

THE REAL ESTATE COUNCIL OF ALBERTA

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

AND IN THE MATTER OF a Hearing regarding the conduct of
JAMES KENNETH KNUTSON, currently not registered,
previously registered with Devonshire (The Park) Inc. o/a Maxwell Devonshire

Hearing Panel Members: A.B. - Hearing Panel Chair
L.M - Licensee
M.W. - Licensee

Hearing Date: November 25, 2021

Decision Date: January 31, 2022

Appearances: Sania Chaudhry, Counsel for the Registrar of the Real
Estate Council of Alberta

Kenneth James Knutson, did not attend

**DECISION OF THE HEARING PANEL ON
CONDUCT DESERVING OF SANCTION**

UPON READING the affidavit testimony of witnesses and considering the evidence submitted at the hearing of this matter; **AND UPON** reviewing and considering the materials submitted and the argument made, the Hearing Panel finds that Mr. Knutson's conduct is deserving of sanction for breaching section 38(4)(a) of the *Real Estate Act* and Rule 42(g) of the *Real Estate Act Rules*.

A. Introduction

The Licensee, currently unregistered, is James Kenneth Knutson ("Mr. Knutson"). He received his license in 2017 and at the relevant time of the investigation was an associate with Maxwell Devonshire in Edmonton. The alleged conduct deserving sanction is not associated with a fixed date.

B. Decision

For reasons that follow, the Panel finds that the allegations set out in the Notice of Hearing dated October 25, 2021, have been proven on a balance of probabilities by

the Registrar. In particular, the Panel finds that the licensee breached section 38(4) of the Act by not cooperating during an investigation. Further, the licensee breached section 41(1)(a) of the *Real Estate Act Rules* by failing to act honestly by declaring to agree to abide by the *Real Estate Act* and *Real Estate Act Rules*, whilst publicly declaring a belief that the licensee is not subject to the authority of government authorities, courts, or federal or provincial laws. And breached s. 42(g) of the *Real Estate Act Rules* by engaging in conduct that undermines public confidence in the industry, harming the integrity of the industry and bringing the industry into disrepute.

C. Procedural Matters

The matter comes before this Hearing Panel ("the Panel") as a result of the coming into force of section 76.4(5) of the Act, which states:

(5) In the event that, on the coming into force of this section, a Hearing Panel or an Appeal Panel has been established under section 36, that Panel shall cease to exist and an official administrator shall establish a new Hearing Panel or Appeal Panel to proceed with the matter as if the Hearing Panel or Appeal Panel established prior to the coming into force of this section had not been established.

2019 c13 s4;2020 c10 s71

The Registrar takes the position that the result of the matter that was heard on May 6, 2019, and the decision of October 10, 2019 is that the Hearing Panel for that hearing ceased to exist, rendering the phase one decision of the panel from October 2019 a nullity. Without the phase one Panel existing, the decision cannot stand. This Panel was not provided with a copy of the decision of the earlier Panel. The Administrator undertook to establish a new Hearing Panel to deal with the matter, we are that Panel. The Registrar further submits that while the 2019 Hearing Panel ceased to exist, the evidence presented during the course of the hearing is relevant and admissible for the current hearing. The Registrar provides that the previous affidavits were made current by the swearing of a recent affidavit by the testifying parties that their statements continued to be true. The Registrar directed the Panel to s.42 of the Act. The Panel notes that section 42(h) indicates that "the laws of evidence to judicial proceedings do not apply;" notwithstanding, the Panel is cognizant of the necessity to ensure that evidence before the Panel is both admissible and reliable.

There were no submissions from the Registrar on the history or purpose section 76.4(5). There was no submission from the Licensee on the matter. The Panel proceeded with the hearing as provided for at s.41.1 of the Act.

The Licensee did not attend the hearing. The Registrar provided an Affidavit of attempted service from Ms. Amanda Marshall of Edmonton, Alberta, exhibit 2. No

personal service was affected by Ms. Marshall. The affidavit of service of Carolyn Thompson is exhibit 3. In exhibit 3, there is a Canada Post tracking document (exhibit "b") that provides that the document was delivered at 4pm on November 3, 2021. Exhibit "A" attached to the affidavit is the notice of hearing. Exhibit "C" is an email to James K. Knutson, with attachments and indicating the date of the hearing as November 25 and 26 of November 2021 in the body of the email. The Panel is satisfied that the Licensee was properly served with notice of the hearing inclusive of the allegations of conduct deserving sanction. A registered letter was received by the Registrar on November 24, 2021, from Mr. Knutson concerning this matter – exhibit "6". The hearing proceeded on November 25, 2021, in the absence of Mr. Knutson.

D. Documents submitted to the Hearing Panel

The Registrar provided Exhibit Book 1 in the matter before us. Documents in the Exhibit Book 1 correspond numerically with those documents already identified. Further information in the Exhibit Book 1 are; at Tab 4, entered as exhibit 4 – the Affidavit of Bryan Edgar Statt, Broker at Maxwell Devonshire, dated on November 2, 2021, swearing to the continuing and ongoing truth of his statements from the May 6, 2019 hearing, inclusive of exhibit "A" – transcript of testimony from the May 6, 2019 hearing, and exhibit "B" – true copies of exhibits provided during the May 6, 2019 hearing.

Tab 5, entered as exhibit 5 – Affidavit of Andrew Brainard dated November 16, 2021, Professional Conduct Review Officer with the Real Estate Council of Alberta, swearing to the continuing and ongoing truth of his statements from the May 6, 2019 hearing, inclusive of exhibit "A" – transcript of testimony from the May 6, 2019 hearing, and exhibit "B" – true copies of exhibits provided during the May 6, 2019 hearing.

