

THE REAL ESTATE COUNCIL OF ALBERTA

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

AND IN THE MATTER OF a Hearing regarding the conduct of **PARAMJIT KAUR AULAKH**, Mortgage Broker and Real Estate Associate, registered at all material times with Centum Accord Mortgage Inc. and 1426300 Alberta Ltd. O/A Realty Executives Progressive

Hearing Panel Members: Phil McDowell, Chair
Tony Lamb
Kevin Kelly

Appearances: Jason Kully, case presenter on behalf of the Executive Director (the "ED") of the Real Estate Council of Alberta ("RECA")

Paramjit Kaur Aulakh, on her own behalf

Hearing Date: August 20, 2019, via telephone conference

AMENDED DECISION ON CONDUCT DESERVING OF SANCTION

1. Introduction

1.1 This matter involves the conduct of Paramjit Kaur Aulakh ("Ms. Aulakh") arising from her representation of [Purchasers] and [Co-Applicant] in seeking mortgage financing to purchase a property located in Edmonton, Alberta [the Property] in or around September, 2014, and such other conduct of Ms. Aulakh which is described in greater detail in this decision. At all material times, Ms. Aulakh was registered with RECA as a mortgage broker and real estate associate.

1.2 The parties did not object to the composition of the Hearing Panel.

1.3 Ms. Aulakh was not represented by legal counsel nor anyone else at the sanction hearing. In response to specific questions from the Hearing Panel about her being unrepresented, Ms. Aulakh confirmed that she understood that

she could have a lawyer assist her in her dealings with the ED and before the Hearing Panel, but that she chose not to and was prepared to proceed without legal representation.

- 1.4 Pursuant to section 46(1) of the *Real Estate Act*, the parties submitted to the Hearing Panel an Admission of Conduct Deserving of Sanction signed by Ms. Aulakh and dated July 10, 2019 that included the following:
 - a. an acknowledgement by Ms. Aulakh that she was given an opportunity to seek legal advice prior to signing the Admission of Conduct Deserving of Sanction;
 - b. a statement that she agrees to the Admission of Conduct Deserving of Sanction voluntarily;
 - c. a statement that she admits to the facts and breaches set out in Schedule "A" to the Admission of Conduct Deserving of Sanction; and
 - d. her admission that her conduct is deserving of sanction.
- 1.5 The Admission of Conduct Deserving of Sanction document was accepted by the ED of RECA on July 22, 2019.
- 1.6 The parties also submitted a Joint Submission on Sanction dated August 12, 2019. The jointly proposed sanction arising from Ms. Aulakh's conduct is as follows:
 - a. Ms. Aulakh should have her real estate license and mortgage license cancelled. Ms. Aulakh should not be eligible to apply for and be issued a new license until 24 months have elapsed from the date of cancellation.

2. Exhibits

- 2.1 The following exhibits were entered at the hearing by the parties:

Exhibit 1: Notice of Hearing
Exhibit 2: Affidavit of Service of the Notice of Hearing
Exhibit 3: Admission of Conduct Deserving of Sanction dated July 10, 2019
Exhibit 4: Joint Submission on Sanction dated August 12, 2019 with supporting case law:
Tab 1 – *Jaswal v Newfoundland (Medical Board)*, 1996 CanLII 11630 (NL SC)
Tab 2 – *Nielsen (Re)*, 2012 CanLII 82669 (BC REC)
Tab 3 – *(Singh Gill (Re))*, 2010 CanLII 26586 (BC REC)
Tab 4 – *Law Society of Upper Canada v. Steven Michael Mucha*, 2008 ONLSAP 5
Tab 5 – *Law Society of Alberta v. Bondar*, 2015 ABL5

Tab 6 – *Law Society of Upper Canada v. Okay Hyacinth Anyadiegwu*, 2006 ONLSHP 106

Tab 7 – *Law Society of Upper Canada v. Bishop*, 2014 ONLSTA 19

Tab 8 – *R v. Anthony-Cook*, 2016 SCC 43

3. Issues

- 3.1 As the parties submitted an Admission of Conduct Deserving of Sanction and a Joint Submission on Sanction in this case, and the ED accepted the Admission of Conduct Deserving of Sanction, the only issue for the Hearing Panel to determine is whether the sanction proposed in the Joint Submission on Sanction should be accepted, or whether the Hearing Panel should depart from the proposed sanction and substitute a different sanction on the facts of this case.

4. Facts

- 4.1 Pursuant to section 46 of the *Real Estate Act*, the parties submitted an Admission of Conduct Deserving of Sanction. The facts agreed to by the parties that give rise to conduct deserving of sanction are herein reproduced from paragraphs 6 – 87 of the Admission of Conduct Deserving of Sanction (with some modifications for privacy reasons) and are as follows:
6. *Ms. Aulakh first became licensed as a real estate associate in October, 2008. At all relevant and material times, she was a real estate associate registered to 1426300 Alberta Ltd. O/A Realty Executives Progressive.*
 7. *Ms. Aulakh first became registered as a mortgage broker in January 2006. At all relevant and material times, she was a mortgage broker and had a Franchise Agreement with and was registered to Centum Accord Mortgage Inc. ("Centum Accord").*
 8. *On July 8, 2013, the complainants, [Purchasers] entered into a purchase agreement (the "Purchase Agreement") with [Builder] to purchase a new-build home located at [the Property].*
 9. *The [Purchasers] were scheduled to take possession of [the Property] in June 2014.*
 10. *Acting on the advice of [Mortgage Associate], the [Purchasers] paid cash deposits toward the purchase of [the Property] in the amount of \$30,400 (the "Deposits").*

