

THE REAL ESTATE COUNCIL OF ALBERTA

IN THE MATTER OF a Hearing under Part 3 of the *REAL ESTATE ACT* (the "Act")

AND IN THE MATTER OF a Hearing regarding the conduct of **Elilarasy Sivalingam**,
Real Estate Associate, currently and all material times registered with Real Estate
Professionals Inc.

Hearing Panel: [R.D] - Chair
[C.R]
[D.T]

Appearances: I. Nazir, for the Registrar of the Real Estate Council of
Alberta

Elilarasy Sivalingam, Licensee

Hearing Date: April 11, 2025, by video conference

HEARING PANEL DECISION

Background:

On March 26, 2025, a Notice of Hearing (Exhibit 1) was issued to Elilarasy Sivalingam (the "Licensee"). On March 27, 2025, the Notice of Hearing was served on the Licensee (Exhibit 2). The hearing was scheduled for April 11, 2025, at 9:30a.m. Mountain Time, and proceeded on that date.

The Notice of Hearing outlined alleged conduct deserving of sanction when:

1. In or around June and July 2022, the Licensee failed to provide competent services to their buyer clients contrary to Rule 41(b) of the *Real Estate Act Rules*:

- a. The Licensee failed to draft amendments to extend critical contract conditions which could have resulted in the seller cancelling the transaction and the buyer client losing the contract.
 - i. The initial deposit was submitted a day after the required deadline. The Licensee did not draft an amendment to the contract, to reflect the delay, for their clients to sign to present to the seller.
 - ii. The Licensee informed her clients and their lawyer that an extension was required to move the closing date from July 15, 2022, to July 28, 2022. The Licensee did not draft an amendment to formalize this change.
 - b. The Licensee presented documents to her clients for signature without adequately explaining the documents and the consequences that would ensue, should conditions not be met.
2. In or around June and July 2022, the Licensee failed to fulfil her fiduciary obligations to their clients, contrary to Rule 41(d) of the Real Estate Act Rules when:
 - a. The Licensee referred her clients to an unlicensed individual regarding financing.
 - b. The Licensee failed to confirm with her clients whether they had secured a mortgage commitment before drafting and presenting a waiver of financing conditions for their signature, despite knowing or being in a position where she should have known that financing had not been finalized.
 - c. The Licensee advised her clients to waive all financing conditions, making the transaction firm.
 - d. The Licensee did not discuss the possibility of drafting an amendment to extend the financing condition date, which could have prevented her clients from forfeiting their \$10,000 deposit.
3. The Licensee made a referral to her clients without taking reasonable steps to ensure the person was in fact authorized to carry out the activities for which the referral was made, contrary to s. 45(3) of the Real Estate Act Rules when:
 - a. The Licensee referred her clients to a mortgage associate in Ontario who was not licensed to deal in mortgages in Alberta.

4. The Licensee elicited confidential information from her clients without first disclosing in writing the nature of the services she would be providing, contrary to s. 55(1)(a) of the Real Estate Act Rules.

The Hearing:

On April 11, 2025, the hearing of this matter proceeded. The Registrar was represented by legal counsel and the Licensee was self represented. Neither the Registrar nor the Licensee objected to the composition of the Hearing Panel.

Phase 1 – Conduct Deserving of Sanction

At the request of the Registrar, and with no objection from the Licensee, the Agreement of Conduct Deserving of Sanction (the "Agreement"), dated March 26, 2025, was admitted into evidence (Exhibit 3) as the agreed facts and breaches in the hearing of this matter. The parties agree the breaches constitute conduct deserving of sanction.

The parties presented no additional evidence.

This Hearing Panel makes its findings of fact, determinations of breach, and conclusions regarding conduct deserving of sanction based on the Agreement and the relevant provisions of the *Real Estate Act* and *Real Estate Act Rules*. During the hearing, the Panel accepted the following agreed upon facts, on a balance of probabilities.:

1. The Licensee was licensed as a mortgage associate with the Real Estate Council of Alberta (RECA) from January 17, 2018, to January 15, 2019, at which time she rescinded her license.
2. The Licensee became licensed to trade in residential real estate with RECA on January 10, 2019.
3. At the time of the conduct deserving of sanction, the Licensee was registered as a real estate associate with Real Estate Professionals Inc.
4. The Licensee was approached by [P.T] and [M.T] (the "Buyers") in or around February of 2022 to help them search for a property. As immigrants from Sri

Lanka with limited proficiency in English, the Buyers specifically sought out the Licensee's real estate services due to their shared language.

