

THE REAL ESTATE COUNCIL OF ALBERTA

IN THE MATTER OF Part 3 of the *REAL ESTATE ACT*, R.S.A. 2000, c.R-5 (the "*Real Estate Act*")

AND IN THE MATTER OF a Hearing regarding the conduct of **RAJNEESH AERY**, Mortgage Associate, currently registered with 1170245 Alberta Ltd. o/a Dominion Lending Centres Global and at the material time, with The Mortgage Alliance Company of Canada Inc. o/a Mortgage Alliance

Hearing Panel Members: [J.A], Hearing Panel Chair
[M.G]
[K.M]

Appearances: Mitali Kaul, Counsel for the Registrar of the Real Estate Council of Alberta

Rajneesh Aery did not appear

Hearing Date: January 26, 2022, via video conference

**DECISION ON CONDUCT DESERVING OF SANCTION
AND DECISION ON SANCTION AND COSTS**

INTRODUCTION

1. This hearing involves the conduct of Rajneesh Aery, a licensed mortgage associate. It arises from his client's unsuccessful purchase in 2014 of a property in Airdrie, Alberta. The conduct that is the subject of this hearing occurred during the period that Mr. Aery was licensed as a mortgage associate with The Mortgage Alliance Company of Canada Inc. o/a Mortgage Alliance, which extended from August 17, 2010 to May 16, 2017.
2. There was no objection to the composition of the Hearing Panel.

3. Mr. Aery has been licensed as a mortgage associate with the Real Estate Council of Alberta ("RECA") since August 2010. He did not appear at the hearing, and he was not represented by counsel. Prior to the scheduled hearing, he provided written notice to Counsel for the Registrar that he did not intend to participate in the hearing and he relied solely on the Agreement on Facts and Breaches ("Agreement") and the Joint Submission on Sanction ("Submission") made between the parties.
4. During the hearing, the Agreement was presented to the Hearing Panel. It was executed by the parties on November 25, 2021 and included the following provisions with respect to breaches of the *Real Estate Act* Rules:
 - a. A statement that Mr. Aery agrees that he made representations or carried on conduct that was reckless or intentional and that misled or deceived or was likely to do so contrary to section 42(a) of the *Real Estate Rules* ("the Rules").
 - b. A statement that Mr. Aery agrees that he participated in fraudulent or unlawful activities in connection with the provision of services or in dealings contrary to section 42(b) of the Rules.
5. The Submission was also presented. It indicated that Mr. Aery agreed and the Registrar accepted that Mr. Aery had breached the Rules. The Submission was executed by the parties on December 28, 2021
6. In the Submission, the parties jointly proposed the following sanctions:
 - a. Mr. Aery will pay to RECA:
 - i. \$20,000.00 for the breach of section 42(a) of the Rules;
 - ii. \$20,000.00 for the breach of section 42(b) of the Rules;
 - b. Mr. Aery's authorization to trade in real estate under the *Real Estate Act* will be suspended for the period of 3 months, commencing April 1, 2022; and
 - c. Mr. Aery will pay costs in the sum of \$500.00 for the investigation and proceedings.

EXHIBITS

7. The following exhibits were entered at the hearing:
 - Exhibit 1: Notice of Hearing
 - Exhibit 2: Affidavit of Service for the Notice of Hearing

- Exhibit 3: Email of January 14, 2022 from Mitali Kaul to Rajneesh Aery to confirm attendance at hearing, and reply of Rajneesh Aery January 17, 2022 to indicate he will not attend
- Exhibit 4: RECA summary of licence history for Rajneesh Aery
- Exhibit 5: Agreement on Facts and Breaches
- Exhibit 6: Joint Submission on Sanction
8. According to the terms of the Agreement and the Submission, the parties agreed that these documents would be entered as exhibits in the hearing.
9. The Registrar also submitted supporting case law to address the proposed sanctions:
- a. *Jaswal v. Medical Board (Nfld.)*, 1996 CanLII 11630 (NL SCTD)
 - b. *Adams v. Law Society of Alberta*, 2000 ABCA 240 (CanLII)
 - c. *Law Society of Upper Canada v. Lambert* 2014 ONLSTH 158 (CanLII)
 - d. *Aliya Lalji*, 2016 RECA 004027, 000844
 - e. *Brandon James Antonini*, 2011 RECA 1972-05
 - f. *Castle Kwan*, 2010 RECA 6806-08
 - g. *Aulakh (Re)*, 2019 ABRECA 121 (CanLII)
 - h. *Terry Michael Taschuk*, 2013 RECA 2332-08
 - i. *Iftikhar Ahmet Chaudhary*, 2011 RECA 6432-07, 2311-08
 - j. *R v. Anthony-Cook*, 2016 SCC 43
 - k. *Bradley v. Ontario College of Teachers*, 2021 ONSC 2303 (CanLII)