11. *The [Purchasers] signed the Removal of Conditions on June 29, 2013, removing the financing condition on the Purchase Agreement before they had secured financing on [the Property].*
12. *Sometime in early 2014, [Builder] provided notice that the possession date for [the Property] would be moved to July 15, 2014 (the "Extended Possession Date").*
13. *As the Extended Possession Date approached, the [Purchasers] still had not secured financing for [the Property].*
14. *On July 16, 2014, [Builder] emailed the [Purchasers] to inform them that they were in default of the Purchase Agreement and could face interest charges as high as \$14,000. In response, the [Purchasers] requested [Builder] grant a further extension of the possession date in order to allow them time to find a qualified guarantor. [Builder] granted a further extension of the possession date to August 15, 2014.*
15. *The [Purchasers] tried to find a qualified guarantor prior to August 15, 2014 but were unsuccessful. To avoid forfeiting the Deposits as a result of breaching the Purchase Agreement, the [Purchasers] decided to explore other avenues for obtaining financing.*
16. *On August 26, 2014, based on the recommendation of a friend, the [Purchasers] contacted Ms. Aulakh to discuss options for mortgage financing and to schedule a meeting.*
17. *The following day, Ms. Aulakh emailed the [Purchasers] a mortgage application and asked them to provide their credit scores.*
18. *At this time, Ms. Aulakh had a responsibility to ensure the [Purchasers] clearly understood her role and to disclose any conflict of interest that she may have had in the course of providing services. Ms. Aulakh did not verbally explain to the [Purchasers] whether she acted for them, for the mortgage lender, or as an intermediary between the [Purchasers] and the lender. She also failed to explain the difference between what it meant for Ms. Aulakh to act for the lender or the borrower or to act as an intermediary.*
19. *The [Purchasers] informed Ms. Aulakh that they had bad credit and there was a sense of urgency to get approved for financing quickly as they were in danger of losing the Deposits. Ms. Aulakh advised the [Purchasers] that she could possibly get them approved, but their son [Co-Applicant] would likely have to be a co-applicant on the mortgage.*

20. *On August 28, 2014, the [Purchasers], accompanied by [Co-Applicant], met Ms. Aulakh at a Tim Hortons to discuss financing options for the purchase of [the Property]. The [Purchasers] explained their situation to Ms. Aulakh.*
21. *Ms. Aulakh advised the [Purchasers] to complete the mortgage applications and the [Purchasers] did. The [Purchasers] also signed various documents at Ms. Aulakh's urging. Ms. Aulakh did not review or explain the contents of the mortgage application or the documents.*
22. *[Co-Applicant] and his partner [Co-Applicant's Partner] also filled out a mortgage application which they later forwarded to Ms. Aulakh.*
23. *Following the meeting, the [Purchasers] and Ms. Aulakh went to view [the Property].*
24. *Later that evening, Ms. Aulakh pulled credit scores for the [Purchasers], [Co-Applicant], and [Co-Applicant's Partner]. Based on the scores she obtained, she concluded that the [Purchasers] would not be approved for financing from one of the Big Five Banks.*
25. *On August 29, 2014, Ms. Aulakh advised the [Purchasers] that it was unlikely they would be approved for a traditional mortgage, and that she would instead look to trust companies as an alternative option. Ms. Aulakh also highlighted to the [Purchasers] that they would likely need a down payment of 15% to 20% of the purchase price of [the Property] to obtain a mortgage.*
26. *The [Purchasers] indicated that they did not have the additional funds required to put down any additional down payment.*
27. *Although the [Purchasers] had already indicated to Ms. Aulakh they had no means to put down any additional money towards a down payment, Ms. Aulakh advised them she would personally lend them \$61,000 to add to their down payment on [the Property], and that the [Purchasers] would declare it as a gift from family on the mortgage documents (the Down Payment Loan").*
28. *Ms. Aulakh conducted herself as if she was an agent for the [Purchasers], [Co-Applicant] and [Co-Applicant's Partner]. The [Purchasers], [Co-Applicant] and [Co-Applicant's Partner] consented to this agency relationship.*

First Mortgage

29. *On August 29, 2014, Ms. Aulakh submitted a mortgage application to [Private Lender] on the [Purchasers]' behalf. Ms. Aulakh determined that [Co-Applicant's Partner]'s credit score was too low to include in the application. Accordingly, the application was submitted under the [Purchasers]' and [Co-Applicant]'s names.*
30. *In the "Down Payments" section of the application form, Ms. Aulakh listed the \$30,400 Deposits.*
31. *To ensure the [Purchasers] had a large enough down payment to be approved for financing, Ms. Aulakh also listed a "gift from parents" in the amount of \$60,850 in the "Down Payments" section.*
32. *On September 3, 2014, the [Purchasers] received a conditional approval letter for the mortgage from [Private Lender]. The mortgage was a one-year closed mortgage of \$482,400 at 4.99% per annum interest rate. The advance date of the funds was September 15, 2014 (the "First Mortgage").*
33. *[Private Lender] imposed a condition on advancing the First Mortgage funds that they receive written confirmation by way of a "gift letter" that the down payment of \$60,050 should have read "\$60,850".*
34. *On September 3, 2014, Ms. Aulakh instructed the [Purchasers] and [Co-Applicant] to sign a Mortgage Borrower Relationship Disclosure (the "Relationship Disclosure") and a Mortgage Borrower Compensation Disclosure (the "Compensation Disclosure") regarding the First Mortgage.*
35. *The Relationship Disclosure document stated that Ms. Aulakh was acting as an intermediary between the [Purchasers] and [Co-Applicant] as the borrowers and [Private Lender] as the lender with respect to the First Mortgage. Ms. Aulakh failed to explain this change to her existing agency relationship with the [Purchasers] and [Co-Applicant] and failed to obtain their consent. She also failed to explain the differences between what it meant for Ms. Aulakh to act for the lender or the borrower or to act as an intermediary.*
36. *Ms. Aulakh failed to offer the [Purchasers] multiple options of lenders and she did not present each side in a neutral and honest way, thus failing to maintain neutrality as a purported intermediary.*

Second Mortgage

37. *On August 29, 2014, Ms. Aulakh also submitted a second mortgage application to [Private Lender] on the [Purchasers]' behalf. As with the First Mortgage, in addition to listing the Deposits as a down payment on*

the application form, Ms. Aulakh also listed a "gift from parents" in the amount of \$60,850.

