

THE REAL ESTATE COUNCIL OF ALBERTA

Case: 006466

Process: A Hearing under Part 3 of the *Real Estate Act*

Industry Member: Michael Eurchuk

Hearing Panel: Bobbi Dawson (Chair)
Gordon Reekie
David Hicks

Appearances: Andrew Bone, for executive director of the Real Estate Council of Alberta
Michael Eurchuk, in person

Hearing Date: July 24, 2018

DECISION OF HEARING PANEL

I. BACKGROUND:

On June 22, 2018, following an investigation by the Real Estate Council of Alberta ("RECA"), Michael Eurchuk entered into an agreement with the executive director of RECA (the "executive director") detailing an Admission of Conduct Deserving of Sanction.

Also on June 22, 2018, Mr. Eurchuk along with counsel for the executive director agreed to a Joint Submission on Sanction arising out of the above noted Admission of Conduct.

On July 4, 2018, the Executive Director issued a Notice of Hearing alleging that Michael Eurchuk breached section 42(g) of the *Real Estate Act Rules*.

This hearing took place on July 24, 2018 by telephone conference. Representations were made by both counsel for the executive director as well as Mr. Eurchuk.

We have reviewed and considered the material referred to above, as well as the submissions made during the hearing, and our decision is set out below.

II. FINDINGS:

Conduct Deserving of Sanction:

The Notice of Hearing alleges a breach of s 42(g) of the *Real Estate Act Rules*. That section states:

Industry Members must not:

...
(g) *engage in conduct that undermines public confidence in the industry, harms the integrity of the industry, or brings the industry in to disrepute.*

Rather than repeat here the details of the conduct deserving of sanction and the parties' submissions on sanction, we have instead attached as Schedule "A" and "B" respectively to this decision, the signed Admission of Conduct Deserving of Sanction (marked as Exhibit 2 in the Hearing), and the Joint Submission on Sanction (marked as Exhibit 3 in the Hearing).

During the hearing, the executive director's counsel clarified one paragraph in the Admission of Conduct (Schedule A). Paragraph 8 suggests that when initially questioned about the timing of attendance sheets, Mr. Eurchuk provided false information to RECA. The executive director's counsel confirmed that this information was actually provided via a standard survey circulated after the course. It was not a misrepresentation made to a RECA investigator or to anyone else addressing conduct or a potential violation of the *Rules*. To the contrary, the executive director's counsel states that Mr. Eurchuk has been scrupulously honest throughout the investigation. Moreover, the executive director's counsel has acknowledged that Mr. Eurchuk's conduct was not at any point motivated by dishonesty or malice; there was no intent to prejudice course attendees.

We accept the Admission of Conduct (Schedule A), subject only to the minor clarification noted above.

Therefore, pursuant to s. 47 of the *Real Estate Act*, the conduct outlined in Schedule A is deemed to be this Panel's findings on Conduct Deserving of Sanction.

Sanction:

With respect to the appropriate sanction in this case, we agree with the Joint Submission (Schedule B). The parties have properly identified and given appropriate

weight to the relevant aggravating and mitigating factors. As such, we will not review them in detail. However, we note in particular that a primary aggravating factor is that course attendees were asked to complete an attendance form they knew to be false. This type of conduct undermines the integrity of the industry's educational framework, and it places course attendees in the untenable position of being asked by a course presenter (who is supposed to be a leading industry member teaching, at least in part, about ethical requirements) to violate their ethical obligations as industry members.

However, weighing heavily in Mr. Eurchuk's favor is his honesty, candor and cooperation during the investigation, his willingness to resolve this by agreed submission, and his expressed remorse. We found Mr. Eurchuk's expression of remorse to be genuine. In fact, at the conclusion of the hearing he apologized to the panel members for having taken their time to deal with this. It is clear that the conduct in question is an aberration in a long and otherwise discipline-free history as a leading member of the real estate industry in Alberta.