The Panel questioned Registrar's Counsel on the decision to supply their evidence in this format rather than recalling the witnesses. Counsel indicated that the witnesses were fearful of consequences to them as a result of providing the information and indicated to the Registrar that the process was stressful. As a result the Registrar choose to admit the evidence through follow up affidavits rather than virtual testimony. The Panel is satisfied with the explanation of Counsel and finds that the reliability of the evidence is not diminished by the method of admittance, and therefore allow the affidavits, exhibit 4 and 5.

Exhibit 6 was entered by the Registrar, it is the letter document from Mr. Knutson received by the Registrar on November 24, 2021.

E. Alleged Breaches

Registrar alleges the following breaches:

- a) You did not cooperate with the investigator or promptly respond to their questions during an investigation, contrary to section 38(4)(a) of the *Real Estate Act* ("Act"):
- i. You did not answer the questions posed to you by the investigator in a Notification of a Professional Conduct Review letter, dated February 4, 2019;
- b) You did not act honestly, contrary to section 41(a) of the Real Estate Act Rules ("*Rules*"):
- i. You declared on your re-registration form submitted to RECA on March 18, 2019, that you intended to abide by the "Real Estate Act, Real Estate Act Rules ("*Rules*", and laws that apply to a professional authorized to trade in real estate or deal in mortgages" despite your comments and beliefs to the contrary, including that you are not subject to government authorities, courts, federal or provincial laws, or legislation;
- c) You engaged in conduct that undermines public confidence in the industry, harms the integrity of the industry, or brings the industry into disrepute, contrary to section 42(g) of the Real Estate Act Rules:
- i. Your "abusive conduct" before the Alberta courts convinced them, on their own motion and at the direction of the Chief Justice, to investigate whether you should be subject to Court restrictions prohibiting you from initiating or continuing any actions in Alberta Courts;
- ii. Upon review of your history before the Court, you were declared to be a "vexatious litigant" by the Alberta Court of Queen's Bench on December 12, 2018;
- iii. The Alberta Court of Queen's Bench determined that you should be subject to broad, enhanced, and stringent court access restrictions because you are an "abusive litigant" and rely on "litigation misconduct";
- iv. You have showed disregard for the authority of the Courts and the laws of Alberta and Canada and have made comments that are both anti-government and anti-institutional;
- v. You provided in your response to RECA typical Organized Pseudolegal Commercial Arguments ("*OPCA*"), which have been recognized by the Courts in Alberta and elsewhere to include concepts and strategies that seek to evade or disrupt due legal process;
- vi. You do not recognize the authority of RECA;

vii. You are ungovernable by RECA.

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

The Act:

38(4) A person who is required under subsection (2) to answer the questions of a person conducting an investigation
(a) shall co-operate with the investigator and promptly respond to the questions,

The Real Estate Act Rules:

41 Licensees must..

(a) act honestly;

42 Licensees must not..

(g) engage in conduct that undermines public confidence in the industry, harms the integrity of the industry, or brings the industry into disrepute.

G. Conduct Deserving of Sanction

S.38(4) of the Act, failure to cooperate

The Registrar provided that the licensee failed to respond to questions in the course of an investigation by the Registrar on February 4, 2019. Turning to exhibit 5 and the affidavit of Andrew Brainard, Professional Conduct Review Officer for the Real Estate Council of Alberta, dated November 16, 2021. The affidavit contains the deponent's statement that the information provided in the May 6, 2019, hearing as provided for in the transcript and exhibits remain true as of November 16, 2021.

The transcript of the testimony of Mr. Brainard from the May 6, 2019 hearing is exhibit A. Counsel for the Registrar drew our attention to page 157 of the transcript, where Mr. Brainard is questioned about the Court of Queen's Bench decisions involving the licensee. These are the decisions 2018 ABQB 858 (exhibit 15 of May 2019 hearing) and 2018 ABQB 1050 (exhibit 16 of May 2019 hearing) – Under exhibit B in the November 16th affidavit.

On February 4, 2019, Mr. Brainard emailed Mr. Knutson with correspondence that questioned his actions concerning conduct on the court matters mentioned above, more specifically, inquired of Mr. Knutson whether he had paid the court costs and addressed the default judgements related to his mortgage and credit card debt.

At page 172 of the transcript an audio conversation between Mr. Brainard and Mr. Knutson is entered into evidence as exhibit 17A, May 2019 hearing. The call took place on February 15, 2019. The initial discussion involves Mr. Knutson requesting information on the complainant and the Review Officer explaining that such information could not be shared. At page 174, Mr. Knutson questions Mr. Brainard on his use of a style manual and grammar rules to create the questions put to Mr. Knutson in written correspondence.

On March 4, 2019 (page 359, exhibit 19, May 2019 hearing) correspondence was provided by registered mail to RECA from Mr. Knutson. The correspondence contains approximately 162 pages of documentation. On the first page, in the top right corner is a \$1 Canadian stamp, a red thumb print impression, and the name "James Kenneth Knutson" inscribed over the stamp. Page 360 provides a legend to the "Parse Syntax Grammar Performance." A further review of the correspondence does not supply a response to the questions posed in the RECA request for information of February 4, 2019.

The requirement to co-operate and promptly respond is inferred to include a response in an acceptably intelligible way. Using the language of what the courts have determined to be the style of OPCA does not conform to provision of a response that is cooperative.

