

**THE REAL ESTATE COUNCIL OF ALBERTA**

**IN THE MATTER OF** an Appeal Hearing pursuant to section 48 of the *REAL ESTATE ACT*, R.S.A. 2000, c.R-5 (the "*Real Estate Act*")

**AND IN THE MATTER OF** an Appeal Hearing regarding Phase 1 and Phase 2 decisions issued with respect to sanction and costs in respect of the conduct of **GAGANDEEP SINGH**, formerly a Real Estate Associate and Mortgage Broker

Appeal Panel Members: [J.A], Chair  
[B.R]  
[D.R]

Appearances: Gagandeep Singh on his own behalf  
  
Gen Zha on behalf of the Registrar of the Real Estate Council of Alberta

Hearing Dates: August 28 and September 18, 2023

**DECISION OF THE APPEAL PANEL**

**SUMMARY OF THE APPEAL**

1. This Appeal Panel was appointed to hear the appeal of Gagandeep Singh ("the Appellant") who was formerly a licensed Real Estate Associate and Mortgage Broker. He was the subject of a Phase 1 decision regarding conduct and a Phase 2 decision regarding sanction for breaches of s. 42(b) and 43(1) of the Real Estate Act Rules ("the Rules") made pursuant to the *Real Estate Act*, R.S.A. 2000, c. R-5 ("the Act"). Phase 2 also addressed costs of the proceeding.
2. The Appellant argued that the Hearing Panel and investigation were biased, that the Hearing Panel ought not to have accepted and relied on

opinion evidence from a witness called by the Registrar, and that the sanctions were disproportionate to the breaches. The role of the Appeal Panel is to review the Hearing Panel Decisions against the standard of reasonableness, and applying that standard we have dismissed the appeal.

## BACKGROUND

3. In a decision dated November 4, 2022, the Hearing Panel issued its Phase 1 decision. It found the Licensee to have engaged in conduct deserving of sanction for four breaches of s. 42(b) and three breaches of s. 43(1) of the Rules.
4. On February 13, 2023, the Hearing Panel issued its Phase 2 decision to address sanction for the breaches and costs of the proceeding. As excerpted from that decision, the Hearing Panel held that:

*In summary, and pursuant to its authority in the Real Estate Act, s. 43(1), ("the Act), and having found that the conduct of the Licensee (Gagandeep Singh) was conduct deserving of sanction for having breached the Real Estate Rules s. 42(b) four times, and for having breached the Real Estate Rules s. 43(1) three times, this Hearing Panel Orders that:*

1. *Pursuant to Section 43(1)(a) of the Act, the Registrar shall cancel the Licensee's real estate and mortgage associate licenses.*
2. *Pursuant to section 43(1)(d)(1) ("sic") of the Act, the Licensee shall be prohibited from applying for new licenses for ten (10) years from the date of the Licensee's temporary suspensions, being December 1, 2020.*
3. *Pursuant to Section 43(1)(d)(1) ("sic") of the Act, the Licensee shall be prohibited from applying for new licenses until the Licensee has met the educational requirements, and the examination requirement(s), as described by the Real Estate Act Rules, sections 14(b) and 14(c), as at the date the Licensee applies for new licenses;*
4. *Pursuant to the Real Estate Act Rules, Division 4, Section 16(4), the Licensee shall not be exempt from the education, examination or other requirements prescribed, approved, or adopted by the relevant Industry Council to become a new Licensee in the sector in which he was licensed within the past thirty-six (36 months.)*

5. Pursuant to Section 43(1)(d) of the Act, the Licensee shall pay a fine of eighty thousand dollars (\$80,000.00) for breaching four counts of the Real Estate Act Rule 42(b); and
6. Pursuant to Section 43(2) of the Act, in addition to dealing with the conduct of the Licensee under Section 43(1), the Licensee shall pay part of the costs of the investigation and hearing, in the amount of twenty-three thousand four hundred and sixty five dollars (\$23,465.00).
5. On March 14, 2023, the Appellant provided the Real Estate Council of Alberta ("RECA") with notice of his intent to appeal the Phase 1 and Phase 2 decisions.
6. The statutory mandate of the Appeal Panel is found in s. 50 of the Act. In particular, s. 50(1) provides as follows:

*50(1) The appeal to the Appeal Panel shall be founded on the record of the hearing before the Hearing Panel and the decision of the Hearing Panel.*
7. The Act further provides in s. 50(4) that:

*50(4) The Appeal Panel shall, within a reasonable time from the date of the conclusion of all proceedings before it, do one or more of the following:*

  - (a) make any finding or order that, in its opinion, ought to have been made by the Hearing Panel;*
  - (b) quash, confirm or vary the finding or order of the Hearing Panel or substitute or make a finding or order of its own;*
  - (c) refer the matter back to the Hearing Panel for further consideration in accordance with any direction that the Appeal Panel makes.*
8. The appeal hearing commenced August 28, 2023. It was adjourned to allow the Appellant additional time to prepare. It reconvened September 18, 2023.

