THE REAL ESTATE COUNCIL OF ALBERTA

IN THE MATTER OF Section 41 of the *REAL ESTATE ACT*, R.S.A. 2000, c.R-5 (the "***Act***")

AND IN THE MATTER OF a Hearing regarding the conduct of SAMEER KALIA, Real Estate Associate registered at all material times hereto to Century 21 A.L.L. Stars Realty Ltd., Brokerage

Hearing Panel Members:	Mr. Stan Mills, Chair Mr. Terry Brooke Ms. Rita Aggarwala
Appearances:	Mr. Murray Engelking, for Mr. Kalia
	Mr. Andrew Bone, for the Executive Director of the Real Estate Council of Alberta (the "**ED**")
Hearing Date(s):	September 17 and 18, 2018 at the offices of the Real Estate Council of Alberta ("**RECA**") in Calgary, Alberta

DECISION

UPON Hearing the testimony of witnesses and considering the evidence submitted at the hearing of this matter; **AND UPON** reviewing and considering the materials submitted and the arguments made by the parties,

THE HEARING PANEL HEREBY FINDS AS FOLLOWS:

A. Introduction

This is a case about the need for clear communication between real estate industry members selling real estate on their own behalf, and potential buyers who are members of the public. In this case, a real estate associate did not make his interest in lands clear to a potential buyer of those lands. This avoidable omission led to confusion, bad blood and a protracted and costly process, starting with a complaint by a member of the public and leading to these proceedings.

The ED, upon completing a conduct investigation of real estate associate Sameer Kalia, referred the matter to a hearing panel, in accordance with Section 39(1)(b) of the *Act*. In accordance with Section

41 of the *Act* a hearing was held at RECA's Calgary offices on September 17 and 18, 2018 (the "**Hearing**"). Documentary and oral evidence were presented at the Hearing, along with arguments. Both Mr. Kalia and the ED were represented by legal counsel. The purpose of the Hearing was to determine whether the conduct complained of and investigated was conduct deserving of sanction.

The Hearing Panel (the "**Panel**") finds that Mr. Kalia did engage in conduct deserving of sanction, as set out more fully in these reasons.

B. Allegations

The ED has accused Mr. Kalia of the following breaches. They are listed in the order presented by the ED in the Notice of Hearing:

1. A breach of Section 41(d) of the *Real Estate Act Rules* (the "***Rules***"), requiring industry members to fulfill fiduciary obligations to clients;
2. A breach of Section 41(f) of the *Rules*, requiring industry members to disclose conflicts of interest to clients;
3. A breach of Section 42(b) of the *Rules*, prohibiting industry members from participation in fraudulent or unlawful activities in connection with the provision of services or in any dealings;
4. A breach of Section 42(a) of the *Rules*, prohibiting industry members from conduct that recklessly or intentionally misleads or deceives any person;
5. A breach of Section 53(c) of the *Rules*, which requires associates to provide, in a timely manner, all documents relating to trades in real estate to their brokers;
6. Section 62(1) of the *Rules*, which requires industry members to make certain written disclosures when trading in real estate on their own behalf.

As explained more fully in these reasons, the Panel finds that the ED has proven that Mr. Kalia was in breach of Sections 41(d), 41(f), 42(a), 53(c) and 62(1)(a) and (b) of the *Rules*.

C. The Facts

The ED presented three (3) *viva voce* witnesses. The three (3) witnesses were:

1) GL, the complainant;
2) RG, the owner, broker and president of [("brokerage")].;
3) CR, the investigator in the matter.

The ED had also listed Mr. Kalia as a witness. Counsel agreed that Mr. Kalia would testify on his own behalf, with broad rights of cross-examination by the ED.

A number of exhibits were entered into evidence by the parties.

Based on the presentation of evidence at the Hearing, the Panel finds the following facts in this case:

1. A purchase contract for approximately 76 acres of land in Nisku, Alberta (the "**Nisku Property**" or "**Property**"), was entered on January 12, 2013, between [("Company1")]. or nominee or assignee (the buyer), and sellers who were represented by [("Brokerage")]. (the "**First Contract**"). The agreed purchase price was $920,000.
2. The buyer was a corporation owned and directed by Mr. Kalia.
3. Mr. Kalia initialed and signed the First Contract on behalf of the corporate purchaser, with the initials "M.K." He witnessed that signature himself, with a different signature, reading "Sam Kalia." He did this without the sellers of the Nisku Property or their agent present.
4. Mr. Kalia owned other land, directly or indirectly, close to the Nisku Property, and was interested in expanding his holdings in the area.
5. In the First Contract, Mr. Kalia included the following term: "One of the buyers is a licensed Realtor in the Province of Alberta."
6. On January 16, 2013, Mr. Gaetz conducted a corporate search on [("Company1")]. as part of his standard practice, and realized that:
    a. the corporation had been struck, and
    b. Mr. Kalia was the sole director of the corporation.
7. RG informed Mr. Kalia of his findings.
8. On January 17, 2013, Mr. Kalia registered a new corporation, [("Company2")], in which he, his wife and his father were directors. The First Contract was amended to change the name of the buyer from [("Company1")]. to [("Company2")].
9. Mr. Kalia was an owner of [("Company2")] as well as a director. Ownership of this corporation was not specifically documented or testified to in the evidence, however the Panel finds that on the totality of the evidence, it is more likely than not that Mr. Kalia was an owner.
10. Some time after January 12, 2013, Mr. Kalia met GL at a restaurant. They discussed the Nisku Property. GL expressed an interest in purchasing the land.
11. This meeting was an opportunistic or chance meeting. Mr. Kalia did not seek out GL to induce him to buy the Nisku Land.

