

THE REAL ESTATE COUNCIL OF ALBERTA

IN THE MATTER OF section 39(1)(b) and section 41 of the *Real Estate Act*, R.S.A. 2000, c. R-5,

AND IN THE MATTER OF a Hearing regarding the conduct of **JOHN EDWARD RUDYK**, currently registered with **Real Broker AB Ltd. o/a Real Broker** and was previously registered with **Grande Prairie Associates Realty Ltd. o/a Re/Max Grande Prairie** and with **1st Grande Prairie Realty Ltd. o/a Coldwell Banker 1st Grand Prairie Realty** and with **Royal LePage - The Realty Group Ltd.** and with **Menzies Printers Ltd. o/a Royal LePage - The Realty Group**.

Hearing Panel Members: [A.T], Chair, Panel member
[J.M], Panel member
[A.S], Panel member

Application Date: November 1, 2024

Counsel for the Registrar: T. Leonardo

Counsel for the Licensee: Simon Renouf

Decision of a Hearing Panel

INTRODUCTION

This is the decision and written reasons of the Hearing Panel of the Real Estate Council of Alberta on conduct deserving of sanction with respect to the conduct of Mr. John Rudyk, a real estate associate ("the Licensee").

The hearing was held virtually on October 7th, 8th, 9th, 2024 and January 20 and February 27, 2025.

PRELIMINARY MATTERS

Neither the Registrar nor the Licensee objected to the composition of this Hearing Panel.

Jordan Application

At the outset of the hearing, the Licensee made a Jordan application, relying on the decision of the Supreme Court of Canada in *R. v. Jordan*, 2016 SCC 27, ("*Jordan*").

Both counsel for the Licensee and the Registrar were given the opportunity to submit evidence and legal submissions.

Counsel for the Licensee submitted that he was bringing a *Jordan* application, not a stay application. He argued undue delay on the basis that the allegations against the Licensee stemmed from conduct in 2016. Counsel did not adduce any evidence nor provide the Panel with any authorities to suggest that *Jordan* applied to professional disciplinary hearings.

The Registrar submitted that *Jordan* applies to criminal proceedings, and that there was no jurisprudence to suggest that a *Jordan* application could be made in the professional disciplinary context.

The Panel referred the parties to the decision of the Supreme Court of Canada in *Law Society of Saskatchewan v. Abrametz*, 2022 SCC 29 ("*Abrametz*"), where the Supreme Court rejected the argument that *Jordan* applies to professional disciplinary hearings.

The Panel asked counsel for the Licensee if he wished to bring a stay application, adduce evidence or provide the Panel with legal authorities, but counsel for the Licensee declined to do so.

The Registrar relied on the *Abrametz* decision and asked the Panel to deny the *Jordan* application and proceed with the hearing.

Upon considering the submissions of both parties, the Panel denied the Licensee's *Jordan* application and advised that we would provide our reasons as part of our Phase 1 written decision. Our reasons for rejecting the *Jordan* application follow.

The Panel was not provided by the Licensee with any legal authorities or evidence in support of his *Jordan* application.

As set out above, the Supreme Court of Canada in *Abrametz* rejected the proposition that *Jordan* applies to professional disciplinary hearings. At paragraphs 46 to 48 of *Abrametz*, the Supreme Court held as follows:

[46] Inordinate delay in administrative proceedings, as in other legal proceedings, is contrary to the interests of society. Decisions by administrative decision makers need to be rendered promptly and efficiently. Administrative delay undermines a key purpose for which such decision-making authority was delegated — expeditious and efficient decision-making.

[47] However, there are important reasons why *Jordan* does not apply to administrative proceedings. *Jordan* deals with the right to be tried within a reasonable time under s. 11(b) of the *Canadian Charter of Rights and Freedom*. No such *Charter* right applies to administrative proceedings. As such, there is no constitutional right outside the criminal context to be “tried” within a reasonable time.

[48] There are fundamental differences between criminal and administrative proceedings: *Blencoe*, at paras. 88-96. A human rights body’s investigation is aimed at determining what took place and seeks to settle the matter in a non-adversarial manner. The purpose of human rights proceedings is to eradicate discrimination, rather than to punish an offender: *Blencoe*, at paras. 94 and 126. Similar distinctions can be drawn between disciplinary and criminal matters. While the former are intended to regulate professional conduct within a limited private sphere of activity, the latter is intended to maintain public order and welfare for the broad public: *R. v. Wigglesworth*, 1987 CanLII 41 (SCC), [1987] 2 S.C.R. 541, at p. 560.

The Supreme Court in *Abrametz* rejected the calls to “*Jordanize*” *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44 (“*Blencoe*”). It went on to hold that it had dealt with abuse of process as it relates to administrative delay in *Blencoe*, where it recognized that decision makers have the power to assess allegedly abusive delay.

The Supreme Court in *Blencoe* held that delay may constitute an abuse of process in two ways: the fairness of a hearing can be compromised where delay impairs a party’s ability to answer the complaint against them, or, even when there is no prejudice to hearing fairness, an abuse of process may occur if significant prejudice has come about due to inordinate delay. *Blencoe* sets out a three-step test to determine whether delay that does not affect hearing fairness nonetheless amounts to an abuse of process. First, the delay must be inordinate. Second, it must have directly caused significant prejudice. Prejudice is a question of fact. Examples include

significant psychological harm, stigma attached to the individual's reputation, disruption to family life, loss of work or business opportunities, as well as extended and intrusive media attention. When these two requirements are met, the tribunal will proceed to a final assessment of whether the delay amounts to an abuse of process. Delay will amount to an abuse of process if it is manifestly unfair to a party or in some other way brings the administration of justice into disrepute.

The Licensee did not bring a stay application nor adduce any evidence required under the three-step test in *Blencoe*.

For these reasons, the Panel denied the *Jordan* application and ordered the hearing to proceed.

ADJOURNMENTS AND LEGAL COUNSEL HISTORY

This hearing was originally scheduled for August 27-30, 2024. The Licensee requested an adjournment to attend to a sick relative and allow newly retained counsel, Mr. Chimuk, to prepare for the hearing.

The hearing proceeded on October 7, 2024. During the Registrar's opening statement, shortly after the lunch break, counsel for the Licensee became disconnected from the hearing room. The Panel waited for counsel for the Licensee to reconnect for 20 minutes. The Panel asked the hearing administrator to get in touch with counsel for the Licensee and assist him with reconnecting to the hearing. Given that counsel for the Licensee was unable to reconnect to the hearing, the Panel adjourned the hearing for an hour to allow counsel for the Licensee to reconnect. Although counsel for the Licensee was able to briefly reconnect after the one hour adjournment, he again became disconnected, and despite the Panel waiting for him to reconnect, was unable to reconnect back to the hearing. The Panel asked the hearing administrator to ask counsel for the Licensee to attend the hearing virtually from the RECA offices where it could be ensured that he has a steady connection and no connectivity issues. The hearing administrator advised the Panel that counsel for the Licensee did not respond to this suggestion other than to ask her to re-send him the link to the virtual hearing room, which she advised she did 6 times. Despite the Panel waiting for counsel for the Licensee to reconnect, he was not able to do so.

Given that counsel for the Licensee seemed to have unresolved connectivity issues that led to the hearing adjourning at 1.40 pm that afternoon, the Panel directed that:

1) the hearing be adjourned until 9.15 am on October 8, 2024; and

2) that counsel for the Licensee attend the hearing virtually from the RECA offices, where it could be ensured that he does not have any further connectivity issues that could further delay this hearing.

The hearing proceeded on October 8, 2024 as scheduled. However, counsel for the Licensee did not attend virtually from the RECA offices as directed by the Panel, instead appearing virtually from his office. Counsel for the Licensee advised the Panel that he had addressed the connectivity problem and that there would be no further connectivity issues.

The Panel decided to proceed with the hearing so as not to waste any more hearing time. The Panel directed that if counsel for the Licensee became disconnected again, he was to immediately proceed from his office to the RECA offices and continue the hearing from there. The Panel noted that if there were any further delays to the hearing, the Panel could consider costs consequences. Lastly, the Panel noted that there were a few times on October 7, 2024, when counsel for the Licensee walked away from the screen and the Panel could not see whether he was present in the room. The Panel directed counsel for the Licensee to stay on camera while the hearing continued.

On October 9, 2024, the Licensee applied for an adjournment to allow him to retain new counsel to represent him in this matter. The Panel granted the Licensee's adjournment on the conditions set out in its written decision of that date.

On November 1, 2024, the Licensee advised that he had retained new legal counsel, Mr. Madu, and requested that the hearing be adjourned to give his new counsel time to review the file. The Panel granted that adjournment on the conditions set out in its written decision of November 14, 2024. The hearing was to continue on January 20 and 21, 2025.

On December 13, 2024, the Licensee's new counsel, Mr. Madu, submitted a Notice of Withdrawal of Lawyer of Record.

On January 20, 2025, the Licensee made a fourth adjournment request to allow him to retain new legal counsel. This Panel noted that the Registrar's last witness has had her testimony rescheduled three times and ruled that the Registrar could proceed to call its last witness on January 20, 2025 and that the Licensee could cross examine that witness without counsel. This Panel granted that adjournment on the conditions set out in its written decision of January 21, 2025.

The Licensee then retained Mr. Renouf to represent him at the continuation of the hearing on February 27, 2025. The hearing concluded on February 27, 2025.

THE CITATIONS

The Notice of Hearing set out the following allegations:

1. Between March 1, 2016 and October 1, 2016, the Licensee made representations that were reckless or intentional and misled or deceived any person or was likely to do so contrary to Rule 42(a) of the *Real Estate Act Rules*:
 - a. The Licensee was representing [K.D.] as the Buyer's real estate agent. The Licensee attended a meeting with [K.D.] and [D.S.], the mortgage broker assisting his client, where the Licensee misled [D.S.] into believing that he was there just as buyer's agent/family friend to [K.D.].
 - b. In the meeting with [K.D.] and [D.S.], the Licensee failed to communicate to [D.S.] that it would be he who would reside at the subject Property being purchased by his client.
2. Between March 1, 2016 and October 1, 2016, the Licensee participated in fraudulent or unlawful activities in connection with the provision of services contrary to Rule 42(b) of the *Real Estate Act Rules*:
 - a. The Licensee advised his client, [K.D.], to mislead her mortgage broker, [D.S.] by stating that [K.D.] would reside at the Property as her principal residence.
 - b. The Licensee did not advise his client, [K.D.], that if she did not reside at the Property as her principal residence, she would need to provide a 20% down payment.
 - c. The Licensee transferred the down payment amount to his client, [K.D.], while knowing the down payment must come from the client or her immediate family.

- d. The Licensee advised his client, [K.D.], to provide her mortgage broker, [D.S.] with a fabricated story about where the down payment came from.
- e. The Licensee failed to disclose his interest in the Property to any party in the subject transaction until 2019, when he was questioned by his Real Estate Broker after a civil claim was initiated between the parties.

THE *REAL ESTATE ACT RULES*

Rules 42(a) and (b) of the *Real Estate Act Rules* provide that:

42 Licensees must not:

- (a) make representations or carry on conduct that is reckless or intentional and that misleads or deceives any person or is likely to do so;
- (b) participate in fraudulent or unlawful activities in connection with the provision of services or in any dealings.

THE DECISION

After hearing all of the evidence, the submissions of counsel for the Registrar and counsel for the Licensee, the Panel found that the Licensee breached both Rules 42(a) and (b) of the *Real Estate Act Rules*, that the following citations were made out, and that this conduct is deserving of sanction:

1. Between March 1, 2016 and October 1, 2016, the Licensee made representations that were reckless or intentional and misled or deceived any person or was likely to do so contrary to Rule 42(a) of the *Real Estate Act Rules*:
 - a. The Licensee was representing [K.D.] as the Buyer's real estate agent. The Licensee attended a meeting with [K.D.] and [D.S.], the mortgage broker assisting his client, where the Licensee misled [D.S.] into believing that he was there just as buyer's agent/family friend to [K.D.].
 - b. In the meeting with [K.D.] and [D.S.], the Licensee failed to communicate to [D.S.] that it would be he who would reside at the subject Property being purchased by his client.

2. Between March 1, 2016 and October 1, 2016, the Licensee participated in fraudulent or unlawful activities in connection with the provision of services contrary to Rule 42(b) of the *Real Estate Act Rules*:

- a. The Licensee advised his client, [K.D.], to mislead her mortgage broker, [D.S.] by stating that [K.D.] would reside at the Property as her principal residence.
- c. The Licensee transferred the down payment amount to his client, [K.D.], while knowing the down payment must come from the client or her immediate family.
- d. The Licensee advised his client, [K.D.], to provide her mortgage broker, [D.S.] with a fabricated story about where the down payment came from.
- e. The Licensee failed to disclose his interest in the Property to any party in the subject transaction until 2019, when he was questioned by his Real Estate Broker after a civil claim was initiated between the parties.

The Panel found that Citation 2. b. was not made out.

THE EVIDENCE

The citations arose out of the Licensee's conduct during a real estate purchase transaction that took place in 2016. The following evidence was adduced at the hearing.

Testimony of [K.D.]

[K.D.], the Licensee's client, testified that at the time of the purchase, [K.D.] and the Licensee were close friends. She explained that they were previously involved in a romantic relationship, which lasted for six to eight months, but that the romantic relationship ended in February of 2014.

On cross examination, it was suggested to [K.D.] that the romantic relationship between her and the Licensee was on and off, and that there was a romantic relationship between [K.D.] and the Licensee at the time of the purchase of the New Property. [K.D.]'s evidence was consistent throughout that while she had been in a romantic relationship with the Licensee for a period of 6-8 months in and around 2013, after that time period, they were close friends and were not involved romantically.

It was [K.D.]'s evidence that around the time of the transaction, the Licensee was going through a divorce and disclosed to her that he could not qualify for a

mortgage. She testified that the Licensee was a close friend, that she thought he was a great dad, and that she proposed that she and Licensee could buy a house together for the Licensee and his kids to live in in what she described as a "rent to own" arrangement. At the time, [K.D.] owned her own single family home which she resided in.

The initial plan was for [K.D.] and the Licensee's adult son to purchase both sides of a duplex together for the Licensee and his adult son to live in, with the son and [K.D.] signing the mortgage together. [K.D.] testified that she was advised by a mortgage broker that buying an entire duplex was a big commitment, and that this plan ultimately fell through after the Licensee's adult son decided to purchase his own home. An exclusive buyer representation agreement listing [K.D.] and the Licensee's adult son as buyers dated March 1, 2016 was entered as evidence at the hearing.

[K.D.] told the Panel that when the duplex deal fell through, the Licensee was extremely upset. He then suggested that since [K.D.] was already approved for a mortgage, she could purchase a single-family home for him to live in instead. [K.D.]'s evidence was that the Licensee refused to be on the mortgage with her and told her that he could not qualify for a mortgage because he had a business and didn't pay himself a wage.

[K.D.] agreed and proceeded to purchase a single-family home for \$318,000 (the "New Property") with \$10,000 cash back for improvements.

[K.D.]'s testified that she and the Licensee agreed to the following terms with respect to the purchase of the New Property:

- After three years, the Licensee would purchase the New Property from [K.D.] and take over the mortgage.
- The Licensee would pay the down payment and all the mortgage payments and property taxes.
- [K.D.] would not be out of pocket for anything.
- [K.D.] would get a three-year mortgage, and the Licensee would qualify for his own mortgage in three years time.

[K.D.] found a residential tenancy agreement on the internet and had the Licensee sign it. The Residential Tenancy Agreement dated August 1, 2016 between [K.D.] as landlord and the Licensee as tenant (the "RTA") was entered into evidence. The term of the RTA was three years, which was meant to align with the term of the mortgage. Under the RTA, the Licensee was to pay a security deposit of \$1,800 and rent of

\$1,800 every month. The RTA also provided that the Licensee would be responsible for the utilities and home insurance.

It was [K.D.]’s evidence that at no point in time did she plan to move out of her existing residence into the New Property. She testified that the Licensee told her that for the deal to go through, she would have to tell the mortgage broker that she would be living in the New Property.

[K.D.] testified that the purchase price was determined by both the Licensee and [K.D.].

She stated that both the initial \$1000 deposit and the additional \$4000 deposit were provided by the Licensee and that the Licensee asked her to open a new bank account for the purchase of the New Property. A bank statement for that account was entered into evidence. It showed the Licensee deposited \$15,900 into [K.D.]’s account on June 29, 2016. [K.D.] evidence was that the \$15,900 was deposited by the Licensee into the account for the deposit and down payment for the New Property.

A 5% down payment was put down for the purchase of the New Property. When asked who told her she had to put down a 5% down payment on the New Property, [K.D.] testified that the Licensee told her that she would have to say that the New Property would be her primary residence so that a 20% down payment would not be required. She testified that the Licensee told her she could not purchase the New Property as a secondary residence because secondary residences require a 20% down payment, and the Licensee did not want to put down a 20% down payment.

The lawyer’s file for the purchase of the New Property was entered into evidence. The Trust Reconciliation statement from the lawyer’s file stated that \$10,900 of the funds paid in were paid by John Rudyk, and a further \$3,217.28 in funds were paid by 1555390 Alberta Ltd. It was [K.D.]’s evidence that 1555390 Alberta Ltd. was the Licensee’s corporation.

The residential purchase contract for the New Property was entered into evidence. It showed [K.D.] as the sole purchaser of the New Property.

A receipt and contract for the inspection of the New Property by [P.B Inspection] were entered into evidence. Both the receipt and contract listed John Rudyk as the party the inspection was done and paid for.

It was [K.D.]’s evidence the Licensee attended all the meetings required with respect to the purchase of the New Property, including all the meetings with the lawyer and mortgage broker.

The mortgage broker's file was entered into evidence. The mortgage commitment letter from the bank listed "owner occupied property" as a condition of approval of the mortgage. When asked whether her mortgage broker reviewed this condition with her, [K.D.] said she could not recall. When asked what she told the mortgage broker about who would be living in the New Property, [K.D.] testified that she was told by the Licensee that she would have to tell the mortgage broker that she would be living in the New Property so that it would be classified as her primary residence for mortgage purposes. [K.D.] stated that the Licensee told her that they could later say that they broke up, and that people do this all the time.

[K.D.] could not recall what the Licensee told the mortgage broker about living in the New Property.

When asked what conversations she had with the Licensee about what to tell the mortgage broker about the gift letter, [K.D.] testified that the Licensee told [K.D.] that he could not provide the down payment for the New Property because he was not a direct family member. She further testified that the Licensee told her that she needed to have her parents sign a gift letter so that it looked like it was her parents and not the Licensee that provided the down payment for the New Property. [K.D.] gave evidence that her parents provided a gift letter that stated that they gifted her \$15,900 for the down payment for the New Property, when in fact that \$15,900 came from the Licensee, not her parents.

The mortgage broker's file showed that [K.D.] would be receiving a monthly rental income of \$2,500. When asked about this, [K.D.] advised that to qualify for the mortgage for the New Property, it had to look like she was renting out her existing residence and receiving rental income. When asked whether at the time of the purchase of the New Property she was planning to rent out her existing residence, [K.D.] stated she was not, but that the Licensee told her that she had to say that she was in order to qualify for the mortgage.

[K.D.] testified that she and the Licensee had a falling out. After the falling out, the Licensee stopped paying the mortgage on time. It was [K.D.]'s evidence that in the months when the Licensee failed to transfer the mortgage payments into her account, she had to pay the mortgage out of her own funds because she did not want the mortgage to go into default. The arrangement became very stressful for [K.D.] and she asked her parents to take over dealing with the Licensee and the managing of the New Property.

