

THE REAL ESTATE COUNCIL OF ALBERTA

IN THE MATTER OF Sections 39(1)(b)(i) and 41(1) of the *REAL ESTATE ACT*,
R.S.A. 2000, c.R-5

AND IN THE MATTER OF a Hearing regarding the conduct of
ASLAM CHAUDHRI, Real Estate Associate, currently unregistered,
previously registered with **Grand Realty & Management Ltd. o/a Grand Realty** and
with **Urban Real Estate Services Ltd. o/a Urban-Realty** and with **Discover Real
Estate Ltd.** and with **1853147 Alberta Ltd. o/a Engel & Volkers Calgary** and with
Calgary Independent Realty Ltd. o/a CIR Realty

Hearing Panel Members: [G.F], Hearing Panel Chair
[L.M]
[G.P] (alternate for [S.D])

Hearing Date: May 24 – June 3, 2022

Decision Date: October 31, 2022

Appearances: Sania Chaudhry, Counsel for the Registrar of the Real
Estate Council of Alberta

Aslam Chaudhri, Self-represented

Conduct of the Hearing – Procedural Matters

On November 3, 2021, the Registrar issued a Notice of Hearing for Case 009891, as against Licensee Aslam Chaudhri (Licensee Chaudhri), to commence on December 13, 2021, and to be heard over 9 full days. (Exhibit 1)

On November 3, 2021, the Registrar issued a Notice of Hearing of Cases 009089, 010371, 010661 and 011302, against Licensee [G.S] ([G.S].), to commence on December 13, 2021, and to be heard over 9 full days. (Exhibit 2)

It was agreed between Counsel for the Registrar, Licensee Chaudhri, Counsel for [G.S]., Mr. Fred Fenwick K.C., McLennan Ross LLP and the Hearing Panel that the hearing of Case 009891, would proceed in conjunction with the hearing of Cases 009089, 010371, 010661 and 011302.

By consent of the parties and agreement of the hearing panel, the hearing of cases: 009891, 009089, 010371, 010661 and 011302 (the five cases) was postponed from December 13, 2021, to May 24, 2022, at 9:30 a.m.

On May 11, 2022, Counsel for the Registrar issued a schedule of records that the Registrar intended to use at the hearing of the five cases.

On May 24, 2022, the hearing for the five cases commenced with Case 009891 against Licensee Chaudhri proceeding first; then followed by the four cases against [G.S]. The hearing of the five cases concluded on June 3, 2022.

Eighteen Notices to Attend as a Witness, plus conduct money, were issued. One hundred seven exhibits were entered, consisting of over 1,500 pages of written materials, an audio video recording and a transcript of the audio video recording.

The Complaint – Case: 009891 – Licensee Chaudhri

On December 5, 2019, [S.C] ([S.C]) and [A.C] ([A.C]), submitted an online complaint about Licensee Chaudhri to RECA, with supporting documents. (Exhibit 4). RECA followed up the complaint by obtaining documents (Exhibits 6 and 7) from Jayman Mortgage Associate, [L.L].

On December 9, 2019, Licensee Chaudhri was notified of professional conduct review #009891. (Exhibit 8).

On December 23, 2019, Licensee Chaudhri responded to the complaint by providing documents (Exhibits 9 and 10).

On August 20, 2020, Licensee Chaudhri was invited to attend an interview with RECA Conduct Review Officers, [R.B] ([R.B]) and [C.M] ([C.M]) (Exhibit 13a). The interview was conducted and recorded on September 3, 2020 (Exhibits 13b and 13c).

RECA sought and obtained information from TD Canada Trust on September 4, 2020 (Exhibit 12).

On September 25, 2020, RECA sent notice of a Professional Conduct Review relating to Licensee [G.S]. (Exhibit 15), to [R.A] (Exhibit 17) and to [D.W] (Exhibit 19). [G.S]. responded to RECA on September 28, 2020 (Exhibit 20). On October 5, 2020, RECA requested documents from [R.A] (Exhibit 21). On November 18, 2020, and continuing thereafter, signature analysis documents were sent by RECA Conduct Review Officer [R.B], to and from Docufraud (Exhibits 22-26). A forensic report was issued by Docufraud on September 10, 2021 (Exhibit 26).

Allegations & Findings:

On November 3, 2021, and at the hearing, RECA alleged that Licensee Chaudhri's conduct was deserving of sanction for breaching sections of the *Real Estate Act or Rules*; and specifically, that:

1. You (Licensee Chaudhri) engaged in fraudulent activities in connection with the provision of your services, contrary to *section 42(b)* of the *Real Estate Act Rules*:
 - a) When you, (Licensee Chaudhri) agreed to act for [S.C] and [A.C] in their real estate purchase and in assisting them with their mortgage, they told you (Licensee Chaudhri) that [A.C] was unemployed. Despite knowing that [A.C] was unemployed, you (Licensee Chaudhri) represented in your emails with [L.L] ([L.L]), the mortgage associate for this transaction, that [A.C] was employed.
 - b) You (Licensee Chaudhri) represented falsely to [L.L] that [A.C] employer was a small business and did not have a formal paystub system, that the boss was out of the office so that is why you (Licensee Chaudhri) sent the paycheques in a separate email, and that [A.C] was employed by [H. INC].
 - c) You (Licensee Chaudhri) asked [G.S] ([G.S]) to create a fraudulent employment letter and fraudulent paycheques for [A.C] and sent these to [L.L] for the mortgage application, despite knowing that the documents were false; and
 - d) You (Licensee Chaudhri) told [S.C] what false details to fill in for [A.C]'s employment on the mortgage application forms and sent these to [L.L] for the mortgage transaction despite knowing that the information was not true.

The following exhibits, along with emails, texts, signing certificates and other documents, were admitted at the hearing:

Financial information relating to [S.C], and [A.C], including a Jayman Financial Mortgage application, Cheque stubs 000013 and 000020, two paycheques issued to [A.C], Letter of Employment from [H. INC]. (Exhibit 6)

Service and information Agreement between Jayman Financial, [S.C] and [A.C] (Exhibit 27)

TD Canada Trust Mortgage Commitment Borrowers [S.C] and [A.C] (Exhibit 29)

Cancellation of transaction notice from Licensee Chaudhri to [L.L] and Notice for Non-Waiver and non-satisfaction of conditions (Exhibits 32 and 33)

Exclusive Buyer Representation Agreement dated November 25, 2018 (Exhibit 41)

Residential Purchase Contract between Jayman Built Ltd., [S.C] and [A.C] for property located at [ADDRESS], with an acceptance date of November 28, 2018 (Exhibit 43)

MLS (sold) listing of [ADDRESS] (Exhibit 49)

The Findings - Case: 009891 – Licensee Chaudhri

The Hearing Panel unanimously finds that:

1. Licensee Chaudhri's conduct is deserving of sanction for breaching sections of the *Real Estate Act* Rules; and specifically, that Licensee Chaudhri engaged in fraudulent activities in connection with the provision of his services, contrary to *section 42(b)* of the *Real Estate Act* Rules; as cited in the Notice of Hearing paragraphs a, b and d, as alleged by the Registrar, when Licensee Chaudhri:

a) agreed to act for [S.C] and [A.C], and despite knowing that [A.C] was unemployed, the Licensee Chaudhri represented in his emails to [L.L], that [A.C] was employed.

b) represented falsely to [L.L] that [A.C]'s employer was a small business; [A.C]'s employer did not have a formal paystub system; [A.C]'s boss was out of the office and that was why the Licensee indicated he will send the paycheques in a separate email; and [A.C]'s was employed by [H. INC].

c) not proven.

d) Sent false documents to [L.L] for the mortgage transaction despite knowing that the information was not true.

Licensee Chaudhri admitted to RECA Conduct Review Officer [R.B], and the evidence is overwhelming, that Licensee Chaudhri knowingly sent false details regarding [A.C]'s employment history, as stated on the mortgage application form, to [L.L], along with a fraudulent employment letter and fraudulent paycheques. It is also clear from the admissions of Licensee Chaudhri, that he knew the employer's business did

not have a formal paystub system, that the “boss” was out of the office, and that [A.C] was not employed by [H. INC].

The Hearing Panel concludes that Licensee Chaudhri sent the false information, and made these representations, facilitate the fraudulent approval of a mortgage application. Because of the convincing evidence that Licensee Chaudhri did so, the panel accepts and gives weight to [S.C]’s evidence that Licensee Chaudhri, or someone assisting Licensee Chaudhri, created the false documents. [S.C]’s evidence is consistent with Licensee Chaudhri’s admissions.

In light of Licensee Chaudhri’s admissions to RECA Conduct Review Officer [R.B], Chaudhri’s argument that [S.C]. created the false documents, and that [S.C]. duped Licensee Chaudhri into being a mere messenger for [S.C]. in sending the false documents to [L.L], is not accepted nor given any weight.

Based on the conclusion that Licensee Chaudhri knowingly sent false documents to [L.L], the Hearing Panel does not need to determine if Licensee Chaudhri:

- i) directed any particular person, including Licensee [G.S]., to fill in the details on the false application; and
- ii) told [S.C] which false details to write on the false mortgage application form.

The Hearing Panel does not find on the evidence before it in this case, that Licensee Chaudhri asked Licensee [G.S] to create a fraudulent employment letter and fraudulent paycheques. There was evidence that Licensee Chaudhri and Licensee [G.S]. worked in the same office location, and as a result of their professional relationship, the possibility of Licensee Chaudhri asking Licensee [G.S] to create and pass false documents existed. However, the possibility is insufficient to prove, on the balance of probabilities, that in this case, Licensee [G.S] was asked by Licensee Chaudhri, to create a fraudulent employment letter and fraudulent paystubs. The Hearing Panel finds that based on all of the evidence presented in this case, the Registrar did not meet its burden of proof, regarding allegation “c”.

