

THE REAL ESTATE COUNCIL OF ALBERTA

**IN THE MATTER OF** a Hearing under Section 39(1)(b)(i), s.41 and s.47(1) of the  
*REAL ESTATE ACT*, R.S.A. 2000, c.R-5 (the "Act")

**AND IN THE MATTER OF** the conduct of SUNDI ALINE CLARK,  
currently registered with Redline Real Estate Group Inc.

Hearing Panel Members: Bill Kirk, Chair  
Kathy Schmidt  
Julia Jones

Appearances: Tracy Leonardo, Counsel for the Executive Director of the  
Real Estate Council of Alberta

Brian D. West, Counsel for Sundi Aline Clark

Hearing Date: August 17, 2018 by way of a telephone conference

**DECISION OF A HEARING PANEL ON CONDUCT DESERVING OF SANCTION AND  
DECISION ON SANCTION AND COSTS**

A. Introduction

The parties submitted to the Hearing Panel an Admission of Conduct Deserving of Sanction document signed by Ms. Clark and dated July 11, 2018 that included a Schedule of Agreed Facts and Agreed Breaches. The document is attached to this Decision as Schedule "A". The parties also submitted a Joint Submission on Sanction dated July 12, 2018 which is attached to this Decision as Schedule "B".

The conduct deserving of sanction admitted to by Ms. Clark was with respect to a property located in a flood hazard area in High River, Alberta (the "Property"). Ms. Clark was first authorized as a real estate associate on June 2, 2015 and the conduct deserving of sanction occurred from March 31, 2016 to April 22, 2016, during her first real estate transaction.

Ms. Clark admitted to two breaches of the *Real Estate Act Rules*, (the "REA Rules"). The first was the failure to provide competent service to her client contrary to Rule 41(b) when she:

- 1) failed to advise her client (the buyer) that the doctrine of *caveat emptor* applied after the seller's representative failed to provide supporting

- documentation regarding flooding and flood remediation for the Property purchased by her client;
- 2) failed to create an amendment to the purchase contract addressing issues raised during the home inspection;
  - 3) failed to document in writing, in the brokerage file, any due diligence activities on behalf of her client;
  - 4) failed to ask the seller's representative to obtain information on flooding at the Property from the Town of High River & Alberta's Disaster Recovery Program; and
  - 5) minimized important information about overland flooding provided by a neighbour without:
    - (a) asking about the nature of the flooding;
    - (b) asking for supporting documentation; or
    - (c) possessing the necessary knowledge and expertise to do so.

The second breach was of Rule 54(2) wherein Ms. Clark loaned her client \$1,000.00 for the deposit to purchase the Property. This was an inducement to her client which was not provided on behalf of her brokerage, and for which her broker had not provided written approval.

The parties jointly proposed sanction for these breaches of the *REA Rules* with a fine of \$2,500.00 for the breach of Rule 41(b) and a fine of \$1,500.00 for the breach of Rule 54(2). In addition, it was proposed that Ms. Clark complete two educational courses: Unit 4 – Residential Property Issues and Unit 7 – Representing the Buyer, within six months of the Hearing Panel's Order being issued and pay costs of the investigation and proceedings in the sum of \$500.00.

#### B. Hearing Panel Composition

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

#### C. Issues

1. Whether the conduct admitted to by Ms. Clark constituted conduct deserving of sanction; and
2. If the conduct is deserving of sanction, whether the sanctions proposed by the parties in the joint submission on sanction is appropriate in the circumstances.

D. Applicable sections of the *Real Estate Act* and *REA Rules*

Sections 46 and 47 of the *Real Estate Act* refer to situations where the Industry Member admits to conduct deserving of sanction, as follows:

46(1) An industry member may, at any time after the commencement of proceedings under this Part and before a Hearing Panel makes its findings in respect of the industry member's conduct, submit to the executive director a statement of admission of conduct deserving of sanction in respect of all or any of the matters that are the subject matter of the proceedings.

(2) A statement of admission of conduct may not be acted on unless it is in a form acceptable to the executive director and meets any additional requirements set out in the rules.

47(1) If a statement of admission of conduct is accepted, the executive director shall immediately refer the matter to a Hearing Panel, and in that case the Hearing Panel shall deal with the matter as if it had been referred to it under section 39(1)(b).\*

(2) If a statement of admission of conduct is accepted, each admission of conduct in the statement in respect of any act or matter regarding the industry member's conduct is deemed for all purposes to be a finding of the Hearing Panel that the conduct of the industry member is conduct deserving of sanction.

\*Section 39(1)(b) states that the Executive Director may refer a matter to a Hearing Panel if he or she determines there is sufficient evidence of conduct deserving of sanction.