12. Mr. Kalia and GL attended at the land on the same day as they met. GL did not see any [("Brokerage")] signs on the land during the visit.
13. GL believed Mr. Kalia was acting as his representative in the sale.
14. GL believed Mr. Kalia also represented the sellers, who were unknown to GL. This was a point of contention during the hearing. Mr. Kalia testified that he told GL that he had the Nisku Property "under contract," meaning Mr. Kalia was in the process of purchasing it. GL understood that to mean Mr. Kalia had a contract with the owners of the Nisku Land to represent them in a sale. The Panel believes GL on this point.
15. Mr. Kalia helped GL to come up with an offering price for the Nisku Property. This fact was contested, and the Panel prefers GL's evidence.
16. Mr. Kalia prepared a purchase contract for the Nisku Property, with GL's corporation, [("Company3")], as the buyer and Mr. Kalia's corporation, [("Company2")]., as the seller.
17. GL and Mr. Kalia met at a restaurant to review the purchase contract. Changes were made to the purchase contract. These changes were initialed by Mr. Kalia as "M.K" on behalf of [("Company2")]. Mr. Kalia witnessed the "M.K." signature with a different signature which read "Sam Kalia." These different initials and signatures were made in the presence of GL.
18. GL did not pay attention to the formalities or terms of the purchase contract, other than the purchase price. He simply signed or initialed where Mr. Kalia told him to.
19. A purchase contract was finalized between [("Company3")]. and [("Company2")]. on February 2, 2013. The purchase price agreed to was $1,200,000 (the "**Second Contract**").
20. Mr. Kalia did not explain to GL, in writing or verbally, at any point, that the Nisku Property was conditionally sold to [("Company2")]; nor that Mr. Kalia had an interest in the Property through [("Company2")]; nor that Mr. Kalia was not representing GL.
21. GL was not in fact aware of these three points. GL's actual knowledge of the two latter points were facts in dispute at the Hearing. Mr. Kalia's counsel argued that GL "must have known" that Mr. Kalia had an interest in the Nisku Property and that Mr. Kalia was not representing GL, despite the fact that this was never clearly stated to him. The Panel does not agree with Mr. Kalia and prefers GL's evidence on these points.
22. GL attended at the Nisku Property again, without Mr. Kalia, and noticed a [("Brokerage")] sign on the Property.
23. On February 7, 2013, GL spoke with RG and learned the Property was not Mr. Kalia's listing, and that it was conditionally sold to [("Company2")]

24. Mr. Kalia did not submit any documentation to his brokerage regarding the Second Contract, as he believed it was a personal real estate trade.
25. GL contacted Mr. Kalia's broker shortly after February 7, 2013.
26. GL instructed his lawyer to contact Mr. Kalia's lawyer and not to allow the release of the deposit funds for the Second Contract.
27. The Second Contract was cancelled.
28. Mr. Kalia used the due diligence clause in the First Contract to cancel the First Contract.

The parties spent considerable time debating the [("Brokerage")] sign and whether it was removed by Mr. Kalia when he first took GL to view the Nisku Property. The Panel could not conclude that Mr. Kalia removed the sign, and therefore has not made that finding.

The parties also discussed a page of the Second Contract which GL alleges was missing in the copy of the Contract sent to him by Mr. Kalia via email. That page contains a term that states, "vendor to authorize seller's lawyer to release the initial deposit to the seller within 24 hours of acceptance." The page is initialed by GL and Mr. Kalia (as corporate representative). The ED alleges that the omission of this page from the email attachment was intentional.

The Panel finds that if a copy of the Second Contract with a page missing was sent to GL, the ED has not proven that it was sent with intention to deceive. It may have been an inadvertent omission. In any case, the Panel finds that GL likely did not review the email attachment containing the Second Contract, as he was simply relying on Mr. Kalia to have the paperwork in place. Further, he initialed the missing page without reviewing it, again simply doing what Mr. Kalia instructed him to do. Mr. Kalia should perhaps have pointed the term out to GL during the contract execution, however this point and whether it was an obligation of Mr. Kalia's to point out the term in question was not addressed by the parties. The Panel can not find that Mr. Kalia intentionally held back the missing page.

GL testified that Mr. Kalia told him the Nisku Property was being sold because of a disagreement between two brothers from Vancouver that owned the land, and that GL could therefore purchase the Property at a good price. Mr. Kalia denied this. The Panel is not able to believe one witness over the other, and therefore can not make a finding of fact on this point.

The parties addressed whether there was discussion regarding the possibility of development on the Nisku Property. GL testified that Mr. Kalia did not disclose to him that the Property was in a 100-year flood zone. He also testified that when he went to view the Property, he saw that there was a ravine and a stream running through it and realized the entirety of the Property was unlikely to be developable. Mr. Kalia testified that he did disclose to GL that the Property was in a 100-year flood zone.

The Panel finds that the ED has not established that Mr. Kalia failed to have discussions with GL about the existence of water on the Property. Furthermore, whether or not the fact that the Nisku Property was on the 100-year flood zone was specifically stated to GL, GL was aware that there was water on the Property and that development permission was not assured.

D. Discussion

During Mr. Kalia's testimony, he stated that he believed personal real estate trades on conditionally sold lands were permissible, with consent and disclosure. However, Mr. Kalia fell far short of obtaining clear consent and providing clear disclosure to GL regarding his interest in the Nisku Property, or the status of that Property as conditionally sold at the time the Second Contract was entered into. Further, by not being clear about his interest and representative capacity, Mr. Kalia allowed GL to believe Mr. Kalia was representing [("Company3")]. In the Panel's opinion, these omissions form the crux of Mr. Kalia's conduct deserving of sanction.

Section 41(d) of the *Rules*

Section 41(d) of the *Real Estate Act Rules* states: "Industry members must fulfill their fiduciary obligations to their clients."

As explained above, the Panel finds that GL believed Mr. Kalia to be his representative (or, more accurately, [("Company3")]'s representative), and that Mr. Kalia allowed him to believe this. Specifically, an agency relationship was created under Rule 48(a), which states:

> For the purposes of this division, an agency relationship is established when a buyer or a seller expressly or implicitly consents that an industry member should act on his or her behalf, and the industry member consents so to act or so acts in a trade of real estate.

GL implicitly consented to Mr. Kalia's acting on his behalf, and Mr. Kalia so acted, establishing an agency relationship. Specifically, the Panel has found that Mr. Kalia showed GL the Nisku Property; assisted GL in coming up with an offer price for the Property; and prepared the purchase contract.

Having established an agency relationship, Mr. Kalia owed [("Company3")]. fiduciary duties. The ED lists three particular fiduciary breaches in the Notice of Hearing, namely:

i. Encouraging GL to enter into a contract for far more money than Mr. Kalia believed the Property was worth;
ii. Failing to inform GL that the Nisku Property likely could not be developed; and
iii. Failing to inform GL of his interest in the Property.

The Panel has found that the ED has established the third particular. This is indeed a breach of an agent's fiduciary duty to a client.

