

**THE REAL ESTATE COUNCIL OF ALBERTA**

**IN THE MATTER OF** a Hearing under Part 3 of the *Real Estate Act*,  
R.S.A. 2000, c.R-5

**AND IN THE MATTER OF** a Hearing regarding the conduct of **MOHIT SETH**, both a Mortgage Broker and a Real Estate Associate, currently registered with Maak Finance Ltd. o/a Ezee Mortgages and 1800086 Alberta Ltd. o/a First Place Realty and was formerly registered with Enrich Mortgage Group Ltd. o/a Mortgage Alliance – Enrich Mortgage Group

Hearing Panel Members: [W.K], Chair, Panel member  
[K.M], Panel member  
[J.D], Panel member

Hearing Date: March 21, 2024, via video conference

Counsel for the Registrar: Andrew Bone

Counsel for the Licensee: G. Brent Cooper, McLeod Law LLP

**DECISION OF THE HEARING PANEL**

**ISSUES:**

The issues before this Hearing Panel convened on March 21, 2024, are:

- (i) Shall the Hearing Panel accept the Licensee's Admission of Conduct Deserving of Sanction in case 010414.001?
- (ii) Does the Hearing Panel accept the Joint Submission on Sanction in case 010414.001?

**DECISION:**

1. On March 21, 2024, this Panel conducted a Hearing, under Part 3 of the *Real Estate Act*, RSA 2000, c. R-5 (the "**Act**"), into allegations of Conduct Deserving of Sanction against Mohit Seth ("**Seth**" or the "**Licensee**").
2. In accordance with section 43 of the *Act*, Seth and the Registrar entered into an Agreement of Conduct Deserving of Sanction (Schedule 1) and provided a Joint Submission on Sanction (Schedule 2).

3. Upon review of the Agreement of Conduct Deserving of Sanction, and the Joint Submission on Sanction, it was the unanimous decision of the Hearing Panel that the sanctions proposed, in each case, were reasonable and within an appropriate and acceptable range. Accordingly, this case presents no factors that warrant deviation from the sanctions jointly agreed to.
4. Pursuant to its powers under section 43 of the Act, the Hearing Panel imposes the following sanctions in relation to Seth's conduct:

Breach	Fine
Rule 42(a) of the Real Estate Act Rules	\$9,000
Rule 54(3) of the Real Estate Act Rules	\$7,000
<b>TOTAL</b>	<b>\$16,000</b>

5. As articulated in greater detail below, the Licensee shall pay no costs.

#### ANALYSIS & REASONS:

6. Part 3 of the Act contemplates a two-stage process. First, the Hearing Panel must find that the Licensee engaged in conduct deserving of sanction. Second, if the Hearing Panel determines that the conduct of a Licensee is deserving of sanction, the Hearing Panel must determine the appropriate sanction.
7. The Licensee's Admission of Conduct Deserving of Sanction was accepted pursuant to section 47 of the Act and deemed to be, as a finding of the Hearing Panel.
8. The Joint Submission on Sanction referred the Hearing Panel to and applied the oft-cited "Jaswal Factors" found in the seminal decision of *Jaswal v Newfoundland (Medical Board)*, 1996 CanLII 11630 (NL SC) ("*Jaswal*"), at para 35, to Seth's conduct. The Jaswal Factors include:
  - (a) The nature and gravity of the proven allegations;
  - (b) The age and experience of the Licensee;
  - (c) The previous character of the offender and, in particular, the presence or absence of prior complaints or convictions;
  - (d) The age and mental condition of the Licensee;
  - (e) The number of times the offence was proven to have occurred;
  - (f) The role of the Licensee in acknowledging what occurred;
  - (g) Whether the Licensee had already suffered serious financial or other penalties as a result of the allegations having been made;

- (h) The impact of the incident on the victim, if any;
  - (i) Mitigating circumstances;
  - (j) Aggravating circumstances;
  - (k) The need to promote specific and general deterrence and thereby protect the public and ensure the safe and proper conduct of the profession;
  - (l) The need to maintain the public's confidence in the integrity of the profession;
  - (m) 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
  - (n) The range of sentence in other similar cases.
9. It is well established law that a panel in these circumstances should not depart from a joint submission on sanction unless the proposed sanction would bring the administration of justice into disrepute: *R v Anthony Cook*, 2016 SCC 43 ("**Anthony Cook**") at para 32.
10. In assessing the Jaswal Factors, in light of the Joint Submission on Sanction, it was the unanimous decision of the Hearing Panel that the assessment by the Registrar and Licensee, in each case, was reasonable and within the appropriate and acceptable range.
11. Of specific note, the Hearing Panel considered, as mitigating factors:
- a. Seth had engaged in no previous misconduct under the *Act*;
  - b. The conduct deserving of sanction was limited to one client;
  - c. The conduct deserving of sanction occurred in 2017;
  - d. No subsequent misconduct has been identified;
  - e. Seth took full responsibility for his actions;
  - f. Seth cooperated with the Hearing process; and
  - g. Seth did not engage in any Hearing misconduct.
12. While the Hearing Panel acknowledges aggravating factors including the nature of the breaches and the need to maintain confidence in the industry, those factors do not deter the Hearing Panel from finding that the jointly proposed sanctions fall within a reasonable, appropriate, and acceptable range.
13. The Joint Submission on Sanction further referred the Hearing Panel to the relatively recent decision of *Jinnah v Alberta Dental Association and College*, 2022 ABCA 336 ("**Jinnah**") with respect to awarding costs in administrative hearings.

14. The Alberta Court of Appeal's findings in *Jinnah* creates a general presumption that, in assessing costs of an administrative hearing under the *Health Professions Act*, RSA 2000, c. H-7 (the "***Health Professions Act***"), the default is that no costs should be awarded: *Jinnah* at paras 140-144.
15. The Hearing Panel is not presently bound by this aspect of the decision of *Jinnah* as the within administrative hearing does not fall under the *Health Professions Act* and an award of costs remains discretionary.
16. Nonetheless, while the *Jinnah* decision may have still been persuasive, that analysis is not necessary for the Hearing Panel to undertake as an award of costs in this instance similarly falls within the *Anthony Cook* analysis on joint submissions and the Hearing Panel should only depart from the proposed sanction if it may "bring the administration of justice into disrepute:" *R v Anthony-Cook*, 2016 SCC 37 at para 32.
17. No such findings have been made and this case presents no factors that warrant deviation from the sanctions jointly agreed to.

This decision was signed in the City of Calgary and in the Province of Alberta on the 7<sup>th</sup> day of May 2024.

**"Signature"**

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[W.K], Hearing Chair