5. The Licensee agreed to act as an agent for the Buyers and began showing them suitable properties between February 2022 to early June 2022. During this period, the Licensee did not draft a written representation agreement for the Buyers to sign.
6. On February 26, 2022, the Licensee emailed the Buyers requesting certain financial records.
7. The Buyers became interested in a property located at [ADDRESS] (the "Property") and they instructed the Licensee to submit an offer on the Property.
8. On June 9, 2022, the Licensee drafted a purchase contract for the Property and sent it to the Buyers to sign electronically. The contract contained the following terms:
 - Contract Number: 1968
 - Seller: [C.C]
 - Buyers: [M.T] and [P.T]
 - Address: [ADDRESS]
 - Purchase Price: \$358,000
 - Completion Date: July 15, 2022
 - Deposit: \$10,000 by certified bank draft due on or before June 14, 2022
 - Financing Condition: Due on or before June 17, 2022
 - Property Inspection Condition: Before June 17, 2022
 - The contract was electronically signed by both the Buyers and the seller
9. The Licensee did not review key contractual deadlines with the Buyers, including the deposit deadline and financing conditions. Additionally, the Licensee did not verify whether the Buyers could meet the deadlines stipulated in the contract.
10. The deposit was required per the contract to be delivered by June 14, 2022, but was delivered on June 15, 2022. The Licensee did not contact the Buyers to get instructions to prepare an amendment to extend the delivery of the deposit.
11. Shortly thereafter, the Buyers asked the Licensee to refer them to a mortgage associate who could communicate in their native language of Tamil.
12. The Licensee referred the Buyers to [R.A] ("[R.A]") in Ontario. The Licensee had worked with [R.A] previously and informed the Buyers of his authorization to conduct mortgage transactions in Alberta.
13. [R.A] was not licensed to deal in mortgage in Alberta.

14. The Buyers primarily communicated with [R.A] through the Licensee, who facilitated three-way telephone calls among the group. The Buyers received only one or two direct calls from [R.A].
15. One of the Buyers provided financial documents to the Licensee for the purpose of securing a mortgage, with the intention that they would be forwarded to [R.A]. However, the Licensee failed to transfer the documents as intended.
16. On June 17, 2022, the Licensee drafted a waiver of conditions document, waiving the condominium document review and property inspection conditions. The Licensee presented the waiver to the Buyers for signature via DocuSign without fully explaining its contents. The Buyers signed the waiver in reliance on the Licensee's advice.
17. On June 23, 2022, the Licensee drafted an Exclusive Buyer Representation Agreement for the Buyers to sign. The Agreement contained the following information:
 - Agreement Number: 1968
 - Brokerage: Real Estate Professionals Inc.
 - Buyers: [M.T] and [P.T]
 - Agreement Begins: June 1, 2022
 - Agreement Ends: September 1, 2022
 - Brokerage Representative: Elli Sivalingam
 - Electronically signed by buyers and brokerage representative
18. Also on this date, the Licensee drafted a Consumer Relationship Guide that was signed by one of the Buyers on June 23, 2022, and signed by the other Buyer on June 25, 2022.
19. On June 24, 2022, the Licensee and [R.A] received an email from [J.S] ("[J.S]"), a Home Financing Advisor for Scotiabank in Woodbridge Ontario, advising them she had requested documents from the Buyers for the mortgage application for the property at [ADDRESS], but had not received any.
20. On or around June 26 and 27, 2022, upon the Licensee's request, the Buyers emailed copies of their paystubs, bank statement and a T1 document to the Licensee.
21. On June 27, 2022, the Licensee drafted a waiver of conditions document, waiving the financing condition on the Property, and instructed the Buyers to sign it. The Licensee prepared the waiver without confirming that a mortgage had been secured and failed to ensure the Buyers fully understood its implications — specifically, that signing the waiver would make the contract

binding and that, if the transaction did not complete, they would forfeit their \$10,000 deposit.