Pre-Hearing Motions - Case 009891 – Licensee Chaudhri

May 11, 2022, Application

Licensee Chaudhri made a written application requesting that the hearing of Case 009891 against him be recorded by the CBC for public interest reasons, to show the level of transparency of the proceedings. The Registrar’s counsel objected to

Licensee Chaudhri's application, on the basis that the application was unclear, all RECA hearings are public, and spectators may attend. Licensee [G.S], through his legal counsel, took no position on Licensee Chaudhri's application.

The hearing panel considered Licensee Chaudhri's application, and denied it, for the following reasons:

1. RECA hearings are recorded. Process transparency is ascertainable from the record;
2. Members of the public, including the CBC, can apply to observe the hearing; and
3. If the Applicant is asking the panel to compel the CBC to observe the hearing, which was unclear from the application, the panel has no jurisdiction to compel the CBC to attend as an observer.

May 19, 2022, Application

Licensee Chaudhri made an oral application that the Hearing Panel compel Witness [S.C], provide his agency disclosure, exclusive Buyer Representation Agreement and Offer to Purchase Agreement; on the basis that Licensee Chaudhri could not locate [A.K] a potential witness.

The Hearing Panel stood down the application for disclosure pending presentation of Case 009891. The hearing panel preferred to hear the testimony of Witness [S.C], to determine the relevance and materiality of the documents requested by Licensee Chaudhri, before rendering its decision.

After hearing Case 009891, the hearing panel concluded that Witness [S.C]'s agency disclosure, and any exclusive Buyer Representation Agreement that may, or may not, have been entered into between [S.C] and [A.K], along with any Offer to Purchase Agreement that was, or was not, facilitated by [A.K], are not relevant nor material to the issue before the panel: whether Licensee Chaudhri engaged in fraudulent activities in the delivery of his services. Licensee Chaudhri's application for disclosure was denied.

May 24, 2022, Application

During the hearing of the case against Licensee Chaudhri, and during the hearing of the four cases against Licensee [G.S], Licensee [G.S]'s counsel objected to the admissibility of Licensee Chaudhri's RECA audio video interview recording (Exhibit 13b) and the RECA audio video transcript (Exhibit 13c) as conducted on September 3, 2020 by RECA Conduct Review Officers [R.B] and [R.M], for the truth of their contents, as against Licensee [G.S]. The Hearing Panel requested written submissions from the parties and reserved its decision.

On June 1, 2022, the Hearing Panel issued its decision that Licensee Chaudhri's RECA video interview with [R.B] and [R.M] (Exhibit 13b) and the interview transcript (Exhibit 13c), are not admissible as to the truth of their contents, as evidence against Licensee [G.S]. 24

The Hearing Panel's reasons were as follows: the contents of the RECA interview and transcript were the result of unsworn information provided by Licensee Chaudhri to two RECA Conduct Review Officers, at a time when Licensee Chaudhri opted to participate without legal counsel. It would be procedurally unfair to Licensee [G.S] to admit Exhibits 13b and 13c, for the truth of their contents, as against Licensee [G.S].

Licensee Chaudhri made no application, nor objection, relating to the admissibility of Exhibits 13b and 13c, as against either Licensee [G.S] or as against himself. Exhibits 13b and 13c were introduced as evidence by the Registrar, and admitted for the truth of their contents, as against Licensee Chaudhri.

May 27, 2022, Application

Licensee Chaudhri made a motion that the hearing be adjourned, so that he could retain legal counsel. Counsel for RECA and Licensee [G.S] consented to the application. In view of the fact that the Licensee had ample notice and opportunity to retain legal counsel prior to the commencement of the hearing, and in fairness to the parties, their witness schedules and the panel's schedule, the Hearing Panel directed Licensee Chaudhri to inform the Hearing Panel in writing, on or before June 3, 2022, if Licensee Chaudhri was retaining counsel or not.

On May 30, 2022, Licensee Chaudhri elected to continue the hearing without legal counsel, and to proceed with his closing argument. The Registrar and Licensee Chaudhri were directed to provide their written submissions at specified times, one week apart, from the closing of the Registrar's case against Licensee Chaudhri. The parties complied with the deadlines.

Apology by Licensee Chaudhri

The Alberta Evidence Act, RSA 2000 Chapter A-18, s. 26.1(2), precludes the Hearing Panel from giving any weight or consideration to Licensee Chaudhri's apology for his actions, as communicated to RECA Conduct Review Officers [R.B] and [R.M] during the RECA audio video interview (Exhibit 13b) and as recorded on the transcript (Exhibit 13c). The Hearing Panel did not take into consideration the apology, as an express or implied admission, in its analysis of the five cases that were the subject of this hearing, or in making its findings in the five cases.

Jurisdiction - Case: 009891 – Licensee Chaudhri

Licensee Chaudhri made a motion that pursuant to the *Act* s. 37(2), the Hearing Panel did not have jurisdiction to hear the complaint against him, because of deficiencies in the online complaint made by [S.C] and [A.C]. (Exhibit 4). Licensee Chaudhri's position was that the initial complaint submitted to RECA, and upon which the investigation and hearing proceeded, did not include the Complainant's name(s), as required by the *Act* s.37(1)(2).

The Hearing Panel reviewed Exhibit 4, being the written complaint submitted to RECA by [S.C] and [A.C]. The written complaint clearly states the names of the two complainants: [S.C] and [A.C]. The complaint also provides detailed particulars. The particulars cited are sufficient to authorize the Registrar to commence an investigation, pursuant to the *Act*, s.38(1).

The Hearing Panel finds that the complaint submitted by [S.C] and [A.C] meets the requirements of the *Real Estate Act*, s.37(2), and that RECA was entitled to act on their on-line submission, to conduct an investigation. As a result of the investigation, RECA proceeded under the *Act*, s.39 to refer the matter to a Hearing Panel. Pursuant to the *Real Estate Act*, s.41(1) a Hearing Panel shall hold a hearing. The *Real Estate Act*, s.42(a), authorizes the Hearing Panel to receive evidence relevant to the matter being heard. The Hearing Panel finds that it has jurisdiction to hear Case 009891 against Licensee Chaudhri.

Evidence from unrelated proceedings - Case: 009891 – Licensee Chaudhri

Licensee Chaudhri asserted that he was being blackmailed by RECA. He also made a motion that information from a mediation conducted in a civil case concerning the enforcement of a contract, and in particular the payment of a real estate commission fee between [S.C] and the Licensee, must be admitted as evidence and considered by the Hearing Panel, in order to make a procedurally fair finding in the case against him.

The Hearing Panel disagrees that unsworn information from a civil mediation should be admitted as evidence in this hearing. The reasons for the Hearing Panel's conclusion are:

1. It is a fundamental legal principle, and a contractual term of standard mediation protocols, that information shared during mediation shall remain confidential, to the extent provided by law;

2. If an agreement is made in mediation, the terms of that agreement are admissible in other proceedings, for the purpose of enforcing the agreement; a non-issue in this case;

3. there is no legal basis or lawful exception to justify undermining the contractual expectation of privacy and confidentiality that was entered into between the mediation participants ([S.C] and Licensee Chaudhri); and

4. the issue in this case is the Licensee's alleged conduct in relation to the distribution of false mortgage application documents; not the alleged motive(s) of [S.C] and [A.C], that might have prompted them to file a civil suit in another forum, to mediate that civil suit, or to submit an on-line complaint to RECA, against Licensee Chaudhri.

The burden of proof - Case: 009891 – Licensee Chaudhri

RECA bears the burden of proving the allegations made against Licensee Chaudhri.

The standard of proof - Case: 009891 – Licensee Chaudhri

As set out in the RECA Hearing and Appeals Practice and Procedure Guidelines at Part 4, S. B, at page 10, RECA must prove that, on the balance of probabilities, the Licensee more likely than not, committed the acts alleged. The panel adopts the approach established by the Supreme Court of Canada, set out in *H. v McDougall 2008 SCC 53* at 44:

...the only practical way in which to reach a factual conclusion in a civil case is to decide whether it is more likely than not the event occurred.

And at 46:

...evidence must be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test.

The Elements of Section 42(b):

The elements of Section 42(b), that must be proven by the Registrar, are:

Participation by Licensee Chaudhri;
Fraudulent documents were issued;
Provision of services by Licensee Chaudhri; or
any dealings by Licensee Chaudhri

The Issues –Case: 009891 – Licensee Chaudhri

1. Did the Licensee participate in the distribution of documents? Yes
2. If yes, were the documents fraudulent? Yes
3. If the documents were fraudulent, were they distributed in the context of the Licensee providing services? Yes
4. Or, if the documents were fraudulent, were they distributed in the context of the Licensee being engaged in “any dealings”? Not necessary to determine. See above.

Analysis of the Evidence – Case: 009891 – Chaudhri

1. “Participation” Admissions by Licensee Chaudhri:

On August 20, 2020, RECA sent an email to Licensee Chaudhri, requesting an interview with him on September 1st, 3rd or 4th, 2020 (Exhibit 13a). An audio video recording was made of the interview. (Exhibit 13b); and a transcript (Exhibit 13c).

Licensee Chaudhri was not sworn for the interview, nor did he affirm the truth of the contents of the interview. However, Licensee Chaudhri acknowledged, in his unsworn interview with RECA Conduct Review Officers [R.B] and [R.M] that he was answering truthfully and completely to all questions (Exhibit 13c, at page 3, Lines 21 – 24). Licensee Chaudhri gave no indication during the RECA interview that he had any difficulties understanding the documents that were shown to him, or that he did not understand what was being said during the RECA interview.