With respect to the first particular, Mr. Kalia's belief regarding the value of the Property was not proven. His company purchased the Property for $920,000 and later attempted to amend the First Contract purchase price to $600,000, but his opinion as to the Property's actual worth was not established. Mr. Kalia testified that he decided not to close the First Contract because of the fallout over the Second Contract and the bad feelings that subsequently arose, not because of any belief in the actual value of the Nisku Property. The Panel accepts this.

With respect to the second particular, the Panel has found that GL was aware that there were development issues with the Nisku Property. The Panel is not convinced that Mr. Kalia failed to have discussions with him in this regard.

Section 41(f) of the *Rules*

Section 41(f) of the *Rules* states: "Industry members must disclose to their clients, at the earliest practical opportunity, any conflict of interest they may have in the course of providing services to, or in their dealings with, a client."

The Panel has found that Mr. Kalia failed to inform GL that he had an interest in [("Company2")]., as an owner and director. This put Mr. Kalia's interests in conflict with his client's interests, resulting in Mr. Kalia breaching Section 41(f) of the *Rules*.

Section 42(b) and/or (a) of the *Rules*

Section 42(b) of the *Rules* states: "Industry members must not participate in fraudulent or unlawful activities in connection with the provision of services or in any dealings."

Section 42(a) of the *Rules* states: "Industry members must not make representations or carry on conduct that is reckless or intentional and that misleads or deceives any person or is likely to do so."

The ED lists a number of particulars to establish these breaches:

i. Initialling the First Contract with the initials "M.K" though Mr. Kalia's first name begins with an "S";
ii. Signing the First Contract on behalf of the corporate buyer with a forged signature to make it appear to various parties, during and after the fact, that Mr. Kalia did not have a personal interest in the transaction;
iii. Falsely representing in the Second Contract that a dispute between brothers precipitated the sale;
iv. Signing the Second Contract with a forged signature;
v. Removing the "for sale" signage from the Nisku Property prior to viewing the Property with GL.

Counsel for the ED clarified during the Hearing that the reference to "forgery" in the above particulars was inaccurate, and that those references should instead by replaced by the term "misleading." He argued that even after making this substitution of terminology, the breaches were still committed.

As explained above, the third and fifth particulars listed above have not been proven by the ED. The remaining particulars all deal with Mr. Kalia's usage of two different initials/signatures on the First and Second Contract, one as a corporate representative and one as an individual.

The parties spent considerable time addressing Mr. Kalia's use of two different signatures on both the First and Second Contracts, and whether this was done to deceive. Mr. Kalia testified that it has always been his practice to use one signature as a representative of his corporation (whose corresponding initials appear to be "M.K," not "S.K."), and another for himself personally. To that end, he used his corporate representative signature to sign each contract on behalf of the buyer and seller, respectively, and his personal signature to witness his corporate representative signature. GL was sitting with Mr. Kalia when

he initialed and signed the Second Contract, and did not pay any attention to the different signatures being used.

Mr. Kalia should not have witnessed his own signature. However, there is no dispute that Mr. Kalia signed the contracts on behalf of the corporate parties of which he is director and owner. A witness is not technically needed in purchase contracts of this sort. No party has relied on the witness signature, nor does it appear that any party relied on the initials "M.K." to represent someone other than Mr. Kalia. Mr. Kalia's broker at the time was unable to testify at the Hearing, so the Panel has no evidence with respect to whether that broker relied on any of the initials or signatures in the contracts.

The ED relies on *R. v. Olan*, [1978] 2 S.C.R. 1175, in stating that fraudulent conduct requires an element of dishonesty. Although Mr. Kalia did use two signatures in executing the contracts, there is no evidence that he did this dishonestly or with an intent to induce another to act to their detriment. The ED has not established a breach of Section 42(b) of the *Rules*.

Finally, the ED alleges, also with respect to Sections 42(b) and 42(a) of the *Rules*, that Mr. Kalia participated in an "overall scheme" to induce GL to buy the Nisku Property for a price that Mr. Kalia helped to determine, while concealing his interest in the Property.

As stated in the enumerated facts above, the Panel finds that Mr. Kalia's meeting with GL was opportunistic. Mr. Kalia did not seek out a vulnerable party to induce into buying the Nisku Property. He had interests in other lands in the area and decided to increase his holdings in the area.

That said, once Mr, Kalia realized GL was interested in purchasing the Nisku Property, he did proceed in a manner that the Panel finds was reckless and likely to mislead or deceive, and that did in fact mislead and deceive. Mr. Kalia's conduct induced GL to by the Nisku Property for a price that Mr. Kalia helped him to determine while concealing his interest in the Property. Specifically,

- Mr. Kalia did not clearly state to GL that he was not acting as [("Company3")]'s agent. His actions in showing GL the land, assisting him to come up with an offer price, and drawing up the initial offer led GL to believe he was so acting;

- Mr. Kalia did not clearly state to GL that he was not the listing agent on the Nisku Property, and instead stated that he had the Property "under contract";
- Mr. Kalia did not clearly disclose to GL that he had a personal interest in the Property as he was required to do, nor that the Property was conditionally sold to a corporation that he was a director and owner of.

Together, these actions and omissions induced GL to enter into the Second Contract, believing Mr. Kalia was his agent and not realizing Mr. Kalia had a personal interest in the Nisku Property. Mr. Kalia's actions were reckless and misleading, and a breach of Section 42(a) of the *Rules*.

Section 53(c) of the *Rules*

Section 53(c) of the *Rules* states:

> A real estate associate broker and associate must provide to the broker in a timely manner all original documentation and copies of original documentation provided to the parties or maintained by other brokerages:
>
> (i) related to a trade in real estate; and
>
> (ii) required under the Act and these Rules.

The ED alleges that Mr. Kalia was required to submit documentation regarding the Second Contract to his brokerage. Mr. Kalia argued that because this was a personal trade, he was not required to submit any documentation to his brokerage.

As explained above, Mr. Kalia entered an agency relationship with [("Company3")]. in regards to the Second Contract. As he could only do so through his brokerage, he was required to submit documentation regarding the Second Contract to his brokerage. His failure to do this put him in breach of Section 53(c) of the *Rules*.

