

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 "**Act**")

IN THE MATTER OF a Hearing regarding the conduct of **FRANK PAUL PERESTA**, Real Estate Associate, currently unlicensed, formally previously registered with Real Broker AB Ltd o/a Real Broker and with Redline Real Estate Group Inc. o/a Greenleaf Property Management and with 2142595 Alberta Ltd. o/a Royal LePage Integrity.

Hearing Panel Members: [J.G], Chair
[L.M]
[A.S]

Hearing Date: October 15, 2024, via video conference

Counsel for the Registrar: Andrew Bone

Former Licensee: Frank Paul Peresta

DECISION ON CONDUCT DESERVING OF SANCTION AND ON SANCTION

Background

On September 11, 2024, a Notice of Hearing was issued and served personally on Frank Paul Peresta, (the "**Former Licensee**"). The hearing was scheduled for October 10, 2024. The hearing did not proceed on that date and was rescheduled for October 15, 2024.

The Notice of Hearing alleged that the Former Licensee engaged in conduct deserving of sanction when, in or around 2022, the Former Licensee participated in fraudulent or unlawful activities in connection with the provision of services or in any dealings, contrary to section 42(b) of the *Real Estate Act Rules*.

The Hearing

On October 15, 2024, the hearing of this matter proceeded. The Registrar was represented by legal counsel. The Former Licensee was self-represented and confirmed that they wanted to proceed without legal counsel.

Composition of the Hearing Panel

There was a change to the composition of the Hearing Panel wherein an alternate panel member was appointed at the request of the Hearing Panel Chair. The parties did not have any opposition to the Hearing Panel members following the change.

Hearing Panel's Decision

As delivered orally, the Hearing Panel accepts the Edited Agreement on Conduct Deserving of Sanction and the Joint Submission on Sanction and Costs and pursuant to the Interim Order dated October 17, 2024, imposed the sanction on the Former Licensee effective October 15, 2024.

Hearing Panel's Reasons for Decision

Conduct Deserving of Sanction- Phase 1

The Registrar and the Former Licensee agreed to enter the Edited Admission of Conduct Deserving of Sanction (the "**Admission**") into evidence as the agreed facts and breach in the hearing of this matter, and agreed the breach constituted conduct deserving of sanction.

Agreed Facts

The parties presented no additional evidence. The Hearing Panel requested clarification as to the prior registration status of the Former Licensee. Counsel for the Registrar clarified that the Former Licensee was only ever registered as the real estate associate and was never registered as a mortgage broker.

The Hearing Panel makes its finding of facts, breach and conduct deserving of sanction based upon the Admission presented by the parties. This Hearing Panel required no further evidence from the parties and, during the hearing, this Hearing Panel accepted the admission of the breach based on the following admitted facts:

1. Between November 1, 2019 and November 17, 2021, the Former Licensee was registered as a real estate associate with Redline Real Estate Group Inc. o/a Greenleaf Property Management ("**Redline**").

2. On April 21, 2021, Redline and SG entered into an Exclusive Seller Representation Agreement (the "**Listing Agreement**") for [Address 1] (the "**Property**") SG had been along time friend of the Former Licensee's in-laws. The Former Licensee was the Redline representative. The terms included the following:

- Brokerage: Redline
- Seller: SG
- Property: [Address 1]
- List price: \$2,950,000
- Redline representative: Peresta
- Term of Listing Agreement: April 20, 2021, to December 20, 2021
- Brokerage Fee: 4% on entire sale amount.
- Brokerage offer to Buyer's Agent: 3.5% on the first \$100,000 and 1.5% on the balance.

3. On November 17, 2021, the Former Licensee left Redline with a number of other associates and registered with Real Broker AB Ltd. o/a Real Broker ("**Real Broker**"). This was due to the fact that Redline was ceasing the majority of their operations by the end of the year.

4. In or around November 2021, the Former Licensee requested SG sign an amendment to the Listing Agreement. The purpose of the amendment was to transfer the agreement from Redline to the new brokerage Real Broker. This was a standard amendment given to all clients moving from Redline to Real Broker.

