

THE REAL ESTATE COUNCIL OF ALBERTA

IN THE MATTER OF a Hearing under 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 SUKHWINDER
RANDHAWA, Real Estate Associate, registered at all material times with Lampas
Holdings Ltd. o/a Re/Max River City

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

Appearances: Andrew Bone, Counsel for the Registrar of the Real
 Estate Council of Alberta

 Murray Engelking, Counsel for Sukhwinder
 Randhawa

Hearing Date: June 10, 2022, via video conference

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

INTRODUCTION

1. This hearing involves the conduct of Sukhwinder Randhawa arising from his representation of the buyer and the seller in two failed transactions in June and November 2014, at which time Mr. Randhawa was licensed as a real estate associate with Lampas Holdings Ltd. o/a Re/Max River City.
2. The parties did not object to the composition of the Hearing Panel.
3. Mr. Randhawa has been licensed as a real estate associate with the Real Estate Council of Alberta ("RECA") since 1997.

4. Pursuant to section 46(1) of the *Real Estate Act* ("the Act"), the parties submitted an Admission of Conduct Deserving of Sanction to the Hearing Panel ("the Admission"). It was executed by Mr. Randhawa, whose signature was witnessed by his Counsel, March 3, 2022. It includes the following:
 - a. An acknowledgement that Mr. Randhawa was given the opportunity to seek the advice of a lawyer before signing the Admission;
 - b. The agreement of Mr. Randhawa that the Admission was voluntary;
 - c. The admission by Mr. Randhawa of the facts and breaches set out in Schedule "A" of the Admission;
 - d. The admission by Mr. Randhawa that his conduct is deserving of sanction.
5. The Admission was accepted by the Board of Directors of RECA.
6. The parties also provided a Joint Submission on Sanction to the Hearing Panel. It is dated March 1, 2022. The parties jointly propose the following sanctions arising from Mr. Randhawa's conduct:
 - a. For the following breaches of the *Real Estate Act* Rules ("the Rules"), the sum of \$12,500.00 broken down as follows:
 - i. \$5,000.00 for the breach of Rule 41(d);
 - ii. \$3,000.00 for the breach of Rule 53(c);
 - iii. \$3,000.00 for the breach of Rule 54(3);
 - iv. \$1,500.00 for the breach of Rule 59(2).
 - b. Costs in the sum of \$1,000.00 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 of the Notice of Hearing
 - Exhibit 3: Admission of Conduct Deserving of Sanction dated March 3, 2022
8. Although not formally entered as an exhibit in this hearing, the Hearing Panel accepts the content of the Joint Submission on Sanction and bases its decision on the Joint Submission on Sanction, the parties' oral submissions, and the exhibits.

9. The Hearing Panel received the following case law for its consideration:

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)

R. v. Anthony-Cook, 2016 SCC 43

10. The Hearing Panel received the following Decision of the Hearing Panel for its consideration:

Dawson-MacIver, 2012 6466/07/001588-CM

11. The Hearing Panel received the following RECA Decisions on administrative penalty for its consideration:

- *Donald McLean*, 2012 000073
- *Deborah Keatley*, 2013 003358
- *James Murphy*, 2015 005428
- *Robert Magee*, 2015 004759
- *Bruce Lea*, 2019 009266
- *Bradley Lyons*, 2019 000455-CM
- *Samuel Wipf*, 2013 00337

FACTS

12. The agreed breaches of the Rules and the supporting facts are found in Schedule "A" of the Admission and they are set out below. The names of sellers and purchasers have been anonymized:

1. *Sukhwinder Randhawa (Hereinafter "Mr. Randhawa") and the Registrar agree to the following:*

Agreed Breaches

2. *It is agreed that the below conduct is deserving of sanction for the following breaches:*

- a. *Mr. Randawa (sic) provided services to a client in a trade in which he had a conflict of interest without receiving the written and informed*

consent of that client, contrary to section 54(3) of the Real Estate Act Rules.

