

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 decision issued with respect to sanction and
costs in respect of the conduct of **CASURT ROY MORGAN**, formerly a Real Estate
Associate with Axiom Mortgage Solutions Inc. O/A Axiom

Appeal Panel Members: [W.K], Chair
[M.G], Panel Member
[D.R], Panel Member

Appearances: Casurt Roy Morgan on his own behalf

Andrew Bone on behalf of the Registrar of the Real Estate
Council of Alberta

Hearing Dates: May 27, 2024

DECISION OF THE APPEAL PANEL

SUMMARY OF THE APPEAL

1. This Appeal Panel was appointed to hear the Appeal of Casurt Roy Morgan (the "**Licensee**" or 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 erred in its written decision dated November 20, 2023, with respect to sanctions and costs (the "**Hearing Panel Decision**"). The role of the Appeal Panel is to review the Hearing Panel Decision against the standard of reasonableness.
3. In applying that standard, this Appeal Panel has dismissed the Appeal.

NATURE OF THE APPEAL

4. The Appeal is with respect to sanction and costs only. In both his written and oral submissions, the Licensee rehashed a number of arguments he made during Phase 1 of the Hearing, mainly around the ability of his client [T.B] to qualify for insurance and what he perceived as various miscommunications around mortgage insurance. His Notice of Intent to Appeal states that he would be providing new evidence related to phase 1, but no new evidence was provided, nor were any other valid grounds put forward to challenge Phase 1 of the hearing.
5. The Licensee was clear in his submissions, particularly his written submissions, that he was appealing the Phase 2 decision on sanction only. The Appeal Panel views the references to Phase 1 as contextual. The Licensee's Appeal submissions do not challenge the Phase 1 decision. Furthermore, the parties jointly agreed to waive costs for the preparation of the record of the hearing based on the fact that the Appeal was focused on sanction and the hearing related to sanction had no oral component, obviating the need for a transcript on that portion. Finally, it would not be fair or appropriate to the Registrar to entertain Phase 1 appeal arguments at such a late date, when the Appeal documents, including the Notice of Appeal, which the Licensee did not object to or comment on, only refer to appealing the Phase 2 sanctions and costs order and the parties have proceeded throughout on the understanding that this is an appeal of the Phase 2 decision.

BACKGROUND

6. In a decision dated August 11, 2023, the Hearing Panel issued its Phase 1 decision. It found the Licensee to have engaged in conduct deserving of sanction for a number of breaches of s.42(b) and s.43(1) of the Rules including, without limitation:
 - a) On or about February 2016, the Appellant committed forgery in connection with the provision of services, contrary to section 42(b) of the Rules while representing [T.B] and [T.O] in what was referred to as the "[T.B] Deal"; and
 - b) On or about April 2016 to May 2016, the Appellant had committed forgery in connection with the provision of services, contrary to section 42(b) of the Rules, while representing [S.C] in what was referred to as the "[S.C] Deal."
7. The allegation that the Appellant had failed to provide adequate supervision for an alleged assistant who was performing duties on his behalf in respect of the [S.C] Deal, contrary to section 69(e) of the Rules, was not proven largely because the conclusion of the Hearing Panel was that there was no assistant, rather the Appellant had forged the signatures himself.
8. In total, the Hearing Panel found the Appellant engaged in multiple forgeries on 6 documents on at least 2 separate occasions in both the [T.B] Deal and [S.C] Deal.
9. On November 20, 2023, based on the Hearing Panel's above findings regarding conduct, the following sanctions and costs were levied against the Appellant:
 - a) The Appellant's license was cancelled pursuant to section 43(1)(a) of the Act;

- b) The Appellant became ineligible to apply to the Real Estate Council of Alberta (“RECA”) for a license for a period of 3 years;
- c) The Appellant was directed to successfully complete all educational requirements in place at the time before being able to apply for a new license from RECA;
- d) The Appellant was directed to pay a fine in the amount of \$20,000 in relation to the [T.B] Deal and \$10,000 in relation to the [S.C] Deal; and
- e) The Appellant was directed to pay the costs of the Hearing in the amount of \$15,620 (“Costs”).