38. Ms. Aulakh failed to explain the risks of having more than one mortgage and the impact that this might have on the [Purchasers]' ability to obtain financing in the future.
39. On September 3, 2014, [Private Lender] also approved a one-year closed mortgage of \$30,150 at 12% per annum interest rate (the "Second Mortgage"). As with the First Mortgage, the funds were due to be advanced on September 15, 2014.
40. [Private Lender] imposed the same condition to advancing the Second Mortgage funds that they receive written confirmation by way of a "gift letter" that the down payment of \$60,050 was a non-refundable gift. It appears the condition imposed by [Private Lender] on the Second Mortgage also contains a typo and that the "\$60,050" should have read "\$60,850".

Down Payment Loan

41. On September 5, 2014, Ms. Aulakh received a template gift letter from [Private Lender] (the "Gift Letter Form"). [Private Lender] required a completed Gift Letter Form in order to fulfil the conditions on the First Mortgage and the Second Mortgage, which was that the [Purchasers] and [Co-Applicant] provide written confirmation that the \$60,050 down payment was a non-refundable gift.
42. Ms. Aulakh sent the Gift Letter Form to the [Purchasers] on September 5, 2014 and directed the [Purchasers] to complete the Gift Letter Form.
43. On September 15, 2014, which was the advance date of the First Mortgage and the Second Mortgage funds, the [Purchasers] completed the Gift Letter Form by stating that the Down Payment Loan in the amount of \$61,000 was a gift from [one of the Purchasers]' sister, [Sister].
44. On September 15, 2014, Ms. Aulakh had a BMO bank draft payable to the [Purchasers] issued from Ms. Aulakh's primary chequing account in the amount of \$61,000. Ms. Aulakh gave this bank draft to the [Purchasers] on September 15, 2014.
45. The [Purchasers] deposited the \$61,000 bank draft from Ms. Aulakh into their account on September 16, 2014.

46. *On Ms. Aulakh's advice, the [Purchasers] purchased a BMO draft payable to [Sister] for \$61,000, the amount of the Down Payment Loan, on September 17, 2014. On Ms. Aulakh's advice, the [Purchasers] instructed [Sister] to deposit this draft into her account.*
47. *To create the appearance as if the Down Payment Loan was a gift from [Sister], [Sister] immediately issued the \$61,000 back to the [Purchasers] via a bank draft from [Sister]'s account. The [Purchasers] deposited the \$61,000 on September 18, 2014.*
48. *The [Purchasers] then withdrew the \$61,000 from their account on September 19, 2014 and paid it as a down payment for [the Property].*
49. *[Sister] did not contribute any of her personal funds as a gift to the [Purchasers] to use towards the purchase of [the Property].*
50. *The [Purchasers] expressed concern with the 18% interest rate Ms. Aulakh intended to charge on the Down Payment Loan. The [Purchasers] advised that they would not be able to cover the monthly payments of the First Mortgage, the Second Mortgage, and the Down Payment Loan.*
51. *The parties discussed that the [Purchasers] could make a large prepayment towards the Down Payment Loan to alleviate their monthly expenses going forward and minimize one of their monthly payments for the upcoming year.*
52. *Ms. Aulakh informed the [Purchasers] that they could pay her \$13,380 upfront (the "Prepayment") towards the Down Payment Loan. Ms. Aulakh stated that the amount was for "lawyer's fees and payments for the first year" toward the Down Payment Loan.*
53. *On September 15, 2014, the [Purchasers] purchased a bank draft payable to Ms. Aulakh in the amount of \$13,380. The [Purchasers] provided the draft to Ms. Aulakh on the same date. Ms. Aulakh deposited it into her account on September 16, 2014.*
54. *Ms. Aulakh failed to disclose the existence of a conflict of interest arising from her acting as the mortgage broker and the lender for the [Purchasers]. She did not make any written disclosure and she failed to disclose the effect, or potential effect, of the conflict of interest.*

Transfer of Property

55. *[Builder] transferred title of [the Property] to the [Purchasers] on September 26, 2014.*
56. *The First Mortgage and Second Mortgage were registered on title on this date.*
57. *As a result of the delay in obtaining financing, in part because of the complex nature of the mortgages Ms. Aulakh eventually had the [Purchasers] approved for, the [Purchasers] paid substantial fees and interest to [Builder].*