5. On November 24, 2021, SG advised the Former Licensee that they would not amend the Listing Agreement.
6. On December 21, 2021, the Listing Agreement with Redline expired, and it was not renewed by SG.
7. In early January 2022, the Former Licensee reached out to SG and asked if they could keep working together. SG said they were interviewing other agents and were not interested.
8. On January 11, 2022, the Former Licensee emailed SG and advised them that they had invested well over \$25,000 in the listing of the Property. While this was not clarified, the Former Licensee considered this to be actual expenses and their time and effort.
9. On February 21, 2022, the Former Licensee advised SG that they had been contacted by a real estate associate (the "**Associate**") about an interested buyer (the "**Buyer**") for the Property. The Associate wanted to book a showing. The Former Licensee stated they would be willing to assist SG, but they would need to sign a new listing agreement with Real Broker.
10. On February 21, 2022, SG advised the Former Licensee that they would not sign a new listing agreement with Real Broker. However, SG informed the Former Licensee that if the Buyer purchased the Property within 30 days, they would be willing to pay their expenses, which SG believed to be \$25,000 (the "**Expenses**"), and a referral fee of \$5000 (the "**Referral Fee**") for a total of \$30,000.
11. On or about February 24 and March 1, 2022, the agreement was referenced in several communications simply as \$30,000 as opposed to expenses plus a \$5,000 fee. The Former Licensee believed the \$30,000 offer from SG was a flat fee. There was never a formal agreement created.

12. On or about February 24, 2022, SG and the Former Licensee agreed to proceed, and the Property was subsequently shown to the Buyer.

13. On April 1, 2022, SG advised the Former Licensee the Property had sold to the Buyer and the closing was April 21, 2022. SG advised them that after the closing they could prepare their invoice for the Expenses and the Referral Fee, and SG's lawyer would take care of paying them.

14. On April 25, 2022, SG informed the Former Licensee that the sale had closed. They asked them to prepare an invoice, which would include the receipts for the Expenses up to \$25,000 and the Referral Fee.

15. On May 4, 2022, an invoice from Real Broker created by the Former Licensee was sent to SG It included with the following information:

- To: SG, seller
- RE: the Property
- Letter Related to Commissions Owed
- Commission: \$30,000 + \$1500 GST
- Total Commission Due: \$31,500

16. On May 9, 2022, SG contacted the Former Licensee and stated, regarding the invoices, the \$5000 was a referral fee not a commission and the original receipts totaling \$25,000 should accompany the invoice. They requested a second invoice.

17. On or about May 9, 2022, the Former Licensee sent SG an edited invoice from Real Broker. It included the Referral Fee and three (3) detailed receipts. Each receipt had a company name, an invoice numbers and a description of the services provided including photos, videos, and other marketing materials. The amounts and dates on the receipts were as follows:

- [RS] \$8,951.40 dated April 30, 2021
- [PSM] \$9975.00 dated April 20, 2021
- [PSM] \$7350.00 dated June 1, 2021

18. The receipts totaled \$26,276.40. The receipts provided to SG by the Former Licensee were fabricated by the Former Licensee. While the Former Licensee accrued some real expenses from [RS] and [PSM], they did not total \$26,276.40.

19. On May 17, 2022, SG contacted the Former Licensee and advised them that they would not pay the Expenses without proof of payment by them. SG also stated that the Expenses seemed excessively high.

20. On May 18, 2022, the Former Licensee provided SG Visa Statements for April and June 2021. They displayed the Former Licensee's name, a Visa number and other account information as would be expected on a Visa statement. They included the following charges:

- Charge #1: [RS] -\$8,951.40
- Charge #2: [PSM] - \$9975.00
- Charge #3: [PSM] - \$7350.00

21. The Visa statements were altered by the Former Licensee to show false payments made by them towards the fabricated Expenses.

22. The Former Licensee immediately apologized to the Vendors and took responsibility for the invoices.

23. SG rightfully believed that the Expenses were false. SG has not paid the Former Licensee or Real Broker any money for the Referral Fee or the Expenses.