22. The Buyers signed the waiver in reliance on their trust in the Licensee.
23. On July 12, 2022, the Licensee received an email from lawyer [P.K] of [K.L.O], advising that his office had not received any mortgage instructions for the transaction.
24. On July 14, 2022, the Licensee emailed the Buyers and the Buyers' lawyer, advising that the closing date for the Property was being extended to July 28, 2022. The Licensee informed the Buyers that the extension related to the mortgage aspect of the transaction. She explained that her contacts in Toronto had initially conducted a preliminary review of the documents and indicated that securing financing appeared feasible; however, upon further examination, they determined that a more thorough assessment was necessary, requiring additional time to complete the process.
25. The Licensee failed to draft an amendment to reflect the extension of the closing date.
26. On July 26, 2022, [J.S] emailed the Buyers a Customer Authorization for Scotiabank Home Financing Solutions document to begin the mortgage application process.
27. In or around early August, [R.A] informed the Buyers that securing a mortgage for the Property would require them to refinance their current home. He advised that the resulting mortgage payments would be approximately \$6,000 per month. Due to the financial burden, the Buyers declined to proceed, as they were unable to afford the stated amount.
28. [R.A] informed the Buyers that if they chose not to proceed, they would likely forfeit their \$10,000 deposit. The risk of losing their deposit caused the Buyers significant concern, particularly as the Licensee had not previously advised them of this potential outcome.
29. The Buyers could not proceed with purchasing the Property and subsequently lost their \$10,000 deposit.

Admitted Breaches

This Hearing Panel also accepts the following agreed upon breaches:

1. In or around June and July 2022, the Licensee failed to provide competent services to her client contrary to Rule 41(b) of the Real Estate Act Rules when:
 - a. The Licensee failed to draft two amendments to address the late deposit and to request an extension of the closing date from the seller.

- b. The Licensee obtained signatures on several documents without explaining their contents or the consequences of signing them if conditions were not met.
- 2. In or around June and July 2022, E. Sivalingam failed to fulfill her fiduciary obligations to her clients, contrary to Rule 41(d) of the Real Estate Act Rules when:
 - a. She did not confirm with the Buyers whether they had a mortgage commitment prior to drafting and have them sign a waiver of financing conditions when she knew or ought to have known they did not have financing in place.
 - b. She advised the Buyers to waive all financing conditions, making the transaction firm.
 - c. She failed to discuss the possibility of drafting amendments to extend the financing condition date, which could have prevented the Buyers from forfeiting their \$10,000 deposit.
 - d. She referred her clients to an unlicensed individual regarding financing.
- 3. The Licensee made a referral to the Buyers without taking reasonable steps to ensure the person is in fact authorized to carry out the activities for which the referral is made, contrary to s. 45(3) of the *Real Estate Act Rules* when:
 - a. The Licensee referred the Buyers to [R.A] without confirming whether he was licensed to deal in mortgages in Alberta. By failing to take reasonable steps to verify [R.A]'s authorization, the Licensee failed to meet the requirements of the Rule.
- 4. The Licensee elicited confidential information from her clients without disclosing to her clients in writing, before or as soon as possible after eliciting that information, the nature of services she would provide, contrary to s. 55(1)(a) of the Real Estate Act Rules when:
 - a. The Licensee entered into a representation agreement with the Buyers only after she had already begun collecting their personal and confidential information and representing them in the purchase of the Property.
 - b. The delay between collecting the personal and confidential information and entering the representation agreement was several weeks, during which time the Licensee continued to show her clients properties. She did not enter the agreement as soon as possible after eliciting the information, as required by the *Rules*.

Additional comments on the breach of Rule 41(d):

The Hearing Panel considered whether the actions outlined under this agreed upon breach amounted to a breach of fiduciary duty, or something less such as a lack of competence and decided to uphold the parties' agreement on breaches.

The Hearing Panel accepts RECA's lawyer's submission of the case Dasouki (RE), 2017 ABRECA 143, which outlines the general components of a fiduciary obligation:

"...the fiduciary obligation requires that the industry member act in good faith for the best interest of the client."

The decision goes on to state that

"...it includes such things as honesty, loyalty and good faith in all dealings with the client, avoiding conflicts of interest as between the industry member and the client, as well as full and complete disclosure of all facts material to a transaction. A fact is material if it could reasonably influence the client's decision to make or accept an offer or to enter into a transaction, and failing to disclose such a fact that an industry member is, or ought reasonably to be, aware of could constitute a breach of fiduciary duty."

While it appears from the Registrar's submissions and some of the precedents provided that RECA's practice in issuing administrative penalties is to treat any violation of a client's best interests as a breach of fiduciary duty, the law requires that a breach of fiduciary duty involve conduct that extends beyond merely acting contrary to a client's best interests. There must be a failure involving a lack of good faith, loyalty, honesty, confidence, avoidance of conflicts of interest, breach of trust or disclosure of material facts. Examples include where the fiduciary breaches their duty of loyalty and trust by preferring theirs or a third parties' interest to the beneficiary; or where the fiduciary make an unreasonable unilateral decision on behalf of the beneficiary, such as only providing the beneficiary with limited information or not following instructions.