Ms. Clark admitted she breached Rules 41(b) and 54(2) of the *REA Rules* which are as follows:

41 Industry members must:  
(b) provide competent service;

and

54 (2) A real estate broker, associate broker or associate, as the case may be, must not directly or indirectly, provide an inducement unless the inducement is provided by and on behalf of the brokerage with which the real estate broker, associate broker or associate is registered, details of the inducement are provided in writing and the broker has provided written approval.

If breaches of the *REA Rules* have been proven, section 43 of the *Real Estate Act* sets out the sanctions and costs that a Hearing Panel may order:

Decision of Hearing Panel

43(1) If a Hearing Panel finds that the conduct of an industry member 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 industry member by the Council;
- (b) an order reprimanding the industry member;
- (c) an order imposing any conditions or restrictions on the industry member and on that industry member's carrying on of the business of an industry member that the Hearing Panel, in its discretion, determines appropriate;
- (d) an order requiring the industry member 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 industry member from applying for a new authorization for a specified period of time or until one or more conditions are fulfilled by the industry member;
- (e) any other order agreed to by the parties.

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

E. Exhibits

The following exhibits were entered at the Hearing:

- Exhibit 1: The Notice of Hearing dated July 25, 2018
- Exhibit 2: Admission of Conduct Deserving of Sanction dated July 11, 2018
- Exhibit 3: Joint Submission on Sanction dated July 12, 2018

Authorities:

- Tab 1: *Jaswal v. Medical Board (Nfld.)*, 1996 CanLII 11630 (NL SCTD)
- Tab 2: *Adams v. Law Society of Alberta*, 2000 ABCA 240 (CanLII)

- Tab 3: *Law Society of Upper Canada v Lambert*, 2014 ONLSTH 158 (CanLII)
- Tab 4: *RECA Panel Decision- Dasouki, Jameel* dated March 24, 2017
- Tab 5: *RECA Administrative Penalty - Raj, Maria* dated June 21, 2016
- Tab 6: *RECA Administrative Penalty - Hartell, Dixie Lee* dated January 14, 2013
- Tab 7: *RECA - Administrative Penalty Harding, Jeffrey Robert* dated February 9, 2015
- Tab 8: *R. v. Anthony-Cook*, 2016 SCC 43, 2016 CSC 43, 2016 Carswell BC 2929

#### F. Submissions

Both parties waived their right to an opening statement. Counsel for the Executive Director presented an oral summary of the Joint Submission on Sanction, including a review of the authorities provided.

It was submitted that the Hearing Panel ought to consider the relevant factors set out in *Jaswal v. Medical Board (Nfld.)*, *supra*, when assessing whether the jointly proposed sanction was appropriate. A summary of those factors and their application to Ms. Clark's conduct and circumstances, as well as the joint submissions, as presented to the Hearing Panel are summarized below.

##### **The nature and gravity of the proven allegations**

The failure to provide competent service spanned the length of the transaction and resulted in Ms. Clark's client purchasing a home she could not reside in without significant remediation costs.

It is imperative to send a clear message that this type of conduct regarding buyers seeking properties in flood hazard areas, will not be tolerated.

By providing a personal loan of \$1,000.00 for the deposit, Ms. Clark provided an inducement directly to her client that was not by and on behalf of the brokerage. Details of the inducement were not provided in writing to the client or Ms. Clark's broker.

By failing to document the inducement, or have it run through the brokerage, Ms. Clark left both her client and her brokerage vulnerable should complications arise with respect to the inducement.

##### **The age and experience of the industry member**

Ms. Clark was 39 years old and first authorized as an associate on June 2, 2015. She was inexperienced; this was her first real estate transaction. However, she had

recently completed both parts of the Fundamentals of Real Estate course on March 17, 2015 and the Practice of Residential Real Estate course on May 8, 2015.

**The previous character of the offender and in particular, the presence or absence of prior complaints or convictions**

There was no disciplinary history.

**The number of times the offence was proven to have occurred**

There was one breach of Rule 41(b) and one of Rule 54(2).

**The role of the industry member in acknowledging what occurred**

Ms. Clark acknowledged the conduct that occurred and was honest and forthright throughout the investigation. However, she did not seem aware that her behaviour fell well short of the standard expected of a buyer's representative, particularly with regard to properties in flood hazard areas.

In addition, Ms. Clark demonstrated a lack of understanding regarding her duties to her buyer client, including what constitutes competent service, and when an inducement can properly be given to a client.

**Whether the industry member had already suffered serious financial or other penalties as a result of the allegations having been made**

Ms. Clark suffered no financial or other penalties as a result of the allegations having been made.

**Impact of the incident on the victim, if any**

The complainant was unable to live in the Property upon taking possession due to the presence of mould and potential exposure to asbestos during remediation. As at July 20, 2016, the complainant had incurred \$9,169.88 in expenses remediating the Property.