Conduct Deserving of Sanction

The Hearing Panel accepts the Admission, being an admission of conduct deserving of sanction, based upon the following admitted breach:

1. The Former Licensee participated in the unlawful activities of forgery in connection with the provision of services, contrary to sections 42(b) of the Real Estate Act Rules when the former licensee:

- a) Fabricated expenses from [RS] and [PSM]. They further altered their Visa statements to reflect payment of the fabricated expenses.

Sanction and Costs - Phase 2

The Registrar and the Former Licensee put forward a Joint Submission on Sanction and Costs (the “**Joint Submission**”) that was entered into evidence and jointly proposed the following sanction for the breach:

The Former Licensee’s licence be cancelled, and they be ineligible to re-apply for a licence for 4 years. Further, there will be a requirement that the Former Licensee successfully complete all education requirements before being able to apply for a new licence from RECA as though they had never previously received a licence from RECA.

The parties also jointly requested that no costs be payable by the Former Licensee for the investigation and proceedings.

As outlined in *R v. Anthony-Cook*,¹ which the Hearing Panel accepts applies in the context of disciplinary hearings², a Hearing Panel should not deviate from a joint submission unless the joint submission would bring the administration of justice into disrepute or otherwise be contrary to the public interest. It is a high threshold, specifically,

“Rejection denotes a submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down.”³

As delivered orally at the hearing, the Hearing Panel accepts the Joint Submission of the parties in relation to sanction and costs and finds that the Joint Submission is

¹ 2016 SCC 42

² *Bradley v. Ontario College of Teachers*, 2021 ONSC 2303

³ *Anthony-Cook*, Ibid, para. 34

would not bring the administration of justice into disrepute or otherwise be contrary to the public interest.

Sanction

The Hearing Panel's authority to impose a sanction on a licensee whose conduct has been found to be deserving of sanction is provided at section 43 of the Act:

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

- (a) an order cancelling or suspending any licence issued to the licensee by an Industry Council;
- (b) an order reprimanding the licensee;
- (c) an order imposing any conditions or restrictions on the licensee and on that licensee's carrying on of the business of a licensee that the Hearing Panel, in its discretion, determines appropriate;
- (d) an order requiring the licensee to pay to the Council a fine, not exceeding \$25 000, for each finding of conduct deserving of sanction;
- (d.1) an order prohibiting the licensee from applying for a new licence for a specified period of time or until one or more conditions are fulfilled by the licensee;
- (e) any other order agreed to by the parties.

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

The Hearing Panel considered the facts of this case in relation to the breach and the relevant factors as outlined in *Jaswal v. Newfoundland (Medical Board)*⁴. These factors include:

- the nature and gravity of the proven allegations;
- the age and experience of the Former Licensee;
- the previous character of the Former Licensee and the presence or absence of any prior complaints or convictions;
- the number of times the conduct was proven to have occurred;
- the role of the Former Licensee in acknowledging what had occurred;
- whether the Former Licensee had already suffered other serious financial or other penalties as a result of the allegations having been made;
- the impact of the incident on the victim, if any;
- the presence or absence of any mitigating circumstances;
- the presence or absence of any aggravating circumstances;
- the need to promote specific and general deterrence, protect the public and ensure the safe and proper conduct of the profession;
- the need to maintain the public's confidence in the integrity of the Profession;
- the degree to which the offensive conduct that was found to have occurred was clearly regarded, by consensus, as being the type of conduct that would fall outside the range of permitted conduct; and
- the range of sanctions in other similar cases.

In applying these factors to this matter, the Hearing Panel considered:

Mitigating Factors

The previous character of the Former Licensee

The Former Licensee has no previous history of misconduct, which is mitigating.

The role of the Former Licensee in acknowledging what had occurred

⁴ 1996 CanLII 11630 (NL SC)

The Former Licensee has taken full responsibility for their conduct. They entered into an Agreement on Conduct Deserving of Sanction and the Joint Submission on Sanction and Costs, thus saving resources. This is mitigating.

Specific Deterrence

The Former Licensee has admitted the misconduct and expressed remorse. Further, they voluntarily cancelled their licence in light of the allegations and stated their intention not to seek relicensing in the future. This reduces the likelihood of recidivism and significantly addresses specific deterrence. This is mitigating.