- i. In June of 2014 Mr. Randhawa represented both sides in a purchase and sale agreement. He had a relationship with the purchaser and that was not disclosed in writing to the seller.*
- b. Mr. Randhawa failed to fulfill his fiduciary obligations contrary to section 41(d) of the Real Estate Act Rules.*
 - i. Mr. Randhawa represented a client in the purchase of a property in June of 2014. That client required financing to complete the transaction. He failed to include a buyer's financing condition and the deal collapsed.*
- c. Mr. Randhawa failed to provide both a buyer and seller he represented on the same deal with a transaction brokerage agreement, contrary to section 59(2) of the Real Estate Act Rules.*
 - i. Mr. Randhawa represented the same buyer and seller in two failed transactions (June and November 2014). Neither party signed or was provided with a transaction brokerage agreement.*
- d. Mr. Randawa (sic) failed to provide to his broker in a timely manner all original documentation and copies of original documents related to a trade in real estate, contrary to section 53(c) of the Real Estate Act Rules.*
 - i. In June of 2014 Mr. Randhawa represented both sides in the purchase and sale of a property. The deal collapsed and he did not provide the agreement to his brokerage.*
 - ii. In November 2014 Mr. Randhawa represented the same two clients in a second purchase and sale agreement. He did not provide the agreement to his brokerage.*

Agreed Facts

- 3. All of the below transactions concern [ADDRESS] (the "Property").*
- 4. The following concerns the purchase of the Property by G from A.*
 - a. In June 2014 Mr. Randhawa acted for G and A in the purchase and sale of the Property.*
 - b. On June 2, 2014 an agreement to represent both the buyer and the seller was signed by the parties.*

- c. *On June 4, 2014 a purchase and sales agreement was entered into by both parties. The purchase price was \$418,500.*
 - d. *Gs had a prior relationship with Mr. Randhawa. He owed them money at the time of the transaction.*
 - e. *At no material time was documentation provided to A that disclosed a relationship with Gs.*
 - f. *The sale closed June 27, 2014 and the [purchasers] took ownership of the Property.*
5. *The following concerns the attempted purchase of the Property by the Ts from the Gs in June of 2014:*
 - a. *On June 18, 2014, the Ts contacted Mr. Randhawa regarding the Property.*
 - b. *On June 21, 2014, Mr. Randhawa prepared an offer to purchase the Property from the Gs for \$424,500 with a \$5,000 deposit. This was six days prior to the Gs purchase from A closing.*
 - c. *The offer was unconditional, it had no financing or property inspection conditions. Mr. Randhawa did not provide any advice or recommendations on this.*
 - d. *The Ts required financing in order to complete the transaction.*
 - e. *The offer was accepted by the Gs and final signing occurred on June 30, 2014.*
 - f. *The Ts were unable to secure mortgage financing by the closing date of July 20, 2014, as they could not pay the balance owing, the deal collapsed.*
 - g. *There was not any financial loss to the Ts because of this failed transaction.*
 - h. *Mr. Randhawa represented the Ts and the Gs in this transaction.*
 - i. *Neither party signed or was provided with a transaction brokerage agreement.*
 - j. *The purchase and sales agreement was not provided to Mr. Randhawa's brokerage.*
6. *The following concerns the second attempted purchase of the Property by the Ts from the Gs in November of 2014.*
 - a. *On November 20, 2014 Mr. Randhawa prepared a second offer to purchase the Property for the Ts for \$445,000.*
 - b. *The offer was accepted by the Gs and final signing occurred on November 20, 2014.*

- c. *The Ts had a financing condition with a condition date of November 26, 2014.*
- d. *The Ts required financing in order to complete the transaction.*
- e. *The Ts were unable to secure mortgage financing by the condition date and the deal collapsed.*
- f. *There was not any financial loss to the Ts because of this failed transaction.*
- g. *Mr. Randhawa represented the Ts and the Gs in this transaction.*
- h. *Neither party signed or was provided with a transaction brokerage agreement at the material time.*
- i. *That purchase and sales agreement was not provided to Mr. Randhawa's brokerage.*

