] were in need of either one. On the contrary, the evidence demonstrated that [J.P & M.P] were at the point of completing the process of managing debt through OPD. In their circumstances, a debt specialist was unnecessary. Rather, they required a referral to a licensed mortgage broker to assist them with the transition from renting to home ownership.

[130] The Panel concludes that the Licensee's evidence in regard to the referral to other mortgage brokers or the recommendation of [R.M] as a debt specialist lacks credibility. It is "entirely inconsistent with the preponderance of the probabilities that rationally emerge out of all the evidence in the case." ¹ The Panel does not accept the Licensee's evidence in this regard.

[131] Without the Licensee's referral, [R.M] would not have come to the attention of [J.P & M.P] and [W.S]. Only through their own diligence did they later discover that they had been misled. The consequence for them was the loss of the purchase because of a mortgage based on false information apparently created and supplied by [R.M]. Although counsel for the Licensee endeavoured to suggest that [J.P & M.P] and [W.S] were implicated in the creation of the information, his argument was unconvincing and irrelevant to the question whether the Licensee referred them to an unlicensed mortgage broker. [W.S] denied any involvement in the creation of the false T4 slip or employment letter and the Panel accepts her testimony on this point.

[132] The Licensee's course of dealings, including representing to [M.P] that he was in direct contact with [R.M] and failing to correct [M.P]'s patent references to seeking a mortgage through [R.M], consistently reinforced the false impression that [R.M] was a licensed mortgage broker. The Licensee had many opportunities to correct that understanding and seized none of them.

[133] Through his referral to [R.M], the Licensee participated in inducing them to give personal financial information to an individual who presented them with service and client agreements for TMG and Scotiabank when he had no right or authority to do so. They were placed in a vulnerable position.

¹ *Faryna v Chorney*, 1951 CanLII 252 at p. 359

[134] Therefore, the Panel finds that the Licensee recommended [R.M] to [J.P & M.P] and represented in ambiguous terms that he was a licensed mortgage broker. Considered as a whole, the evidence of referring [J.P & M.P] and [W.S] to [R.M] demonstrates an absence of the competency, skill, and care expected of a licensee.

[135] Concerning the May 26, 2020, amendment to the RPC as prepared by the Licensee, it simply and unconditionally stated "Seller to have their lawyer upon final closing to have a direction to pay [M&M Inc.] a sum total of \$20,000 CDN." The Licensee testified that he knew M&M was one of [R.M]'s companies. Before the Panel, he did not address the fact that the company had been struck from the Registry.

[136] While the Licensee testified that he wrote this term into the amended RPC to inform the lender and protect [J.P & M.P] and [W.S], his assertion defies logic. By failing to provide any protection, for example, that the funds were held in trust by a responsible third party for payment of the required work, the amendment accomplished nothing more than paying \$20,000 of the mortgage proceeds to M&M.

[137] In argument, the Licensee's counsel submitted that the question was whether there was an instruction to pay \$20,000 to a third party and on what basis the seller would require this condition. He suggested that it was not necessarily tied to this real estate transaction. There was no need for the Licensee to impose conditions on the use of the money as his client did not request one. His role was to facilitate his client's decision and not to override it unless there was obvious risk.

[138] The Panel finds no merit in this argument.

[139] Creating a barrier free home to accommodate [M.P]'s needs was critical to the real estate purchase. The evidence demonstrates that the Licensee knew that the mortgage would provide the funds for the necessary renovations.

[140] A licensee is not merely a scribe and is expected to deploy his knowledge and experience to protect a client's interests. With no attached conditions or requirement for M&M to account for the sum, there was no obligation for the funds to be applied to renovating the property, as [J.P & M.P] expected. Indeed,

as they learned when they confronted [R.M], he intended to keep \$10,000 as a fee for assisting them to find a mortgage loan.

[141] It is no defense for the Licensee to now say that he relied on a lawful instruction given to him by [W.S]. Assuming that the Licensee is correct in attributing the instruction to her, there is no evidence to suggest that this was a reasonable or ordinary instruction. At a minimum, he might have inquired into the instruction before complying with it. In any event, he was duty bound to ensure that she had adequate protection. The failure to take measures to provide a condition for the use and application of the \$20,000 sum assigned to M&M did not reflect the care and skill expected of a licensee.

[142] The Panel observes, as well, that if the seller were to release this sum to M&M, then the price paid for the [ADDRESS] would not be \$329,000 as reflected in the original RPC. Rather, it would be \$320,000 after payment to M&M. This difference has not been explained by the evidence.

[143] The Panel finds that the Licensee failed in the fiduciary obligations he owed to [J.P & M.P] and [W.S], specifically reasonable care and skill.

[144] As to the waiver of the financing condition on May 26, 2020, it is clear from [W.S]'s evidence that she was prepared to waive the condition knowing that financing was not in place.

[145] The Licensee has endeavoured to distance himself from the waiver, stating that he was not obliged to confirm whether financing was in place. In argument, his counsel stated that it was [W.S]'s decision and not the Licensee's. Requiring him to seek confirmation from the lender was beyond the standard of conduct that is normally expected. However, to suggest that he had any reason to verify [W.S]'s instructions was inappropriate and arguably placed him in the position of dealing with the mortgage.

[146] The Panel finds the Licensee's approach neglectful. It displayed neither loyalty to the client nor the exercise of reasonable skill that one might expect from an industry professional.

[147] The Licensee knew from his course of dealings with [J.P & M.P] and [W.S] that financing for this transaction was not straightforward. He would have been

acutely aware of the risk if financing was waived when it had not been secured. He prepared the waiver without even a modicum of effort to confirm that financing had been secured. Indeed, the evidence of [J.P] suggests that he knew the mortgage was not then in place. In these circumstances, the Panel finds that he breached his fiduciary obligations, specifically the duty to exercise reasonable care and skill expected of a reasonable and competent member of the real estate industry. This could have been accomplished by clarifying the risk with his clients

[148] Concerning the deposit, there is no evidence that the Licensee applied any effort either to advising [J.P & M.P] or [W.S] of the RPC requirement to pay the \$1000 deposit within five business days of the May 7, 2020 acceptance, or to explaining the risk that the purchase would collapse if the deposit was not paid. Indeed, he did not address the deposit. Indeed, he delayed until May 27, 2020, before directing [M.P] on the method of paying the deposit. Beyond that, he provided no assistance.

[149] In argument, the Licensee's counsel suggested that [W.S] read the RPC and had the opportunity to ask questions. She knew the importance of the RPC and she had previous experience with real estate transactions as she had owned homes. It was not the Licensee's duty to go through each line of the RPC or overexplain obvious terms. He had no reason to believe that the buyer was unable to pay the down payment. When the issue arose on May 27, 2020, it was addressed. He also argued that [W.S] went to [R.M], BMO, the police and RECA, but she did not consult the Licensee to ask what would happen to the downpayment if the purchase was cancelled. The Licensee bore no responsibility for the outcome.

[150] The Panel finds that the Licensee he breached the duty of reasonable care and skill set out in the CRG and the specific duty to help the buyer comply with the RPC as set out in clause 4.2(f) of the EBR. He placed the purchase at risk when he failed to advise his clients about the timely payment of the deposit.

[151] To be clear, if the Licensee's argument was intended to suggest that he owed a lower duty to [W.S] because she had previously owned a home, then it is without foundation. The Panel has been provided with no support for this position in the legislative or regulatory regime that governs the real estate industry.

[152] As for the allegation that the Licensee failed to advise his clients that they would lose the deposit if the transaction collapsed, the evidence does not satisfy the probative burden of the balance of probabilities. [M.P] testified that the Licensee told him of this risk. [W.S], who was the named buyer, was uncertain it was ever discussed. The Panel finds the evidence equivocal and, on this basis, makes no finding of a breach in this limited matter.

[153] To summarize, in respect of the allegations of s. 41(d) of the Rules and the breach of the fiduciary obligations owed by the Licensee to his clients set out in paragraphs 2(a) to (e) of the Notice of Hearing the Panel finds on the balance of probabilities that the allegations are founded. The allegation set out in paragraph 2(f) is unfounded.

***B. Allegation 3: Section 41(d) and 42(d) of the Rules
Evidence and Argument Summary***

[154] Section 41(d) of the Rules provides as follows:

41 Licensees must:

(d) fulfill their fiduciary obligations to their clients; ...

[155] Section 42(d) of the Rules provides as follows:

42 Licensees must not:

(d) discourage a client, customer or a party to a trade in real estate, deal in mortgages, or property management service from seeking legal counsel or expert advice; ...