The Hearing Panel considered the following admissions made by Licensee Chaudhri, during the RECA video interview (Exhibit 13 b), and as recorded in the written transcript (Exhibit 13c):

At page 34, Lines 16-25 and at Page 35, Lines 1 to 3, the Licensee admits to sending the following mortgage application documents to mortgage associate [L.L], on behalf of [S.C] and [A.C]:

Mortgage application stating that [A.C] was employed by [H. INC]. for 4 years, earning a gross annual income of \$26,400 (Exhibit 6)

Service agreement

[H. INC]. Employment Verification letter dated November 21, 2018 (Exhibit 13)

Notification of assessment

[H. INC]. cheque stubs #000013 and #000020

At page 35, Lines 21 to 25, and at page 36, Lines 1 to 3, Licensee Chaudhri admits to supplying [L.L] with the mortgage application documentation, by emailing them to her.

At page 37, Lines 4 to 8, the Licensee admits that he received the mortgage application documents directly from Chaudhary.

Licensee Chaudhri's credibility is cast in doubt, when during the RECA interview (Exhibit 13c, Page 37, Lines 19 to 23) he stated that he did not recall sending the hand written mortgage application sent to him by [S.C] to [L.L]. This statement contradicts his recorded answers at Exhibit 13c, pages 35, 36 and 37.

Mortgage Advisor [L.L]'s evidence

Licensee Chaudhri's foregoing admissions are consistent with the evidence of [L.L], who testified that Licensee Chaudhri emailed her the above documents, in support of the Complainant's mortgage application. [L.L]'s oral testimony was consistent with the emails and attached documents, as exchanged between her and Licensee Chaudhri (Exhibit 6). [L.L]'s testimony is also consistent with Licensee Chaudhri's unsworn audio/video interview, wherein Licensee Chaudhri admitted to sending mortgage documents to [L.L], on behalf of the [S.C] and [A.C]. [L.L] testified that Licensee Chaudhri sent a November 29, 2018, email to her, stating that [H. INC]. "was a small business and did not have a payroll system".

The panel considered [L.L] to be a credible and sincere witness. She gave her testimony without hesitation and was consistent in her answers. Her evidence is material and relevant to the issue of whether Licensee Chaudhri participated in the delivery of the documents to her, that are the subject of this complaint.

No evidence from any witness, nor any evidence given by Licensee Chaudhri, contradicts the truthfulness of Licensee Chaudhri's admissions made during the RECA investigation interview (Exhibit 13b); or the accuracy of the transcript of that interview (Exhibit 13c); or the reliability of [L.L]'s evidence. All of the foregoing clearly demonstrate that Licensee Chaudhri sent a false employment letter, a false mortgage application, misleading cheque stubs and other documents in support of the false mortgage application to [L.L].

Conduct Review Officer [C.R]'s evidence

[C.R] affirmed and gave oral evidence relating to the chronology of events relating to her role as the recipient of the on-line complaint submitted by [S.C] and [A.C]; and relating to the complaint's compliance with s.37(2) of the *Real Estate Act*.

Conduct Review Officer [R.B.]’s evidence

The affirmed oral evidence given by [R.B] was:

The customer information provided by TD on September 23, 2019, confirmed that Licensee [G.S] was the owner of a TD chequing account, that operated from the [H. INC].’s corporate address.

On November 21, 2018, Licensee Chaudhri texted [S.C] requesting [A.C]’s employment information. Licensee Chaudhri stated in the November 21, 2018 text that “a letter could be done”.

The [H. INC]. letter that stated false employment information was dated November 21, 2018.

On November 26, 2018, Mortgage Associate [L.L] received from Licensee Chaudhri:

1. a November 26, 2018, Jayman Financial mortgage application (Exhibit 6) dated November 26, 2018, that named [S.C] as borrower and [A.C] as co-borrower. [A.C] was described on the mortgage application as employed by [H. INC]., in the position of office secretary, having been employed full time for 4 years, and earning \$26,400 per year.
2. a [H. INC]. letter addressed “To Whom It May Concern” dated November 21, 2018, confirming [A.C]’s employment at [H. INC]. since 2018, and confirming her salary.
3. [H. INC]. paycheque #000013 payable to [A.C] and dated 2018-11-15.
4. [H. INC]. paycheque numbered # 000020 payable to [A.C] and dated 2018-10-31.
5. A [H. INC]. paystub #000013 dated Oct 15, 18, for a cheque issued to [K.A] [A.C], with the handwritten reference “Aslam Uncle”, struck out.

Licensee Chaudhri provided RECA Conduct Review Officer [C.R] ([C.R]), a written statement dated December 23, 2019 (Exhibit 9), wherein Licensee Chaudhri admits at the end of the paragraph numbered bullet 2, Q1, to being “a partner in crime” when he “reluctantly agreed” to provide a false paystub for [A.C] to [L.L]. The Licensee admitted in this document (Exhibit 9) that he should have refused to issue the false paystub.

On September 4, 2020, Licensee Chaudhri sent a written response to RECA (Exhibit 14), that did not recant any of his statements made during the RECA interview. In his written response, Licensee Chaudhri expressed a desire to: 1) cross-examine RECA witnesses; and 2) state his arguments.

Complainant [S.C.]’s evidence

Complainant [S.C] gave evidence that Licensee Chaudhri instructed him to fill out the Mortgage Application (Exhibit 6); and that he obtained the false information for the Mortgage Application, from Licensee Chaudhri.

The panel found Complainant [S.C.]’s evidence credible, in light of an email sent from the Licensee to [S.C] (Exhibit 7), instructing [S.C] how to complete the mortgage application form. [S.C.]’s evidence is consistent with a November 25, 2018, text message (Exhibit 10), sent from Licensee Chaudhri to [S.C] asking for [S.C.]’s signature.

On cross-examination, [S.C] confirmed that he filled out the mortgage application form; and that he instructed Licensee Chaudhri to forward the mortgage application to [L.L]. This evidence supports the conclusion that Licensee Chaudhri asked [S.C] to fill out the information that appeared on the mortgage application form.

Licensee Chaudhri made an assertion during the RECA interview that [S.C] and [L.L] acted together to fabricate the false mortgage application documents. This assertion lacks credibility because it contradicts Licensee Chaudhri’s admissions during the RECA investigative interview, that he forwarded documents to [L.L]. [L.L.]’s sworn evidence that the Licensee sent documents to her, also contradicts Licensee Chaudhri’s unsworn assertion. The panel finds it highly unlikely that [S.C] and [L.L] would have any need to involve Licensee Chaudhri in creating false documents; if they were collaborating directly with one another, as alleged by Licensee Chaudhri.

The exhibits demonstrate the panel’s conclusion that Licensee Chaudhri had active involvement in facilitating the transfer of the false documents, and his sharing of information on behalf of [S.C] and [A.C]. The exhibits also demonstrate a flow of documents from Licensee Chaudhri to [L.L], rather than a flow of documents directly between [S.C], [A.C] and [L.L].

There was no evidence before the Hearing Panel that someone other than Licensee Chaudhri accessed his email account to communicate with [L.L], or that the attachments to those emails were not sent from Licensee Chaudhri’s email account to [L.L].

The Hearing Panel finds that Licensee Chaudhri's act of sharing mortgage application documents with [L.L] was "participation", regardless of Licensee Chaudhri's reasons for doing so.

2. "Fraudulent activities"

In the context of the citation in this case, fraud requires that information or documents are:

1. False; and
2. issued with intent to deceive.

Witness: Complainant - [A.C]'s evidence

[A.C]'s affirmed oral evidence was that she did not recognize the complaint (Exhibit 4) that she and [S.C] submitted online; nor did she recognize the false mortgage application, or the false [H. INC]. employment letter. On direct examination she did not have any recollection of signing the mortgage application; however, on cross-examination she admitted to signing the mortgage application, at the direction of [S.C]. She did so without reading its contents.

She confirmed without hesitation that the employment information given about her on the mortgage application was false; that she had never been employed nor received a paycheque from [H. INC]. On this point, she was clear and consistent. She also testified that she did not meet [L.L] at the show home as alleged by Licensee Chaudhri.

[A.C]'s credibility suffered from her lack of recollection of the documents and of details that, given their nature, should have been recalled; and as a result, other than to the extent her evidence corroborated that the mortgage application contained false information about her employment history, [A.C]'s evidence, is given minimal weight.

Witness: Mortgage Broker – [R.A]'s evidence

[R.A]'s affirmed oral evidence related to [G.S]'s licensing history, and his provision of documents that contained Licensee [G.S]'s signature, to RECA Conduct Review Officer [R.B]. His evidence was credible.

Witness: Broker Grand Realty – [E.W]'s evidence

[E.W]'s affirmed oral evidence related to [G.S]'s. licensing history, and [E.W]'s provision of documents that contained [G.S]'s signature, to RECA Conduct Review Officer [R.B]. His evidence was also credible. On cross-examination he

acknowledged that attachments to Exhibit 24 were missing; however, his testimony, that he sent [R.B] all documents in his file, was credible.

Licensee Chaudhri's admissions

During the RECA interview, Licensee Chaudhri admitted to knowing that false documents would be created to support [S.C]'s and [A.C]'s mortgage application. He also admitted (Exhibit 13c, Page 37 Lines 1 to 3) to being involved for the purpose of helping [S.C] obtain mortgage approval. (Exhibit 13c, Page 38, Lines 2-6), knowing that [A.C] was not employed.

Licensee Chaudhri admitted (Exhibit 13c, Page 39, Lines 20- 22), that he made a bad decision in doing so; at Page 40, Lines 2-8, that it was not the right thing to do, and that he became a "partner in his [[S.C].s.] crime" when he became involved in obtaining a false mortgage qualification (Exhibit 13c, Page 41, Lines 3-9). Licensee Chaudhri admitted several times during the RECA interview that he agreed to forward the false documents. He was aware that "*these kinds of things, which are completely illegal or wrong*" (Exhibit 13c, Page 41, Lines 19-20) and that his doing so, was the first in his career (Exhibit 13c, Page 41, Line 22).