## PRELIMINARY MATTERS

9. The Appellant initiated two applications to waive the costs of preparing the record for the appeal hearing. Both were refused in earlier rulings of the Appeal Panel.
10. The Panel issued notice and direction to the parties on July 13, 2023. In the absence of a transcript of the proceedings, it specified that the parties could rely on the audiovisual recordings of the Phase 1 and Phase 2 hearings by providing a detailed list with specific dates and times of any excerpt to aid the hearings administrator to cue the required excerpts.
11. At the outset of the hearing of September 5, 2023, the Registrar objected to the Appeal Panel hearing those audiovisual excerpts on the basis that the role of the Appeal Panel was to review the decision in the context of the parties' arguments. Counsel expressed concern about the need to preserve the integrity of the hearing at first instance, stating that it was counterintuitive to listen to the recording.
12. The Appellant responded that the excerpted recordings would support his argument of bias.
13. The Registrar's objection was overruled. There was no demonstrated legal or procedural basis to preclude the Appellant from presenting them to the Appeal Panel. Just as the Appeal Panel would have listened to excerpts of a transcript that might have been read in, it allowed the excerpted recordings to be shown.

## STANDARD OF REVIEW

14. The Appellant, who was unrepresented, did not address standard of review directly.
15. The Registrar argued that the standard of review of the decisions of the Hearing Panel was reasonableness. The Appellant's disagreement or dissatisfaction with the outcome of the Phase 1 hearing process was insufficient. Rather, the Appeal Panel should focus on errors in the decision and could not rehear the case, reweigh the evidence or substitute its own findings.
16. The Registrar relied on the decision of the Alberta Court of Appeal in *K.V. v. College of Physicians and Surgeons of the Province of Alberta*, 1999 ABCA 125. In that case, sitting on appeal from a decision of the council of the College of Physicians and Surgeon, the Court adopted the reasoning in

*George L. v. The College of Physicians and Surgeons of the Province of Alberta* (1993), 145 A.R. 377 (ABCA). It held that the Court's intervention on appeal should be limited to matters such as law, procedure, or demonstrably unreasonable findings of fact. However, it should not retry a matter.

17. In this regard, the Appeal Panel adopts the reasoning set out in *Kalia (Re)*, 2019 ABRECA 5 (CanLII), a decision of a RECA Appeal Panel. After considering a number of authorities and, in particular, the factors set out in the decision of *Newton v. Criminal Trial Lawyers Association*, 2010 ABCA 399, and *Pethick v. Real Estate Council (Alberta)*, 2019 ABQB 431 that Appeal Panel in *Kalia* held at pp. 8-9 that:

*...the Hearing Panel below applied its home statute and related enactments in relation to its findings of fact, there is nothing definitive in s. 50(4) that attracts a correctness standard. The subsection provides that...the Appeal Panel shall..., do one or more of the following – this statement gives broad discretion to the Panel to take any number of steps to address the issues in the appeal. The Hearing Panel is equally entitled to deference when exercising its statutory authority in determining matters before it. The Panel is aware that where questions of law or true jurisdiction are posed, a standard of correctness may apply, however, no question of jurisdiction arose in the matter before the Hearing Panel such that a correctness standard would apply on this Appeal. This Panel finds that a reasonableness standard applies to the decision of the Hearing Panel. (at pp. 8-9)*

18. Similarly in the present case, it has not been suggested that the Hearing Panel acted beyond its statutory authority and no question of jurisdiction or law was raised. As such, this appeal does not attract a correctness standard.

19. Further, as stated in *Kalia* (at p. 9):

*If a correctness standard is to be applied to what the Hearing Panel "ought" to have decided, it would allow the Appeal Panel to subjectively review the Hearing Panel's findings and substitute its own decision for that of the Hearing Panel. This would significantly undermine the process and hearings at first instance; with the reasoning above, that is not the intent of the legislation.*

20. In this context, the Appeal Panel has reviewed its role and determined that its mandate is to review the decision of the Hearing Panel on a reasonableness standard.

21. The reasonableness standard of review is summarized as follows:
- The Appeal Panel is to demonstrate an attitude of deference to the Hearing Panel, especially as concerns the manner in which the Hearing Panel evaluated and weighed the evidence;
  - Is the decision within a range of reasonable outcomes;
  - Is the decision supported by the evidence and law; and
  - Has the Hearing Panel explained how it weighed the evidence.