[156] It is alleged that the licensee breached s. 42(d) or s. 41(d) of the Rules by telling [W.S] not to contact Alberta Income for the Severely Handicapped (AISH) when she questioned whether her AISH benefits would be affected by purchasing the [ADDRESS]. Further, it is alleged that he directed her only to speak with an unlicensed individual, about her AISH benefits.

[157] [W.S] testified that she was in receipt of AISH benefits from late 2016 through January 2023. During that time, she was also working part time at a retirement residence. She stated that [R.M] knew the sources of her income. She testified

that she did not want a house in her name as she was afraid it would affect her benefit eligibility. This would have been devastating for her.

[158] [W.S] stated that the Licensee knew she was on AISH because she spoke with him about it when they viewed houses with him.

[159] When she expressed concern about the purchase and its impact on her benefits, [M.P] sent text messages to the Licensee and received his responses (Exhibit 10):

Name: John

Phone Number: (withheld)

Contents:

2020-05-10 14:02:47 Sent

Hey John how's your weekend? How's everything going?

2020-05-10 14:23:53 Sent

[W.S] brought up a possible issue that may take away her AISH benefits or take away percentage of her AISH benefits because of mortgaging the house when she renews her AISH contract.

2020-05-10 14:28:08 Sent

When Aish is renewed they ask if you own a house or not. Have you and [R.M] ever worked with this before?

2020-05-10 Sent 14:34:20

[W.S] will talk to her AISH worker and see if there's a way and explain that we're paying the down and making the payments and just using [W.S]'s credit.

2020-05-10 14:35:27 Received

Please speak with [R.M] directly on any and all financing issues PRIOR to speaking with anyone else.

2020-05-10 14:36:29 Sent

Including [W.S] speaking to her AISH worker?

2020-05-10 14:37:22 Received

My statement is specific and explicit. Please follow it. Thanks.

2020-05-10 14:39:32 Sent

Okay

[160] [W.S] testified that she also spoke with [R.M] about her concerns many times. He told her not to worry about her AISH as he had done this many times before and it was okay. He told her not to contact the funding agency.

[161] The Licensee denied that he knew [W.S] was receiving AISH, although he was aware she was working part time. He first learned of AISH when [M.P] contacted him on May 10, 2020, in the above exchange in text messages.

[162] The Licensee added that AISH is not necessarily a mortgage issue. The first time he heard that [W.S] was on AISH was in the text exchange above.

[163] The Licensee testified that he knew nothing about the AISH program. By directing [M.P] to have [W.S] speak with [R.M], he did not mean that he didn't want her to speak with someone else later. Rather, he wanted [J.P & M.P] and [W.S] to have a preliminary conversation with [R.M]. He agreed that [R.M] was not an AISH specialist.

Analysis and Findings

[164] The Panel accepts the evidence that the Licensee knew that [W.S] was in receipt of AISH benefits. This was underscored for him when [M.P] contacted him by text message on May 10, 2020, seeking advice about whether the purchase of the [ADDRESS] in [W.S]'s name placed her AISH benefits at risk.

[165] When [M.P] told the Licensee that [W.S] would speak with her AISH worker, the Licensee's reply was firm and directive: "Please speak with [R.M] directly on any and all financing issues PRIOR to speaking with anyone else...My statement is specific and explicit. Please follow it. Thanks." (Exhibit 10)

[166] Counsel for the Licensee argued that while sending [W.S] to [R.M] may not have been the best advice, the Licensee did not actively discourage her from consulting an expert.

[167] The Panel is not persuaded by the Licensee's arguments. It finds that by his statements to [M.P], the Licensee directed [W.S] not to speak with an AISH

worker who could have applied expertise in the AISH program to addressing her concern. He instructed her to speak with the unlicensed mortgage broker, [R.M].

[168] In so doing, the Panel finds that he actively “discouraged a client...to a trade in real estate...from seeking legal counsel or expert advice” contrary to s. 42(d) of the Rules.

[169] The allegation of a breach of s. 42(d) of the Rules is founded.

[170] The Notice of Hearing provided in the alternative that the Licensee’s actions constituted a breach of s. 41(d) and the Licensee’s fiduciary responsibilities. The Panel accepts equally that the alternate argument is founded. The Licensee failed to act with reasonable care, skill, and competence as well as undivided loyalty to promote [W.S]’s best interests when he directed her to a third party, away from the AISH provider who could have provided her with the information she needed to make informed decisions.

C. Allegation 4: Section 42(a) and 42(b) of the Rules

Evidence and Argument Summary

[171] Sections 42(a) and 42(b) of the Rules follow:

42 Licensees must not:

(a) make representations or carry on conduct that is reckless or intentional and that misleads or deceives any person or is likely to do so;

(b) participate in fraudulent or unlawful activities in connection with the provision of services or in any dealings; ...

[172] The specific details of the allegation are set out above in the Notice of Hearing. The question that arises with respect to this alleged breach is whether the Licensee participated in fraudulent or unlawful activities in relation to his introducing his clients to [R.M] as a person who could help them obtain a mortgage, communicating with [R.M], and failing to disclose to his clients that he was not licensed to deal in mortgages.

[173] The evidence with respect to the Licensee's conduct is set out in part "A" above that addresses allegation 2. The question of fraudulent activity was addressed by counsel in argument.

[174] The Registrar's position is that [R.M] as an unlicensed person, fraudulently solicited and gave the appearance of negotiating a mortgage using TMG and Scotiabank documents. The Registrar supports this position by reference to text messages and conversations with [J.P & M.P] and [W.S], arguing that as a whole, this conduct is contrary to s. 17(b) of the Act which expressly requires a mortgage broker to be licensed. The Licensee participated in the fraudulent or unlicensed activities by his representations to his clients and his course of conduct.

[175] The Registrar referred the Panel to provisions of s. 380 of the *Criminal Code*, R.S.C. 1985, c. C-46.

[176] Section 380 refers to "deceit, falsehood, or other fraudulent means" to defraud a person of property or money.

[177] The Registrar argued that dishonesty and deprivation were the hallmarks of fraud.² Evidence of dishonesty could be shown by "withholding material information."³ Deprivation could be shown by "detriment, prejudice, or risk of prejudice to the economic interests of the victim."⁴ Proof of loss was not required.

[178] In response, counsel for the Licensee argued that the Notice of Hearing implied that the Licensee had actual knowledge of the fraudulent documents submitted to BMO. However, there was no evidence that the Licensee knew of the fraudulent documents submitted to BMO. Moreover, he considered it speculative at best to say that [R.M] was engaged in any activities with regard to the mortgage.

² *R. v. Olan et al.*, 1978 CanLII 9 (SCC), [1978] 2 SCR 1175

³ *Law Society of Upper Canada v. Martin Ronald Zaretsky*, 2013 ONLSHP 54 (CanLII)

⁴ Above, note 1, at p.1182

Analysis and Findings

[179] As set out in the Analysis under the heading “A. Allegation 2: Section 41(d) of the Rules”, the evidence satisfies the Panel on the balance of probabilities that the Licensee knowingly introduced [J.P & M.P] to an unlicensed mortgage broker, communicated regularly with that person, and did not disclose that he was not licensed to deal in mortgages until the transaction was on the point of collapse.

[180] The Panel finds that the Licensee participated in fraudulent activities in connection with the provision of services or in his dealings with [J.P & M.P] and [W.S] contrary to s. 42(b) of the Rules. This Panel applies the civil standard of the balance of probabilities and not the criminal standard of proof beyond a reasonable doubt. It makes no finding with respect to criminal liability.

[181] The Panel accepts the test of dishonesty and risk of deprivation to establish fraudulent activity. Accordingly, it is necessary to show that by the Licensee’s knowing act of referring [J.P & M.P] and [W.S] to an unlicensed mortgage broker, he withheld material information, and that he placed them at risk of deprivation.

[182] Firstly, there is no argument that the Licensee knew that [R.M] was not a licensed mortgage broker. The evidence before the Panel is that the Licensee introduced [R.M] to [J.P & M.P] and [W.S] as a person who could help them obtain a mortgage, knowing that he was not licensed.

[183] The Panel accepts that the exchange of text messages between [M.P] and the Licensee, particularly on March 28, 2020, when the Licensee inquired whether they had contacted [R.M], leave no reason to doubt that [J.P & M.P] and [W.S] were relying on [R.M] to provide the services of a mortgage broker (Exhibit 10). The Licensee has provided no reasonable explanation of his failure to correct their impression when [M.P] wrote to him regarding [R.M] and the progress of pre-approval for the mortgage.