PRELIMINARY MATTERS

10. The Hearing Panel noted the absence of Mr. Aery from the hearing.
11. Exhibit 1, Notice of Hearing, expressly states that if Mr. Aery does not attend, the Hearing Panel may proceed. Exhibit 2, a Statutory Declaration, shows that Mr. Aery was personally served with the Notice of Hearing on December 17, 2021. Exhibit 3 shows that by email on January 17, 2022, Mr. Aery stated that he did not want to participate in the hearing and asked Counsel for the Registrar to request the Hearing Panel accept the Agreement and Submission reached by the parties.
12. Section 41.1 of the *Real Estate Act* permits the Hearing Panel to proceed in the absence of the licensee provided he has been served and given reasonable particulars of the matter to be decided.
13. The Hearing Panel considered the evidence contained in the exhibits and was satisfied that Mr. Aery had been served with the Notice of Hearing and that it

contained a statement that the Hearing Panel might proceed in his absence. The Agreement and Submission, both executed by Mr. Aery, contained reasonable particulars of the matters to be decided. Further, Mr. Aery had expressed his intention not to be present at the hearing.

14. On this basis, the Hearing Panel determined that the circumstances were sufficient to allow it to proceed in the absence of Mr. Aery.

AGREED FACTS

15. The facts that follow are drawn directly from the Agreement:

1. Mr. Aery has been licensed as a mortgage associate with the Real Estate Council of Alberta ("RECA") since August 17, 2010.
2. He is currently registered with 1170245 Alberta Ltd. o/a Dominion Lending Centres Global.
3. At the time of the conduct deserving of sanction, he was registered with The Mortgage Alliance Company of Canada Inc. o/a Mortgage Alliance.
4. Mr. Aery has no prior discipline history with RECA.
5. As a result of a complaint filed by [M.B] ("[M.B]") on May 28, 2014, RECA commenced an investigation into Mr. Aery's conduct regarding involvement with a property located at [ADDRESS] (the "Property").
6. On January 15, 2014, [M.B] was introduced to [J.D] ("[J.D]") through a mutual friend named [A.S] ("[A.S]").
7. [J.D] is licensed as a real estate associate for 16 years and a mortgage associate for 11 years.
8. On January 16, 2014, [M.B] entered into a purchase contract with Mattamy Homes, the builder for the Property. The purchase price was \$416,940.00 with total deposits of \$30,000.00. This offer was open until January 21, 2014 and was accepted on that date. The possession date for the Property was May 29, 2014.
9. On January 20, 2014, [J.D] transferred the mortgage file to Mr. Aery, a mortgage associate who worked in the same office across the hall. [J.D] continued to retain the real estate portion of the file.
10. [M.B] paid the deposits in accordance with the deposit schedule, and also for extras that increased the purchase price to \$432,067.00 and the deposits to \$35,451.00 all of which were paid.
11. Mr. Aery did not do a pre-approval for the mortgage for the Property.