**Specific and General Deterrence**

It was submitted that there was a need for specific deterrence in this matter. Specific deterrence refers to the effect a sanction has to correct the conduct of the person who is sanctioned. The fine proposed by the parties would discourage Ms. Clark from representing a buyer without the necessary knowledge and skills to do so. The requirement to complete educational courses concerning residential property issues and buyer representation would ensure Ms. Clark could perform the necessary services and give the necessary advice to future buyer clients.

It was submitted that the need for general deterrence was significant as industry members generally must recognize that harm to public confidence in, or the reputation of, the Alberta Real Estate Industry comes with significant sanctions. General deterrence refers to the effect a sanction issued in one case will have dissuading others to become involved in the same conduct.

### **The need to maintain the public's confidence in the integrity of the profession**

It was submitted that real estate associates must practice in strict compliance with the *Real Estate Act* and the *REA Rules* in order to maintain the integrity of the industry. Public confidence in the industry is compromised when a real estate associate contravenes the *Real Estate Act* or the *REA Rules*.

In *Adams v. Law Society of Alberta, supra*, the Alberta Court of Appeal noted that public confidence in a profession should be of utmost importance to disciplinary bodies:

A professional misconduct hearing involves not only the individual and all the factors that relate to that individual, both favorably and unfavorably, but also the effect of the individual's misconduct on both the individual client and generally on the profession in question. This public dimension is of critical significance to the mandate of professional disciplinary bodies.

In *Law Society of Upper Canada v Lambert, supra*, a hearing panel for the Law Society of Upper Canada added that a profession's most valuable asset is its collective reputation and this must be considered in determining an appropriate sanction. The hearing panel stated:

When determining the appropriate penalty for this 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 Bigham M.R. stated at p.519, "A profession's most valuable asset is its collective reputation and the confidence which that inspires".

It was submitted that Ms. Clark's breaches of Rules 41(b) and 54(2) of the *REA Rules* erode the collective reputation of the Alberta Real Estate Industry along with the public confidence this reputation should inspire.

It was submitted that significant fines are required in this matter to maintain and protect public confidence in the Alberta Real Estate Industry on a go-forward basis. The public must be confident the Alberta Real Estate Industry will protect them when they seek to purchase homes in flood hazard areas.

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

Ms. Clark's conduct fell short of the standard expected of a buyer's representative, in particular with regard to a buyer seeking properties in a flood hazard area.

### Previous Sanctions in Similar Circumstances

It was submitted that precedents are not binding on the Hearing Panel but help ensure sanctions are consistent between comparable conduct. There were three cases presented as comparable conduct for the breach of Rule 41(b) as follows:

1. *RECA Hearing Decision – Jameel Dasouki – May 24, 2017*

The hearing Panel determined Dasouki breached Rule 41(b) when he used contradictory and inconsistent agency relationship forms. He also presented a rent-to-own arrangement to his clients as a sale and failed to advise his clients that the offer included no security deposit, or to make the deal conditional upon receiving a security deposit. He also failed to verify material representations made by another industry member.

Dasouki received a fine of \$2,500.00 and was required to complete three educational courses.

2. *RECA Administrative Penalty – Marie Raj – June 21, 2016*

Raj made disclosures in purchase contracts for two lots in Edmonton which stated the principals of the corporate sellers were "licensed Realtors" in Alberta. She did not disclose that she was one of those principals. Furthermore, when secondary deposits were not delivered according to the terms of the purchase contracts, Raj verbally allowed for an extension of the delivery date instead of drafting amendments. Finally, when the buyer requested an extension of the completion date in the purchase contracts, Raj verbally allowed the buyer more time instead of drafting amendments.

Raj received a fine of \$2,000.00 for failing to provide competent service.

3. *RECA Administrative Penalty – Dixie Lee Hartell – January 14, 2013*

Hartell was representing sellers of a home in Strathmore on which an addition was being constructed. Competence issues arose in both a collapsed and a completed transaction. In the collapsed transaction, she knew construction on the addition had not finished when the sellers accepted an offer to purchase the property. Furthermore, she was unaware whether inspections had been completed and permits issued. When



reviewing the offer to purchase with the sellers, Hartell failed to make them aware of these issues. As a result, the sellers made certain representations in the offer to purchase that may have been false.

In the completed transaction, after her sellers accepted an offer to purchase the property, Hartell contacted the Town of Strathmore, as well as the company constructing the addition, to inquire whether inspections would be completed and permits issued on or before the possession date. However, she did not follow up to ensure the inspections were completed and permits issued. Furthermore, Hartell did not communicate this information to her sellers or the buyer's representative. The inspections and permits were required for the home to be occupied.