(Collectively, the “Sanction Decision”)

- 10. On March 14, 2023, the Appellant provided RECA with notice of his intent to appeal the Phase 2 decisions with respect to Sanction and Costs.

STANDARD OF REVIEW

- 11. The Appellant, who was unrepresented on Appeal, did not address standard of review directly.
- 12. The Registrar argued that the standard of review of the decisions of the Hearing Panel was one of reasonableness.
- 13. Section 50(1) of the *Real Estate Act* provides that this Appeal shall be founded on the record of the hearing before the Hearing Panel and the decision of the Hearing Panel.
- 14. Section 50(2)(c) of the *Real Estate Act* provides that, on appeal, the Appeal Panel may “draw inferences of fact and make a decision or finding that, in its opinion, ought to have been made by the Hearing Panel.” Despite the plain language, courts, including the Alberta Court of Appeal, have interpreted virtually identical statutory provisions to mean that appellate bodies in administrative proceedings, such as this Appeal Panel, should not exercise powers on appeal unless an error is shown in the decision below. Courts have stated that, while the appellate body should intervene where it does not agree with the initial tribunal’s decision concerning an issue of law or procedure, the appellate body should not interfere with respect to findings of fact unless such finding is unreasonable, or palpably and demonstrably wrong: *KV v College of Physicians and Surgeons of the Province of Alberta*, 1999 ABCA 125 paras 6-13.
- 15. The Registrar asserts that in assessing the question of whether a sanction imposed by a hearing panel was reasonable, an appeal panel should intervene where the sanction imposed was based on application of the wrong principles or demonstrably unfit. The test is not whether the appeal panel itself would have imposed a different sanction: *Alberta Law Society v Schuster*, 2017 ABLS 24 para 40.
- 16. The Appeal Panel agrees with the submission of the Registrar insofar as an Appeal Panel should afford some deference to the Hearing Panel and not simply disregard their views. However, where the Appeal Panel perceives unreasonableness, a palpable and demonstrable error, the application of a wrong principle, or where the sanction is

demonstrably unfit,, it is entitled to strike down the Hearing Panel's Sanction Decision.

SUBMISSIONS OF THE PARTIES

A. FOR THE APPELLANT

17. The Appellant provided written submissions on May 10, 2024, for the Appeal hearing on May 27, 2024.
18. The Appellant's grounds of appeal and arguments are summarized from his written submissions and his oral submissions on Phase 2 made before the Appeal Panel. The conclusion sought by the Appellant were that the "fines levied on this matter [were] excessive and unjustified." The Appellant asked the that Appeal Panel reduce the sanctions and costs awarded as follows: 1-year suspension effective the day of the decision with a total fine accumulation of no more than \$10,000. For this conclusion, the Appellant relied on two previous Hearing Panel decisions (Dhaliwal and Merchant) arguing that the cases were analogous and similar sanctions should be imposed.

B. FOR THE REGISTRAR

19. The Registrar provided and addressed the Hearing Panel's assessment of similar cases, its review of the seminal *Jaswal Factors* (*Jaswal v. Medical Board (Nfld.)*, 1996 CanLII 11630 (NL SCTD) (the "**Jaswal Factors**") and identified the reasonableness of the sanction imposed on the Appellant in light of these authorities.
20. The Registrar directed the Appeal Panel through each of the relevant *Jaswal* factors with respect to the evidentiary record detailing the assessment of the Hearing Panel as follows:
 - a) As set out above, the nature and gravity of Morgan's Misconduct is significant. He engaged in multiple, deliberate forgeries for his own benefit and to the potential detriment of his clients;
 - b) Morgan is 47 years old and had 6 years of experience as an associate at the time of his Misconduct. This is ample time and experience to be aware that forgeries, of any kind, are unacceptable practice.
 - c) Morgan has no prior discipline.
 - d) Morgan has not acknowledged his wrongdoing. In fact, even in his submissions on sanction, he seeks to minimize his Misconduct, demonstrating a remarkable lack of understanding of its seriousness and a concerning potential for recidivism;
 - e) There is no evidence Morgan suffered any financial penalties as a result of his misconduct;
 - f) The Misconduct does not appear to have directly caused any financial loss to any of Morgan's clients. However, it did deprive [T.O] and [T.B] of the opportunity to make different choices (*See para 23 of the Sanction Decision*).
21. In this regard, the Registrar identified the Hearing Panel's conclusion as follows:

