

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 "*Real Estate Act*")

AND IN THE MATTER OF a Hearing regarding the conduct of FAROUK SANDRUDIN MOHAMED, Real Estate Associate Broker, currently registered with R & D Realty Inc., also operating as Maxwell Canyon Creek

Hearing Panel Members: [M.K], Hearing Chair
[A.A]
[L.M]

Appearances: Sania Chaudhry, Counsel for the Registrar of the Real Estate Council of Alberta

Farouk Mohamed, self-represented

Counsel for the Panel: Ricki Johnston, Gowling WLG

Hearing Date: April 11 and 12, 2022 via video conference

DECISION OF A HEARING PANEL ON CONDUCT DESERVING OF SANCTION

1. Introduction

This is a matter in which Farouk Mohamed, an associate broker (the "Licensee") licenced with the Real Estate Council of Alberta ("RECA"), is subject to allegations that his conduct is deserving of sanction in relation to alleged breaches of the *Real Estate Act*, R.S.A. 2000, c.R-5 in force between Jul 1, 2015 and Oct 29, 2019¹, (the "*2000 Act*") and the *Real Estate Act* Rules, the version in effect at the time of the Hearing² ("Rules") and the version in effect at the time of the alleged breaches³ ("2013 Rules").

The parties did not object to the composition of the Hearing Panel.

¹ <https://www.canlii.org/en/ab/laws/stat/rsa-2000-c-r-5/117374/rsa-2000-c-r-5.html#document>

² *Real Estate Act* Rules, current as of December 1, 2021

³ *Real Estate Act* Rules, current as of October 23, 2013

2. Notice of Hearing

The specific allegations against the Licensee set out in the Notice of Hearing are as follows:

1. You traded in real estate without holding the appropriate authorization for that purpose, contrary to s.17(a) of the *Real Estate Act* (the prior version in effect during the time of your conduct) as outlined below:
 - a. You were an associate broker at your real estate brokerage from 2012.
 - b. Section 1(1)(x)(iv) of the *Real Estate Act* defines "trade" as including "property management". Section 2(4) of the *Real Estate Act Rules* (prior version in effect during the time of your conduct) requires that a real estate associate broker must hold the required qualifications, be licensed as a real estate associate broker, be employed with a licensed real estate brokerage, and be registered with and approved to trade in real estate on behalf of that brokerage.
 - c. On February 5, 2013, your brokerage's real estate broker sent an email to the brokerage's associates reminding them that they are not approved to provide property management services.
 - d. As your brokerage did not approve you providing property management services as required by s.2(4)(d) of the Rules, you were not authorized to provide property management services.
 - e. From December 2015 to August 2017, you provided property management services for [C.M]'s rental home. You collected and managed rent, entered tenancy agreements, paid expenses, and provided monthly statements to [C.M]. You also charged property management fees;
 - f. From early 2016 to August 2017, you provided property management services for 124**** Alberta Inc.'s unit. You collected and managed rent, entered tenancy agreements, and paid expenses and condominium fees, for the unit;
 - g. From January 2016 to August 2017, you provided property management services for [M.J]'s two units. You collected and managed rent, entered tenancy agreements, paid expenses and condominium fees, and provided monthly statements to [M.J];

h. From February 2016 to August 2017, you provided property management services for [L.L.]’s two units. You collected and managed rent, entered tenancy agreements, paid expenses and condominium fees, and provided monthly statements to [L.L.];

i. From February 2016 to August 2017, you provided property management services for [S.B.]’s rental home. You collected and managed rent, entered tenancy agreements, paid expenses, and provided monthly statements to [S.B.]. You also charged property management fees;

j. From May 2016 to August 2017, you provided property management services for [C.C INC]’s unit. You collected and managed rent, entered tenancy agreements, paid expenses and condominium fees, and provided monthly statements to [C.C INC]. You also charged property management fees; and

k. From August 2016 to August 2017, you provided property management services for [Z.G.]’s unit. You collected and managed rent, entered tenancy agreements, paid expenses and condominium fees, and provided monthly statements to [Z.G.]. You also charged property management fees.

2. You provided property management services outside of your brokerage in seven instances, contrary to s. 53(a) of the *Real Estate Act Rules*; and

3. You did not inform your brokerage of these seven instances of property management services, contrary to s. 53(d) of the *Real Estate Act Rules*.

During the course of the Hearing, the Licensee admitted to the following breaches as included in the Notice of Hearing:

(a) The Licensee agreed that he provided property management services outside of his brokerage in seven instances, contrary to s. 53(a) of the *Real Estate Act Rules*; and

(b) The Licensee admitted that he did not inform his brokerage of seven instances in which he provided property management services outside of his brokerage contrary to s. 53(d) of the *Real Estate Act Rules*.

3. Pre-Hearing Applications

The Hearing was conducted over two days (April 11 and 12, 2022 via video conference). After the Notice of Hearing was issued and before the Hearing commenced there were five preliminary applications:

1. December 16, 2021 – the Licensee applied to have an in-person hearing
2. January 6, 2022 – the Registrar applied to excuse a witness from testifying
3. January 20, 2022 – the Registrar applied for an adjournment
4. March 23, 2022 – the Registrar applied to have some of the licensees Exhibits excluded from the hearing
5. April 4, 2022 – the Licensee applied to appeal the decision of the March 23, 2022 application and the matter was resolved by consent as between the Licensee and the Registrar.

The preliminary hearings are listed to provide a history of the proceedings prior to the Hearing and were not considered by the Hearing Panel as part of its deliberation or this decision.

4. Registrar's Position

The Registrar's allegations as outlined in its opening statement were that the Licensee had traded in real estate as a property manager from 2015 to 2017 when not authorized to do so. The Registrar argued that Section 17 of the *Real Estate Act*, RSA 2000, c R-5, and the *Real Estate Act Rules* as of October 23, 2013 (the "2000 Act" and "2013 Rules") in effect at the relevant times, provided that, trade in real estate included "authorized property management" and that the evidence would show that between December 2015 and August 2017 the Licensee undertook unauthorized property management duties for nine properties and seven clients in breach of the 2000 Act and the 2013 Rules. The Registrar submitted that there was a requirement for strict compliance with the 2000 Act and the 2013 Rules and the Licensee, in undertaking property management when not authorized, undermined the public's trust in the Licensee and the goal of consumer protection. The 2000 Act and 2013 Rules state:

Rules:

PART 1

AUTHORIZATIONS, LICENCES & REGISTRATIONS

Division 1 – Classes of Licences

2 (1) For the purposes of the Act, Bylaws and Rules there shall be the following classes of real estate brokers:

- (a) brokerage;*
- (b) broker; and*
- (c) associate broker; and*
- (d) associate.*

(2) A real estate brokerage is a person who:
(a) is licensed by the Council as a brokerage; and
(b) employs or has associated with it a licensed and registered real estate broker.

...

(4) A real estate associate broker is an individual who:
(a) holds the qualifications of a real estate broker;
(b) is licensed as a real estate associate broker by the Council;
(c) is employed by or associated with a licensed real estate brokerage in Alberta;
and
(d) is registered with and approved to trade in real estate on behalf of that brokerage.

Act:

Authorization required

17 No person shall

(a) trade in real estate as a real estate broker,
(b) deal as a mortgage broker,
(c) act as a real estate appraiser, or
(d) advertise himself or herself as, or in any way hold himself or herself out as, a mortgage broker, real estate broker or real estate appraiser unless that person holds the appropriate authorization for that purpose issued by the Council.

5. The Licensee's Position

The Licensee argued that while he did trade in property management he did not profit from the operation, did not solicit or advertise the business and that he both ceased undertaking the property management business as soon as he was advised of the complaint and took steps to pay the property owners amounts they were owed. The Licensee argued that as an associate broker he was authorized to trade in property management and was not in breach of the Act by doing so.

