

THE REAL ESTATE COUNCIL OF ALBERTA

IN THE MATTER OF Section 43 of the *REAL ESTATE ACT*,
R.S.A. 2000, c.R-5

AND IN THE MATTER OF a Hearing regarding the conduct of Licensee, Bhalinder Singh Dhaliwal, a licensed Mortgage Associate with 4VPMGI Mortgage Solutions Inc., O/A Verico IMortgage Solutions.

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

Appearances: Counsel for the Registrar of the Real Estate Council of Alberta ("RECA"): A. Bone

Bhalinder Singh Dhaliwal, Licensee

Hearing Date: May 23, 2023 by way of a video conference

**DECISION OF A HEARING PANEL ON CONDUCT DESERVING OF SANCTION AND
DECISION ON SANCTION AND COSTS**

A. Introduction

The Licensee, Bhalinder Singh Dhaliwal ("Mr. Dhaliwal"), was a licensed mortgage associate with 4VPMGI Mortgage Solutions Inc., O/A Verico IMortgage Solutions.

Mr. Dhaliwal executed an Agreement on Facts and Breaches on May 22, 2023 related to the following allegation;

On or about October 2021, Mr. Dhaliwal participated in fraudulent activities in connection with the provision of services, contrary to section 42(b) of the Real Estate Act Rules.

- i. Mr. Dhaliwal created a fraudulent mortgage commitment letter. This letter was provided to his clients.

The Licensee accepted responsibility for the allegation and the hearing proceeded by way of an Agreement on Facts and Breaches and a Joint Submission on Sanction between the Licensee and the Registrar of the Real Estate Council of Alberta. The Hearing Panel accepts the Agreement on Facts and Breaches, including both that the alleged conduct occurred and that it constituted conduct deserving of sanction. Further, the Hearing Panel accepts the Joint Submission on Sanction.

B. Documents submitted to the Hearing Panel

The parties submitted to the Hearing Panel the Original Notice of Hearing dated February 15, 2023 and Amended Notice of Hearing, dated May 15, 2023 which were Exhibits "1" and "2" respectively.

A NEW Agreement on Breaches and Facts document ("Agreement") signed by Mr. Dhaliwal on May 22, 2023 was submitted and entered as an Exhibit "3".

The parties also submitted a Joint Submission on Sanction signed by counsel for the Registrar on May 12, 2023 and by the Licensee on May 11, 2023.

The caselaw / decisions provided to the Hearing Panel was:

1. *Jaswal v. Medical Board (Nfld.)*, 1996 CanLII 11630 (NL SCTD);
2. *Behroyan (Re)*, 2018 CanLII 50247 (BC REC)
3. *Inglis (Re)* 2019 CanLII 53386
4. *Aulakh (Re)* 2019 ABRECA 121
5. *Merchant (Re)* 005064 ABRECA
6. *Law Society of Upper Canada v Lambert*, 2014 ONLSTH 158 (CanLII);
7. *99 Taschuk, Terrence* 2332-08 - redacted
8. *22 Wolf* 776-00-R
9. *289 Adel* RECA
10. *Jinnah v. Alberta Dental Association and College* 2022 ABCA 336
11. *R. v. Anthony-Cook*, 2016 SCC 43, 2016 CSC 43, 2016 Carswell BC 2929
12. *Bradley v Ontario College of Teachers*, 2021 ONSC 2303

C. Agreed Breaches and Agreed Facts

The facts agreed to and related to the conduct deserving of sanction by Mr. Dhaliwal as provided for in the Agreement are as follows:

Admitted Facts

1. In or around November 2020, Mr. Dhaliwal was contacted by [T.S] and [H.S] ("[T.S and H.S]") to answer some general mortgage questions.
2. [T.S and H.S] were considering a mortgage for a new home build located at [ADDRESS 1] (the "Property").

3. [T.S and H.S] new home project manager for this potential build was [C.S].
4. On December 1, 2020, Mr. Dhaliwal did a credit report for [T.S and H.S].
5. In or around August 2021 Mr. Dhaliwal was contacted by [T.S and H.S] to begin a mortgage application process for the Property.
6. In or around October 4, 2021, Mr. Dhaliwal did an updated credit report for [T.S and H.S].
7. On October 20, 2021, a false mortgage commitment letter (the "False Letter") was created by Mr. Dhaliwal. It contained the following information.
 - Broker Name: Verico Paragon Mortgage Inc.
 - Attention: Bhalinder Dhaliwal
 - Lender: Alberta Treasury Branch ("ATB") Financial
 - Property: [ADDRESS 1]
 - Applicants: [T.S and H.S]
 - Loan amount: 620,000 at 1.550% Variable Interest
 - Term: 60 Months
8. On October 29, 2021, the False Letter was signed by [T.S and H.S] and a copy was provided to them.
9. On December 10, 2021, [C.S] contacted ATB regarding the status of [T.S and H.S]'s mortgage application. When nothing could be found relating to [T.S and H.S] or the Property, ATB emailed [C.S] and asked [them] to provide the commitment letter. About 15 minutes after sending the email [C.S] responded with a copy of the False Letter. It was at this stage ATB determined the document was fraudulent.
10. At no time was there an actual mortgage commitment from ATB for [T.S and H.S].
11. Mr. Dhaliwal did not receive any benefit for the creation of the False Letter.