12. On April 28, 2014, Mr. Aery pulled [M.B]' s credit report and discovered that his credit score had decreased from 676 to 639. Based on that credit report, Mr. Aery informed [M.B] he would need a co-signer or 15% down.
13. [M.B] informed Mr. Aery that [M.H] would be his co-signer.
14. On May 5, 2014, [M.B] forwarded a copy of [M.H] driver's license and SIN card to Mr. Aery's email. The license of [M.H] was from the Province of Saskatchewan.
15. On May 6, 2014, Mr. Aery pulled [M.H] credit report.
16. On May 6, 2014, [M.B] emailed the Notice of Closing document provided by the builder to Mr. Aery. The document states:
- "If you have not already done so, you must ensure all mortgage financing is in place and that your solicitor has been provided with mortgage instructions at least 3 weeks prior to your possession date".*
17. On May 8, 2014, Mr. Aery submitted a mortgage application for [M.B] and [M.H] to MCAP, the mortgage lender. Mr. Aery informed the lender stating:
- "Hi [M.L] Clients want to buy first house in Canada and its a builder deal dp already gave to builder in Jan both applicant are brother both applicant are in trucking from last over 3 year. If you have any question pIs let me know".*
18. On May 9, 2014, a Mortgage Commitment was provided by MCAP (the "Lender") for [M.B] and [M.H] with conditions. One of the conditions stated:
- "[M.H]: Confirmation of total amount of \$42,000.00, broken down as follows: Salaried income of \$42,000.00, Require current job letter & paystub, if using 2 yr average require 2012 & 2013 T4 's to confirm income from same industry".*
19. On or around May 12,2014, Mr. Aery received a false employment letter from [M.D] confirming that [M.H] was permanently employed with his company 1723353 Alberta Ltd as a class 1 truck driver, earning \$3500.00 a month and under no probation.
20. Mr. Aery also received a paystub for [M.H] supporting his employment at 1723354 Alberta Ltd. that he knew was falsified.
21. On or around May 26, 2014, Mr. Aery submitted the false employment letter and paystub to MCAP, a mortgage lender.
22. MCAP stated that they only accept documents from Brokers, Solicitors, and Appraisers. All of the documents MCAP receives is (sic)

via fax and are deposited directly into their electronic system. Mr. Aery was the broker who submitted the false job letter and false paystub for [M.H] to MCAP.

23. On May 19, 2014, the Lender sent a follow up on the outstanding conditions to Mr. Aery and outlined the requirement for proof of deposit of pay for both applicants. The Lender confirmed receiving the employment letter and paystub for [M.H] which still needed to verbally (*sic*) verified by them. The Lender further required February and March paystubs and confirmation of deposit of pay for February, March and April paystubs for [M.H].

24. On May 21, 2014, [J.D] set up an appointment for [M.B] and [M.H] to see a CIBC mortgage representative about a CIBC mortgage.

25. On May 22, 2014, [M.H] & [M.B] attended the CIBC appointment and the fake employment letter and fake paystub were discovered. The co-applicants never proceeded with their mortgage application with CIBC.

26. On May 26, 2014, the Lender sent a message to Mr. Aery stating there were still outstanding conditions on the mortgage commitment. One of the conditions was that the Lender still required confirmation of deposit of pay for February, March and April pays for [M.H] and further wanted a corporate search for 1723354 Alberta Ltd.

27. On May 27, 2014, Mr. Aery informed the Lender:

"Hi [M.L] Please cancel that deal client told me they closed that deal with CIBC Thanks and have a great day"

28. [M.B] incurred legal costs by hiring a lawyer to persuade Mattamy Homes to extend the closing date for the Property so as to secure financing. [M.B] ultimately did not go through with the purchase contract which resulted in him forfeiting the complete deposit amount.

AGREED BREACHES OF THE REAL ESTATE RULES

16. As set out in the Agreement, the parties agreed to the following breaches of the Rules that constitute conduct deserving of sanction:

- a. Mr. Aery participated in fraudulent or unlawful activities in connection with the provision of services or in any dealings contrary to Rule 42(b) of the *Real Estate Act* Rules:
 - i. On or around May 12, 2014, Mr. Aery received a false employment letter signed by [M.D] ("[M.D]") for [M.H] ("[M.H]") that falsely stated that [M.H] was a permanent employee at 1723354 Alberta Ltd and earned \$3,500.00 a month.