Licensee Chaudhri denied any knowledge of [H. INC]. He also denied knowing who operates [H. INC]. Licensee Chaudhri asserted that Licensee [G.S]. was an acquaintance of his, and that he did not know Licensee [G.S]. other than Licensee [G.S] as having been a mortgage broker. Licensee Chaudhri was vague and evasive in his responses to the RECA Conduct Review Officer's interview questions, relating to the Licensee's knowledge, and extent of any relationship, with Licensee [G.S].

Licensee Chaudhri's explanation during the RECA interview, that the word "Uncle" was written on [H. INC] cheque stub #000013, and that [S.C] oral references to him as "Uncle", merely because of respect for their age differences, was not credible. This assertion lacked credibility because [S.C] suffered financial loss when the purchase of the home could not proceed, due to cancellation of the false mortgage application. It is unlikely that [S.C] would rely on Licensee Chaudhri to assist him to obtain mortgage approval, incur financial loss due to that assistance being disrupted by the discovery of fraudulent documents submitted by Licensee Chaudhri, and continue to orally refer to Licensee Chaudhri, with a term of respect i.e. "Uncle". It is more likely that the written notation "Uncle", as stated on cheque stub #000013, was indicative of a more familiar relationship between Licensee Chaudhri, the recipient of the fraudulent cheque, and the person who wrote the fraudulent cheque.

During the RECA interview, Licensee Chaudhri cast blame upon [L.L], for requiring income verification documentation from [S.C] and [A.C]. He also cast blame upon

[A.C], for being unemployed. He alleged that, but for [L.L] and [A.C], he would not be involved in the issuance of false documents.

Licensee Chaudhri's lack of ownership of his active role in attempting to deceive the mortgage funder is highly problematic for the industry; and for those who rely upon the integrity of RECA Licensees. According to Exhibit 28, on November 27, 2018, at 5:45 p.m., Licensee Chaudhri texted [L.L], that *"the questions you are asking him and saying that his income is not enough is very confusing to him. Please call me directly to receive further details and to avoid any confusion. Call me tonight ..."* At Page 41, Line 25 and at Page 42, Line 9 to 10, the Licensee also explained the cause of his conduct was due to [S.C].s "emotions", in responding to [L.L]'s questions.

The hearing panel does not accept that Licensee Chaudhri's actions in forwarding false documents were due to the conduct of third parties. Licensee Chaudhri's actions are solely within his control; he, not the clients that he serves, is accountable for his actions.

When asked during the RECA interview, by RECA Conduct Review Officer [R.B], what is meant by the November 21, 2018, text message a "letter could be done", Licensee Chaudhri had no explanation for the words that he admitted to having written in his text message. The Hearing Panel applies a commonsense interpretation to those words, in the context of the events, and concludes that they were meant to communicate that Licensee Chaudhri could obtain a false letter, in support of [S.C]'s mortgage application.

[S.C] gave oral testimony that corroborated Licensee Chaudhri's admissions; specifically, that, on or about the day that Licensee Chaudhri attended at [S.C]'s residence:

- a. Licensee Chaudhri was aware that [S.C]'s income, standing alone, was insufficient to qualify for a mortgage to purchase the Jayman Built home;
- b. [S.C] would be more likely to qualify for a mortgage to purchase the Jayman Built home, if [A.C] was included as a Co-Borrower and her income was included on the mortgage application;
- c. Licensee Chaudhri recommended that [A.C] be added as a Buyer to the Jayman home purchase contract;
- d. [S.C] informed Licensee Chaudhri that [A.C] was unemployed;
- e. [S.C] informed Licensee Chaudhri that he did not want [A.C] involved in the falsification of any mortgage application information, to avoid putting [A.C]'s immigration status at risk;
- f. Licensee Chaudhri reassured [S.C] that the inclusion of [A.C] as a co-borrower on the mortgage application would not be a problem for her immigration status, because it would be used for "internal purposes" only; and

g. Licensee Chaudhri sent [S.C] a text stating that “we can take care of that”

According to Exhibit 10, Tab 2, text message between Licensee Chaudhri and [S.C] dated November 21, 2018, at 11:38 a.m., Licensee Chaudhri texted [S.C]: “Please text me [A.C]’s complete name. There is a good chance to get the letter done”.

[S.C] responded with the name “[A.C]”. This name is consistent with the name written on the Mortgage Application form, and that was sent by Licensee Chaudhri to [L.L].

Exhibit 7, Tab 1, on November 27, 2018, at 11:11 a.m., demonstrates that Licensee Chaudhri emailed a number of documents to [L.L], including:

- a. Mortgage application (4 pages)
- b. Employment letters relating to borrower [S.C] (3 pages)
- c. Paystubs relating to co-borrower [A.C].

On November 27, 2018, at 3:38 p.m., Licensee Chaudhri emailed [L.L] that “[A.C]’s copies of paystubs will be sent to you tomorrow as her boss is not in the office. Thanks. Aslam” This statement was false and made for one purpose: to mislead [L.L] (and the Lender). [A.C] was not employed; there was no “boss” to whom she reported. The evidence is clear that Licensee Chaudhri was aware of these facts.

As per Exhibit 7, Tab 3, on November 29, 2018, Licensee Chaudhri emailed [L.L] a document that Licensee Chaudhri’s email described as: “d) [A.C]’s deductions as per Bookkeeper, in lieu of paystub. It is a small business and does not have a formal paystubs system.” These records and Licensee Chaudhri’s statement were also false.

On Dec 23, 2019, in his statement to RECA Conduct Officer [C.R], re case 009891, Licensee Chaudhri wrote at Bullet 2: He denies involvement in their application for a mortgage. This statement is contradicted by Licensee Chaudhri sending [H. INC] pay stubs, cheques and an employment verification letter to [L.L], so that [S.C] and [A.C] could qualify for a mortgage.

The Hearing Panel finds that the mortgage application documents forwarded by Licensee Chaudhri to [L.L], were false, and that knowing they were false, they were sent by Licensee Chaudhri with intent to mislead and deceive the lender, so that [S.C] and [A.C] could qualify for a mortgage, for which they were otherwise unable to qualify.

Licensee Chaudhri also attempted to create uncertainty about the reliability of [S.C]’s testimony, when he argued that [S.C] had the necessary computer skills to create false documents.

Complainant – [S.C.]’s evidence

[S.C.]’s evidence was inconsistent on certain points, for example, the accuracy and truthfulness of his employment history as stated on his Resume, as posted on his social media page. These inaccuracies and exaggerations about his work-related credentials affected his credibility. However, his lack of reliability with respect to the accuracy of his Resume is not significant enough, or relevant enough to the issues, to undermine his reliability with respect to the events that occurred, and that are relevant and material to the creation and distribution of the false documents.

On the points pertinent to the issues in this complaint, [S.C.] gave evidence that he was directed by Licensee Chaudhri to fill in false information on the mortgage application form; after he became aware that [A.C.]’s lack of full-time employment was insufficient to qualify for a mortgage. The Hearing Panel accepts that [S.C.]’s evidence on needing guidance to complete the mortgage application form is consistent with Licensee Chaudhri’s testimony, and Licensee Chaudhri’s level of experience with the mortgage funding process. Also, the details provided on the false mortgage application were consistent with the false documents that Licensee Chaudhri forwarded to [L.L.]. On the balance of probabilities, it is more likely that Licensee Chaudhri told [S.C.] to write the [H. INC] corporate name and address on the false employer information on the mortgage application form, to justify [A.C.]’s false income.

Without evidence to the contrary, the Hearing Panel accepts the testimony of [S.C.] as it relates to the process, he engaged in with Licensee Chaudhri and the mortgage documentation. The panel finds that on the balance of probabilities, Licensee Chaudhri directed [S.C.] to write the false information on the mortgage application form. The panel finds that the timing of the complaint, in relation to the civil action between Licensee Chaudhri and [S.C.] is not relevant to the issue and finding that Licensee Chaudhri instructed [S.C.] as to which false details to write on the mortgage application. The Hearing Panel finds that on the balance of probabilities, the Registrar met its burden of proof regarding allegation “d”.

3. “Provision of Services”

Licensee Chaudhri argued that the conduct of Complainant [S.C.], in filling out a false application, should be a factor in considering whether or not Licensee Chaudhri acted fraudulently. The panel has no jurisdiction to assess the actions of anyone other than the Licensee. In this case, the Complainant’s alleged conduct is not a factor in determining if Licensee Chaudhri acted in accordance with his obligations pursuant to the *Real Estate Act Rules*.

During the RECA interview, Licensee Chaudhri acknowledged that he was contacted by the Buyers, by text, about Licensee Chaudhri’s listing of property for sale in Airdrie

(Exhibit 13c, Page 4, Lines 16-19 and Page 6, Lines 16-21); and after being contacted about the listing, Licensee Chaudhri met with [S.C] and an ATB representative, to ascertain [S.C]'s mortgage qualifications (Exhibit 13c, Page 5, Lines 6 to 9).

Licensee Chaudhri admitted to showing [S.C] and [A.C] over twenty properties (Exhibit 13c, Page 5, Lines 15 to 20), including accompanying them, about half a dozen times, to the Jayman Built show home that relates to the mortgage application in this complaint. Exhibit 13c, Page 12, Lines 6-19). Licensee Chaudhri admitted to writing the offer for the property (Exhibit 13c, Page 12, Line 23). He acknowledged having [S.C] and [A.C] sign, on November 25, 2020, a Buyer Representation Agreement (Exhibit 13c, Page 15, Lines 20 to 25) by Authentisign (Exhibit 13c, Page 16, Lines 2 to 7) explaining it to them (Exhibit 13c, Page 20, Line 25) and acting as their agency representative (Exhibit 13c, Page 22, Lines 16-23).

