

Case: 010099 & 009625

THE REAL ESTATE COUNCIL OF ALBERTA

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

AND IN THE MATTER OF a Hearing regarding the conduct of Industry Member, Rowell Barbon Crisostomo, a Mortgage Associate, currently unregistered, formerly registered with Dominion Lending Centres Mortgage Mentors Broker Inc. o/a Dominion Lending Centres Mortgage Mentors, Sky Financial Corporation o/a The Mortgage Centre and Elite Mortgage Corp.

Hearing Panel Members: J.J, Chair
T.L
M.G

Appearances: Case Presenters for the Executive Director of the Real Estate Council of Alberta ("RECA"): Andrew Bone and Tomilola Olarinde

Steve Crisostomo: representing himself

Hearing Date: September 25, 2020 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 Industry Member, Rowell Barbon Crisostomo ("Mr. Crisostomo"), was licensed as a Mortgage Associate with The Mortgage Centre between June 11, 2015 and September 17, 2019 and with Dominion Lending Centres Mortgage Mentors between September 17, 2019 and February 10, 2020. The Hearing relates to conduct that occurred between June 2019 and February, 2020.

B. Documents submitted to the Hearing Panel

The parties submitted to the Hearing Panel the Notice of Hearing dated September 2, 2020 and the Affidavit of Service sworn September 14, 2020 which were Exhibits "1" and "3" respectively.

An Admission of Conduct Deserving of Sanction document signed by Mr. Crisostomo on August 24, 2020 that included Agreed Breaches and Agreed Facts was also submitted and entered as an Exhibit "2".

The parties also submitted a Joint Submission on Sanction signed by Mr. Crisostomo on August 24, 2020 and by the Case Presenter on September 9, 2020 that was entered as Exhibit "4".

The caselaw provided to the Hearing Panel was:

- *Jaswal v. Medical Board (Nfld.)*, 1996 CanLII 11630 (NL SCTD);
- *Adams v. Law Society of Alberta*, 2000 ABCA 240 (CanLII);
- *Law Society of Upper Canada v Lambert*, 2014 ONLSTH 158 (CanLII);
- *Cockrell*, August 22, 2016 RECA Administrative Penalty;
- *Carbage*, December 2, 2013 RECA Administrative Penalty; and
- *R. v. Anthony-Cook*, 2016 SCC 43, 2016 CSC 43, 2016 Carswell BC 2929.

C. Agreed Breaches and Agreed Facts

The conduct deserving of sanction admitted to by Mr. Crisostomo was:

Mr. Crisostomo failed to provide competent service, contrary to section 41(b) of the *Real Estate Act Rules*:

- Between June and September of 2019 Mr. Crisostomo drafted mortgage applications and submitted them to various lenders with errors and omissions contained in them.
- Between September 2019 and February 2020 Mr. Crisostomo pulled credit reports on nearly 80 clients but had only uploaded 6 consent forms into velocity/filogix, and most were not filled out properly.
- At the material time Mr. Crisostomo's brokerage had a policy that associates would upload all client consent forms into velocity/filogix prior to pulling credit.

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

Rule 41(b) of the *Real Estate Act Rules*, which Mr. Crisostomo admitted to breaching, states:

- 41 Industry members must:
- (b) provide competent service.

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.

E. Conduct Deserving of Sanction

As Mr. Crisostomo's statement of admission of conduct was accepted by the Executive Director, pursuant to section 47(2) of the *Real Estate Act*, the conduct is deemed to be a finding of the Hearing Panel that the admitted conduct is conduct deserving of sanction. Accordingly, the Hearing Panel finds that Mr. Crisostomo engaged in conduct deserving of sanction, specifically that he breached Rule 41(b) of the *Real Estate Act Rules*.