## SUBMISSIONS OF THE PARTIES

### A. FOR THE APPELLANT

22. The Appellant provided written submissions for the appeal hearing on August 9, August 26, and September 5, 2023. As noted above, he proceeded without benefit of a transcript of the Phase 1 and Phase 2 proceedings. He elected to rely on audiovisual excerpts of those hearings to support his arguments on appeal.
23. The Appellant's grounds of appeal and arguments are summarized below from his written and oral submissions to the Appeal Panel:
- a. Bias of the Hearing Panel
- i. The Hearing Panel viewed a video used in the case of LAC that immediately preceded the Appellant's case. In the Appellant's view, mere knowledge of the existence and content of the video was prejudicial to his case. The Hearing Panel's decision was "fueled by bias formulated through the prejudicial evidence that was presented during the LAC hearing" (Appellant's submission, September 5, 2023, page 3). According to the Appellant, this resulted in findings in Phase 1 that the Appellant's witnesses were untrustworthy and unreliable. Specifically, the Appellant relied on the finding that witnesses SC and AC who testified in the LAC case were credible when it was clear to him that they were not. He submitted that their evidence was not pertinent to his case, but illustrative of the Hearing Panel's bias when later it found HS and YL were reliable when, according to the Appellant, they were not.
  - ii. The Appellant selected an audiovisual excerpt from the Phase 1 hearing that showed his former counsel objecting that the Hearing Panel hearing inculpatory evidence prior to the Appellant's opportunity to present his case. Counsel asserted that the evidence presented through the investigator in his

evidence in chief would be “in the Panel’s mind” and would remain there for the days that would be consumed with the Registrar’s presentation of its case. He asserted that this was unfair.

The Appellant argued that it was unfair to hear the evidence against him for six days before he had the opportunity to present a case to defend himself. By the time he responded to the Registrar’s case, the Hearing Panel had closed its mind to the possibility that he was not in breach. The Appellant further argued that the Registrar unfairly only presented inculpatory evidence and not exculpatory. It was left to him to show that he was not guilty of the breaches.

- iii. The Appellant argued that the presentation of an email dated November 20, 2020, was prejudicial as the Hearing Panel saw the document before ordering it to be withdrawn or redacted.

b. Inadequate and biased investigation

The Appellant argued that the investigation preceding the hearing was inadequate and biased. The investigator failed to follow up on exculpatory evidence. The investigator made no attempt to explore the true source of fraudulent documents. As the investigation was driven by bias, it was reasonable to infer that the decision of the Hearing Panel was driven by this biased evidence.

The Appellant further argued that the Registrar failed to call available exculpatory evidence and statements. In this regard, he referred to the cross examination of SR, formerly the investigator assigned to his case who acknowledged in evidence that LAC did initially not assert that the Appellant was involved in the breaches.

c. Expert evidence

The Appellant argued that the Hearing Panel was incorrect to qualify [D.K] as an expert. The expert was not certified in Canada, the United States or the United Kingdom. However, the document examiner proposed by the Appellant was well qualified. This shows bias of the Hearing Panel.

The Appellant also argued that the expert improperly looked only at the signatures on cheques and paystubs and did not determine who wrote the details on the cheques. He asserted that letterhead purportedly from his company Higrade was not confirmed to be genuine.

d. Sanction and costs

The decision regarding sanction was not in line with previous decisions which suggested a 3 month licence suspension and either a letter of reprimand or a fine in the sum of \$1,000.00, with costs of \$500.00. The Appellant provided many administrative penalties issued by the Registrar to illustrate his position. The Phase 2 decision on sanction and costs was disproportionate to those authorities. He argued that he should have been sanctioned in line with those penalties.

B. FOR THE REGISTRAR

24. The Appeal Panel has summarized those parts of the Registrar's submissions that are relevant to the Appellant's grounds of appeal:

a. Bias

- i. The Appellant was represented by counsel during the Phase 1 proceeding. As stated in the Hearing Panel's ruling on procedural matters in its Phase 1 decision:

*It was agreed between Counsel for the Registrar, Licensee [A.C], and Counsel for Licensee Singh, G. that Cases 009891, 009089, 010371, 010661, 1n3 011302 would be heard concurrently.*

The Hearing Panel specifically stated in its decision that it would not rely on the interview with LAC for the truth of its content concerning the Appellant and his involvement in the matters before it.

- ii. As to the argument that it was prejudicial for the Hearing Panel to hear the evidence against the Appellant before he had the opportunity to present his case, procedurally, the Registrar must call its case first before the Appellant responds. In any event, opening statements had been presented and the Appellant had the opportunity to test the Registrar's case through cross examination.
- iii. Concerning the email of November 20, 2020, the Registrar relied on the authority of *Anthem Riverfront Holdings v Calgary (City)*, 2017 ABQB 356 (CanLII) for the proposition that the Hearing Panel was entitled and obliged to weigh the evidence before it.



b. Inadequate and biased investigation

The Registrar responded that the Hearing Panel expressly addressed this in the reasons for its decision noting that the investigator had no duty to pursue exculpatory evidence. The failure to follow every lead in an investigation did not imply bias of the Hearing Panel. Moreover, the Appellant had the ability to call and challenge evidence, as he did.

c. Expert evidence

The Registrar argued that the Appellant was asking the Appeal Panel to reweigh the expert evidence. The Hearing Panel heard and considered the Appellant's concerns in choosing to prefer the evidence of [D.K] over the Appellant's witnesses. The Appellant had not demonstrated how the Hearing Panel erred.

d. Sanction and costs

The Registrar noted that the majority of the authorities presented by the Appellant represented administrative penalties. They were not decisions of a Hearing Panel. Most involved one breach, but not multiple breaches as in the present case. Several were decisions of a Hearing Panel based on a joint submission of the parties agreeing to conduct and sanction.