Licensee Chaudhri admitted to communicating with [L.L] on behalf of [S.C] and [A.C]. (Exhibit 13c, Page 31; and that he did so, as a result of [S.C]'s "confusion" in dealing with mortgage arrangements, and in responding to [L.L]'s income related questions (Exhibit 13c, Page 32, Lines 1-6). Licensee Chaudhri acknowledged that he received the service agreement, for his clients, [S.C] and [A.C], to complete (Exhibit 13c, Page 35, Lines 15 – 19).

The Hearing Panel finds that Licensee Chaudhri's involvement in the above activities, together with some, or all, of the activities below, constitute the provision of services, as required by s.42(b).

Exhibit 13B, Page 5, Lines 6 – 25, and page 6, Lines 1 - 14. The Licensee met with [S.C] and an ATB representative, to ascertain if [S.C] could qualify for a mortgage; and on Page 9, Lines 7 - 1, Licensee Chaudhri arranged a meeting with an ATB mortgage representative.

Page 11, Licensee Chaudhri emailed an Airdrie listing to [S.C] for property located at [ADDRESS].

Exhibit 13c, page 13, Line 6, Licensee Chaudhri stated that [S.C] was "working with him".

Exhibit 13c, page 19, Lines 20-23, Licensee Chaudhri explained the Buyer Representation Agreement to [S.C] on November 24th, and he had an agreement in place with [S.C] and [A.C] on November 25th.

Exhibit 13c, Page 29, Lines 1 - 24, Licensee Chaudhri introduced [S.C] and [A.C] to [L.L].

Exhibit 13c, page 31, Lines 24 and 25, and at page 32, Lines 1 - 6, Licensee Chaudhri acknowledged that [S.C] and [A.C] were relying on him, to provide the information required to arrange mortgage financing approval.

Exhibit 13c, page 33, Lines 19 - 20. Licensee Chaudhri admitted to being involved "10 to 20%" in communications between [S.C], [A.C] and [L.L].

The Licensee's unsworn statements to Conduct Review Officer [R.B] are corroborated by the following evidence:

Exhibit 9, Tab 1: On November 12, 2018, according to the written statement submitted by Licensee Chaudhri to RECA, [S.C] inquired with Licensee Chaudhri about homes available on MLS, particularly the home at [ADDRESS, CALGARY], as described in Exhibit 9, Tab 5 and as active MLS status, in Exhibit 38. According to Licensee Chaudhri's written statement to RECA, Licensee Chaudhri inquired with [S.C] and [A.C], whether they had an agency relationship with another realtor.

On November 13, 2018, Licensee Chaudhri gathered T4 records from [S.C] and [A.C].

On November 17, 2018, Licensee Chaudhri agreed to meet with the ATB mortgage representative and [S.C] at Tim Hortons.

On November 21, 2018, Licensee Chaudhri began showing homes to [S.C] and [A.C], including the Jayman Built home that was the subject of the false mortgage financing application.

Exhibit 4, Tab 3 On November 25, 2018, Licensee Chaudhri entered into an Exclusive Buyer Representation Agreement with [S.C] and [A.C]; and Licensee Chaudhri was the Brokerage Representative. The digital initials of Licensee Chaudhri are on this document.

Exhibit 4, page 32: On November 25, 2018, at 2:00 p.m. Licensee Chaudhri was cited as the designated broker for [S.C] and [A.C], on a Residential Purchase Contract that cited at s 8.2, Buyer Conditions, with no Schedule attached.

Exhibit 6, page 62, On November 25, 2018, the typewritten Residential Real Estate Purchase Contract s.9.2 that lists "other items" with new Home Schedule "A" attached, cites Licensee Chaudhri as the designated broker for [S.C] and [A.C].

On November 27, 2018, at 5:45 p.m., Licensee Chaudhri texted [L.L], information about borrower [S.C]'s experience purchasing a home. Licensee Chaudhri wrote to [L.L] that "they are relying on me to help and hold their hand."

On November 27, 2018, according to Exhibit 7, Tab 1, Licensee Chaudhri emailed [L.L] copies of [S.C]'s paystubs. Licensee Chaudhri indicated his intent to send additional paystubs for [A.C].

Exhibit 4, at page 26, On November 25, 2018, Licensee Chaudhri sent [S.C] the Consumer Relationships Guide.

Exhibit 6, Tab 10: According to a Residential Real Estate Purchase Contract tendered as an offer to purchase and made November 25, 2018, between Jayman Built, [S.C] and [A.C], the financing condition at Paragraph 8.2(a) was to be satisfied on or before November 30, 2018. Licensee Chaudhri was named at Paragraph 14.1, as the Brokerage representative.

On November 26, 2018, Licensee Chaudhri emailed [L.L] regarding paystubs, and entered into a brokerage agreement with [S.C] and [A.C].

Exhibit 9, Tab 6: On November 28, 2018, a handwritten Residential Real Estate Purchase Contract with handwritten notes was accepted between Jayman Built, [S.C] and [A.C], citing at Paragraph 14.1 that Licensee Chaudhri was the Brokerage representative. The signing certificate indicates that the document was created by Licensee Chaudhri.

Exhibit 9, Tab 1: On November 30, 2018, Licensee Chaudhri prepared, on behalf of [S.C] and [A.C], a Notice of Non-waiver/non-satisfaction of conditions ("the Notice") regarding the Residential Purchase Contract entered into between Jayman Built Ltd., [S.C] and [A.C]. Licensee Chaudhri's written statement to RECA confirmed that [S.C] "instructed him" to prepare the Notice. According to the Signing Certificate xxx079D, at Exhibit 9, Tab 3, Licensee Chaudhri issued the Notice to Jayman Built Ltd. on behalf of [S.C] and [A.C].

Exhibit 9, Tab 1 Licensee Chaudhri stated in his written statement to RECA that he emailed the notice of Non-Waiver to [L.L]

Exhibit 32: On November 30, 2018, at 11:56, Licensee Chaudhri communicated to [L.L], cancellation of the [S.C] and [A.C] mortgage application, due to lack of financing.

Exhibit 7, Dec 23, 2019, statement from Licensee Chaudhri to RECA Conduct review Officer [C.R], Case 009891, wherein Licensee Chaudhri wrote in response to Q1:

Bullet 1: "they want me to help purchase another house I will be glad to do so..."

The Hearing Panel finds that Licensee Chaudhri was providing services as a realtor, when he issued false mortgage application documents, to assist his clients, [S.C] and [A.C], to purchase a home; for which he was the designated realtor. The conveyance of the false mortgage application documents was also done to facilitate "any dealings" relating to his services.

It is not necessary for the purposes of *s.42(b)* for the Hearing Panel to define "participation" to include the creation of false documents; and to make findings as to who created the false employment letter and false paystubs. For the purposes of this complaint, the Hearing Panel defines the element of "participation" as having been satisfied, by the distribution of false documents.

Licensee Chaudhri's Evidence

Licensee Chaudhri exercised his right not to testify at the hearing and to close his case without calling any witnesses on his behalf.

Conclusion

Licensee Chaudhri's history indicates that he has been a Real Estate Associate since June 7, 2010 (Exhibit 3). Licensee Chaudhri admitted that he knew the documents (employment letter, paystubs and application with [A.C]'s employment information) sent to [L.L] were false. Being a "mere transferor" of false material and alleging that another person was responsible for the creation of false documents, or that a client instructed a Licensee to distribute false documents, does not absolve a Licensee of the wrongful act of knowingly forwarding false information to a mortgage broker.

Any reasons, motives of third parties, alleged breach of a real estate brokerage contract, cancellation of the mortgage application, timing of a complaint by [S.C], the timing of discussions with the mortgage broker, reference to other mortgage funders, allegations that a 15% mortgage discount existed or influenced parties, the timing of DocuSign certifications, or who and why the mortgage application process was cancelled, are irrelevant and not probative to determining whether Licensee Chaudhri participated, by distributing, false material to a mortgage broker. Nor are any actions by [A.K] and [S.C] in signing two different representation agreements relevant nor probative to the issue of participation, as set out in *s.42(b)*.

Licensee Chaudhri argued that there is no explicit duty imposed by the *Real Estate Act*, upon a Licensee to verify the accuracy of documents to apply for financing for a home purchase. However, the allegation in this complaint, is not that the Licensee failed to verify the accuracy of a document; the allegation in this complaint is that Licensee Chaudhri “participated in the distribution of false documents.” Licensee Chaudhri did not need to verify the accuracy of the documents, because he admitted to knowing that they were false.

In this complaint, the Hearing Panel finds that the evidence is not conclusive as to who created the false employment letter, and the false paystubs. The Hearing Panel does not find Licensee Chaudhri responsible for the creation of the false documents, but the Hearing Panel certainly finds Licensee Chaudhri accountable and responsible for their distribution.

Between November 21, 2018, and November 25, 2018, Licensee Chaudhri received [S.C.]’s bank statements, employment letter, pay stubs, and [A.C.]’s tax documents. Upon receipt of [A.C.]’s tax documents, Licensee Chaudhri became aware that [A.C.] had not sent employment verification documents. Despite his awareness that she did not have employment verification documents, he admitted to forwarding to [L.L], the completed, and false mortgage application, together with an employment letter and employment paystubs that the Licensee knew to be false, to verify [A.C.]’s employment.

This case can be distinguished from *Goll* because Licensee Chaudhri was not reckless, he acted with deliberate intent; he knowingly forwarded false documents to [L.L]. Nor were his actions a “mistake”. Licensee Chaudhri knew the documents were false. Unlike the *Bondar* case cited by the Registrar, the Licensee did not merely forward a false document, while being unaware of its false nature. Nor did he turn a blind eye to his duty to verify the accuracy of the document as occurred in the *Riccioni* case, also cited by the Registrar. In this case, Licensee Chaudhri was not an “unwilling or unaware” participant. He had a choice to send the false documents or not, regardless of if pressured by [S.C] to do so. He admits to doing so and the evidence corroborates his admission. It is therefore this Hearing Panel’s unanimous decision that Licensee Chaudhri must be found to be deserving of sanction for breaches of *s.42(b)* of the *Real Estate Act Rules*.

