

THE REAL ESTATE COUNCIL OF ALBERTA

Case: 005064

Industry Member: Mehboob Ali Merchant

Appeal Panel Members: Arlene Blake – Public Member, Chair
George Pelechaty – Industry Member
Junaid Malik – Industry Member

Application Date of Stay Application: February 4, 2020 by Mehboob Ah Merchant

Application for Advice and Direction: February 24, 2020 by Mehboob Ah Merchant

Submission by Executive Director: February 27, 2020 by Christopher Davison

Amended Decision – February 27,
2020, underlined changes shown

DECISION

BACKGROUND

On September 9, 2019, Mr. Merchant admitted to a Hearing Panel of conduct deserving of sanction. On October 21, 2019, a Hearing Panel issued a Decision sanctioning Mr. Merchant for his conduct (the "Sanction Decision").

On October 31, 2019, the Executive Director ("ED") initiated an appeal of the Sanction Decision (the "Appeal").

On November 20, 2019, Mr. Merchant also appealed the Sanction Decision (the "Cross-Appeal"). Mr. Merchant also sought a stay of the sanctions imposed by the Sanction Decision (the "Stay Application").

The Appeal and Cross-Appeal are scheduled to be heard by the Appeal Panel on March 17, 2020 (the "Appeal Hearing").

On January 29, 2020, a Hearing Panel issued its decision to deny Mr. Merchant's Stay Application (the "Stay Decision").

On February 4, 2020, Mr. Merchant sought an appeal by written submissions only of the Stay Decision (the "Stay Appeal").

On February 24, 2020, Mr. Merchant wrote to this Appeal Panel seeking advice and directions under Part 3, T, of the *Hearing and Appeal Practice and Procedure*

Guidelines (dated January 2018), regarding the two appeals of the same Sanction Decision proceeding at a single Appeal Hearing. Specifically, Mr. Merchant requested "detailed, step-by-step procedure guideline/ process checklist to help [him] maneuver through the process". Mr. Merchant also queries whether there should be two separate hearings given that both parties have appealed.

On February 27, 2020, ED's counsel provided an email outlining their understanding of the steps in a hearing of this nature and requesting our consideration of same. There was also a request to shorten the time for Mr. Merchant to identify his desire to be the 1st Presenter at the hearing, to March 3, rather than March 13, 2020.

The Appeal Panel understands that all submissions of the parties have been exchanged.

THE STAY APPEAL

Dates have not been set yet for the parties' written submissions for the Stay Appeal. The Appeal Panel wishes that the Stay Appeal be considered and determined before the March 17, 2020 Appeal Hearing, if at all possible.

In that regard the Appeal Panel provides the following directions for submissions of written arguments:

1. Written submissions by the Appellant by March 4, 2020
2. Response by the Executive Director by March 6, 2020
3. Rebuttal of the Appellant by March 10, 2020

Upon receipt of the above submissions, the Appeal Panel will render its decision concerning the Appeal of the Stay Decision.

THE APPLICATION FOR ADVICE AND DIRECTIONS

The subject matters of the Appeal and Cross-Appeal are congruent, and it is practical, appropriate, and necessary that they be heard together on March 17, 2020. It is important that a single decision be made in response to both the Appeal and the Cross-Appeal in order to avoid inconsistent and contradictory outcomes.

We encourage Mr. Merchant to review the *Process Checklist - Appeal of a Hearing Panel Decision to an Appeal Panel* and *Hearing and Appeal Practice and Procedure Guidelines* (dated January 2018) for assistance on the general processes.

Neither the *Checklist* nor the *Guidelines* specifically address the order of events where there is both an appeal and a cross-appeal of the same subject matter, as is the case here.

As a practical matter, considering that the ED initiated its appeal first, we would

anticipate that the ED would present its arguments first on the issue of the ED's Appeal and responding to Mr. Merchant's written submissions, followed by Mr. Merchant in both response to the ED's Appeal and in support of Mr. Merchant's Cross-Appeal, followed by the ED's opportunity to respond to anything new addressed by Mr. Merchant in his oral argument.

However, we recognize that this is a fluid matter and anticipate that there may not be bright lines between arguments made in support of or in response to the Appeal versus those in support of or in response to the Cross-Appeal. It is possible that the majority if not all of the arguments made by either or both parties will apply to both the Appeal and the Cross-Appeal.

Accordingly, if Mr. Merchant prefers, we may proceed in the reverse order. In that case, Mr. Merchant would make his arguments in support of his Cross-Appeal and in response to the ED's written submissions first, followed by the ED's response to Mr. Merchant's Cross-Appeal and arguments in favor its Appeal, followed by Mr. Merchant's opportunity to respond to anything new addressed by the ED in oral argument.

For greater clarity, and in keeping with the principle of fairness, Presenter 1 will provide their appeal argument; followed by Presenter 2 with their response and their appeal argument; Presenter 1 will respond to Presenter 2; followed by Presenter 2 providing their final reply.

If Mr. Merchant prefers to proceed first, then he should advise the ED's counsel by no later than March 06, 2020.

Practicality and flexibility need to be present at the Appeal Hearing.

Given the fluid nature of the hearing process, it would be premature to provide any greater detail of advice and direction in response to Mr. Merchant's request.

Dated at the City of Calgary in the Province of Alberta, this 28th day of February 2020.

Alberta Panel of the
Real Estate Council of Alberta

Arlene Blake,

Appeal Panel Chair