SUBMISSIONS ON SANCTION

13. The Admission also includes the agreement between the Registrar for RECA and Mr. Randhawa concerning three factors to be considered in determining an appropriate sanction:
- a. A mitigating factor was the agreement of Mr. Randhawa to the Admission. It avoided the time and expense of a hearing, saving witnesses the inconvenience and stress of appearing before the Hearing Panel.
 - b. Two aggravating factors were:
 - i. Mr. Randhawa's experience as a licensed real estate broker for 18 years at the time of the conduct. He should have known that the agreed conduct breached the *Rules*.
 - ii. There is a disciplinary history for Mr. Randhawa.
14. The Joint Submission on Sanction refers to the *Jaswal* decision (above) concerning factors when considering the sanction for the agreed breaches. The relevant factors from *Jaswal*, as they are set out in the Joint Submission on Sanction, follow:
- a. Age and experience of the Licensee
 - i. Mr. Randhawa is currently 63 years old and was first licensed in September 1997 after the inception of RECA.
 - ii. Given Mr. Randhawa's lengthy experience he ought to have been aware that his conduct at issue was unacceptable. This is aggravating.
 - b. The previous character of the member.

- i. Mr. Randhawa has a disciplinary history. This is aggravating.
 - ii. Mr. Randhawa signed a consent agreement in 2004 and agreed to pay a fine of \$6500, costs of \$1000 and to complete the Ethical Practice in Real Estate and Working with the Seller courses. As part of his conduct, he was found to have failed to disclose all relevant information to a client. This is similar to the current conduct.
 - iii. In 2016 and 2017, Mr. Randhawa received two administrative penalties for failing to provide competent service. These were both related to improper measurements for condominiums. These should be ascribed extremely low weight as the conduct occurred after the current matter.
 - iv. In 2019, Mr. Randhawa received three administrative penalties totaling \$12,500. These penalties related to his representation of clients involved in a real estate investment from 2008. He made representations that were reckless or intentional and that misled or deceived persons, undermined public confidence in the industry and he failed in his fiduciary duty. The last breach is similar to the current conduct.
- c. The number of times the offences were proven to have occurred:
 - i. There was one breach of Rule 41(d), two breaches of Rule 53(c), one breach of Rule 54(3), and one breach of Rule 59(2). Given that all of these stem from one property and two transactions this is aggravating
- d. The nature and gravity of the proven allegations:
 - i. In this matter Mr. Randhawa failed to fulfill his fiduciary obligations, failed to provide to his broker in a timely manner all original documentation, failed to provide transaction brokerage agreements and provided services to a client in a trade in which he had a conflict of interest.
 - ii. These breaches are serious in nature and gravity. Mr. Randhawa's conduct negatively impacts the industry's professionalism and integrity.
- e. The need to maintain public confidence in the industry:
 - i. 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 unduly compromised when a licensee fails to fulfill his fiduciary obligations, fails to provide to his broker all original documentation, fails to provide transaction brokerage agreements and provides services to a client in a trade in which he had a conflict of interest.

ii. In *Adams*, (above), the Alberta Court of Appeal noted that public confidence in a profession should be of utmost importance to disciplinary bodies. At para. 6, it held:

iii.

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.

iv. In *Lambert*, (above), 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. relied on previous case law in holding that a profession's most valuable asset is its collective reputation. At para. 17, it held:

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 that inspires".

In the Joint Submission on Sanction, the parties stated that Mr. Randhawa's breaches of the *Rules* impact the collective reputation of Alberta's real estate industry along with the public confidence this reputation should inspire. This is an aggravating factor.

- f. The role of the member in acknowledging what occurred
 - i. Mr. Randhawa has admitted to his conduct and signed a Section 46 agreement on the facts of this matter. This is mitigating.
- g. The impact of the incident on the various complainants
 - i. There was no financial loss to any of the clients. This is mitigating.
- h. Specific deterrence
 - i. There is a need for specific deterrence given Mr. Randhawa's disciplinary history.
- i. General deterrence
 - i. The need for general deterrence is high. Public confidence in the industry is compromised when a licensee fails to fulfill his fiduciary obligations, fails to provide transaction brokerage

agreements and provides services to a client in a trade in which he had a conflict of interest.