F. Joint Submission on Sanction

The Hearing Panel's finding concluded Phase 1 of the Hearing. The Hearing Panel went on to consider the Joint Submission on Sanction which was reviewed by the Case Presenters at the Hearing as follows:

The Executive Director and Industry Member proposed the following sanction:

Breach	Fine
Rule 41(b)	\$1,000
Costs	\$500
TOTAL	\$1,500

Education:

Successfully complete unit seven and nine of the Mortgage Associates Program which covers brokerage relationships, professionalism and risk reduction.

Condition on Licence:

Rowell Crisostomo is prohibited from submitting deals to a lender without prior approval from the broker or broker delegate until successful completion of unit seven and nine of the Mortgage Associates Program.

Authority for Sanction

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

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;
- 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.

Factors on Sanction

The Panel should think about the facts of the case and about the subject when deciding on a sanction.

Jaswal lists factors relevant to a decision about sanction:

- the nature and gravity of the proven allegations

- the age and experience of the industry member
- the previous character of the offender and, in particular, the presence or absence of prior complaints or convictions
- the number of times the offence was proven to have occurred
- the role of the industry member in acknowledging what occurred
- whether the industry member had already suffered serious financial or other penalties as a result of the allegations having been made
- impact of the incident on the victim, if any
- mitigating circumstances
- aggravating circumstances
- the need to promote specific and general deterrence and thereby protect the public and ensure the safe and proper conduct of the profession
- the need to maintain the public's confidence in the integrity of the profession
- 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
- the range of sentence in other similar cases (Precedents).

General deterrence refers to the effect a sanction will have on others in the future: will it dissuade others from similar conduct? General deterrence is also about what the public and industry would consider a reasonable response to the conduct.

Specific deterrence refers to the effect a sanction will have on the subject of the sanction: will it dissuade them from repeating the conduct? Here the Panel can weigh factors like the subject's financial circumstances, their remorse or lack of remorse, etc. and what impact a sanction will have on them personally.

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, the last 2 items refer to factors not specifically enumerated in *Jaswal*.

Factors in the Present Matter

Below is the Executive Director's and the Industry Member's analysis of the relevant *Jaswal* factors.

- Age and Experience of the Industry Member
Mr. Crisostomo is currently 43 years old and was first authorized as a mortgage associate in April 2014.

At the material time Mr. Crisostomo had been an industry member for approximately 5 years. At that stage he ought to have had a better grasp of the competencies he failed to demonstrate.
- The Previous Character of the Member
Mr. Crisostomo has no previous disciplinary history.
- The Number of Times the Offence was Proven to have Occurred
There were two incidents that breached section 41(b) of the *Real Estate Act Rules*. However, given the similarity of the breaches and the relatively short time frame between them, for the purposes of sanction, we have considered them as a single breach of section 41(d) of the Rules.
- The Nature and Gravity of the Proven Allegations
A real estate professional needs to be knowledgeable and diligent in carrying out the various functions of their position. When this does not occur, it erodes the trust and confidence placed in the industry by the various stakeholders.

However, Mr. Crisostomo's breach of Rule 41(b) is at the lower end of the scale in both its nature and gravity. The breach was not purposeful and had a minimal impact on clients.
- The Need to Maintain Public Confidence in the Industry
Real estate associates must practice in strict compliance with the *Act* and the *Rules* in order to maintain the integrity of the industry. Public confidence in the industry is compromised when an industry member fails to provide competent service.

In *Adams* the Alberta Court of Appeal noted that public confidence in a profession should be of utmost importance to disciplinary bodies (at p. 3):

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 *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 (at para 17):

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".

Mr. Crisostomo's breach impacts the reputation of Alberta's real estate industry along with the public confidence that reputation should inspire. However, as mentioned above, these breaches are at the lower end of the spectrum in terms of their nature and gravity and so have less impact on the industry's reputation.

It is submitted that education and a fine are sufficient to maintain public confidence in the Alberta Real Estate Industry.