Further, the Hearing Panel discussed the *Jaswal* factors and their relevance to the Appellant's case in determining the appropriate sanction.

## CLOSING ARGUMENTS

25. In closing, the Appellant reiterated that he challenged the Hearing Panel's decisions on the basis of bias. The Hearing Panel heard that he was culpable more than 300 times over a six day period while the Registrar presented its case. This eliminated the possibility of a fair hearing. In his view, the Panel overlooked contradictory evidence and the findings of credibility rendered the entire decision reviewable. The decision concerning sanction and costs was unsound as it did not follow previous decisions.
26. The Registrar submitted that the Hearing Panel's decisions were reasonable based on the totality of the evidence. The Hearing Panel weighed and discussed the evidence at length in its decision. The Appellant did not attack the Hearing Panel's reasoning or analysis. The appeal was based on the Appellant's subjective belief but without grounds to support it. Finally, the sanction and costs fell within the range of permissible findings.

## ANALYSIS

27. The role of an Appeal Panel is not to rehear this case or reweigh the evidence. Rather, it is empaneled to receive the submissions and arguments of the parties and determine on that basis whether the conclusions reached by the Hearing Panel were coherent, logical, and ultimately whether they were reasonable (see *Kalia*, above).
28. With that focus, the Appellant's role is to demonstrate the grounds on which the decision of the Hearing Panel is unreasonable. In this regard, he has not succeeded.
29. The Appellant submitted that the Hearing Panel was biased against him as it viewed an audiovisual recorded interview with LAC that was prejudicial to his case.
30. The Appeal Panel cannot overlook that during the Phase 1 Hearing, counsel for the Appellant objected to the admissibility of the recording as hearsay against the Appellant. According to the reasons for decision, the Hearing Panel then requested and received written submissions from the parties, and determined as follows:

*On Wednesday, June 1, 2022, before the conclusion of the cases against Licensee Singh, G. the Hearing Panel Decided, and informed the parties that, the RECA investigative audio video recorded interview against (LAC) shall not be admitted as to the truth of its contents, as against Licensee Singh, G. In making its decisions, the Hearing Panel did not consider the evidence from the taped RECA interview of (LAC), as part of the record against Licensee Singh, G. The Hearing Panel directed that any closing arguments made by either RECA's Counsel, or Licensee Singh, G.'s Counsel, that refer to (LAC's) recorded statements, as made during the RECA interview, will not be considered.*

31. The Appeal Panel is satisfied that the respective positions of the parties were canvassed, after which the Hearing Panel determined to eliminate the evidence from its deliberation, a decision which was in the Appellant's favour. The Hearing Panel's professionalism and adherence to its duty has not been questioned.
32. As such, without more to support the Appellant's argument, it cannot now be said that the audiovisual recording tainted the Hearing Panel's deliberation or reasons for decision. It was expressly addressed and removed from consideration.

33. As to the order of the hearing, Part 8, section 8.1, of the Real Estate Act Bylaws, Hearing and Appeal Practice Guidelines (“the Guidelines”) is instructive. It provides that:

*8.1 The practice and procedure of a hearing panel and an appeal panel shall include the Hearing and Appeal Practice and Procedure Guidelines prescribed, adopted and approved by the Board from time to time.*

34. Part 4 of the Guidelines then provides in paragraph B as follows:

B. STANDARD OF PROOF

*The onus of proving the misconduct allegations is on the counsel for the registrar. They must prove the case on a balance of probabilities. The hearing panel will decide whether or not there is conduct deserving of sanction on a balance of probabilities.*

32. Further, the Guidelines provide for the distinct roles of the parties’ counsel:

I. ROLE OF COUNSEL FOR THE REGISTRAR

*The registrar is represented by counsel. The role of counsel for the registrar is to present to the hearing panel the registrar’s case about the allegations of conduct deserving of sanction against the licensee. The registrar’s case is the allegations of conduct deserving of sanction set out in the notice of hearing.*

J. ROLE OF LICENSEE/LICENSEE’S LEGAL COUNSEL

*The licensee or their legal counsel (or other agent e.g., broker) may choose to present a response or defence to the registrar’s case about allegations of conduct deserving of sanction. Because the onus of proof is on the counsel for the registrar, the licensee is not required to present a defence. Nevertheless, the licensee can be compelled to testify at the hearing and they must testify if the counsel for the registrar requests it.*