The Exhibits entered at the Hearing are set out in Schedule "A".

6. Facts

The Investigation Manager for RECA ("J.P.") gave evidence with respect to the Licensee's registration history with RECA. J.P. gave evidence that the Licensee registration history included the time period of 2015 to 2017 as an Associate Broker with Real Estate Professionals Inc., (which had commenced on May 1, 2006) in the sectors of commercial, residential and rural real estate and property management.

The Licensee's registration history was entered as Exhibit 2. Further, J.P. gave evidence in relation to the broker's registration where the Licensee was an associate broker from 2015 to 2017, (including 2006), and the registration history for the broker was entered as Exhibit 3.

Counsel for the Registrar also reviewed with J.P. a series of emails and letters between the Licensee and J.P., and his legal counsel which were entered as Exhibits 8 through 11. In those emails and letter, including a letter from the Licensee's legal counsel (dated September 15, 2017), the legal counsel indicated that his client admitted providing property management services, had ceased same, and takes responsibility for his actions, which was entered as Exhibit 10.

Further emails from the Licensee to J.P. as well as letters from the Licensee's legal counsel were entered as exhibits:

- Letters in response to inquiries by J.P. dated January 3, 2018, January 18, 2018, and February 14, 2018 from the Licensee's legal counsel.
- The February 14, 2018, letter included attachments which were bank statements for a TD Canada Trust Account, Owner Statements for each property managed by the Licensee and copies of relevant leases

These documents were entered as Exhibit 12. Through the evidence of J.P. it was established Licensee was managing a number of properties in the time period between 2015 and 2017. The particular properties are identified by lease agreements to which the Licensee was a signatory as agent for the owners or landlord and sometimes on behalf of FM Properties Inc., which is his management company. The Licensee did not dispute that the lease agreements were signed by him and each included a property for which he had provided property management services which are listed as follows:

- 1) Periodic Tenancy Agreement, effective November 1, 2016 between S. & S.B. and L.M. for the property of [ADDRESS 1], signed by the Licensee for S. & S.B.
- 2) Residential Tenancy Agreement, effective on January 1, 2017 between C.M c/o FM Properties Inc. and J.P.G. for the property of [ADDRESS 2], signed by the Licensee as the landlord's agent.
- 3) Residential Tenancy Agreement effective September 1, 2016 between FM Properties Inc. and G.I.M. for the property of [ADDRESS 3], signed by the Licensee as the landlord's agent.
- 4) Residential Tenancy Agreement effective June 13, 2016 between FM Properties Inc. and S.N. for the property of [ADDRESS 4], signed by the Licensee as the landlord's agent.

- 5) Residential Tenancy Agreement effective July 1, 2016 between FM Properties Inc. and P.W. for the property of [ADDRESS 5], signed by the Licensee as the landlord's agent.
- 6) Residential Tenancy Agreement dated March 23, 2017 between FM Property Management and H.E. and N.B., property not listed on agreement, without a signature of the landlord or the landlord's agent.

In certain circumstances and in connection with some of the leases listed above, the properties were initially listed for sale by the Licensee, but instead of being sold, they were converted to rental properties.

The Hearing Panel accepted the leases (Exhibit 12) of which the Licensee had been managing those properties.

Another exhibit that was entered through J.P., Exhibit 13, which was a phone interview of the Licensee. During the phone interview the Licensee provided some detail with respect to each of the properties that had been leased (Exhibit 12). He explained that none of the funds were ever mixed, and there was delay in renting some of the properties because of market circumstances, and therefore there was no incoming rent. The Licensee indicated he had sorted out all of the issues with respect to certain of the tenants and that the owners were aware of these circumstances. When the Licensee was reminded of the broker's policy with respect to not managing property outside of the brokerage, he ceased being a property manager and has not been a property manager since that time.

The Hearing Panel accepts as fact that during the interview the Licensee acknowledged he was managing properties and his broker had a policy that prohibited associate brokers from property management.

A second phone call interview of the Licensee by a RECA investigator, also Exhibit 13 dealing with the issue of releases being obtained by the Licensee's legal counsel and the possibility of the Licensee voluntarily withdrawing from being a realtor.

There was also further evidence from the Registrar that was entered through J.P. that dealt with the broker's policy on property management. J.P. reviewed an email that was received from the broker dated August 25, 2017 which attached information relating to Real Estate Professionals Inc.'s policy on property management. It included:

- An excerpt from the brokerage's policy manual (page 28) indicating that they are not in the business of property management;
- A February 5, 2013 email confirming that the brokerage did not allow property management to be conducted by its registered associates;

- An excerpt from the contract signed by the Licensee when he joined the brokerage and specific reference made to paragraph 18 which references a prohibition on participating in rental activities, other than for properties that the agent has a majority interest in; and
- The broker's handwritten notes that the broker took from a phone conversation on the Licensee's departure from the brokerage on August 12, 2017. In those notes the broker indicates that the Licensee admitted that he had at least eight clients for which he managed property, some with more than one unit and that the Licensee admitted that he knew he was not allowed to do property management with the broker.

The Hearing Panel accepts as fact that the Licensee knew of the broker's policy to not undertake property management. He was aware of that policy when he became an associate broker in 2005, and was further reminded of that policy in 2013, that he was not authorized to undertake property management. Finally, the Hearing Panel accepts that the Licensee admitted that he undertook property management while an associate broker with the brokerage when he was not authorized or allowed to do so as a term of his contract with the brokerage (except in a limited circumstance).

The Hearing Panel accepts as fact that the Licensee did undertake management of property when not authorized to do so with his brokerage, and the properties that he did manage did not come within the exception in his contract.

The Hearing Panel concluded that the issues raised by the Licensee in his cross-examination of J.P. were not relevant to this stage of the hearing.

7. Decision

The Hearing Panel had to consider whether the Licensee acted contrary to section 17(a) of the 2000 Act in relation to the allegations set out in the Notice of Hearing. The Licensee admitted to breaching s. 53(a) and (d) of the *Rules*.

The Notice of Hearing set out the allegations, which were deserving of sanction, and the alleged breaches under the Act and Rules, which took place, are set out below. The Hearing Panel's findings will be set out in relation to each of the allegations:

1. You traded in real estate without holding the appropriate authorization for that purpose, contrary to s. 17(a) of the *Real Estate Act* (the prior version in effect during the time of your conduct) as outlined below:
 - a. You were an associate broker at your real estate brokerage from 2012.

b. Section 1(1)(x)(iv) of the *Real Estate Act* defines “trade” as including “property management”. Section 2(4) of the *Real Estate Act Rules* (prior version in effect during the time of your conduct) requires that a real estate associate broker must hold the required qualifications, be licensed as a real estate associate broker, be employed with a licensed real estate brokerage, and be registered with and approved to trade in real estate on behalf of that brokerage.

c. On February 5, 2013, your brokerage’s real estate broker sent an email to the brokerage’s associates reminding them that they are not approved to provide property management services.

d. As your brokerage did not approve you providing property management services as required by s.2(4)(d) of the Rules, you were not authorized to provide property management services.