We find that Morgan's Misconduct, while serious, was not of the same magnitude as Wolf, Singh, or Adel. Morgan did not breach his fiduciary duties, act in a conflict of interest, or have prior discipline. His hearing was considerably shorter than each of Wolf, Singh, and Adel's. On the other hand, we are also satisfied that Morgan's circumstances merit a more significant sanction than Dhaliwal, Merchant, or Aulakh. In each of those cases, the licensee took responsibility for their actions. Dhaliwal and Aulakh expressed remorse. As a result, RECA could be better assured that the goal of specific deterrence had been met and a lengthy prohibition on reapplying for a license was not necessary. This is not the case here. *[emphasis added]*

22. The Registrar noted that the majority of the authorities presented involved one breach, but not multiple breaches as in the present case and several were decisions of a Hearing Panel based on a joint submission of the parties agreeing to conduct and sanction (which was also not the case in these circumstances).
23. With respect to Costs, the Registrar referenced the Appellant's September 16, 2023, Reply Submissions wherein he stated the following in relation to costs:

The licensee does not oppose the assessment of costs in this matter in the amount proposed by the Registrar. (See page 1 of the September 16, 2023, Licensee's Reply Submissions)
24. There was therefore no argument before the Hearing Panel with respect to Costs and the Hearing Panel accepted the amounts as proposed by the Registrar. Given that acceptance by the parties, the Registrar submits it would be inappropriate to interfere with the Hearing Panel's decision on Appeal.
25. The Registrar concluded by submitting that the Hearing Panel's decision was reasonable in the circumstances and concurrent with analogous and applicable authorities and therefore, the Appellant's Appeal should be dismissed.

ANALYSIS

26. 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; whether there is any palpable and demonstrable error in the sanction; whether there is any error in principle with the sanction; and whether the sanction is demonstrably unfit.
27. With that focus, the Appellant's role is to demonstrate the grounds on which the decision of the Hearing Panel is unreasonable, made using incorrect principles, palpably and demonstrably wrong, or demonstrably unfit. In this regard, he has not succeeded.
28. The conclusion sought by the Appellant were that the "fines levied on this matter [were] excessive and unjustified." For this conclusion, the Appellant relied on two

previous RECA decisions (Dhaliwal and Merchant), but the sanctions as articulated by the Appellant in each of these decisions were inaccurate. In both decisions the licensees were subject to license cancellation and not suspension and the Appeal Panel does not see these cases as analogous.

29. With respect to the sanctions imposed by the Phase 2 Hearing Panel, the Appellant has placed no new authorities before the Appeal Panel. Any authorities presented were previously scrutinized and analyzed by the Hearing Panel and those containing lesser sanctions do not outline the breadth or depth of the conduct that the Hearing Panel determined to be worthy of sanction.
30. 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. While the Appellant objects to the sanction, he has not suggested or identified any ground on which the decision is vulnerable other than quantum which he considers excessive.
31. At the conduct Hearing, the Licensee did not oppose the assessment of costs as before the Hearing Panel but rather accepted the amounts proposed by the Registrar. The Licensee has not put forward any specific arguments about why an appeal on costs should be successful in this case. The Appeal Panel agrees that it would be inappropriate to interfere with the Hearing Panel's decision on Appeal in these circumstances.
32. To conclude, The Appellant has not demonstrated that the Hearing Panel's decision regarding sanction or costs was incoherent, illogical, unreasonable, wrong in principle, palpably and demonstrably incorrect, or demonstrably unfit in the circumstances of this case. The Hearing Panel explained its reasons and the conclusions it reached were within the range of possible outcomes for the serious breaches it found to have been committed by the Appellant.
33. In accordance with s. 50(4)(b) of the Act, the Appeal Panel confirms the Phase 2 decisions of the Hearing Panel and finds that there is no basis for its intervention.

CONCLUSION AND ORDER

34. After considering the evidence and the respective submissions of the parties, the Appeal Panel dismisses the Appeal.
35. 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 August 12, 2024;
 - b) The Appellant is to respond to Registrar's submission on or before August 26, 2024;
and
 - c) The Registrar is to provide its reply, if any, on or before September 2, 2024.