33. Finally, paragraph K.7 provides that:

K.7 Registrar Presents Case

*As the registrar is the moving party, the counsel for the registrar will always present first. The counsel for the registrar will outline the allegations of conduct deserving of sanction in the notice of hearing and call witnesses to present the evidence against the licensee. ...*

34. This order of proceeding provides fairness and transparency for the accused licensee. Correspondingly, it provides a foundation for the defence he will mount against the Registrar's case.
35. In accordance with the Guidelines, the Hearing Panel first heard the case against the accused licensee. It would not be possible for an accused licensee to defend himself or provide exculpatory evidence before he had heard that evidence and understood the case that the Registrar would be making against him.
36. It is certain that for six days, the Hearing Panel received evidence to support the Registrar's position. It was presented through witnesses and documents.
37. It is equally beyond doubt that the evidence was available for challenge by the Appellant through cross-examination of witnesses, objections to the admission of evidence, and finally through the presentation of his own case in response.
38. As noted, the order of proceeding accorded with the provisions of the Guidelines. There is no suggestion that the Hearing Panel deviated from the Guidelines or that it was incapable of understanding that during those six days it was hearing only the Registrar's side of the case, and that the Appellant's presentation of evidence would follow.
39. The Appeal Panel notes that the Appellant was represented by legal counsel during the Hearing, and through that counsel had the opportunity to cross examine the witnesses called by the Registrar. This was confirmed by the excerpts relied upon by the Appellant during the Appeal Hearing. The purpose of cross examination is two-fold. First to obtain admissions from the witnesses called by the opposing party that are helpful to your case and second to cast doubt on the testimony of those witnesses. This was part of the evidence in the minds of the Hearing Panel prior to the start of the evidence called by the Appellant.
40. The Appeal Panel does not infer that that Hearing Panel was fettered or swayed in its duty as a decision maker by the order in which the parties presented their respective cases.
41. Similarly, while the Hearing Panel responded to the Appellant's objection by ordering the redaction of information from an exhibit before it, it was discharging the duty of a decision maker. The Appellant showed the Appeal Panel the audiovisual excerpt showing the submissions of counsel concerning the admissibility of the document. The Appeal Panel does not accept the Appellant's submission that the Hearing Panel's ability to render an objective

and reasonable decision in this case was compromised. The Hearing Panel necessarily had to view the email and evaluate the content relative to the rules of evidence before ordering, as it did, the withdrawal or redaction of certain content. Only then, according to the excerpt shown, did it admit the document into evidence.

42. There is no evidence that the Hearing Panel was improperly swayed by the process of making its ruling.

43. The Appellant has put forward the opinion that the investigator did not balance his inquiries by pursuing exculpatory information.

44. The Hearing Panel commented at p.17 of the Phase 1 decision that:

*Although (investigator) [R.B] was criticized by Counsel for Licensee Singh, G. for not following every lead in these cases, and for presenting evidence that only supported RECA's position against Licensee Singh, G., there is no evidence that [R.B] failed to conduct a fair investigation or that he had a duty to investigate every possible new complaint, that might arise from the investigation.*

45. The task before the Hearing Panel was not to evaluate the quality of the investigation. Rather, the question before the Hearing Panel was whether the totality of the evidence presented to it during the hearing satisfied the burden of proof, that is to say whether, on the probative standard of the balance of probabilities, the case against the Appellant was made out or not.

46. It is a misapprehension of the role of the Appeal Panel, or indeed the Hearing Panel, to assert that it should inquire into the investigation and whether it could have been carried out differently. To the extent that there were inadequacies in the case presented by the Registrar to the Hearing Panel, they were available for the Appellant to challenge with evidence, as he did.

47. There is no basis for the Appeal Panel's intervention with respect to the investigation carried out by the RECA investigator.

48. Concerning the qualification of [D.K] as a handwriting expert in examining documents, the Appellant argued that she was not qualified to give evidence in Canada. This argument was pursued before the Hearing Panel which reviewed her experience and credentials. It held:

*A handwriting analysis opinion is relevant to the issues in this hearing; and the Hearing Panel requires the assistance of an expert. There was no exclusionary rule to prevent [D.K] from being qualified as an expert. The evidence given indicated that no Canadian regulatory body certifies handwriting experts; and*

*that affiliation and/or certification with an organization that offers handwriting certification is optional, not mandatory, for handwriting analysts. [D.K]'s lack of such affiliations is not a determinative factor to reject a properly qualified handwriting expert. [D.K] was accepted as an expert in this case.*

49. The Hearing Panel considered and disposed of the argument that [D.K] was not qualified. It held that the argument had no merit as there was no requirement for specific affiliation or certification to qualify her to give evidence before the Hearing Panel.
50. A second expert, [M.D], was also qualified based on his credentials, experience, and prior testimony as an expert in the field.
51. After hearing divergent opinions from the experts, the Hearing Panel held:

*In weighing the expert evidence, the Hearing Panel finds that, on the balance of probabilities, [D.K]'s report is more reliable than [M.D]'s report. The Hearing Panel gives more weight to [D.K]'s report because her analysis was more detailed, considered more factors, and accounted for variations, in analyzing the comparison and question signatures, and in justifying her opinion. In contrast, [M.D] did not opine regarding the likelihood of variations within each of the question samples and the comparison samples. Also, [D.K]'s opinion was definitive in terms of her probability of accuracy, whereas, [M.D] expressed a probability, as to the correctness of his opinion, regarding each "question" signature.*

*The Hearing Panel considered that even though the experts opinions differ, after having taken into consideration all the details in the reports, the Hearing Panel concludes that on the balance of probabilities, [D.K]'s opinion that the same person signed the comparison signatures, as who signed the cheques and Higrade Inc. letter, is more likely correct than [M.D]'s opinion. The Hearing Panel accepts [D.K]'s opinion that the "question" signatures were made by the same person as the comparison signatures, despite natural variation. Given Licensee Singh, G. was the person who made the comparison signatures, the Hearing Panel concludes that the person who made the signatures on the Higrade Inc. cheques and Higrade Inc. letter, was Licensee Singh, G.*

52. This passage indicates a reasoned approach to the application of expert evidence. It does not indicate, as the Appellant submits, evidence that the Hearing Panel was biased. Any concern the Appellant had for examination of the documents was properly placed before the Hearing Panel. The Hearing

- Panel considered the content of the expert evidence and the detail in the respective reports. It concluded that it preferred the evidence of [D.K].
53. The Appellant's submissions offer no basis for the Appeal Panel to intervene in the Hearing Panel's conclusion concerning the qualification of [D.K] as an expert or its treatment of the evidence of the two experts it qualified.
  54. Finally, as regards the sanction imposed after the Phase 2 Hearing, the Appellant has placed no authorities before the Appeal Panel that present the breadth or depth of the conduct that the Hearing Panel determined to be worthy of sanction.
  55. Many of the authorities relied on by the Appellant are either the formal records of administrative penalties issued by the Registrar or decisions of a Hearing Panel based on joint submissions of the parties. Neither of these offers fitting guidance for the imposition of a sanction following six days of a contested hearing. In any event, they do not emanate from a superior decision maker. As such, they do not bind the Hearing Panel.
  56. It is clear from the Phase 2 decision that the Hearing Panel thoroughly canvassed the *Jaswal* factors relative to its findings concerning the conduct of the Appellant. It reviewed relevant jurisprudence. The Appellant objects to the sanction but has not suggested any ground on which the decision is vulnerable other than quantum which he considers excessive.
  57. Similarly, in respect of the costs award, the Hearing Panel's decision shows that it reviewed the factors set out in *Re Pethick*, 2019 AB RECA 118 and applied them to the facts of this case before determining the costs award. It did not overlook the decision of the Alberta Court of Appeal in *Jinnah v. Alberta Dental Association and College*, 2022 ABCA 336, and held that this case presented an exception to the general rule that the governing body ought to bear the costs associated with self-regulation. Accordingly, it awarded costs against the Appellant.
  58. The Appellant has not demonstrated that the Hearing Panel's decision regarding sanction or costs was incoherent, illogical, or unreasonable in the circumstances of this case. The Hearing Panel explained its reasons. The conclusions it reached were within the range of possible outcomes for the serious breaches it found to have been committed.
  59. To conclude, in accordance with s. 50(4)(b) of the *Act*, the Appeal Panel confirms the Phase 1 and Phase 2 decisions of the Hearing Panel and finds that there is no basis for its intervention.

## CONCLUSION AND ORDER

60. After considering the evidence and the respective submissions of the parties, the Appeal Panel dismisses the appeal of the Phase 1 and Phase 2 decisions.
61. As the parties were earlier advised, the Appeal Panel reserved its decision on costs pending the outcome of the appeal. The parties are now directed to provide their submissions on costs in writing, not to exceed five pages, according to the following schedule:
  - a. The Registrar is to provide its submission on costs on or before November 14, 2023;
  - b. The Appellant is to respond to Registrar's submission on or before November 21, 2023;
  - c. The Registrar is to provide its reply, if any, on or before November 28, 2023.

Dated the 31<sup>st</sup> day of October 2023 in the City of Edmonton in the Province of Alberta.

**"Signature"**

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[J.A], Appeal Panel Chair



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Appeal Panel Members: [J.A], Chair  
[B.R]  
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Appearances: Gagandeep Singh on his own behalf  
  
Gen Zha on behalf of the Registrar of the Real Estate Council of Alberta

Hearing Dates: August 28 and September 18, 2023

Written submission on Costs

Received: November 23, 2023

**COSTS**

**SUMMARY OF THE APPEAL**

35. This Appeal Panel was appointed to hear the appeal of Gagandeep Singh ("the Appellant") who was formerly a licensed Real Estate Associate and Mortgage Broker. He was the subject of a Phase 1 decision regarding conduct and a Phase 2 decision regarding sanction for breaches of s. 42(b) and 43(1) of the Real Estate Act Rules ("the Rules") made pursuant to the

*Real Estate Act*, R.S.A. 2000, c. R-5 ("the Act"). Phase 2 also addressed costs of the proceeding.