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

Mr. Dhaliwal admits to conduct deserving sanction for the following breaches of the Real Estate Act Rules:

a. Mr. Dhaliwal participated in fraudulent activities in connection with the provision of services, contrary to section 42(b) of the Real Estate Act Rules.

E. Conduct Deserving of Sanction

Mr. Dhaliwal's statement of Agreement of Facts and Breaches was accepted by the Hearing Panel, pursuant to section 46 of the *Real Estate Act*. As the facts are not in dispute and are agreed to by the Licensee, the Hearing Panel finds that the admitted conduct has occurred as agreed and is conduct deserving of sanction. Accordingly, the Hearing Panel finds that Mr. Dhaliwal engaged in conduct deserving of sanction, specifically that he breached Rule 42(b) of the *Real Estate Act Rules*.

F. Joint Submission on Sanction

The Hearing Panel's finding concludes Phase 1 of the Hearing. The Hearing Panel then considered the Joint Submission on Sanction which was presented in the written and agreed upon submissions of the parties:

The Registrar and Licensee proposed the following sanction:

Breach	Sanction / Fine
Rule 42(b)	A 12-month cancellation of licence, requiring the licensee to complete all education requirements before being able to apply for a new licence from RECA as though he had not previously been licensed.
Costs	0
TOTAL	\$0

Authority for Sanction

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

43(1) If a Hearing Panel finds that the conduct of 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 the 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;
- e. any other order agreed to by the parties.

(2) The Hearing Panel may, in addition to or instead of dealing with the conduct of a Licensee under subsection (1), order the Licensee to pay all or part of the costs associated with the investigation and hearing determined in accordance with the bylaws.

Factors on Sanction

The Panel must consider the facts of the case in relation to the breach and the supporting case law when deciding on a sanction.

Jaswal lists factors relevant to a decision about sanction:

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

- the degree to which the offensive conduct that was found to have occurred was clearly regarded, by consensus, as being the type of conduct that would fall outside the range of permitted conduct and
- the range of sentence in other similar cases (Precedents).

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

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

Mitigating and aggravating factors refer to evidence which make the conduct less serious (mitigating) or more serious (aggravating). While all of the above factors can be thought of as mitigating or aggravating, the last 2 items refer to factors not specifically enumerated in *Jaswal*.

Factors in the Present Matter

Below is the Registrar's and the Licensee's analysis of the relevant *Jaswal* factors at pages 4 and 5 of the Joint Submission on Sanction.

Mitigating Factors

The Previous Character of the Licensee

Mr. Dhaliwal has no previous history of misconduct.

This is mitigating.

The Role of the Licensee in Acknowledging What Occurred

Mr. Dhaliwal has taken full responsibility for this breach. He has entered into a s.46 agreement and this joint submission, thus saving the resources of all parties involved.

This is very mitigating.

Other financial penalties suffered by the Licensee as a result of allegations

Mr. Dhaliwal was terminated with cause from his Brokerage as a result of these allegations. While he is now employed, he did suffer financial consequences due to this conduct.

This is mitigating

The Number of Times the Offence was Proven to have Occurred.

The breach of rule 42(b) is in regard to a single document.

This is mitigating.

impact of the incident on the victim, if any

There was no financial impact on the victim in this case, this is mitigating.

Aggravating Factors

Age and Experience of the Licensee: Mr. Dhaliwal is 44 years old. He has been a mortgage associate since 2010. At the time of the misconduct, he had been an associate for 11 years. He had sufficient experience to know his misconduct was unacceptable.

This is aggravating.

The Nature and Gravity of the Proven Allegations; and 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

Mr. Dhaliwal has intentionally committed forgery in the course of his dealings. This is misconduct of deliberate dishonesty.

The nature of this breach is extremely serious. The mandate of RECA includes to "protect against, investigate, detect, or suppress fraud." Mr. Dhaliwal's misconduct strikes at the heart of this mandate.

Mr. Dhaliwal's breach of rule 42(b) via forgery is one of the most serious offence types a licensee can engage in.

- d. Mr. Dhaliwal's misconduct is well outside of the range of permitted conduct.
- e. This is extremely aggravating.