- j. Mitigating factors
 - i. Mr. Randhawa has agreed to forego the considerable time and expense of a hearing, saving witnesses the inconvenience and stress of appearing by entering into the Agreement.
15. The Joint Submission on Sanction refers to non-binding prior decisions of RECA and the Hearing Panel to illustrate penalties that have been imposed in similar circumstances.
16. Concerning the breach of *Rule 41(d)* in which Mr. Randhawa breached his fiduciary obligations to his client:
 - a. In *Donald McLean* (above) an administrative penalty of \$5,000.00 was imposed for failure to fulfil fiduciary duties by failing to ensure a deposit was collected in accordance with the terms of the purchase contract.
 - b. In *Deborah Keatley* (above) an administrative penalty of \$5,000.00 was imposed for arbitrarily rejecting the buyers' request for an extension regarding the financing condition without consulting the seller who was her client.

In the parties' submission, the breach of fiduciary duty in these cases is similar to the present case and all three matters represent a single breach of *Rule 41(d)*.

17. Concerning the breach of *Rule 53(c)* in which Mr. Randhawa failed to provide his broker in a timely manner with original documentation and copies of original documents related to a trade in real estate:
 - a. In *James Murphy* (above) an administrative penalty of \$1,500.00 was imposed for failure to submit a purchase contract and deposit to the brokerage until the broker made a formal demand. In the parties' submission, the conduct in *Murphy* is less serious than Mr. Randhawa's breach of *Rule 53(c)* as it related to one transaction and not two. Further, in *Murphy* the documents were submitted to the broker, whereas they were not in the present matter.
 - b. In *Robert Magee* (above) an administrative penalty of \$1,500.00 was imposed as Mr. Magee submitted documents late for transactions in August and September 2014. In the parties' submission, the breach in *Magee* is less serious. Although it involved two incidents, the licensee

was late submitting the documents as opposed to not submitting them at all.

18. Concerning the breach of *Rule 54(3)* and providing services to a client in a trade in which Mr. Randhawa had a conflict of interest without receiving the written and informed consent of the client:
 - a. In *Bruce Lea*, an administrative penalty of \$3,000.00 was imposed for representing both the buyer and seller on a transaction without having the buyer waive the conflict of interest in writing. The parties submit that this is similar to Mr. Randhawa's breach of the *Rule*.
 - b. In *Bradley Lions*, an administrative penalty of \$4,500.00. Mr. Lions represented the buyer and seller on a transaction. He had represented both of them in previous transactions and had received confidential information about their respective real estate needs, motivation and financial qualifications. He did not disclose this in writing to either party. The parties submit that this conduct is more serious than Mr. Randhawa's breach in which the conflict related solely to the buyer.

19. Concerning the breach of *Rule 59(2)* and Mr. Randhawa's failure to provide a transaction brokerage agreement to both the buyer and seller he represented on the same deal:
 - a. In *Dawson-MacIver* (above), the Hearing Panel imposed a fine of \$4,000.00, costs of \$4,309.10, and education requirements. Ms. Dawson-MacIver sold her client's property to an employee of the brokerage with which she was registered. The property was sold at the full list price. She did not disclose the conflict of interest or provide the required dual agency agreement. She failed to provide copies of subsequent offers to purchase to her brokerage. Because the purchaser was an employee at the same brokerage as Ms. Dawson-MacIver, she was presumed to have access to and knowledge of any confidential information with respect to the transaction including the seller's motivation for selling, expectations on price, and financial information. The parties submit that the conduct in *Dawson-MacIver* is more serious than Mr. Randhawa's breach and notes that several other breaches were considered in the fine.
 - b. In *Wipf* (above) an administrative penalty of \$1,500.00 was imposed for representing a buyer and seller without disclosure. The unconditional sale collapsed when Mr. Wipf failed to collect any deposits. He was an experienced associate with a prior disciplinary hearing. This was

considered aggravating. However, he had voluntarily ceased to be registered as an industry member and this was considered mitigating.