36. On October 31, 2023, following a contested appeal, the Appeal Panel issued its decision confirming the Phase 1 and Phase 2 decisions of the Hearing Panel.
37. The Appeal Panel then directed the parties to provide their submissions on costs. The Registrar was directed to provide its submission on or before November 14, 2023; the Appellant was to respond on or before November 21, 2023; and the Registrar was to provide its reply, if any, on or before November 28, 2023.
38. The Appeal Panel has now received a submission from the Registrar. The Appellant has indicated that he does not intend to provide a submission on costs.

#### THE REGISTRAR'S SUBMISSION ON COSTS

39. The Registrar submitted that the Appellant should pay \$3,172.49 in appeal hearing costs inclusive of disbursements, calculated in accordance with the guide to costs set out in section 10.3 of the *Real Estate Act* Bylaws ("the Bylaws").
40. The position taken by the Registrar is that this case falls outside the principles of the Alberta Court of Appeal decision in the case of *Jinnah v. Alberta Dental Association and College*, 2022 ABCA 336 ("*Jinnah*"). In that decision, the Court held that at para. 145 that in the case of self-regulated professions, "the profession as a whole should bear the costs in most cases of unprofessional conduct."
41. The Registrar maintains that the present case corresponds to an exception to *Jinnah* as the licensee has committed serious unprofessional misconduct, has failed to cooperate in the appeal process, and has engaged in hearing misconduct. As such, an award of costs against the licensee is warranted for the appeal.
42. With specific reference to the factors to be considered in determining costs, as enumerated in section 10.4 of the Bylaws, the Registrar submitted that:
  - a. The Appellant was not cooperative in the appeal proceeding. He missed deadlines for submission, refused service of documents, failed to follow instructions, and made unnecessary applications.

- b. The Appellant was wholly unsuccessful in the appeal process.
- c. The Appellant caused the Registrar to incur the unnecessary expense of responding to two unsuccessful and meritless applications to waive the cost of production of the record.
- d. The appeal was an unnecessary expense given the thoroughness of the Hearing Panel's decision and the meritless position taken by the Appellant.
- e. The Appellant did not challenge the validity or legality of the Hearing Panel's decision and merely disagreed or was unhappy with the outcome.
- f. There is insufficient evidence of any financial burden on the Appellant.

#### ANALYSIS

- 43. RECA is the governing body that regulates the conduct of licensees, of whom the Appellant was one.
- 44. The *Jinnah* decision addresses costs for disciplinary proceedings in self-regulated professions. At paragraph [135], the Court held that:

*[135] Costs are an inevitable part of self-regulation:*

*Professions in Alberta are extended the privilege of self-regulation. With that comes the responsibility to supervise and, when necessary, discipline members. The disciplinary process must necessarily involve costs, and any self-regulating professional organization must accept those costs as an inevitable consequence of self-regulation. It is acceptable for the profession to attempt to recover some of those costs back from disciplined members, but the burden of the costs of regulation are to some extent inevitable. (Citing College of Physicians & Surgeons Alberta v. Ali, 2017 ABCA 442 at para. 110.)*

- 45. The Court further stated at para. [138] that:

*[138] While it is true that a member who commits unprofessional conduct displays a trait that distinguishes him or her from other members of the profession who have not committed unprofessional conduct, this fact, by itself, does not convince us that it is appropriate, as a general principle, to impose a significant portion of the costs of an investigation into and hearing*

*of a complaint on a disciplined dentist unless a compelling reason to do so exists.*

46. It is useful to return to the Hearing Panel's decision concerning costs.

On February 13, 2023, the Hearing Panel issued its Phase 2 decision to address sanction and costs. It applied subsection 28(4) of an earlier version of the Bylaws, in effect at the time of the hearing. The factors enumerated in that subsection are now found in section 10.4 of the current version of the Bylaws:

- a. The degree of co-operation of the licensee;
- b. The result of the matter and the degree of success;
- c. The importance of the issues;
- d. The complexity of the issues;
- e. The necessity of incurring the expenses;
- f. The reasonable anticipation of the case outcome;
- g. The reasonable anticipation for the need to incur expenses;
- h. The financial circumstances of the licensee; and any financial impact experienced to date by the licensee;
- i. Any other matter.

47. These factors were applied in the context of the *Jinnah* decision and the factors set out in *Re Pethick*, 2019 AB RECA 118, following Mr. Pethick's appeal to the Court after costs against the Registrar were refused by an Appeal Panel. The Court's decision may be found at *Pethick v. Real Estate Council (Alberta)*, 2019 ABQB 431.