Dated the 24th day of July 2024 in the City of Calgary in the Province of Alberta.

"Signature"

[W.K], Appeal Panel Chair

Cases: 007015.002 and 011077.002

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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 Casurt Roy Morgan,
formerly a Mortgage Broker of Axiom Mortgage Solutions Inc. O/A Axiom Mortgage
Solutions (Formerly Invis Inc. O/A Invis)

Appeal Panel Members:

[W.K], Chair
[M.G]
[D.R]

Appearances:

Casurt Roy Morgan on his own behalf

Andrew Bone on behalf of the Registrar of the Real
Estate Council of Alberta

Appeal Date:

May 27, 2024

Written submission on Costs

Written Submissions by Registrar – July 25, 2024

Received:

Written Submissions by Licensee – August 26, 2024.

COSTS DECISION

A. SUMMARY OF THE APPEAL

1. This Appeal Panel was appointed to hear the appeal of Casurt Roy Morgan (the "**Appellant**") who was formerly a licensed Mortgage Broker. He appealed a Phase 1 decision regarding conduct and a Phase 2 decision regarding sanction for breaches of s. 42(b) 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 the costs of the underlying proceeding.

2. On July 24, 2024, following a contested appeal, the Appeal Panel issued its decision confirming the Phase 1 and Phase 2 decisions of the underlying Hearing Panel.
3. The Appeal Panel then directed the parties to provide their submissions on costs. The Registrar was directed to provide its submission on or before August 12, 2024, and the Appellant was to respond on or before August 26, 2024. The Registrar was to provide its reply submission, if any, on or before September 2, 2024 (though it chose not to exercise the right of reply).
4. The Appeal Panel has now received submissions from both the Registrar and the Appellant.
5. Pursuant to section 50(5) of the *Act*, the Appeal Panel may make an award as to the costs of an appeal determined in accordance with the *Real Estate Act* Bylaws (the "**Bylaws**"). The method to calculate costs is found in the Bylaws at section 10.1.

B. THE REGISTRAR'S SUBMISSION ON COSTS

6. The Registrar submitted that the Appellant should pay \$1,890.75 in appeal hearing costs inclusive of disbursements, calculated in accordance with considerations for costs as set out in section 10.4 the Bylaws.
7. In its written submissions, the Registrar asserted that it was "taking a generous approach to costs" and that it was not requesting costs the Registrar spent in preparation for the Appeal Hearing or other interlocutory steps or adjournments but rather was only seeking costs for attendance at the actual hearing and the costs of the process service charges accumulated in the Appeal, all in accordance with section 10.1 of the Bylaws.

8. The Registrar provided the following table to assist in its calculation:

Item	Hours	Amount/hr	Low end	High end
Legal Costs – Registrar’s Counsel’s time for one hearing day	1.0	\$100-\$250/hr	\$100.00	\$250.00
Hearing secretary salary – one day hearing time	1.0	\$15/hr	\$15.00	\$15.00
Hearing Panel Honoraria – not including decision writing costs.	1.0	Chair and two panel members	\$1400.00	\$1400.00
Process Service Charges	-	-	\$225.75	\$225.75
GRAND TOTAL			\$1,740.75	\$1,890.75

9. The position taken by the Registrar was to forego seeking costs for a number of interlocutory applications and adjournments that arose prior to the Appeal Hearing and, in reference to the factors articulated in *Pethick (Re)*, 2019 ABRECA 118, asked the Appeal Panel to consider a number of relevant factors in this Appeal, including that:

- (a) The Appellant was cooperative throughout the appeal;
- (b) The Appellant was wholly unsuccessful in his appeal;
- (c) The Appeal had little merit as the Appellant’s argument relied on two precedents that had already been previously considered and distinguished;
- (d) The Appellant put no specific argument forward on why costs were excessive on Appeal and the costs put forward in the underlying Hearing had previously been accepted by the Appellant in his phase two submissions at the underlying hearing; and
- (e) For the foregoing reasons it should have been clear to the Appellant that the Appeal was destined to fail and its pursuit wasted time, energy and resources for all parties.