As the three-year agreed upon timeline approached, the Licensee did not get his own mortgage. Instead, it was [K.D.]'s evidence that the Licensee requested that

[K.D.] jointly sign a mortgage with him, which [K.D.] refused, telling him that if he wanted to stay in the New Property, he would have to sign a new tenancy agreement. When the Licensee did not get his own financing, [K.D.] thought she may sell the New Property, retained a new real estate licensee and provided notice that she would be entering the New Property. When she entered the New Property, [K.D.] realized that the Licensee was no longer living there. She stated that she was told that the Licensee had sublet the New Property for 17 months and collected \$2,100 per month in rent from the tenant.

It was [K.D.]'s evidence that the Licensee then served her with a civil claim demanding that she repay him \$64,122.19 that he paid for the down payment, legal fees, principal portion of mortgage payments, and improvements he made to the New Property. The Civil Claim filed by the Licensee against [K.D.] was entered as an exhibit at the hearing.

After being served with the claim, [K.D.] retained a lawyer to defend her and was told by her lawyer that the arrangement she entered into with the Licensee was mortgage fraud.

[K.D.] and the Licensee went to mediation and she ultimately agreed to pay the Licensee \$18,000 to settle the claim.

[K.D.] then spoke to her lawyer about having the Licensee accountable for his actions, and the lawyer suggested that [K.D.] report the Licensee to RECA.

[K.D.] testified that she then disclosed the true nature of the transaction to the real estate lawyer, mortgage broker and bank.

[K.D.] met with [B.D.], the Licensee's broker at the time, to explain what occurred. She also met with [M.L.], the manager of [D.S.], the mortgage broker. The conversation between [K.D.] and [M.L.] was summarized by [M.L.] in an email to [K.D.], which email was entered as an exhibit at the hearing. In response to the email, [K.D.] wrote that the Licensee misinformed her on the gravity of this dealing and repeatedly told her that "people do it all the time", not mentioning that it was mortgage fraud.

On cross examination, [K.D.] was asked whether she was angry at the Licensee for losing the lawsuit. Her response was the claim was settled for \$18,000, that she didn't lose and that she feels fine about it now.

[K.D.] testified that she felt let down by the Licensee for encouraging her to participate in mortgage fraud. She stated that the Licensee reassured her that banks don't care so long as the mortgage payments are made.

Testimony of [S.D.]

[S.D.], [K.D.]'s mother, testified that she met the Licensee about eight years ago through her son and [K.D.].

It was her evidence that [K.D.] and the Licensee were friends.

[S.D.] testified that [K.D.] never lived in the New Property and that she never heard [K.D.] say that she intended to live in the New Property.

When asked about the gift letter, [S.D.] admitted that she signed the gift letter even though she did not give [K.D.] the money for the down payment for the New Property.

[S.D.] confirmed that she and her husband took over managing the New Property after the Licensee and [K.D.] stopped getting along and after the Licensee stopped paying the rent on time.

In October of 2018, [S.D.] sent the Licensee a letter advising him that she and her husband have taken over the management of the New Property and that rent needs to be paid on time. The letter went on to state that:

It is unfortunate that the situation has deteriorated to this point, but as I'm sure you can appreciate we have to look out for the best interest of [K.D.]. At the beginning of this situation she agreed to help you based on you upholding your verbal and written agreement. To date this has not happened (rent not paid on time, minimum 2 payments in account at all times) and therefore we have had to step in....

When asked what verbal agreement she was referring to in the letter, [S.D.] explained that the Licensee and [K.D.] had discussed extensively what would happen, that the Licensee wanted to purchase the New Property but could not get the financing, so [K.D.] purchased the New Property for the Licensee to live in.

[S.D.] was asked about an email the Licensee sent [S.D.] in March of 2019, where the Licensee wrote the following:

... The agreement that I have with [K.D.] is that I mortgage the property in my name to take her off and that has been the agreement all along. I

have more into the home than a downpayment. I have also put approximately \$13,000 to \$14,000 into the home including a new hot water tank this week. Also, I have to pay the CMHC premium out when I do the new mortgage. [K.D.]’s intention and agreement was for me to own the home once I was able to qualify for a mortgage by the end of the term - which I am intending to do. I’m unsure why [K.D.] has decided not to talk to me but it's definitely unfortunate and unfair to me.

[S.D.] testified that she thought that at the three-year point, the Licensee would get a mortgage of his own. However, the Licensee continued to be late on his rent payments, causing [S.D.] to seek legal advice.

On June 6, 2019, [S.D.] wrote to the Licensee advising him that she needed him to enter into a purchase agreement for the New Property by June 25, 2019 so that she would have enough time for a contingency plan in case the Licensee’s purchase would not go through and [K.D.] needed to arrange new financing for the New Property. That same day, the Licensee responded that he will have something together by then.

However, on June 25, 2019, the Licensee emailed [S.D.] that:

...I have a couple of options that I’m working on. As I have already put a substantial amount of money into this home, the best option is to avoid having to come up with another full 5% down would be to add me or *mu assignee* to the mortgage and then have the mortgage assumed for a short term and then I can remortgage without putting a downpayment down. The other option is a little more involved and would require time to make arrangements.

That same day, [S.D.] responded that assuming the mortgage was not an option, that [K.D.] would be signing a new mortgage on July 2, 2019 and that the Licensee had until then to have all his paperwork done.

The Licensee then asked why [K.D.] was signing a new mortgage now when the old mortgage would not be up until July 29, 2019.

Two days later, [S.D.] responded that after much discussion, [K.D.] decided to remortgage the New Property herself given that it seemed that the Licensee was having difficulty securing financing. [S.D.] advised the Licensee that they could discuss another rental agreement if he wished.

[S.D.] testified that the Licensee did not sign another rental agreement. As a result, [K.D.] provided notice that she would be entering the New Property, which was when [K.D.] found that someone other than the Licensee was living in the New Property, that the Licensee had not lived there since 2018, and that the occupants of the New Property were paying the Licensee \$2,100 in rent per month.

Testimony of [B.D.]

[B.D.] was the Licensee's broker at the time of the transaction.

[B.D.] testified that in the transaction at issue, the Licensee was representing both the seller and the buyer. The Agreement to Represent Both Seller and Buyer between the brokerage, the seller and [K.D.] was entered into evidence. [B.D.] explained that when a real estate licensee is representing both the seller and buyer, different disclosure requirements apply, and that given that the Licensee was representing the seller, any interest the Licensee may have had in the New Property should have to be disclosed by the Licensee in writing and that it would put the Licensee in a conflict of interest.

It was [B.D.]'s evidence that it was brokerage policy to disclose any conflict of interest in writing. [B.D.] went on to say that she could not recall whether the Licensee disclosed that he had a conflict of interest in this transaction, but that when she reviewed the brokerage file, she did not see any written indication that the Licensee disclosed his conflict of interest in writing. She went on to state that a conflict of interest should have been written into the contract.

When asked whether a romantic relationship between the buyer and the real estate licensee should have been disclosed to the seller where an Agreement to Represent Both Seller and Buyer was entered into, [B.D.] advised that a romantic relationship between the buyer and the real estate licensee would be a conflict of interest and would have had to have been disclosed.

When asked whether the Licensee told [B.D.] that he was in a romantic relationship with [K.D.], [B.D.] stated that she did not know the two had been in a romantic relationship until the Licensee advised [B.D.] that he was going to mediation with an ex-girlfriend.

[B.D.] explained that the receipt of funds document that records where the deposit for the purchase of a property came from is a federal requirement designed to prevent money laundering.

It was [B.D.]’s evidence that the records on the brokerage file did not show that the Licensee paid the deposit, and that if the deposit had in fact been provided by the Licensee, additional documentation would have had to have been completed.

[B.D.] confirmed that it was common industry knowledge that a down payment of 20% was required by a buyer who would not be living in the property.

She further advised that it was also common industry knowledge, even for brand new agents, that down payments could only come from direct family members, that is, fathers, mothers or siblings.

[B.D.]’s evidence was that after the mediation, [K.D.] called her and advised her that she wanted to see her immediately. [B.D.] noted that [K.D.] stated that she was really upset about the outcome of the mediation, that she could accuse the Licensee of mortgage fraud but that she would not come after the Licensee’s career if he “released” her from paying the amount they settled at during the mediation.

[B.D.] said she told [K.D.] that she was leaving for a two-week holiday and then met with the Licensee, who told her that a judge awarded him the mediated amount and that [K.D.] should not be talking to [B.D.] about the outcome of the mediation. [B.D.] then spoke with [K.D.] and asked her if she would talk to the Licensee, which [K.D.] refused, stating that if the Licensee didn’t “release” her from paying the amount agreed to at the mediation, she would report him to RECA.

When asked what is the term for when someone provides incorrect information on a mortgage application, [B.D.] replied that it is mortgage fraud.

When asked what obligations a real estate licensee has if they know of mortgage fraud, [B.D.] replied that the obligation is to report mortgage fraud immediately.

[B.D.] further stated that the Licensee did not disclose any mortgage fraud to her with respect to this transaction.

When asked what she would have done if the Licensee had told her that the buyer was lying on her mortgage application, [B.D.] responded that she would have had to notify the mortgage broker, RECA and the RCMP.

Evidence of [D.S.]

[D.S.] is a mortgage broker who facilitated the financing for the New Property. [D.S.] testified that she knew the Licensee, that they met many times, did business together, were in business development groups together, and that the two of them

were close for many years. She further stated that she was introduced to [K.D.] by the Licensee.

[D.S.] testified that she did not see any indication of fraud at the time of the transaction. It was her evidence that [K.D.] and the Licensee came to meet with her together, but that this was not unusual for the Licensee to accompany his clients to their meetings with her. [D.S.] gave evidence that she was told that the Licensee and [K.D.] were family friends and that neither the Licensee nor [K.D.] disclosed to her that they were in a romantic relationship.

[D.S.] explained that a condition of the bank's mortgage commitment for the New Property was that the New Property be owner occupied. When asked why this was a condition, [D.S.] explained that whether a property is owner occupied determines the minimum amount of down payment required by the lender, with owner occupied properties requiring a 5% down payment but rental properties requiring a 20% down payment.

[D.S.] explained that an owner-occupied property with a 5% minimum down payment is backed by the Canada Mortgage and Housing Corporation ("CMHC"), and that a rental property requires at least a 20% down payment because it is not backed by the CMHC.

[D.S.] stated that [K.D.] told her that she intended to live in the New Property and rent out her existing home.

It was [D.S.]'s evidence that the Licensee did not tell her he would be living in the New Property, nor that [K.D.] would not be living in the New Property, nor that he and [K.D.] would be living in the New Property together.

[D.S.] stated that it was a condition of the mortgage financing that [K.D.] would be receiving rental income of \$2,500. When asked why this was a condition of the financing, [D.S.] explained that lenders want confirmation that buyers are going to rent out their existing property and receive that extra income. She further explained that an appraisal of [K.D.]'s existing property was required by the lender.

[D.S.] advised that at the time, it was a rule that a gift for a down payment could only come from a relative. When asked if a down payment could come from a romantic partner, [D.S.] stated that at the time, that was not permitted unless the money sat in the buyer's bank account for 90 days. [D.S.] further stated that if a down payment came from a romantic partner, she would have expected that to be disclosed.

[D.S.] testified that she and the Licensee exchanged emails in which she advised the Licensee that the down payment needed to come from a family member.

The email exchanges were entered into evidence.

On June 19, 2016, [D.S.] sent an email to the Licensee stating that "in regards to the gift money, I will need a gift letter signed if the money hasn't sat in her account for 90 days." The Licensee responded by asking "and if the money is from me and we're not family is that a problem?", to which [D.S.] replied that "yes, the gift needs to be from a family member." The Licensee then sent another email asking "and the gift letter needs to be from her parents but the money can come from anywhere?"

There was no written response from [D.S.] to the Licensee's last email.

When asked what steps she would have taken had she been advised that it was the Licensee and not [K.D.]'s parents that provided the down payment, [D.S.] stated that she would have advised that either the money had to sit in [K.D.]'s bank account for 90 days or that the Licensee had to apply for the mortgage as an applicant.

When asked what would have happened had the lender been advised that [K.D.] did not receive the down payment from her parents, [D.S.] advised that the financing would have collapsed. [D.S.] further stated that this would be mortgage fraud and that the lender was relying on the client and the mortgage broker to be honest so that they can properly assess the risk.

When asked whether at any point the Licensee or [K.D.] advised her that the conditions of the mortgage commitment would not be met, [D.S.] stated no.

[D.S.] explained that as the sole purchaser, [K.D.] was responsible for the mortgage, and that if [K.D.] would have failed to make the mortgage payments, the lender would have foreclosed on the New Property.

It was [D.S.]'s evidence that in the fall of 2019, [K.D.] met with her to give her a heads up that she would be reporting the Licensee to RECA on the basis that the information provided in the mortgage application was not true. Upon learning the information, [D.S.] immediately informed her broker, who then summarized what [K.D.] told her in an email, which email was entered into evidence at this hearing.

On cross examination, [D.S.] was asked whether she recalled the Licensee discussing his relationship with [K.D.] with her. [D.S.] answered that she did not.

[D.S.] was also asked whether she recalled the Licensee telling her that he and [K.D.] were together and that they intended to live in the New Property together once it was renovated. [D.S.] answered that she did not.

[D.S.] could not recall who dropped off the gift letter.

It was her evidence that she ordered the appraisal of [K.D.]'s existing property as it was required as part of her due diligence.

When asked whether romantic partners can provide gift letters for down payments now, [D.S.] stated that the rules changed a year and a half ago and that common law or romantic partners can now provide gift letters for down payments.

When asked whether back then, if a common law couple wanted to buy a home, gift letters were signed by family members so as to avoid having the money sit in an account for 90 days, [D.S.] responded that she had heard of that happening but that she had not seen it herself, and that the rules did not allow it.

When asked by the Panel about whether at the time of the transaction, she knew that the Licensee and [K.D.] had at any point been in a romantic relationship, [D.S.] answered that she did not, and that at the time of the transaction, she thought they were family friends because that is what she was told.

When asked by the Panel whether the email from the Licensee asking whether if the money was from him and they were not family was a problem, [D.S.] admitted that the email did raise alarm bells for her but that she was firm that she needed a gift letter from a family member.

[D.S.] was asked by the Panel whether she responded to the last email from the Licensee in which he asked whether the gift letter could come from [K.D.]'s parents but the money could come from anywhere, [D.S.] stated that she did not because that would be mortgage fraud, and that if a question like this was asked of her, her response would be that the money either had to sit in [K.D.]'s account for 90 days or that she needed a gift letter from a family member.

[D.S.] testified that she did not recall whether she and the Licensee had any further conversations about the gift letter or the source of the down payment, but that if they did, she would have told him the same things she stated in her emails.

When questioned by the Panel whether in 2016 she knew that the Licensee would be living in the New Property, [D.S.] responded that she did not.

When asked who she thought would be living at the New Property at the time the deal was funded, [D.S.] responded that she thought [K.D.] would be living in the New Property.

[D.S.] denied that she ever saw or was made aware of the Residential Tenancy Agreement between the Licensee and [K.D.].

Testimony of [R.B.]

[R.B.], a senior investigator at RECA, testified for the purpose of entering the following documents into evidence:

- The RECA file for the Licensee;
- The mortgage broker's file;
- The corporate search for 1555390 Alberta Ltd.

Testimony of Licensee, John Rudyk

The Licensee told the Panel that he had been a licensed real estate agent for 21 years and that he had no previous disciplinary history with RECA. He stated that he was an active community member, involved in his children's schools and various community boards, including sitting on the Grande Prairie combative sports commission for the past six years. The Licensee was also elected for a third term on the Grande Prairie and Area Association of Realtors, an organization that represents the Grande Prairie members on a local and national level.

The Licensee denied that he misled anyone with respect to the transaction. He stated that it was likely that [D.S.] was aware of his relationship with [K.D.] given that he and [K.D.] socialized with [D.S.] and the rest of the Grande Prairie real estate community, and that he and [D.S.] attended lunches together as part of a business networking group. He gave evidence that [K.D.] was his date to his work Christmas party, but later admitted that [D.S.] was not present at that party.

The Licensee told the Panel that it was his view that he disclosed everything he needed to disclose to [D.S.]. He pointed to the email correspondence between him and [D.S.] and stated that he did disclose to [D.S.] that he was the source of the gift money. He stated that he did not know what [D.S.] told the lender about who was the source of the gift money, that the wording of the gift letter came from [D.S.] and that [D.S.] gave the gift letter to [K.D.] for her parents to sign.

It was his view that the gift letter did not say anything untrue, and stated that he had no role in signing the gift letter or providing it to [D.S.].

The Licensee denied that he had any interest in the New Property at the relevant time.

The Licensee stated that while he represented [K.D.], he did not represent the seller and that another agent in his brokerage represented the seller.

He said that he waived the commission on the transaction based on his relationship with [K.D.].

He testified that just prior to getting possession of the New Property, he signed the residential tenancy agreement.

It was the Licensee's evidence that the original plan for the New Property was that he and [K.D.] would move in together. The Licensee stated that [K.D.] had said that she did not want the Licensee's kids moving into her existing home and that she wanted the two of them to buy a new home. The Licensee testified that [K.D.] continued to live in her existing home after the transaction.

When asked whether [K.D.] told [D.S.] that she would not be renting out her existing home, the Licensee stated that he did not know.

The Licensee told the Panel that he and [K.D.] disclosed to [D.S.] that they were planning to live in the New Property together when they met with her to discuss obtaining financing for the New Property.

He testified that shortly after the offer for the New Property was written, he went to his broker's, [B.D.], office and told her about the transaction. He stated that he showed [B.D.] all the paperwork he had prepared and that she advised him that another real estate licensee at their brokerage had done the same thing.

The Licensee left [B.D.]'s brokerage in 2022.

When asked whether he told [K.D.] to mislead her mortgage broker about who would be living in the New Property, the Licensee denied doing so. He stated that [D.S.] was aware that [K.D.] had not rented out her existing home, and that is probably why [D.S.] requested an appraisal of [K.D.]'s existing home.

The Licensee testified that he advised [K.D.] that if she did not reside at the New Property as her principal residence, she would need to provide a 20% down payment and on the difference between a CMHC and non CMHC mortgage.

When asked whether he transferred the down payment for the New Property to [K.D.] while knowing that the down payment must come from the buyer or a family member, the Licensee stated that this was not true, that he and [K.D.] knew that the alternative was for them to wait 90 days for the money to sit in [K.D.]'s account, that any suggestion that the deal would have collapsed if the money had to sit in [K.D.]'s account for 90 days was speculation.

The Licensee denied that he advised [K.D.] to provide [D.S.] with a fabricated story of where the down payment came from. He pointed to the emails between him and [D.S.] and stated that [D.S.] was aware that he was the source of the down payment.

With respect to the allegation that the Licensee failed to disclose his interest in the New Property until 2019, the Licensee initially stated that he did not have any interest in the New Property in 2016, although he later stated that technically he did have an interest in the New Property in 2016 in that he was going to be living there as a tenant.