The Hearing Panel finds that the Licensee was licensed as an associate broker and although he had the designation to property manage, he did not have the requisite licence, nor was his brokerage licensed to provide property management services;

e. From December 2015 to August 2017, you provided property management services for [C.M]’s rental home. You collected and managed rent, entered tenancy agreements, paid expenses, and provided monthly statements to [C.M]. You also charged property management fees;

The Hearing Panel finds that the lease confirmed the Licensee undertook property management services for this rental property and the Licensee charged a fee for property located at [ADDRESS 2] for [C.M].

f. From early 2016 to August 2017, you provided property management services for 124**** Alberta Inc.’s unit. You collected and managed rent, entered tenancy agreements, and paid expenses and condominium fees, for the unit;

The Hearing Panel finds that the Licensee undertook property management services for this rental property and the Licensee charged a fee for same for property located [ADDRESS 3] for 124**** Alberta Inc.

g. From January 2016 to August 2017, you provided property management services for [M.J]’s two units. You collected and managed

rent, entered tenancy agreements, paid expenses and condominium fees, and provided monthly statements to [M.J];

The Hearing Panel finds that the lease for unit [ADDRESS 6], and the statement of income and expenses for [UNIT 1] and [UNIT 2] confirmed that the Licensee undertook property management services for these rental properties and the Licensee charged a fee for same for properties located at Units [UNIT 1] and [UNIT 2], [ADDRESS 6] for [M.J].

h. From February 2016 to August 2017, you provided property management services for [L.L]'s two units. You collected and managed rent, entered tenancy agreements, paid expenses and condominium fees, and provided monthly statements to [L.L];

The Hearing Panel finds that the statements of income and expenses for [UNIT 1] and [UNIT 2], [ADDRESS 7] confirmed that the Licensee undertook property management services for these rental properties and the Licensee charged a fee for same for properties located at Units [UNIT 1] and [UNIT 2], [ADDRESS 7] for [L.L].

i. From February 2016 to August 2017, you provided property management services for [S.B]'s rental home. You collected and managed rent, entered tenancy agreements, paid expenses, and provided monthly statements to [S.B]. You also charged property management fees;

The Hearing Panel finds that the lease confirmed that the Licensee undertook property management services for this rental property and the Licensee charged a fee for same for property located at [ADDRESS 1] for [S.B].

j. From May 2016 to August 2017, you provided property management services for [C.C INC]'s unit. You collected and managed rent, entered tenancy agreements, paid expenses and condominium fees, and provided monthly statements to [C.C INC] You also charged property management fees;

The Hearing Panel finds that the lease confirmed that the Licensee undertook property management services for this rental property and the Licensee charged a fee for same for property located at [ADDRESS 3] for [C.C INC]

k. From August 2016 to August 2017, you provided property management services for [Z.G]'s unit. You collected and managed rent,

entered tenancy agreements, paid expenses and condominium fees, and provided monthly statements to [Z.G]. You also charged property management fees.

The Hearing Panel finds that the lease confirmed that the Licensee undertook property management services for this and rental property and the Licensee charged a fee for same for property located at [ADDRESS 4] for [Z.G].

2. You provided property management services outside of your brokerage in seven instances, contrary to s. 53(a) of the Rules;
3. You did not inform your brokerage of these seven instances of property management services, contrary to s. 53(d) of the Rules.

The Hearing Panel accepts the admission of the Licensee to these allegations. Furthermore, the Hearing Panel's findings on Allegations 1 (e) to (k) support a finding of the breach of these allegations.

In order to establish breaches of the allegations as set out above, the Registrar must prove that the Licensee traded in real estate (property management) without authorization, and was involved in property management by managing properties, leasing them and collecting rents.

First, sections 1(1)(x) and (iv) of the *2000 Act* set out the definition of "trade" and it includes "property management". Further, s. 17 of the *2000 Act* sets out the required authorization for trading in real estate (which includes property management):

The onus is on the Licensee under s. 82 of the *Act* to establish that he was authorized to undertake property management. Section 82 states:

Burden of proof

82 When, in an investigation, hearing, appeal or prosecution under this Act, a person pleads that at the time of the conduct at issue the person was lawfully authorized by the Council to act as an industry member, the burden of proving that is on that person.

The Registrar argued that the Licensee did not discharge this onus. In response, the Licensee argued that he was licensed to act as a broker as well as to trade in real estate management based on his having completed the requisite courses for both. The Licensee argued the legislation should be interpreted such that as an associate broker he did have the ability to undertake property management. He admitted a breach of

the Rules through trading in property management outside his brokerage but argued the Act was separate from the Rules and that the trading at issue did not constitute a breach of s.17 (a) of the 2000 Act.

In order for the Licensee to be properly authorized by Council to undertake property management, the Licensee needed to be registered and approved to trade in real estate on behalf of a brokerage. The Licensee was registered to trade in real estate with a brokerage but that trade was restricted to trading in real estate as authorized by his brokerage. That is, it is a statutory requirement for the Licensee to be not only licensed but authorized to trade in property management within the brokerage, in this case Real Estate Professionals Inc. While the licence provides a general authorization to trade in real estate, that authorization is limited by the need to conduct such trading within a brokerage that is itself authorized to conduct such trading. The evidence before the Hearing Panel was that the Licensee was not authorized by his broker to undertake property management because the brokerage was not trading in property management and had expressly directed its associates not to do so. Despite the lack of authorization within his brokerage and from his broker, the Licensee conducted property management.

Any trading in property management by the Licensee was therefore trading outside his brokerage and not authorized in accordance with 17(a) of the 2000 Act. The Licensee was authorized to trade in property management but in order to do so required a brokerage within which to make those trades. His brokerage at the relevant times was not such a brokerage and had expressly advised the Licensee that any brokers were not to undertake property management given the lack of authorization to do so).

Therefore, the Hearing Panel finds that the Licensee was not authorized to provide property management services. Furthermore, the Hearing Panel finds that in seven specific cases, Allegation 1 (e) to (k), the Licensee did undertake property management services with respect to seven properties.

Accordingly, the Registrar has proven the Licensee breached Allegation 1 in the Notice of Hearing.

With respect to Allegations 2 and 3, the Licensee admitted to undertaking property management outside the brokerage and admitted to Allegations 2 and 3, that he breached *Rules* 53 (a) and (d). In doing so he admitted that while registered with a brokerage not authorized to trade in property management, he entered into lease agreements, signed those lease agreements, collected rents and made payments to owners all as a property manager. There was no evidence before the Hearing Panel

that authorized the Licensee to undertake property management or act as a property manager outside of the brokerage.

Therefore, in addition to the Licensee admitting to breaching s. 53 (a) and (d) of the *Rules*, as set out in Allegations 2 and 3 in the Notice of Hearing, the Hearing Panel finds that the Licensee also breached section 17(a) of the *2000 Act*. The Hearing Panel finds that the Licensee is guilty of allegations in the Notice of Hearing in that the Licensee was trading in property management when he was not authorized to do so.

The Hearing Panel will instruct the Hearings Administrator to set up a Phase 2 Hearing on Sanction and Costs, with a date to be agreed upon by the Hearing Panel and the parties.

Signed in the City of Edmonton in the Province of Alberta this 1st day of September, 2022.

