

THE REAL ESTATE COUNCIL OF ALBERTA

Case Number: 012314.001
Name on License: Patrick Krause
Licence Sector and Class: Real Estate Associate
Current Brokerage: EXP Realty of Canada Inc. o/a EXP REALTY
Conduct Brokerage: Canadian Independent Realty Ltd. o/a
CIR Realty, formerly EXP Realty of Canada Inc. o/a
EXP Realty

Hearing Panel: [G.F], Chairperson
[A.S]
[D.T]

Counsel for the Registrar: Gen Zha
Counsel for the Licensee: Scott Chimuk, Blue Rock Law LLP
Process: A Hearing Under Part 3 of the *Real Estate Act*

Hearing Panel Decision – May 8, 2024

Background:

On November 30, 2023, a Notice of Hearing (Exhibit 1) was issued and according to the Affidavit of Service (Exhibit 2), was personally served on Patrick Krause, (the "Licensee"), on December 5, 2023. The hearing was scheduled for January 16, 2024 and January 17, 2024. The hearing was adjourned by consent of the parties and this hearing panel to May 8, 2024.

The Notice of Hearing alleged that the Licensee engaged in conduct deserving of sanction when:

1. On or about October 14, 2021, the Licensee participated in fraudulent activities in connection with the provision of services, contrary to section 42(b) of the Real Estate Act Rules.

- a. From approximately September 30, 2019 to October 21, 2021, the Licensee was registered as a residential real estate associate at CIR Realty.
- b. On or about October 14, 2021, the Licensee forged client signatures on seven (7) separate Exclusive Seller Representation Agreement Terminations with CRI Realty (Terminations) and the Licensee signed as the witness for each of the forged signatures.
- c. On or about October 14, 2021, the Licensee sent the Terminations to CIR Realty with the intent of deceiving them into believing the forged signatures were true signatures of the Licensee's clients.
- d. On or about October 22, 2021, the Licensee registered as a residential real estate associate at EXP Realty, with the intent to transfer the Licensee's clients' listings over to EXP Realty.

On May 2, 2024, the Registrar and the Licensee entered into an Agreement of Conduct Deserving of Sanction, pursuant to Part 3, Section M(d) of the Hearing and Appeal Practice and Procedure Guidelines.

The Hearing:

On May 8, 2024, the hearing of this matter proceeded. The Registrar and the Licensee were each represented by legal counsel. Neither the Registrar nor the Licensee objected to the composition of the hearing panel.

Phase 1 – Conduct Deserving of Sanction

At the request of the Registrar and the Licensee, the Agreement of Conduct Deserving of Sanction (the "Agreement") was admitted into evidence (Exhibit 3) as the agreed facts and breaches in the hearing of this matter, and the breaches constitute conduct deserving of sanction. The parties presented no additional evidence.

This hearing panel makes its findings of fact, breaches and conduct deserving of sanction based upon the Agreement. This hearing panel required no further information or evidence from the parties; and during the hearing, this hearing panel accepted this agreement based on the following admitted facts:

1. The Licensee was first licensed as a real estate associate on September 18, 1997;
2. From September 30, 2019 to October 21, 2021, the Licensee was registered as a residential real estate associate at Canadian Independent Realty Ltd. o/a CIR Realty;
3. On October 22, 2021, the Licensee registered as a residential real estate associate at EXP Realty, intending to transfer his clients' listings to EXP Realty;

4. In or about October 2021, the Licensee signed nine (9) signatures on behalf of his six (6) clients on seven (7) separate Exclusive Seller Representation Termination documents;
5. Each Termination Agreement ("TA") listed a specific seller for a specific listing, as noted below, and CIR Realty was listed as the brokerage for each listing. For TA's #1-3, the Licensee signed each seller's signature. For TA's #4-7, the Licensee signed [R.D]'s signature, on behalf of the seller, [S.D CORP].