As with Mr. Knutson's responses in the various court actions against him, he chose to respond using the FEDERAL POSTAL COURT style, utilizing the Parse Syntax Grammar Performance, which the Court in *2018 ABQB 858 Re Knutson*, describes as follows:

[18] Both the Knutson and MCAP Affidavits include a bizarre, practically indecipherable document, the first page of which is reproduced as Appendix "D". The content and text of the first page of this document is representative of its entire nine pages. As best I can evaluate this item, I conclude this is a "judgment" of a purported US court, the ":FEDERAL-POSTAL-COURT", issued on November 26, 2016 by ":FEDERAL-POSTAL-JUDGE: David-Wynn: Miller. The "judgment" is followed by a ":STUDY-GUIDE" which seems to indicate a strange kind of grammar. For example:

4 = PRONOUNS = FOR THE SINGLE-ONE-WORD; FOR AN ADJECTIVE-PRONOUN-OPINION OF THE FACT CHANGES WITH THE FACT INTO THE PRONOUN; FOR AN ADVERB-CONNECTS TO THE PRONOUN BEFORE AND ADVERB.

*[19] The remaining ten pages are the Knutson MCAP mortgage, but that document has been annotated. Each page is marked in thick felt marker ":EVIDENCE:" and stamped with a legend:
:Syntax-word-key-meaning:*

1=Adverb	8=Past-time
2=Verb	9=Future-time
3=Adjective	0=Conjunction
4=Pronoun	NC=No-Contract

and is sometimes annotated with other text, such as “:STYLES-Boxing=:OMIT-VOID-CONTENT-FRAUD-SYNTAX-GRAMMER”. All words are then individually annotated with a hand-written number, which appears to correspond to the stamped legend.

[20] Though my analysis of the meaning of this peculiar item is hampered by its perplexing nature, I conclude the function of the “:FEDERAL-POSTAL-COURT” decision and attached annotated mortgage document is that the mortgage contract is being proofread using an abnormal grammar code. The failure of MCAP to format its documents according to this outlandish linguistic system allegedly means the contract is void and fraudulent.

While not identical, the response of Mr. Knutson to RECA on March 4, 2019, is in the similar indecipherable style. As it was determined that Mr. Knutson was a vexatious litigant, abusing court processes with his OPCA philosophy and style it cannot be that the use of the that style or philosophy is appropriate or cooperative when addressing a disciplinary matter before the industry regulator. The Panel finds that the licensee has failed to cooperate with the regulator in relation to the investigation.

41 Licensees must:.. (a) act honestly:

The allegation that the licensee has not acted honestly is centred on statements made in the course of applying to be re-registered as a licensee in 2019. In particular, questions posed on the application form require the applicant at Part 2. Authorization & Acknowledgement, Subscription Statement and Responsibilities at #3:

I understand and accept the duties and responsibilities of an associate/associate broker as set out in the Real Estate Act and Real Estate Act Rules. I am aware that as a professional I must follow all standards of practice and comply with the Real Estate Act, Real Estate Act Rules, and laws that apply to a professional authorized to trade in real estate or deal in mortgages in Alberta. I acknowledge my obligation to familiarize myself with the application laws of Alberta, to only engage in work or provide services I am authorized and competent to do, and to abide by any terms, restrictions and conditions on my licence. I will immediately notify the executive director, in writing of any changes to the information provided in support of this application that may occur during the application process or after my authorization.

To this statement Mr. Knutson responded "Yes". In his response of March 4, 2019, he attached his 2017 statement concerning registration, which was at that time approved. It was marked 'EVIDENCE' and was annotated the form using the syntax rules set out above in his correspondence, providing:

Appendix A to the H.E.I.X Subscription Agreement.		
3.	I understand and accept the duties and responsibilities of an associate/associate broker as set out in the Real Estate Act and Real Estate Act Rules. I am aware that as a professional I must follow all standards of practice and comply with the Real Estate Act, Real Estate Act Rules, and laws that apply to a professional authorized to trade in real estate or deal in mortgages in Alberta. I acknowledge my obligation to familiarize myself with the applicable laws of Alberta, to only engage in work or provide services I am authorized and competent to do, and to abide by any terms, restrictions and conditions on my licence. I will immediately notify the executive director, in writing, of any changes to the information provided in support of this application that may occur during the application process or after my authorization.	Yes

The implication in the document above is that Mr. Knutson finds the statement offends the rules of the parse syntax grammar. There are several notes of "nc" denoting no contract, which we infer to mean that Mr. Knutson disagrees or does not accept the duties and responsibilities as an associate. We note that in the first line above the word "accept" is "nc-4" – this is "no-contract pronoun". Mr. Knutson also included an annotated copy of the Real Estate Act in his response using the same syntax grammar rules shown in his registration application form response. As indicated above by the Court at paragraph [18] Mr. Knutson considered his own mortgage fraudulent. It is our inference from Mr. Knutson's defiance and noncompliance with his own contractual obligations under the law, his annotations of the *Real Estate Act*, and his above response, that he cannot have honestly committed to upholding the laws of Alberta in relation to the Real Estate Act or Rules. Moreover, there are fiduciary obligations that result from participating in this profession; where a licensee professes to be their own sovereign agent not otherwise governed by the prevailing law, there cannot be an honest commitment to uphold or apply the laws of the jurisdiction in which the licensee physically operates.

In Knutson, 2018 ABQB 858:

[72] Knutson's submitting to this Court and his reliance on the "FEDERAL-POSTAL-COURT" decision of "Judge :David-Wynn: Miller" warrants special comment. This step is serious litigation misconduct. An attempt to impose a fictional court decision into an Alberta Court of Queen's Bench process is prima facie contempt of court: *Fearn v Canada Customs*, at paras 201-210.