"Signature"

[M.K], Hearing Panel Chair

Schedule "A"

The following are Exhibits entered at the Hearing:

1. Notice of Hearing and Affidavit of Service dated December 3 and 6, 2021
2. Licensing History – Farouk Mohamed ("F.M") dated January 13, 2022
3. Licensing History – K.L. dated April 9, 2022
4. Confirmation of Receipt of Complaint dated August 15, 2017
5. Email Opening Letter to F.M. Attachment to Email; Notification of PCR Letter dated August 23, 2017
6. Phone Audio; J.P. (RECA Investigator) and F.M. dated August 23, 2017
7. Opening Letter to K.L Attachment to Email; Notification of PCR Letter dated August 23, 2017
8. Email; F.M. to J.P.; Attachment to Email; Response Letter of F.M. Attachment to Email; Notice to Associates of Termination of F.M. Attachment to Email; Termination of F.M. dated September 6, 2017
9. Email; J.P. to F.M. re: Incomplete Answers dated September 7, 2017
10. Email; J.M, Counsel for F.M. to J.P; Attachment to Email; Letter from J.M to RECA dated September 15, 2017
11. Email; F.M. to J.P. dated October 18, 2017
12. Email; F.M. to J.P. dated February 14, 2018
13. Phone Audio; J.P and F.M. Parts 1 & 2 dated April 29, 2021
14. J.P. Internal Email Stop Code August 23, 2017 3:47 PM – 161522
15. RECA Internal Memo August 8, 2017 – 161502
16. FM Email to J.P. Re: Unable to Register – 161894 dated August 29, 2017
17. J.P.Email to F.M. – Allegations are Serious dated August 29, 2017
18. J.P. Email to F.M. – No Complainant / Info Received – 162362 dated September 6, 2017
19. F.M. Email to J.P. September 6, 2017 – Response to Opening Letter – 162441
20. J.P. Emails to F.M. September 8, 2017 Extension Granted – 162569
21. J.P. Email to F.M. September 18, 2017 – Suspension Threat – 163353

22. J.P. Letter to F.M. – Failure to Co-operate dated September 18, 2017
23. J.P. Email to F.M. Extension to Oct 19 2017 – 163855 dated September 22, 2017
24. F.M. Email to J.P. Re: Annual Fees Renewal – 164687 dated September 29, 2017
25. F.M. Email to J.P. Oct 18 2017 Plea to Not Suspend – 166852 dated October 18, 2017
26. F.M. Application to Withdraw Cover Letter – 16702 dated October 19, 2017
27. F.M. Application to Withdraw – 167023 dated October 19, 2017
28. J.M. Letter to V.M. January 3, 2018 – Withdrawal and Propose Consent Agreement
29. Complaint by K.L. (Broker) dated August 14, 2017
30. Termination Letter by K.L. dated August 16, 2017
31. Email; K.L. to PCRO; Attachment to Email ; Brokerage Policy of Property Management from February 5, 2013 dated August 25, 2017

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 "*Real Estate Act*")

AND IN THE MATTER OF a Hearing regarding sanction and costs in respect of the conduct of FAROUK MOHAMED, Real Estate Associate Broker, currently registered with R & D Realty, operating as Maxwell Canyon Creek, and registered at all material times with Real Estate Professionals Inc.

Hearing Panel Members: [J.A], Chair
[L.M]
[A.A]

Appearances: Christopher Davison, Counsel on behalf of the Registrar of the Real Estate Council of Alberta

Farouk Mohamed on his own behalf

Hearing Dates: February 7-9, 2023

AMENDED DECISION ON SANCTION

INTRODUCTION

1. Farouk Mohamed, an Associate Broker ("the Licensee"), was the subject of allegations concerning breaches of the *Real Estate Act*, R.S.A. 2000, c. R-5, as it was in force between July 1, 2015, and October 29, 2019 ("the Act"). and the Real Estate Act Rules then in effect ("the Rules").
2. A decision of the Hearing Panel ("the Phase 1 Hearing Panel") dated September 1, 2022, found the Licensee to have engaged in conduct deserving of sanction. The questions of sanction and costs was remitted to this Hearing Panel ("the Phase 2 Hearing Panel").
3. The parties did not object to the composition of the Phase 2 Hearing Panel.

4. Mr. Mohamed has been registered with the Real Estate Council of Alberta ("RECA") since June 30, 2004. He was not represented by legal counsel nor anyone else at the sanction hearing. In response to specific questions from the Phase 2 Hearing Panel about being unrepresented, Mr. Mohamed confirmed that he understood he could have a lawyer assist him, that he voluntarily chose to appear on his own behalf, and was prepared to proceed without legal representation.
5. For reasons that are set out further in this decision, the present decision addresses only the reasons for the sanction to be imposed. The question of costs remains to be addressed at a later date.

PRELIMINARY EVIDENCIARY MATTER AND STAY APPLICATIONS

6. A preliminary matter arose concerning the admissibility of certain documents due to questions of settlement privilege attaching to them. Accordingly, the Phase 2 Hearing Panel determined that it would not receive any documents reflecting negotiation between the parties, including a joint admission, settlement, or communication with counsel when receiving the parties' submissions on sanction.
7. Accordingly, the Phase 2 Hearing Panel reserved the issue of costs to be addressed subsequent to the issuance of the sanction decision. Subject to any objections that may be received at that time, it is anticipated that settlement privilege will no longer prevent the Phase 2 Hearing Panel from receiving that evidence when considering the question of costs.⁴
8. After the examination and cross-examination of the first witness, [J.P], the Licensee made an application for a stay of these proceeding. In his view, the delay in completing the investigation which started in August 2017 and concluded with the Report to the Registrar in May 2021, the subsequent Phase 1 Hearing, and now the Phase 2 Hearing, was too long and the proceeding should not be permitted to continue.
9. The Licensee relied on the decision of a RECA Hearing Panel in *Bahadar (Re)*, 2018 ABRECA 16 (CanLii). In that case, a complaint was filed in 2009 and investigated during 2010 and 11. A notice of hearing did not issue until 2018, some 9 years after the initial complaint. At that time, the member applied for a permanent stay of the proceeding, citing an abuse of process. The foundation of the argument, which was accepted, was extreme and inordinate delay which prejudiced his ability to mount a defence. One witness was deceased and another could no longer be located.
10. The Licensee also cited s. 81(4) of the *Act*. It provides as follows:

⁴ See *Sable Offshore Energy Inc. v. Ameron International Corp.*, 2013 SCC 37 (CanLII), [2013] 2 SCR 623 at para [12]; and, *Dasouki (RE)*, 2017 CanLII 147870 (AB RECA).

(4) A prosecution under this Act may be commenced within 3 years after the date on which the offence is alleged to have been committed, but not after that date.

11. The Licensee argued that in his case, where the complaint was brought in 2017, and the Phase 1 hearing occurred in 2022, followed by this Phase 2 hearing in 2023, RECA was beyond the 3-year time limit to proceed.
12. In response, counsel for the Registrar ("Counsel") relied on the decisions in *Law Society of Saskatchewan v. Abrametz*, 2022 SCC 29 (CanLII) and *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44 (CanLii), noting the threshold test of significant prejudice or impairment of a party's ability to answer a complaint.
13. Counsel reviewed the elements of the test for a stay. He argued that the present delay of roughly five years was well below the nine year delay that occurred in *Bahadar*. In the Registrar's view, it was not an inordinate delay.
14. With respect to any impairment in mounting a defence, Counsel noted that the Licensee admitted the breaches of the Act and Rules during the investigation and did not dispute whether he was engaged in unauthorized property management activities. Therefore, the effect of the passage of time on proving the case was not a consideration. Next, he argued that there was no evidence of a stigma or psychological harm stemming from the delay. Counsel acknowledged that early in the investigation, the Licensee stated that he was under stress and that his family life was shattered, but this was not stigma or psychological harm relating to the delay. Rather, it was about his termination by the broker from the brokerage.
15. Next, Counsel addressed whether the delay would amount to an abuse of process or bring the administration of justice into disrepute. Again, counsel for the Registrar noted that the Licensee's actions in engaging in property management outside his brokerage when not authorized to do so was not in dispute.
16. As for s. 81 of the Real Estate Act, Counsel noted that it falls under Part 6 of the Act, whereas administrative hearings into conduct, such as the present process, are governed under Part 3. Section 81 allows for prosecution of certain offences in the Provincial Court of Alberta and mandates that the prosecutions must be commenced within three years of the alleged offence. It has no application to part 3 hearings.
17. The Phase 2 Hearing Panel carefully considered the submissions of the parties and for the following reasons determined that it would not grant the application for a stay.
18. Firstly, the Phase 2 Hearing Panel noted that the delay of roughly five years did not approach the delay experienced in the *Bahadar* case. The mere fact of delay did not render it an inordinate period.