It was the Licensee's evidence that in 2019, [K.D.] stopped communicating with him, and most of the communications from that point in occurred between the Licensee and [S.D.]. While the Licensee had some discussions about assuming the mortgage for the New Property in 2019, that transaction did not proceed. When asked about when he moved out of the New Property, the Licensee answered that it was after things became difficult between him and [K.D.]. The Licensee stated that [K.D.] broke things off with him and he then became involved in another relationship, which made [K.D.] angry. It was the Licensee's evidence that this is when things got difficult, and he talked to his new girlfriend about moving in together which is what they eventually did. This occurred about 2 years after he moved into the New Property.

The Licensee testified that it was publicly known that he had moved in the New Property in 2016. He moved into the New Property with his two youngest children and he met the neighbours.

With respect to his Civil Claim against [K.D.], the Licensee stated that both he and [K.D.] were represented by lawyers and that both parties attended the mediation with their lawyers. His evidence was that the outcome of the mediation was that [K.D.] agreed to pay him back approximately \$18,000 to compensate him for the amount he put down as a down payment for the New Property and for the legal fees.

The Licensee stated it should raise concern that [K.D.]'s complaint to RECA was made right after the mediation.

When asked whether between 2016 and 2019 [K.D.] raised any concerns about the purchase of the New Property, the Licensee stated that [K.D.] did not have any concerns about the transaction until after he commenced his civil claim against [K.D.]. The Licensee stated that the lawyer that represented [K.D.] in the purchase of the New Property was aware of all of the circumstances of the transaction.

The Certificate of Title for the New Property dated February 2025 was entered into evidence. It showed that [K.D.] remains the registered owner of the New Property and that the original lender who lent the mortgage funds in 2016 still had a mortgage registered on title.

The Licensee testified that he made improvements to the New Property to make it nice for him and his family.

It was the Licensee's opinion that there was sufficient value in the New Property now to protect both [K.D.] and the lender because the values of real estate in Grand Prairie have gone up since the New Property was purchased.

On cross examination, the Licensee admitted that at the time the New Property was purchased, his credit was not good and he could not qualify for a mortgage. When asked about how long he had been in a relationship with [K.D.], the Licensee stated that the relationship lasted for a year or more and then it went back and forth. When asked if he had any evidence that he and [K.D.] were in a relationship at the time the New Property was purchased, the Licensee stated that he had photographs and that people had seen the two of them together, but that he did not have any of that evidence at the hearing.

The Licensee testified that [K.D.] never moved into the New Property.

When asked why he and [K.D.] entered into a rental agreement at the time the New Property was purchased if they were in a relationship and were going to move into the New Property together, the Licensee stated that [K.D.] insisted on entering into the rental agreement.

When asked whether he told his broker that he had an interest in the New Property, the Licensee answered that he told her that he would be living in the New Property and that she was aware that he was the one making the down payment. When it was suggested by counsel for the Registrar that there was nothing on the brokerage file indicating that he told his broker that he had interest in the New Property, the Licensee stated that he made a note on the file folder of the date of the conversation he had with [B.D.] but that because he was no longer with the brokerage, he no longer had access to his emails or the file.

The Licensee was asked whether he thought he had an interest in the New Property given that he had put down the down payment, and paid the legal and inspection fees. He responded that he did not think he had an interest in the New Property and that he wasn't a lawyer.

The Licensee stated that he could not say whether the brokerage had policies with respect to having interest in a property.

The Licensee was asked why he stated in the documentation that he filled out that the deposit came from [K.D.] if he was the one who paid the deposit. The Licensee responded that the document referred to [K.D.] as the buyer, not the person who put down the deposit.

The Licensee denied that he lied about who was going to be living in the New Property so that a 20% down payment would not be required.

Counsel for the Registrar pointed out that the Licensee took a mortgage fraud course in 2005 and attended many other professional development courses that addressed mortgage fraud. She then asked whether it is mortgage fraud if someone lies on a mortgage application. The Licensee answered that he did not know but that it could be. The Licensee agreed that as real estate licensee, he had an obligation to prevent mortgage fraud and to report any suspected mortgage fraud to his broker.

When asked why he thought that [D.S.] must have known that he and [K.D.] were in a relationship, the Licensee responded that Grande Prairie is a small community, that they were friends and talked to each other at industry meetings.

The Licensee agreed that it was important for the mortgage broker to know that he and [K.D.] were in a relationship.

The Licensee testified that it was [D.S.] that provided the gift letter to [K.D.]'s parents.

On cross examination, the Licensee admitted that he knew that given that he was the one paying the down payment, the gift letter was not true. When asked whether he thought that this was mortgage fraud, the Licensee responded that when someone is in a relationship with the purchaser, they should be able to provide a gift letter. When asked about the rules about gift letters at the time of transaction, the Licensee answered that he could not remember, but that there was an option to have the money sit in the purchaser's bank account for 90 days and avoid having to provide a gift letter. When asked why he did not do that on this transaction, the Licensee responded that there was not enough time and that he could not remember. The Licensee stated that he did not ask [K.D.] to provide a fake gift letter,

and that he did not remember what the lender's conditions for financing were because it was too long ago and it was not a document that he was required to sign.

When asked what he would do if a client came to him and said they would be providing a fake gift letter, the Licensee responded that he would tell the client to talk to the mortgage broker.

The Licensee stated that he was a real estate licensee, not a mortgage broker, and that he assisted on the transaction for a house that he and [K.D.] would eventually live in together. When asked when he found out that [K.D.] would not be moving into the New Property, the Licensee stated that [K.D.] moving in was an ongoing discussion and that he found out she would not be moving in when their relationship ended. The Licensee maintained that [K.D.] told him that if the two of them were going to live together, it would be in the New Property.

The Licensee testified that he did not know that [K.D.] told [D.S.] that she would be renting out her existing property and that at the time of the transaction, [K.D.] had not decided whether she would be renting out her existing property.

When asked by the Panel what was his and [K.D.]'s intention for the New Property at the time of the transaction, the Licensee answered that it was for him to move in and for [K.D.] to move in later. He explained that they didn't have a specific timeline, that they were renovating the New Property, and that their relationship had lots of ups and downs.

When asked by the Panel what was his and [K.D.]'s intention for the long term, the Licensee answered that it was for them to live in the New Property together and after three years, for him to remortgage the property in his name or for the two of them to remortgage it together.

When asked whether he thought he had an interest in New Property given that he was paying the 5% down payment, the Licensee answered that he didn't think he had an interest upfront, that his interest would come after the fact once the two of them remortgaged the New Property in both of their names.

The Licensee stated that while he was present when [K.D.] met with [D.S.], the gift letter and where the down payment came from were not discussed at their meeting.

He further stated that he attended the meeting between [K.D.] and the lawyer because [K.D.] asked him to attend.

When asked whether he paid a security deposit required under the RTA, the Licensee stated that he eventually paid the security deposit.

The Licensee was referred to his email to [S.D.] dated March 14, 2019, where he stated that the agreement between him and [K.D.] was that he mortgage the New Property in his name to take her off and that “that has been the agreement all along”. The Licensee was asked what he meant by “all along”. He stated that he meant in the last couple of months because their relationship was breaking down.

THE PARTIES’ SUBMISSIONS

The Registrar’s submissions

With respect to the breach of Rule 42(b), Counsel for the Registrar submitted that the evidence clearly shows that the Licensee engaged in mortgage fraud. He took multiple steps to ensure he had a house to move into and convinced [K.D.] that their scheme had no consequences. They were close friends, but even if they were in a romantic relationship, it did not matter because the evidence was clear that [K.D.] never intended to move into the New Property. The agreement between them was that after three years, the Licensee would get his own mortgage.

The Registrar argued that the Licensee’s actions were self serving. He had opportunities to be forthcoming about what was really happening, but he chose not to. He sat in a meeting with the mortgage broker and didn’t disclose that he would be living in the New Property nor that he was the one paying the down payment. The Registrar submitted that the Licensee had an obligation to tell the mortgage broker that he and [K.D.] were in a romantic relationship, he could not just assume that she knew. It was submitted that these were facts that were important to the lender, and that lenders need to know who has an interest in a property to assess their risk.

The Registrar argued that it didn’t matter if [K.D.] or anyone else was a participant in the mortgage fraud. The Registrar pointed out that Rule 42(b) states that licensees must not “participate in fraudulent or unlawful activities in connection with the provision of services or in any dealings.” Accordingly, even if the Licensee was one of the participants in fraudulent activity, that would be a breach of Rule 42(b).

The Registrar submitted that the conduct at issue took place “during the provision of services” when the Licensee was acting as a real estate agent for [K.D.].

She referred the Panel to the definition of fraud in s. 380 of the *Criminal Code*, and the case in *R. v. Olan*, [1978] 2 S.C.R. 1175 (“*Olan*”), where the Supreme Court of

Canada found that it was not essential that there be actual economic loss as the outcome of the fraud for a court to find fraud.

The Registrar argued that the Licensee told [K.D.] to lie about the source of the down payment and about who would be living in the New Property and that he knew that these lies would result in her being able to secure the financing. Furthermore, the Licensee withheld important information from the mortgage broker and his own broker and the non-disclosure of these important facts was fraud.

The Registrar submitted that it met the dishonesty component of the definition of fraud.

The Registrar pointed out that in *Olan*, the Supreme Court of Canada held that the element of deprivation in fraud is satisfied on proof of detriment, prejudice, or risk of prejudice to the economic interests of the victim, and that it was not essential that there be actual economic loss as the outcome of the fraud.

The Registrar submitted that the Licensee's actions put the lender's interest at risk.

Moreover, the Registrar argued that [K.D.] was put in a position where she was the only one legally responsible for the mortgage, and her credit would have been affected if mortgage payments were not made.

As a result of the scheme, [K.D.] had to pay the Licensee \$18,000.

The Registrar submitted that the actus rea of fraud was met.

With respect to the mens rea, the Registrar referred the Panel to the Supreme Court of Canada decision in *R. v. Theroux*, [1993] 2 S.C.R. 5, where the Supreme Court of Canada stated that:

The mens rea would then consist in the subjective awareness that one was undertaking a prohibited act (the deceit, falsehood or other dishonest act) which could cause deprivation in the sense of depriving another of property or putting that property at risk. If this is shown, the crime is complete. The fact that the accused may have hoped the deprivation would not take place, or may have felt there was nothing wrong with what he or she was doing, provides no defence.

The Registrar submitted that the Licensee knew that he was committing a dishonest act which could put [K.D.] or the lender at risk. The Registrar pointed out that the Licensee had taken many courses on identifying mortgage fraud and the fact that there was no economic loss to anyone as a result of the fraud did not matter. The

lender had the right to know who was making the down payment and living in the New Property, and that the lender could have denied funding if it felt that its interest was not protected. Moreover, the Licensee put [K.D.]’s interests at risk in that she was responsible for making the mortgage payments whether or not the Licensee paid her that month.

With respect to the breach of Rule 42(a), the Registrar referred this Panel to the RECA decision in *Cai (Re)*, 2021 ABRECA 119, where that Panel held that:

In the Panel’s view, the Supreme Court’s guidance in (*R v. Zora*, 2020 SCC 14) regarding acting with knowledge versus acting recklessly versus acting negligently in criminal failure to comply situations, provides the basis for the correct interpretation of Rule 42(a):

1. A licensee acts negligently where they ought to have seen a risk of someone being, or likely being, misled or deceived, and ought to have acted in a way that a reasonably prudent person would have acted to prevent the other person from being, or likely being, misled or deceived;
2. A licensee acts recklessly where they subjectively see a substantial and unjustifiable risk that someone will or will likely be misled or deceived by their conduct, but they proceed with the conduct anyway. Recklessness has been held to be equivalent to gross negligence in certain cases;
3. A licensee acts intentionally where they have actual knowledge, or are wilfully blind, to the fact that their conduct will or is likely to mislead or deceive someone, and they proceed with the conduct anyway.

The second and third of these scenarios constitute breaches of Rule 42(a). The first does not.

The Registrar submitted that in this case, the Licensee acted with an intention to deceive. When he and [K.D.] met with [D.S.], the mortgage broker, he did not disclose his interest in the New Property. [D.S.] testified that it was important for the lender to know who was providing the down payment and who would be living in the New Property.

The Registrar submitted that it needed to make its case out on a balance of probabilities, that is, that it was more likely than not that the Licensee committed the acts alleged. The Registrar referred the Panel to the Supreme

Court of Canada decision in *F.H. v. McDougall*, 2008 SCC 53, where the Supreme Court confirmed that there is only one civil standard of proof in civil cases and that is proof on a balance of probabilities, and that a trier of fact must scrutinize evidence with care to determine whether it is more likely than not that an alleged event occurred.

The Licensee's submissions

Counsel for the Licensee referred the Panel to paragraph 46 of the Supreme Court of Canada's decision in *F.H. v. McDougall*, where the Supreme Court stated that:

[46] Similarly, evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test. But again, there is no objective standard to measure sufficiency. In serious cases, like the present, judges may be faced with evidence of events that are alleged to have occurred many years before, where there is little other evidence than that of the plaintiff and defendant. As difficult as the task may be, the judge must make a decision. If a responsible judge finds for the plaintiff, it must be accepted that the evidence was sufficiently clear, convincing and cogent to that judge that the plaintiff satisfied the balance of probabilities test.

The Licensee submitted that in addition to the balance of probabilities test, the Panel must determine what weight should be given to the evidence given that there are credibility issues at play, and those credibility issues should cause the Panel to give less weight to evidence where credibility is at issue.

The Licensee submitted that [K.D.] is still the registered owner of the New Property, that the New Property has increased in equity, and that the same lender still has a registered mortgage on title. He further submitted that the Licensee suing [K.D.] was not incompatible with him being a real estate agent, and noted that at the mediation, during which both parties were represented by legal counsel, [K.D.] agreed to pay the Licensee \$18,000. He submitted that it was not until a few months after the settlement of the lawsuit did [K.D.] come to [B.D.]'s office, where she stated that she would not report him to RECA if he agreed to release her from the \$18,000 settlement they reached at mediation. Counsel for the Licensee submitted that [K.D.]'s motivation for the RECA complaint was to get out of the agreement she reached at the

mediation, and that the Licensee refused to agree to release [K.D.] from the agreed upon settlement because he felt he had done nothing wrong.

The Licensee submitted that there was no mortgage fraud in this transaction.

He pointed to the email exchange between the Licensee and the [D.S.], the mortgage broker, and submitted that the Licensee told [D.S.] that he was the source of the down payment, and that it was [D.S.], not the Licensee, who came up with the idea that [K.D.]'s parents sign the gift letter. The Licensee submitted that [D.S.] admitted to the Panel that she requested the gift letter to protect herself.

The Licensee noted that there was no written response from [D.S.] to the Licensee's last email to [D.S.], in which email he asks whether the gift letter could come from [K.D.]'s parents but if the money could come from anywhere.

He argued that the Licensee did not have an economic interest in the transaction, and suggested that the only interest that the Licensee could have had in the New Property was through the commission, which was waived, and that being a potential tenant would not be considered an interest in the New Property.

The Licensee submitted that he did not take issue with the Registrar's definition of fraud, and her arguments on dishonesty and deprivation.

It was submitted that key to the allegation of fraud was that the lender did not know the necessary facts, however, that in this case, the lender was fully aware through its mortgage broker that the Licensee was the source of the gift money, and that it was the mortgage broker, and not the Licensee, that asked [K.D.] to have her parents sign a gift letter.

Counsel for the Licensee concluded that the Licensee told this Panel that he did not commit mortgage fraud, and that due to his 20 year unblemished professional record, his word is entitled to considerable weight. He submitted that the Registrar's two main witnesses had a personal interest in this hearing, with [K.D.] trying to extract a financial benefit from the threat of making a RECA complaint, which should cause the Panel to give her evidence less weight.

THE REASONS

The following are the reasons of this Panel. We first address allegations related to the breach of Rule 42(b), that the Licensee participated in fraudulent or unlawful activities in connection with the provision of services. We then address the allegations related to the breach of Rule 42(a), that the Licensee made representations that were reckless or intentional and misled or deceived any person or was likely to do so.

Breach of Rule 42(b) of the *Real Estate Act Rules*

The Registrar alleged that the Licensee participated in fraudulent or unlawful activities in connection with the provision of services contrary to Rule 42(b) of the *Real Estate Act Rules* by:

- a. by advising [K.D.], to mislead the mortgage broker by stating that [K.D.] would reside at the New Property as her principal residence;
- b. not advising [K.D.] that if she did not reside at the Property as her principal residence, she would need to provide a 20% down payment;
- c. transferring the down payment amount to [K.D.], while knowing the down payment must come from [K.D.] or her immediate family;
- d. advising [K.D.], to provide her mortgage broker with a fabricated story about where the down payment came from; and
- e. failing to disclose his interest in the property to any party in the subject transaction until 2019, when he was questioned by his Real Estate Broker after a civil claim was initiated between the parties.

For the reasons set out below, this Panel finds that all the citations with respect to the Breach of Rule 42(b) other than citation b. have been proven on a balance of probabilities.

- a. By advising [K.D.], to mislead the mortgage broker by stating that [K.D.] would reside at the New Property as her principal residence;

The Licensee and [K.D.] gave conflicting evidence about why the New Property was purchased and who was going to reside at the New Property. After weighing the evidence of the Licensee, [K.D.], [S.D.], [D.S.], [B.D] and the documentary evidence set out below, this Panel prefers the evidence of [K.D.] and finds that [K.D.]’s evidence is consistent with the evidence of [S.D.], [D.S.], [B.D] and the documentary evidence.

Based on the evidence set out below, this Panel finds that [K.D.] purchased the New Property for the Licensee to live in, that the Licensee and [K.D.] did not intend that [K.D.] would live in the New Property, and that the Licensee advised [K.D.] to tell the mortgage broker that she would be residing at the New Property so that he would not have to pay a 20% down payment.

It was [K.D.]’s evidence that she and the Licensee were involved in a romantic relationship that ended in February of 2014, and that at the time of the transaction in 2016, they were close friends. She testified that the Licensee was going through a divorce and told her that he could not qualify for a mortgage and that she wanted to help him and his kids out. They agreed to a plan where she would buy a house for him to live in in what she described as a “rent to own” arrangement. She would get a three-year mortgage, he would pay the down payment, monthly mortgage payments and property taxes and all purchase fees, and that after three years he would qualify for his own mortgage and purchase the New Property from [K.D.]. It was [K.D.]’s evidence that it was never her intention to move into the New Property.

On cross examination, it was suggested that at the time of the transaction, the Licensee and [K.D.] were involved in an on again off again romantic relationship and that they intended to move into the New Property together. [K.D.]’s evidence throughout was consistent that the romantic relationship ended in February of 2014, more than two years before the transaction.

In contrast, the Licensee’s evidence was that he and [K.D.] were involved in a romantic relationship and that they intended to, at some point in the future, move into the New Property together. The Licensee told the Panel that the intention was for him to move in right away and for [K.D.] to move in later, that they didn’t have a specific timeline for [K.D.] to move in, that they were renovating the New Property, and that their relationship had lots of ups and downs. The Licensee admitted that he paid the down payment in the amount of \$15,900 for the New Property, and that he moved into the New Property when it was purchased.

[K.D.]’s mother, [S.D.], gave evidence that at the time of the transaction, [K.D.] and the Licensee were friends, that [K.D.] never lived in the New Property and that she never heard [K.D.] say that she intended to live in the New Property.

[S.D.] wrote to the Licensee in October of 2018 that "at the beginning of this situation, [K.D.] agreed to help you based on you upholding your verbal and written agreement" (emphasis added).