[73] That is not the only implication of asserting alleged authority of this kind. Pseudolaw is a kind of self-destructive extremist political ideology that

is reinforced in highly introspective, introverted community 'echo chambers': Re Gauthier, at para 92. As I observed in 1985 Sawridge Trust v Alberta (Public Trustee), 2017 ABQB 548 at paras 72-73, people who use pseudolaw are motivated by extremist political beliefs and ideologies:

Judicial and legal academic authorities uniformly identify OPCA narratives and their associated pseudolegal concepts as resting on and building from a foundation of paranoid and conspiratorial anti-government and anti-institutional political and social belief. These individuals are sometimes called 'litigation terrorists' for this reason. They may act for personal benefit, but they also do so with the belief they are justified and act lawfully when they injure others and disrupt court processes. Persons who advance OPCA litigation to harm others have no place in Canada's courts. ... Their next target can be anyone who crosses their path - government officials or organizations, peace officers, lawyers, judges, business employees - and who then offends the OPCA litigant's skewed perspectives.

These individuals believe they have a right to attack others via the courts, they like the idea of doing that, and they view their litigation targets as bad actors who deserve punishment. ...

Further confirmation of Mr. Knutson's position in this regard is provided in his latest response to RECA, exhibit 6, dated November 22, 2021, in which he states:

I hereby order you to convert the property into whatever is necessary to achieve extinguishment of all said claims, and to correct the record to reflect the extinguishment and to notify me by providing me with a record evidencing the same. I also order you to cease and desist your attempt to administer this estate for your benefit, as it is held by private trust cognizable by Canada Revenue Agency and to wipe all libel and slanderous statements made by RECA from the internet and to make the estate whole again. Trying to administer an estate for your own benefit without the proper authority is unjust enrichment and a breach of trust, as you are the trustee, unless you can provide me with your written delegated authority to administer this estate. Where is your Power of Attorney, your lien interest, your security agreement and your trust indenture? I demand you provide me with this paperwork evidencing your authority to hold any administrative process concerning this estate and what you claim as your authority to buy, sell, and/or trade securities backed by this estate within ten (10) days of receiving this correspondence and your failure to do so, will be your admission that you lack the authority to administer this estate for your own benefit and if you decide not to return the proceeds of disposition, you will force me to get CRA involved for recoupment and a return of trust property.

Mr. Knutson also demands that the information contained in his response is "Strictly Private and Confidential". The nature of the proceedings require that any disclosure to the Panel in relation to this matter is available for consideration of the decision of the Panel and may inform the issues before the Panel. Mr. Knutson's choice to respond as he has requires the Panel to conform to the principles of natural justice; disclosure is to be shared such that all parties may advance or respond to a claim. Only in the rarest of circumstances will disclosure be subject to a confidentiality or sealing order. Our determination that Mr. Knutson has not acted honestly also addresses the matter of Mr. Knutson not recognizing the authority of RECA. It would be inconsistent to find that Mr. Knutson believes that the authority of RECA, under their given mandate, applies to him, when he has clearly stated on several occasions that he does not recognize the laws of Canada.

42 Licensees must not... (g) engage in conduct that undermines public confidence in the industry, harms the integrity of the industry, or brings the industry into disrepute.

When we consider the Court matters in which Mr. Knutson is or has been involved with, along with and outlined in 2018 ABQB 858:

1. *Bank of Nova Scotia v James Knutson*, Alberta Court of Queen's Bench Docket 1603 21486
2. *MCAP Service Corporation v James Knutson*, Alberta Court of Queen's Bench Docket 1603 18699
3. *Capital One Bank (Canada Branch) v James Knutson*, Alberta Court of Queen's Bench Docket 1803 08102
4. *Knutson (Re)* 2018 ABQB 1050
5. *Knutson (Re)* 2021 ABQB 367

Mr. Knutson has been the subject of three debt collection actions over the course of several years, including the last time he was a licensed agent.

In 2018 ABQB 858 and the MCAP matter, the court provides the following:

[14] On October 25, 2016 MCAP Service Corporation [MCAP], a mortgage lender, filed a Statement of Claim in response to Knutson's default on a mortgage for a residential property located in Beaumont, Alberta. A \$507,688.15 outstanding debt was owed as of October 18, 2016. MCAP sought judgment for the outstanding claimed debt, foreclosure, and solicitor and own client costs. A supporting appraisal affidavit indicated the outstanding debt was basically the value of the Beaumont residence.

[15] Master Wacowich ordered a Court-ordered sale on January 10, 2017. Knutson did not appear at that hearing. The Master subsequently on January 24, 2017 ordered any occupants of the mortgaged property had 14 days to exit the residence. A supporting affidavit attached a text message exchange between Knutson and the realtor conducting the January 10, 2017 court-ordered sale. Knutson's texts reject that he is in a contract with the realtor, MCAP, or MCAP's lawyer:

I am not in default as the document says, as I have given response to court of queen's bench. I have proof of lading and signature from registered mail, so your contract with the courthouse is misleading and has not given full disclosure to you. I do not have a contract with you or with either corporation but if you wish to contract with me, I will send my terms and conditions and if you agree I will draft up a contract.

[16] Knutson filed an appeal of the January 10, 2017 Order on February 6, 2017, indicating he would rely on an affidavit, "3 requests for Validation of a debt document", and "Document-contract-federal-postal-station-court-venue-performance". MCAP applied for an order for vacant possession, to be heard on the same day.

[17] Both parties filed Affidavits. In the Affidavit filed by Knutson on March 7, 2017, Knutson indicates "I am a Common Law man, of inherent jurisdiction.", and attaches as proof his NOUICR and Registration of Live Birth. Knutson continues to say he has sent this lender another set of Get Out Of Debt Free letters, which are attached as exhibits. Knutson claims that proves no debt exists. He also says [Charter](#), s 32 means the law of Canada does not apply to him: "I have never, nor am I now acting as agent of the government."