48. After canvassing the facts of the case in the context of the *Jinnah* and *Pethick* decisions, and applying the Bylaws, the Hearing Panel held that:
- a. Serious unprofessional conduct had occurred;
  - b. The member, as the Appellant was referred to, had committed serial offences;
  - c. The member had failed to cooperate with investigators, resulting in added cost;
  - d. The member had engaged in hearing misconduct by unnecessarily prolonging the hearing or otherwise unjustifiably increasing the costs.

49. The Hearing Panel awarded costs of \$23,465.00 against the Appellant.

50. Having reached the decision to dismiss the appeal, the Appeal Panel does not reconsider the hearing costs or the considerations underpinning that award by the Hearing Panel. To do so would constitute an error.

51. The role of the Appeal Panel is now to evaluate whether the exceptions to the general rule, that costs are borne by the self-regulating body, were met during the appeal process.
52. The Appeal Panel has considered the factors set out in section 10.4 of the Bylaws relative to the conduct of the appeal process. Viewed through that lens, the Appeal Panel has determined that the Appellant was engaged in the exercise of the rights extended to him in legislation. Although his conduct may have been irregular at times, he did not misconduct himself to a degree that would extend this case beyond the general rule that the cost of self-regulation will generally fall to the professional body.
53. As such, it is the conclusion of the Appeal Panel that no costs will be awarded.
54. The matters raised in the Registrar's submission on costs for the appeal are addressed below.

#### *The degree of co-operation*

55. Subsection 48(1) of the Act permits a licensee to lodge an appeal:  
  
*48(1) A licensee in respect of whom a Hearing Panel has made a finding or order under section 43 or the registrar may appeal the finding or order to an Appeal Panel.*
56. It is the plain intent of the Act that appeals may be brought by any licensee, such as the Appellant, who is the subject of a decision of the Hearing Panel. Certainly, the mere act of bringing an appeal cannot be construed as misconduct.
57. Concerning the Appellant's conduct throughout the appeal process, the Appeal Panel notes that he was self-represented. This may have led to moments when, had he been represented, counsel would have presented his case differently, For example, submissions may have been timely, service may have proceeded with greater efficiency, and argument would have been more cohesive.
58. The Appellant's absence of familiarity with process was overcome. Submissions were eventually received. Service was effected. The absence of a written record was addressed through video excerpts from the recording of the hearing. The Appellant had the opportunity to marshal his arguments before the Appeal Panel.

59. The Appeal Panel finds that any perception of an absence of cooperation was attributable to the Appellant's circumstances as a self-represented person and not to hearing misconduct or a degree of co-operation that would attract an award of costs.

*The result of the matter and degree of success*

60. The Appeal Panel has grouped the balance of the Registrar's submissions as the result and degree of success.
61. As the Registrar stated in its submission, the Appellant twice submitted an application to waive that cost of preparing the record. On both occasions, the application was denied for want of evidence concerning the Appellant's financial circumstances.
62. The Appeal Panel notes that it was the Appellant's right to bring an application to waive the cost of preparing of the record. This is expressly provided in subsections 48(8) and (9) of the Act:

*48 (8) The costs of preparing the record of the hearing shall be paid by the Appellant.*

*(9) Despite subsection (8), the Appeal Panel may waive or reduce the payment of all or part of the costs of preparing the record.*

63. There is no indication that the applications were brought for any purpose other than to waive the cost of production of the record. The Registrar has not demonstrated to the Appeal Panel that the failure of the applications and the absence of the Appellant's financial information are suitable considerations in determining the award of costs at the conclusion of this appeal. In this light, it would be difficult to say that the applications unnecessarily consumed resources.
64. Further, the Registrar argues that costs should be awarded against the Appellant as (a) the appeal was "wholly unsuccessful"; (b) the Hearing Panel decision was so thorough that the appeal should be considered an unnecessary expense; and, (c) the Appellant's mere disagreement or unhappiness with that decision was not a foundation for an appeal.
65. It bears repeating that the Appellant was exercising the rights accorded to him by section 48 of the Act. The Act and Bylaws establish a comprehensive scheme for the conduct of hearings and appeals.

66. Something more than a licensee exercising the right of appeal is required for costs to be awarded against him.
67. In the present case, until the case was heard, the thoroughness of the Hearing Panel's decision and the degree of the Appellant's disagreement or unhappiness relative to the parties' arguments on appeal, could not be plumbed.
68. As such, in the Appeal Panel's determination, the degree of success as reflected in the outcome of the appeal and the applications to waive costs, is not a foundation for an award of costs.

CONCLUSION

69. No costs are awarded.

Dated the 8<sup>th</sup> day of January 2024 in the City of Edmonton in the Province of Alberta.

“Signature”

[J.A], Appeal Panel Chair