[184] Further, on March 30, 2020, when [M.P] expressed feelings of discouragement in the likelihood of obtaining a mortgage, the Licensee urged him to give [R.M] time to “figure things out.” He indicated in text messages of March 30 and 31, 2020, that he and [R.M] were speaking directly to one another.

[185] The Panel concludes that if there were a scintilla of doubt remaining, by March 31, 2020, the Licensee clearly knew that [R.M] was dealing in a mortgage for [J.P & M.P] and [W.S]. He actively supported his clients in their mistaken belief that [R.M] was helping them to secure a mortgage. He knew that this was the work of a mortgage broker who lawfully had to be licensed to deal in mortgages.

[186] The Panel concludes that it was dishonest for the Licensee to withhold the fact that [R.M] was not a licensed mortgage broker. The Licensee endeavoured to excuse his dishonesty by stating that [J.P & M.P] and [W.S] had never asked him whether [R.M] was licensed. This assertion does offence to the fiduciary obligations owed to clients. It demonstrates an absence of loyalty, reasonable care or skill.

[187] Secondly, the Licensee's dishonesty continued to the point when the transaction collapsed. He then disclosed that [R.M] was not licensed. By fostering the false impression until that time, he placed [J.P & M.P] and [W.S] at risk of deprivation. They were exposed to risk and ultimately the actual loss of their deposit when the transaction collapsed.

[188] Accordingly, the Panel finds that the test for fraud is met and the Licensee breached s. 42(b) of the Rules.

[189] In the alternative, the Panel finds that the Licensee's conduct falls squarely within s. 42(a) of the Rules. The evidence demonstrates that the Licensee made representations and carried on a course of conduct that was reckless or intentional and misled or deceived [J.P & M.P] and [W.S]. Having placed them in contact with [R.M], he allowed them to establish a relationship and reliance on an unlicensed person, to their peril.

[190] The Panel finds that the Licensee breached s. 42(a) of the Rules.

[191] Lastly, counsel for the Licensee referred the Panel to the question of who created fraudulent documents that were sent to BMO. This question is not before the Panel and is not germane to this finding. It is unnecessary to decide that question to find that the Licensee acted contrary to s. 42(a) of the Rules and s. 42(b) of the Rules.

D. Allegation 5: Section 43(1) of the Rules

Evidence and Argument Summary

[192] Section 43(1) of the Rules follows:

43 (1) Subject to these rules, a licensee who establishes a client relationship when trading in residential real estate, engaging in property management, or when dealing in mortgages must enter into a written service agreement with that prospective client.

[193] It is alleged that the Licensee breached s. 43(1) as [J.P & M.P] became his prospective clients in September 2019, when they told him what they were seeking in a residential real estate purchase and described their financial position.

[194] [M.P] stated that at no time did the Licensee go over documents about consumer relations or any agreement. He confirmed that in 2019, he and [J.P] met with the Licensee for 45 minutes to an hour, talking about their finances and the possibility of buying a barrier free apartment and the risks. He recalled no paperwork.

[195] [M.P] stated that he recalled at least two properties shown to [J.P & M.P] by the Licensee. He considered they were clients of the Licensee who was searching for a home for them and showing them properties. He stated that he completed no paperwork to indicate that he was a client.

[196] To support this view that the Licensee was working with them, [M.P] pointed to a text exchange he initiated with the Licensee on March 28, 2020, a portion of which follows (Exhibit 10):

Name: John

Phone Number: (withheld)

Contents:

2020-03-28 10:41:58 Sent

Good morning John it's [M.P] we were wondering if you had time to show us the [ADDRESS 2] this weekend anytime after 5pm? It would be [J.P] and [W.S] viewing the house with you as I can't enter the house.

2020-03-28 10:44:24 Received

Sure.

...

2020-03-28 10:52:17 Sent

When are you able to do the viewing? Are you free tonight?

2020-03-28 10:52:36 Received

So how does today work?

2020-03-28 10:53:53 Sent

We're free this evening [W.S] works until 4pm

2020-03-28 10:54:35 Received

Which house would you like to see? How does 5pm work then?

2020-03-28 10:55:26 Sent

The [ADDRESS 2] and 5 works yes

2020-03-28 10:56:05 Received

Can you please text me the MLS number?

2020-03-28 10:57:34 Sent

[ADDRESS 2 MLS]

[197] [M.P] testified that the Licensee knew that if a property was purchased, [J.P & M.P] intended to occupy it with [M.P]'s father. In support of his position, text messages show an exchange between the Licensee and [M.P] on April 18, 2020, concerning a property identified as the [ADDRESS 3], [M.P] wrote of having his father live downstairs and renovating the main floor to make it barrier free and safer "for [J.P] and I." (Exhibit 10)

[198] [J.P], who also attended the 2019 meeting with the Licensee, testified that she did not remember him giving them any documents or any referrals to mortgage brokers. It was just a conversation about what they were thinking about. She stated that the Licensee spoke with [J.P & M.P] about the need either

for a 20% downpayment or a co-signer as they would not qualify for mortgage insurance. [J.P] testified that she signed no paperwork with the Licensee.

[199] [J.P] stated that they looked at a property with another agent in early 2020 and, on that agent's recommendation, applied without success for a mortgage. They then decided to reconnect with the Licensee on the basis that the other agent was new to the industry.

[200] [J.P] testified that the Licensee showed her two or three properties and provided "normal realtor advice." [J.P & M.P] considered him their agent. He knew that [J.P & M.P] and [M.P]'s father, who had resided with them for years, would also live in the property. [W.S] was not going to live in the property.

[201] [J.P] stated that when the [ADDRESS] was found, she and [M.P] determined the purchase price and conditions shown in the RPC because they were the Licensee's clients.

[202] [W.S] recalled attending two showings with [J.P] and the Licensee. The Licensee returned to do measurements with them for renovations.

[203] [W.S] testified that they were looking for a home for [J.P & M.P] and not for her. She explained that she did not want to own a home. She understood that the Licensee was representing [J.P & M.P] and her as clients in the purchase of the property. She served as the purchaser only in order to obtain a mortgage for [J.P & M.P]. She told the Licensee, [R.M] and [J.P & M.P] that it upset her to do so, but [R.M] had advised that this would have to be the case. She agreed because in her view [J.P & M.P] wanted and needed the house and it was the only way she could help them. She had good credit and they had a big debt load. The plan was to use her credit and their income. The Licensee was aware of this and it was stated and restated to him many times. She considered him to be their agent.

[204] The Licensee testified concerning his relationship with [J.P & M.P]. He recalled that [M.P] reached out to him in response to a Facebook advertisement in September 2019. He stated that when people walk through the door, he does initial questioning, just talking about their interest in buying a house, and pre-approval. He referred to "filtration questions."

[205]The Licensee stated that his assistant contacted [J.P & M.P] to arrange a meeting. When they attended, the assistant was responsible for giving [J.P & M.P] blank copies of the EBR and CRG. He testified that he went through a licensee's fiduciary obligations as set out in the CRG. [J.P & M.P] asked whether they could take the documents with them and he agreed.

[206]The Licensee stated that [J.P & M.P] probably told him that they were both working and they told him about the OPD. They told him they did not want to rent any more.

[207]He agreed that in 2019, he did not enter a service agreement with [J.P & M.P].

[208]In 2020, when they again contacted him, he showed them two properties, but did not enter a service agreement with them. During this time, he was aware of their price range and [M.P]'s specific needs for barrier free accessibility.

[209]The Licensee maintained his position that he did not enter an agency relationship until May 6, 2020, when [W.S] signed the EBR and CRG. [W.S] was his client.

[210]Under questioning, the Licensee confirmed that he knew [J.P & M.P] would live at the [ADDRESS] and that the house was for them. However, he understood that [W.S] would be living there, too. He stated that he did not know who would pay the mortgage, and ultimately it would be the responsibility of the person who appeared on the mortgage.

[211] [J.P & M.P] later asked the Licensee to show them a property described as "[ADDRESS 2]" At that time, the Licensee met [W.S] who told him that she would probably be involved in a real estate purchase.

[212] When asked why he did not sign a CRG or RPC with [J.P & M.P], the Licensee said they were not clients. He understood that they would be living in the property and paying part of the mortgage. He also understood that [W.S] would probably live there, but this was not of importance.