Request for Submissions on Sanction and Costs

The Hearing Panel requests written submissions from the parties on the appropriate sanction and costs, and directs as follows:

1. Counsel for the Registrar must supply their written submissions to the Hearings Administrator within 14 days of receipt of this decision. The Hearings Administrator will supply those written submissions to the Licensee immediately on receipt;

2. The Licensee must supply his written submissions to the Hearings Administrator within 14 days of receipt of the Counsel of the Registrar's written submissions. The Hearings Administrator will supply those written submissions to the Counsel of the Registrar immediately on receipt.

3. Counsel for the Registrar may supply a rebuttal within 7 days of receiving the Licensee's submissions. Once the timelines above have passed, the Hearings Administrator will provide all written submissions to the Hearing Panel for consideration and decision on sanction and costs.

This Decision is signed in the City of Calgary in the Province of Alberta on this 31st day of October, 2022.

"Signature"

[G.F], Hearing Panel Chair

Case: 009891

THE REAL ESTATE COUNCIL OF ALBERTA
IN THE MATTER OF Sections 39(1)(b)(i) and 41(1) of the
REAL ESTATE ACT, R.S.A. 2000, c.R-5
AND IN THE MATTER OF a Hearing under Part 3 of the *Real Estate Act*
regarding the conduct of

ASLAM CHAUDHRI, Real Estate Associate, currently unregistered,
previously registered with **Grand Realty & Management Ltd. o/a Grand Realty** and
with **Urban Real Estate Services Ltd. o/a Urban-Realty** and with **Discover Real
Estate Ltd.** and with **1853147 Alberta Ltd. o/a Engel & Volkers Calgary** and with
Calgary Independent Realty Ltd. o/a CIR Realty

Hearing Panel Members: [G.F], Hearing Panel Chairperson
[L.M]
[G.P] (alternate for [S.D])

Hearing Date: May 24 – June 3, 2022

Decision Date: January 4, 2023

Submissions: Ms. Sania Chaudhry, Counsel
for the Registrar of the Real Estate Council of Alberta

Mr. Aslam Chaudhri, Licensee
Self-Represented

Hearing Panel Decision on Sanction & Costs – Phase II

On November 4, 2022, the Hearing Panel released its Conduct Decision regarding the merits of the conduct allegations made by the Registrar, against the Licensee. (Phase 1 – the “Conduct Decision”). The Hearing Panel found that the Licensee knowingly participated in fraud in the provision of his services, in breach of Section 42(b) of the *Real Estate Act Rules*. The evidence from Phase 1 of the hearing included an audio and video tape of a RECA investigator interview, in which the Licensee admitted emailing a mortgage application, on behalf of his clients, that contained false employment information, to a mortgage broker. He also admitted emailing false letters of employment, and false paycheques, to the mortgage broker. He admitted that he made false oral statements about the mortgage applicant’s employment status, and the employer’s

availability, to the mortgage broker, all of which were in support of the false mortgage application.

By committing these acts, the Licensee acted contrary to Section 42(b) of the *Real Estate Act Rules* by engaging in conduct that undermines the public confidence in the industry, harms the integrity of the industry, or brings the industry into disrepute.

In the Conduct Decision, the Hearing Panel directed the parties to make written submissions on Sanction and Costs, for consideration in Phase 2 of the hearing process. The directive was issued in accordance with RECA's Hearing and Appeal Practice and Procedure Guidelines (the "Guidelines"), and in particular, Part 5B.

On November 4, 2022, the Registrar issued its 450 page formal written submission relating to Sanction and Costs (Phase 2). The Licensee submitted a two page written submission that did not provide any substantive evidence relating to sanctions and costs. Instead, the Licensee's submission alleged that RECA is a "sophisticated thief" and "works like the Mafia".

On December 3, 2022, in the interests of procedural fairness, a directive was issued by this Hearing Panel, inviting the parties to submit an Agreed Statement of Facts, or an Agreed List of Exhibits, on or before December 12, 2022, and to give written notice of any intent to introduce new evidence for consideration in Phase II. In response to the December 3, 2022 directive, the Licensee provided an email confirming that: 1) he is not responding to the Hearing Panel or RECA; and 2) RECA and the Hearing Panel is "neither honest or trustable", "absolutely 100% biased", engaged in "falsehood and cover up" and "is a Mafia operation". The Registrar did not provide any further materials.

On December 23, 2022, the Hearing Panel convened and reviewed the written submission on sanction and costs from the Registrar, and the written submissions of the Licensee; and deliberated. In reaching its decision on sanction and costs, the Hearing Panel applied the factors outlined in *Jaswal v Medical Board (Nfld.) (1996)138 Nfld. & PEIR 181*. Those factors are:

a) The nature and gravity of the proven allegations:

The Licensee intentionally participated in mortgage fraud, when he sent a mortgage application, containing information that he knew to be false, along with false documents in support of that application, to a mortgage broker. The Licensee also made false oral statements, to the mortgage broker.

The Licensee's act of committing fraud violated the fundamental trust and honesty that the public, lending institutions and other professionals rely upon, to conduct real estate business in good faith. When the Licensee sent the false application to the Mortgage Broker, the Licensee was acting as a fiduciary to ensure that he delivered accurate and reliable information from his clients (the mortgage applicants) to the mortgage broker (and the financial institution).

The Hearing Panel does not accept the Registrar's submission that the Licensee asked another Licensee to forge the false documents, as stated in its submission at Paragraph 51(a). The Hearing Panel did not make such a finding in Phase 1 of the hearing; therefore the Registrar's submission on this point is not an aggravating factor.

Instead of fulfilling his professional obligation to act with honesty, the Licensee committed an act that he admittedly knew was wrong. By committing the act of fraud, the Licensee undermined the confidence of his clients, the mortgage broker, the financial institution and the public, in relying upon the real estate profession to act with honesty and integrity.

Part 2 of *the Real Estate Act Rules*, section 41(a) requires that a Licensee "act honestly", and at Section 41(d) fulfill their fiduciary duties to their clients. The Rules also require at Section 41(g) that the Licensee practice in strict accordance with the *Act*, Regulations, Rules, and Bylaws ..." Section 42(b) prohibits a Licensee from participating in fraudulent activities in the provision of services.

The Hearing Panel is unanimous that the Licensee's action is a serious and egregious breach of his professional responsibilities under the Rules; and that his breach was a violation of the fundamental trust and confidence that the public place in real estate professionals. The impact upon public confidence in the profession must be given significant weight when considering the *Jaswal* factors.

The rationale for giving significant weight to the impact of the Licensee's conduct upon public confidence in the profession is articulated in *Bolton v Law Society [1993] EWCA Civ 32*, wherein the Court states that:

A profession's most valuable asset is its collective reputation and the confidence that it inspires. ... a solicitor appearing before a tribunal can adduce a wealth of glowing tributes ...show that ...the consequences of ...suspension would be little short of tragic. Often he will say, convincingly, that he has learned his lesson and will not offend again. ... All these matters are relevant and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness. ...The reputation of the profession is more important than the fortunes of any individual member ...

There is no specific legal test to determine if license cancellation is an appropriate sanction. The Supreme Court of Canada, in *The Law Society v Ryan, 2003 SCC 20*, endorsed the sanction of a license cancellation wherein the member's misconduct was similar to conduct for which a professional disciplinary body previously imposed such a sanction and the conduct was a serious and egregious

breach of the member's professional conduct and responsibilities; and there is no compelling evidence of mitigation.

The Hearing Panel accepts the Registrar's submission that *Ryan*, as well as *the Law Society of Upper Canada v Mucha 2008 ONLSAP 5*, create a presumption in law that dishonest conduct, including mortgage fraud, without mitigating factors, warrants cancellation of a professional license.

The Alberta Court of Appeal, in *Adams v Law Society of Alberta 2000 ABCA 240* upheld a lawyer's disbarment on the basis that a single violation can undermine confidence in the profession and that act, can violate the public's trust in the legal profession. Mortgage fraud, intentional fraud and acts of dishonesty have resulted in license cancellation for members of the real estate profession. *The Real Estate Council vs Paramjit Kaur Aulakh 2019 ABRECA 121 at para 5.5(5)*, *Real Estate Council of Alberta decision for Case 005064 against Industry Member Mehboob Ali Merchant at p 55 and p 59*, and *Inglis 2019 CanLII 53386 (BC REC)*

The *Real Estate Act Rules, Division 5, Section 26*, deem cancellation of a license to have occurred when a license is "terminated, suspended or cancelled". Cancellation can range from a lifetime ban, to a three year ban as permitted in the *Real Estate Act*. Nor is an unblemished history, or modest financial impact on the complainant, a bar to license cancellation, *Merchant at p 55 and p 59*.

The Hearing Panel accepts that the Licensee's act of providing a false mortgage application to a broker is a serious violation, and although it does not warrant a lifetime cancellation, it warrants this Hearing Panel exercising its discretion as set out in *Aulakh* to impose a one year cancellation, rather than the six month cancellation proposed by the Registrar.

Despite two opportunities to do so, the Licensee did not provide any substantive evidence of mitigating factors for the Hearing Panel's consideration in Phase 2. The Hearing Panel considered that the Licensee's actions involved one false mortgage application; not multiple false applications; and that the Licensee otherwise had an unblemished career. However, the Licensee also distributed multiple false documents and he made false oral representations, in support of that one fraudulent mortgage application. The number and nature of the multiple false documents are evidence of a carefully orchestrated, albeit clumsy, attempt to deceive the mortgage broker and the lending institution.