Third Mortgage

58. *Despite transferring the Down Payment Loan to the [Purchasers] and accepting the Prepayment in mid-September, Ms. Aulakh contacted the [Purchasers] on October 10, 2014 to have them sign another mortgage application and a Direction to Pay.*
59. *Ms. Aulakh required these documents to be signed as she intended to register the Down Payment Loan as a third charge mortgage on title of [the Property] in the name of Centum Accord (the "Third Mortgage"). The [Purchasers] were unaware of this intention and Ms. Aulakh never advised the [Purchasers] that she intended to register the Down payment Loan as a third mortgage on the title to [the Property].*
60. *In October, 2014, Ms. Aulakh advised the [Purchasers] she was charging an additional fee of \$5,000 on the Down Payment Loan as part of the Third Mortgage (the "Brokerage Fee").*
61. *Though the Direction to Pay indicated Brokerage Fee, the [Purchasers] signed the documents without the opportunity to read them in their entirety, seek independent legal advice, or clarify what role Ms. Aulakh held in the transaction or how she was being compensated.*
62. *In particular, though the [Purchasers] signed the Direction to Pay, they did not understand, and Ms. Aulakh did not advise of, the fact that the Brokerage Fee was a fee they had to pay as compensation to Ms. Aulakh for personally lending them the Down Payment Loan.*
63. *The [Purchasers] signed the documents for the Third Mortgage without reviewing what was provided in its entirety. The [Purchasers] believed they would have the opportunity to take the documents for the Third Mortgage to a lawyer who could explain them fully.*

64. *Ms. Aulakh failed to ensure the [Purchasers] understood the contents of the documents.*
65. *The Third Mortgage was registered on title for [the Property] in the amount of \$66,000 on October 22, 2014 in the name of Centum Accord. The \$66,000 included the \$61,000 paid by Ms. Aulakh to the [Purchasers], as well as the \$5,000 Brokerage Fee.*
66. *The [Purchasers] did not know the \$5,000 Brokerage Fee would be included in the Third Mortgage registered on title.*
67. *At no time did Ms. Aulakh assess the [Purchasers]' financial capacity to carry the Third Mortgage. The funds for the Third Mortgage had been advanced prior to as part of the Down Payment Loan without any consideration of the [Purchasers]' financial position.*
68. *No Mortgage Borrower Compensation Document was signed with respect to the Third Mortgage.*

Attempted Sale of [the Property]

69. *In or around January 2015, the [Purchasers] determined they could no longer afford [the Property] as a result of the payments owing on the First Mortgage, the Second Mortgage, and the Third Mortgage. The [Purchasers] decided to sell [the Property].*
70. *On February 7, 2015, the [Purchasers] entered into an Exclusive Agency Agreement with Ms. Aulakh to facilitate the sale of [the Property].*
71. *There was no discussion of Ms. Aulakh's conflict of interest caused by her role as real estate agent and the lender and holder of the Third Mortgage.*
72. *The [Purchasers] advised Ms. Aulakh that they wish to list [the Property] for \$650,000. On Ms. Aulakh's advice the [Purchasers] obtained an appraisal of [the Property], which stated the value of [the Property] to be \$610,000. [the Property] tax assessment also valued [the Property] substantially lower than the [Purchasers]' desired listing price, in the high \$500,000s.*
73. *Nonetheless, the [Purchasers] instructed Ms. Aulakh to list [the Property] for \$648,800 as they were motivated to make enough from the sale of [the Property] to cover their debts and have a down payment for a new property.*

74. *[The Property] was listed for \$648,800 on March 19, 2015.*
75. *In April 2015, [the Property] remained unsold. Ms. Aulakh advised the [Purchasers] to lower the price of the listing; however, the [Purchasers] rejected this advice as they believed doing so would absorb their equity and not cover the cost of the sale.*
76. *In June 2015, the [Purchasers] were displeased with Ms. Aulakh's efforts to sell [the Property] and terminated the Exclusive Agency Agreement with her. Though the [Purchasers] had considered listing [the Property] with another real estate agent, they ultimately decided to try to refinance [the Property] to lower their monthly mortgage payments in the hopes of keeping [the Property].*
77. *When the [Purchasers] attempted to refinance [the Property], they learned that the Down Payment Loan had been registered as the Third Mortgage on title in the amount of \$66,000.*
78. *It was at this time that the [Purchasers] learned that the Third Mortgage was \$5,000 more than the Down Payment Loan they had received. The [Purchasers] were not aware that the additional \$5,000 for the Brokerage Fee was included in the Third Mortgage.*
79. *The [Purchasers] learned from various lenders that they could not qualify for refinancing because of the Third Mortgage.*
80. *In early August 2015, the [Purchasers] contacted Ms. Aulakh and requested she remove the Third Mortgage from title until [the Property] was refinanced. They also asked Ms. Aulakh to lower the 18% interest rate, and offered to gift Ms. Aulakh their vehicle as collateral, which had been valued at \$48,000 a year earlier.*
81. *Ms. Aulakh refused the propositions made by the [Purchasers]. However she did agree to waive the approximately \$2,000 in interest that had accumulated on the Down Payment Loan since the maturity date.*

The Foreclosure

82. *In December 2015 and January 2016, the [Purchasers] informed Ms. Aulakh of their intention to give up the home because they could not renew the mortgages as a result of the Third Mortgage.*
83. *Between January 2016 and May 2016, [the Property] went into foreclosure proceedings as a result of the [Purchasers]' default.*

84. *On May 24, 2016, Ms. Aulakh emailed [Paralegal], a paralegal with the [Law Firm], and made an offer to purchase [the Property] in the amount of \$535,000.*
85. *On May 27, 2016, [Paralegal] advised Ms. Aulakh that she should amend her offer to specify that the purchase price was \$535,000 or such amount necessary to pay out the Plaintiff's first and second mortgages in full. [Paralegal] also advised that Ms. Aulakh's offer would not be accepted if it included commissions.*
86. *On June 2, 2016, Ms. Aulakh submitted an amended offer of \$535,000 or "whatever amount to payout [Private Lender] in full", updating the price in accordance with [Paralegal]'s suggestions.*
87. *On June 6, 2016, Ms. Aulakh's offer to purchase [the Property] was filed with the Alberta Court of Queen's Bench which accepted the offer and issued the Order for Sale accordingly. The [Purchasers] were subsequently served with the Order for Foreclosure.*

4.2 As mentioned above, the ED accepted the Admission of Conduct Deserving of Sanction. Accordingly, all admissions contained in the Admission are deemed to be findings of the Hearing Panel pursuant to section 47 of the *Real Estate Act*. The Hearing Panel must now make its determination on an appropriate sanction against Ms. Aulakh. This will be discussed in further detail below.