Hartell received a fine of \$3,000.00 for failing to provide competent service.

There was one case presented as comparable to the breach of Rule 54(2):

1. *RECA Administrative Penalty – Jeffrey Robert Harding – February 9, 2015*

Harding agreed to pay his client's legal expenses after Harding's commission was released from the sale of the property.

Harding received a fine of \$1500.00 for providing an inducement, which was not provided on behalf of his brokerage, nor approved by his broker.

Counsel for Ms. Clark agreed with the oral submissions of Counsel for the Executive Director and stated that the proposed sanctions were within the range for similar conduct and appropriate in the circumstances.

G. The Hearing Panel's Decision

Pursuant to section 47(2) of the Act, the admissions in the Admission of Conduct Deserving of Sanction document are deemed for all purposes to be a finding of this Hearing Panel and that conduct is conduct deserving of sanction. Accordingly, the Hearing Panel finds that Ms. Clark engaged in conduct deserving of sanction, specifically that she breached Rule 41(b) of the *REA Rules* when she:

- 1) failed to advise her client (a buyer) that the doctrine of *caveat emptor* applied after the seller's Realtor failed to provide supporting documentation regarding flooding and flood remediation at the property being purchased by her client;
- 2) failed to create an amendment to the purchase contract addressing issues raised during the home inspection;

- 3) failed to document in writing in the brokerage file any due diligence activities on behalf of her client;
- 4) failed to ask the seller's Realtor to obtain information on flooding at the Property from the Town of High River & Alberta's Disaster Recovery Program; and
- 5) minimized important information about overland flooding provided by a neighbour without
  - a. asking about the nature of the flooding;
  - b. asking for supporting documentation; or
  - c. possessing the necessary knowledge and expertise to do so.

Ms. Clark also breached Rule 54(2) of the *REA Rules* when she loaned her client \$1,000.00 for the deposit to purchase the Property. This was an inducement to her client which was not provided on behalf of her brokerage, and for which her broker had not provided written approval.

The Hearing Panel considered the sanction that was jointly proposed by the parties and found it appropriate given all the factors to be considered as set out in *Jaswal, supra*. In particular, the Hearing Panel found two of the *Jaswal, supra* factors to be paramount in these circumstances. The first was the need to maintain the public's confidence in the integrity of the real estate industry and the second was the inexperience of Ms. Clark at the time the conduct occurred. The authorities provided to the Hearing Panel supported the fines agreed to by the parties for each of the breaches of the Rules. The Hearing Panel agrees that the two educational courses being proposed for Ms. Clark to complete within six months will ensure she can perform the necessary services and give the necessary advice required to future buyer clients.

#### H. Conclusion

Pursuant to section 47(2) of the *Real Estate Act*, the Hearing Panel has determined that Ms. Clark engaged in conduct deserving of sanction. For the reasons set out in this decision, the Hearing Panel agrees with the sanction jointly proposed by the parties and pursuant to section 43 of the *Real Estate Act* the Hearing Panel orders the following sanction:

- Breach of Rule 41(b) of the *REA Rules*: \$2,500.00 fine;
- Breach of Rule 54(2) of the *REA Rules*: \$1,500.00 fine;
- Costs of the investigation and proceedings in the sum of \$500.00; and
- Completion of two educational courses within six months of the date of this Decision:

Unit 4 – Residential Property Issues and Unit 7 – Representing the Buyer.

This Decision is dated this 28<sup>th</sup> day of August, 2018.

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Bill Kirk, Hearing Chair

THE REAL ESTATE COUNCIL OF ALBERTA

Case: 006304  
Process: A Hearing under Part 3 of the *Real Estate Act*  
Industry Member: Sundi Aline Clark  
Class of License: Real Estate Associate  
Registration: Century 21 Foothills Real Estate Ltd. O/A Century 21 Foothills Real Estate (Currently registered with Redline Real Estate Group Inc.)  
Document: ADMISSION OF CONDUCT DESERVING OF SANCTION

1. I, Sundi Aline Clark, acknowledge that I have been given an opportunity to seek the advice of legal counsel prior to signing this Admission.
2. I agree to this Admission voluntarily.
3. I admit to the facts and breaches set out in **Schedule "A"** and admit that my conduct is deserving of sanction.

DATED this \_\_\_\_11\_\_\_\_day of \_\_\_\_July\_\_\_\_2018.