Section 62(1) of the *Rules*

Section 62(1) of the *Rules* states:

> An industry member trading in real estate on the industry members own behalf, either directly or indirectly, must disclose in writing:

(a) to a buyer or seller who is not represented by an industry member:
    (i) any interest, direct or indirect, that he has in the transaction;
    (ii) that the industry member is authorized under the Act;
    (iii) the name of the brokerage with which the industry member is registered;
    (iv) complete details of any negotiations for a further trade of the real estate or the industry members interest in it to another person; and
    (v) any information within the knowledge of the industry member that could materially affect the value of the real estate.
(b) To the industry member representing a buyer or seller:
    (i) That the industry member is authorized under the Act; and
    (ii) The name of the brokerage with which the industry member is registered.

The ED alleges that Mr. Kalia contravened Section 62(1) of the *Rules* in respect of both the First Contract and the Second Contract.

The First Contract, which is subject to Section 62(1)(b) of the *Rules,* contained the following clause: "One of the buyers is a licenced Realtor in the Province of Alberta." This statement does not satisfy the requirements of 62(1)(b)(i) or (ii), and puts Mr. Kalia in breach of those sections. The clause does not state who the industry member is (Mr. Kalia), nor the name of his brokerage. Mr. Kalia's counsel argued that this is merely a technicality, as the information ought to have been obvious to RG. The Panel disagrees. It is precisely the lack of proper disclosure throughout this matter that has resulted in these proceedings. It is incumbent on industry members to ensure the disclosures required in the *Rules* are made fully, properly and clearly.

With respect to the Second Contract, the Panel has found that Mr. Kalia was in an agency relationship with [("Company3")]. This would suggest that he was subject to Section 62(1)(b) of the *Rules*. This does not make sense, as Section 62(1)(b) would require him to make disclosures about himself to himself, thereby offering no protection to the other parties involved in the transaction.

Section 62 should be considered from the perspective of the industry member. Mr. Kalia testified that he believed he was not acting for [("Company3")]. and that he was involved in a personal trade. Therefore,

his obligations would be governed by Section 62(1)(a). He was therefore required to disclose to GL in writing:

- His interest in the transaction;
- That he was authorized under the *Act*;
- The name of his brokerage;
- Knowledge that he had with regards to the Nisku Property being in the 100-year flood zone.

Mr. Kalia provided none of these written disclosures, and is therefore in breach of Section 62(1)(a). Again, his counsel argued that the breaches are technical and insignificant, that the GL ought to have known all of these things but Mr. Kalia simply had not written them down. Again, the Panel disagrees with this line of argument. The written disclosures required by the Act and Rules are there in order to protect the public and avoid situations precisely like the ones the parties find themselves in.

E. Conclusions of Breach

Mr. Kalia is in breach of the following provisions of the *Real Estate Act Rules*:

- Rule 41(d)
- Rule 41(f)
- Rule 42(a)
- Rule 53(c)
- Rule 62(1)(a)
- Rule 62(1)(b).

He has, accordingly engaged in conduct deserving of sanction.

F. Request for Submissions on Sanction and Costs

The Hearing Panel requests written submissions on sanction and costs. Should either party desire a formal hearing on the issue of sanction and costs, they must advise the Hearings Administrator within 5 days of the receipt of this decision, with an explanation as to why a hearing is requested. The Panel will then make a decision as to whether a formal hearing on sanction and costs will be held.

Should neither party make the request described above, the following schedule shall apply:

The ED is asked to supply his written submissions to the Hearings Administrator within 14 days of receipt of this decision. The Hearings Administrator is directed to supply those written submissions to Mr. Kalia immediately on receipt. Mr. Kalia is asked to supply his written submissions to the Hearings Administrator within 14 days of receipt of the ED's written submissions. The Hearings Administrator is directed to supply those written submissions to the ED immediately on receipt. The ED is provided 7 days to supply a rebuttal.

Once the timelines for provision of written submissions to the Hearings Administrator have passed, any written submissions received within the time frames set out above will be supplied to the Hearing Panel for its consideration and decision on sanction and costs.

Dated at the City of Calgary in the Province of Alberta, this 10th day of October 2018.

Hearing Panel of the
Real Estate Council of Alberta

_____
Stan Mills, Hearing Panel Chair

THE REAL ESTATE COUNCIL OF ALBERTA

IN THE MATTER OF Section 41 of the *REAL ESTATE ACT*, R.S.A. 2000, c.R-5 (the "***Act***")

AND IN THE MATTER OF a Hearing regarding the conduct of SAMEER KALIA, Real Estate Associate registered at all material times hereto to Century 21 A.L.L. Stars Realty Ltd., Brokerage

Hearing Panel Members:	Mr. Stan Mills, Chair Mr. Terry Brooke Ms. Rita Aggarwala
Appearances:	Mr. Murray Engelking, for Mr. Kalia
	Mr. Andrew Bone, for the Executive Director of the Real Estate Council of Alberta (the "**ED**")
Hearing Date(s):	September 17 and 18, 2018 at the offices of the Real Estate Council of Alberta ("**RECA**") in Calgary, Alberta

DECISION ON SANCTION

FOLLOWING the decision of the Hearing Panel with respect to conduct deserving of sanction (the "Phase I Decision") and **UPON Considering** the written submissions of the parties with regards to the appropriate sanction in this matter,

THE HEARING PANEL HEREBY FINDS AS FOLLOWS:

G. Introduction

On September 17 and 18, 2018, a contested Phase I hearing (the "**Hearing**") was held, to determine whether certain conduct of Sameer Kalia was deserving of Sanction.

On October 10, 2018, the hearing panel in this matter (the "**Panel**") made findings with respect to Mr. Kalia's conduct, and determined that Mr. Kalia's conduct was deserving of sanction. Specifically, in the Phase 1 decision, the Panel found the following conduct to be deserving of sanction:

- Mr. Kalia did not clearly state to GL, a potential buyer of property in Nisku in which Mr. Kalia had an interest (the "**Property**")
    - that he was not the listing agent for the Property;
    - that he had an interest in the Property; and
    - that he was not acting as [("Company3")]'s agent.

  In fact, Mr. Kalia established an agency relationship with [("Company3")]:
    - he told GL he had the Property "under contract";
    - he showed GL the Property;
    - he assisted GL in coming up with an offer price; and
    - he drew up the initial offer.