19. Secondly, there could be no argument that the Licensee experienced any impairment in mounting a defence when he had admitted from the outset that he engaged in unauthorized property management. This was not a case where evidence had become unobtainable. Evidence of the conduct was provided by the Licensee himself who acknowledged the breaches from the earliest days after the complaint was lodged.
20. Thirdly, as to an argument of stigma or psychological harm, the Phase 2 Hearing Panel accepts the discomfort and stress of being the subject of a complaint and an investigation. However, no evidence was presented to suggest that the Licensee's has experienced discomfort and stress approached the threshold of stigma or psychological harm as contemplated in the authorities cited.
21. Fourthly, as to the question of whether the delay in proceeding would draw the administration of justice into disrepute such that a stay ought to be granted, the Phase 2 Hearing Panel adopted the reasoning of the Supreme Court of Canada in *Abrametz* where the Court noted that the principles of delay outlined in *R. v. Jordan*, 2016 SCC 27 (CanLii), [2016] 1 S.C.R. 631 do not apply to administrative proceedings such as the present one. The Court further noted that there was no constitutional right outside a criminal context for a party to be "tried" within a reasonable time.
22. Finally, as for s. 81 of the Real Estate Act, the Phase 2 Hearing Panel accepts that the prosecution of an offence pursuant to section 81 is a process distinct from an administrative hearing into the conduct of a licensee, sanction, and costs, which includes the present hearing. This is well set out in the *Act* which empowers hearing panels in Part 3. Later in Part 6, the *Act* allows the distinct process of prosecution of an offence such as would occur in the Alberta Courts as permitted by the *Provincial Offences Procedure Act*, R.S.A 2000, c.P-34.
23. Later in the hearing, following the testimony of [K.L], the Licensee made a second application for a stay of the proceeding, citing [K.L]'s responses to questions where he admitted that he had no specific memory of particular events that were put to him.
24. The Phase 2 Hearing Panel asked the Licensee to indicate how that evidence and the failure to answer the questions bore on the issue of sanction. After considering the Licensee's submission, the Phase 2 Hearing Panel was not satisfied that the questions and responses in issue were relevant to the issue of sanction. As such, the Licensee failed to demonstrate that, in those few instances where [K.L] could not recall details, the Licensee's ability to mount a challenge to the sanctions proposed by the Registrar was impaired. The application was denied.

PHASE 1 HEARING PANEL DECISION

25. Three allegations were advanced before the Phase 1 Hearing Panel. They can be summarized as follows:
- a) The Licensee traded in real estate without holding the appropriate authorization for that purpose, contrary to s. 17(a) of the Act;
 - b) The Licensee provided property management services outside of his brokerage in seven instances, contrary to s. 53(a) of the Rules; and,
 - c) The Licensee did not inform his brokerage of these seven instances of property management services, contrary to s. 53(d) of the Rules.
26. In its decision of September 1, 2022, the Phase 1 Hearing Panel held that:
- a) The Licensee was not authorized to provide property management services and breached s. 17(a) of the Act;
 - b) The Licensee did undertake property management services with respect to seven properties and did breach s. 53(a) of the Rules;
 - c) The Licensee did so while registered with a brokerage that was not authorized to trade in property management and breached s. 53(d) of the Rules.

EXHIBITS

27. The following exhibits were entered at before the Phase 2 Hearing Panel with the consent of the parties

- Exhibit 1.002: Notice of Hearing and Affidavit of Service
- Exhibit 2.002: Licensing history – Farouk Mohamed
- Exhibit 3.002: Licensing history – [K.L]
- Exhibit 4.002: Confirmation of receipt of complaint
- Exhibit 5.002: Email opening letter to Farouk Mohamed
- Exhibit 6.002: Phone audio [J.P] and Farouk Mohamed
- Exhibit 7.002: Opening letter to [K.L]
- Exhibit 8.002: Email Farouk Mohamed to [J.P]
- Exhibit 9.002: Email [J.P] to Farouk Mohamed
- Exhibit 10.002: Email [J.M] to [J.P]
- Exhibit 11.002: Email Farouk Mohamed to [J.P]
- Exhibit 12.002: Email Farouk Mohamed to [J.P]

Exhibit 13.002: Phone audio [J.P] and Farouk Mohamed Parts 1&2
Exhibit 14.002: [J.P] email re stop code
Exhibit 15.002: RECA internal memorandum
Exhibit 16.002: Farouk Mohamed email to [J.P]
Exhibit 17.002: [J.P] email to Farouk Mohamed
Exhibit 18.002: [J.P] email to Farouk Mohamed
Exhibit 19.002: Farouk Mohamed email to [J.P]
Exhibit 20.002: [J.P] emails to Farouk Mohamed
Exhibit 21.002: [J.P] email to Farouk Mohamed
Exhibit 22.002: [J.P] letter to Farouk Mohamed
Exhibit 23.002: [J.P] email to Farouk Mohamed
Exhibit 24.002: Farouk Mohamed email to [J.P]
Exhibit 25.002: Farouk Mohamed email to [J.P]
Exhibit 26.002: Farouk Mohamed application to withdraw cover letter
Exhibit 27.002: Farouk Mohamed application to withdraw
Exhibit 28.002: [J.M] letter to RECA with redaction
Exhibit 29.002: Complaint by [K.L]
Exhibit 30.002: Termination letter by [K.L]
Exhibit 31.002: Email from [K.L]
Exhibit 32.002: Request for suspension of authorization
Exhibit 33.002: [B.M] letter to Farouk Mohamed
Exhibit 34.002: Excerpts from RECA website Farouk Mohamed re suspension
Exhibit 35.002: RECA Discipline Publications Guidelines
Exhibit 36.002: Email [J.P] to Farouk Mohamed
Exhibit 37.002: [J.P] Report to the Registrar
Exhibit 38.002: Email exchange Farouk Mohamed and [K.L]

28. On behalf of RECA, the following authorities were submitted to address the question of sanction:

Jaswal v. Medical Board (Nfld.), 1996 CanLII 11630 (NL SCTD)

Law Society of Upper Canada v. Lambert 2014 ONLSTH 158 (CanLII)

Flaksman, RECA file 000009-CM

Schneider, RECA file 007379

Schuller, RECA file 004344

Mann, RECA file 009846

Johnson, RECA file 003442

Chen, RECA file 007022

Wright, RECA file 004732

Wright, RECA file 008472 (*Wright "2"*)

Centanni, RECA file 004088

FACTS

29. Three witnesses were summoned to appear before the Phase 2 Hearing Panel, [J.P], [K.L], and [C.S]. Respectively, they were the RECA investigator, the broker, and the former Registrar of RECA. The Licensee intended to examine the witnesses. Shortly after he commenced the examination in chief of [J.P], it was determined that a more prudent course for eliciting information and allowing the breadth of cross-examination to the Licensee was to have Counsel conduct an examination in chief. This then afforded the Licensee the opportunity to cross-examine the witnesses.

Evidence of [J.P]

30. [J.P] testified that he was the assigned RECA Professional Conduct Review Officer who investigated this complaint. He explained that his role was to investigate a complaint or any information indicating that the conduct of a licensee or the provision of licensed services that was potentially deserving of sanction, including practicing while unauthorized.
31. [J.P] received a letter on August 14, 2017, from [K.L], the broker for Real Estate Professionals Inc., containing serious information indicating that the Licensee was conducting property management outside the brokerage.