\_\_\_\_\_  
(Sundi Aline Clark)

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Printed name of Witness

**Witness must swear or affirm the Affidavit of Execution below**

This admission of conduct deserving of sanction is accepted by the Executive Director on \_\_\_\_July 12, 2018\_\_\_\_  
(date)

\_\_\_\_\_  
Bob Myroniuk, Executive Director  
of the Real Estate Council of Alberta

## Schedule "A"

1. Sundi Aline Clark and the Executive Director agree to the following:

### Agreed Facts

2. On March 30, 2016 Clark and [{"buyer"}] discussed via text message viewing [{"Address"}] (the "Property"). During this exchange [{"buyer"}] asked Clark about flooding at the Property.
3. On March 31, 2016 Century 21 Foothills Real Estate ("Century 21") and [{"buyer"}] entered into Exclusive Buyer Brokerage Agreement #ME2016SC for a term beginning on March 31, 2016 and ending September 30, 2016. Clark was Century 21's brokerage representative.
4. On March 31, 2016 Clark texted [{"buyer"}] that the Property experienced no overland flooding, only four inches of sewer back-up, and had a refurbished furnace. Clark obtained this information verbally from [{"Seller's Representative"}] who represented the sellers of the Property and, like Clark, was registered to Century 21, a designated agency brokerage.
5. On March 31, 2016 [{"buyer"}] asked Clark for more information about the flood impact at the Property and if refurbishing a flooded furnace was legal.
6. On March 31, 2016 Clark texted [{"Buyer"}] further information provided verbally by [{"Seller's Representative"}]: an insurance company had remediated the property. However, Clark was unable to get more detailed information from [{"Seller's Representative"}].
7. Between the March 31, 2016 and April 22, 2016—the day [{"buyer"}] waived conditions—Clark never received any supporting documentation from [{"Seller's Representative"}] to confirm any of the information he provided verbally about the Property.

8. When [{"Seller's Representative"}] was unable to provide supporting documentation, Clark never advised [{"buyer"}] the doctrine of *caveat emptor* applied to her purchase of the Property.
9. On April 3, 2016 the sellers and [{"buyer"}] entered into Residential Purchase Contract #ME2016SC for the Property. The initial deposit was \$1,000. The purchase price was \$226,000.
10. On April 4, 2016 Clark provided an inducement to [{"buyer"}] by personally paying the initial deposit on her behalf. This inducement was not provided on behalf of Century 21. [{"buyer"}] did not repay Clark until June 19, 2016, after [{"buyer"}] took possession of the Property.
11. On April 20, 2016 a home inspection of the Property was completed by [{"Inspector"}]. Clark texted [{"Seller's Representative"}] about issues raised during the home inspection including: a mouse infestation, duct and furnace cleaning, the refurbished furnace, bathroom leaks, and a sewage back-up valve.
12. Clark never created an amendment to the purchase contract ensuring the issues raised during the home inspection were addressed by the sellers.
13. During the home inspection [{"buyer"}] spoke to a neighbour who indicated the Property may have experienced overland flooding. Clark never followed-up with the neighbour about the information he provided to [{"buyer"}].
14. On April 21, 2016 [{"buyer"}] texted Clark that only the registered owner of the Property could request information from the Town of High River and Alberta's Disaster Recovery Program. Prior to conditions being waived Clark never asked [{"Seller's Representative"}] to obtain information on flooding at the Property from the Town of High River or Alberta's Disaster Recovery Program.

15. On April 22, 2016 [{"buyer"}] waived the financing and property inspection conditions.
16. Between April 3, 2016 and April 22, 2016 Clark failed to document in writing in the brokerage file any due diligence activities on behalf of [{"buyer"}].
17. Upon taking possession of the Property on May 30, 2016 [{"buyer"}] was unable to live in the Property due to the presence of mould and potential exposure to asbestos during remediation.
18. As at July 20, 2016 the complainant had incurred \$9,169.88 in expenses remediating the Property.

### **Agreed Breaches**

19. It is agreed that the above conduct is deserving of sanction for the following breaches:
  - a. Clark failed to provide competent service to her client contrary to Rule 41(b) of the *Real Estate Act* Rules:
    - i. Clark failed to advise her client the doctrine of *caveat emptor* applied after [{"Seller's Representative"}] failed to provide supporting documentation regarding flooding and flood remediation at the Property
    - ii. Clark failed to create an amendment to the purchase contract addressing issues raised during the home inspection
    - iii. Clark failed to document in writing in the brokerage file any due diligence activities on behalf of [{"buyer"}]
    - iv. Clark failed to ask [{"Seller's Representative"}] to obtain information on flooding at the Property from the Town of High River & Alberta's Disaster Recovery Program
    - v. Clark minimized important information about overland flooding provided by a neighbour without:
      1. Asking about the nature of the flooding
      2. Asking for supporting documentation
      3. Possessing the necessary knowledge and expertise to do so

- b. Clark provided an inducement to her client—which was not provided on behalf of her brokerage, and for which her broker had not provided written approval—contrary to section 54(2) of the *Real Estate Act Rules*:
  - i. Clark loaned her client \$1,000 for the deposit to purchase the Property



AFFIDAVIT OF EXECUTION

I, Brian West of the City/Town of Okotoks,  
(print name of **witness**)

in the Province of Alberta, swear or affirm that:

1. I was personally present to see Sundi Aline Clark named in the attached Admission, who is personally known to me, sign the Admission.
2. The Admission was signed at the City/Town of Okotoks, in the Province of Alberta.
3. I know Sundi Aline Clark and I believe they are eighteen years old or older.