Analysis and Findings

[213] Section 43(1) is prescriptive: a licensee “must enter into a written service agreement with that prospective client.” The basic obligations of a licensee in a sole agency agreement or as a designated agent, as the Licensee was, are set out in s. 58 and s. 58.1 of the Rules, which follow:

58 The basic obligations of a licensee who is in a sole agency relationship with a buyer are to:

- (a) use best efforts in locating a property in the specified market area that meets the material requirements identified by the buyer and generally to promote the interests of the buyer;*
- (b) at the earliest reasonable opportunity, advise any seller in whose property the buyer is interested that the licensee is the buyer’s agent;*
- (c) subject to section 59, act as only the buyer’s agent;*
- (d) obey all lawful instructions of the buyer;*
- (e) fulfill its fiduciary duties of loyalty, confidentiality and of full disclosure of all conflicts of interest that may arise between the buyer’s interests and those of the licensee, sellers or competing buyers;*
- (f) not appoint another brokerage to act on behalf of the buyer as sub-agent without the buyer’s prior written consent;*
- (g) exercise reasonable care and skill in the performance of the agreement;*
- (h) seek out and advise the buyer in a timely manner of available properties in the market area which may meet the buyer’s requirements, including those listed with other brokerages and other available properties known to the licensee;*
- (i) take reasonable steps to discover relevant facts pertaining to any property for which the buyer is considering making an offer;*
- (j) disclose, in a timely manner, to the buyer all relevant facts known to the licensee affecting a property or transaction;*
- (k) advise the buyer to obtain expert advice on matters of importance to the buyer;*
- (l) provide, in a timely manner, all offers and counter-offers to and from the buyer even when the property is already the subject of an agreement of purchase and sale;*

(m) keep the buyer fully informed regarding the progress of the transaction;
(n) disclose to the buyer the existence and terms of any competing offers known to the licensee for a property in which the buyer is interested;
(o) assist the buyer in negotiating favourable terms and conditions with a seller and in preparing and complying with a legally binding agreement of purchase and sale of the property; and
(p) comply with the provisions of the Act, Regulations, Rules and Bylaws.

58.1 *(1) The basic obligations of a licensee who is acting as a designated agent for a seller or a buyer are the same as for a licensee who is in a sole agency relationship with a seller or buyer, as the case may be, and include those obligations that are set out in sections 57 and 58 of the Rules respectively.*

[214] It is not disputed that the Licensee met with [J.P & M.P] in September 2019. He learned of their financial situation and their housing needs. They returned to meet with him in March 2020. There is no question that the Licensee failed to enter a written service agreement with [J.P & M.P] in 2019 or in 2020. They signed neither a CRG nor an EBR. Those documents would have outlined the responsibilities of all of the parties in this relationship.

[215] The Licensee looked for properties and showed properties to [J.P & M.P] in March 2020. Evidence showed that [M.P] was accommodated by viewing the property virtually during the showing. It is not disputed that the Licensee showed properties to [J.P & M.P] and [W.S]. Further, he showed them properties in March 2020 and thereby further established a client relationship with them.

[216] There are many indications that the Licensee was privy to substantial confidential information about [J.P & M.P] in their pursuit of home ownership. For example, during the course of their dealings, he learned: (i) that [J.P & M.P] seeking barrier free accommodation; (ii) that they were involved in OPD; (iii) that [M.P] had received a sum of money in 2020 that was available to support a purchase; (iv) that [W.S] would join them in the purchase, agreeing to be their co-signer and later to be the buyer on their behalf.

[217] The Panel is also satisfied by the evidence that the Licensee was present during the stages of searching for and find a suitable property for [J.P & M.P].

[218] Counsel for the Licensee argued that it would be “unnatural and off-putting” if the mere disclosure of confidential information meant that a licensee entered a client relationship with a buyer or seller. He suggested that no one had an intention of entering a client relationship during the September 2019 meeting, that it was merely exploratory and [J.P & M.P] did not regard themselves as clients as they later looked at property with someone else. Only in 2020 did the Licensee show them properties. He viewed the first showing as exploratory. He argued that the operative language of s. 43(1) required an active decision by the Licensee to solicit or accept business.

[219] If the Licensee’s argument is accepted, then [J.P & M.P] became his clients when he made an active decision to solicit or accept business. Clearly, he satisfied that condition when he advertised his services on Facebook. He was soliciting business and [J.P & M.P] responded. The fact that [J.P & M.P] contacted a second agent in the interim and then returned to him does not assist the Licensee.

[220] The Panel concludes that even if [J.P & M.P]’s act of responding to the Licensee’s solicitation in September 2019 did not create a client relationship, then certainly by March 2020 when the Licensee was actively searching for a property for them, [J.P & M.P] became his clients. By failing to complete a service agreement with [J.P & M.P] at any point, the Licensee breached s. 43(1) of the Rules.

VII. Conclusion

[221] The Notice of Hearing set out the alleged breaches of the Rules. The Panel has considered the evidence presented and assessed it in the reasons given below on the basis of the probative standard of the balance of probabilities or whether it is more likely than not that something occurred.

[222] Accordingly, the Panel concludes that the Licensee has engaged in conduct that is deserving of sanction as he breached the Rules. Specifically, the Panel finds that the Licensee:

- a. Breached the fiduciary obligations to his clients contrary to s. 41(d) of the Rules as set out in the Notice of Hearing in paragraph 2(a) through (e).
- b. Breached the fiduciary obligations owed to his client contrary to s. 42(d) or in the alternative s. 41(a) of the Rules as set out in the Notice of Hearing in paragraphs 3(a) and (b).
- c. Participated in fraudulent activities in connection with the provision of services or in any dealings contrary to s.42(b) of the Rules, and made representations or carried on conduct that was reckless or intentional and that misled or deceived his clients or was likely to do so, contrary to s. 42(a) of the Rules as set out in the Notice of Hearing in paragraphs 4(a) through (c).
- d. Failed to enter into a written service agreement with a prospective client contrary to s. 43(1) of the Rules as set out in the Notice of Hearing in paragraph 5(a) through (c).

[223] This matter is remitted to a Phase II hearing to determine the issue of sanction.

[224] If either party wishes to conduct Phase II of this Hearing orally, they must inform the hearing administrator no later than seven (7) days from the date the Registrar and Licensee are served with this decision. They must include in their communication an explanation as to why an oral hearing is requested.

[225] If neither party contacts the hearings administrator according to the previous paragraph, the panel requests the parties to provide their written submissions for this Panel's consideration in Phase II of this hearing, in accordance with the following deadlines:

- the Registrar shall provide its written submission on Sanction and Costs to the hearing administrator on or before the expiry of fourteen (14) days from the date the Registrar and the Licensee are served with this decision;
- the Licensee shall provide their written submission on Sanction and Costs to the hearing administrator on or before the expiry of fourteen (14) days from the date the Registrar and the Licensee are served with this decision; and

- the Registrar shall have seven (7) days from the date the Registrar is served with the Licensee's written submission on Sanction and Costs, to provide its written Reply to the hearing administrator.

Dated the 4th day of February 2025 in the City of Edmonton in the Province of Alberta.

"Signature"

[J.A], Hearing Panel Chair

THE REAL ESTATE COUNCIL OF ALBERTA

IN THE MATTER OF a Hearing under Part 3 of the *REAL ESTATE ACT*,
R.S.A. 2000, c.R-5 (the "Act")

AND IN THE MATTER OF sanction and costs regarding the conduct of John Wade,
Real Estate Associate, currently with Real Broker AB Ltd. o/a Real Broker and
conduct brokerage
with Irealty Calgary Inc. o/a Re/Max Irealty Innovations and the decision
of February 4, 2025, of this Panel

Hearing Panel Members: [J.A], Chair
[J.P]
[H.Y]

Appearances: T. Leonardo and A. Bone, Counsel for the Registrar
of the Real Estate Council of Alberta

Charles Fair, Counsel for John William Wade

Submissions received: February 19, 2025 and March 5, 2025

DECISION ON SANCTION AND COSTS

I. Introduction

- [1] This decision follows the Phase I decision of February 5, 2025, and the decision that that John William Wade ("the Licensee"), an associate broker licensed with the Real Estate Council of Alberta ("RECA") engaged in conduct deserving of sanction in relation to breaches of the *Real Estate Act* Rules ("the Rules").