5. Conduct Deserving of Sanction

5.1 In paragraph 5 of the Admission of Conduct Deserving of Sanction, Ms. Aulakh and the ED agreed that Ms. Aulakh's conduct is deserving of sanction for the following breaches:

- 1) *On or around September 2014, Ms. Aulakh failed to provide competent service to her clients, contrary to section 41(b) of the Real Estate Act Rules, particulars of which include:*
 - a. *Ms. Aulakh represented the [Purchasers] in seeking mortgage financing to purchase [the Property].*
 - b. *Ms. Aulakh brokered and registered the First Mortgage on title for [the Property].*
 - c. *Ms. Aulakh brokered and registered the Second Mortgage on title for [the Property].*
 - d. *Ms. Aulakh provided, or caused to be provided, to the [Purchasers] the Down Payment Loan, which was registered as the Third Mortgage.*

- e. *Ms. Aulakh failed to explain, adequately or at all, to the [Purchasers] one or more of the following:*
 - i. *the risk of having more than one mortgage to their future ability to obtain financing;*
 - ii. *that the Down Payment Loan would be a third mortgage registered on title.*

- f. *Ms. Aulakh also failed to do one or more of the following:*
 - i. *assess, adequately or at all, the [Purchasers]' financial capacity to carry the Third Mortgage;*
 - ii. *provide the [Purchasers] with complete or any copies of mortgage documents or written disclosures pertaining to the Third Mortgage until after the monies related to the Down Payment Loan were advanced and used as a down payment on [the Property]; and*
 - iii. *ensure that the [Purchasers] understood the contents of the documents given to them to sign.*

2) *On or around August to September 2014, Ms. Aulakh failed to ensure that her role as a mortgage broker was clearly understood by the [Purchasers] or [Private Lender], contrary to s. 41(e) of the Real Estate Act Rules, particulars of which include:*

- a. *Ms. Aulakh agreed to assist the [Purchasers] in obtaining mortgage financing to purchase [the Property].*
- b. *Ms. Aulakh did one or more of the following in assisting the [Purchasers] in obtaining mortgage financing:*
 - i. *Ms. Aulakh failed to explain to the [Purchasers], adequately or at all, whether she acted for them, for the mortgage lender, or as an intermediary between the lender and borrower; and*
 - ii. *Ms. Aulakh failed to explain to the [Purchasers], adequately or at all, the differences between acting for the lender, the borrower or as an intermediary.*
- c. *Ms. Aulakh declared her role in a mortgage application document as an "intermediary," but:*
 - i. *failed to explain and obtain consent for the any change to her existing agency relationship with the [Purchasers]; and*
 - ii. *failed to maintain neutrality between the lender and borrower as required of an intermediary.*

3) *On or around September to October 2014, Ms. Aulakh failed to disclose to the [Purchasers] how she would be paid for her services in brokering the Third*

Mortgage contrary to s. 41(c) of the Real Estate Act Rules, particulars of which include:

- a. Ms. Aulakh provided the [Purchasers] with the Down Payment Loan.*
- b. Ms. Aulakh charged or caused to be charged the Brokerage Fee of \$5,000 on the Down Payment Loan.*
- c. Ms. Aulakh registered or caused to be registered on title for [the Property] a Third Mortgage of \$66,000, representing the amount of the Down Payment Loan and the Brokerage Fee.*
- d. Ms. Aulakh failed to disclose the Brokerage Fee adequately or at all to the [Purchasers] prior to providing them with the Down Payment Loan.*

4) On or around September 2014, Ms. Aulakh failed to disclose to the [Purchasers] at the earliest practical opportunity the existence of a conflict of interest in her dealings with them, contrary to s. 41(f) of the Real Estate Act Rules, particulars of which include:

- a. Ms. Aulakh entered into an express or implied client relationship with the [Purchasers] as their mortgage broker or brokerage.*
- b. Ms. Aulakh also entered into a lending relationship with the [Purchasers] as the lender of the Down Payment Loan.*
- c. Ms. Aulakh failed to disclose to the [Purchasers], adequately or at all, the existence of a conflict of interest arising from acting as their mortgage broker and their lender by doing one or more of the following:*
 - i. Ms. Aulakh failed to provide disclosure in writing;*
 - ii. Ms. Aulakh failed to disclose sufficient details of the conflict of interest; and*
 - iii. Ms. Aulakh failed to disclose the effect or potential effect on the [Purchasers] of the conflict of interest.*

5) On or around September 2014, Ms. Aulakh participated in fraudulent or unlawful activities in connection with the provision of services or any dealings contrary to s. 42(b) of the Real Estate Act Rules, particulars of which include:

- a. Ms. Aulakh loaned the [Purchasers] the Down Payment Loan.*
- b. Ms. Aulakh falsified or participated in the falsification of the source of the Down Payment Loan to [Private Lender] by doing one or more of the following:*
 - i. Ms. Aulakh knowingly provided false information to [Private Lender] about the source of the Down Payment Loan;*