SWORN OR AFFIRMED before me at the )  
City/Town of Okotoks in the )  
Province of Alberta on this 11 day )  
of July, 2018 )

\_\_\_\_\_  
A Commissioner for Oaths for the )  
Province of Alberta )

\_\_\_\_\_  
(signature of **witness**)

## THE REAL ESTATE COUNCIL OF ALBERTA

Case: 006304  
Process: A Hearing under Part 3 of the *Real Estate Act*  
Industry Member: Sundi Aline Clark  
Class of License: Real Estate Associate  
Registration: Currently registered with Redline Real Estate Group Inc.  
Document: JOINT SUBMISSION ON SANCTION

### Introduction

1. The Industry Member has agreed to an Admission of Conduct Deserving of Sanction under section 46 of the *Real Estate Act*.
2. The Admission is accepted by the Executive Director and has been entered as an exhibit in this hearing.
3. Under section 47 of the *Real Estate Act* the Admission of Conduct Deserving of Sanction is deemed to be a finding of this Hearing Panel and therefore concludes the first phase of the hearing on conduct.
4. The second phase of the hearing concerns sanction.
5. The Industry Member and Executive Director make the following submission on sanction together.

### Panel Authority on Sanction

6. The Hearing Panel's authority to impose sanction on an industry member whose conduct has been found deserving of sanction is described at section 43 of the *Real Estate Act*:

Decision of Hearing Panel

43(1) If a Hearing Panel finds that the conduct of an industry member 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 industry member by the Council;
- (b) an order reprimanding the industry member;
- (c) an order imposing any conditions or restrictions on the industry member and on that industry member's carrying on of the business of an industry member that the Hearing Panel, in its discretion, determines appropriate;
- (d) an order requiring the industry member 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 industry member from applying for a new authorization for a specified period of time or until one or more conditions are fulfilled by the industry member;
- (e) any other order agreed to by the parties.

### Factors on Sanction

7. A RECA Panel must consider whether a number of factors are relevant when assessing sanction. *Jaswal v Newfoundland (Medical Board)*[TAB 1], lists a number of factors that may be relevant:
  - a. the **nature and gravity** of the proven allegations
  - b. the **age and experience** of the industry member
  - c. the **previous character** of the offender and, in particular, the presence or absence of prior complaints or convictions
  - d. the **number of times the offence was proven** to have occurred;
  - e. the **role of the industry** member in acknowledging what occurred
  - f. whether the industry member had already suffered serious financial or **other penalties** as a result of the allegations having been made
  - g. **impact of the incident on the victim**, if any
  - h. **mitigating** circumstances
  - i. **aggravating** circumstances
  - j. the need to promote **specific and general deterrence** and thereby protect the public and ensure the safe and proper conduct of the profession
  - k. the **need to maintain the public's confidence** in the integrity of the profession
  - l. the **degree** to which the offensive conduct that was found to have occurred was clearly regarded, by consensus, as being the type of conduct that would fall outside the range of permitted conduct and
  - m. the **range of sentence in other similar cases**.
8. General deterrence refers to the effect a sanction issued in one case will have dissuading others to become involved in the same conduct. Specific deterrence refers to the effect a sanction has to correct the conduct of the person who is sanctioned.
9. Specific deterrence can also be achieved by punishment and by corrective or education conditions.
10. Mitigating and aggravating refers to facts which make the conduct less (mitigating) or more (aggravating) serious.
11. The Hearing Panel must consider each relevant factor, give weight to the factor in terms of how it should influence the sanction, consider the mandate of RECA under the *Real Estate Act* and then make an order which complies with section 43.

## **Factors in the Present Matter**

### *Age and Experience of the Industry Member*

12. The Industry Member was 39 years old during the conduct period. She was first authorized as a real estate associate on June 2, 2015.
13. The Industry Member was an inexperienced real estate associate during the conduct period. The purchase in question was the Industry Member's first real estate transaction.
14. However, the Industry member had recently completed both parts of the Fundamentals of Real Estate course (on March 17, 2015) and the Practice of Residential Real Estate course (on May 8, 2015).