Aggravating Factors

The nature and gravity of the proven allegations

On multiple occasions the Former Licensee intentionally engaged in forgery in during this transaction. This is misconduct of deliberate dishonesty. The nature of this conduct is extremely serious. The mandate of RECA includes “to protect against, investigate, detect or suppress fraud”⁵ The Former Licensees misconduct strikes at the heart of this mandate. Breaches of Rule 42(b) involving forgery are one of the most serious offence types a Licensee can engage in. This is made worse by the fact that it was calculated and deliberate. This is very aggravating.

The age and experience of the Licensee

The Former Licensee is 52 years old. They were registered since 2019 and had been a real estate agent for about 2 years at the time of the misconduct. They had sufficient experience to know the misconduct was unacceptable. The Hearing Panel further finds that it is trite, regardless of experience, that engaging in forgeries would be unacceptable conduct. This is very aggravating.

The number of times the conduct was proven to have occurred

The conduct was admitted to having occurred on 4 occasions, which is aggravating.

⁵ *Real Estate Act* R.S.A. 2000, c.R-5, Section 5

The need to maintain the public's confidence in the integrity of the Profession

In *Law Society of Upper Canada v Lambert*,⁶, the Law Society Hearing Panel stated that, “a profession's most valuable asset is its collective reputation and the confidence which that inspires.” This must be considered in determining an appropriate sanction. There is a great need to maintain public confidence that intentional forgeries will be addressed with effective and appropriate sanctions. This factor is very aggravating.

Previous Sanctions in Similar Circumstances

The Hearing Panel considered the cases provided by the parties in the joint submission, specifically:

Case	License	CDOS	Penalty	Factors
<i>Dhaliwal (Re) 2023 ABRECA 29 (CanLII)</i>	Mortgage Associate	Created a false mortgage commitment letter. (one document)	<ul style="list-style-type: none"> • License cancellation with no ability to reapply for 1 year, and • \$0 in fines and costs. 	<ul style="list-style-type: none"> • No prior disciplinary history • No losses • No benefit to the Licensee • Remorseful • Cooperated with RECA • Agreed Statement of Facts and Joint Submission on Sanction
<i>Merchant (Re) 2020 ABRECA 140(CanLII)</i>	Real Estate Associate	Impersonated his brokerage, attempted to surreptitiously lease his client's property, then sublet it and pocket the difference. He had sublet the property previously without the	<ul style="list-style-type: none"> • License cancellation with no ability to reapply for 1 year, • \$21,000 in fines; and • agreed to \$1500 in costs. 	<ul style="list-style-type: none"> • No prior disciplinary history • No real losses • Agreed Statement of Facts

⁶ 2014 ONLSTH 158 (CanLII)

		client's permission and engaged in property management without a license. He also stole \$20,000 from his brokerage that he likely would have eventually received as commission.		
<i>Aulakh (Re)</i> 2019 ABRECA 121 (CanLII)	Mortgage Broker	Lent purchasers a downpayment, created fraudulent source of downpayment documentation and provided false information on the private mortgage application. Engaged in a conflict of interest and provided incompetent service.	<ul style="list-style-type: none"> • License cancellation with no ability to reapply for 2 years • no fines, and • agreed that no costs would be paid. 	<ul style="list-style-type: none"> • No prior disciplinary history • Property was foreclosed upon • Licensee received broker fees(3) • Cooperated with RECA • Agreed Statement of Facts and Joint Submission on Sanction
<i>Voth (Re)</i> 2023 ABRECA 23 (CanLII)	Real Estate Associate	Falsified client's signature on an Exclusive Buyer's Representation Agreement using Authentisign software in order to collect	<ul style="list-style-type: none"> • License cancellation with no ability to reapply for 3 years, • \$15,000 in fines, and • \$1500 in costs, 	<ul style="list-style-type: none"> • One prior administrative penalty in the past • No losses • Failed to cooperate with RECA • Agreed Statement of Facts