- ii. *Ms. Aulakh assisted or coached the [Purchasers] to falsely declare to [Private Lender] that the Down Payment Loan was a gift from a relative;*
 - iii. *Ms. Aulakh knew that the [Purchasers] intended to falsely declare to [Private Lender] that the Down Payment Loan was a gift from a relative but failed to take steps to prevent it; and*
 - iv. *After the [Purchasers] falsely declared to [Private Lender] that the Down Payment Loan was a gift from a relative, Ms. Aulakh knowingly failed to notify [Private Lender] of the false declaration despite opportunity to do so.*

- 6) *In or around February to June 2015, Ms. Aulakh provided services to her client the [Purchasers] in a trade or anticipated trade in which she had a conflict of interest without receiving their written and informed consent, contrary to s. 54(3) of the Real Estate Act Rules, particulars of which include:*
 - a. *Ms. Aulakh was in an exclusive seller representation agreement with the [Purchasers] for the purpose of acting as their real estate agent to list and sell [the Property].*
 - b. *At this time, Ms. Aulakh was the lender and holder of the Third Mortgage on [the Property], which placed her in a conflict of interest.*
 - c. *Ms. Aulakh failed to obtain written and informed consent from the [Purchasers] to act in conflict of interest.*

- 7) *In or around May to June 2016, Ms. Aulakh failed to fulfil her fiduciary duty of loyalty or confidentiality to the [Purchasers] contrary to s. 57(e) of the Real Estate Act Rules in that:*
 - a. *From approximately February to June 2015, Ms. Aulakh was in a sole agency relationship with one or more of the [Purchasers] to sell [the Property].*
 - b. *In the course of acting for the [Purchasers], Ms. Aulakh obtained confidential information including one or more of the following:*
 - i. *The financing history on [the Property];*
 - ii. *The listing and selling history on [the Property];*
 - iii. *The market reception of [the Property];*
 - iv. *Outstanding mortgage or debt obligations on [the Property]; and*
 - v. *Details of the [Purchasers]' financial and living situation.*
 - c. *In or around 2016, [the Property] entered foreclosure proceedings.*

- d. *In or around May to June 2016, Ms. Aulakh made an offer to purchase [the Property] in foreclosure for \$535,000.*
- e. *In making the offer, Ms. Aulakh relied on, made use of or benefited from some or all of the above confidential information, which was not the purpose for which Ms. Aulakh obtained the information.*

5.2 Section 47(2) of the *Real Estate Act* provides as follows:

If a statement of admission of conduct is accepted, each admission of conduct in the statement in respect of any act or matter regarding the industry member's conduct is deemed for all purposes to be a finding of the Hearing Panel that the conduct of the industry member is conduct deserving of sanction.

5.3 Accordingly, the above admissions by Ms. Aulakh are deemed by the Hearing Panel to be conduct deserving of sanction.

5.4 Based on section 47(2) and the breaches described in the Admission of Conduct Deserving of Sanction, the Hearing Panel finds that Ms. Aulakh acted contrary to the following *Real Estate Act Rules*, and her conduct is therefore deserving of sanction.

5.5 Section 41 of the *Real Estate Act Rules* provides, in part, as follows:

Industry members must:...

- (b) *provide competent service;*
- (c) *disclose to their clients, at the earliest practical opportunity, how they will be paid for their services; ...*
- (e) *ensure the role of the industry member is clearly understood by their clients and third parties;*
- (f) *disclose to their clients, at the earliest practical opportunity, any conflict of interest they may have in the course of providing services to, or in their dealings with, a client; ...*

5.6 Section 42(b) of the *Real Estate Act Rules* provides as follows:

Industry members must not: ...

- (b) *participate in fraudulent or unlawful activities in connection with the provision of services or in any dealings;*

5.7 Section 54(3) of the *Real Estate Act Rules* provides as follows:

An industry member shall not provide any services to the client or potential client in a trade or anticipated trade in which the industry member has, or will have, a conflict of interest without receiving the written and informed consent of the party.

5.8 Section 57(e) of the *Real Estate Act Rules* provides as follows:

The basic obligations of an industry member who is in a sole agency relationship with a seller are: ...

- (e) *to fulfill its fiduciary duties of loyalty, confidentiality and of full disclosure of all conflicts of interest that may arise between the sellers interests and those of the industry member or buyers.*

6. Sanction

6.1 Section 43 of the *Real Estate Act* provides the Hearing Panel with the authority to order a sanction where an industry member's conduct has been found to be deserving of sanction:

43(1) If a Hearing Panel finds that the conduct of an industry member 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 industry member by the Council;*
- (b) *an order reprimanding the industry member;*
- (c) *an order imposing any conditions or restrictions on the industry member and on that industry member's carrying on of the business of an industry member that the Hearing Panel, in its discretion, determines appropriate;*
- (d) *an order requiring the industry member 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 industry member from applying for a new authorization for a specified period of time or until one or more conditions are fulfilled by the industry member;*
- (e) *any other order agreed to by the parties.*

6.2 The Joint Submission on Sanction addressed the relevant factors for the Hearing Panel to consider when assessing sanction, as identified in *Jaswal v Newfoundland (Medical Board)*, 1996 CanLII 11630 (NL SC). The Hearing Panel's consideration of these factors is detailed below:

- a. *The nature and gravity of the proven allegations*

In this case, the allegations deal with important responsibilities industry members owe to their clients and third parties, including:

- 1) providing competent service to Ms. Aulakh's clients;
- 2) ensuring her role as a mortgage broker was clearly understood by her clients and third parties;
- 3) disclosing to her clients, at the earliest practical opportunity, how she will be paid for her services;
- 4) disclosing to her clients, at the earliest practical opportunity, any conflict of interest she may have in the course of providing services to, or in her dealings with, a client;
- 5) participating in fraudulent or unlawful activities in connection with the provision of services or in any dealings;
- 6) providing services to her client in a trade or anticipated trade in which Ms. Aulakh has, or will have, a conflict of interest without receiving the client's written and informed consent;
- 7) failing to fulfill her fiduciary duties of loyalty, confidentiality and of full disclosure to her client, as sellers of [the Property], of all conflicts of interest that may arise between her client's interests and those of Ms. Aulakh or buyers.

b. The age and experience of the industry member

The Admission of Conduct Deserving of Sanction states that Ms. Aulakh first became licensed as a real estate associate in October 2008 and first became registered as a mortgage broker in January 2006.