When asked what verbal agreement she was referring to in the letter, [S.D.] explained that the Licensee and [K.D.] had discussed extensively what would happen, that the Licensee wanted to purchase the New Property but could not get financing, so [K.D.] purchased the New Property for the Licensee to live in.

[S.D.]'s evidence and the documentary evidence from October 2018 supports [K.D.]'s version of events.

The Licensee sent [S.D.] an email in March of 2019, where he wrote that "[t]he agreement that I have with [K.D.] is that I mortgage the property in my name to take her off and that has been the agreement all along. [K.D.]'s intention and agreement was for me to own the home once I was able to qualify for a mortgage by the end of the term - which I am intending to do" (emphasis added).

When asked what he meant by "all along", the Licensee stated that he meant in the last couple of months because their relationship was breaking down.

The Panel finds that the email of March 2019 from the Licensee supports [K.D.]'s version of events.

The Licensee claimed that shortly after the offer for the New Property was written, he went to his broker's, [B.D.], office and told [B.D.] about the transaction, showed [B.D.] all the paperwork and that [B.D.] told him that another real estate licensee at their brokerage had done the same thing. However, when [B.D.] was asked whether the Licensee told her that he was in a romantic relationship with [K.D.], [B.D.] stated that she did not know the two had been in a romantic relationship until the Licensee advised [B.D.] that he was going to mediation with an ex-girlfriend. [B.D.] testified that the Licensee did not disclose any mortgage fraud to her with respect to this transaction. When asked what she would have done if the Licensee had told her that the buyer was lying on her mortgage application, [B.D.] responded that she would have had to notify the mortgage broker, RECA and the RCMP.

[K.D.]'s evidence was that the Licensee told her to tell the mortgage broker that the New Property would be her primary residence, that she would be living in the New Property, and that they would later say they broke up. [K.D.] stated that the Licensee assured her that people do this all the time. She explained that the Licensee told her that she would have to tell the mortgage broker that the New Property would be her primary residence so that a 20% down payment would not be required. She testified

that the Licensee told her that secondary residences require a 20% down payment, and that the Licensee did not want to pay a 20% down payment. [K.D.] stated that the Licensee told her that for [K.D.] to qualify for the mortgage with a 5% down payment, it had to look like she was renting out her existing home and living in the New Property, but that it was never her intention to rent out her existing home or to move into the New Property.

The Licensee denied he told [K.D.] to mislead her mortgage broker about who would be living in the New Property. He denied that he lied about who was going to be living in the New Property so that a 20% down payment would not be required.

The Licensee stated that [D.S.] was aware that [K.D.] had not rented out her existing home, and that is probably why [D.S.] requested an appraisal of [K.D.]'s existing home.

On cross examination, the Licensee admitted that at the time the New Property was purchased, his credit was not good and he could not qualify for a mortgage.

When asked about how long he had been in a relationship with [K.D.], the Licensee stated that the relationship lasted for a year or more and then it went back and forth. When asked if he had any evidence that he and [K.D.] were in a relationship at the time the New Property was purchased, the Licensee stated that he had photographs and that people had seen the two of them together, but that he did not have any of that evidence at the hearing.

The Panel notes that aside from the Licensee claiming that he and [K.D.] were in an on and off relationship at the time of the transaction, there was no other evidence adduced that would suggest that he and [K.D.] were in a romantic relationship at the time of the transaction. This is despite that fact that the Licensee had opportunities to adduce this evidence given that this hearing was adjourned a number of times since [K.D.] testified

in October of 2024 that the two of them were not in a relationship, and the Licensee did not testify or put in his case until February 27, 2025. Furthermore, [S.D.], [K.D.]'s mother, testified that at the time of the transaction, [K.D.] and the Licensee were friends and were not romantically involved.

[B.D.], the Licensee's broker, testified that it was common industry knowledge that a down payment of 20% was required by a buyer who would not be residing in the property.

The mortgage broker's file showed that [K.D.] would be receiving a monthly rental income of \$2,500. When asked about this, [K.D.] advised that to qualify for the mortgage for the New Property, it had to look like she was renting out her existing residence and receiving rental income. When asked whether at the time of the purchase of the New Property she was planning to rent out her existing residence, [K.D.] stated she was not, but that the Licensee told her that she had to say that she was in order to qualify for the mortgage.

It was [K.D.]'s evidence the Licensee attended all the meetings required with respect to the purchase of the New Property, including all the meetings with the lawyer and mortgage broker.

When asked what she told the mortgage broker about who would be living in the New Property, [K.D.] testified that she was told by the Licensee to say that she would be living in the New Property so that it would be classified as her primary residence for mortgage purposes.

The mortgage broker, [D.S.], testified that given that the mortgage was a CMHC mortgage with a 5% down payment, it was a condition of the mortgage that the property be owner occupied. Had [K.D.] disclosed that she would not be living in the New Property, the required down payment would have been 20%.

[D.S.] testified that the Licensee attended her meetings with [K.D.], and that it was not unusual for the Licensee to attend meetings between her and the client.

It was [D.S.]'s evidence that at the time of the transaction that she was told that the Licensee and [K.D.] were family friends and that neither the Licensee nor [K.D.] disclosed to her that they were in a romantic relationship.

[D.S.] testified that [K.D.] told her that she intended to live in the New Property and that she would be renting out her existing home. She further stated that the Licensee did not say anything about him living in the New Property nor that [K.D.] would not be living in the New Property. Furthermore, neither the Licensee nor [K.D.] told [S.D.] that they would be living in the New Property together. When asked why it was a condition of the mortgage financing that [K.D.] would be receiving rental income of \$2,500, [D.S.] explained that lenders want confirmation that buyers are going to rent out their existing property and receive that extra income.

Despite that [K.D.], [S.D.] and the Licensee all testified that the Licensee attended the meeting between [D.S.] and [K.D.], the Licensee gave evidence that he did not know that [K.D.] told [D.S.] that she would be renting out her existing property and that at

the time of the transaction, [K.D.] had not decided whether she would be renting out her existing property.

On cross examination, [D.S.] was asked whether she recalled the Licensee discussing his relationship with [K.D.] with her. [D.S.] answered that she did not. [D.S.] was also asked on cross examination whether she recalled the Licensee telling her that he and [K.D.] were together and that they intended to live in the New Property together once it was renovated. [D.S.] answered that she did not.

When asked by the Panel about whether at the time of the transaction, she knew that the Licensee and [K.D.] had at any point been in a romantic relationship, [D.S.] answered that she did not, and that at the time of the transaction, she thought they were family friends because that is what she was told.

When questioned by the Panel whether in 2016 she knew that the Licensee would be living in the New Property, [D.S.] responded that she did not. When asked who she thought would be living at the New Property at the time the deal was funded, [D.S.] responded that she thought [K.D.] would be living in the New Property.

[D.S.]'s evidence above is consistent with [K.D.]'s evidence that [K.D.] and the Licensee did not tell [D.S.] that they were in a romantic relationship nor that they would be living at the New Property together. It is also consistent with the evidence of [S.D.].

The Licensee denied that he misled anyone with respect to the transaction. He stated that it was likely that [D.S.] was aware of his relationship with [K.D.] given that he and [K.D.] socialized with [D.S.] and the rest of the Grande Prairie real estate community. The Licensee agreed that it was important for the mortgage broker to know that he and [K.D.] were in a relationship.

The Licensee told the Panel that he and [K.D.] disclosed to [D.S.] that they were planning to live in the New Property together when they met with her to discuss obtaining financing for the New Property. As outlined above, both [K.D.] and [D.S.] deny that [D.S.] was told that [K.D.] and the Licensee would be living in the New Property together.

On August 1, 2016, the Licensee and [K.D.] entered into an RTA with a three-year term, which coincided with the term of the mortgage. Under the RTA, the Licensee was to pay [K.D.] a security deposit and monthly rent in the amount \$1,800. The Licensee admitted that he paid the security deposit and the monthly rental payment. When asked why he and [K.D.] entered into a rental agreement at the time the New Property was purchased if they were in a relationship and were going to move into

the New Property together, the Licensee stated that [K.D.] insisted on entering into the rental agreement. This Panel finds that the parties entering into an RTA for a three year term is consistent with [K.D.]'s version of events. Couples that buy a property to reside in together do not typically have one spouse pay the down payment and enter into a tenancy agreement to pay the other spouse the entire monthly amount of the mortgage payment and property taxes.

The Licensee agreed that [K.D.] never moved into the New Property. When asked when he found out that [K.D.] would not be moving into the New Property, the Licensee stated that [K.D.] moving in was an ongoing discussion and that he found out she would not be moving in when their relationship ended. The Licensee maintained that [K.D.] told him that if the two of them were going to live together, it would be in the New Property.

The Panel finds that based on the evidence above, [K.D.] purchased the New Property for the Licensee to live in and that she never intended to move into the New Property or rent out her existing home. The Panel further finds that the Licensee told [K.D.] to tell the mortgage broker that the New Property would be her primary residence so that a 20% down payment would not be required because the Licensee did not want to put down a 20% down payment.

- b. not advising [K.D.] that if she did not reside at the Property as her principal residence, she would need to provide a 20% down payment

As set out above, [K.D.] testified that the Licensee told her that if she did not reside at the New Property as her principal residence, she would need to provide a 20% down payment.

Accordingly, this citation has not been made out.

- c. transferring the down payment amount to [K.D.], while knowing the down payment must come from [K.D.] or her immediate family

There is uncontradicted evidence that the down payment for the New Property in the amount of \$15,900 was transferred by the Licensee to [K.D.].

Where the evidence conflicts is whether the Licensee knew that the down payment must come from [K.D.] or her immediate family.

[K.D.] testified that the Licensee told her that he could not provide the down payment for the New Property because he was not a direct family member. She further gave evidence that the Licensee told her that she needed to have her parents sign a gift letter so that it looked like it was her parents and not the Licensee that provided the down payment for the New Property.

[B.D.], the Licensee's broker, testified that, at the time of the transaction, it was common industry knowledge, even for brand new agents, that down payments could only come from direct family members, that is, fathers, mothers or siblings.

[D.S.], the mortgage broker, gave evidence that at the time of the transaction, it was a rule that a gift for a down payment could only come from a relative. When asked if a down payment could come from a romantic partner, [D.S.] stated that at the time, that was not permitted unless the money sat in the buyer's bank account for 90 days. [D.S.] further stated that if a down payment came from a romantic partner, she would have expected that to be disclosed.

[D.S.] testified that she and the Licensee exchanged emails in which she advised the Licensee that the down payment needed to come from a family member. Those emails were entered into evidence.

On June 19, 2016, [D.S.] sent an email to the Licensee stating that "in regards to the gift money, I will need a gift letter signed if the money hasn't sat in her account for 90 days."

The Licensee responded by asking "and if the money is from me and we're not family is that a problem?", to which [D.S.] replied that "yes, the gift needs to be from a family member" (emphasis added).

The Licensee then sent another email asking "and the gift letter needs to be from her parents but the money can come from anywhere?" There was no written response to the Licensee's last email.

[D.S.] could not recall whether she and the Licensee had any further conversations about the gift letter or the source of the down payment, but stated that if they did, she would have told him the same thing she stated in her emails.

When asked what steps she would have taken had she been advised that it was the Licensee and not [K.D.]'s parents that provided the down payment, [D.S.] stated that she would have advised that either the money had to sit in [K.D.]'s bank account for 90 days or that the Licensee had to apply for the mortgage as an applicant.

[D.S.] stated that if the lender would have known that [K.D.] did not receive the down payment from her parents, the financing would have collapsed. [D.S.] further stated that this is mortgage fraud and that the lender was relying on the client and the mortgage broker to be honest so that they can properly assess the risk.

While it was noted at the hearing that the rules now allow a romantic partner to provide a gift letter for a down payment, the Panel finds that this rule change is not relevant in that this was not the rule at the time of the transaction.

When the Licensee was asked whether he transferred the down payment for the New Property to [K.D.] while knowing that the down payment must come from the buyer or a family member, the Licensee stated that this was not true, that he and [K.D.] knew that the alternative was for them to wait 90 days for the money to sit in [K.D.]'s account, that the suggestion that the deal would have collapsed if the money had to sit in the account for 90 days was speculation.

The Licensee pointed to the emails between him and [D.S.], and stated that [D.S.] was aware that he was the source of the down payment.

The Licensee stated that while he was present when [K.D.] met with [D.S.], the gift letter and where the down payment came from were not discussed at their meeting.

On cross examination, the Licensee admitted that he knew that given that he was the one paying the down payment, what was stated in the gift letter was not true. When asked whether he thought that this was mortgage fraud, the Licensee responded that when someone is in a relationship with the purchaser, they should be able to provide a gift letter. When asked about the rules about gift letters at the time of transaction, the Licensee answered that he could not remember, but that there was an option to have the money sit in the purchaser's bank account for 90 days and avoid having to provide a gift letter. When asked why he did not do that on this transaction, the Licensee responded that there was not enough time and that he could not remember. The Licensee stated that he did not ask [K.D.] to provide a fake gift letter, and that he did not remember what the lender's conditions for financing were because it was too long ago and it was not a document that he was required to sign.

The Panel finds that the Licensee knew that the down payment had to come from the purchaser or an immediate family member. He specifically asked the mortgage broker via email "and if the money is from me and we're not family is that a problem?" to which he received a response via email that "yes, the gift needs to be from a family member." Moreover, [K.D.] testified that the Licensee told her that he could not provide the down payment for the New Property because he was not a direct family member. The Licensee was a real estate licensee with more than 20 years of experience. His broker testified that it was common industry knowledge,

even for brand new agents, that at the time, down payments could only come from direct family members, that is, fathers, mothers or siblings.

This citation has been made out.

- d. The Licensee advised his client, [K.D.], to provide her mortgage broker, [D.S.] with a fabricated story about where the down payment came from.

[K.D.] testified that the Licensee told her that he could not provide the down payment for the New Property because he was not a direct family member. She further gave evidence that the Licensee advised her that she needed to have her parents sign a gift letter so that it looked like it was her parents and not the Licensee that provided the down payment for the New Property.

The Licensee denied that he advised [K.D.] to provide [D.S.] with a fabricated story of where the down payment came from. He pointed to the emails between him and [D.S.], the mortgage broker, and stated that based on those emails, [D.S.] was aware that he was the source of the down payment. He stated that while he was present when [K.D.] met with [D.S.], the gift letter and where the down payment came from were not discussed at their meeting.

For the reasons that follow, the Panel prefers the evidence of [K.D.] to the evidence of the Licensee and finds that the Licensee told [K.D.] to provide the mortgage broker with a fabricated story about where the down payment came from.

The Licensee was an agent with 20 years of experience. His broker testified that it was common industry knowledge, even for brand new agents, that down payments could only come from direct family members. More importantly, he was told directly by the mortgage broker that the down payment could only come from direct family members.

While it was common knowledge for real estate licensees that down payments could only come from direct family members, it is not likely something that [K.D.], as a young nurse who only ever purchased one home before, would have known.

The Licensee admitted that at the time the New Property was purchased, his credit was not good and he could not qualify for a mortgage. [K.D.]'s evidence was that she purchased the New Property for the Licensee to live in in what she described as a "rent-to-own" arrangement. Her evidence was that she wanted to help out a close friend, who was going through a divorce and who could not qualify for his own mortgage. Right after the New Property was purchased, the Licensee signed the RTA and moved into the New Property alone. [K.D.] never moved into the New Property. Both [K.D.] and her mother testified that [K.D.] never intended to move into the New

Property. The Licensee paid the down payment, all the legal fees and was to pay all mortgage payments and property taxes. These facts are consistent with the “rent to own” arrangement described by [K.D.].

The Panel finds that this citation has been made out.

- e. The Licensee failed to disclose his interest in the property to any party in the subject transaction until 2019, when he was questioned by his Real Estate Broker after a civil claim was initiated between the parties.

The Licensee denied that he had an interest in the New Property at the time of the transaction.

The Panel finds that the Licensee had an interest in the New Property at the time of the transaction in that:

- a) he paid the down payment in the amount of \$15,900; and
- b) he was intending to live in the New Property in what [K.D.] described as a “rent to own” arrangement, in which the Licensee would qualify for his own mortgage and take over the ownership of the New Property in three years' time, when [K.D.]’s mortgage term expired.

While the Licensee stated that he and [K.D.] were in a romantic relationship at the time of the transaction, the Panel prefers the evidence of [K.D.] and [S.D.] on this point, and finds that the Licensee and [K.D.]’s romantic relationship ended in February of 2014 and that at the time of the transaction, [K.D.] and the Licensee were close friends. Had the Panel found that the Licensee and [K.D.] were in a romantic relationship at the time of the transaction, the Panel would have ruled that this was an interest that the Licensee should have disclosed.

It is undisputed that the Licensee paid the down payment for the New Property in the amount of \$15,900. This \$15,900 is clearly a financial interest in the Property. It was a significant sum of money that the Licensee put into the Property. There was no indication from the Licensee nor [K.D.] that this was intended to be a gift to [K.D.]. In fact, several years later, the Licensee sued [K.D.] to get the \$15,900 down payment back.

It is also undisputed that the Licensee moved into the New Property without [K.D.] when the transaction closed.

[K.D.] testified that she and the Licensee agreed to the following terms with respect to what she called the “rent to own” arrangement for the New Property:

- After three years, the Licensee would purchase the New Property from [K.D.] and take over the mortgage.
- The Licensee would pay the down payment and all the mortgage payments and property taxes.
- [K.D.] would not be out of pocket for anything.
- [K.D.] would get a three-year mortgage and the Licensee would qualify for his own mortgage in three years time.

In an email from March of 2019 to [S.D.], the Licensee described the arrangement between him and [K.D.], which the Panel finds is consistent with the testimony [K.D.] gave about the arrangement between the parties. In that email, the Licensee stated:

... The agreement that I have with [K.D.] is that I mortgage the property in my name to take her off and that has been the agreement all along. I have more into the home than a downpayment. I have also put approximately \$13,000 to \$14,000 into the home including a new hot water tank this week. Also, I have to pay the CMHC premium out when I do the new mortgage. [K.D.]'s intention and agreement was for me to own the home once I was able to qualify for a mortgage by the end of the term - which I am intending to do."

(emphasis added)

[B.D.], the Licensee's broker, gave evidence the Licensee was representing both the seller and the buyer in the transaction and the agreement to represent both the seller and buyer between the brokerage, the seller and [K.D.] was entered into evidence. [B.D.] explained that when a real estate licensee is representing both the seller and buyer, different disclosure requirements apply, and that given that he was representing the seller, any interest the Licensee may have had in the New Property would have to be disclosed by the Licensee in writing and that it would put the Licensee in a conflict of interest.

[B.D.] testified that it was brokerage policy to disclose any conflict of interest in writing. [B.D.] went on to say that she could not recall whether the Licensee disclosed that he had a conflict of interest in this transaction, but that when she reviewed the brokerage file, she did not see any written indication that the Licensee disclosed his conflict of interest in writing. She went on to state that a conflict of interest should have been written into the contract.

It was [B.D.]’s evidence that the brokerage file did not show that the Licensee paid the deposit, and that if the deposit had in fact been provided by the Licensee, additional documentation would have had to have been completed.

The Panel finds that it was important for the seller to know that the Licensee had a financial interest in the transaction. The Licensee’s brokerage was representing both [K.D.] and the seller. As someone who was putting down the down payment for the property and was entering into an arrangement to take over the property and the mortgage in three years time, it was in the Licensee’s interest that the purchase price be as low as possible. This interest conflicted with the interest of the seller, in whose interest it was that the purchase price be as high as possible.