### *Previous Character of the Industry Member*

15. The Industry Member has no previous disciplinary history.

### *Number of Times the Offences Occurred*

16. There was one breach of section 41(b) of the Rules.
17. There was one breach of section 54(1)(e) of the Rules.

### *Nature and Gravity of the Allegations*

18. The Industry Member's failure to provide competent service to her buyer client spanned the length of the transaction and led to her client purchasing a home in which she could not reside without significant remediation costs. As a result of the Industry Member's failure to provide competent service her client purchased a home unsuited to her needs.
19. It is imperative to send a clear message that this type behavior—towards buyers seeking properties in flood hazard areas—will not be tolerated.
20. By providing a personal loan of \$1,000 for the deposit the Industry Member provided an inducement directly to her client which did not run through her brokerage. Details of the inducement were not provided in writing to the client or the Industry Member's broker.
21. By failing to document the inducement, or have it run through the Brokerage, the Industry Member left both her client and her brokerage vulnerable should any complications have arisen with respect to the inducement.

### *Role of the Industry Member in Acknowledging What Occurred*

22. The Industry Member acknowledged what occurred and was honest and forthright throughout the investigation. However the Industry Member did not

seem aware that her behavior fell well short of the standard expected of a buyer's representative: particularly with regard to properties in flood hazard areas.

23. In addition, the Industry Member demonstrated a lack of understanding regarding her duties to her buyer client, including what constitutes competent service, and when an inducement can properly be given to a client.

*Financial or Other Penalties as a Result of the Allegations*

24. The Industry Member suffered no financial or other penalties as a result of the allegations having been made.

*Need to Maintain Public Confidence in the Industry*

25. Real estate associates must practice in strict compliance with the Act and the *Real Estate Act Rules* ("Rules") in order to maintain the integrity of the industry. Public confidence in the industry is compromised when a real estate associate contravenes the Act or the Rules.

26. In *Adams* the Alberta Court of Appeal noted that public confidence in a profession should be of utmost importance to disciplinary bodies:

*A professional misconduct hearing involves not only the individual and all the factors that relate to that individual, both favorably and unfavorably, but also the effect of the individual's misconduct on both the individual client and generally on the profession in question. This public dimension is of critical significance to the mandate of professional disciplinary bodies.*

*Adams v Law Society of Alberta*, 2000 ABCA 240 at para 6 – [Tab 2]

27. In *Lambert* a hearing panel for the Law Society of Upper Canada added that a profession's most valuable asset is its collective reputation and this must be considered in determining an appropriate sanction. In *Lambert* the hearing panel writes:

*When determining the appropriate penalty for this 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". [emphasis added]*

*Law Society of Upper Canada v Lambert*, 2014 ONLSTH 158 (CanLII) at para 17 – [Tab 3]

28. The Industry Member's breaches of sections 41(b) and 54(2) of the Rules erode the collective reputation of the Alberta real estate industry along with the public confidence this reputation should inspire.

29. Significant fines are required in this matter to maintain and protect public confidence in the Alberta real estate industry on a go-forward basis. The public must be confident the Alberta real estate industry will protect them when they seek to purchase homes in flood hazard areas.

*Degree to which the Offensive Conduct Falls Outside the Range of Permitted Conduct*

30. As stated above, the industry member's conduct fell short of the standard expected of a buyer's representative: particularly with regard to a buyer seeking properties in a flood hazard area.

*Impact of the Incident on the Complainant*

31. The complainant was unable to live in the subject property upon taking possession due to the presence of mould and potential exposure to asbestos during remediation.
32. As at July 20, 2016, the complainant had already incurred \$9,169.88 in expenses remediating the subject property.

*Specific and General Deterrence*

33. General deterrence refers to the effect a sanction issued in one case will have dissuading others to become involved in the same conduct. Specific deterrence refers to the effect a sanction has to correct the conduct of the person who is sanctioned.
34. There is a need for specific deterrence in this matter. The fine will discourage the industry member from representing a buyer without the necessary knowledge and skills to do so. The requirement to complete education concerning residential property issues and buyer representation will ensure the industry member can perform the necessary services and give the necessary advice to future buyer clients.
35. The need for general deterrence is significant. Industry members must recognize that harm to public confidence in—or the reputation of—the Alberta Real Estate Industry comes with significant sanctions.
36. As mentioned in *Adams* and *Lambert* a profession's collective reputation and the public confidence it inspires should be of utmost importance to a regulator.

*Adams v Law Society of Alberta*, 2000 ABCA 240 at para 6 – [Tab 2]

*Law Society of Upper Canada v Lambert*, 2014 ONLSTH 158 (CanLII) at para 17 – [Tab 3]

*Previous Sanctions in Similar Circumstances*

37. Precedents are not binding on the Hearing Panel but help ensure sanctions are consistent between comparable conduct.

Section 41(b) of the Rules

a) *Hearing Decision – Jameel Dasouki – May 24, 2017 [TAB 4]*

The Hearing Panel determined Dasouki:

- used contradictory and inconsistent agency relationship forms
- presented a rent-to-own arrangement to his clients as a sale
- failed to advise his clients that the offer included no security deposit, or to make the deal conditional upon receiving a security deposit
- failed to verify material representations made by another industry member

All of the above were found to be violations of section 41(b) of the Rules and conduct deserving of sanction.