The Need to Maintain Public Confidence in the Industry

- a. In *Law Society of Upper Canada v Lambert*, 2014 ONLSTH 158 [Tab 6] at para. 17, the Law Society Hearing Panel stated that a profession's "most valuable asset is its collective reputation." This must be considered in determining an appropriate sanction.

b. RECA must be able to demonstrate to the public that it is investigating, detecting, and suppressing fraud and other crimes of dishonesty, perpetrated by licensees. RECA must not only actually protect the public but also show the public that their protection is of central concern. As stated previously, this is our legislated mandate.

c. In this case, there is a great need to maintain public confidence that RECA will meet intentional forgery with an effective and appropriate sanction. In this case, that sanction should be appropriately severe.

d. This is extremely aggravating.

Specific and General Deterrence

a. The need for specific deterrence in this case is moderate. Mr. Dhaliwal has admitted his misconduct and expressed remorse. This reduced the likelihood of recidivism.

b. This is moderately aggravating.

c. The need for general deterrence is high. The public deserves confidence that mortgage associates who assist them will not falsify documents. The public must have confidence in the truthfulness and accuracy of mortgage documents. Licensees must be strongly deterred from engaging in forgery.

d. This is very aggravating.

Precedents:

Precedents are not binding on the Hearing Panel but can help the Panel impose sanctions consistently to comparable conduct.

The parties provided several cases for our consideration, we will cite those considered in our decision.

Sanction

Based on precedent and the other *Jaswal* factors the Counsel for the Registrar and for the Licensee jointly submit that a licence cancellation for a period of one year is appropriate in this case.

No costs have been sought by the Registrar.

The Agreement between the Registrar and Licensee

A factor in determining the appropriateness of the proposed sanction is that the parties have reached an agreement on conduct and on sanction taking into account the relevant factors.

The Supreme Court of Canada addressed the test that should be used when considering whether to depart from an agreed outcome in the case *R v. Anthony-Cook* 2016 SCC 43, the “public interest” test:

[32] Under the public interest test, a trial judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest. But, what does this threshold mean? Two decisions from the Newfoundland and Labrador Court of Appeal are helpful in this regard.

[33] In *Druken*, at para. 29, the court held that a joint submission will bring the administration of justice into disrepute or be contrary to the public interest if, despite the public interest considerations that support imposing it, it is so “markedly out of line with the expectations of reasonable persons aware of the circumstances of the case that they would view it as a break down in the proper functioning of the criminal justice system”. And, as stated by the same court in *R. v. O. (B.J.)*, 2010 NLCA 19 (N.L. C.A.) (CanLII), at para. 56, when assessing a joint submission, trial judges should “avoid rendering a decision that causes an informed and reasonable public to lose confidence in the institution of the courts”.

The Registrar and Licensee submit the proposed sanction is within an appropriate range that the Panel can accept.

As it relates to s. 42(b) and to the proposed sanction of the 12-month cancellation, we were provided with the case of *Aulakh* 2019 ABRECA 121 where the licensee was given a 2-year cancellation for facilitating a purchaser to secure three private mortgages, accepting payment of brokerage fees on those mortgages; creating fraudulent documentation; providing false information; acting incompetently and in conflict of interest. She had no prior disciplinary history. She admitted to her conduct and expressed remorse, no fines or costs were imposed.

In the matter of Merchant case 005064 ABRECA, there were 3 breaches of s.42(b), among others, where the licensee received a \$15,000 fine and a licence cancellation of 12 months.

Behroyan (Re), 2018 CanLII 50247 (BC REC) the Licensee was suspended for 1 year for deceptive dealing, breach of his duty to act honestly, failure to act in his client's

best interest and/or avoid conflicts of interest, failure to advise his client to obtain independent legal advice.

There are some of the cases, with multiple breaches (Taschuk, Adel) where Licensees were given 5- and 10-year cancellations. While the Panel appreciates that they convey the gravity of fraudulent actions, the sanctions exceed what is appropriate for the single breach.

G. The Hearing Panel's Decision

The Hearing Panel considered the sanction that was jointly proposed by the parties and found it appropriate given all the factors to be considered as set out in *Jaswal, supra*.

The authorities provided to the Hearing Panel supported an order of cancellation for the breach of Rule 42(b) of the *Real Estate Act Rules*.

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

With similar consideration for the matter of costs, and the principles declared in the *Jinnah* decision the Panel finds no costs are payable by the Licensee in this matter.

H. Conclusion

Based on the Agreement on Facts and Breaches, considering the agreement of the licensee, the Hearing Panel has determined that Mr. Dhaliwal engaged in conduct deserving of sanction. For the reasons set out in this decision, the Hearing Panel agrees with the sanction jointly proposed by the parties and pursuant to section 43 of the *Real Estate Act*, the Hearing Panel orders the following sanction:

- I. Licence cancellation for a 12-month period, requiring the Licensee to complete all education requirements before being able to apply for a new licence from RECA as though he had not previously been licensed, and completion and passing of all examinations;
- II. No costs have been proposed and none are ordered.

This Decision is dated this 26th day of June 2023

"Signature"

[A.B], Hearing Panel Chair