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

The Joint Submission on Sanction states that Ms. Aulakh has no disciplinary history and has been a RECA member in good standing since 2006.

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

The Admission of Conduct Deserving of Sanction lists no less than seven agreed breaches of conduct deserving of sanction. Furthermore, the Joint Submission on Sanction states that Ms. Aulakh engaged in willful and intentional conduct on multiple occasions.

e. The role of the industry member in acknowledging what occurred

The Admission of Conduct Deserving of Sanction states that Ms. Aulakh cooperated with the investigation concerning this case and acknowledges the agreed facts and that she engaged in conduct deserving of sanction.

- f. Whether the industry member had already suffered serious financial or other penalties as a result of the allegations having been made*

The case presenter for the ED submitted that:

- 1) the ED recognizes that cancelling Ms. Aulakh's real estate associate and mortgage broker licenses is going to have a significant impact on her ability to recoup financially and to maintain gainful employment;
- 2) imposing costs would have a significant impact on Ms. Aulakh;
- 3) taking into account Ms. Aulakh's cooperation and joint submission, and her acceptance of the conduct (which has eliminated the need for any contested hearing and calling of witnesses), the ED recognizes that through her cooperation, significant costs have been saved.

- g. The impact on victims, if any*

The Joint Submission on Sanction states that:

- 1) Ms. Aulakh's conduct harms the reputation of the real estate industry; and
- 2) her conduct significantly impacted the [Purchasers], as their home [the Property] was subject to foreclosure proceedings.

- h. Additional mitigating circumstances*

The Joint Submission on Sanction provides the following mitigating factors:

- 1) Ms. Aulakh cooperated with the investigation of this matter;
- 2) she acknowledges the facts and that she engaged in conduct deserving of sanction;
- 3) prior to this matter, Ms. Aulakh has no discipline history and has been a RECA member in good standing since 2006; and
- 4) she worked with conduct counsel for RECA to achieve a resolution by agreement, thereby saving RECA the time and expense of a contested hearing, which in turn saved witnesses

the inconvenience and stress of having to attend and testify at a hearing.

i. Additional aggravating circumstances

The Joint Submission on Sanction provides the following aggravating factors:

- 1) Ms. Aulakh's conduct harms the reputation of the real estate industry;
- 2) she engaged in fraudulent activity for her own gain;
- 3) she engaged in willful and intentional conduct on multiple occasions;
- 4) she breached her fiduciary duties to her clients;
- 5) her conduct had a significant impact on the victims, the [Purchasers], as their home [the Property] was subject to foreclosure proceedings;
- 6) specific and general deterrence must be promoted in this case to ensure that Ms. Aulakh and other real estate professionals realize that such conduct will be met with consequences.

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

As stated above, the parties submit that there is a need to promote specific and general deterrence to ensure that Ms. Aulakh and other real estate professionals realize that such conduct will be met with consequences.

k. The need to maintain the public's confidence in the integrity of the profession

The parties submit that Ms. Aulakh's conduct harms the reputation of the real estate industry.

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

The parties agree, and Ms. Aulakh acknowledges the facts and that she engaged in conduct deserving of sanction, including fraudulent activity for her own gain. The Hearing Panel finds that the seriousness of her conduct clearly falls outside the range of permitted conduct.

m. The range of sentences in similar cases

The parties presented several cases involving mortgage fraud committed by real estate professionals and lawyers that are relevant to sanction. In those cases, the sentences ranged from:

- 1) disbarment for the lawyers involved in mortgage fraud (*Law Society of Upper Canada v. Steven Michael Mucha*, 2008 ONLSAP 5; *Law Society of Alberta v. Bondar*, 2015 ABL5; *Law Society of Upper Canada v. Okay Hyacinth Anyadiegwu*, 2006 ONLSHP 106; *Law Society of Upper Canada v. Bishop*, 2014 ONLSTA 19);
- 2) ineligibility to renew a real estate license for 18 months, successful completion of specified real estate courses and costs payable of \$1,000 on a real estate industry member who was inactive at the time of the hearing (*Singh Gill (Re)*, 2010 CanLII 26586 (BC REC), and
- 3) real estate licence cancellation and ineligibility to apply for re-licensing for three years, successful completion of specified real estate courses and costs payable of \$1,000 (*Nielsen (Re)*, 2012 CanLII 82669 (BC REC)).

- 6.3 Rule 14(3) of the *Real Estate Act Rules* outlines the discretion that a hearing panel or the court has when an industry member's license has been cancelled and he/she applies for a new license:

14(3) When a person's licence has been cancelled under the Act and that person applies for a new licence, that person is not eligible to be issued a new licence until 36 months have elapsed from the date of the cancellation, or such lesser or greater time as may be determined by a hearing or appeal panel or the court.

- 6.4 The Hearing Panel interprets rule 14(3) to mean that while the standard cancellation period is 36 months, the Hearing Panel may exercise its discretion to impose a lesser or greater cancellation period if it is satisfied that a lesser or greater period is justified, taking into account the relevant factors of the case.