Where a licensee openly and with conviction denounces the laws by which they said they agreed to uphold, and also rejects the law of contract governing real estate and financial transactions at the heart of the legislation under which he is licensed, is to significantly diminish the integrity of the profession. Further, what Mr. Knutson does when he demands action from RECA, as in exhibit 6, is to proclaim himself to be above the law. The public could have no confidence that Mr. Knutson would be truthful or committed to carrying out his duties as a fiduciary or at a minimum acknowledging the binding nature of a contract. Foundationally contracts between buyers and sellers, buyers and lenders, buyers, sellers and licensees are the agreements that allow for all transactions to be completed. For greater clarity, being a fiduciary requires that Mr. Knutson act in good faith, with honesty and sincerity, fulfilling obligations of trust. The public, viewing the behaviour and consequences of Mr. Knutson's actions as played out in the courts would severely undermine the public's confidence in the industry and brings disrepute to the industry.

Addressing the matter of governability, this Panel, given the foregoing, finds that Mr. Knutson has no appreciation or concern for RECA and any of its applicable laws or rules and their application to his actions as a licensed agent. Mr. Knutson is a significant risk to the public and no amount of supervision or investigation or education by the regulator will alter his theories and beliefs; the earliest evidence of OPCA behaviour discussed in 2018 ABQB 858 is 2016 at paragraph[7]. In 2021 ABQB 367, Mr. Knutson continues his OPCA campaign, including attempting to impose fiduciary obligations on the Associate Chief Justice:

[7] Mr. Knutson claims to unilaterally impose trustee and fiduciary status upon me. That is a well-known and long discounted OPCA scheme: *Meads v Mead*, paras 448-449, 492-493. Mr. Knutson also says the “acts, statutes, bylaws and codes” do not apply to him, “The Master has returned!”. Unilateral pseudolaw claims to be outside the law are not only a basis to conclude that a litigant has abused court processes, but does so with an ulterior, bad-faith intent: *Fiander v Mills*, [2015 NLCA 31](#) at paras [37-40](#). I conclude that Mr. Knutson’s April 30, 2021 document is a bad-faith attempt to interfere with Court processes, and escape valid litigant management steps.

SUMMARY

The Panel finds that Mr. Knutson did engage in conduct deserving of sanction as alleged. Specifically, Mr. Knutson breached section 38(4) of the *Act* by not cooperating during an investigation. Further, the licensee breached section 41(1)(a) of the *Real Estate Act Rules* by failing to act honestly by declaring to agree to abide by the *Real Estate Act* and *Real Estate Act Rules*, whilst publicly declaring a belief that the licensee is not subject to the authority of government authorities, courts, or federal or provincial laws. And under s. 42(g) of the *Real Estate Act Rules* by engaging in conduct that undermines public confidence in the industry, harming the integrity of the industry and bringing the industry into disrepute.

REQUEST FOR SUBMISSION ON SANCTION AND COSTS

As a result of our findings, Phase two of this matter will be addressed by written submissions of the parties. The Panel requests written submissions from the parties on the appropriate sanction and costs.

The Registrar is asked to supply 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. Knutson immediately on receipt, which we anticipate will be provided by registered mail. Mr. Knutson is asked to supply his written submissions to the Hearings Administrator within 14 days of receipt of the Registrar’s written submissions, taking into account receipt by registered mail. The Hearings

Administrator is directed to supply those written submissions to the Registrar immediately on receipt. The Registrar is provided 7 days to supply a rebuttal, which is provided to Mr. Knutson without further reply. Once the timelines for provision of written submissions to Hearings Administrator has past, the written submissions received within the timeframe set out will be supplied to the Hearing Panel for their consideration and decision on sanction and costs.

Should either party desire a formal hearing in relation to sanction, with *viva voce* evidence, or should they desire to advance more evidence by way of affidavit, they must advise the Hearings Administrator within five days of receipt of this decision, with an explanation of why such a hearing or additional written evidence is requested. The Panel will then make a decision as to whether a formal hearing on sanction will be held and/or the procedure to be followed with respect to additional affidavit evidence and any related questioning on that evidence, and the above timeline will be adjusted accordingly.

This Decision is dated this 31 day of January, 2022.

"SIGNATURE"

A.B., Hearing Panel Chair

THE REAL ESTATE COUNCIL OF ALBERTA

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

AND IN THE MATTER OF a Hearing regarding the conduct of
JAMES KENNETH KNUTSON, currently not registered,
previously registered with Devonshire (The Park) Inc. o/a Maxwell Devonshire

Hearing Panel Members: A.B. - Hearing Panel Chair
L.M. – Licensee
M.W. – Licensee

Hearing Date: November 25, 2021

Decision Date: September 6, 2022

Appearances: Counsel for the Registrar of the Real Estate Council of
Alberta

James Kenneth Knutson, did not attend

DECISION ON SANCTION AND COSTS

FOLLOWING the decision of the Hearing Panel with respect to the conduct deserving of sanction decision (Phase 1 Decision) and UPON Considering the written submissions of the Registrar of the Real Estate Council of Alberta (the “**Registrar**”) regarding the appropriate sanctions in this matter,
THE HEARING PANEL HEREBY FINDS AS FOLLOWS:

INTRODUCTION

1. A Phase I hearing was held on November 25, 2021 to determine whether conduct of the licensee, Mr. James Kenneth Knutson (the “**Licensee**” or “**Mr. Knutson**”) was deserving of sanction.
2. The result of the Phase I hearing was that the Hearing Panel (the “**Panel**”) found that the conduct of Mr. Knutson was deserving of sanction as follows:
 - a. that the Licensee breached section 38(4) of the *Real Estate Act* by not cooperating during an investigation;
 - b. the Licensee breached section 41(1)(a) of the *Real Estate Act* Rules by failing to act honestly by declaring to agree to abide by the *Real Estate Act* and *Real Estate Act* Rules, whilst publicly declaring a belief that the licensee is

- not subject to the authority of government authorities, courts, or federal or provincial laws, and;
- c. breached s. 42(g) of the *Real Estate Act* Rules by engaging in conduct that undermines public confidence in the industry, harming the integrity of the industry and bringing the industry into disrepute.