- ii. You (*sic*) also received a false paystub for [M.H] In support of his employment at 1723354 Alberta Ltd.
- b. Mr. Aery made representations or carried on conduct that was reckless or intentional and that misled or deceived any person or is likely to do so contrary to section 42(a) of the *Real Estate Act* Rules.
 - i. On or around May 26, 2014, Mr. Aery submitted the false employment letter and paystub to MCAP, the mortgage lender for the mortgage application.

ISSUES AND FINDINGS

CONDUCT DESERVING OF SANCTION: ISSUE AND FINDING

17. Section 47 of the *Real Estate Act* provides as follows:

47(1) If a statement of admission of conduct is accepted, the Board 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 licensee's conduct is deemed for all purposes to be a finding of the Hearing Panel that the conduct of the licensee is conduct deserving of sanction.

18. Applying section 47(2) of the *Real Estate Act*, the Agreement reached by the parties concerning the conduct of Mr. Aery, is deemed to be a finding of this Hearing Panel. On this basis, the Hearing Panel concludes on the balance of probabilities that Mr. Aery's conduct is deserving of sanction.

SANCTION AND COSTS: ISSUES AND FINDINGS

19. Section 43 of the *Real Estate Act* gives a Hearing Panel the discretionary authority to order a sanction where an industry member's conduct has been found to be deserving of sanction. It provides that:

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

20. The Submission addressed the factors identified in *Jaswal v. Newfoundland (Medical Board)*, 1996 CanLII 11630 (NL SC). The Hearing Panel's consideration of the factors follows:

a. Age and experience of the licensee

Mr. Aery is 48 years old and was first authorized as a mortgage associate with RECA in 2010. The breaches occurred in 2014 and Mr. Aery ought to have been aware at that time that the conduct that is the subject of this hearing was a breach of the Rules.

b. Previous character of the licensee

Mr. Aery does not have any other disciplinary history with RECA.

c. Number of offences

Evidence shows one breach of section 42(a) of the Rules and one breach of section 42(b) of the Rules.

d. *Nature and gravity of the proven allegations*

The breaches of sections 42(a) and 42(b) of the Rules are serious, particularly when considering RECA's mandate to prevent mortgage fraud. Mr. Aery's conduct negatively impacts the industry's professionalism and integrity.

e. *Need to maintain public confidence in the industry*

Public confidence in the real estate profession is maintained when licensees practice in compliance with the *Real Estate Act* and the Rules. When a licensee acts in contravention of them, the professional integrity of the industry is jeopardized, leading to a decline in public trust of the industry.

The Hearing Panel also considered relevant case law.

- i. In *Adams v. Law Society of Alberta*, 2000 ABCA 240 (CanLII), the Alberta Court of Appeal noted that the misconduct of an individual affects both the client and the profession.
- ii. In *Law Society of Upper Canada v. Lambert* 2014 ONLSTH 158 (CanLII), the Law Society of Upper Canada stated that a profession's collective reputation is its most valuable asset and must be considered when determining an appropriate sanction.
- iii. The Hearing Panel concludes that Mr. Aery's breach of both section 42(a) and 42(b) of the Rules affects the collective reputation and undermines public confidence in the real estate professionals.

f. *Role of the licensee in acknowledging what occurred*

The Submission notes that Mr. Aery initially was not honest with RECA. However, he later admitted his conduct as evidenced by his participation in the Agreement and the Submission.

g. *Impact of the incident on the complainant*

According to the Submission, the complainant was an unsophisticated, first-time home buyer. He arrived in Canada in 2010 or 2011 and was employed as a truck driver. He incurred legal costs in an unsuccessful attempt to delay the possession date for the property in order to secure mortgage financing. However, he was unable to take possession of the property and forfeited his deposit of \$35,341.00.

h. *Specific and general deterrence*

The parties agree that mortgage fraud is a serious public issue and the need for general deterrence is significant. Actions that harm the public confidence in the reputation of the real estate industry come with sanctions.