  GL was led to believe that Mr. Kalia was the listing agent, was uninterested in the Property, and that Mr. Kalia was acting as realtor for [("Company3")]. GL entered a purchase contract for the Property based on these understandings.
- Mr. Kalia did not submit documentation to his brokerage regarding the real estate transaction involving [("Company3")]. He was required to do this under the *Real Estate Act Rules* (the "***Rules***").
- Mr. Kalia did not provide to GL, in writing, as required by the *Rules,*
    - His interest in the transaction, specifically that he was the owner and director of a corporation to which the Property had been conditionally sold;
    - That he was an industry member authorized under the *Act*;
    - The name of his brokerage;
    - Knowledge that he had with regards to the Property being in a 100 year flood zone.
- Mr. Kalia did not disclose in writing to RG, the listing realtor for the Property with whose client a company that Mr. Kalia owned and directed had a conditional sales agreement,
    - that he had an interest in the Property;
    - that he was an authorized industry member; and
    - the name of his brokerage.

  He was required to do this under the *Rules*.

As a result of his conduct, considering the entirety of the particulars and allegations set out in the Notice of Hearing and what was proven during the Hearing, the Panel found that Mr. Kalia breached sections 41(d) (fiduciary duties), 41(f) (disclosure of conflicts of interest), 42(a) (reckless and misleading representations or conduct), 53(c) (providing his brokerage with documents relating to trades in real estate) and 62(1)(a)

and (b) (written disclosure of industry member's interest in real estate) of the *Rules*.

The issues to be determined in these reasons are the issue of the appropriate sanction for Mr. Kalia, along with any costs that arise against Mr. Kalia.

For the reasons discussed below, the Panel believes the following sanction against Mr. Kalia is appropriate in these circumstances:

- A $5,000 fine for his breaches of section 41(d) and 41(f) of the *Rules*;
- A $10,000 fine for his breach of section 42(a) of the *Rules*;
- A $2,500 fine for his breach of section 53(c) of the *Rules*;
- A $2,500 fine for his breaches of sections 62(1)(a) and (b) of the *Rules*;
- A 3 month suspension of Mr. Kalia's authorization to trade in real estate under the *Act*, commencing immediately;
- An education requirement, being the completion of Unit 4 (Consumer Relationships) and Unit 12 (Ethics, Professionalism and Risk Reduction) of the *Fundamentals of Real Estate – Real Estate Associates Program*, at his own expense. Should Mr. Kalia not complete this education requirement within 3 months, his authorization to trade in real estate under the *Act* will continue to be suspended until he has completed the requirement;
- Costs in the amount of $13,294.

The facts and breaches are set out in the Panel's written Phase I Decision, issued October 10, 2018.

H. Parties' Proposed Sanctions and Costs

The parties were invited to make submissions with respect to the appropriate sanction and costs, and both parties did so.

The ED proposes the following sanction:

- For the breach of Rules 41(d) and (f), a fine of $10,000; a 3 month license suspension; and an education requirement (Consumer Relationships unit)
- For the breach of Rule 42(a), a fine of $20,000; a 9 month license suspension; and an education requirement (Ethics, Professionalism and Risk Reduction unit)
- For the breach of Rule 53(c), a fine of $2,500
- For the breach of Rule 62(1)(a), a fine of $1,500

- For the breach of Rule 62(1)(b), a fine of $1,500
- Costs related to Mr. Kalia's adjournment and bias applications, in the amount of $5,450
- Thrown away costs in the amount of $5,948.75
- Additional costs in the amount of $23,040.64

Mr. Kalia proposes a global sanction of a fine in the amount of $6,500.

With respect to costs, Mr. Kalia suggests that because there were allegations of fraud made and not proven, the ED should be made to pay Mr. Kalia's costs, on a full solicitor and own client basis. In any case, Mr. Kalia submits that he should not be made to pay more that 25% of the costs incurred by the ED.

I. Discussion

a. Global versus Separate Sanctions

Mr. Kalia argues that the ED's approach to sanction, whereby each breach of the *Act* or *Rules* is considered separately, is problematic, as the effect is to penalize Mr. Kalia multiple times for the same transgressions. For example, Mr. Kalia's failure to disclose to GL his interest in the Property led to breaches of sections 41(d), 41(f), 42(a) and 62(1)(a) of the *Rules*. Mr. Kalia cites *The Law Society of British Columbia v. Aaron Murray Lessing*, 2013 LSBC 29, as persuasive authority for this argument.

The ED argues that the *Lessing* case does not stand for the proposition that sanctions should be considered only on a global basis. The ED points out that the Benchers in *Lessing* state that the determination of whether a sanction should include a fine or a suspension ought to be considered on a global basis. Once this is determined, the issuance of any suspension ought to be considered on a global basis, whereas fines should be determined citation-by-citation. Furthermore, these general principals may not be appropriate in all cases, and hearing panels should proceed on a case-by-case basis.

The Panel agrees with the ED on this point. *Lessing* does not stand for the general proposition that sanctions in disciplinary matters ought to be considered on a global basis. Where the same set of facts lead to multiple breaches of the *Act* or *Rules*, multiple sanctions may be awarded, as each breached provision addresses a specific harm that the legislature or regulating body intended to address.

In this case, for example, Mr. Kalia's failure to disclose his interest in the Property takes a different character under Rules 41(d) and (f), which deal with a realtor's duty to his or her clients; Rule 42(a), which deals with reckless and misleading representations to anyone including clients; and Rule 62(1)(a), which is a specific procedural requirement: Not only did Mr. Kalia fail to fulfil the procedural requirement to inform GL of his interest in writing, GL was a client of Mr. Kalia, to whom Mr. Kalia owed a fiduciary duty to disclose his interest. Furthermore, the failure to disclose was reckless and misled GL, inducing him to proceed with the sale. It is entirely appropriate to consider sanctions separately for each of these distinct breaches, and within these different contexts.

The Panel further notes that the ED recognizes that the breaches of Rules 41(d) and 41(f) are essentially identical. The ED has therefore proposed a single penalty for those combined sections. This is the appropriate, case-specific methodology to follow.

The Panel also notes parenthetically that by considering the breaches individually, members of the public, realtors and decision makers will more readily be able to connect a specific breach to a precedent sanction. Indeed, in the cases presented by the ED and Mr. Kalia for the Panel to consider, separate sanctions are generally considered for individual breaches.

b. Jaswal / Gellert Factors

The ED asks the panel to consider the factors enumerated in *Jaswal v. Newfoundland (Medical Board),* [1996], 138 Nfld. & P.E.I.R. 181 (Nfld S.C.T.D.) in arriving at an appropriate sanction. *Jaswal* is a case involving profession conduct in the medical profession. It has been cited with approval by the Alberta Court of Appeal in professional conduct scenarios, and is commonly referred to in RECA hearings.