[D.S.], the mortgage broker, testified that [K.D.] and the Licensee came to meet with her together and that she was told that the Licensee and [K.D.] were family friends. It was [D.S.]’s evidence that the Licensee did not tell her he would be living in the New Property, nor that [K.D.] would not be living in the New Property, nor that the two of them would be living in the New Property together.

With respect to the down payment, [D.S.] sent an email to the Licensee stating that “in regards to the gift money, I will need a gift letter signed if the money hasn’t sat in her account for 90 days.”

The Licensee responded by asking “and if the money is from me and we’re not family is that a problem?”, to which [D.S.] replied that “yes, the gift needs to be from a family member.”

The Licensee then sent another email asking “and the gift letter needs to be from her parents but the money can come from anywhere?” There was no written response to the Licensee’s last email.

When asked what steps she would have taken had she been advised that it was the Licensee and not [K.D.]’s parents that provided the down payment, [D.S.] stated that she would have advised that either the money had to sit in [K.D.]’s bank account for 90 days or that the Licensee had to apply for the mortgage as an applicant.

The Licensee told the Panel that it was his view that he disclosed everything he needed to disclose to [D.S.]. He pointed to the email correspondence between him and [D.S.] and stated that he did disclose to [D.S.] that he was the source of the gift money.

The emails indicate that the Licensee was told by the mortgage broker that if the down payment came from him, that was a problem. He was clearly told by the

mortgage broker that the gift needed to be from a family member. Despite that, he proceeded to pay the down payment and did not advise the mortgage broker that the gift letter was a farce.

The Licensee argues that the mortgage broker knew that he was the source of the down payment and that he had nothing to do with the gift letter, and that therefore the Licensee did not commit mortgage fraud. This Panel disagrees. As evidenced by the emails, the Licensee was clearly told that if the down payment came from him, the money needed to sit in [K.D.]’s account for 90 days, and that a down payment in the form of a gift could only come from a family member. The Licensee’s broker stated that this was common industry knowledge, something that even a new real estate agent would know.

This Panel finds that the Licensee knew that the down payment could not come from him without first sitting in [K.D.]’s account for 90 days, yet proceeded to pay the down payment anyway. The Panel prefers [K.D.]’s evidence and finds that the Licensee told her that he could not provide the down payment for the New Property because he was not a direct family member, and that she needed to have her parents sign a gift letter so that it looked like it was her parents and not the Licensee that provided the down payment.

This Panel finds that this citation has been made out.

Panel’s conclusion on breach of Rule 42(b)

Rule 42(b) provides that licensees must not participate in fraudulent or unlawful activities in connection with the provision of services or in any dealings.

This Panel concludes that the Licensee participated in fraudulent activities in connection with the purchase of the New Property by [K.D.] by:

- a. advising [K.D.], to mislead the mortgage broker by stating that [K.D.] would reside at the New Property as her principal residence;
- c. transferring the down payment amount to [K.D.], while knowing the down payment must come from [K.D.] or her immediate family;
- d. advising [K.D.] to provide her mortgage broker with a fabricated story about where the down payment came from; and

- e. failing to disclose his interest in the property to any party in the subject transaction until 2019, when he was questioned by his Real Estate Broker after a civil claim was initiated between the parties.

The Panel agrees with the Registrar that for the purposes of this hearing, it is not relevant whether [K.D.] or anyone else participated in the fraud along with the Licensee. Rule 42(b) provides that licensees must not participate in fraudulent activities in connection with the provision of services or in any dealings. It does not require that licensees orchestrate the fraud or be the only participants in the fraud.

The Panel finds that the Licensee told [K.D.] to lie about the source of the down payment and about who would be living in the New Property so that she could secure financing with only a 5% down payment, knowing that he was the one who would be paying the down payment and with the intent that he would take over the New Property in three year's time when the mortgage came due.

Furthermore, the Licensee was dishonest in that he did not disclose to the mortgage broker nor his brokerage that he would be living in the New Property, that the down payment came from him and did not advise the mortgage broker that the gift letter was a farce.

In *Olan*, the Supreme Court of Canada held that the element of deprivation in fraud is satisfied on proof of detriment, prejudice, or risk of prejudice to the economic interests of the victim, and that it was not essential that there be actual economic loss as the outcome of the fraud. In *R. v. Theroux*, the Supreme Court of Canada held that the mens rea would consist in the subjective awareness that one was undertaking a prohibited act (the deceit, falsehood or other dishonest act) which could cause deprivation in the sense of depriving another of property or putting that property at risk.

The Licensee's dishonesty put both [K.D.]'s and the lender's interests at risk. [K.D.] was left in a position where she was solely responsible for the mortgage on the New Property. The lender was at risk in that had the lender known that [K.D.] would not be living in the New Property, it would have required a 20% down payment. As an experienced real estate agent, the Licensee knew his actions were putting [K.D.] at risk in that she would be solely responsible for the mortgage. Moreover, he knew that the lender and CMHC would agree to a 5% down payment only if the property was the primary residence of the mortgagor. The fact that the mortgage did not go into default or that the New Property may now be worth more than it was at the time of the transaction is not relevant. As held by the Supreme Court in *Olan*, it is not essential that there be actual economic loss as the outcome of the fraud.

This Panel concludes that for the reasons set out above, the Licensee breached Rule 42(b) of the ***Real Estate Act Rules*** by participating in fraudulent activities in connection with the provision of services to [K.D.].

Breach of Rule 42(a) of the ***Real Estate Act Rules***

Rule 42(a) provides that licensees must not make representations or carry on conduct that is reckless or intentional and that misleads or deceives any person or is likely to do so.

It is alleged that the Licensee made representations that were reckless or intentional and misled or deceived [D.S.], the mortgage broker, in that:

- a. he attended a meeting with [K.D.] and [D.S.], where he misled [D.S.] into believing that he was there just as buyer's agent/family friend to [K.D.].
- b. in the meeting with [K.D.] and [D.S.], the Licensee failed to communicate to [D.S.] that it would be he who would reside at the New Property.

[D.S.] testified that the Licensee attended her meetings with [K.D.], and that she was told at the meetings that the Licensee and [K.D.] were family friends. It was [D.S.]'s evidence that neither the Licensee nor [K.D.] told her that they were in a romantic relationship.

[D.S.] testified that [K.D.] told her that she intended to live in the New Property and that she would be renting out her existing home. She further testified that the Licensee did not say anything about him living in the New Property nor that [K.D.] would not be living in the New Property. Furthermore, neither the Licensee nor [K.D.] told [S.D.] that they would be living in the New Property together.

On cross examination, [D.S.] was asked whether she recalled the Licensee discussing his relationship with [K.D.] with her. [D.S.] answered that she did not. [D.S.] was also asked whether she recalled the Licensee telling her that he and [K.D.] were together and that they intended to live in the New Property together once it was renovated. [D.S.] answered that she did not.

When asked by the Panel about whether at the time of the transaction, she knew that the Licensee and [K.D.] had at any point been in a romantic relationship, [D.S.] answered that she did not, and that at the time of the transaction, she thought they were family friends because that is what she was told.

[D.S.]’s evidence is consistent with [K.D.]’s evidence that [K.D.] and the Licensee did not tell [D.S.] that they were in a romantic relationship nor that they would be living at the New Property together.

The Licensee testified that it was likely that [D.S.] was aware of his relationship with [K.D.] given that he and [K.D.] socialized with [D.S.] and the rest of the Grande Prairie real estate community. The Licensee agreed that it was important for the mortgage broker to know that he and [K.D.] were in a relationship.

It was the Licensee’s evidence that he and [K.D.] disclosed to [D.S.] that they were planning to live in the New Property together when they met with her to discuss obtaining financing for the New Property. Both [K.D.] and [D.S.] deny that [D.S.] was told that [K.D.] and the Licensee would be living in the New Property together.

This Panel prefers the evidence of [D.S.] and [K.D.] to the evidence of the Licensee, and finds that the Licensee attended a meeting with [K.D.] and [D.S.] where [D.S.] was told that the Licensee and [K.D.] were family friends and where [K.D.] told [D.S.] that she intended to live in the New Property. The Panel finds that despite that he was present at the meeting, the Licensee did not disclose to [D.S.] that he would be residing at the New Property nor that he would be paying the down payment for the New Property. The Panel finds that the Licensee acted with an intention to deceive, and that as explained by [D.S.], it was important for the lender to know who was providing the down payment and who would be living in the New Property.

This Panel finds that both breaches of Rule 42(a) have been made out.

CONCLUSION

This Panel finds that the Licensee engaged in conduct deserving of sanction contrary to Rule 42(a) and 42(b) of the *Real Estate Act Rules*.

This Panel invites the parties’ submissions on the appropriate sanction and costs.

Dated at Edmonton, on May 12, 2025

“Signature”

[A.T], Hearing Chair

THE REAL ESTATE COUNCIL OF ALBERTA

IN THE MATTER OF section 39(1)(b) and section 41 of the *Real Estate Act*, R.S.A. 2000, c. R-5,

AND IN THE MATTER OF a Hearing regarding the conduct of JOHN EDWARD RUDYK, currently registered with Real Broker AB Ltd. o/a Real Broker and was previously registered with Grande Prairie Associates Realty Ltd. o/a Re/Max Grande Prairie and with 1st Grande Prairie Realty Ltd. o/a Coldwell Banker 1st Grand Prairie Realty and with Royal LePage - The Realty Group Ltd. and with Menzies Printers Ltd. o/a Royal LePage - The Realty Group.

Hearing Panel Members: [A.T], Chair, Panel member
[J.M], Panel member
[A.S], Panel member

Hearing Dates: October 7th, 8th, 9th, 2024; and
January 20 and February 27, 2025.

Counsel for the Registrar: T. Leonardo

Counsel for the Licensee: Simon Renouf

Decision of a Hearing Panel

A. OVERVIEW AND DECISION SUMMARY

1. This is the decision and written reasons of the Hearing Panel of the Real Estate Council of Alberta on sanction with respect to the conduct of John Rudyk, a real estate associate ("Mr. Rudyk").
2. In a written decision dated May 12, 2025, the Hearing Panel found that Mr. Rudyk engaged in conduct deserving of sanction contrary to Rules 42(a) and 42(b) of the *Real Estate Act Rules* (the "*Rules*") in that:
 - a) He made representations that were reckless or intentional and misled or deceived any person or was likely to do so, contrary to Rule 42(a); and
 - b) He participated in fraudulent or unlawful activities in connection with the provision of services or in any dealings, contrary to Rule 42(b).

3. The parties submitted written submissions with respect to sanction. After the parties' submissions were submitted to this Panel, the Alberta Court of Appeal rendered its decision in *Charkhandeh v. College of Dental Surgeons of Alberta*, 2025 ABCA 258 ("*Charkhandeh*"). On July 23, 2025, this Panel requested the Registrar's and Mr. Rudyk's submissions on whether the *Charkhandeh* decision should impact the Panel's decision on sanction and costs in the Rudyk matter. The Registrar and Mr. Rudyk made further submissions on the impact of the *Charkhandeh* decision.
4. After reading the above mentioned submissions of counsel for the Registrar and counsel for Mr. Rudyk, for the reasons that follow, Panel orders the following sanctions:
 - a. **Suspension**
 5. A 12 month suspension of Mr. Rudyk's authorization to trade in Real Estate issued under the *Real Estate Act* (the "*Act*") to commence immediately,
 - b. **Education**
 6. Prior to the end of the 12 month suspension, Mr. Rudyk shall complete a course on ethics, fraud or mortgage fraud that is satisfactory to the Registrar. If the parties cannot agree on a course, they can come back before this Panel.
 - c. **Fines**
 7. Mr. Rudyk shall pay the following fines within 30 days of the date of this decision:

Breach of Rule 42(a)	\$2,000
Breach of Rule 42(b)	<u>\$5,000</u>
Total fines	\$7,000
 - d. **Costs**
 8. Mr. Rudyk shall pay costs in the amount of \$5,000 within 30 days of the date of this decision.

B. THE PARTIES' SUBMISSIONS

1. The submissions of the Registrar
9. It is the Registrar's position that Mr. Rudyk's licence should be canceled pursuant to s. 43(1)(a) of the *Real Estate Act* (the "*Act*"), and that the Panel order that Mr.

Rudyk is ineligible to apply for a licence for 3 years and must successfully complete all education requirements before being able to apply for a new licence pursuant to s. 43(1)(c) of the Act. The Registrar submits that Mr. Rudyk should pay a fine in the amount \$4,000 for the breach of Rule 42(a) and a fine in the amount of \$10,000 for a breach of Rule 42(b). Lastly, the Registrar submits that Mr. Rudyk should pay costs in the amount of \$14,085.

a. Registrar's submission on Panel's authority on sanction

10. The Registrar submits that the Hearing Panel's authority to impose sanction is set out in s. 43 of the **Act**. S. 43 of the **Act** states that:

Decision of Hearing Panel

43(1) If a Hearing Panel finds that the conduct of a licensee was conduct deserving of sanction, the Hearing Panel may make any one or more of the following orders:

(a) an order cancelling or suspending any authorization issued to the licensee by the Council;

(b) an order reprimanding the licensee;

(c) an order imposing any conditions or restrictions on the licensee and on that licensee's carrying on of the business of an 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.

11. The Registrar submits that in determining the sanction, the Hearing Panel should consider following the factors set out in *Jaswal v Newfoundland (Medical Board)*, 1996 CanLII 11630 (NLSC) ("**Jaswal**"):

a. the nature and gravity of the proven allegations;

- b. the age and experience of the Licensee;
- c. the previous character of the Licensee and, in particular, the presence or absence of prior complaints or convictions;
- d. the number of times the offence was proven to have occurred;
- e. the role of the Licensee in acknowledging what occurred;
- f. whether the Licensee had already suffered serious financial or other penalties as a result of the allegations having been made;
- g. impact of the incident on the victim, if any;
- h. mitigating circumstances;
- i. aggravating circumstances;
- j. the need to promote specific and general deterrence and thereby protect the public and ensure the safe and proper conduct of the profession;
- k. the need to maintain the public's confidence in the integrity of the profession;
- l. 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
- m. the range of sentences in other similar cases.

12. The Registrar submits that general deterrence refers to the effect a sanction issued will have on dissuading others to become involved in the same conduct.
13. Specific deterrence refers to the effect a sanction has to correct the conduct of the person who is sanctioned. The Registrar submits that specific deterrence can also be achieved by punishment and by corrective or education conditions.
14. The Registrar submits that mitigating and aggravating factors refer to evidence which make the conduct less serious (mitigating), or more serious (aggravating). While all of the factors can be thought of as mitigating or aggravating, the Registrar notes that (h) and (i) above refer to factors not specifically enumerated in *Jaswal*

15. It is the Registrar's position that the Panel must consider each relevant factor, give weight to the factor in terms of how it should influence the sanction, consider the mandate of RECA under the Act and then make an order that complies with s. 43 of the *Act*

b. Registrar's Submissions on Licence Cancellation Principles

16. The Registrar states that there is no specific test for licence cancellation as a sanction. However, there are principles that can be derived from relevant real estate industry case law.

17. The Registrar submits that the Panel should consider the following principles when considering if licence cancellation is a fit and just sanction:

- i) licence cancellation is appropriate for misconduct that is of a serious or severe character: *Behroyan (Re)*, 2018 CanLII 50247 ("*Behroyan*") at para 27, *Inglis (Re)*, 2019 CanLII 53386 ("*Inglis*") (BC REC) at para 42, and *Aulakh (Re)*, 2019 ABRECA 121 ("*Aulakh*") at para 6.5.
- ii) cancellation is not reserved for only the most serious of misconduct. That is because cancellation is a spectrum, where the degree of seriousness of misconduct can be reflected in the length of the cancellation. As per *Behroyan* and *Inglis*, individuals can re-apply for a licence after the cancellation period is over.
- iii) The most severe penalty of lifetime licence cancellation is reserved for the "most serious of misconduct": *Behroyan* at para 27, *Inglis* at para 42.
- iv) The standard cancellation period under RECA legislation is 3 years. A Panel may use its discretion to impose a lesser or greater cancellation period: *Aulakh* at para 6.4.
- v) A lack of previous disciplinary history is not a bar to licence cancellation: *Merchant (Re)*, 2019 RECA unreported ("*Merchant*"); *Dhaliwal (Re)*, 2023 ABRECA 29 ("*Dhaliwal*"), at p. 6.
- vi) Licence cancellation is appropriate for the following types of misconduct:
 - a) Intentional criminal acts such as forgery even where there is no financial loss to any party: *Voth (Re)*, 2023 ABRECA 23 ("*Voth*") at p. 9, *Dhaliwal* at p. 7;
 - b) Mortgage fraud: *Aulakh*;

- c) Acts of dishonesty and serious lack of judgment, compounded by making false statements: *Inglis* at para 43;
- d) Misappropriation of monies: *Behroyan* at para 27;

c. Registrar's submissions on the *Jaswal* factors

18. The Registrar submits that the fact that Mr. Rudyk does not have a disciplinary history is mitigating.

19. It is the Registrar's position that the following factors are neither aggravating nor mitigating:

- i) To the Registrar's knowledge, Mr. Rudyk has not suffered any penalty or financial consequence due to these allegations;
- ii) The Panel found two separate breaches that all relate to one incident of misconduct flowing from one transaction;
- iii) While Mr. Rudyk has not acknowledged his conduct was deserving of sanction, he was entitled to proceed to hearing and have the evidence tested before the Panel.

20. The Registrar submits that the following factors are aggravating:

- i) Mr. Rudyk is 54 years old and was first licensed with RECA in 2004. He has been licensed as an associate for 20 years. At the time of the conduct at issue, Mr. Rudyk was a very experienced real estate associate and should have known better.
- ii) It is the Registrar's position that the impact of the incident on the victims is aggravating. Mr. Rudyk put [K.D.] at risk of being responsible for mortgage payments on the property when he did not pay his rent on time. He sued [K.D.] after he moved out of the property, and as a result, [K.D.] agreed to pay him \$18,000 to settle the claim. The lender's interest was put at risk when the lender was given false information on the mortgage application. Mr. Rudyk encouraged [K.D.] to provide false information to the lender. The Registrar submits that although the lender did not experience any actual loss, the risk of deprivation was significant.
- iii) The Registrar submits that the nature and gravity of the proven allegations is extremely aggravating. A breach of Rule 42(b) is extremely serious. Pursuant to s. 5 of the *Act*, the mandate of RECA includes to "protect against,

investigate, detect or suppress fraud.” The Registrar states that Mr. Rudyk’s misconduct strikes at the heart of this mandate.

The Registrar submits that a breach of Rule 42(b) is one of the most serious offences which a licensee can commit.

Additionally, Mr. Rudyk intentionally misled the mortgage broker to believe that he was a friend of [K.D.] and did not disclose that he would be living in the property. The Registrar submits that Mr. Rudyk’s conduct falls outside the bounds of acceptable behaviour.

iv) It is the Registrar’s position that the need to maintain public confidence in the industry is an extremely aggravating factor in this case. As stated in *Law Society of Upper Canada v. Lambert*, 2014 ONLSTH 158 at para 1, a profession’s most valuable asset is its collective reputation. The Registrar states that the Panel must consider this in determining an appropriate sanction.