PARTIES' SUBMISSIONS ON SANCTION AND COSTS

3. Section 43 of the *Real Estate Act* provides a Hearing Panel with the authority to order a sanction where a licensee's conduct has been found to be deserving of sanction:

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;*
 - d.1) *an order prohibiting the industry member from applying for a new authorization for a specified period of time or until one or more conditions are fulfilled by the industry member;*
 - e) *any other order agreed to by the parties.*
4. Each of the parties were provided with deadlines to provide their submissions on sanction and costs. Mr. Knutson did not provide a submission, but did supply correspondence, which will be addressed in our decision.
 5. The Registrar's submission was received by the Panel on March 14, 2022, totalling 380 pages. The Registrar in its submission seeks a sanction of a lifetime cancellation of the licensee in light of the Panel's findings on conduct. That request is based on our finding of ungovernability. The Registrar provides no submission on sanction related to other breaches found.
 6. The Registrar relies on the factors in the leading case of *Jaswal v. Medical Board (Nfld.)*, 1996 CanLII 11630 (NL SC) ("Jaswal") for determining an appropriate sanction:
 - a. the nature and gravity of the proven allegations;

- b. the age and experience of the licensee;
- c. the previous character of the licensee and in particular the presence or absence of any prior complaints or convictions;
- d. the age and mental condition of the offended client;
- e. the number of times the offence was proven to have occurred;
- f. the role of the licensee in acknowledging what had occurred;
- g. whether the licensee had already suffered other serious financial or other penalties as a result of the allegations having been made;
- h. the impact of the incident on the victim;
- i. the presence or absence of any mitigating circumstances;
- j. the need to promote specific and general deterrence and, thereby, to protect the public and ensure the safe and proper conduct of the profession;
- k. the need to maintain the public's confidence in the integrity of the profession;
- l. 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;
- m. the range of sentence in other similar cases.

7. The Registrar submits that where there is a serious and egregious breach of conduct and responsibilities that undermine public confidence then licence cancellation becomes presumptive, and the Jaswal factors of deterrence and confidence of the public should be weighted more heavily than other factors. Given the Registrar's submission on sanction on only the finding of ungovernability, the Panel will focus consideration of the factors on that breach. In addressing the Jaswal factors, it will be necessary to consider aspects of the other breaches found that correspond with the Jaswal factors.

8. The Panel finds that several of the Jaswal factors are less relevant to the circumstances of the case. Those factors are not considered by the Panel at length and include:

- (a) The age and mental condition of the offended client as set out in sub-paragraph d. above. In this case, the issues arose in connection with the Licensee's conduct without an interaction with a client and so any particulars of his clients are not relevant factors;
- (b) The number of times the offence was proven to have occurred as set out in sub-paragraph e. above. The finding of a lack of governability is connected to the Licensee's ongoing expression of an ideology and is not tied to a particular offence.
- (c) Whether the licensee had already suffered other serious financial or other penalties as a result of the allegations having been made as set out in sub-paragraph g. above is not relevant on the evidence led in this case. No evidence was presented by either party to suggest any financial penalties or other consequences had resulted from these allegations.

(d) The impact of the incident on the victim as set out in subparagraph h. above is also not a relevant factor in this case. There was no evidence led of the existence of any direct victims of the Licensee's expression of his particular ideology as he had no clients.

9. With the exception of the *Jaswal* factors which were not relevant to this sanction hearing as set out in paragraph 8 above, the Panel considered the remaining *Jaswal* factors in arriving at a sanction. In particular, the Panel highlights the implication of the first factor identified at sub-paragraph a. above as the nature and gravity of the proven allegations. The Panel has found that the Licensee is ungovernable by the Real Estate Council of Alberta. As outlined in our decision on conduct on the matter of governance reviews the Licensee's conduct on the whole, coupled with what has played out in the courts in the previous several years is compelling support for the finding of ungovernability. This *Jaswal* factor was given particular weight in this consideration of sanction.

10. The Panel finds that being ungovernable is a breach of the greatest gravitas. This Panel finds that any licensee of RECA being ungovernable further diminishes public confidence in the industry and brings the industry into disrepute. If the public cannot rely on a governing body to appropriately regulate its members behaviours to ensure their protection against prohibited behaviours, there is significant risk that the public will consider that governing body to be ineffectual. Said differently, strong trust requires good governance.

11. With regard to the remaining factors, a number of factual findings impacted the Panel's conclusion on sanction:

(a) The Licensee has a history of litigation and conflict with judicial bodies in which his expressed ideology has led him to reject the authority of judicial and other governmental bodies;

(b) Even in the context of the sanction phase of the hearing, the Licensee continued to assert his ideology and reject the authority of the Panel to issue a sanction indicating the Licensee does not acknowledge his role in the matters that led to the Phase I hearing;

(c) The Licensee chose not to participate in the sanction Phase II hearing and so no evidence of mitigating factors was led before the Panel;

(d) As is set out in general above, there is a need on behalf of RECA to promote deterrence of execution of this ideology to the extent that, as in the Licensee's case, it renders a licensee ungovernable by its governing body. It is necessary to ensure public confidence in RECA that it is able to restrict participation by any licensees that do not recognize the authority of RECA for reasons including:

(i) there is risk of harm to the public in general as the Licensee rejects his obligations to be bound by the rules governing his profession;

(ii) there is risk to the potential clients of the Licensee who may rely on the expectation that the Licensee is being governed by RECA and adhering to applicable governing rules and regulations;

(iii) there is risk that the actions of the Licensee including his express rejection of the authority of the governing body for the real estate profession could erode public confidence in the ability of the regulator to govern its members; and

(iv) there is risk to other members of RECA that rely on RECA's maintenance of certain regulatory authority over other members with whom they may do business.