The parties also agree that Mr. Aery has no previous disciplinary history and there is no evidence that he has repeated the same conduct, whether before or after this incident. However, his initial lack of acknowledgement of the gravity of his conduct and lack of remorse necessitate specific deterrence measures.

i. *Aggravating factors*

Mortgage fraud is a serious contravention. The obligation to communicate true and relevant information in the mortgage application is a serious one. As stated in the Submission, Mr. Aery was not initially forthcoming with RECA during the investigation.

Mr. Aery's misconduct resulted in the complainant being unable to buy the property and incurring a significant financial loss.

j. *Mitigating factors*

As Mr. Aery agreed to the Agreement and the Submission, the time and expense of a hearing as well as the inconvenience and stress for witnesses were avoided.

No mortgage funds were issued as the transaction was cancelled.

Mr. Aery has no prior disciplinary history with RECA.

21. A number of precedents addressing sanctions and costs were presented. While they do not bind the Hearing Panel, they assist by promoting consistency and fairness when a Hearing Panel is presented with comparable conduct.

22. The case law presented to address breaches of section 42(a) of the Rules is summarized below:

a. *Aliya Lalji, 2016 RECA 004027, 000844*

Ms. Lalji entered a Consent Agreement with the Executive Director of RECA. She was found by the Hearing Panel to have breached section 42(a) of the Rules *by* providing a purchase contract showing an inflated purchase price of \$285,000.00 when the actual price was \$245,000.00. Ms. Lalji was ordered to pay a fine of \$10,000.00. Sanctions were also given for other breaches and Ms. Lalji was suspended for a period of 18 months.

b. *Brandon James Antonini, 2011 RECA 1972-05*

Mr. Antonini provided an Admission of Conduct Deserving of Sanction pursuant to section 46 of the Rules and a Joint Submission with RECA on sanction and costs. Mr. Antonini was found to have breached section 42(a) of the Rules by intentionally submitting a mortgage application to a mortgage lender and showing the purchaser's intended purpose to refinance the property. Mr. Antonini knew that the purchaser's intention was to tear down and rebuild on the site. The Hearing Panel imposed a fine of \$10,000.00.

c. *Castle Kwan, 2010 RECA 6806-08*

Pursuant to a Consent Agreement, Mr. Kwan, a mortgage associate, was found to have breached section 42(a) of the Rules as he submitted a false Notice of Assessment to a mortgage in order to qualify for a personal mortgage. The Hearing Panel agreed to a fine of \$10,000.00 and a suspension of one year.

23. The case law presented to address breaches of section 42(b) of the Rules is summarized below:

a. *Aulakh (Re), 2019 ABRECA 121 (CanLII)*

Ms. Aulakh was a mortgage broker and real estate associate. She provided an Admission of Conduct Deserving of Sanction pursuant to section 46 and a Joint Submission on Conduct. She acknowledged that she breached section 42(b) by knowingly providing false information to the mortgage lender about the source of the down payment loan. Further, she participated with the purchasers in falsely declaring to the lender that the down payment loan was a gift from a relative. Ms. Aulakh did not take steps to prevent the purchasers from misleading the lender and failed to notify the lender. She was sanctioned for this and other breaches resulting in the cancellation of her license for 24 months.

b. *Aliya Lalji, 2016 RECA 004027, 000844*

Ms. Lalji entered a Consent Agreement that was approved by a Hearing Panel. She was found to have breached section 42(b) of the Rules by altering contracts, creating false documents, and forging signatures on documents that were relied on by third parties. For this breach she was fined \$20,000.00. Sanctions were also given for other breaches. Ms. Lalji was suspended for 18 months.

c. *Terry Michael Taschuk*, 2013 RECA 2332-08

Mr. Taschuk entered a Consent Agreement with the Executive Director of RECA that was approved by the Hearing Panel. He was found to have breached section 42(b) of the Rules in six separate incidents by creating false documentation for mortgage applications. He was fined \$10,000.00 for each incident. For this breach and others, he was also suspended for 36 months.

d. *Iftikhar Ahmet Chaudhary*, 2011 RECA 6432-07, 2311-08

Pursuant to an Agreed Statement of Facts, Mr. Chaudhary was found to have breached section 42(b) of the Rules in respect of two separate mortgage transactions in which he, firstly, created false letters of employment for purchasers, and secondly, created false pay stubs for purchasers. He provided the false documents to mortgage lenders to facilitate mortgage approval. The agreement was accepted by the Hearing Panel. Mr. Chaudhary was fined \$10,000.00 for each of the two mortgage transactions.