The Hearing Panel also considered the audio video tape evidence from Phase 1, wherein the Licensee asserted that his actions were done out of compassion for his clients, and to serve their interests in obtaining a mortgage. It is unconscionable for a Licensee to place anyone's interests ahead of a professional duty to be honest, ethical and truthful. It is gravely concerning that an experienced and educated Licensee, would conclude that a mortgage loan obtained under fraudulent circumstances, could be in the best interests of his clients. The

Licensee's clients were first time home buyers and recent immigrants to Canada; they were particularly vulnerable to the legal and financial consequences of being involved in any fraudulent acts. The clients relied upon the Licensee, and that reliance put the Licensee in a more significant position of power, trust and authority. The Licensee's abuse of his client's trust, and his failure to adhere to the values of honesty and integrity that one would expect a realtor to uphold, as part of their professional education and ethical responsibility, is an aggravating factor.

Also, the evidence from Phase 1 is clear that the Licensee indicated to his clients that he had a "way" of overcoming their inability to qualify for a mortgage, due to lack of employment. Taking this evidence into consideration, the Hearing Panel does not find that the Licensee's submission of "just one" false mortgage application, during an otherwise unblemished career, is a mitigating factor.

Mitigating factors must be compelling to displace the presumption of cancellation. Evidence of those mitigating factors must be exceptional; and could include medical reasons, financial desperation or severe duress. The evidence proving these exceptional circumstances must be so obvious to the public, that there is no need to reassure the public about the integrity of the profession. *The Law Society of Upper Canada v Abbott 2017 ONCA 525 at page 25*. The Licensee has not provided evidence of exceptional circumstances; the statement made by the Licensee during the RECA interview, that he had no prior conduct issues during his career, is not sufficient to qualify as an exceptional mitigating factor.

While the cancellation of a license may have a specific deterrence effect upon a Licensee, in this case, the Licensee continues to refuse to accept responsibility for the impact of his fraudulent acts. During Phase I of the hearing process, the Licensee justified his fraudulent act by placing blame on his client for "being emotional" and for "instructing" him to email the false documents to the mortgage broker. The Licensee also placed blame upon his client for "being unemployed"; and upon the mortgage broker for "offering a \$15,000 mortgage discount".

During Phase II of the hearing process, the Licensee provided no substantive submissions relating to any mitigating factors; instead he places blame upon RECA and the Hearing Panel for being "a dishonest, corrupt Mafia operation". The Licensee has consistently failed to acknowledge that his fraudulent acts cause damage to the industry; and to those whom he had a duty to serve in an honest manner. In this case, the Hearing Panel considers it appropriate and necessary to cancel the Licensee's license for one year, and impose a significant fine, as a form of specific deterrence.

The Hearing Panel finds that cancellation, not suspension, of the Licensee's license for one year, from the date of this decision, is an appropriate response to provide specific deterrence to the Licensee, general deterrence to others in the profession; and to restore public confidence in the profession's ability to self-

govern and maintain its integrity. As was articulated in *Bolton*, it is imperative that the Licensee be removed from the profession.

b) The age and experience of the Licensee

The Licensee is 70 years old, and has been licensed since 2010. It is an aggravating factor that a Licensee with so much life experience, and professional experience, would act dishonestly, and commit fraud, rather than protect his clients, his professional reputation and the reputation of the real estate profession by adhering to his professional duties to be honest and trustworthy.

c) The previous character of the Licensee, and in particular, the presence or absence of prior complaints or convictions.

The Registrar submits that the Licensee was issued an Administrative Penalty for failing to co-operate with the investigation of the complaint. Without evidence to the contrary from the Licensee, the Hearing Panel accepts that an Administrative Penalty was issued, and that is an aggravating factor.

d) The number of times the offence was proven to have occurred.

The Registrar submits that the Licensee asked another Licensee to forge three false employment documents. This submission is rejected as an aggravating factor, because during Phase 1 of the hearing, the Hearing Panel did not find that the Licensee asked any specific individual to forge the false employment documents. The Hearing Panel did find in Phase 1 that the Licensee forwarded the false mortgage application, plus several false documents in support of that application, and the Licensee made false oral representations to the mortgage broker. The fact that numerous fraudulent materials were knowingly sent by the Licensee, to the mortgage broker, is an aggravating factor.

e) The role of the Licensee in acknowledging what occurred

During the investigative interview, the audio video tape admitted as evidence in Phase 1 of the hearing, records the Licensee admitting his wrongful acts; and describing himself as “a partner in crime”, who was simply acting as a messenger, to forward the false documents, as his client instructed. The statements made in the RECA interview were recanted by the Licensee; who cast blame upon others. His failure to acknowledge the impact of his fraudulent acts is an aggravating factor.

f) Whether the Licensee already suffered serious financial or other penalties as a result of the allegations having been made

The Licensee did not provide any substantive evidence of financial hardship, or other penalties incurred, as a result of the allegations made in this case. The Registrar made no submission on this point.

g) Impact of the incident on the victims, if any

The Licensee's clients did not suffer financially from the Licensee's actions, because the fraudulent documents were exposed prior to mortgage approval. But for the timely exposure of this fraud, the Licensee's clients may have found themselves facing very serious legal and financial consequences. The Hearing Panel disagrees that the impact on the victims is a neutral factor, merely because there was no immediate financial loss. The victim's exposure to significant legal and financial risk, coupled with the time and stress associated with submitting a complaint, participating in the investigation and participating as witnesses at the hearing, is an aggravating factor.

h) Mitigating circumstances

The Licensee has not provided any substantive evidence of mitigating factors, for consideration in Phase 2 of this hearing. The Hearing Panel accepts the Registrar's submission that the Licensee does not have a previous history of disciplinary action against him; and as such this is a mildly mitigating factor. The Registrar's submission is consistent with the Licensee's recanted responses, given during the investigative interview, and admitted as evidence in Phase 1. Also see the discussion above relating to deterrence.

i) Aggravating circumstances

See the discussion above regarding the nature of the contravention; and the impact upon the public's perception of the real estate profession.

j) The need to promote specific and general deterrence and thereby protect the public and ensure the safe and proper conduct of the profession.

The Hearing Panel accepts that there is a general need to make other members of the real estate industry aware that an act of fraud is a serious matter; and can result in cancellation of a license. There is also a need to ensure that the Licensee is specifically deterred from committing a dishonest act in the future.

The Licensee's fraudulent acts, misrepresentation and dishonesty impact the reputation of the entire real estate profession. They also undermine public confidence in the real estate industry. The Hearing Panel accepts the Registrar's submission that the committing of fraud, and undermining of public confidence in the profession, are very aggravating factors. Also see comments above, regarding public confidence.

k) 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

The Hearing Panel finds that there would be a high degree to which the offensive conduct falls outside the range of permitted conduct.

l) The range of sentence in other similar cases

The Registrar submits at Page 14, Paragraphs 59 and 60, that fines for a breach of Rule 42(b) range from \$5,000 to \$20,000 and license suspension from 3 months to 2 years. The Registrar recommends at Page 14, Paragraphs 59 and 60 and at Page 16, Paragraph 69, that a \$7,000 fine with 6 month suspension is appropriate in this case. This recommendation is based upon the Registrar's rationale that the Licensee did not draft the fraudulent documents himself, but he asked another Licensee to forge the documents. The Registrar's rationale is not supported by this Hearing Panel's decision in Phase 1 of the hearing. The evidence presented in Phase 1 of this case, did not prove, on the balance of probabilities, who created the false documents. What was proven on the balance of probabilities in Phase 1, was that the Licensee knowingly sent multiple false documents to a mortgage broker; and he made false oral representations.

The Registrar's recommendation for a \$7,000 fine is contradicted at Page 1, Paragraph 3 and again at Page 16, Paragraph 68 of the Registrar's submission, wherein a \$15,000 fine is proposed; instead of a \$7,000 fine. Another contradiction appears at Page 1, Paragraph 2, wherein the Registrar requests a 6 month cancellation of the Licensee's license; but at Page 16, Paragraph 69, the Registrar requests a 6 month suspension of the Licensee's license.

A similar precedent to this case exists in *Aulakh*, wherein fraudulent acts, including falsification of documents and information to obtain a private loan, resulted in a breach of Rule 42(b), plus breach of other rules, and a 24 month suspension. No fine nor costs were awarded against *Aulakh*. The Registrar distinguishes *Aulakh* from this case, on the basis that this Licensee did not gain financially, from his fraudulent acts. The Hearing Panel disagrees that no financial gain should set the Licensee in this case, apart from *Aulakh* and *RECA vs Aliya Lalji*, March 9, 2016. In this case, but for the fraud having been detected in a timely manner, the mortgage application may have been approved, the home purchase completed and the Licensee paid a commission. The Licensee had potential to benefit financially, from his fraudulent acts.

The Licensee's potential for financial gain, coupled with the submission of fraudulent documents, makes this case similar to *RECA vs Stephanie Yuen-Shen Fan*, September 21, 2012. However, this case also differs from *Fan*, because *Fan* breached more Rules, than the Licensee breached, in this case. *Fan* resulted in an 8 month suspension and a \$12,000 fine for multiple breaches.

This case is also similar to *Lalji and RECA vs Steve Sedgwick*, November 6, 2018 wherein in each case, the Licensee created false documents, circulated them, and in *Sedgwick*, made false representations. Lalji was suspended for 18 months and fined \$20,000 for contravening Rule 42(b). Sedgwick was suspended for 3 months, fined \$15,000 for contravening Rule 42(b), required to complete an

educational course on Ethics, Professionalism and Risk Reduction, and ordered to pay costs in the sum of \$1,590. Sedgwick is distinguishable from this case, because Sedgwick entered into an Admission of Conduct Deserving of Sanction, and he “*read a statement to the Hearing Panel ... that he deeply regretted his conduct and was remorseful*”. The parties in Sedgwick also provided a joint submission on sanction to the Hearing Panel; thereby reducing the hearing time and cost.