Mr. Kalia suggests that the case of *Law Society of British Columbia v. Geller*, 2005 LSBC 15, provides a more appropriate list of factors to consider in cases involving real estate professionals.

The two cases provide very similar lists of factors, for the most part. The Panel has considered the following factors, most of which are common to *Jaswal* and *Geller*, and some of which are unique to one case or the other, in coming to its decision on sanction.

(a) The age and experience of the industry member;

(b) The previous character of the industry member, including details of prior discipline;
(c) The number of times offending conduct occurred;
(d) The number of breaches that occurred;
(e) The nature and gravity of the conduct proven;
(f) The impact of the conduct on the victim given the victim's individual attributes;
(g) Any advantage or potential advantage gained by the industry member;
(h) Whether the industry member has acknowledged the misconduct and taken steps to redress the wrong;
(i) Whether the industry member has already faced other serious financial, criminal or other penalties as a result of the conduct;
(j) The need for specific or general deterrence;
(k) The need to ensure the public's confidence in the integrity of the profession;
(l) The presence or absence of additional mitigating circumstances;
(m) The presence or absence of additional aggravating circumstances;
(n) The range of penalties in similar cases

Note that factor (m), the presence or absence of aggravating circumstances, does not appear in either the *Jaswal* or *Geller* list of factors, however it was addressed by the ED and the Panel believes it is an appropriate factor to consider. Similarly, factor (d), the number of breaches, does not appear as a factor in *Jaswal* or *Geller*. However, given the discussion above, it is appropriate to consider this factor as distinct from the number of times offending conduct occurred.

The age and experience of the industry member

Mr. Kalia is 51 years old, and has been an industry member since 2001.

Prior discipline

Mr. Kalia has no previous disciplinary history.

The number of times offending conduct occurred

Mr. Kalia's conduct spanned two related and successive real estate transactions. In the first transaction, Mr. Kalia failed to meet the written disclosure requirements of Rule 62(1)(b). In the second transaction, Mr. Kalia engaged in a series of actions which led to him owing and breaching fiduciary duties to GL, and to misleading GL. He also failed to

meet the written disclosure requirements of Rule 62(1)(a) and failed to submit documents relating to the transaction to his brokerage. In all, there were three discrete occasions of misconduct (involving failure to provide written disclosures and failure to submit information to his brokerage), and one series of actions constituting offending conduct.

The number of breaches

Mr. Kalia breached several Rules: Rule 41(d), 41(f), 42(a), 53(c), 62(1)(a) and 62(1)(b). For each rule listed, there was a proven allegation of a single breach.

The nature and gravity of the conduct proven

Mr. Kalia argues that his conduct in failing to disclose his interest in the Property to GL was serious, but not so egregious as to justify a suspension. Mr. Kalia was not, after all, found to have committed intentional fraud under Rule 42(b), as alleged by the ED.

Mr. Kalia also argues that his failure to disclose his interest in the Property in writing to RG is not as serious an offence, as RG became aware of his interest prior to closing, and the transaction, although it did not ultimately close, proceeded in light of this awareness.

The ED argues that Mr. Kalia's breaches, particularly his failure to disclose a conflict of interest vis a vis his interest in the Property to GL, is fundamental to public confidence. Mr. Kalia's reckless conduct induced GL into entering a contract believing Mr. Kalia to be his agent and without realizing Mr. Kalia's personal interest in the Property. The ED submits that this type of behaviour is serious in nature and unacceptable.

The Panel agrees with the ED. Mr. Kalia's conduct in failing to disclose his interest in the Property and recklessly allowing GL to believe he was representing him is harmful to the industry's reputation and the public's trust in the industry. Mr. Kalia's misconduct was serious, and induced GL to enter a purchase contract. Although the Panel did not find intentionally fraudulent conduct pursuant to Rule 42(b), Mr. Kalia's reckless disregard for whether GL understood Mr. Kalia's role and interest in the transaction is nevertheless a serious transgression. As the ED points out, citing *Law Society of Upper Canada v. Marshall Stephen Kasman*, 2008 ONLSAP 7, Mr. Kalia ought to have known he was doing wrong and ought to have turned his mind to the risk and potential consequences he was creating for GL, but he chose not to and behaved

recklessly as to the possible consequences of the risk. In such a case, it is not uncommon to impute knowledge of the risk and consequences to the transgressor.

The Panel agrees with Mr. Kalia that his conduct with respect to his failure to disclose his interest in writing to RG falls on the lower end of the scale of objectionable behaviour in these circumstances.

Impact of the conduct on the victim

No one experienced a financial loss in this matter, as neither of the transactions concerning the Property closed, and all deposits were returned. GL was very upset about Mr. Kalia's conduct, in particular, his failure to disclose his interest in the Property and the fact that he was not the listing realtor of the Property.

The advantage or potential advantage gained by the industry member

Because neither of the transactions closed, Mr. Kalia did not benefit from his misconduct. However, had the transactions closed, Mr. Kalia, through his corporation, stood to gain approximately $300,000 almost instantly, being the approximate difference between his purchase price and the selling price he had arrived at with GL.

Acknowledgment of wrongdoing by the industry member

Mr. Kalia argues that he has acknowledged from the outset of the investigation that he failed to disclose his interest in the Property in writing, with respect to both of the transactions involving the Property, and thus breached Rule 62(1).

The ED submits that Mr. Kalia showed no remorse for his conduct, and that he minimized the significance of it by characterizing it as a technicality.

The Panel agrees with the ED. Mr. Kalia stated during the Phase 1 hearing that even though GL was never explicitly informed of the same, GL ought to have known that Mr. Kalia was not representing him; that Mr. Kalia was not the listing realtor; and that Mr. Kalia had an interest in the Property. Mr. Kalia argued that the only problem with his lack of disclosure regarding his interest in the Property was that it wasn't written down, as required by rule 62(1). At no point did the Panel sense any remorse or responsibility on the part of Mr. Kalia with respect to his role in misleading GL, nor any acknowledgment that he could have

misled GL by his conduct. Similarly, Mr. Kalia did not address or show remorse or take responsibility with respect to failing to inform his brokerage of the transaction involving GL.

Real estate professionals must act professionally. They must clearly and fully inform clients and unrepresented buyers regarding various items, which items are laid out in the legislation. Things that may arguably seem obvious to a real estate professional will not necessarily be obvious to a non-industry member. Part of being a professional in an industry that serves the public is ensuring the public is clearly informed where necessary, and explicitly seeking consent where necessary.