<u>Seller</u>	<u>Listing Number</u>
TA #1 [R.S]	A1146775
TA #2 [P.T] & [C.T]	A1146509
TA #3 [M.M.P] & [M.P]	A1119153
TA #4 [S.D CORP]	A1129291
TA #5 [S.D CORP]	A1115544
TA #6 [S.D CORP]	A1115502
TA #7 [S.D CORP]	A1115466

6. On October 14, 2021, the Licensee provided TA's #1 to and including #7 to CIR Realty, without advising CIR Realty that he had signed on behalf of his clients.
7. CIR Realty discovered that the Licensee signed for his clients. A complaint was made to RECA.
8. After CIR Realty raised the concerns to him, the Licensee was candid with his clients and informed them of what he had done. He obtained electronic signatures from his clients.
9. When the Licensee signed for his clients, he believed that all of his clients wanted their files transferred. All but one of the Licensee's clients transferred their files to the Licensee and the new brokerage.

During Phase 1 of the hearing, this hearing panel accepted that the following breaches were admitted by the Licensee as being conduct deserving of sanction:

- a) Making representations or carrying on conduct that is reckless or intentional and that misleads or deceives any person or is likely to do so contrary to 42(a) of the *Real Estate Act Rules*; and
- b) In or about October 2021, the Licensee signed the signatures of his clients, as described above, on a total of seven (7) Exclusive Seller Representation Agreement Termination documents.

Phase 2 – Sanction and Costs

Sanction

On May 8, 2024, during Phase 2 of the hearing, the Registrar and the Licensee put forward a Joint Submission on Sanction (Exhibit 4), jointly proposing a sanction of a \$15,000 fine for breach of Rule 42(a), and jointly proposing that pursuant to *Jinnah v Alberta Dental Association and College*¹ the Licensee pay no costs.

Counsel for the parties jointly submitted that this hearing panel has authority to impose sanction pursuant to its authority set out in the *Real Estate Act* (“the Act”), s.43(1) that provides, among other things that:

If a hearing panel finds that the conduct of an industry member was conduct deserving of sanction, the hearing Panel may make any one or more of the following orders:

- (d) an order requiring the Licensee to pay to the Council a fine, not exceeding \$25,000, for each finding of conduct deserving of sanction.

Counsel for the parties jointly submitted that the proposed sanction meets RECA’s mandate to set and enforce standards of professional conduct and to protect the public; and while not binding upon this hearing panel, this hearing panel should not deviate from the joint submission unless the proposed sanction would bring the administration of justice into disrepute or is otherwise contrary to the public interest².

This hearing panel accepts the joint submission of counsel that the principles stated by the Supreme Court of Canada in *Anthony-Cook* apply to this disciplinary hearing; and as a result, this hearing panel should not deviate from the joint submission of the parties unless the proposed sanction would be “markedly out of line with the expectations of reasonable persons aware of the circumstances of the case³ ...” and that ... “cause an informed and reasonable public to lose confidence in the institution of the courts”⁴.

The parties jointly submit, and this hearing panel accepts, that the proposed sanction of a \$15,000 fine is within appropriate range that this hearing panel can accept and that would not cause an informed and reasonable public to lose confidence in RECA panels as an institution.

¹ 2022 ABCA 336 at paragraphs 140 to 144

² *R v Anthony-Cook* 2016 SCC 42

³ *R v Druken* 2006 NLCA 67, 261 Nfld & PEIR 271 at paragraph 29

⁴ *R v O (B.J.)* 2010 NLCA 19 (NLCA) (Can LII) at paragraph 56

This hearing panel accepts the joint submission on sanction because it meets the relevant factors in deciding an appropriate sanction, as outlined in *Jaswal v Newfoundland (Medical Board)*⁵:

a. The Nature and Gravity of the proven allegations

The Licensee's breach of Rule 42(a), by signing contracts on behalf of his clients, is serious in nature and gravity. His actions negatively affect his clients' and the public's confidence in the integrity of the real estate industry. This factor is aggravating.

b. The Age and Experience of the Licensee

At the time of his misconduct, the Licensee was 55 years old and had been licensed in real estate for over 24 years: more than sufficient time to understand that his conduct was unacceptable. This factor is aggravating.

c. The Previous Character of the Licensee and the presence or absence of prior complaints

The Licensee has no disciplinary history. This factor is mitigating.

d. The Number of Times the offence was proven to have occurred.