- The Role of the Member in Acknowledging What Occurred
Mr. Crisostomo has accepted responsibility for his actions and has expressed a desire for further education to ensure these competency concerns do not arise again.
- Specific Deterrence
There is not a strong need for specific deterrence. The Executive Director accepts that with the proper education and training Mr. Crisostomo will not make the same errors again.
- General Deterrence
There is some need for general deterrence. Failing to provide competent service does impact the public's confidence in the Alberta's real estate industry.

Industry members must recognize that harm to public confidence in the reputation of Alberta's real estate industry comes with proportional sanctions.
- Previous Sanctions in Similar Circumstances
Precedents are not binding on the Hearing Panel but can help the Panel impose sanctions consistently to comparable conduct.

Breach of Rule 41(d)

Mr. Crisostomo failed to provide competent service by:

1. drafting and submitting mortgage applications to lenders with errors and omissions, and
2. failing to follow brokerage policies while pulling credit reports.

Precedents:

Mary Lou Carbage - is an Administrative Penalty that was issued in 2013 for a breach of Rule 41(b). Over several months Ms. Carbage represented parties in four real estate transactions. The files on all transactions contained numerous technical errors and omissions. A fine of \$1,500 was issued.

The current matter is similar to Carbage in scope and seriousness. In both matters the subjects made multiple errors in their respective positions.

Trevor Cockrell - is an Administrative Penalty that was issued in 2016 for a breach of *Rule* 41(b). On three occasions the Mortgage Associate did not meet with his clients and confirm their identities. All information on these three mortgages was provide by third parties. A fine of \$1,500 was issued.

The current matter is similar to Cockrell. While Mr. Cockrell's actions can and did lead to fraud there is a larger scope of activity in the current matter.

Sanction

Based on precedent and the other *Jaswal* factors the parties agreed that an appropriate fine for the breaches of Rule 41(b) is \$1,000.

The parties agreed Mr. Crisostomo should pay costs of \$500 in this matter.

The parties also agreed that within six months of the decision, Mr. Crisostomo will successfully complete unit seven and nine of the Mortgage Associates Program which covers brokerage relationships, professionalism and risk reduction.

Finally, the parties agreed that a term should be placed on Mr. Crisostomo's licence stating that:

Rowell Crisostomo is prohibited from submitting deals to a lender without prior approval from the broker or broker delegate until successful completion of unit seven and nine of the Mortgage Associates Program.

The Agreement between the Executive Director and Industry Member

A further factor is that the parties have reached an agreement on conduct and on sanction taking into account the relevant factors.

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), 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”.

At paragraphs 49-60, the Court in *Anthony-Cook* also outlines the procedure decision makers must follow if they want to depart from a joint submission.

The Executive Director and Industry Member submit the proposed sanction is within an appropriate range that the Panel can accept.

G. The Hearing Panel’s Decision

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*. The emphasis on education rather than punitive measures is congruous with the facts in this matter.

The authorities provided to the Hearing Panel supported the fines agreed to by the parties for the breach of *Rule 41(b)* of the *Real Estate Act Rules*. The Hearing Panel finds that the educational courses being proposed for Mr. Crisostomo to complete and the term on his licence, are appropriate in the circumstances.

The Hearing Panel also considered *R v. Anthony-Cook, supra* and the public interest test set out in that case. The public interest test states 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. The Hearing Panel finds that it should not depart from the joint submission on sanction as the proposed sanction would not bring the administration of justice into disrepute and it is not contrary to public interest.

H. Conclusion

Pursuant to section 47(2) of the *Real Estate Act*, the Hearing Panel has determined that Mr. Crisostomo 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:

- I. A fine of \$1,000.00 for the breach of *Rule 41(b)*;
- II. \$500.00 for costs associated with the investigation and Hearing;
- III. Successful completion of unit seven and nine of the Mortgage Associates Program; and
- IV. The following term placed on Mr. Crisostomo's licence:

"Rowell Crisostomo is prohibited from submitting deals to a lender without prior approval from the broker or broker delegate until successful completion of unit seven and nine of the Mortgage Associates Program."

This Decision is dated this 9th day of October, 2020.

JJ

Julia Jones, Hearing Panel Chair