Other penalties faced by the industry member

The Panel has not been informed of any other penalties ordered against Mr. Kalia. Mr. Kalia was fired by his brokerage, and has since joined another brokerage.

Specific deterrence

Mr. Kalia argues that simply going through the hearing process constitutes specific deterrence.

The ED argues that because Mr. Kalia has not taken responsibility for his wrongdoing, the need for specific deterrence is significant, to ensure Mr. Kalia does not operate in a similar fashion in the future.

The Panel is cognizant of the fact that the investigation and hearing process is stressful for industry members, and serves as a deterrence to some degree. That said, Mr. Kalia's testimony, which came close to the end of this lengthy process, did not convince the Panel that he thought he did anything wrong. The need for specific deterrence does appear to exist.

General Deterrence

Mr. Kalia has focused on his breach of Rule 62(1) in his submission, stating that to the extent industry members need to be reminded of the writing requirements in the *Rules*, a sanction may be appropriate, provided it is reasonable. Mr. Kalia did not provide any comment on the other breaches found by the Panel, specifically his breaches of fiduciary duties or reckless misrepresentation.

The ED argues that the need for general deterrence is significant, and that industry members must be cognizant of the seriousness of failing to disclose conflicts of interest and recklessly misleading people.

The Panel agrees with the ED. Mr. Kalia's conduct was subtle in some ways, as there was a large amount of omission involved, but this does not make it any less serious. Real estate professionals must be proactive in ensuring their interests and roles are made clear to affected parties.

The need for the public's confidence

Public confidence in the industry's integrity is very important to the Real Estate industry, as it is the public that the industry serves. People entrust Real Estate professionals with their homes, with their confidence and with their money. They expect Real Estate professionals to act with integrity and honesty. The public needs to know that it is unacceptable for Real Estate professionals to act in a manner that is deceitful, or to otherwise disregard their rules of practice, and that industry members will be appropriately sanctioned in these instances.

Additional mitigating and aggravating factors

Neither party has pointed out additional mitigating or aggravating factors.

The range of penalties in similar cases

The ED has presented a number of precedents for the Panel to consider. Mr. Kalia has pointed out how these precedents can be distinguished from this case, and has also provided a list of cases for the Panel to consider Mr. Kalia has provided no fact summaries and minimal analysis or discussion about the cases he has listed, nor how they apply to Mr. Kalia's circumstances. It is difficult for the Panel to determine which breaches the precedents referred to by Mr. Kalia are intended to address. The Panel has reviewed and considered all of the precedents provided by both parties.

a. Breach of Rules 41(d) and 41(f)

The ED has referred the Panel to one consent agreement dealing with misuse of trust funds (RECA – *Helm*, Case 001600-CM and 00768-CM, $15,000 fine); one administrative penalty dealing with failure to properly collect a deposit (RECA 2012 – *McLean*, Case 000073, $5,000 fine); one administrative penalty in which a client was not consulted regarding a

request for extension (RECA 2013 – *Keatley*, Case 003358, $5,000 fine); and one consent agreement dealing with a conflict of interest where a realtor who represented the seller made an offer on a property personally without disclosing the conflict (RECA – *Liu*, Case 000572-CM, $3,500 fine and education).

Mr. Kalia has presented one case in which an admission of conduct deserving sanction and a joint submission on sanction were being considered by a hearing panel. The case involves an industry member who failed to advise a client of a conflict of interest, namely that his broker had an interest in certain property that was the subject of a real estate transaction, contrary to Rule 54(3) (RECA 2017 – *Holbrook*, $3,000 fine and education requirement). Mr. Kalia also submits that the *Liu* case is an appropriate precedent.

Mr. Kalia's situation, wherein he failed to disclose a conflict of interest regarding his interest in the Property at issue, falls somewhere within this spectrum of cases. The Panel agrees with Mr. Kalia that the *Helm* case is not a useful precedent for this breach.

b. Breach of Rule 42(a) and possible suspension orders

The ED has referred the Panel to one case where an admission of conduct deserving sanction and joint submission on sanction were entered. The case involves a form of mortgage fraud where an industry member arranged for a client's mortgage without informing the lender that the funds were to be used for a tear down/rebuild (RECA – *Antonini,* Case 1972-05, $10,000 fine and education requirement). The ED also provided a second case, dealing with a lawyer inducing a client to enter a transaction to his benefit, and putting the client's trust funds at risk (*Law Society of Alberta v. Elgert*, 2014 ABLS 2, 18 month suspension).

Mr. Kalia referred the Panel to an administrative penalty in which a real estate associate was found to have contravened Rule 42(a) for over-stating the size of a property by approximately 4 square meters (RECA 2018, Case 008423, $1,500 penalty). He referred the Panel to a second case in which a real estate associate was found to have contravened Rule 42(a) by providing a post-dated purchase contract to the purchaser that, had it been signed before the post-date, could have misled existing tenants into believing the Agreement had been received after the expiry of the tenancy and Right of First Refusal had expired (*Holbrook*, letter of reprimand)

Mr. Kalia argues that suspensions ought to be reserved for the most egregious cases, where purposeful fraud or breach of trust is present. He points to three precedents in which, he argues, the conduct in question was much more egregious than his own conduct in this case, and where suspensions were not ordered. The first case is a case involving mortgage fraud, where an admission of conduct deserving of sanction and joint submission on sanction were considered (RECA 2017 – *Prasad*, Case 005058, $5,000 fine and education requirement). The second is *Antonini*, discussed above ($10,000 fine and education requirement). The third is a case referred to in *Antonini* and deals with a situation in which an industry member created a false invoice for a dishwasher in order to hide a monetary inducement (*David Agema*, $7,500 fine). Unfortunately, the actual decision was not provided to the Panel and the description in the *Antonini* case is very brief. Two other cases dealing with mortgage frauds are referenced in *Antonini*, and again described very briefly. In each of these cases, a fine and suspension was ordered (*Kwan*, $10,000 fine and 12 month suspension; *Campbell*, $5,000 fine and 2 month suspension).