32. It was noted that although the information also raised concerns of fraud and theft, neither of those issues was supported by the information gathered during the investigation and they were not pursued further.
33. [J.P] noted that on August 23, 2017, a "stop code" was placed on the Licensee's license. The stop code was an administrative tool used to flag the license. It did not prevent the Licensee from continuing to trade. According to [J.P], it was standard for RECA to issue a stop code in any situation where there are serious allegations and a licensee has been terminated from a brokerage.
34. The stop code was removed August 29, 2017.
35. By October 18, 2017, [J.P] had concerns about whether the Licensee was cooperating with the investigation as he failed to produce documents that had been requested. The Licensee was warned that his license would soon be suspended if he failed to cooperate.
36. While questioning [J.P], the Licensee stated that he was cooperating, perhaps not providing all of the information required, but he was giving information. He disagreed with the characterization of his actions as refusing to cooperate, adding that he was providing information, although perhaps not what RECA wanted.
37. On October 19, 2017, the Licensee submitted a formal Application to Withdraw from Industry ("the Application"), pursuant to s. 54 of the Act.
38. According to [J.P], filing the Application suspended all investigative activity pending acceptance. Records show a telephone call on October 20, 2017 with a former client of the Licensee.
39. No further action was taken until after January 3, 2018, the date on which the Licensee withdrew the Application and the investigation was reinstated.
40. By the time the Licensee withdrew the Application, he had still not complied with [J.P]'s earlier requests. Accordingly, on January 4, 2018, as the investigation resumed, [J.P] prepared a Request for Suspension of Authorization Pursuant to Section 38(4.2) of the Act ("the Request"). It provided for the suspension of the license of a Licensee who was not cooperating with an investigation until the Registrar was satisfied that he was cooperating.
41. The Request was approved by the RECA Executive Director on January 4, 2018. In accordance with RECA's Discipline Publication Guidelines, notice of the suspension was placed on the RECA website. The suspension was lifted February 4, 2018, when the Licensee complied with the previous requests for information relating to the investigation. Notice of the Licensee's reinstatement was also placed on the RECA website.

42. [J.P] reviewed the financial statements for the properties managed by the Licensee, noting the amount of rent received as well as the taxes withheld and the property management fee charged by the Licensee.
43. In response to questioning by the Licensee, [J.P] acknowledged that during a conversation on August 23, 2017, the Licensee stated that he would cooperate and he acknowledged that he had been managing properties outside his brokerage.
44. [J.P] also acknowledged that from February 2018 through April 2021, when he contacted the Licensee with follow up questions, no activity was undertaken on the investigation.
45. On May 28, 2021, [J.P] completed a Report to the Registrar recommending that the matter be referred to a hearing panel.

Evidence of [K.L]

46. [K.L], formerly a broker and recently an associate broker, owned Real Estate Professionals Inc. where the Licensee was an associate broker until August 2017. According to [K.L], Real Estate Professionals Inc. did not engage in property management.
47. [K.L] recalled discovering that the Licensee was managing property when he was contacted by a concerned property owner. He terminated the Licensee from the brokerage immediately when he admitted his property management activities. [K.L] identified his email exchange with the Licensee on August 16, 2017.
48. [K.L] recalled contacting a practice advisor at RECA for advice. He did not recall whether the practice advisor told him to terminate the Licensee or to advise the other members of the brokerage. However, he acknowledged that he wrote to other licensees with the brokerage to advise them of the Licensee's termination.
49. [K.L] was shown an email he sent to [J.P] August 25, 2017. He enclosed a policy manual, a reminder, and a contract signed by the Licensee when he joined the brokerage, and notes made during a meeting with the Licensee on August 12, 2017. [K.L] had no present memory of sending the email.
50. In cross-examination, [K.L] recalled that during the meeting of August 12, 2017, the Licensee admitted that he had been conducting property management. While he did not remember demanding that the Licensee provide certain documents to him that day, he admitted that it sounded reasonable. [K.L] repeated that he did not recall whether the practice advisor counselled him to terminate the Licensee from the brokerage. He did not recall ever speaking directly with [J.P] about the matter.

Evidence of [C.S]

51. In 2017, [C.S], now retired, was RECA's Director of Professional Standards, providing oversight to RECA's three core regulatory functions: field audit, investigations, and prosecutions. He later became the Registrar.
52. [C.S] recalled receiving a complaint from [K.L] who said that the Licensee had been providing property management services. An investigation ensued and the matter was referred to a hearing.
53. Mr. Stephenson testified that RECA has no role in terminating a Licensee from a brokerage and that decision lies with the broker. Further, RECA has no role in the payment or disputes regarding commissions.
54. [C.S] identified the Request for Suspension of January 4, 2018, which he signed as the delegate of the Executive Director of RECA. He explained that licensees must cooperate with investigations. The provisions of s. 38(4.2) of the Act allow RECA to compel compliance and to take action including a suspension for failing to cooperate. Section 55 of the Act permits RECA to publish information when a license is suspended and this was the standard practice now and in 2018.
55. [C.S] testified that his relationship with [K.L] was solely professional and he had no direct contract with him concerning this matter.
56. The Licensee asked [C.S] about the breadth of RECA's investigation. [C.S] stated that s. 38(3) of the Act permits RECA "to investigate any other matter related to the licensee's carrying on of the business of a licensee that arises in the course of the investigation." Although the investigation into the Licensee's activities may have been opened on the single issue of unauthorized practice, it was then determined that there were additional concerns about consumer funds that were missing or possibly stolen. The additional allegations were not pursued to a hearing.

CLOSING ARGUMENTS

57. Counsel for the Registrar sought the following penalties:
 - a. For the breach of s. 17, \$15,000-\$20,000;
 - b. For the breach of s. 53(a), \$13,500;
 - c. For the breach of s. 53(d), \$5,000.

As noted above, the issue of costs was reserved to a later time.

58. Counsel for the Registrar relied on the *Jaswal* decision (above). His submission is summarized below:
 - a. Nature and gravity of the proven offences
According to the decision of the Phase 1 Hearing Panel, the proven breaches involved nine properties owned by seven victims. The financial statements indicated approximately \$235,000.00 was collected in rent and \$16,000 was

withheld for taxes. These sums should properly have been deposited in real estate trust accounts, but they were not. As a result, the clients were deprived of the protections that would otherwise have been in place.

Additionally, the Licensee collected \$7,313.00 in management fees and failed to apprise his brokerage of his activities.

Counsel argued that the number of victims, placing their funds at risk, and failing to keep the brokerage up to date made this breach inherently very serious and extremely aggravating when considering the penalty to be imposed for the breach of s. 17(a).

- b. Age and experience of the Licensee
The Licensee is currently 56 years old. He has been licensed since 2005 and licensed as an Associate Broker since 2012. He should have been and was aware that his conduct was totally unacceptable.
- c. The previous character of the Licensee
The Licensee has no disciplinary history.
- d. The number of times the offences were proven to have occurred
Counsel argued that the offences were in respect of nine properties and seven victims over the course of more than one and a half years. This was a commercial enterprise contributing to the finding of a breach of s. 17(a).

Further the Licensee was trading in a name other than his brokerage contrary to Rule 53(a) and the penalty should be proportional to the nine properties involved.

Lastly, the Licensee continued the activity for the substantial period of one and a half years without informing his brokerage contrary to Rule 53(d).

- e. The role of the member in acknowledging what occurred
Counsel noted that the Licensee admitted his conduct from the earliest stages. However, he obstructed the investigation in a way that was prolonged and protracted. The failure to acknowledge the impact of his conduct was evidenced by his insistence during the Phase 2 hearing where he admitted the breaches but continued to insist that he had not obstructed the investigation.