In the end, however, we accept and agree with the sanction proposed by the parties and set out at paragraph 20 of the Joint Submission (Schedule B).

III. DECISION ON SANCTION & COSTS:

Based on the foregoing, we hereby order and direct as follows:

- Mr. Eurchuk shall pay a fine of \$6,500;
- Mr. Eurchuk's authorization to trade in real estate shall be suspended for a period of one month, starting forthwith, or as otherwise directed by the Executive Director;
- Mr. Eurchuk shall, within six months, complete the educational course: *Real Estate Act, Rules and Regulations*.
- Mr. Eurchuk shall pay costs of this matter in the amount of \$500.

Dated this 7th day of August, 2018.

Bobbi Dawson, Hearing Panel Chair

THE REAL ESTATE COUNCIL OF ALBERTA

Case: 006466
Process: A Hearing under Part 3 of the Real Estate Act
Industry Member: Michael Elias Eurchuk
Authorization: Real Estate Associate Broker
Registration: Polaris Realty (1995) LTD. o/a Maxwell Polaris
Document: ADMISSION OF CONDUCT DESERVING OF SANCTION

1. I, Michael Elias Eurchuk, 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 22nd day of June 2018.

Michael Elias Eurchuk

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 June 22, 2018

(date)

Charles Stevenson, for
Bob Myroniuk, Executive Director
of the Real Estate Council of Alberta

Schedule "A"

1. Michael Elias Eurchuk and the Executive Director agree to the following:

Agreed Facts

2. Michael Eurchuk ("Mr. Eurchuk") is currently registered as a Real Estate Associate Broker with Polaris Realty (1995) Ltd. o/a Maxwell Polaris.
3. On March 15, 2016 Mr. Eurchuk signed a Memorandum of Understanding to be an instructor for the Real Estate Update 2016 Course.
4. On March 14, 2016 Mr. Eurchuk agreed to present this course in accordance with a lesson plan confirmed with MP, RECA's Education Services Manager at that time.
5. Mr. Eurchuk agreed in the Memorandum of Understanding and in confirming the lesson plan that he would abide by the
 - a. learning outcomes
 - b. lesson plan
 - c. facilitator's guide approved by the RECA Education Services Manager
 - d. Education Code of Conduct
6. Mr. Eurchuk agreed and was required to do the following each time he taught the course:
 - a. He would spend approximately 9 hours over 1 ½ days teaching the course.
 - b. He would pass 2 attendance sheets out in which students were confirming to RECA they had attended the full course on each of the ½ days.
 - c. He would not pass the attendance sheets out until the end of each day.
 - d. He would teach all Sessions of the course, including all student participation exercises.
 - e. He would include a 10 minute discussion of the Education Code of Conduct with the students.

7. On September 15, 2016 Mr. Eurchuk taught the course to a class of students at the Realtors Association of Edmonton. He did the follows:
 - a. He spent only 5 ½ hours on the course ending it a 3:40pm on the first day.
 - b. He omitted session 5 telling students "We are not going to do the questions from Session 5, as long as no one tells RECA."
 - c. He omitted Activity 2 in Session 6 of the course.
 - d. He omitted many of the student participation exercises.
 - e. He passed the attendance sheet for September 15 around for signing at 11:30 am on September 15, 2016.
 - f. He passed the attendance sheet for September 16 out for signing at 3:40pm on September 15, 2016. He put the students in the position of declaring falsely they attended 1 ½ days of instruction.
 - g. He did not discuss the Education Code of Conduct for learners as required.
 - h. He included material not applicable for residential or rural real estate practice such as the Deferred Reserve Caveat.
 - i. He glossed over various course topics, such as septic system maintenance, electrical utilities, heating utilities, waste management services and potential environmental issues.
 - j. He only made a reference to course material regarding natural gas.
8. On September 21, 2016 Mr. Eurchuk was questioned by RECA about his instruction on September 15 and 16. Mr. Eurchuk answered falsely to RECA:
 - a. He handed the first attendance sheet out between 3:30 and 3:45 pm on September 15, 2016.
 - b. He handed the second attendance sheet out between 11:30 & 11:45 pm on September 16.
9. Mr. Eurchuk admitted that on three other occasions when he taught the course he completed it in one day and handed out the attendance sheet for the second day on the first day. The dates that those three courses took place were August 23, 2016, September 15, 2016 and September 19, 2016. All three courses took place at the Realtors Association of Edmonton.