10. The Registrar submitted that, given these factors, the Appellant should pay the full costs as sought while imploring the Panel to consider that additional more significant costs could have been sought in these circumstances.
11. The Registrar also referenced the “Jinnah Presumption” arising from the oft-cited case of *Jinnah v Alberta Dental Association and College*, 2022 ABCA 336 (“*Jinnah*”). The Court in *Jinnah* found that in the case of self-regulated professions, “the profession as a whole should bear the costs in most cases of unprofessional conduct,” and costs should only be imposed where there are compelling reasons including:
 - (a) the breach was especially serious;
 - (b) the subject was a “serial offender” – this can mean there was only one prior discipline;
 - (c) the subject failed to cooperate with the investigation and extended the use of resources of the regulator; or
 - (d) the subject participated in hearing misconduct which made the hearing more expensive.
12. While acknowledging the Jinnah Presumption, the Registrar argued that this was a serious matter as Mr. Morgan was found to have engaged in intentional forgery with regards to 2 separate deals and 6 separate documents and that the matter should be considered especially serious so as to negate the Jinnah Presumption to the extent it applies.
13. The Registrar also argued that this “appeal falls outside of the scope of *Jinnah*” asserting that *Jinnah* did not apply because this matter was an appeal by the licensee and therefore distinguishable. Given that *Jinnah* also involved an internal appeal by a licensee this assertion was not accepted by the Appeal Panel.

C. The Licensee's (Appellant's) Position on Costs

14. The Appellant provided limited submissions in response referencing that he had cooperated with the investigation and emphasizing that he had ultimately withdrawn matters that "would have incurred other physical cost."
15. With respect to costs, the Appellant relied on a single reported decision of *Fleming (Re)*, 2022 ABRECA 21 ("*Fleming*") wherein an Appeal Panel had quashed an administrative penalty initially ordered by the Registrar for a breach of section 41(b) of the Rules for allowing a person to use a homeowner's bathroom during a showing.

D. Analysis

16. The *Fleming* decision is of limited utility in assessing costs of this Appeal.
17. In *Fleming*, the Registrar had imposed a \$1,500 administrative penalty against the appellant which, on appeal, was quashed. Both the facts and the procedural elements at issue in *Fleming* (i.e. dealing with an administrative penalty that was not the subject of an oral hearing) are distinguishable and of little assistance in determining whether costs should be awarded in this instance.
18. The Registrar maintains that the present case corresponds to an exception to *Jinnah* as the licensee had committed serious unprofessional misconduct, on multiple occasions, and had initially failed to cooperate in the appeal process. Relying on both the *Jinnah* and *Pethick* cases the Registrar asserted an award of costs against the licensee is warranted for the Appeal.
19. This Appeal Panel agrees with the Registrar.
20. The role of the Appeal Panel is to evaluate whether the exceptions to the general rule, that costs are borne by the self-regulating body, were met.
21. While the Licensee ultimately co-operated with the appeal process:
 - (a) Mr. Morgan's invention of an assistant or his efforts to prevent RECA from contacting him unduly complicated the initial investigation and subsequent Appeal;

- (b) Mr. Morgan was wholly unsuccessful in his Appeal;
 - (c) Mr. Morgan did not take responsibility for his breaches and conduct; and
 - (d) The issue of combating forgery remains “especially serious.”
22. Costs of the hearing may therefore be awarded by the Appeal Panel pursuant to section 50(5) of the **Act**. The method to calculate costs is found in the Bylaws at section 10.1: Where ... costs payable may include: general hearing and appeal costs, transcript production, hearing or appeal administration costs, honoraria of hearing panel members, legal costs up to \$250 per hour, adjournment costs, and other miscellaneous costs.
23. The costs sought by the Registrar are a fraction of the enumerated heads of costs applicable in these circumstances and each of the costs sought fall within an enumerated range. As such, it is the determination of this Panel that costs are warranted and payable.

E. CONCLUSION

24. Costs are awarded in the amount of \$1,890.75 payable by the Licensee forthwith.

Dated this 21st day of October 2024 in the City of Calgary in the Province of Alberta.

“Signature”

[W.K], Appeal Panel Chair