However, the Licensee obstructed the investigation in such a way that his license was suspended January 4, 2018. While the Licensee repeated claims that he was cooperating with the investigation, he was not. This was not admitting responsibility and should not be a factor in reducing the sanction. As evidenced in correspondence with [J.P], the Licensee insisted that RECA required a complaint from the public to proceed. He painted himself as a victim to divert from the breaches he committed. This was aggravating when considering penalty.

- f. Whether the Licensee has already suffered other serious financial or other penalties as a result of the allegations having been made
Counsel argued that although the Licensee asserted that he had suffered financial or other penalties already, this was incorrect. In 2017, a stop code was placed on his license for 6 days. It only required a telephone call to RECA from a party dealing with the Licensee. There was no evidence he suffered.

Concerning the lawfulness and direction of the investigation, it was properly based on the notification from [K.L.] concerning the Licensee's property management activities. Even without a formal complaint, s. 37 of the Act as it was in 2017 allowed for an investigation even when there was no complaint, but a suggestion of conduct deserving of sanction. The lawfulness and direction of the investigation are not mitigating factors.

The suspension of January 4, 2018 occurred because the Licensee did not provide documents. Once they were provided, the license was reinstated. The suspension was necessary to ensure compliance with the investigation. It was unrelated to a sanction for the breaches of the Act that were referred to the Phase 1 Hearing Panel. If it were considered mitigating it could incentivize others to fail to cooperate and this would be inappropriate. Further, if the Licensee wanted to challenge the suspension, then he would have to do so in the proper forum and not before the Phase 2 Hearing Panel (*R. v. Litchfield*, [1993] 4 S.C.R. 333).

Concerning the publication of the suspension, it conformed to standard practice at RECA. It was within RECA's authority and it was common sense that the public needed to know when a suspension was imposed and lifted. RECA did not abuse its authority.

As for financial consequences, loss of income or reputation, or the need to sell his residence, the Licensee had shown no evidence to support his claims. Counsel urged that there was no evidence that would mitigate or aggravate sanction.

- g. Impact of the incidents on the victims
Although there was no loss to the property owners, the Licensee put them at risk by handling their funds and depriving them of the protection of broker's insurance and real estate trust accounts.
- h. Presence or absence of other mitigating circumstances
The Licensee ceased all property management activities and has not engaged in unlicensed activities since that time. He did not originally solicit these clients and returned all funds to them. This is somewhat mitigating.

The evidence before the Phase 2 Hearing Panel indicated that any psychological or reputational damage stemmed from the Licensee's termination from Real Estate Professionals Inc. and the dissemination of information within the brokerage. This

is evidenced by the Licensee's email of October 18, 2017, to [J.P]. RECA did not terminate the Licensee from the brokerage.

The delay in concluding the investigation was not inordinate and did not cause significant prejudice.

- i. Specific and general deterrence
The need for specific deterrence is low in this case as the Licensee ceased property management when he was caught. However, the need for general deterrence was high, the public needed to have the confidence that they are informed whether a licensee is properly licensed so that they can make an informed choice. The public also needed to have confidence that a licensee will not subvert an investigation. This was an aggravating factor.
- j. The range of sentences in similar cases
 - a) *Flaksman*
This was an administrative penalty of the Executive Director of RECA. The Licensee was fined \$5,000.00 for breach of s. 17(a) of the Act and \$3,000.00 for the breach of s. 53(a) of the Rules in respect of unlicensed property management of two properties in spite of being informed that the broker did not have the required authorization . The Licensee had no prior disciplinary history and entered into a consent agreement with RECA.
 - b) *Schneider*
Having discovered that her brokerage registration and broker registration had lapsed for over nine months, the individual contacted RECA. The Executive Director imposed an administrative penalty of \$5,000.00 for a breach of s. 17(a).
 - c) *Schuller*
For two years, the individual traded in real estate by offering property management services contrary to s. 17 of the Act and continued after being notified he was not authorized. He failed to cooperate with RECA. The Executive Director imposed an administrative penalty of \$10,000.00.
 - d) *Mann*
The Executive Director imposed a penalty of \$10,000.00 for unlicensed property management activities contrary to s. 17(a) of the Act over a period of four years that continued in spite of warnings to cease. The individual was aware of the need to be licensed and was not forthcoming in the investigation.
 - e) *Johnson*
The Executive Director imposed an administrative penalty of \$15,000.00 for trading in real estate without a license contrary to s. 17 of the Act. The actions included advertising and renting foreclosed properties without

authority; fraudulently directing rental payments; and advertising over 100 properties for sale and rent without the authority of owners. A tenant lost a security deposit.

f) *Wright*

An administrative penalty of \$25,000.00 was imposed for contravening s. 17(a) of the *Act* over a period of two years after being told to cease. He controlled a property management business with hundreds of thousands of dollars a year in transactions. The Licensee had twice been disciplined for similar conduct.

g) *Chen*

An administrative penalty of \$25,000.00 was imposed for contravening s. 17(a) of the *Act*. The individual multiple instances of trading without the required licence although earlier receiving an administrative penalty for similar activity. She also failed to cooperate with the investigation. One property was rented and thirteen properties were advertised for rent on behalf of the owner.

h) *Wright "2"*

A penalty of \$1,500.00 was imposed for the contravention of Rule 53(a) for conducting property management activities for one property in the name of a company that was unlicensed.

i) *Centanni*

A consent agreement was entered between the Licensee and the Executive Director in which the licensee agreed to a fine of \$1,500.00 for a breach of s. 53(a) of the Rules for conducting unlicensed property management activities in respect of one property without an executed agreement with the owner.

To conclude with respect to the appropriate penalty, Counsel for the Registrar acknowledged that the Licensee had no prior disciplinary hearing and he ceased trading immediately. However, a significant sum of money was collected in his unlicensed trade in property management. This posed this posed a risk for victims. The Licensee knew better than to trade as outside his brokerage and fail to inform his broker of his property management activities. There was a lack of cooperation during the investigation.

Counsel sought a penalty of \$15,000.00 to \$20,000.00 for the breach of s. 17(a) of the *Act*. For the breach of s. 53(a) of the Rules, \$1,500.00 per property was sought. In this case nine properties were involved and the penalty was calculated at \$13,500.00. Lastly, counsel noted that there were no precedents for a breach of s. 53(d) of the Rules, but argued that as the Licensee failed to keep the brokerage apprised and in so doing withheld information, an appropriate penalty was \$5,000.00.

59. The Licensee argued that any characterization of his activities as a large scale criminal enterprise with victims was false. Moreover, he took responsibility for his actions and recognized the authority of RECA and the Act. He reminded the Phase 2 Hearing Panel that in October 2017, he was under immense personal and professional pressure. From the outset of the investigation, he advised RECA that he intended to cooperate fully. He terminated all property management activities and obtained releases from the owners. He made an application to withdraw and later withdrew it knowing that he would have to answer the allegations when he did.
60. The Licensee addressed the *Jaswal* factors as follows:
- a. Nature and gravity of the proven allegations
He stated that if he did not accept the nature or gravity, he would not have appeared before the Phase 2 Hearing Panel. Holding an opinion of the law that is different from RECA's interpretation did not show disrespect and he must not be penalized for it. He admitted the breaches from the beginning and it was hard to start a new career from scratch at his age. He argued this should be considered mitigating.
 - b. Previous character of the Licensee
The Licensee noted that from the day he arrived in Canada, there were no prior complaints or convictions and this should be considered mitigating.
 - c. The number of times the offences were proven to have occurred
The Licensee stated that the fact he admitted the occurrences should be considered mitigating.
 - d. The role of the Licensee in acknowledging what occurred
The Licensee stated that he had always acknowledged the occurrences and had never denied them or run away.
 - e. Whether the Licensee has already suffered other serious financial or other penalties as a result of the allegations having been made
The Licensee stated that he appeared in this proceeding on his own behalf because he could not afford a lawyer. He has had to sell his house and now rents a home. His family, in particular his wife, has suffered. His life, his character and his will had been severely tested. He has gone from selling \$15,000,000.00 to \$20,000,000.00 hotels, multifamily properties, and land, to selling cars. He would not have been hired by a former client to sell cars if he were dishonest. He presently earns little income.
 - f. The impact of the incidents on the victims
The Licensee maintained that there were no victims and this should be considered mitigating.