Agreed Breaches

10. It is agreed that the above conduct is deserving of sanction for the following breaches:
 - a. Engaged in conduct that undermines public confidence in the industry, harms the integrity of the industry, or brings the industry into disrepute contrary to **Rule 42(g) of the Real Estate Act Rules**:
 - i. Mr. Eurchuk agreed to teach the Real Estate Update 2016 course at standards set for him by RECA.
 - ii. He disregarded many of the standards and provided the students less than they paid for and less than was required by RECA.
 - iii. He broke the trust placed on him by RECA and the students to provide the best education experience the course was designed to provide.
 - iv. He put students in the position of feeling they had to sign a false declaration about their attendance.

Agreed Factors on Sanction

11. It is agreed that the following facts are relevant as mitigating factors:
 - a. Mr. Eurchuk has a long career in education and real estate with no discipline history.
 - b. Mr. Eurchuk has made a full admission and expressed deep remorse.
12. It is agreed that the following facts are relevant as aggravating factors:
 - a. Mr. Eurchuk was in a position of trust and the students were vulnerable to his actions and influence.
 - b. Mr. Eurchuk taught the course for compensation. He did not deliver what was agreed upon.
 - c. Mr. Eurchuk is an experienced broker, expected to conduct himself at the utmost level of integrity and professionalism.

AFFIDAVIT OF EXECUTION

I, _____ of the City/Town of Edmonton,
(print name of **witness**)

in the Province of Alberta, swear or affirm that:

1. I was personally present to see Michael Elias Eurchuk named in the attached Admission, who is personally known to me, sign the Admission.
2. The Admission was signed at the City/Town of Edmonton, in the Province of Alberta.
3. I know Michael Elias Eurchuk and I believe he is eighteen years old or older.

SWORN OR AFFIRMED before me at the)
City/Town of _____ in the)
Province of Alberta on this _____ day of)
_____, 20____)

A Commissioner for Oaths for the Province)
of Alberta)

(signature of witness)

THE REAL ESTATE COUNCIL OF ALBERTA

Case: 006466
Process: A Hearing under Part 3 of the *Real Estate Act*
Industry Member: Michael Elias Eurchuk
Class of License: Real Estate Associate Broker
Registration: Polaris Realty (1995) LTD. O/A Maxwell Polaris
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 factors refer to evidence which make the conduct less serious (mitigating) or more serious (aggravating). While all of the above factors can be thought of as mitigating or aggravating, items (h) and (i) refer to factors not specifically enumerated in *Jaswal*.
 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.

Analysis of the *Jaswal* Factors

12. Age and Experience of the Industry Member
 - Mr. Eurchuk is currently 79 years old and was first authorized as a real estate associate at RECA's inception in 1997. He has been an industry professional significantly longer.
 - Given his lengthy experience he ought to have been aware that his conduct in this matter was unacceptable.
13. The Previous Character of the Member
 - Mr. Eurchuk has no previous disciplinary history.
14. The Number of Times the Offence was Proven to have Occurred.
 - There was 1 incident that breached section of 42(g) of the Rules. However Mr. Eurchuk has admitted that on 3 other occasions when he taught the same course he completed it in one day and handed out the attendance sheet for the second day on the first day.