In this case, the Hearing Panel finds that the Licensee's conduct meets this threshold. Her actions demonstrated a disregard for the Buyers' interests, **and** a prioritization of her own interests ahead of her clients, thereby breaching her fiduciary obligations.

In taking the steps that she took, namely, failing to confirm whether the Buyers had a mortgage commitment prior drafting and having them sign a waiver of financing conditions despite knowing or having reason to know that financing was not yet secured; advising the Buyers to waive all financing conditions; failing to discuss the

possibility of drafting an amendment to extend the financing condition date; and referring the Buyers to an unlicensed individual who spoke their language and who she knew from her previous work for financing, it is reasonable to infer that the Licensee prioritized her own interest in advancing the transaction over the Buyers' need for protection.

This potential conflict of interest always exists for real estate professionals, and it requires real estate professionals to be extremely vigilant in ensuring they prioritize their clients interests ahead of their own. The failure to observe these basic protections for the Buyers, together with ongoing conflict of interest that is embedded into every real estate agency, is sufficient for this panel to conclude that the Licensee preferred her interests over her Buyers', thereby breaching her fiduciary duties to them.

Phase 2 – Sanction and Costs

Sanction

On April 11, 2025, during Phase 2 of the hearing, the Registrar and the Licensee put forward a Joint Submission on Sanction (the "Joint Submission"), that was entered into evidence as Exhibit 4, and that jointly proposed the following sanctions for breaches of the Rules:

Rule 41(b)	\$4,500
Rule 41(d)	\$ 5,000
Rule 45(3)	\$ 1,000
Rule 55(1)	<u>\$ 2,000</u>
Total	\$12,500

This Hearing Panel has authority to impose sanction pursuant to its authority set out in the *Real Estate Act* ("the Act"), s.43(1) that provides, among other things that:

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:

- (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;
- (d.1) an order prohibiting the Licensee from applying for a new authorization for a specified period of time or until one or more conditions are fulfilled by the Licensee;
- (e) any other order agreed to by the parties.

The Joint Submission meets RECA's mandate to set and enforce standards of professional conduct and to protect the public; and while not binding upon this Hearing Panel, this Hearing Panel accepts that it should not deviate from the Joint Submission unless the Joint Submission on sanction would bring the administration of justice into disrepute or otherwise be contrary to the public interest¹.

The proposed sanction for each breach is within the appropriate range that this Hearing Panel can accept and that would not cause an informed and reasonable public to lose confidence in RECA as an institution.

This Hearing Panel also accepts the Joint Submission because it meets the relevant factors in deciding an appropriate sanction, as outlined in *Jaswal v Newfoundland (Medical Board)*².

Admitted Factors on Sanction

The following are relevant as mitigating factors agreed to by the parties:

1. The Licensee has agreed to forego the time and expense of a hearing by making these admissions.
2. The Licensee has no disciplinary history and has complied with the investigation conducted by RECA.
3. The Licensee has expressed remorse for the conduct in question.

The following are relevant as aggravating factors:

1. The Licensee is an experienced real estate associate.

¹ *R v Anthony-Cook* 2016 SCC 42

² 1996 Can LII 11630 (NL SC) at paragraph 36

2. The Licensee engaged in multiple breaches.
3. The Licensee advised the Buyers to waive the financing condition when they did not have financing secured, resulting in losing their \$10,000 deposit.
4. The Licensee's misconduct has had an extremely distressing and negative impact upon the Buyers financially and mentally.
5. The Licensee's conduct is serious and there is a need to promote general and specific deterrence to ensure that Ms. Sivalingam and other real estate professionals understand this conduct is wrong and will be met with consequences.

The Joint Submission is accepted as this Hearing Panel's decision on sanction. The Hearing Panel did consider whether the proposed amount was severe enough and whether an education component was required, however, the question is not whether the Joint Submission matches the sanction the Hearing Panel would have ordered. The question is whether accepting the Joint Submission would put the administration of justice into disrepute. The Joint Submission proposing a total of \$12,500 in fines aligns with precedents citing the similar breaches. After considering the *Jaswal* factors, this Joint Submission proposing a total of \$12,500 in fines is sufficient to demonstrate the seriousness with which this Hearing Panel regards the Licensee's conduct, and in particular, the nature of the offences. A total of \$12,500 in fines provides general deterrence to other members of the real estate profession and should instill confidence in the public. The Joint Submission of a total of \$12,500 is not so unreasonable that it puts the administration of justice into disrepute.

Signed this 5th day of May 2025 at the City of Calgary in the Province of Alberta.

"Signature"

[R.D], Hearing Panel Chair