- [2] Concerning the contravention of the Rules referred to in paragraph 222(b) of the Phase I decision and the reference to it as a breach of the fiduciary obligations owed to a client, the Panel notes that it should properly have been cited, as it was in the Notice of Hearing, as discouraging a client from seeking legal counsel or expert advice contrary to s. 42(d) of the Rules, and in the alternative, a failure to fulfill the fiduciary obligations to a client contrary to s. 41(d) of the Rules. The Panel acknowledges the inadvertent error in its summary of the contraventions. It has been corrected in this Phase II decision, as noted in paragraph 3(b) below.
- [3] The Panel issued its decision February 5, 2025. It found that the Licensee engaged in conduct deserving of sanction as he breached multiple sections of the Rules. Specifically, the Panel found that the Licensee:
- a. Breached the fiduciary obligations to his clients contrary to s. 41(d) of the Rules as set out in the Notice of Hearing in paragraph 2(a) through (e).
 - b. Discouraged a client, customer or a party to a trade in real estate from seeking legal counsel or expert advice contrary to s. 42(d) or, in the alternative, breached the fiduciary obligations owed to his client contrary to s. 41(d) of the Rules as set out in the Notice of Hearing in paragraphs 3(a) and (b).
 - c. Participated in fraudulent activities in connection with the provision of services or in any dealings contrary to s.42(b) of the Rules, and made representations or carried on conduct that was reckless or intentional and that misled or deceived his clients or was likely to do so, contrary to s. 42(a) of the Rules as set out in the Notice of Hearing in paragraphs 4(a) through (c).
 - d. Failed to enter into a written service agreement with a prospective client contrary to s. 43(1) of the Rules as set out in the Notice of Hearing in paragraph 5(a) through (c).
- [4] This decision continues from the Phase I hearing. Phase II addresses the issues of sanction and costs arising from those findings.

[5] The Phase II decision is organized accordingly:

- Introduction
- Preliminary matter
- Provisions of the Real Estate Act and Bylaws regarding sanction and costs
- Submissions
- Sanction
- Costs
- Conclusion and order

II. Preliminary matter

[6] At the conclusion of the Phase I hearing, the Panel issued its decision on conduct deserving of sanction. It included following direction to the parties:

[225] This matter is remitted to a Phase II hearing to determine the issue of sanction.

[226] If either party wishes to conduct Phase II of this Hearing orally, they must make application to the Panel through the hearing administrator not later than seven (7) days from the date the Registrar and Licensee are served with this decision. They must include in their communication an explanation as to why an oral hearing is required.

[227] In the absence of an application for an oral Phase II hearing, the Panel directs the parties to provide their written Phase II submissions for this Panel's consideration in accordance with the following deadlines:

- the Registrar is to provide its written submission on sanction and costs to the hearing administrator no later than fourteen (14) days from the date on which the Registrar and the Licensee are served with this decision;
- the Licensee is to provide his written submission on sanction and costs to the hearing administrator no later than fourteen (14) days after receipt of the Registrar's submission on sanction and costs; and
- the Registrar is to provide its reply submission, if any, to the hearing administrator no later than seven (7) days after receipt of the Licensee's written submission on sanction and costs.

- [7] Neither party made application for an oral hearing and the Panel has proceeded on the basis of the written submissions it received.
- [8] On February 19, 2025, the Panel received the Registrar's written submission on sanction and costs.
- [9] The RECA Hearings Administrator contacted counsel for the Licensee on February 19, 2025, to advise that his submissions on sanction and costs were due on or before March 5, 2025.
- [10] On March 5, 2025, the Hearings Administrator sent a reminder to the Licensee's counsel.
- [11] Counsel responded to state that he had received instructions to file a Notice of Intent to Appeal the Panel's decision and an Originating Application for Judicial Review. He added that he would not be responding to the Registrar's submissions and requested that the Panel not take any further steps on sanction until after the Appeal is heard and the Judicial Review process is completed.
- [12] In response, the Hearings Administrator advised counsel that the hearing was ongoing and would not conclude until the Panel rendered its Phase II decision on sanction and costs.
- [13] To date, the Panel has received neither a submission on sanction or costs from the Licensee or his counsel.
- [14] Section 48 of the *Real Estate Act* provides a licensee with the right to appeal a decision of a hearing panel. The relevant subsections of section 48 follow:

48(1) A licensee in respect of whom a Hearing Panel has made a finding or order under section 43 or the registrar may appeal the finding or order to an Appeal Panel.

...

(10) A licensee who is appealing a finding or order of a Hearing Panel to an Appeal Panel under this section may, within 7 days of receiving a copy of the

Hearing Panel's decision under section 44, by notice served on the Board, apply to the Hearing Panel for a stay of the finding or order until the Appeal Panel renders its decision on the appeal.

(11) On application under subsection (10) and after allowing the registrar to make representations, the Hearing Panel may, if the Hearing Panel considers it appropriate to do so, grant the stay.

- [15] In the view of this Panel, while it has issued the Phase I decision, it has not completed this hearing. It has addressed conduct deserving of sanction, but not the issues of sanction and costs. Once it has issued the Phase II decision, it will have concluded this proceeding.
- [16] Further, counsel's request in the email of March 5, 2025, did not constitute an application for a stay. Firstly, as provided by section 44(10), it was not timely as it was not served within the time provided and there was no application to extend time. Secondly, an application to stay this proceeding before it concluded is premature.
- [17] Accordingly, the Panel has determined that it will proceed to consider the issues of sanction and cost and conclude this hearing in reliance, in part, on the Registrar's submission. In the absence of a stay, neither an appeal nor an application for judicial review operate to stay this proceeding or prevent the Panel from completing the hearing that is before it. The Licensee has provided no submission for the Panel's consideration.

III. Provisions of the *Real Estate Act* and *Bylaws* regarding sanction and costs

- [18] Section 43 of the *Act* provides the Panel with the authority to issue sanctions and costs. It provides as follows:

43(1) If a Hearing Panel finds that the conduct of a licensee was conduct deserving of sanction, the Hearing Panel may make any one or more of the following orders:

- an order cancelling or suspending any licence issued to the licensee by an Industry Council;

- an order reprimanding the licensee;
- an order imposing any conditions or restrictions on the licensee and on that licensee's carrying on of the business of a licensee that the Hearing Panel, in its discretion, determines appropriate;
- an order requiring the licensee to pay to the Council a fine, not exceeding \$25 000, for each finding of conduct deserving of sanction;

(d.1) an order prohibiting the licensee from applying for a new licence for a specified period of time or until one or more conditions are fulfilled by the licensee;

- any other order agreed to by the parties.

(2) The Hearing Panel may, in addition to or instead of dealing with the conduct of a licensee under subsection (1), order the licensee to pay all or part of the costs associated with the investigation and hearing determined in accordance with the bylaws.

[19] The calculation of hearing costs is addressed in Part 10 of the *Real Estate Act, Bylaws*. It provides as follows:

10.1 Where a complainant is ordered to pay costs under section 40(4) of the Act, a licensee is ordered to pay costs under section 43(2) of the Act, or a licensee or RECA is ordered to pay costs under section 43(2.1) or costs are awarded pursuant to section 50(5) of the Act, the costs payable shall be determined in accordance with the following:

(a) Investigation costs

(i) investigators' costs at a minimum of \$40 per hour to maximum of \$80 per hour;

(ii) general investigation costs including but not limited to disbursements, expert reports and travel costs in accordance with RECA policy guidelines;

(iii) transcript production including but not limited to interview transcripts;

(iv) legal costs not to exceed \$250 per hour; and

(v) other miscellaneous costs.

(b) Hearing and appeal costs

(i) investigators' costs at a minimum of \$40 per hour to a maximum of \$80 per hour;

(ii) general hearing and appeal costs including but not limited to disbursements, process service charges, conduct money, expert reports, travel expenses including but not limited to witnesses and RECA representatives in accordance with RECA policy guidelines, expert witness fees to a maximum of \$1,000 per diem;

(iii) transcript production;

(iv) hearing or appeal administration costs including but not limited to location rental, hearing secretary salary to a maximum of \$15 per hour, honoraria of hearing panel members;

(v) legal costs not to exceed \$250 per hour;

(vi) adjournment costs; and

(vii) other miscellaneous costs.

IV. Submissions

[20] As noted, no submission was received from or on behalf of the Licensee.

[21] In reliance on section 43(1)(a) of the *Act*, the Registrar's submission provided its analysis of the Phase I hearing findings and asked for a fine totalling \$18,000.00, apportioned as follows:

- a. For the breach of Rule 41(d), a fine of \$7500.00
- b. For the breach of Rule 42(d), a fine of \$3,000.00
- c. For the breach of Rule 42(b), a fine of \$5,000.00
- d. For the breach of Rule 43(1), a fine of \$2,500.00

[22] In addition, the Registrar sought cancellation of the Licensee's license followed by a period of ineligibility to apply for a license for 2 years, predicated on successful completion of all education requirements.