15. The Nature and Gravity of the Proven Allegations

- Education is a key component of real estate professional's ability to provide knowledgeable and reasoned advice to their clients.
- Mr. Eurchuk taught a course for compensation. He did not deliver what he agreed to deliver to RECA in terms of the courses depth and breadth.
- Mr. Eurchuk is an Industry Leader. He failed in his capacity as a leader with his conduct in this matter.
- Mr. Eurchuk's breach of Rule 42(g) is serious in both nature and gravity as it negatively effects the education of industry professionals.

16. The Need to Maintain Public Confidence in the Industry

- Public confidence in the real estate profession requires real estate professionals to be knowledgeable and able to provide sage advice to their clients. Public confidence in the industry is compromised when the education provided by a teacher does not cover all of the required components.
- In Adams [TAB 2] 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 page 3

- In Lambert [TAB 3] 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".

Law Society of Upper Canada v Lambert, 2014 ONLSTH 158 (CanLII) at para 17

- Mr. Eurchuk's breach of section 42(g) of the Rules involving the educational development of industry professionals impacts the collective reputation of the Alberta Real Estate Industry along with the public confidence this reputation should inspire.

17. The Role of the Member in Acknowledging What Occurred

- He has admitted his conduct as a teacher was wrong and expressed deep remorse.

18. Specific and General Deterrence

- Given Mr. Eurchuk's remorsefulness, his advanced age and the fact his status as an approved instructor has been revoked by RECA for 5 years, there is not an overwhelming need for specific deterrence in this matter.
- The need for general deterrence is more significant here. Industry members must recognize that harm to public confidence in the reputation of the Alberta Real Estate Industry comes with sanctions. A breach in the educational development of industry professionals erodes public confidence in their abilities and knowledge base.
- Further Mr. Eurchuk's conduct caused multiple learners to breach the Education Code of Conduct for Learners. RECA expended resources having to contact all the learners affected by his conduct and issuing advisory notes.

19. Previous Sanctions in Similar Circumstances

- *Administrative Penalty- Jeffrey Harding [TAB 4]*
Harding was involved in 12 different transactions where he failed to ensure paperwork was properly prepared. This included not fully filling

in documents and having documents signed after the transactions had already closed. He received a fine of \$3,000 for failing to provide competent service. This is less serious than the current matter as educational development is strongly linked to the public's confidence in the industry.

- *Administrative Penalty- Christopher Mele [TAB 5]*
Mele received a \$5,000 penalty for failing to provide competent service during a personal trade transaction. There were several instances where Mele failed to demonstrate competency including inadequately filling out paperwork, having buyer sign a notice. This is less serious than the current matter for the same reason as the above precedent.
- *Administrative Penalty – Kohut, Ms. Shelley Jo-Ann [TAB 6]*
Kohut breached Rule 46 (2) of the *Real Estate Act* Rules by directing an unlicensed assistant to perform tasks that can only be performed by an industry member. She was fined \$1500. Similarly, Mr. Eurchuk directed students to breach the Code of Conduct by having them sign an attendance sheet on the wrong day.

Proposed Sanction

20. The Executive Director and Industry Member submit that the following sanction is warranted taking into account the relevant factors:

- a. Fines
Rule 42(g) \$6,500.00
- b. Other Conditions

Mr. Eurchuk's authorization to trade in real estate under the Real Estate Act shall be suspended for a period of 1 month, such suspension commencing immediately.

The Industry Member should be required to successfully complete the following education within six (6) months of the date the Hearing Panel's Order is issued:

- Unit: Real Estate Act, Rules and Regulations
- 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

21. An additional factor is that the parties have reached an agreement on conduct and on sanction taking into account the relevant factors.
22. The Supreme Court of Canada addressed the test that should be used when considering whether to depart from an agreed outcome in the case *R v. Anthony-Cook (2016)* [TAB 7], the “public interest” test:

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”.

23. The Court in *Anthony-Cook* also outlines the procedure decision makers must follow if they are inclined to depart from a joint submission (Para 49 – 60).
24. 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.
25. 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 22nd day of June, 2018.

Andrew Bone

Counsel for the Executive Director

Michael Elias Eurchuk