20. Mr. Randhawa agreed to pay costs of \$1,000.00 for the investigation and proceedings.

CONDUCT DESERVING OF SANCTION: ISSUE AND FINDING

21. Sections 46 and 47 of the Act provide as follows:

46(1) A licensee may, at any time after the commencement of proceedings under this Part and before a Hearing Panel makes its findings in respect of the licensee's conduct, submit to the Board 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 Board and meets any additional requirements set out in the bylaws.

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.

22. The Hearing Panel has considered the Admission and pursuant to subsection 47(1), deems the Admission to be a finding of the Hearing Panel. The Admission discloses conduct that is deserving of sanction.

SANCTION AND COSTS: ISSUE AND FINDINGS

23. 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.*

24. The Hearing Panel has reviewed the Joint Submission on Sanction and the conduct of Mr. Randhawa in the context of the authorities provided by the parties and the proposed sanction.

25. In considering the *Jaswal* factors, the Hearing Panel finds that Mr. Randhawa's considerable experience as a licensee and his disciplinary history of 2004 are relevant and aggravating factors. The disciplinary breaches of 2016, 2017, and 2019 occurred subsequent to the facts underpinning the present case. As such, the Hearing Panel has determined that they are not factors bearing on the issue of sanction.

26. The five admitted offences arising from two transactions between the buyer and seller create an aggravating consideration. The number and severity of the breaches, are serious considerations particularly as they touch the significant matters of breach of fiduciary, conflict of interest, and the failure to inform or seek written consent.

27. The nature and gravity of the individual offences constitute equally aggravating considerations.

28. Moreover, the failure by Mr. Randhawa to comply with the *Rules* places the public confidence and the reputation of the real estate industry at genuine

risk. The Panel accepts that this is aggravating when determining the appropriate penalty.

29. Viewed globally, this underscores the need for specific deterrence of Mr. Randhawa and general deterrence to the industry.
30. The Hearing Panel accepts that the absence of a financial loss to either the buyer or the seller is a mitigating factor.
31. The Hearing Panel also accepts that Mr. Randhawa's willingness to participate in the Agreement and the Joint Submission on Sanction including costs of the investigation and proceedings is a mitigating factor to be taken into consideration.
32. The Hearing Panel has reviewed the authorities presented concerning the penalty to be imposed. 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.
33. Addressing the question whether to accept or 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.
34. *Bradley v. Ontario College of Teachers*, 2021 ONSC 2303 (CanLII), while not specifically cited by the parties, is relevant to the Hearing Panel's deliberations. It held that the principles enunciated in the *Anthony-Cook* decision apply equally in the context of a disciplinary proceeding such as the matter before this Hearing Panel.
35. The Hearing Panel finds the proposed sanctions to be reasonable in the circumstances described in the Agreement and in view of the aggravating and mitigating factors. The sanctions do not bring the administration of justice into disrepute and they are not contrary to the public interest. The monetary penalty falls within the range of penalties imposed for similar breaches. When

considered together with the agreement on costs, it sufficiently underscores the seriousness of Mr. Randhawa's conduct.

36. As such, the Hearing Panel accepts the Joint Submission on Sanction and finds no basis to intervene, require any further explanation or substantiation of the sanctions from the parties.

CONCLUSION AND ORDER

37. Pursuant to section 43 of the *Real Estate Act* and for the reasons above, the Hearing Panel finds that Mr. Randhawa engaged in conduct deserving of sanction as he breached Rules 41(d), 53(c), 54(3), and 59(2).

38. In consequence of those breaches, the Hearing Panel orders the following sanctions against Mr. Randhawa:
- a. A fine of \$5,000.00 for the breach of Rule 41(d);
 - b. A fine of \$3,000.00 for the breach of Rule 53(c);
 - c. A fine of \$3,000.00 for the breach of Rule 54(3);
 - d. A fine of \$1,500.00 for the breach of Rule 59(2);
 - e. Costs in the sum of \$1,000.00.

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

"Signature"

[J.A], Hearing Panel Chair