The Registrar submits that RECA must be able to demonstrate to the public that it is investigating, detecting and suppressing fraud perpetrated by the licensees. As part of its legislated mandate, RECA must demonstrate to the public that their protection is of central concern.

The Registrar argues that in this case, there is a great need to maintain public confidence that RECA will meet fraud with an effective and appropriately severe sanction.

v) The Registrar submits that specific and general deterrence is a very aggravating factor.

The Registrar argues that Mr. Rudyk’s current belief as to his past conduct is not evidence of a breach but is a factor in specific deterrence.

It is the Registrar’s position that there is a need for specific deterrence in this matter. The Registrar submits Mr. Rudyk has not shown remorse for advising [K.D.], his client and friend, how to commit mortgage fraud for his benefit. It argues that Mr. Rudyk utilized his knowledge of the real estate industry to commit fraud and purposely withheld information from his broker to conceal his plan.

The Registrar submits that the public deserves confidence that licensees will practice in strict accordance with the *Act* and not engage in conduct that

undermines public confidence in the industry or brings the industry into disrepute.

d. Cases submitted by the Registrar

21. The Registrar notes that while precedents are not binding on the Hearing Panel, they can help the Panel impose sanctions consistently to comparable conduct.

i) Rule 42(b)

22. The Registrar submitted the following cases in support of its position for a sanction for the breach of Rule 42(b):

- *Dhaliwal* (unreported);
- *Merchant* (unreported);
- *Aulakh* (unreported);
- *Voth* (unreported);
- *Peresta (Re)*, 2024 ABRECA 35 ("*Peresta*");
- *Wolf (Re)*, 2002 RECA unreported ("*Wolf*");
- *Adel (Re)*, 2010 ABRECA 289 ("*Adel*");

23. It is the Registrar's position that the facts of *Adel* were the most similar to the facts in this matter. The Registrar submitted that just like in *Adel*, the Mr. Rudyk recruited [K.D.] to act as a straw buyer in a mortgage transaction, and did not disclose conflicts of interest in acting as the representative for the buyer, including that he would be living in the property and that he had a financial interest in the property. The Registrar noted that in contrast to *Adel*, Mr. Rudyk did cooperate with the RECA investigation and does not have any prior disciplinary history.

24. The Registrar submits that based on the cases cited above, the range of sanction for fraud is a licence cancellation and ineligibility to re-apply for a period of time between one to ten years. The Registrar argues that the low to mid end of the range is for individuals who take responsibility for their actions and enter into joint submissions, whereas the mid to high range is for individuals who have engaged in ongoing or repeated dishonest conduct over a sustained period of time.

25. The Registrar acknowledges that Mr. Rudyk's case can be distinguished from most of the cases cited above in that Mr. Rudyk's conduct was mostly omissions of material information as opposed to direct misrepresentation. The Registrar submits that while fraud by omission is generally less serious than a direct

omission, in this case, Mr. Rudyk had multiple opportunities over a period of time to correct the omissions and chose not to do so.

26. It is the Registrar's position that Mr. Rudyk's breach falls into the low to mid range of sanctions for the breach of Rule 42(b).

ii) Rule 42(a)

27. The Registrar submits the following cases in support of its position for a sanction for the breach of Rule 42(a):

- *Randhawa (Re)*, 2019 ABRECA 61;
- *Lambert (Re)*, (unreported);
- *Chu (Re)*, 2025 ABRECA 6.

28. It is the Registrar's position that the *Lambert* and *Chu* cases are the most similar to this matter in that Mr. Rudyk intentionally made misrepresentations to another licensee. The Registrar notes that in both *Lambert* and *Chu*, the licensees entered into agreements with the Registrar on breach and sanction. Moreover, the Registrar points out that the misrepresentations in Mr. Rudyk's case were made to commit mortgage fraud.

e. Sanctions Proposed by the Registrar

29. It is the Registrar's position that given the aggravating factors set out above, the lack of significant mitigating factors, and based on the cases set out above, the following sanction is appropriate:

- 1) Cancellation of Mr. Rudyk's licence pursuant to s. 43(1)(a) of the *Act*;
- 2) Ineligibility to apply for a license for 3 years and the successful completion of all education requirements before being able to apply for a new licence from RECA pursuant to s. 43(1)(c) of the *Act*; and
- 3) A fine of \$10,000 for the breach of Rule 42(b), and a fine of \$4,000 for the breach of Rule 42(a).

f. The Registrar's submissions on costs

30. The Registrar submits that the Panel may award costs pursuant to s. 43(2) of the *Act*. s. 10.1 of the *Real Estate Bylaws* set out the rates at which costs are to be determined. S. 10.4 of the *Real Estate Bylaws* states the the following factors may be considered by a panel in determining any costs order:

- a. The degree of cooperation by the licensee;

- b. The result of the matter and 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 the expenses;
- h. The financial circumstances of the licensee and any financial impacts experienced to date by the licensee; and
- i. Any other matter related to an order reasonable and proper costs as determined appropriate by the panel.

31. The Registrar argues that Mr. Rudyk was wholly unsuccessful in this matter and did not take any responsibility for his breaches and conduct. It notes that the issue of combating fraud is important and that the hearing was complex and involved multiple witnesses. The Registrar points out that there is insufficient evidence of the financial burden on Mr. Rudyk, and submits that given that all the evidence was disclosed to the licensee, there should have been a reasonable anticipation of the outcome.

32. The Registrar submits that the breach in this case is fraud and is especially serious. Furthermore, Mr. Rudyk caused the hearing to be more expensive by asking for a number of adjournments. As a result, the Registrar submits that the following costs should be ordered against Mr. Rudyk:

Item	Hours	Amount/hr	Low End	High End
Investigation Costs	30 hrs	\$40 - \$80/hr	\$1200	\$2400
Legal Costs – costs for counsel for 5 days of hearing time, plus 10 hours to research and prepare this Phase 2 argument	18.25 hrs	\$100 - \$250/hr	\$1825	\$4562
Hearing secretary salary (5 days)	8.25 hrs	\$15/hr	\$123	\$123
Hearing Panel Honoraria – not including writing costs (5 days)	8.25 hrs	Chair and two Panel Members (\$1400/day)	\$7000	\$7000
GRAND TOTAL			\$10,148	\$14,085

33. The Registrar argues that Mr. Rudyk should be ordered to pay costs at the higher end of the scale given the above noted factors and his lack of cooperation in completing the matter in an efficient manner.

2. The Submissions of Mr. Rudyk

34. Mr. Rudyk has been licensed as a real estate agent for over 21 years and has had no previous disciplinary history. He notes that in 2023, he was elected for his third term in eight years with the Grande Prairie and Area Association of Realtors.
35. Mr. Rudyk submits that the delay in this case and what he argues was abuse of process are factors that ought to significantly mitigate any sanctions and costs imposed on him.
36. It is his position that the appropriate sanction is a reprimand, and that no costs order should be made.

a. Ordering Sanctions

37. Mr. Rudyk submits that the authority to order sanctions in the public interest is set out in s. 43(1) of the *Act*, which permits the Panel to order a wide range of sanctions. The sanction must be proportionate to the impugned conduct. Citing the decision in *Swart v. College of Physicians and Surgeons of P.E.I.*, 2014 PECA 20 ("*Swart*"), Mr. Rudyk submits that to fall within the range of possible acceptable outcomes, sanctions must fall within the bounds of the statutorily mandated range of possible outcomes and must be proportionate to the conduct involved and the objective of attempting to ensure that a similar event does not occur again.
38. Relying on *Jaswal*, Mr. Rudyk submits that setting the appropriate penalty involves the weighing of evidence, the exercise of discretion, related policy issues and must reflect what has actually happened.
39. Mr. Rudyk states that sentencing also involves a conscious act of balancing and comparison, and that the wrongdoer must be compared first to the non-wrongdoers, and, secondly, to other wrongdoers. The Panel should consciously compare the case under consideration and similar cases. Unreasonable weight given to a particular factor will render an order unreasonable. Citing *Swart*, Mr. Rudyk submits that the penalty will be found to be unreasonable if it does not bear a direct relationship to the wrongdoing found to have been committed.

i) Delay is mitigating

40. Mr. Rudyk points to the Alberta Court of Appeal decision in *Kherani v. Alberta Dental Association and College*, 2025 ABCA 2 ("*Kherani*"), in which the Court confirmed that the passage of time is a significant factor to take into account in mitigation of penalty. He states that the Court in *Kherani* emphasized that sanctions for unprofessional conduct are concerned with preventing future unprofessional conduct, and that this concern diminishes with the passage of time. The Court held that the time between the misconduct and the sanction is the relevant period, and found that a seven year delay between the conduct and the sanction should have been mitigating and the tribunal's failure to consider delay to be mitigating was an error of law.
41. Mr. Rudyk submits that in *Dr Igancio Tan III v Alberta Veterinary Medical Association*, 2025 ABCA 119, the Court described the delay in *Kherani* as an exceptionally long delay, which he argues is shorter than the nine year delay in his case.
42. Mr. Rudyk relies on the Alberta Court of Appeal decision in *Wachtler v College of Physicians and Surgeons of Alberta*, 2009 ABCA 130 ("*Wachtler*"), where the Court noted at para 37 that "delay falling short of requiring a stay may call for other remedies", and at para 49 stated that:
- It is important to impress upon disciplinary bodies that there will be consequences for undue delay. Delay becomes the norm when it has no consequence. One alleged benefit of administrative processes is that they avoid formalities of court process in the interests of speedy justice. A 7 year delay is hardly speedy. Simply telling those responsible for professional discipline that they must do better, or worse, turning a blind eye to delay, leads to more delay.
43. Mr. Rudyk points to the decision in *Abrametz v Law Society of Saskatchewan*, 2023 SKCA 114 ("*Abrametz*"), where the Court confirmed that delay falling short of an abuse of process may constitute a mitigating factor.
44. It is Mr. Rudyk's submission that the nine year delay in his case ought to substantially mitigate the sanction imposed.

ii) Abuse of Process is Mitigating

45. Mr. Rudyk argues that there was an abuse of RECA's complaints process by the complainant, and that pursuant to the Supreme Court of Canada decision in

Abrametz, this abuse of process is a factor that should be considered when determining the sanction.

46. Mr. Rudyk relies on the Alberta Court of Appeal decision in *Chartered Professional Accountants of Alberta (Complaints Inquiry Committee) v. Mathison*, 2024 ABCA 33 ("*Mathison*"), for the proposition that it is reasonable for a Panel to consider whether the complaint made against the professional gave rise to concerns that it was an abuse of process.
47. Mr. Rudyk points to the decision in *Yee v. Chartered Professional Accountants of Alberta*, 2020 ABCA 98 ("*Yee*"), where Slatter J. held that if a complaint had been filed out of spite, for revenge or as a result of a personal grievance in order to pressure the professional to do something, including settling litigation, the chair could consider dismissing the complaint.
48. Mr. Rudyk notes that it was [B.D.]’s, real estate broker’s, evidence that [K.D.] told her that she “won’t come after his career” if Mr. Rudyk agreed that she would not have to pay him the settlement amount they agreed to at the mediation, and that either Mr. Rudyk “stops it”, or she would report him to RECA.
49. Mr. Rudyk argues that this evidence shows that [K.D.] was seeking to use RECA’s disciplinary process as bargaining leverage in her financial dispute with Mr. Rudyk, and that a stay of the process or a reduction in sanction to a reprimand was necessary for RECA to avoid the taint of abuse of its process.
50. Mr. Rudyk that when an abuse of process is found, several remedies are available, including a reduction in sanction or a variation of an award of costs, and that a significant reduction in sanction was appropriate in his case.

iii) No Costs Should Be Awarded

51. Mr. Rudyk relies on the decision in *Burgener v. Law Society of Alberta*, 2023 ABCA 227 ("*Burgener*"), to argue that no costs should be awarded against him.
52. In *Burgener*, a complaint was made in 2007 and a hearing was held over many days in 2015 and early 2016. Mr. Rudyk notes that the Court in *Burgener* set aside the costs awarded against the professional in their entirety and observed that “unexplained extraordinary delay may be so prejudicial to the public interest that it constitutes inordinate delay that in some other ways brings the administration of justice into disrepute.”

iv) Mr. Rudyk's response to Submissions of the Registrar

53. In response to the Registrar's submissions, Mr. Rudyk argues that the factors in *Jaswal* indicate that a lesser sanction is appropriate.
54. Mr. Rudyk points out that he has suffered financially as a result of these allegations in that he has had to retain legal counsel to defend him.
55. Mr. Rudyk submits that it is mitigating, not neutral, that the breaches relate to just one incident.
56. Further, Mr. Rudyk takes issue with the Registrar's submissions on the impact of the incident on the victim and argues that:
- Whether Mr. Rudyk made timely rent payments to [K.D.] is not at issue;
 - The lender is not a "victim" because the lender did not sustain any losses;
 - [K.D.] filed the complaint because Mr. Rudyk would not release her of her obligation to pay the settlement amount agreed upon at a mediation, which is significantly mitigating. Mr. Rudyk submits that it is otherwise irrelevant that the civil claim was settled for \$18,000, that Mr. Rudyk's claim was for over \$64,000 and that [K.D.] was represented by counsel in the civil proceedings.
57. Mr. Rudyk argues that the need to maintain public confidence in the industry is diminished given the exceptionally long delay in this case.
58. With respect to general and specific deterrence, Mr. Rudyk relies on the decision in *Alsaadi v. Alberta College of Pharmacy*, 2021 ABCA 313 at para 29 ("*Alsaadi*") and submits that lack of remorse or refusal to admit is not an aggravating factor. While the admission of guilt is a mitigating factor, the failure to admit guilt is not aggravating.
59. Mr. Rudyk further relies on the decision in *Walton v. Alberta (Securities Commission)*, 2014 ABCA 273 ("*Walton*"), for the proposition that the ordeal and expense of a hearing, together with the publicity that accompanies it, themselves have a deterrent effect. Relying on *Walton*, Mr. Rudyk further submits that unreasonable weight given to a particular factor, including general deterrence, will render the order itself unreasonable and that an administrative penalty that is imposed for general and specific deterrence should be sufficient to reasonably accomplish that end, but no more.

60. Mr. Rudyk argues that the case of *Adel* submitted by the Registrar is not similar to this case at all, in that 23 allegations were made against Mr. Adel, the panel in that case found that 16 allegations had been proven, and that Mr. Adel failed to cooperate with numerous RECA investigations.
61. Mr. Rudyk disputes that he recruited [K.D.] to act as a straw buyer and points out that he did not receive the property title.
62. Mr. Rudyk submits that in contrast to the precedents relied on by the Registrar, Mr. Rudyk:
- a. did not forge or alter documents;
 - b. did not commit theft;
 - c. was not enriched by charging brokerage fees on mortgages;
 - d. did not trade outside of the scope of his brokerage;
 - e. did not cause [K.D.] financial hardship;
 - f. has never been previously sanctioned;
 - g. did not exploit vulnerable clients; and
 - h. fully cooperated with RECA.
63. Mr. Rudyk argues that the appropriate sanction in his case is a reprimand, and that no costs should be awarded.

3. Registrar's Rebuttal

a. Cases cited by Mr. Rudyk

64. Regarding the *Kherani* decision cited by Mr. Rudyk, the Registrar submits that the Alberta Court of Appeal did not determine that delay was a significant mitigating factor. The Registrar submits that although the Court in *Kherani* reduced the fines, the *Kherani* case is not similar to the matter before this Panel given that the Registrar in this case is seeking a licence cancellation whereas Mr. Kherani was not facing a suspension or license cancellation. The Registrar submits that in this case, the allegations are much more serious than the allegations in *Kherani*, and therefore the impact of delay on sanction should not be considered or should be minimal.
65. The Registrar points out that the Court in *Kherani* found that fines were necessary to promote specific deterrence despite the delay and that the Court did not consider delay in upholding the costs ordered by the tribunal.

66. With respect to the *Tan* decision, the Registrar submits that the Court of Appeal dismissed the appeal despite the professional's argument that delay should lower the sanction and stated that "delay might also be relevant if the member put the delay to beneficial use to upgrade his professional capacities and improve his insights and perspectives."
67. The Registrar points out that while in *Tan*, the professional undertook to not perform an orthopedic surgery of companion animals from the time he was charged until the hearing, Mr. Rudyk has not had any negative consequences from the time of the conduct at issue until the time of the hearing in that he has not been subject to a suspension or any limit on his abilities to practice real estate.
68. With respect to the Court of Appeal of Saskatchewan decision in *Abrametz*, the Registrar points out that the Court in that case stated that the impact on the professional, whether financial, reputational, emotional or otherwise is at a minimum an important consideration when deciding whether delay is mitigating. The Registrar submits that in this case there is no evidence that Mr. Rudyk suffered financial, reputational, emotional or any other impact.
69. The Registrar submits that the fact that Mr. Rudyk had to pay for two lawyers was a consequence of him deciding to contest the hearing, and should not be considered a factor given that Mr. Rudyk was not successful.

b. [K.D.]'s motives for making the complaint

70. With respect to [K.D.]'s motives for making the complaint to RECA, the Registrar points to s. 39(1) of the *Act*, and submits that RECA has an obligation to conduct an investigation if the complaint is not frivolous or vexatious, or if there is sufficient evidence of conduct deserving of sanction.
71. The Registrar submits that [K.D.]'s complaint was not frivolous or vexatious, and that given this Panel's findings at Phase 1 of this hearing, there was sufficient evidence of conduct deserving of sanction.
72. The Registrar argues that while [K.D.] may have stated to Mr. Rudyk's broker if he agreed not to enforce the settlement reached at mediation she would not make a complaint to RECA, that does not take away from Mr. Rudyk's serious misconduct in this case.
73. The Registrar submits that it has a mandate to prevent mortgage fraud and protect the public regardless of what actions occurred prior to the complaint,

and that whether [K.D.] had ulterior motives is immaterial. The Registrar points out that it is not uncommon for complainants to want retribution against licensees who have engaged in misconduct against them.

74. The Registrar submits that the *Mathison* decision can be distinguished from this case on its facts. In *Mathison*, the complainant was the CEO of a company in which Mr. Mathison was a CFO. The situation was a contract dispute, the parties were in active civil litigation and there was concern that the complainant was using the professional disciplinary process as a means to gain an advantage in the civil litigation. Further, the complainant was in a position of power over Mr. Mathison, and he sent him an employment termination letter. Additionally, the complainant in *Mathison* involved the police and threatened criminal charges. The Registrar submits that the majority of the Court of Appeal in *Mathison* was not concerned with any of these facts.

c. Other mitigating and aggravating factors

75. The Registrar submits that while the allegations stem from only one incident, the severity of the conduct must also be considered and submits that Mr. Rudyk's conduct was egregious.
76. The Registrar points out that [K.D.], in an effort to help Mr. Rudyk, was exposed to the liability of making mortgage payments every month or her credit could be impacted. The fact that Mr. Rudyk did not always pay his rent on time put [K.D.] at risk and is an issue to be considered when looking at the impact on [K.D.] as a victim.
77. The Registrar argues that the fact that [K.D.] had to pay Mr. Rudyk the \$18,000 settlement reached at mediation is an aggravating factor in that but for Mr. Rudyk engaging her to participate in fraud to help him out, she would not have owed him anything. It was Mr. Rudyk's assurances that he would cover all the costs, including the down payment, that convinced [K.D.] to go along. The Registrar submits that the stress and financial burden on [K.D.] from being sued, having to hire a lawyer and attend a mediation also had an impact.
78. The Registrar argues that the fact that the lender did not experience any loss is irrelevant and there does not need to be an actual loss for deprivation. The risk of a loss is enough.
79. The Registrar submits that the definition of a "straw buyer" in the RECA bulletin is "someone who agrees to put their name on a mortgage application on behalf of another person, typically for a cash payment". The Registrar submits that [K.D.]

participated in the fraudulent scheme for altruistic reasons rather than payment, but that this does not preclude her from being a straw buyer.