[23] In the matter of costs, the Registrar sought costs in the sum of \$18,270.00. This figure represented costs at the higher end of the scale and reflected that the Licensee was wholly unsuccessful in the matter, did not take any responsibility for his conduct, and should reasonably have anticipated the outcome, particularly as he offered no substantial defence. He did not cooperate in completing the Phase I hearing in an efficient manner. It added that there was insufficient evidence of the financial burden this would place on the Licensee.

[24] The Registrar also noted that combating fraud was important.

[25] The Registrar's submission included the following decisions for the Panel's consideration:

Jaswal v. Medical Board (Nfld.), 1996 CanLII 11630 (NL SCTD)
Law Society of Upper Canada v. Lambert 2014 ONLSTH 158 (CanLII)
Jinnah v. Alberta Dental Association and College, 2022 ABCA 336 (CanLII)

[26] Additionally, the Registrar provided the following decisions of RECA hearing panels, appeal panels and administrative penalties, as well as decisions of other provincial regulating bodies:

Behroyhan, 2018 CanLII 50247 (BC REC)
Inglis, 2019 CanLII 53386 (BC REC)
Aulakh (Re), 2019 ABRECA 121 (CanLII)
Merchant, (2019) Case 005064 (RECA)
Dhaliwal, (2023) Case 012459.001 (RECA)
Voth, (2023) Case 011601.001 (RECA)
Wade, (2016) Case 004209 (RECA administrative penalty)
Wade, 2021 ABRECA 113 (CanLII)

Peresta (2024) Case 013475 (RECA)
Wolf, (2002) (RECA)
Adel, (2010) (RECA)
Randhawa, 2022 ABRECA 54 (CanLII)
McLean, (2012) Case 000073 (RECA administrative penalty)
Kainth, (2020) Case 007491 (RECA)
Bedry, (2009) Investigation file 2339-08 (RECA)
Chiacchia, (2020) Case 009893 (RECA administrative penalty)
Khan, 2022 ABRECA 51 (CanLII)
Voth, 2021 ABRECA 5 (CanLII)
Pethick, (2021) Case 005053.002

V. Sanction

E. Jaswal factors

[27] The *Jaswal* decision (above) sets out a number of factors for the Panel to consider before determining sanction. They are listed below and followed by the Panel's assessment of their impact on the question of the sanction warranted by the findings in this case:

- a. The nature and gravity of the proven allegations
- b. The age and experience of the Licensee
- c. The previous character of the Licensee and, in particular, the presence or absence of any prior complaints or convictions.
- d. The number of times the offence was proven to have occurred.
- e. The role of the Licensee in acknowledging what occurred.
- f. Whether the Licensee has already suffered other serious financial or other penalties as a result of the allegations being made.
- g. The impact of the incident on the victims.
- h. The presence or absence of mitigating circumstances.
- i. The presence or absence of aggravating circumstances.
- j. The need to promote specific and general deterrence, to protect the public, and ensure safe and proper practice.
- k. The need to maintain the public's confidence in the integrity of the profession.
- l. The degree to which the offensive conduct is regarded as being the type of conduct that falls outside the range of permitted conduct.

m. The range of sentence in other similar cases.

[28] The *Jaswal* factors are evaluated from the perspective of whether they are considered aggravating, mitigating, or neutral in the decision to impose a penalty.

a. Aggravating factors

i. The nature and gravity of the proven allegations

[29] At the conclusion of the Phase I hearing, the Panel found that the Licensee had committed four breaches of the Rules arising from his dealings with [W.S], and [J.P & M.P].

[30] The breaches are discussed fully in the Phase I decision, and are summarized briefly below. The Licensee was found to have contravened the Rules as follows:

- a. Contravening section 41(d) by failing to fulfill his fiduciary obligations to his clients;
- b. Contravening section 42(d) by discouraging a client from seeking expert advice;
- c. Contravening section 42(a) by recklessly or intentionally misleading or deceiving a person and 42(b) participating in fraudulent or unlawful activities;
- d. And contravening section 43(1) by failing to enter into a written service agreement with a prospective client.

[31] The Registrar argues that the breach of section 42(b) was extremely serious and among the most serious types of offences in which a licensee can engage. It noted as well that the Licensee repeatedly failed in his fiduciary obligations, particularly by discouraging his client from seeking expert advice and failing to enter into a written service agreement. According to the Registrar, this conduct fell outside the bounds of acceptable behaviour and should be judged aggravating.

- [32] The Panel considered the evidence adduced during the hearing in rendering the Phase I decision. It finds that the subject conduct was well outside the bounds of the industry norms. Particularly egregious is the referral of clients to an unlicensed mortgage broker, knowing that he was unlicensed and thereby exposing them to dubious practices, a failed real estate purchase and the absence of the protection inherent in dealing with a licensed professional.
- [33] The Panel has determined that the serious nature of the breaches constituted an aggravating factor in the determination of a penalty.

ii. The age and experience of the Licensee

- [34] The Licensee was 48 years old at the time of the hearing. He was first licensed with RECA in 2005 and at the time of the Phase I hearing, he had approximately 20 years of experience.
- [35] The Panel considers that the Licensee is well-experienced in his profession and yet engages in highly questionable practices that do not conform to the norms of practice as they are set out in the Rules.
- [36] The Panel considers the Licensee's age and long-standing experience as an industry professional to be aggravating factors.

iii. The previous character of the Licensee and, in particular, the presence or absence of any prior complaints or convictions

- [37] The Registrar's submission shows that the Licensee has a history of misconduct and received three administrative penalties. Following a hearing, the penalties were set as follows: for a breach of section 17(a) of the Act for trading in real estate without authorization, he received a fine of \$5,000.00; for a breach of Rule 41(d) for failing to fulfill his fiduciary obligations to a client, a fine of \$1,500.00; and for a breach of Rule 41(e) for failing to ensure that his role as a Licensee was clearly understood by his clients, a fine of \$1,500.00.
- [38] The Panel takes particular note of the Licensee's earlier breach Rule 41(d) and the failure to fulfill the fiduciary obligations owed to a client. This is repeated behaviour that falls short of the industry standard. The Panel finds this to be an aggravating factor.

iv. The number of times the offence was proven to have occurred

- [39] As noted above, in the course of the Licensee's dealings with the clients, four breaches occurred. The Registrar submitted that as the misconduct flowed from one transaction, it was neither mitigating nor aggravating. It was neutral.
- [40] The Panel finds that the number of breaches flowing from one transaction is substantial and it cannot be considered neutral. The four breaches represent multiple actions taken by the Licensee during his representation of the clients. It is aggravating, particularly when considered in the context of other *Jaswal* factors such as experience.

v. The role of the Licensee in acknowledging what occurred

- [41] The Registrar submitted that the Licensee was entitled to a hearing and his failure to acknowledge that his conduct was deserving of sanction was neither aggravating nor mitigating.
- [42] The Panel accepts that the Licensee exercised his right to a hearing on the merits of the case. It also notes its finding in the Phase I decision that the Licensee gave evidence that lacked credibility and was rejected by the Panel. It noted that the Licensee had many opportunities to correct the false impression that he had referred the clients to a licensed mortgage broker. He took none of them. His unsupported assertion that he referred the clients to other licensed brokers was deemed by the Panel to be "hollow."
- [43] None of this suggests that the Licensee assumed any role in acknowledging what occurred. The Panel finds this to be an aggravating factor.

vi. The impact of the incident on the victims

- [44] The Registrar submitted that as a result of the Licensee's conduct, his clients' attempt to purchase a barrier-free property to accommodate [M.P]'s disability was unsuccessful. Further, they lost their deposit on the property.
- [45] The Panel considers that the impact of this incident was significant and harmful to the clients. The loss of the opportunity to purchase the subject property in combination with the loss of the deposit caused detrimental impact to them.

[46] The Panel considers this to be an aggravating factor.

vii. The need to promote specific and general deterrence, to protect the public, and ensure safe and proper practice

[47] The Registrar argued that there was a need for specific deterrence in this case. The Licensee showed no remorse for his referral of the clients to an unlicensed mortgage broker and insisted the individual was a debt specialist. Further, he failed in his fiduciary obligations by waiving financing without taking any measures to ensure financing was in place, and writing a condition directing funds be paid to a third party without any qualification of the purpose (renovations) for those funds. He took no responsibility for those actions.

[48] As to general deterrence, the Registrar submitted that the public deserved confidence that licensees would provide competent service, practice in strict accordance with the Act and not undermine public confidence, harm the integrity of the industry, or bring it into disrepute.

[49] The Panel finds that the conduct of the Licensee strayed significantly from the norms of the industry, without plausible explanation. Specific deterrence is warranted. Moreover, as a whole, general deterrence is necessary as a demonstration to the industry and consumers alike that conduct that breaches industry standards will not be tolerated. They will be addressed within the statutory and regulatory regime of the industry.