- 6.5 In this case, the ED submitted that a 24 month cancellation of Ms. Aulakh's license would be appropriate for the following reasons:

- a. the ED recognizes that cancellation of an industry's member's license(s) is a very serious sanction and is the most serious sanction that can be imposed, and in this case it is not being imposed lightly;
- b. Ms. Aulakh's conduct was severe, given such factors as Ms. Aulakh's participation in providing [Private Lender] with the aforementioned gift letter, and her actions were deceptive and fraudulent;
- c. Ms. Aulakh violated the trust of [Private Lender] and the [Purchasers];

- d. members of the public place a high level of trust on real estate professionals in real estate and mortgage transactions;
 - e. Ms. Aulakh's representation of the victims, her breach of trust and acts of dishonesty are significant issues that qualify as serious conduct that occurred over a significant length of time;
 - f. it is important that cancellation of Ms. Aulakh's license must be imposed to maintain the public's confidence in the integrity of the real estate profession and to demonstrate that in cases such as this matter, where a family and a mortgage lender are relying upon a real estate professional, and the reliance and trust placed by those parties on the real estate professional is breached, and where the real estate professional acts dishonestly, it is important to demonstrate to the public that serious consequences such as cancellation of an industry member's license(s) will result;
 - g. while this case involves significant dishonesty and fraud by Ms. Aulakh, the ED recognizes Ms. Aulakh's conduct after the complaint to RECA was made, resulting in the submission of the Admission of Conduct Deserving of Sanction and Joint Submission on Conduct;
 - h. the parties propose that a shorter cancellation period of 24 months, with no costs payable by Ms. Aulakh, is justified in the circumstances, given the significant impact of the cancellation on Ms. Aulakh, and to recognize that Ms. Aulakh has acknowledged her conduct, has admitted her errors and has been cooperative throughout the investigation of this matter.
- 6.6 The Joint Submission on Sanction does not propose any additional education requirements to be included in any sanction. The case presenter for the ED submitted that as a result of the cancellation of Ms. Aulakh's real estate and mortgage licenses, she will be required to undertake all pre-licensing education again for any license she might apply for in future. Accordingly, the Hearing Panel finds that no educational sanction is required in this case.
- 6.7 The Joint Submission on Sanction does not propose that an order of costs should be imposed in this case. To support this position, the ED submits that:
- a. the cancellation of Ms. Aulakh's real estate associate and mortgage broker licenses will have a significant impact on her ability to recoup financially, to maintain gainful employment, and imposing costs would have a significant impact on her;
 - b. given her submission, and her acceptance of the conduct (which has eliminated the need for any contested hearing and any witnesses), the ED recognizes that through her cooperation, significant costs have been saved; and
 - c. the parties are prepared to jointly agree that no costs are necessary for this hearing, given that it is being conducted in an efficient manner, given

Ms. Aulakh's cooperation, and given the financial consequences that the cancellation is going to have on her.

- 6.8 The Hearing Panel is satisfied with this explanation, and finds that the public interest will not be offended if the sanction does not include an order for payment of any costs.
- 6.9 The Hearing Panel must decide whether to accept the parties' proposed sanction, or whether the circumstances dictate that it should substitute its own sanction. In the Joint Submission on Sanction, the parties draw the Hearing Panel's attention to the public interest test described in *R. v. Anthony Cook*, 2016 SCC 43, where the Supreme Court of Canada confirmed that "under the public interest test, a trial judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest."
- 6.10 In order for a joint submission to bring the administration of justice into disrepute or be contrary to the public interest, it must be so "markedly out of line with expectations of reasonable persons aware of the circumstances of the case that they would view it as a break down in the proper functioning of the criminal justice system". As explained by the court in *Anthony Cook*, the threshold for interference in joint submissions for sanctions is high.
- 6.11 The Hearing Panel finds that the Joint Submission on Sanction is not contrary to the public interest in this case. It is satisfied that the parties have provided it "with a full description of the facts relevant to the offender and the offence" in order to give the Hearing Panel "a proper basis upon which to determine whether [the joint submission] should be accepted" (*Anthony Cook* at paragraph 54).

7. Conclusion and Order

- 7.1 For the reasons discussed above, the Hearing Panel finds that Ms. Aulakh is deemed to have engaged in conduct deserving of sanction for committing breaches of rule 41(b), rule 41(c), rule 41(e), rule 41(f), rule 42(b), rule 54(3), and rule 57(e) of the *Real Estate Act Rules*.
- 7.2 After reviewing the Admission of Conduct Deserving of Sanction, the Joint Submission on Sanction and authorities and oral submissions of the parties, the Hearing Panel:
- a. finds that accepting the proposed sanction will not bring the administration of justice into disrepute or otherwise be contrary to the public interest;

- b. finds that the proposed sanction is both severe enough and appropriate on the facts of this case to maintain the public's confidence in the integrity of the profession, and will protect the public and ensure the safe and proper conduct of the profession; and
- c. accepts the proposed sanction submitted by the parties.

7.3 The Hearing Panel orders the following sanction against Ms. Aulakh:

- a. The real estate associate license and mortgage broker license issued by RECA to Paramjit Kaur Aulakh are hereby cancelled for a period of 24 months, effective August 20, 2019;
- b. Paramjit Kaur Aulakh will not be eligible to apply for and be issued any new license from RECA until August 21, 2021;
- c. Paramjit Kaur Aulakh will be required to successfully satisfy all pre-licensing education requirements before being eligible to apply for a license from RECA; and
- d. No costs will be payable by either party in relation to this matter.

Dated at the City of Calgary in the Province of Alberta, this 3rd day of September, 2019.

Phil McDowell, Hearing Panel Chair