4. Registrar's supplemental submissions on impact of the *Charkhandeh* decision

a. Sanction

80. After the Alberta Court of Appeal rendered its decision in *Charkhandeh*, the Panel asked for the parties' submissions as to the effect of the *Charkhandeh* on this case.
81. The Registrar submits that the Alberta Court of Appeal in *Charkhandeh* confirmed that the *Jaswal* factors must still be considered when deciding on sanction.
82. While the Court of Appeal in *Charkhandeh* confirmed that the protection of the public, maintenance of the public's confidence in the integrity of the profession, specific and general deterrence are important factors, the Court of Appeal also identified proportionality, restraint and enabling rehabilitation as factors to be considered, stating at para 95 that the most lenient sanction that would serve the legitimate purposes of the sanctioning process should be selected.
83. Furthermore, the Court of Appeal stated that even though cancellation of a registration might serve the secondary purposes of denunciation, deterrence and protection of the reputation of the profession, the tribunal must also consider whether any less sanction would have substantially the same impact. The Registrar notes that the Court of Appeal emphasized that a sanction should not be so onerous so as to preclude the rehabilitation of a member.
84. The Registrar submits that *Charkhandeh* can be distinguished from this case in that Dr. Charkhandeh thought that the victim was consenting to the sexual acts, and although that was an unreasonable and wrong belief, his actions were not deceitful. The Registrar submits that in contrast to that, Mr. Rudyk intentionally committed fraud by deceit and took advantage of a client, which the Registrar argues is more serious.
85. With respect to the fines proposed by the Registrar of \$10,000 for the breach of Rule 42(b) and \$4,000 for the breach of Rule 42(a), the Registrar points to para 96 of the Court of Appeal's decision *Charkhandeh* and submits that the fines proposed serve as both specific and general deterrence. The Registrar argues that in past RECA decisions, fines were imposed in addition to licence cancellation and that it is expected by the industry that professionals who

engage in fraud will face significant sanctions, including both licence cancellation and fines.

86. The Registrar submits that a 3 year licence cancellation is the appropriate sanction for Mr. Rudyk's breach of Rule 42(b) of the *Real Estate Act Rules*.
87. The Registrar points out that Rule 26 of the *Real Estate Act Rules* provides that a licence is deemed cancelled when a licence is terminated, suspended or cancelled. Accordingly, whether the hearing panel cancels or suspends Mr. Rudyk, his licence will be deemed to be cancelled by RECA.
88. The Registrar argues that Mr. Rudyk should complete all education as if never licenced, which would ensure rehabilitation of Mr. Rudyk before he re-enters the profession. The Registrar notes that if the panel was to issue a suspension of less than 3 years, the education component would not be met in that R. 16(4) of the *Real Estate Act Rules* provides that a former licensee is exempt from the requirement of education to re-enter the industry if they have been unlicensed for less than 36 months.
89. The Registrar notes that although the Court of Appeal in *Charkhandeh* took into account that the professional in that case did not have any misconduct on his record in the 10 years from the time the conduct at issue occurred to the time of the hearing, the Registrar has already taken that into account when recommending a 3 year licence cancellation. The Registrar further submits that Mr. Rudyk's lack of remorse warrants the question of whether he can be rehabilitated and whether he remains a risk to the public.
90. The Registrar argues that if the Panel finds that the threshold for licence cancellation has not been met in this case, then a suspension of 3 years is warranted. The Registrar further submits that if the Panel finds that a suspension of less than 3 years is appropriate and that a specific education component is required rather than a full re-education, the Registrar can make further submissions on what courses would be appropriate.
91. The Registrar submits that the Court of Appeal in *Charkhandeh* acknowledged that the number of allegations and overall success are relevant to costs and that the first step in the costs analysis is to look at the statutory wording. The Registrar notes that the Bylaws and Regulations are very specific as to what constitutes costs and how those costs should be calculated.
92. The Registrar points out that the Court of Appeal in *Charkhandeh* held that costs are not meant to be a sanction, and that the serious nature of the allegations will

not automatically result in a costs award. However, serious allegations result in lengthier hearings, and as such, often justify higher costs awards.

93. The Registrar submits that the Court of Appeal in *Charkhandeh* held that an important factor is whether costs have been increased due to the unreasonable or inefficient litigation conduct by either party.
94. The Registrar emphasizes that the Court of Appeal in *Charkhandeh* confirmed that costs are discretionary, that the list of factors is not exhaustive and that other things can be considered when determining costs.
95. The Registrar refers to para 144, where the Court of Appeal held that:
 - (a) The expenses must be reasonably incurred having regard to the nature of the investigation, the allegations and the hearing process;
 - (b) The quantum paid by the regulator must be fair and reasonable;
 - (c) It must not have only been reasonable for the College to have incurred the costs (in substance and in quantum) but it must also be reasonable to transfer the burden of those costs to the professional;
 - (d) The costs award must be proportionate to the issues involved, the circumstances of the member, and the overall burden it places on him or her.
96. The Registrar argues that the costs it proposed are reasonable and proportionate, that they are not unduly onerous or “crushing”.
97. The Registrar advises that RECA offers a payment plan, and submits that it is reasonable for Mr. Rudyk to pay a portion of the costs related to the hearing and for the Registrar to bear some of the costs.
98. The Registrar notes that it has not asked for all costs related to the hearing, including the time its counsel spent reviewing the file and preparing for the hearing, witness costs, costs of independent counsel or costs for the time spent by the hearing panel in drafting the decision.
99. The Registrar points out that it was wholly successful, that Mr. Rudyk requested several adjournments and that he made a frivolous *Jordan* application at the outset of the hearing.

5. Mr. Rudyk's supplemental submissions on impact of the *Charkhandeh* decision

100. Mr. Rudyk submits as a unanimous 5 member decision of the Court of Appeal, *Charkhandeh* is clearly intended by the Court to provide guidance to all professional discipline regulators in Alberta.

a. Proportionality

101. In *Charkhandeh*, the College justified expulsion of the professional from the profession on the basis that his offences were among the most serious that could arise. Mr. Rudyk points out that the Court directed that what should occur in such cases is an analysis of whether a meaningful licence suspension could accomplish the same objectives.

102. Mr. Rudyk notes that in *Charkhandeh*, a suspension was found to be appropriate but that the imposition of fines in addition to the suspension was found to be inappropriate.

b. Passage of time

103. Mr. Rudyk argues that in setting aside the cancellation of Dr. Charkhandeh's licence, the Court of Appeal emphasized that the sanction imposed had failed to take into account the member's prior unblemished professional history.

104. He maintains his position regarding delay and abuse of process, and argues that they are mitigating factors unaffected by the *Charkhandeh* decision.

c. Costs

105. Mr. Rudyk argues that the *Charkhandeh* decision supports an award of no costs.

d. Response to the supplemental submissions of the Registrar

106. In response to the supplemental submissions of the Registrar, Mr. Rudyk submits that a cancellation is not the same as a suspension. He argues that s. 43 of the *Act* clearly sets out a hierarchy of sanctions and cancellation is a more severe sanction than a suspension.

107. Mr. Rudyk submits that a suspension would not be appropriate in this case given the strong mitigating factors identified in his submissions.

108. It is Mr. Rudyk's position that the appropriate sanction in this case is a reprimand and that no costs should be awarded.

C. DECISION AND REASONS OF THE PANEL

1. Sanction

109. In its decision regarding Phase 1 of this hearing, this Panel found Mr. Rudyk breached Rules 42(a) and (b) of the *Real Estate Act Rules*, which provide that:

42 Licensees must not:

- (a) make representations or carry on conduct that is reckless or intentional and that misleads or deceives any person or is likely to do so;
- (b) participate in fraudulent or unlawful activities in connection with the provision of services or in any dealings.

110. This Panel found that the following citations in the Notice of Hearing were made out, and that this conduct is deserving of sanction:

1. Between March 1, 2016 and October 1, 2016, the Licensee made representations that were reckless or intentional and misled or deceived any person or was likely to do so contrary to Rule 42(a) of the *Real Estate Act Rules*:

- a. The Licensee was representing [K.D.] as the Buyer's real estate agent. The Licensee attended a meeting with [K.D.] and [D.S.], the mortgage broker assisting his client, where the Licensee misled [D.S.] into believing that he was there just as buyer's agent/family friend to [K.D.].
- b. In the meeting with [K.D.] and [D.S.], the Licensee failed to communicate to [D.S.] that it would be he who would reside at the subject Property being purchased by his client.

2. Between March 1, 2016 and October 1, 2016, the Licensee participated in fraudulent or unlawful activities in connection with the provision of services contrary to Rule 42(b) of the *Real Estate Act Rules*:

- a. The Licensee advised his client, [K.D.], to mislead her mortgage broker, [D.S.] by stating that [K.D.] would reside at the Property as her principal residence.

- c. The Licensee transferred the down payment amount to his client, [K.D.], while knowing the down payment must come from the client or her immediate family.
- d. The Licensee advised his client, [K.D.], to provide her mortgage broker, [D.S.] with a fabricated story about where the down payment came from.
- e. The Licensee failed to disclose his interest in the Property to any party in the subject transaction until 2019, when he was questioned by his Real Estate Broker after a civil claim was initiated between the parties.

111. S. 43 of the **Act** sets out the Panel's jurisdiction with respect to sanction and costs. It provides that:

43(1) If a Hearing Panel finds that the conduct of a licensee was conduct deserving of sanction, the Hearing Panel may make any one or more of the following orders:

- (a) an order cancelling or suspending any licence issued to the licensee by an Industry 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 licence 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.

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

112. After the parties provided their submissions on sanctions in this matter, a five member panel of the Alberta Court of Appeal rendered its decision in *Charkhandeh*. At the request of this Panel, the parties provided supplemental submissions on the impact of the *Charkhandeh* decision on the sanction and costs that should be ordered in this matter.
113. As set out by the Alberta Court of Appeal in *Charkhandeh* at para 86, *Jaswal* sets out a helpful, non-exhaustive list of factors relevant to sanctioning. It lists 13 factors, grouped around seven considerations:
- (a) *Seriousness of the conduct*: nature and gravity of the proven allegations; number of times the offence occurred; the degree to which the offensive conduct was clearly regarded, by consensus, as being the type of conduct that would fall outside the range of permitted conduct, not an “error of judgment”.
 - (b) *Factors relating to the fundamental purpose of sanctions*: the need for deterrence; protection of the public; confidence in the integrity of the profession. These often overlap with the seriousness of the conduct.
 - (c) *Character and personal attributes of the professional*: the age and experience of the offending professional; previous character; presence or absence of prior complaints or convictions.
 - (d) *Impact on the complainant*: age and mental condition of the complainant; impact of the incident on the complainant.
 - (e) *Mitigating factors*: specifically, acknowledgement of responsibility, but others are recognized, including some that reduce the gravity of the misconduct.
 - (f) *Impact of the sanction on the professional*: collateral financial or other penalties as a result of the allegations.
 - (g) *Parity*: the range of sanctions in other similar cases.
114. Where one consideration, such as the seriousness of the allegations, is covered by several of the *Jaswal* factors, care must be taken to avoid double counting: *Charkhandeh* at para 86.
115. In the *Charkhandeh* decision, the Alberta Court of Appeal set out the following guidance with respect to sanctions:

[87] The various possible sanctions serve overlapping purposes. A caution or reprimand primarily serves to confirm that the conduct in question is unprofessional, and would act as a specific deterrent to the professional. Other sanctions are directly related to protection of the public: practising under conditions, suspensions, proof of capacity, counselling or treatment. In addition to their deterrent effect, the latter sanctions could also be directed at rehabilitation of the professional.

[88] Some sanctions, like fines, are almost entirely punitive. They would punish the professional, and act as a specific or general deterrent. Their impact on the protection of the public or the reputation of the profession is more indirect.

[89] What sanctions or combination of sanctions will “maintain the public’s confidence in the integrity of the profession” is difficult to address. [...] That function of sanctioning is primarily served by the fact that unprofessional conduct is positively dealt with by the College, and the overall suitability and proportionality of the sanction. Proportionality is fundamental, because while an unduly lenient sanction for misconduct would undoubtedly undermine public confidence, an overly punitive sanction might have the same effect. Maintaining public confidence in the integrity of the profession does not require overly punitive sanctions, nor, as a sentencing objective, should it override the other factors that must be considered and balanced.

[90] The most severe sanction is obviously cancellation of the professional’s registration, described in the McRuer Report as “economic death”[...] Cancellation is a sanction primarily directed at the protection of the public where the unprofessional conduct demonstrates that the professional is ungovernable, or his or her continued participation in the profession would create an unacceptable risk.

[91] The selection of a fit sentence is within the mandate of the Hearing Tribunal, which must consider and weigh all the competing objectives of the sentencing process.

116. The Court of Appeal in *Charkhandeh* confirmed that sanctions in disciplinary matters serve the following objectives: (a) protection of the public, (b) maintenance of the public’s confidence in the integrity of the profession, (c)

individual deterrence of the sanctioned professional, as well as (d) general deterrence of other members of the profession: *Charkhandeh* at para 92.

117. The primary purpose of sanctions in professional disciplinary cases is protection of the public: *Charkhandeh* at para 93.

118. Further, proportionality, restraint, and enabling rehabilitation are important: *Charkhandeh* at para 93.

119. With respect to the sanctions of cancellation and suspension, the Court of Appeal in *Charkhandeh* at para 95 held that:

[95]The sanction imposed should be aimed at protection of the public, but also proportionate to the gravity of the offence, and the moral culpability of the professional. In accordance with the principle of restraint, the most lenient sanction that would serve the legitimate purposes of the sanctioning process should be selected. Specifically, even though cancellation of registration might serve the secondary purposes of denunciation, deterrence and protection of the reputation of the profession, the Hearing Tribunal must also consider whether any lesser sanction would have substantially the same impact. Where there is no measurable risk to the public, the sanction should also not be so onerous as to preclude rehabilitation of the professional, or unnecessarily prevent a trained professional from providing a valuable service to the public, including his other patients.

120. The Court of Appeal in *Charkhandeh* also commented on the Tribunal's imposition of the maximum fine for each of the proven allegations, stating at para 96 that:

[96] The imposition of the maximum fine on each of the five proven allegations is problematic. When combined with a suspension or expulsion from the profession, these fines do not serve any legitimate incremental function. They are simply a piling on of punitive measures. They do not provide any specific deterrence of a professional who has been prevented from practicing, nor do they provide any general deterrence to other members of the profession who face suspension or expulsion for similar conduct.

a. Mitigating factors

Delay

121. Mr. Rudyk submits that the 9 year delay between the conduct at issue and the Notice of Hearing in this case ought to significantly mitigate any sanctions imposed on him.
122. He argues that the inordinate delay and abuse of process mean that the appropriate sanction is a reprimand and that no costs order be made.
123. The Registrar submits that in this case, given that the allegations are very serious, delay should not impact sanction, or in the alternative, its impact should be minimal. The Registrar argues that Mr. Rudyk has not been subject to any negative consequences between the conduct in question and the hearing, unlike the professional in *Tan*, who undertook not to perform certain surgeries from the time he was charged until the hearing. In Mr. Rudyk's case, there was no publication of the allegations until shortly before the hearing and he was able to continue making a living.
124. The Alberta Court of Appeal in *Wachtler* and *Kherani* confirmed that delay is a mitigating factor for sanctions.
125. In *Wachtler* at para 48, the Alberta Court of Appeal held that "time operates to disconnect the event from the penalty" because the conduct eventually "become[s] some vague matter arising within the professional's practice from long ago."
126. In *Kherani* at paras 49 and 50, the Court of Appeal set out the following with respect to delay as a mitigating factor:

....delay weakens the strength of the denunciation by distancing the penalty from the proven conduct. In addition, the remedial lessons learned from involvement in the disciplinary process cannot be underestimated. This occurs while a professional reasonably exercises their right to dispute allegations of unprofessional conduct. Trying to protect one's professional reputation is not inconsistent with learning from the process.

When considering delay as a mitigating factor, what is relevant is the time between the misconduct alleged and the sanction, not the time between the complainant realizing they had a claim and sanction, or the time between the actual complaint and the hearing. Where all else is equal, the question is whether a finding of unprofessional conduct

from a decade ago requires the same sanction as unprofessional conduct from two years ago.[...]

127. In this case, the Notice of Hearing, dated July 4, 2024 set out allegations concerning Mr. Rudyk's conduct between March 1 and October 1, 2016. The Notice was issued by RECA over 4.5 years after the complaint was made, and 8 years after the conduct occurred.
128. Mr. Rudyk submits that in *Tan*, the Court of Appeal described the delay in *Kherani* as an exceptionally long delay, which Mr. Rudyk argues is shorter than the nine year delay in his case.
129. This Panel finds that the delay in this case was significant. The Notice of Hearing in this matter was issued 8 years after the conduct occurred. As stated by the Court of Appeal in *Kherani*, delay weakens the strength of the denunciation by distancing the penalty from the proven conduct.
130. Applying the Court of Appeal's guidance in the decisions cited above, this Panel treats the delay as a significant mitigating factor in determining the appropriate sanction for Mr. Rudyk.

Previous character of the licensee

131. Mr. Rudyk had no prior disciplinary history in 20 plus years of being licensed as a realtor.
132. The Panel finds that this factor is mitigating.

Number of times the offence was proven to have occurred

133. The Registrar submits that this factor is neutral in that Mr. Rudyk committed two breaches which both related to one incident of misconduct flowing from one transaction.
134. Mr. Rudyk submits that this factor is mitigating in that the breaches relate to one incident.
135. The Panel agrees that this factor is mitigating in that the allegations stem from one incident and one transaction.

b. Neutral factors

Motivation of the complainant

136. Mr. Rudyk submits that the Complainant in this case abused RECA's complaint process and that this ought to be a significant mitigating factor. He has characterized the Complainant's conduct as threatening to make a RECA complaint if Mr. Rudyk did not agree to forego the settlement they agreed to at mediation as an abuse of process. Mr. Rudyk relies on the decision of the Supreme Court of Canada in *Abrametz*, and the decisions of the Alberta Court of Appeal in *Mathison* and *Yee*.
137. The complainant told Mr. Rudyk's broker "I won't come after his career if he just dismisses this and agrees I don't have to pay him anything". After it became clear that Mr. Rudyk would not agree to forego the settlement they agreed to at mediation, the complainant made her complaint to RECA.
138. The Supreme Court of Canada in *Abrametz* noted that abuse of process is a factor that can be considered when determining the appropriate sanction: at para 94.
139. In *Yee*, an Alberta Court of Appeal decision with 3 concurring judgements, Slatter JA recognized that "serious complaints must be treated seriously, despite the motivation behind them" but that a discipline tribunal has "a discretion to divert discipline proceedings in appropriate cases" and that it was an error not to have considered that possibility: *Yee* at para 49. McDonald JA disagreed and concluded that "the motivation behind a complaint is irrelevant. ... meritorious complaints have sometimes been made by those with 'an axe to grind' including embittered ex-spouses and disgruntled former clients": *Yee* at para 88. McDonald JA went on to state that "it would be wrong for an otherwise meritorious complaint to be dismissed owing to the motivation of the individual making that complaint": *Yee* at para 89.
140. In *Mathison*, the majority of the Court of Appeal held that it was not necessary for the purpose of that decision for the Court to decide between the alternative approaches taken in *Yee* to the question of whether an otherwise potentially meritorious complaint can be dismissed or diverted pursuant to the CPA Act based on the complainant's motives.
141. The Registrar points out that s. 39(1) of the *Act* provides that on completion of an investigation, the registrar shall direct that no further action be taken, if the Registrar is of the opinion that

(i) the complaint is frivolous or vexatious, or

(ii) there is insufficient evidence of conduct deserving of sanction.