		a commission. Forged a Authentisign Signing Certificate to deceive RECA investigator		
<i>Morgan (Re)</i> RECA 2023	Mortgage Associate	Engaged in six forgeries on two deals. They the client's signature and initials on several documents and the signature on two gift letters.	<ul style="list-style-type: none"> • Licence cancellation with no ability to re-apply for 3 years, • a fine of \$30,000, and • costs of \$15,620 	<ul style="list-style-type: none"> • No prior disciplinary history • Client deprived of ability to obtain mortgage insurance and one of the clients passed away • Proceeded to a hearing
<i>Wolf (Re)</i> RECA 2002	Real Estate Associate	Engaged in serious fiduciary duty breaches. by concealing from the buyer much lower historic sale prices and providing false and misleading information. Engaged in fraud by creating false and misleading documents, forging signatures and inserting false purchase prices into documents Traded outside of the scope of his brokerage and failed to cooperate with the	<ul style="list-style-type: none"> • Licence cancellation with no ability to re-apply for 7 years, • a fine of \$25,000, and • costs of \$49,816. 	<ul style="list-style-type: none"> • No prior disciplinary history • Proceeded to a Hearing and called no evidence.

		investigation by making false statements to investigators.		
<i>Singh (Re)</i> 2023 ABRECA 10 (CanLII)	Real Estate Associate	Engaged in the creation and distribution of false preapproval letters, paycheques, employment letter and a work permit in the furtherance of mortgage fraud. Failed to enter into written service agreements on 3 matters.	<ul style="list-style-type: none"> • License cancellation with no ability to reapply for 10 years, • a fine of \$80,000, and • costs of \$23,465. 	<ul style="list-style-type: none"> • No prior disciplinary history • Financial loss for two clients • Proceeded to a hearing
<i>Adel (Re)</i> 2010 CanLII 150874 (AB RECA)	Real Estate Associate	Recruited his client to acting as a straw buyer in a mortgage fraud scheme. Engaged in serious conflicts of interest and fiduciary breaches. Failed to disclose to his client-buyer that his wife was the seller of a property. Failed to cooperate with investigators by refusing to answer questions or provide	<ul style="list-style-type: none"> • License cancellation with no ability to re-apply for 10 years, • a fine of \$63,500, and • costs of \$152,584. 	<ul style="list-style-type: none"> • Two prior disciplinary sanctions(suspensions) • Caused financial hardship to the client in the mortgage fraud • Clients were vulnerable. • Clients were harmed. • Licensee personally gained • Failed to cooperate with RECA • Proceeded to a Hearing

		documentation. Failed to be professional in his dealings with the public.		
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Having considered the factors outlined in *Jaswal*, specifically the mitigating and aggravating factors, and the similar cases provided by the parties that afford a range of sanctions, the Hearing Panel accepts the Joint Submission on sanction.

Costs

The Joint Submission of the parties is that the Former Licensee pay no costs. The Former Licensee has no prior disciplinary history, cooperated with the investigation and entered into the Edited Agreed Statement of Facts and Joint Submission on Sanction and Costs. The Hearing Panel recognizes these factors and the decision in *Anthony-Cook* (discussed above) and accepts the Joint Submission not to impose any costs upon the Former Licensee.

Conclusion

The Hearing Panel has accepted the Edited Agreement on Conduct Deserving of Sanction and determined that the Former Licensee engaged in conduct deserving of sanction by breaching s. 42(b) of the *Act*, specifically 4 separate acts of forgery in relation to a single transaction. For the reasons set out in this decision, the Hearing Panel accepts the Joint Submission on Sanction and Costs and pursuant to section 43 of the *Act* imposes the sanction and costs:

- a) Frank Paul Peresta's license is cancelled, effective October 15, 2024, and they are ineligible to re-apply for a license for 4 years. Further, there is a requirement that they successfully complete all education requirements before being able to apply for a new license from the Real Estate Counsel of Alberta ("RECA") as though they had never previously received a license from RECA.

b) There shall be no costs payable by Frank Paul Peresta.

Dated at the City of Calgary in the Province of Alberta, this 12th of November, 2024

Hearing Panel of the Real Estate
Counsel of Alberta

"Signature"

[J.G], Panel Chair