12. What remains then is to determine what sanction is appropriate in this case. Returning to those *Jaswal* factors that are most appropriate the Panel considered:

(b) factor b. – the age and experience of the licensee. Mr. Knutson was initially licensed in 2017 and at the time of the initial investigation in 2019 had been licensed for less than 2 years. During that time, it is not clear that Mr. Knutson actually traded in any real estate, and as such his experience in the industry was limited. While perhaps his relative lack of seniority in the profession would mean generally that factors of age and experience would not be as heavily weighted, any individual who is licenced by RECA must be expected to accept and accede to the duties and obligations they have to the regulator as well as the public. This is the case, whether they have been licensed one year or ten. The relatively short length of time during which Mr. Knutson was licensed does not mitigate in favor of a lesser sanction given the nature of the breaches.

(b) The Panel has also considered *Jaswal* factor f. - the role of the licensee in acknowledging what had occurred. The Licensee has not acknowledged any issues with his conduct or current philosophy. In keeping with his ongoing ideology the Licensee responded to requests for submission on sanction with the following, in part:

Russ Morrow, you have furthered your trespass upon my estate. I demand you immediately cease and desist your actions now. I repudiate you and the registrar of the Real Estate Council of Alberta (hereinafter "RECA) trying to administer my estate for your own benefit by way of the paperwork I received as the grantor and beneficiary of the Knutson, James Kenneth estate (hereinafter "estate"). If you think you can administer private trust property for your own benefit, I again demand to see your written delegated authority to administer this private trust property, after repeated demands, you have produced nothing that shows you have any authority whatsoever to administer my estate and trust. It could also be construed that you have acted in nonfeasance, malfeasance and misfeasance, co-mingling what is private with what is public, unjust enrichment and treason against this man. You and RECA continue to be in breach of your duties as trustee by publicly libel and slandering the estate name, which is causing great harm and damage to the estate, trust and the administration of both. I demand this be rectified immediately.

Dated, February 28, 2022. Without acknowledgement or remorse, the role of the Licensee remain a significantly aggravating factor.

(c) The Panel also considered *Jaswal* factor h. - the impact of the incident on the victim. While there was no direct "victim" as might be contemplated had

a transaction taken place or a member of the public engaged the services of the Licensee, the public at large are victims of the ideologies and behaviours of Organized Pseudolegal Commercial Arguments, "OPCA" litigants. This is established through the numerous court decisions concerning the Licensee in evidence in this matter. Moreover, all persons who tangentially intersect negatively with Mr. Knutson run the risk of being targeted by the OPCA behaviours. The weight of this factor is significant but not as serious as when someone is directly impacted by behaviours.

(d) The Panel also considered *Jaswal* factor i. - the presence or absence of aggravating or mitigating circumstances. The Registrar submits there are no mitigating circumstances. The information provided by the Licensee in the context of the hearing does not identify any circumstances that would be seen as mitigating. Mr. Knutson has been deemed to be a vexatious litigant by the Alberta Courts and has continually engaged in this vexatious and abusive conduct with RECA as well. He explicitly denies RECA's and the general Canadian law's authority over him. This Panel accepts that is the case. However, it is not the Panel's finding that the absence of mitigating factors would lead to giving greater aggravating weight to the conduct of the Licensee. Mr. Knutson has no previous disciplinary history, nor is it clear he ever transacted a purchase or sale in the context of his real estate license, but he has been subject to a variety of orders restricting his access to the courts. This factor is neutral in our view.

(e) The Panel also considered *Jaswal* factor j.- the need to promote specific and general deterrence. This factor is particularly significant to determining the appropriate sanction. The Licensee and those subject to regulation by RECA must operate within the confines of the policies, procedures, rules and legislation that govern the industry. This Licensee must be deterred from espousing his pseudo legal ideology to the public as a licensed member of the industry.

(f) The Panel also considered *Jaswal* factor k. - the need to maintain public confidence. This factor speaks to the need to ensure "that the disciplinary action taken by the Panel is sufficient to maintain integrity of the profession." [2018 50247 (BC REC quoting *Law Society of British Columbia v. Dent*, 2016 LSBC 05 at [23]]. As is addressed above, given the significance that the public would place on the finding that the Licensee is ungovernable, this is significant in determining the appropriate sanction.

(g) The Panel also considered *Jaswal* factor l. - the degree to which the offensive conduct ... would fall outside the range of permitted conduct. The Licensee's conduct in this case is well outside the range of permitted conduct. Those involved with and utilizing pseudo legal theory to engage with society are an irregularity. In the decision 2021 ABQB 367 Knutson (Re), Justice Rooke at paragraph [2]:

...OPCA schemes are typically applied to evade income tax, as a "get out of jail free card", to attack government and institutional

actors, or as a way to purportedly nullify debts and get free money: *Unrau v National Dental Examining Board*, 2019 ABQB 283 at para 178 [*Unrau #2*]. Employing pseudolaw is always an abuse of court processes, and warrants immediate court response: *Unrau #2* at paras 180, 670-671.

And at [7]

Mr. Knutson claims to unilaterally impose trustee and fiduciary status upon me. That is a well-known and long discounted OPCA scheme: *Meads v Mead*, paras 448-449, 492-493. Mr. Knutson also says the "acts, statutes, bylaws and codes" do not apply to him, "The Master has returned!". Unilateral pseudolaw claims to be outside the law are not only a basis to conclude that a litigant has abused court processes, but does so with an ulterior, bad-faith intent: *Fiander v Mills*, 2015 NLCA 31 at paras 37-40. I conclude that Mr. Knutson's April 30, 2021 document is a bad-faith attempt to interfere with Court processes, and escape valid litigant management steps.