The Panel is not assisted by most of the precedents provided by the parties. The *Antonini* case is referred to by both parties. In that case, the hearing panel notes that, as here, there was no loss or harm suffered by any member of the public, and that, unlike here, Mr. Antonini's actions were not motivated by profit. That case was also dealing with a joint submission on sanction. Joint submissions are generally not overturned unless they are very unreasonable. Given the case was subject to a joint submission on sanction and the Mr. Antonini did not stand to profit from his misconduct, the fact that no suspension was ordered in the *Antonini* case does not persuade the Panel. However, the Panel finds the ED's suggestion of a 12 month suspension to be too onerous on these facts.

c. Breach of Rule 53(c)

The ED points to the *Liu* case, in which an industry member failed to provide his brokerage with documentation related to an offer ($2,500 fine).

Mr. Kalia has not provided any additional precedents.

d. Breach of Rule 62(1)(a)

The ED refers to an administrative penalty in which an industry professional failed to disclose the information required under Rule

62(1)(a) in writing, but did disclose the information verbally (RECA 2012 – *Christopher Anthony Mele*, Case 000836, $1,500 penalty).

Mr. Kalia refers to the *Holbrook* case, in which the industry member failed to make certain written disclosures, including that his broker had an interest in the property of interest, in violation of Rule 55(1) ($3,000 fine and education requirement). He also refers to a case in which an industry member contravened Rule 62(1)(a) (RECA 2018, *Lapp*, Case 007580, letter of reprimand).

In this case, Mr. Kalia's failure to make Rule 62(1)(a) disclosures is more serious than the *Mele* breach. It is similar to the *Holbrook* and *Lapp* breaches. The Panel notes that in *Lapp*, the industry member took responsibility for his actions.

e. Breach of Rules 62(1)(b)

Both parties refer to failures by a real estate associate to provide the disclosure required by Rule 62(1)(b). Two administrative penalties were issued on the same day, for two different failures. The ED refers to one penalty and Mr. Kalia refers to the other. The penalties were $1,500 and $2,000, respectively (RECA 2018 – *Pramjit Ruprai*, Cases 004951 and 004987).

J. <u>Decision on Sanction</u>

The Panel has considered all of the factors listed above. The following factors have most heavily influenced the Panel's decision:

- The seriousness of the breaches and the damage such breaches have on public confidence
- The need for general and specific deterrence
- That Mr. Kalia's actions were motivated by personal gain
- That Mr. Kalia has not taken steps to acknowledge responsibility for his breaches;
- The range of penalties in similar precedent cases

On these facts, the Panel finds the following to be an appropriate sanction:

- A $5,000 fine for the breaches of section 41(d) and 41(f) of the *Rules*;
- A $10,000 fine for the breach of section 42(a) of the *Rules*;
- A $2,500 fine for the breach of section 53(c) of the *Rules*;

- A $2,500 fine for the breaches of sections 62(1)(a) and (b) of the *Rules*;
- A 3 month suspension of Mr. Kalia's authorization to trade in real estate under the *Act*, commencing immediately;
- An education requirement, being the completion of Unit 4 (Consumer Relationships) and Unit 12 (Ethics, Professionalism and Risk Reduction) of the *Fundamentals of Real Estate – Real Estate Associates Program*, at his own expense. Should Mr. Kalia not complete this education requirement within 3 months, his authorization to trade in real estate under the *Act* will continue to be suspended until he has completed the requirement.

K. Parties' Submissions on Costs

The ED submits that Mr. Kalia should be ordered to pay a significant portion of the actual costs incurred. He has submitted an estimated schedule of costs totalling $44,313.95, of which he submits Mr. Kalia ought to pay $34,439.39 or approximately 77.7%. The ED points out that he has been conservative in calculating hourly costs, basing them on the minimum prescribed hourly rates, and that the schedule does not include costs of writing the submissions on sanctions and costs, certain travel costs, or the costs for independent legal counsel.

The ED points to RECA's *Hearing and Appeals Practice and Procedure Guideline*, which states that "industry members whose conduct is deserving of sanction ought to be responsible for full costs of the hearing process." He also points out that in a large majority of contested hearings where conduct deserving sanction has been established, hearing panels have ordered costs in excess of those listed in section 28(3) of the *Real Estate Act, Bylaws*.

The ED points to the various pre-trial applications made by Mr. Kalia, being 3 adjournment applications and 1 bias application, stating Mr. Kalia ought to pay the full costs of those applications, because they were all either denied or caused by Mr. Kalia's failure to prepare himself.

Mr. Kalia submits that because there were allegations of fraud made and not proven, the ED should be made to pay Mr. Kalia's costs, on a full solicitor and own client basis. In any case, Mr. Kalia submits that he should not be made to pay more than 25% of the costs incurred by the ED.

Mr. Kalia also submits that he was willing to admit to the breach of Rule 62(1)(a) early on in the investigation process, and that had the ED

simply accepted his admission, the expense of the full investigation and hearing could have been avoided.

L. Decision on Costs

The proven breaches in this case extend well beyond Rule 62(1)(a). The Panel is not prepared to question the ED's decision to take the steps he chose to take in this matter to proceed with the investigation and hearing.

With respect to the pre-trial applications, Mr. Kalia had mixed success in those applications. The Panel is not prepared to penalize him with full indemnity costs for those applications.

The Panel believes that a portion of the amount put forward by the ED in its schedule of costs ought to be borne by Mr. Kalia. He was found to have committed conduct deserving of sanction that was serious. That said, the most serious allegations, of intentional fraud under Rule 42(b), were not proven by the ED. Therefore, the Panel feels that a payment of 30% of the amount put forward in the ED's schedule of costs is appropriate. That amount comes to $13,294.

M. Conclusion

The Panel orders the following:

- Mr. Kalia is ordered to pay fines in the total amount of $20,000, on a schedule to be determined by the ED;
- A 3 month suspension of Mr. Kalia's authorization to trade in Real Estate issued under the *Act* is ordered, effective immediately;
- Mr. Kalia is ordered to complete the following courses from the *Fundamentals of Real Estate – Real Estate Associates Program*, at his own expense:
    - Unit 4 (Consumer Relationships)
    - Unit 12 (Ethics, Professionalism and Risk Reduction)

  Should Mr. Kalia not complete this education requirement within 3 months, his authorization to trade in real estate under the *Act* will continue to be suspended until he has completed the requirement.
- Mr. Kalia is ordered to pay costs in the amount of $13,294.

Dated at the City of Calgary in the Province of Alberta, this 23rd day of November, 2018.

Hearing Panel of the
Real Estate Council of Alberta

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Stan Mills, Hearing Panel Chair