The Hearing Panel accepts the Registrar’s submission that the Licensee’s conduct in this case was less egregious than that of *Sedgwick* or *Lalji*, because the Hearing Panel in this case, did not find during Phase 1 that the Licensee created the false documents. The Registrar’s assertion that the Licensee in this case asked another Licensee to forge the documents is rejected as a factor in assessing the appropriate fine, because this Hearing Panel did make such a finding in Phase 1.

Despite the Registrar’s proposed seven thousand dollar (\$7,000) fine as stated in Paragraph 60 of the Registrar’s submissions, and the incorrect submission that the Licensee asked another Licensee to forge the false documents, based on the precedents cited, the Hearing Panel adopts the Registrar’s recommendation at Paragraph 3 of its submissions, that a fifteen thousand dollar (\$15,000) fine is appropriate in this case, for the breach of Rule 42(b).

Costs

The Real Estate Council of Alberta By-Laws, Section 28(1) stipulate that when an industry member is ordered to pay costs under Section 43(2) of the *Act*, the costs payable shall be determined in accordance with a set fee schedule for investigation costs; and for hearing costs. RECA’s Hearing and Appeal Practice and Procedure Guidelines, Part 5, Section D, include the cost of the Registrar’s legal counsel, as hearing costs. Resolution 2012-8, of the Real Estate Council of Alberta Section 28(3) provides that “subject to the Hearing Panel’s discretion”, the following Guide to Costs may apply for a fully contested hearing:

	Column 2	Column 3
Total fine or penalty	\$5,000 - \$9,999	\$10,000 – 29,999
Costs	\$0 to \$2,500	\$0 to \$5,000

Section 28(4) sets out nine factors the Hearing Panel may consider in determining any cost order. Those factors are:

- i. The degree of co-operation of the industry member. In *Re Pethick 2019 AB RECA 118 at p.4-5*, a RECA appeal Hearing Panel determined that consideration should be given to whether either party unnecessary or unduly complicated the process, or otherwise unreasonably made the process more expensive or time consuming.

Initially, the Licensee co-operated with RECA's investigating officer by making certain admissions (including that he was a "partner in crime"); but, the Licensee later recanted his interview statement and refused to participate in a second interview. Generally, during the hearing, the Licensee co-operated with directions from the Hearing Panel. There were occasions when the Licensee failed to respect the procedural boundaries set by the Hearing Panel. His co-operation during the hearing was undermined when he avoided answering questions, and instead, deflected responsibility by speaking about the actions of other people.

- ii. The result of the matter and degree of success. *Pethick at p 5-7* indicates that the Hearing Panel should consider if the actions of the successful party, influenced the ultimate decision. RECA proved its case on the balance of probabilities; the result being a finding of fraud against the Licensee.
- iii. The importance of the issues. At *p 7*, *Pethick* requires that the Hearing Panel consider the importance of the litigated issues to the industry. Fraud is a serious allegation that has a significant impact upon the integrity of the real estate profession and the public's confidence in the profession to self-regulate. The issue was very important to the industry.
- iv. The complexity of the issues. The issue was made more complex by the Licensee, who made three applications, and two motions, each of which was denied. One of his applications was to retain legal counsel, even though he had been made aware approximately five months earlier, that he had the right to retain legal counsel. After being granted the adjournment to retain legal counsel, three days later, the Licensee indicated he was not retaining counsel. At the conclusion of Phase 1 of the hearing, the Licensee made another application to submit a rebuttal, that he had been advised was not part of the process. The Licensee also could have, but did not, agree to certain facts or exhibits, to reduce hearing time and expense. The Licensee also failed to make substantive submissions to assist the Hearing Panel in considering any mitigating factors or financial impact. Instead, the Licensee's submissions on sanctions and costs repeated the conspiracy theory that the Licensee raised at the outset of this hearing process; that the Hearing Panel and RECA are corrupt, in collusion and acting as a Mafia entity.
- v. The necessity of incurring the expenses. An investigation and a hearing was required, to determine if the complaint had merit.
- vi. The reasonable anticipation of the case outcome. *Pethick at p. 7-8* indicates that this factor is relevant where it is *plain and obvious* that a party was destined to lose. Having admitted his actions in providing the fraudulent material to the mortgage broker, and having clear and

convincing evidence of the fraudulent nature of the documents sent by the Licensee to the Mortgage Broker, it was reasonable to anticipate the Registrar would prove its case.

- vii. The reasonable anticipation for the need to incur expenses. Given the Licensee denied the complaint had merit, notwithstanding his admission and the evidence, it was reasonable to anticipate the need to incur the expense of a hearing.
- viii. The financial circumstances of the industry member; and any financial impact experienced to date by the Licensee. *Pethick* at p 8-9 requires evidence of any financial impact. The Licensee has not provided the Hearing Panel with any evidence regarding his financial circumstances; nor any evidence of the financial impact that he has experienced to date, as a result of this complaint; and
- ix. Any other matter. Neither the Registrar nor the Licensee provided evidence of any other matter that would affect the Hearing Panel's determination of reasonable and proper costs.

Pethick factors must be considered in light of *Jinnah v Alberta Dental Association and College, 2022 ABCA 336*. The Alberta Court of Appeal stipulated that the governing body should bear the costs associated with the privilege and responsibility of self-regulation, unless:

- a) serious unprofessional conduct has occurred. The member must have known the behavior was unacceptable and unprofessional and that the member can be ordered to pay "a substantial portion or all of the costs". Fraud was cited as an example of serious unprofessional conduct.
- b) the member is a serial offender i.e. engaged in unprofessional conduct on two or more occasions. A repeat offender may be ordered to pay "some" costs. A repeat of less serious offences could justify less than 25% of the costs.
- c) the member failed to co-operate with investigators. The Registrar is forced to spend more resources than necessary. The member may be ordered to pay those additional costs.
- d) the member engaged in hearing misconduct. The member unnecessarily prolonged the hearing or otherwise unjustifiably increased the costs. The member may be ordered to completely or largely indemnify the College for those increased costs.

In this case, the Licensee admitted that he was aware that his conduct was dishonest, that he was a "partner in crime" and that he provided false documents to a mortgage broker. From his experience and education, and based on a plain reading of the *Act*, the Rules and other materials relating to the conduct of hearings, the Licensee should have known that he could be ordered to pay "a substantial portion or all of the costs" On this basis, the Hearing Panel orders that the Licensee shall pay a "substantial portion or all of the costs".

This Hearing Panel finds that all of the exceptions in *Jinnah* have been met, except the Licensee being a serial offender. The Licensee committed fraud, being defined by the Court of Appeal as “serious unprofessional conduct”. The Licensee failed to co-operate when he was asked to participate in a second interview, to respond to questions regarding his decision to recant his interview statement. The Licensee unjustifiably increased the costs of the hearing by making applications that had no merit e.g. asking the Hearing Panel to Order an entity over which it has no jurisdiction (the Canadian Broadcasting Corporation) to observe the hearing, when the hearing was, upon request to the Hearings Administrator, open to the public.

The Hearing Panel understands that as a self-represented person, the Licensee may not have appreciated the merits, or lack thereof, of all of his applications and motions. However, the Hearing Panel expects a self-represented Licensee to read the materials that relate to the hearing process. These materials are free of charge and readily available. If the Licensee did so in this case, he failed to recognize that RECA hearings are open to the public, and therefore, his application to compel the Canadian Broadcasting Corporation to attend, was unwarranted and would result in increased costs.

Also, the Hearing Panel expects a Licensee to give careful and thorough consideration to the question of retaining legal counsel. The Licensee had ample time before, during, and after Phase 1 of the hearing, to retain legal counsel. He opted not to do so. He then sought, and was granted, an adjournment to do so; then he continued to appear without legal counsel. A Licensee’s decision not to appear with legal counsel results in saving money; but it also comes with the very high risk of increasing one’s costs, if applications, motions and incorrect procedural steps are not grounded in legal principle or practice.

The Registrar is correct that full costs of the investigation, the compelling of witnesses, and actual time spent by the Registrar’s counsel would be more than the \$21,292.50 in costs requested. The Hearing Panel finds the suggested amount of \$21,292.50 in costs reasonable, and in line with the requirements of *Jinnah* and *Pethick*.

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

1. Pursuant to Section 43(1)(a) of the *Act*, the Registrar shall cancel the Licensee’s license;
2. Pursuant to Section 43(1)(d)(1) of the *Act*, the Licensee shall be prohibited from applying for a new license for one (1) year from the date of this Order;
3. Pursuant to Section 43(1)(d)(1) of the *Act*, the Licensee shall be prohibited from applying for a new license until the Licensee has met the educational requirements, and the examination requirement(s), as described by the *Real Estate Act Rules*, sections 14(b) and 14(c), as at the date the Licensee applies for a new license;

4. Pursuant to the *Real Estate Act Rules, Division 4, Section 16(4)*, the Licensee shall not be exempt from the education, examination or other requirements prescribed, approved, or adopted by the relevant Industry Council to become a new Licensee, in the sector in which he was licensed within the past thirty-six (36) months.
5. Pursuant to Section 43(1)(d) of the *Act*, the Licensee shall pay a fine of fifteen thousand dollars (\$15,000.00) for breaching *Real Estate Act Rule 42(b)*; and
6. Pursuant to *Section 43(2)* of the *Act*, in addition to dealing with the conduct of the Licensee under *Section 43(1)*, the Licensee shall pay part of the costs of the investigation and hearing, in the amount of twenty-one thousand two hundred and ninety two dollars and fifty cents (\$21,292.50).

Dated at the City of Calgary in the Province of Alberta on January 4, 2023.

“Signature”

Dr. Gail H. Forsythe,
Hearing Panel Chairperson