[50] This is an aggravating factor

viii. The need to maintain the public's confidence in the integrity of the profession

[51] The Registrar relied on the *Lambert* decision (above) concerning the value of reputation to a profession as a whole. It argued that RECA must be able to demonstrate to the public that it is investigating, detecting, and suppressing fraud perpetrated by licensees. In this way, it will not only protect the public, but show that public protection is a central concern.

[52] This Panel adopts the reasoning in *Lambert*, which held that when determining the appropriate sanction for misconduct, "the panel is guided by the reasons or

purposes for a penalty order in discipline matters set out in *Law Society of Upper Canada v. Strug* and in *Bolton, supra*, in which Sir Thomas Bingham M.R. Stated at p. 519, 'A profession's most valuable asset is its collective reputation and the confidence which that inspires'."

- [53] The findings in Phase I show breaches of the Rules that imperil the reputation of the industry. They warrant discipline commensurate with the serious risk of harm to the industry that flows from the Licensee's conduct.

ix. The degree to which the offensive conduct is regarded as being the type of conduct that falls outside the range of permitted conduct

- [54] As noted above, the Licensee's conduct fell outside the bounds of permitted conduct. It is for this reason that it was investigated and a hearing was held. The Phase I findings demonstrate the degree to which it was deficient and harmful to the consuming public. This is an aggravating factor.

F. Mitigating factors

- [55] The Panel finds no mitigating factors that would influence the imposition of a penalty.

G. Neutral factors

a. Whether the Licensee has already suffered other serious financial or other penalties as a result of the allegations being made

- [56] There is no evidence that the Licensee suffered any serious financial or other penalties as a result of the allegations that were made.

- [57] The Panel considers this to be a neutral factor in the determination of a penalty.

H. The range of sentence in other similar cases

- [58] The range of sentence in other similar cases is listed among the *Jaswal* factors.

- [59] The Registrar presented a number of decisions made by RECA Hearing Panels and administrative penalties imposed by the Registrar. The complete citations

are set out above in paragraph 28. They are briefly summarized below as they relate to the breaches in question.

a. Breach of Rule 42(b)

[60] Rule 42(b) states as follows:

42 Licensees must not:

...

(b) participate in fraudulent or unlawful activities in connection with the provision of services or in any dealings; ...

[61] In the *Dhaliwal* case, a mortgage associate forged a mortgage commitment letter. This was a single occurrence. No party suffered a loss and the licensee had no prior disciplinary history. The licensee entered an agreed statement of facts and a joint submission on sanction with the Registrar. The penalty imposed was a cancellation of the license for 12 months and completion of all educational requirements before applying, as if he had not previously been licensed.

[62] In *Merchant*, a licensee intentionally pretended to act on behalf of his brokerage, to surreptitiously lease his client's property, sublet it, and collect the difference. He had previously sublet the property without permission and without a property management license. He wrongfully intercepted \$20,000 from his client, that rightfully should have been paid to his brokerage. No party experienced a loss in spite of the fraud and theft. The licensee had no prior disciplinary history. He entered an agreed statement of facts with the Registrar. The penalty imposed was a cancellation of the license and no ability to reapply for one year, \$21,000 in fines, and agreed costs of \$1500.

[63] In *Aulakh*, a licensed mortgage broker and real estate associate provided a personal loan to purchasers, coaching them to falsely declare to the lender that it was a gift from parents. She failed to take steps to prevent the false declaration or notify the lender. She admitted her conduct was deserving of sanction. The licensee's license was cancelled for 24 months, with ineligibility to reapply for licensing until all pre-licensing requirements were met.

- [64] In *Voth*, a licensee knowingly forged the signatures of clients on an Exclusive Buyer Representation Agreement in order to be paid a commission. During the RECA investigation, he knowingly forged an AuthentiSign Signing Certificate by replacing the licensee's email address with another so that he could deceive RECA investigators and avoid consequences of the original forgery. The licensee entered an agreement on conduct deserving of sanction and an agreement on sanction. His license was cancelled and he was prohibited from reapplying for three years, conditional on meeting the educational requirements and examination requirements for a new license. In addition, he received a fine of \$15,000 for three breaches of rule 42(b), and costs of \$1,500.
- [65] In *Peresta*, an individual formerly licensed as a real estate associate and the Registrar entered an agreement on conduct deserving of sanction and a joint submission on sanction and costs. Following the expiry of a listing agreement, the former licensee presented the seller with falsified invoices and credit card statements purporting to represent his expenses associated with the sale of the property. He had no prior disciplinary history. The parties jointly submitted that the license should be cancelled with ineligibility to reapply for a license for four years, with a requirement to complete all education requirements before applying for a new license from RECA as if they had never previously received one. No costs were sought. The Hearing Panel accepted this submission.
- [66] In *Wolf*, multiple transactions were reviewed. Following a hearing on the merits, the Hearing Panel cited examples of the licensee creating false and misleading documents, misleading a seller, inserting false purchase prices and using a document with forged signatures. The sanctions included the immediate revocation of his license, ineligibility to reapply for 7 years, a fine in the amount of \$25,000, plus costs of \$49,816.
- [67] In *Adel*, following a hearing on the merits, the licensee was found to have participated in mortgage fraud by using a third party as a straw buyer. Based on the total penalty of \$63,500, the Hearing Panel imposed a penalty of \$4500 for this breach. It noted that a prior fine and suspension of the license had failed to deter the licensee from the conduct. The Hearing Panel also ordered the licensee to pay costs of \$152,584, particularly noting his lack of cooperation during the investigation. The licensee's license was suspended for 10 years with the condition that prior to re-licensing, he must successfully complete the real estate associate program and pass the provincial examination.

- [68] The Registrar argued that in the present case, the dishonesty occurred by omission of material information as opposed to a direct act. This would generally be considered less serious, but the Licensee had many opportunities over a period of time to correct the omission. He chose not to. The Registrar urged a penalty in the low to middle range indicated by the decisions.
- [69] Based on the Panel's finding on Rule 42(b), the Registrar did not pursue a penalty for the breach of Rule 42(a).
- [70] The Panel has considered the context of the Phase I findings, where it found that the Licensee dishonestly withheld the fact that the mortgage broker to whom he referred his clients was not licensed. The dishonesty continued to the point where the transaction collapsed. He fostered the false impression until that time, exposing them to risk and ultimately the loss of their deposit. It constituted "participation in fraudulent or unlawful activities in connection with the provision of services or in any dealings" as provided in Rule 42(b).
- [71] This is a serious breach. The Licensee is an experienced real estate professional and has demonstrated no remorse or willingness to consider his role in it. The harm to the clients themselves and the industry's reputation is no small matter.
- [72] The Panel has determined that in the matter of the breach of Rule 42(b), a penalty of \$7,500 is warranted.

b. Breach of Rule 41(d)

- [73] Rule 41(d) states as follows:

41 Licensees must:

...

(d) fulfill their fiduciary obligations to their clients; ...

- [74] In *Randhawa*, the Licensee represented the buyer but failed to place a financing condition in the purchase contract. The sale collapsed without financial loss to either the buyer or the seller. The Licensee and the Registrar entered an admission of conduct deserving of sanction and a joint submission on sanction,

agreeing to a penalty of \$5,000 for the breach of Rule 41(d). Total costs of \$1,000 were awarded against the Licensee for four breaches of the Rules.

- [75] In *McLean*, a licensee failed to collect the deposit as stipulated in the purchase contract. The sale collapsed, but as conditions were never waived, neither party suffered a loss. The licensee had no prior disciplinary history. The Registrar imposed a \$5,000 administrative penalty, noting that the licensee had a long career as a real estate professional, the need for specific and general deterrence, and the licensee's assurances to the seller that he was pursuing payment of the deposit.
- [76] In *Kainth*, the licensee and the Registrar provided the hearing panel with an admission of conduct deserving of sanction and a joint submission on sanction. The buyer signed a purchase contract. The deposit was paid one day late and accepted by the seller. The licensee referred the buyer to a mortgage broker, later assuring him that his line of credit application would be approved. He had no documentation or evidence of an approval. The client then waived the financing condition without the line of credit he required for a down payment or approval for mortgage financing. Conditional mortgage approval was obtained, but the client did not proceed. The purchase collapsed and the deposit was forfeited.
- [77] The Registrar urged that *Kainth* was most like the case before the Panel because it involved the referral of a client to a particular mortgage broker, the waiver of financing without confirmation, and the late payment of a deposit. The licensee took responsibility for his actions, as evidenced by the admission and joint submission on sanction. The parties agreed to a penalty of \$4,500 for the breach of Rule 41(d), costs of \$500, and the completion of unit three of the Fundamentals of Real Estate within 6 months of the decision.
- [78] Returning to the Phase I decision, the Panel found multiple breaches of the fiduciary duty owed by a licensee to his clients. Among them:
- a. He knowingly introduced them to an unlicensed mortgage broker;
 - b. He failed to correct that mistake and reinforced the false impression that the individual was licensed on many occasions;

- c. He participated in inducing the clients to give personal financial information to the unlicensed individual, placing them in a vulnerable position;
- d. He wrote an amendment to the purchase agreement to direct \$20,000 of mortgage proceeds without qualification or purpose to the unlicensed mortgage broker's company.