Dasouki received a fine of \$2,500 and was required to complete three educational courses.

b) *Administrative Penalty - Maria Raj – June 21, 2016 [TAB 5]*

Raj made disclosures in purchase contracts for two lots in Edmonton which stated the principals of the corporate sellers were “licensed Realtors” in Alberta. However, Raj did not disclose that she was one of those principals. Furthermore, when secondary deposits were not delivered per the terms of the purchase contracts, Raj verbally allowed for an extension of the delivery date instead of drafting amendments. Finally, when the buyer requested an extension of the completion date in the purchase contracts, Raj verbally allowed the buyer more time instead of drafting amendments.

Raj received a fine of \$2,000 for failing to provide competent service.

c) *Administrative Penalty - Dixie Lee Hartell – January 14, 2013 [TAB 6]*

Hartell was representing sellers of a home in Strathmore on which an addition was being constructed. The sellers lived out of province. Competence issues arose in both a collapsed and a completed transaction.

In the collapsed transaction, Hartell knew construction on the addition had not finished when the sellers accepted an offer to purchase the property. Furthermore, Hartell was unaware whether inspections had been completed and permits put in place. When reviewing the offer to purchase with the sellers, Hartell failed to make them aware of these issues. As a result, the sellers made certain representations in the offer to purchase that may have been false.

In the completed transaction, after her sellers accepted an offer to purchase the property, Hartell contacted the Town of Strathmore, as well

as the company constructing the addition, to inquire whether inspections would be completed and permits put in place on or before the possession date. However, Hartell did not follow up to ensure the inspections were completed and permits put in place. Furthermore, Hartell did not communicate this information to her sellers or the buyer's representative. The inspections and permits were required so the home could be occupied.

Hartell received a fine of \$3,000 for failing to provide competent service.

Section 54(2) of the Rules

d) *Administrative Penalty – Jeffrey Robert Harding – April 26, 2017 [TAB 7]*  
Harding agreed to pay his client's legal expenses after Harding's commission was released from the sale of the property.

Harding received a fine of \$1,500 for providing an inducement, which was not provided on behalf of his brokerage, nor approved by his broker.

**Proposed Sanction**

38. The Executive Director and industry member submit that the following sanction is warranted taking into account the relevant factors:

a. Fines

Admission Paragraph	Breach	Fine
23.a.	Section 41(b) of the Rules	\$2,500
23.b.	Section 54(2) of the Rules	\$1,500

b. Other Conditions

The industry member should be required to successfully complete the following education with six months of the date the Hearing Panel's Order is issued:

- Unit 4: Residential Property Issues
- Unit 7: Representing the Buyer

c. Costs

The industry member should be ordered to pay costs of \$500 for the investigation and proceedings.



## The Agreement between the Executive Director and Industry Member

39. An additional factor is that the parties have reached an agreement on conduct and on sanction taking into account the relevant factors.

40. The Supreme Court of Canada addressed the “public interest” test that should be used when considering whether to depart from an agreed outcome in *Anthony-Cook* [TAB 8]:

32 Under the public interest test, a trial judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest. But, what does this threshold mean? Two decisions from the Newfoundland and Labrador Court of Appeal are helpful in this regard.

33 In *Druken*, at para. 29, the court held that a joint submission will bring the administration of justice into disrepute or be contrary to the public interest if, despite the public interest considerations that support imposing it, it is so “markedly out of line with the expectations of reasonable persons aware of the circumstances of the case that they would view it as a break down in the proper functioning of the criminal justice system”. And, as stated by the same court in *R. v. O. (B.J.)*, 2010 NLCA 19 (N.L. C.A.) (CanLII), at para. 56, when assessing a joint submission, trial judges should “avoid rendering a decision that causes an informed and reasonable public to lose confidence in the institution of the courts”.

*R v Anthony-Cook*, 2016 SCC 43 at paras 32-33

41. The Court in *Anthony-Cook* also outlines the procedure decision makers must follow if they are inclined to depart from a joint submission (at paras 49-60).

42. The Executive Director and industry member have considered the factors for an appropriate sanction and submit that this sanction is within an appropriate range that the Panel can accept.

43. Please feel free to express your concerns about the sanction or to ask for further submissions or more information from either party.

All of which is respectfully submitted this 12 day of July, 2018.

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STEPHEN KENT  
Counsel for the Executive Director

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SUNDI ALINE CLARK