13. Comments like these from the Court, clearly outline how unusual and outside the range of permitted conduct the conduct of the licensee is. Access to justice is seen as a fundamental freedom in our society and where the Court must curtail a citizen's access, they do so only in the clearest cases of abuse. This conduct favours a significant penalty as it leads to erosion of the public trust.

14. The Panel finds that this matter is particularly unique in that there are few decisions that mirror our specific findings on the facts of this case. However, the Panel notes that the Registrar made similar arguments regarding a lifetime cancellation in the matter of *Bonwick* 2022 ABRECA 22 summarized by that Panel at p. 120 and reflected in the Registrar's submission:

8. The Registrar submits that real estate industry case law establishes the principles the Panel should consider when determining if a license cancellation is an appropriate and just sanction:

a. License cancellation is appropriate in cases of serious or severe misconduct. The Registrar referred to the cases of Behroyan (Re), 2018 CanLII 50247 (BC REC) at para. 27; Inglis (Re), 2019 CanLII 53386 (BC REC) at para. 42; Aulakh (Re), 2019 ABRECA 121 (CanLII) at para. 6.5.

b. License cancellation is not reserved for only the most serious misconduct, but rather the misconduct's degree of seriousness can be reflected in the length of cancellation, and individuals can reapply for a license after the cancellation period ends.³

c. Lifetime license cancellation is reserved for the most serious misconduct, similar to disbarment for a lawyer and removal of a physician from the register, "but it need not need be at or near the extreme right of the severity scale, given the ability to moderate the

cancellation by permission to apply for relicensing again at a defined time in future.”⁴

d. A Hearing Panel has the discretion to impose a lesser or greater cancellation period than the standard cancellation period of three years under RECA legislation.⁵

e. A lack of previous disciplinary history does not preclude a Hearing Panel from imposing a sanction of license cancellation.⁶

f. License cancellation is an appropriate sanction for certain classes of misconduct, including mortgage fraud⁷; intentional fraud (including where the actual amount of loss was low)⁸; acts of dishonesty and serious lack of judgment, compounded by making false statements⁹; and misappropriation of funds.¹⁰

15. In *Bonwick*, the Panel found the licensee guilty of a multitude of breaches and ungovernability. In that case the Registrar sought a lifetime cancellation with ineligibility to reapply for a license for nine years.

3 *Behroyan (Re)*, 2018 CanLII 50247 (BC REC) at para. 27; *Inglis (Re)*, 2019 CanLII 53386 (BC REC) at para. 42.

4 *Ibid*, citing *Re Parsons*, BC Financial Services Tribunal Decision No. 2015-RSA-002 (d) at para 91.

5 *Aulakh (Re)*, 2019 ABRECA 121 (CanLII) at para. 6.4.

6 *Merchant, Mehboob Ali* 005064 (HP) at pg. 53.

7 *Aulakh (Re)*, 2019 ABRECA 121 (CanLII) at para. 6.5.

8 *Merchant, Mehboob Ali* 005064 (HP) at pp. 55 and 59.

9 *Inglis (Re)*, 2019 CanLII 53386 (BC REC) at para. 43.

10 *Behroyan (Re)*, 2018 CanLII 50247 (BC REC) at para. 27.

16. The Panel acknowledges that ungovernability is egregious and that deterrence and public confidence are paramount in considering sanction and we consider the lack of a disciplinary history and directly impacted victims mitigating. Unlike *Bonwick*, the Panel is unclear whether the Licensee in this case ever transacted a purchase or sale, leaving it open to speculation as to how a transaction might be managed.

17. What then is an appropriate sanction? The Registrar provided numerous cases from a variety of professions in support of their request for a lifetime cancellation. While many speak to the need for deterrence and the need for preservation of public confidence in their particular industry, none address the matter of an OPCA litigant, or *Freeman*, directly. As is seen through the Courts, the *Freeman* citizen is not forever barred from participation in the legal system but must concede to act within the boundaries of the laws of the province and country that allow society to operate harmoniously; not perfectly, but with a harmony that preserves the rule of law. Until that time, the *Freeman* must be restricted from access.

18. Similarly, the Licensee must be deterred from bringing his OPCA behaviours into the field of real estate where clients/consumers and the general public trust that their interests are paramount to ideologies and philosophies that potentially undermine their interests. Given the findings of this Panel following the conduct

hearing, and upon careful weighing of the evidence and consideration of the arguments presented through the sanctioning submissions and the factors to be considered in determining an appropriate sanction, the Panel orders that:

1. All authorizations issued by the Real Estate Council of Alberta ("RECA") to James Kenneth Knutson are hereby cancelled, effective immediately;
 2. James Kenneth Knutson will not be eligible to apply to RECA for any new authorization whatsoever for a period of five (5) years from the date of this decision;
 3. James Kenneth Knutson will be required to successfully complete all education requirements before being eligible to apply for a new authorization from RECA, as though he had never previously received authorization from RECA;
19. The Registrar sought no sanctions for the remaining breaches of 38(4), 41(1)(a) and 42(g). While section 43 does not restrict the Panel from imposing sanction of findings of a breach, the Panel will not engage in independent analysis of sanction on the remaining breaches absent input of the parties. As well the Registrar sought no fines in this case and none will be issued.

This decision is dated at the City of Calgary in the Province of Alberta, this 6th day of September 2022.

"SIGNATURE"

B, Hearing Panel Chair