24. The parties submitted that an analysis of these cases showed that the range of fines for each breach of section 42(a) and 42(b) of the Rules is \$10,000.00 to \$20,000.00. A suspension of the licensee issued in every case except *Antonini* where there was no financial loss and no complaint against the licensee's conduct.

25. Applied to the facts of the present case, Mr. Aery's conduct was dishonest and reckless. It merited denunciation and deterrence. He showed disregard for the potential damage to the lender and his client and he did not consider the impact of his actions on the real estate industry or the public's trust in licensees.

26. As such, the parties jointly agreed in the Submissions to a proposed sanction of \$20,000.00 for the breach of section 42(a), and \$20,000.00 for the breach of section 42(b), for a total fine of \$40,000.00. In addition, they proposed a suspension of Mr. Aery's license for three months, to commence April 1, 2022. Further, they agreed that Mr. Aery should pay \$500.00 toward the costs of the investigation and the Hearing.

27. The parties relied on the decision of the Supreme Court of Canada in the case of *R. v. Anthony-Cook* to support the principle that the Hearing Panel should not depart from the agreement reached by the parties except in circumstances where it would bring the administration of justice into disrepute or be contrary to the public interest. *Bradley v. Ontario College of Teachers* held that these principles apply equally in the context of a disciplinary proceeding such as the matter before this Hearing Panel.

28. The Hearing Panel has reviewed the conduct of Mr. Aery in the context of the authorities provided by the parties and the proposed sanction. It notes the seriousness of Mr. Aery's breaches of the Rules and the harm that befell the buyer, in addition to the potential harm that might have occurred for the lender if mortgage funds had been advanced on the basis of false information.
29. Further, as a mortgage associate with four years of experience at the time of the breaches, Mr. Aery ought reasonably to have been aware that his conduct was a breach of the Rules and fell seriously short of the professional standard he was bound to uphold. In so doing, Mr. Aery showed an absence of regard for the real estate industry and the collective reputation of real estate professionals. The Hearing Panel also notes that he was not forthcoming with investigators.
30. The Hearing Panel recognizes that there is no suggestion that Mr. Aery participated in conduct deserving of sanction before or after these incidents. It notes his participation in the Agreement and the Submission. This suggests that he recognizes the wrongfulness of his conduct.
31. The Hearing Panel has also considered whether the sanction proposed jointly by the parties should be accepted or whether it brings the administration of justice into disrepute or is contrary to the public interest.
32. Addressing the decision whether to reject a joint submission, Moldaver, J. stated in the *Anthony-Cook* decision at paragraph 34:
- Rejection denotes a submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down.*
33. The Hearing Panel views the proposed sanctions as reasonable in the circumstances described in the Agreement. The fine, suspension, and costs sufficiently underscore the seriousness of Mr. Aery's conduct. The sanctions do not bring the administration of justice into disrepute and they are not contrary to the public interest.
34. As such, the Hearing Panel finds no basis to intervene or require any further explanation or substantiation of the sanctions from the parties.

CONCLUSION AND ORDER

35. Pursuant to section 43 of the *Real Estate Act* and for the reasons foregoing, the Hearing Panel finds that Mr. Aery engaged in conduct deserving of sanction as he breached sections 42(a) and 42(b) of the Rules.

36. In consequence of those breaches, the Hearing Panel orders the following sanctions against Mr. Aery:

- a. A fine of \$20,000.00 for the breach of section 42(a) of the Rules;
- b. A fine of \$20,000.00 for the breach of section 42(b) of the Rules;
- c. A suspension of Mr. Aery's license for 3 months, commencing April 1, 2022;
- d. Costs of \$500.00.

Dated the 16th day of February 2022 in the City of Edmonton in the Province of Alberta.

"Signature"

[J.A], Hearing Panel Chair