[79] The Panel finds that the Licensee's attitude and actions in his dealings with [W.S], [J.P & M.P] were cavalier, inappropriate and unprofessional. They did not meet industry standards. They were abusive of the power he held as a long-standing, trained and licensed real estate professional. The Licensee exposed them all to risk, some of which was realized when the transaction was unsuccessful and they lost their deposit and their opportunity to purchase the property.

[80] Before the Panel, the Licensee demonstrated no remorse or understanding of the fiduciary obligations a licensee owes to a client.

[81] After considering the magnitude of the Licensee's breach of Rule 41(d) in light of these considerations, the Panel has determined to impose a penalty of \$7,500.

c. Breach of Rule 42(d)

[82] Rule 42(d) provides as follows:

42 Licensees must not:

...

(d) discourage a client, customer or a party to a trade in real estate, deal in mortgages, or property management service from seeking legal counsel or expert advice; ...

[83] The Registrar referred the Panel to the *Bedry* administrative penalty decision where a licensee approached a seller directly, negotiating and completing an offer to purchase before advising the seller's representative in spite of the seller's misgivings. The Registrar imposed a penalty of \$1,500.

- [84] The evidence presented during a full hearing on the merits of the present case was clear. [W.S] was in receipt of Assured Income for the Severely Handicapped (AISH) and the Licensee knew that she was. She expressed to the Licensee her concern about the impact of a real estate purchase on her continued receipt of AISH benefits. The Licensee interfered with her pursuit of an inquiry to the proper authorities to the point of forcefully directing her not to speak with AISH to clarify her entitlement. Instead, he pointedly told her to speak to the unlicensed mortgage broker.
- [85] The Panel finds the Licensee's conduct to be without excuse. The Licensee showed limited to no concern about the risk to which he exposed [W.S] by his interference. If her benefit entitlement ceased because of her involvement in a real estate purchase, she was vulnerable to a decision from the proper authorities that would have deprived her of the AISH income that was essential for her welfare. Obstructing her as the Licensee did could serve no beneficial purpose for [W.S] and placed her in jeopardy.
- [86] In consideration of the circumstances of the Licensee's interference, his absence of remorse or understanding of his role in exposing his client to a risk of this magnitude, the Panel imposes a penalty of \$7,500 for the breach of Rule 42(d).

d. Breach of Rule 43(1)

- [87] Rule 43(1) states as follows:

43 (1) Subject to these rules, a licensee who establishes a client relationship when trading in residential real estate, engaging in property management, or when dealing in mortgages must enter into a written service agreement with that prospective client.

- [88] The Registrar provided three administrative penalties to the Board to show penalties given to licensees who fail to obtain written service agreements with clients. In *Chiacchia*, *Khan*, and *Voth* the Registrar imposed penalties of \$1,000.
- [89] In the Phase I hearing, the Panel found that the Licensee entered a written service agreement with [W.S], but failed to complete one with [J.P & M.P]. Nonetheless, he knew of the particular housing needs and financial

circumstances of [J.P & M.P] from the time of his first meeting with them in September 2019. The properties he showed them in the spring of 2020 were tailored to [M.P]’s specific needs. As he continued in his relationship with them, he knew that [W.S] entered the transaction only to assist them in obtaining a mortgage. As the Licensee knew, she was a purchaser in name only without any beneficial interest in the property.

- [90] The evidence presented at the Phase I hearing led the Panel to conclude that the Licensee was in a client relationship with [J.P & M.P]. He failed to enter into a written service agreement with them.
- [91] The Panel imposes a penalty of \$2,500, based on the Licensee’s professional relationship with them as clients and his failure to acknowledge the client relationship through a written service agreement.

VI. Costs

- [92] Section 43(2) of the Act provides as follows:

43(2) The Hearing Panel may, in addition to or instead of dealing with the conduct of a licensee under subsection (1), order the licensee to pay all or part of the costs associated with the investigation and hearing determined in accordance with the bylaws.

- [93] The Alberta Court of Appeal in *Jinnah v. Alberta Dental Association and College*, 2022 (CanLII), where the Court held at paragraph [21] that:

The College should bear the costs associated with the privilege and responsibility of self-regulation unless a member has committed serious unprofessional conduct, is a serial offender, has failed to cooperate with investigators, or has engaged in hearing misconduct.

- [94] In *Pethick v. Real Estate Council (Alberta)*, 2019 ABQB 431 (CanLII) where the Court held at para. [28] that, “Costs awards are not primarily punitive; rather, they allocate the costs of legal proceedings fairly, and in light of who caused the costs to be incurred.”

- [95] In the Registrar's submission, the Licensee's conduct constituted serious unprofessional conduct. The Registrar proposed an order for costs in the sum of \$18,270.
- [96] The Panel accepts that the costs of self-regulation are generally to be borne by RECA, but has determined that this is an appropriate case for the imposition of costs because the Licensee's conduct amounted to serious unprofessional conduct.
- [97] Part 10 of the *Real Estate Act, Bylaws* ("the Bylaws") provides a comprehensive listing of costs for the investigation and hearing, as well as guidance. The Panel has considered the factors set out in section 10.4. They follow:

10.4 The following factors may be considered by a panel in determining any cost order:

- (a) the degree of cooperation by the licensee;
 - (b) the result of the matter and degree of success;
 - (c) the importance of the issues;
 - (d) the complexity of the issues;
 - (e) the necessity of incurring the expenses;
 - (f) the reasonable anticipation of the case outcome;
 - (g) the reasonable anticipation for the need to incur the expenses;
 - (h) the financial circumstances of the licensee and any financial impacts experienced to date by the licensee; and
 - (i) any other matter related to an order reasonable and proper costs as determined appropriate by the panel.
- [98] Of particular relevance, the Panel views the result of this matter and the degree to which the Licensee was unsuccessful as relevant. The result should have been anticipated by a long-term industry professional such as the Licensee. Had this been the case, the hearing might have been avoided or foreshortened. Instead, a full hearing on the merits of this case was required.
- [99] The Panel also recognizes the very serious unprofessional conduct of the Licensee, particularly the risk of referring clients to an unlicensed mortgage broker and steering [W.S], in particular, from receiving proper, informed advice concerning her AISH benefit status. The Panel also notes the Licensee's

deviation from industry standards in creating unsafe or insecure amendments to real estate purchase agreements, including the unqualified direction to pay \$20,000 to the unlicensed mortgage broker's company and the removal of financing conditions without any measure of care. These are illustrative of the unprofessional conduct of the Licensee that is more thoroughly discussed in the Phase I decision.

[100] As noted, the Licensee made no submissions for the Phase II hearing. The Panel has no information about his circumstances or the impact of this hearing on him.

[101] In consideration of these elements, the Panel has determined to impose a costs award against the Licensee in the sum of \$12,070. This is at the low end of the costs that are set out in Part 10 of the Bylaws.

VII. Conclusion and Order

[102] In consideration of the foregoing, the Panel makes the following order in accordance with its authority under s. 43(1) of the *Act*:

- a. The Licensee's license is cancelled immediately for a period of 2 years, with ineligibility to apply thereafter for licensing until he successfully completes once again the RECA course Fundamentals of Real Estate for new real estate associates entering the industry and any other course updates identified by RECA as mandatory for licensing, as if he had never previously been licensed.
- b. For conduct deserving of sanction:
 - i. the breach of Rule 41(d), a penalty of \$7,500;
 - ii. For the breach of Rule 42(d), a penalty of \$7,500;
 - iii. For the breach of Rule 42(b), a penalty of \$7,500;
 - iv. For the breach of Rule 43(1), a penalty of \$2,500.

- c. Costs associated with the investigation and hearing in the amount of \$12,070.

Dated June 11, 2025, in the City of Edmonton in the Province of Alberta.

"Signature"

[J.A], Hearing Panel Chair