The Licensee signed nine signatures on seven different contracts. This factor is aggravating.

e. The Role of the Licensee in acknowledging what occurred.

The Licensee did not inform his conduct brokerage that he had signed contracts on behalf of his clients until after the RECA complaint was received. This factor is aggravating.

The Licensee was co-operative and admitted to his wrongdoing when the complaint was brought to RECA. He expressed deep remorse. This factor is mitigating.

f. Whether the Licensee suffered serious financial or other penalties as a result of the allegations

This hearing panel considers \$15,000 a serious fine.

g. Impact of the incident on the victim, if any

⁵ 1996 Can LII 11630 (NL SC) at paragraph 35

All but one of the Licensee's clients provided an electronic signature after the Licensee signed on the client's behalf. This factor is mitigating.

h. Mitigating circumstances

The Licensee was suffering from personal and professional stress, that led to a lapse in judgment. This factor is mitigating.

The Licensee agreed to forego the time and expense of a two day hearing, saving witnesses the inconvenience and stress of appearing at a hearing. This factor is mitigating.

The Licensee co-operated with the investigation. This factor is mitigating.

The Licensee was candid with his clients. This factor is mitigating.

i. Aggravating Circumstances

See d. and e. above

j. The need to promote specific and general deterrence and protect the public

This hearing panel accepts the joint submission that the Licensee's likelihood of repeating this conduct is low. So far as the need for general deterrence is concerned, this hearing panel accepts the joint submission that the need is high. The public deserves confidence that all Licensees must not mislead others by their conduct; and that all Licensees must be deterred from engaging in conduct that misleads the public.

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

This need to maintain the public's confidence in the integrity of the real estate profession is high. It is of the utmost importance to disciplinary bodies that the public have confidence in a profession.⁶ Licensees must strictly comply with the Act and the Rules in order to maintain the integrity of the real estate profession.

l. The degree to which the admitted conduct falls outside the range of permitted conduct

The Licensee's conduct falls outside the range of permitted conduct. This is an aggravating factor.

⁶ *Adams v Law Society of Alberta* 2000 ABCA 240 at page 3

m. The range of sentence in similar cases.

The parties jointly submitted cases that, although not binding, are comparable to the admitted facts of this case. The case law cited by both legal counsel provides for fines of \$5,000, \$10,000, and \$20,000; for single and multiple breaches of s.42(a) of the Rules.

After considering the *Jaswal* factors, this hearing panel finds that the joint submission of the parties proposing a \$15,000 fine is reasonable and appropriate for the nature and number of aggravating factors in this case.

A \$15,000 fine is in the mid-range. It is sufficient to demonstrate the seriousness with which this hearing panel regards the Licensee's conduct; and in particular, the nature of the offence and the number of times the offence occurred. A \$15,000 fine provides general deterrence to other members of the real estate profession and in that manner, should instill confidence in the public. A mid-range \$15,000 fine is also fair to the Licensee, whose remorse and co-operation throughout this process must be acknowledged and taken into consideration as strongly mitigating factors.

Costs

This hearing panel accepts the joint submission of the parties and finds that no costs should be imposed upon the Licensee. There are no compelling reasons to deviate from the *Jinnah*⁷ principle that costs should not be awarded against a Licensee, when hearing a regulatory matter. While the conduct admitted is serious, this hearing panel recognizes that the Licensee has no prior disciplinary history, he co-operated during the investigation, and he did not engage in any hearing misconduct. The Licensee's actions did not create a compelling reason to impose costs against him.

Signed in the City of Calgary on the 23rd day of May, 2024

"Signature"

[G.F], Hearing Panel Chairperson

⁷ *Jinnah* at 1