142. This Panel finds that serious complaints must be treated seriously, despite the motivation behind them.

143. As pointed out by the Registrar, in the context of RECA, many complaints are brought by what could be characterized as disgruntled former clients.

144. While the Panel recognizes that it does have the discretion to divert discipline proceedings in appropriate cases due to the motivation of the complainant, this Panel finds it would be inappropriate to do so in this case.

145. The complaint in this case is meritorious and serious. This Panel found that Mr. Rudyk engaged in a fraudulent mortgage scheme for his own benefit. While the complainant did offer not to make the complaint if Mr. Rudyk did not enforce the settlement agreement reached at a mediation, once the complaint to RECA was made, the complainant had nothing to gain from the complaint proceeding. There was no longer any civil proceeding that she could get an advantage in participating by participating in this hearing.

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

146. The Registrar submits that Mr. Rudyk has not suffered any penalty or financial consequences as a result of these allegations. Mr. Rudyk disagrees and points out that he has retained lawyers to defend himself against the allegations.

147. The Panel finds that legal costs incurred by professionals to defend themselves against allegations of professional misconduct, which they are found guilty of, are not financial penalties suffered as a result of the allegations. These legal costs are the result of choosing to have those allegations tested at a hearing, which licensees are entitled to do. They are not, however, penalties suffered as a result of the allegations.

148. The Panel agrees with the Registrar that there was no evidence that Mr. Rudyk suffered any penalty or financial consequence as a result of these allegations.

Specific deterrence

149. The Registrar submits that Mr. Rudyk showed no remorse for advising [K.D.] how to commit mortgage fraud for his benefit. He withheld information from his

broker and used his knowledge of mortgage rules to perpetrate fraud for his financial benefit.

150. Mr. Rudyk submits that it would be an error of law to find that lack of remorse or refusal to admit guilt was an aggravating factor. Citing *Alsaadi* at para 29, he argues that while admission of guilt is a mitigating factor, the failure to admit guilt is not aggravating.

151. The Alberta Court of Appeal in *Alsaadi* held that while admission of guilt is a mitigating factor, the failure to admit guilt is not aggravating. Mr. Rudyk engaged in one fraudulent scheme. As set out by the Alberta Court of Appeal in *Walton*, the ordeal and expense of this hearing, together with the publicity that accompanies it, themselves have a deterrent effect.

152. Accordingly, this Panel finds that this factor is neither mitigating or aggravating.

Role of the licensee in acknowledging what occurred

153. The Registrar submits that Mr. Rudyk has not acknowledged that his conduct was deserving of sanction, however he was entitled to have the evidence tested before the hearing panel.

154. The Panel finds that this factor is neither mitigating or aggravating.

c. Aggravating factors

Nature and gravity of proven allegations

155. The Panel finds that the breach of Rule 42(b) is a serious offence. This Panel found that Mr. Rudyk participated in a fraudulent scheme. The mandate of RECA as a regulator includes protecting the public, and detecting and suppressing fraud. This factor is aggravating.

156. However, even with serious offences such as fraud, there is a spectrum of conduct. Factors which would move the conduct toward the more severe end of the spectrum, such as multiple victims, particularly vulnerable victims, or direct misrepresentation (as opposed to misrepresentation by omission), were not found in this case.

Age and experience of licensee

157. Mr. Rudyk was a very experienced real estate associate with 20 years of experience and should have known that the arrangement he participated in was

a fraudulent scheme, and that participating in a fraudulent scheme carried serious consequences. As such, this Panel finds this factor to be aggravating.

Impact of incident on the victim

158. The Registrar submits that Mr. Rudyk put [K.D.] in a position where she was responsible for a mortgage on a property he was living in. [K.D.]’s evidence, which was accepted by the Panel, was that there were months where Mr. Rudyk didn’t pay his rent on time, thereby putting financial pressure on [K.D.] to pay the mortgage.
159. Mr. Rudyk argues that whether he made timely rent payments to [K.D.] is not an issue in this case. He also argues that other than for the purposes of the motivation of the complainant, it is irrelevant to this matter that [K.D.] settled Mr. Rudyk’s claim by agreeing to pay him \$18,000. He points out that he sued [K.D.] for \$64,000, and that [K.D.] was represented by counsel in those proceedings. Moreover, he notes that the Panel was not apprised of the details of the mediation and settlement agreement.
160. While whether Mr. Rudyk’s conduct put financial pressure on the complainant is not relevant to whether Mr. Rudyk engaged in professional misconduct, it is relevant at the sanction stage, as it goes to the impact of the incident on the victim.
161. As a result of Mr. Rudyk’s fraudulent scheme, [K.D.] was personally responsible for a mortgage on a property he lived in and intended to take over. There were months where Mr. Rudyk didn’t pay his rent on time, thereby putting financial pressure on [K.D.] to pay the mortgage. He then sued [K.D.] for over \$64,000 after he moved out of the property to recover the monies he paid towards the mortgage and to improve the property. As a result, he put further financial pressure on [K.D.]. That lawsuit was eventually settled at a mediation with [K.D.] paying Mr. Rudyk \$18,000 as a result of entering into a fraudulent arrangement that he proposed to her, for his benefit, which was made to assist him when he could not qualify for his own mortgage, a term of which was supposed to be that she would not be out of pocket. These were all impacts of the incident on the Complainant.
162. The Registrar submits that although the lender didn’t experience an actual loss, the lender was put at risk. Mr. Rudyk argues that the lender is not a victim, because the lender lost nothing. The Panel notes the evidence was that had the lender known that the property would not be [K.D.]’s principal residence, the

lender would have required a 20% downpayment. Under the fraudulent scheme, the lender was told that the property would be [K.D.]’s principal residence. As such, the lender required only a 5% downpayment. This considerably increased the lender’s risk exposure. While the lender did not experience an actual loss, its risk exposure was considerably higher as a result of the fraudulent scheme where its loan was secured by a 5% downpayment instead of a 20% downpayment.

163. The Panel considers this factor to be aggravating.

General deterrence and need to maintain public confidence in industry

164. The Registrar submits that RECA must demonstrate to the public that it is suppressing fraud perpetrated by licensees. Licensees engaging in fraud has a very negative impact on the profession’s collective reputation.

165. Mr. Rudyk argues that the need to maintain public confidence in the industry is diminished given the “exceptionally long delay” in this case.

166. For the reasons set out above, this Panel considers the significant delay in this matter as a significant mitigating factor.

167. However, an important part of RECA’s mandate is to protect the public from fraud and maintain the public’s confidence in the integrity of the profession. This Panel finds that licensees engaging in fraudulent schemes has a significant impact on the public’s confidence in the integrity of the profession.

168. Accordingly, while the Panel finds delay to be a significant mitigating factor, it finds general deterrence and the need to maintain public confidence in the integrity of the profession to be an aggravating factor.

Parity: the range of sanctions in other similar cases

169. While the Panel found that the cases cited by the Registrar were informative, they were all distinguishable from this matter. The Panel notes that in a number of the cases cited, the licensees and the registrar submitted agreed statements of facts and joint submissions on sanction, which agreement likely had an impact on the sanction.

Each case must be assessed on its own facts.

170. With respect to the breach of Rule 42(b), the Panel found the **Aulakh** case to be more similar to this matter than the other cases cited. However, in **Aulakh** the

licensee admitted that her conduct was deserving of sanction by entering into an agreed statement of facts and a joint submission on sanction, which is a mitigating factor that likely led to a more lenient sanction. In that case, the allegations were more serious in that the licensee engaged in 3 fraudulent transactions, creating fraudulent documentation in regards to the source of the down payment and knowingly providing false information on mortgage applications. She also engaged in multiple conflicts of interest and provided incompetent service. Aulakh's license was cancelled with no ability to reapply for 2 years and no fines were imposed. The parties agreed that no costs would be paid.

171. We agree with Mr. Rudyk that the **Adel** case cited by the Registrar is not comparable to Mr. Rudyk's case. Mr. Adel was found guilty of multiple breaches, and he failed to cooperate with numerous RECA investigations. In this case, Mr. Rudyk was found guilty of two breaches and he cooperated with the investigation.
172. We find that although Mr. Rudyk did participate in a fraudulent scheme, he did not recruit [K.D.] to act as a straw buyer, where he obtained the title to the property and [K.D.] was left responsible for the mortgage, and therefore that the straw buyer cases cited by the Registrar are not similar enough to the case before us.
173. With respect to the breach of R. 42(a), none of the precedents cited by the Registrar are on point, however, the Panel finds that **Chu** is the most similar to the current matter in that the licensee in that case made a misrepresentation to another licensee. However, in **Chu** the licensee entered into an agreement on Conduct Deserving of Sanction and a Joint submission on Sanction, which is a mitigating factor that likely led to a more lenient sanction. While in **Chu** the licensee stood to benefit by getting a slightly higher commission if the sale went through, in our case, Mr. Rudyk benefitted by living in a home while not being able to qualify for a mortgage for that home and by placing the financial risk of owning that home, including potential depreciation or failure by him to make mortgage payments, on his friend, [K.D.].

d. Decision on Sanctions

174. Mr. Rudyk convinced [K.D.], a friend, to buy a property for him to live in when he could not qualify for a mortgage himself. He convinced [K.D.] to misrepresent to the mortgage broker that she was purchasing the property as a primary residence which saved him from putting down a 20% down payment which he

could not afford to make. He exposed [K.D.] to the financial risk of being liable for the mortgage and to potential fraud allegations. He didn't always pay the mortgage on time and sued her to recover the down payment, and other funds he said he put into the property, when he could not secure his own financing to take over the home three years later.

175. Mr. Rudyk submits that the Panel should consider the overall impact of the combined sanctions, costs and fines to ensure that the global sanction is proportional to the culpability of the professional.
176. The Panel finds that the conduct of engaging in a fraudulent scheme was very serious, but was very dated, and was not repeated. Considering all the factors set out above, and in particular the significant delay in this case, this Panel finds that a cancellation would not be appropriate.
177. The Panel finds that a one year suspension along with a fine of \$2,000 for the breach of Rule 42(a) and a fine of \$5,000 for the breach of Rule 42(b) are proportionate sanctions, serving to both denounce and deter the conduct at issue.
178. This combination of a one year suspension and \$7,000 in fees takes into account the serious nature of the conduct, the significant delay in this case, Mr. Rudyk's 20 year prior clean disciplinary history, that both charges stemmed from one incident, and the intervening 9 years of uneventful professional practice. This sanction also reflects the amount of time that had passed without Mr. Rudyk reoffending: *Kherani* at paras 49-50.
179. We note that a one year suspension is on the low end of the spectrum of cases where licensees engaged in a fraudulent scheme, particularly where the licensee did not enter into an agreement on facts and sanction.
180. The Act allows a maximum fine for each breach of \$25,000. The fines imposed by the Panel are far from the maximum fines.
181. Given Mr. Rudyk's lack of acknowledgement that the conduct he engaged in amounted to a fraudulent scheme, the Panel is of the view that an educational component is necessary and orders that Mr. Rudyk complete a course on ethics, fraud or mortgage fraud that is satisfactory to the Registrar. This course shall be completed prior to the end of the 12 month suspension. If the parties cannot agree on a course, they can come back before this Panel. This re-education will promote Mr. Rudyk's rehabilitation and ensure that he can recognize fraud.

2. Costs

182. Making an award of costs is a discretionary matter: *Charkhandeh* at para 132.

183. The first step in determining costs in professional disciplinary hearings is to review the statutory wording: *Charkhandeh* at para 132.

184. S. 43(2) of the *Act* provides that the Hearing Panel may, in addition to or instead of dealing with the conduct of a licensee under subsection (1), order the licensee to pay all or part of the costs associated with the investigation and hearing determined in accordance with the bylaws.

185. S. 10 of the *Bylaws* provides that the costs payable shall be determined in accordance with the following:

(a) Investigation costs

- (i) investigators' costs at a minimum of \$40 per hour to maximum of \$80 per Hour;
- (ii) general investigation costs including but not limited to disbursements, expert reports and travel costs in accordance with RECA policy guidelines;
- (iii) transcript production including but not limited to interview transcripts;
- (iv) legal costs not to exceed \$250 per hour; and
- (v) other miscellaneous costs.

(b) Hearing and appeal costs

- (i) investigators' costs at a minimum of \$40 per hour to a maximum of \$80 per hour;
- (ii) general hearing and appeal costs including but not limited to disbursements, process service charges, conduct money, expert reports, travel expenses including but not limited to witnesses and RECA representatives in accordance with RECA policy guidelines, expert witness fees to a maximum of \$1,000 per diem;
- (iii) transcript production;

- (iv) hearing or appeal administration costs including but not limited to location rental, hearing secretary salary to a maximum of \$15 per hour, honoraria of hearing panel members;
- (v) legal costs not to exceed \$250 per hour;
- (vi) adjournment costs; and
- (vii) other miscellaneous costs.

186. S. 10.4 of the **Bylaws** states the following factors may be considered by a panel in determining any costs order:

- (a) The degree of cooperation by the licensee;
- (b) The result of the matter and 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 the expenses;
- (h) The financial circumstances of the licensee and any financial impacts experienced to date by the licensee; and
- (i) Any other matter related to an order reasonable and proper costs as determined appropriate by the panel.

187. With respect to the factors set out in s. 10.4 of the *Bylaws*, the Registrar argues that Mr. Rudyk was wholly unsuccessful in this matter and did not take any responsibility for his breaches and conduct. It notes that the issue of combating fraud is important and that the hearing was complex and involved multiple witnesses. The Registrar points out that there is insufficient evidence of the financial burden on Mr. Rudyk, and submits that given all that all the evidence was disclosed to Mr. Rudyk, there should have been a reasonable anticipation of the outcome.

188. The Court of Appeal in *Charkhandeh* at para 129 set out a new approach to awarding costs in professional disciplinary proceedings. The Court of Appeal noted that in recent years costs awards in professional discipline hearings have routinely been above \$100,000.

189. The Court of Appeal held that going forward, costs in disciplinary proceedings should be awarded based on the wording of the statute, and the principles set

out in *Charkhandeh*. The approach in *Jinnah* should not be used: *Charkhandeh* at para 168.

190. The Court of Appeal set out the following principles for awarding costs in professional disciplinary hearings:

140..... Despite what has been said on the topic in prior decisions of the Court, the time has come to recognize that seriousness of the charges is relevant to the sanction, but is not a relevant consideration in awarding costs. The quantum and type of the costs will likely be impacted by seriousness of the allegations, but the length and extent of the hearing and the conduct of the parties at the hearing are what is relevant, not seriousness *per se*. Moral indignation towards the underlying conduct is not a principled basis for awarding costs. [...]

142 An important factor is whether costs have been increased due to the unreasonable or inefficient litigation conduct of either party. That would include things like introducing unnecessary or irrelevant evidence, overcharging by the College, refusing to admit uncontested facts, bringing unnecessary applications, delaying proceedings, or failing to meet reasonable deadlines. The party who wastes costs can expect to be held accountable. [...]

[144] In the end, the quantum of any costs awarded must be reasonable (at three levels) and proportionate:

(a) the expenses must be reasonably incurred having regard to the nature of the investigation, the allegations and the hearing process;

(b) the quantum paid by the regulator must be fair and reasonable;

(c) it must not only have been reasonable for the College to have incurred the costs (in substance and as to quantum) but it must also be reasonable to transfer the burden of those costs to the professional. [...]

(d) the costs award must be proportionate to the issues involved, the circumstances of the member, and the overall burden it places on him or her. [...]

[147] An important factor is that, however the costs are calculated, the ultimate award cannot be an unduly onerous or "crushing" burden on

the professional. This factor effectively puts a cap on what would be a proportionate costs award in many cases.

191. The Registrar submits that although the Court of Appeal in *Charkhandeh* directed that the principles set out by it in *Jinnah* should no longer be applied, costs should still be awarded in this matter. It submits that the costs it has proposed are reasonable and proportionate. They are not unduly onerous or crushing for Mr. Rudyk and RECA offers a payment plan option.

192. The Registrar has asked for the following costs based on s. 10 of the *Bylaws*:

Item	Hours	Amount/hr	Low End	High End
Investigation Costs	30 hrs	\$40 - \$80/hr	\$1200	\$2400
Legal Costs – costs for counsel for 5 days of hearing time, plus 10 hours to research and prepare this Phase 2 argument	18.25 hrs	\$100 - \$250/hr	\$1825	\$4562
Hearing secretary salary (5 days)	8.25 hrs	\$15/hr	\$123	\$123
Hearing Panel Honoraria – not including writing costs (5 days)	8.25 hrs	Chair and two Panel Members (\$1400/day)	\$7000	\$7000
GRAND TOTAL			\$10,148	\$14,085

193. The Registrar was successful with the respect to both counts.

194. There was no evidence led to establish that the costs sought by the Registrar in this matter are disproportionate or crushing.

195. Mr. Rudyk brought a *Jordan* application which in light of the *Abrametz* decision of the Supreme Court of Canada, was bound to fail.

196. Moreover, Mr. Rudyk asked for a number of adjournments and was granted a number of adjournments. Some of those adjournments could have been avoided had Mr. Rudyk retained counsel in a timely manner.

197. The Court of Appeal in *Charkhandeh* at para 150 held that notwithstanding the broad language in s. 82(1)(j) of the *Health Professions Act*, generally a professional should not have to pay all or a significant portion of the expenses associated with the infrastructure of the hearing, for example travel expenses and daily allowance for the tribunal members. In the normal course the types of expenses that the professional should be expected to pay are those costs

discretely associated with the hearing itself. In light of this guidance, this Panel finds that it would not be appropriate for Mr. Rudyk to pay the hearing secretary salary and hearing panel honoraria.

198. After considering all of the circumstances of the case and the guidance set out in the *Charkhandeh* decision, the Panel finds that a costs award of \$5,000 is appropriate and reasonable.

D. CONCLUSION

199. In accordance with section 43 of the *Act*, the Panel hereby orders:

a. Suspension

200. A 12-month suspension of Mr. Rudyk's authorization to trade in Real Estate issued under the *Act* to commence immediately,

b. Education

201. Prior to the end of the 12 month suspension, Mr. Rudyk shall complete a course on ethics, fraud or mortgage fraud that is satisfactory to the Registrar. If the parties cannot agree on a course, they can come back before this Panel.

c. Fines

202. Mr. Rudyk shall pay the following fines within 30 days of the date of this decision:

Breach of Rule 42(a)	\$2,000
Breach of Rule 42(b)	<u>\$5,000</u>
Total fines	\$7,000

d. Costs

203. Mr. Rudyk shall pay costs in the amount of \$5,000 within 30 days of the date of this decision.

Dated in the City Edmonton in the Province of Alberta, on October 22nd, 2025

"Signature"

[A.T], Hearing Chair