- g. The need to maintain the public's confidence in the integrity of the real estate industry
The Licensee stated that he was a licensed member of RECA and he recognized its authority. He paid his dues and attended RECA courses. He agreed that the integrity of the industry must be upheld and argued that he had done nothing to bring it into disrepute. No member of the public filed a complaint.
- h. The degree to which the offensive conduct fell outside the range of permitted conduct
The Licensee argued that as he admitted the conduct, this must be considered mitigating.
- i. The range of sentence in other similar cases
The Licensee stated that RECA bylaws provide that the maximum penalty for a contravention of s. 17(a) of the Act is \$25,000.00. The maximum should not be imposed on him. He never advertised or solicited property management business. He immediately ceased all unauthorized activity.

The Licensee noted that in *Flaksman* the contraventions were intentional and more than one. The licensee continued after he was informed by his broker that he did not have the requisite authority. He was fined only \$5,000.00 for the breach of s. 17(a) and \$3,000.00 for a breach of s. 53(a) of the Rules. In *Wright*, the Licensee had previously been disciplined for unlicensed activities, failed to cooperate in the investigation, dealt with multiple properties and showed no sign of ceasing the activity. He received the maximum penalty of \$25,000.00.

The Licensee distinguished the *Chen* case where the licensee received the maximum penalty under s. 17(a) for operating a large scale commercial operation. She also had a prior offence.

In *Johnson*, the licensee advertised properties and rented them without the permission of the owners. He refused to acknowledge the authority of RECA to regulate his conduct. He received a fine of \$15,000.00.

The Licensee argued that the *Chen*, *Johnson*, and *Wright* cases were more egregious than his. He had no prior history and ceased immediately. This should be considered mitigating.

This led him to conclude that in respect of s. 53(a) of the Rules, only one penalty of \$1,500.00 was warranted. In this regard, he relied on the decision in *Wright "2"* and *Centanni* who received fines of \$1,500.00 and \$2,000.00 respectively.

ANALYSIS

61. Section 43 of the *Real Estate Act* gives a hearing panel the discretionary authority to order a sanction where an industry member's conduct has been found to be deserving of sanction. It provides that:
- 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:*
- (a) an order cancelling or suspending any authorization issued to the licensee by an Industry Council;*
 - (b) an order reprimanding the licensee;*
 - (c) 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;*
 - (d) 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;*
 - (e) any other order agreed to by the parties.*
62. The Phase 2 Hearing Panel has considered with care the arguments, the authorities, and the range of penalties imposed in other situations of industry members. It is now tasked to determine the appropriate penalty on the facts of the Licensee's case and the applicable law.
63. It cannot be overlooked that there were nine properties being property managed on behalf of seven owners. Over the period of 20 months, over \$200,000.00 was received by the Licensee as rent. Both the Licensee's time in the profession since 2004 and his status as an Associate Broker since 2012 lead convincingly to the conclusion that he knew his professional responsibilities and knew that he was not licensed to conduct property management activities. This, in combination with over 11 years with a Real Estate Professions Inc., a brokerage that specifically did not trade in property management, leaves the Phase 2 Hearing Panel to conclude that the Licensee was well aware this limitation and his obligations to his brokerage. Nonetheless, he acted in contravention of them.
64. The Phase 2 Hearing Panel is cognizant of the Licensee's delay in providing the documentation requested during the investigation. He was forewarned by RECA about the consequences for failing to cooperate. Notwithstanding the Application,

once the Licensee determined to withdraw the Application, he must certainly have understood that the previously requested information remained outstanding and consequences would ensue.

65. The Phase 2 Hearing Panel concludes that the suspension of his license was due to his delay which was interpreted as a failure to cooperate with the investigation. While related to the breaches, it was a result of the Licensee's delay in providing that information which was, in turn, interpreted as a failure to cooperate with the investigations. It was not a financial or other penalty as a result of the allegations and is not a consideration in determining sanction.
66. The fact that no victim was financially impacted by the Licensee's actions has been considered although the Phase 2 Hearing Panel notes the risk at which they were placed by the handling of rental funds outside a regulated system that would otherwise have afforded consumer protection to them.
67. The Phase 2 Hearing Panel notes that the Licensee had no prior disciplinary history. It also recognizes the Licensee's admission of his conduct and immediate cessation when notified. These are mitigating considerations and reflect a reduced need for specific deterrence. However, the importance of general deterrence of others in the industry remains a consideration in this matter.
68. The Phase 2 Hearing Panel adopts the reasoning in *Law Society of Upper Canada v. Lambert* 2014 ONLSTH 158 (CanLII) [Tab3] where the Law Society Tribunal stated 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'."
69. The Phase 2 Hearing Panel acknowledges the personal and financial losses that have been described by the Licensee. However, the Phase 2 Hearing Panel views these as related to the unauthorized trade in which the Licensee was engaged and the consequences for him when they were discovered. They were not a result of the allegations and the investigation conducted by RECA. As such, they did not influence the Phase 2 Hearing Panel's consideration of the appropriate penalty.

CONCLUSION AND ORDER

70. After considering the evidence and the respective submissions of the parties, the Phase 2 Hearing Panel orders the following sanction against the Licensee:
- a) For the breach of s. 17(a) of the *Act*, the sum of \$15,000.00;
 - b) For the breach of s. 53(a) of the Rules, the sum of \$10,500.00 based on seven offences as found by the Phase 1 Hearing Panel, calculated at \$1,500.00 per offence;
 - c) For the breach of s. 53(d) of the Rules, the sum of \$5,000.00.
71. Finally, throughout the hearing, the Phase 2 Hearing Panel heard of the Licensee's financial hardship. Being cognizant of the Licensee's present straitened circumstances, the Phase 2 Hearing Panel recommends that RECA consider providing the Licensee with a structured schedule for payment of the sanction.
72. As indicated above, the Phase 2 Hearing Panel remains seized of the matter of costs. It will allow a period of 45 days for the parties to jointly agree on the matter of costs. Failing a joint agreement, on application from either party, the Phase 2 Hearing Panel will decide the next steps to be taken to decide the matter of costs.

Dated the 23rd day of February, 2023 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 "*Real Estate Act*")

AND IN THE MATTER OF a costs in respect of the conduct of FAROUK MOHAMED, Real Estate Associate Broker, currently registered with R & D Realty, operating as Maxwell Canyon Creek, and registered at all material times with Real Estate Professionals Inc.

Hearing Panel Members: [J.A], Chair
[L.M]
[A.A]

Counsel: Christopher Davison, on behalf of the Registrar of the Real Estate Council of Alberta

Scott Chimuk, on behalf of the Licensee

Submissions received: March 23, 2023; April 7, 2023; April 13, 2023

DECISION ON COSTS

Pursuant to the authority given under section 43(2) of the *Real Estate Act*, R.S.A. 2000, c. R-5, and upon consideration of the submissions provided by the parties, the Panel assesses costs in the sum of \$11,000.00 against the Licensee.

Dated the 17th day of April, 2023 in the City of Edmonton in the Province of Alberta.

"Signature"

[J.A], Hearing Panel Chair