

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")

AND IN THE MATTER OF a Hearing regarding the conduct of **MICHAEL CORDELL BANKS**, Real Estate Associate, currently and all material times registered with Excellence Real Estate Edmonton Ltd. o/a Re/Max Excellence

Hearing Panel: [R.D], Chair
[L.M], Panel Member
[J.P], Panel Member

Appearances: T.L, Counsel for the Real Estate Council of Alberta
Stan Galbraith, Counsel for the Michael Cordell Banks
Michael Cordell Banks, Licensee

Hearing Date: December 9, 2024 by video conference

HEARING PANEL DECISION

Background:

On November 22, 2024, a Notice of Hearing (Exhibit 1) was issued to Michael Cordell Banks (the "Licensee"). On November 22, 2024, the Notice of Hearing was served on Michael Banks (Exhibit 2). The hearing was scheduled for December 9, 2024, at 9:30a.m. Mountain Time, and proceeded on that date.

The Notice of Hearing outlined alleged conduct deserving of sanction when:

1. Between November 23, 2021, and December 31, 2021, the Licensee traded in real estate as a real estate broker without holding the appropriate licence for that purpose issued by the Industry Council relating to that industry, contrary to s. 17(a) of the *Real Estate Act*:

- a. The Licensee provided commercial property listings to a potential client without a commercial real estate licence;
- b. The Licensee received financials of commercial properties from a potential client without a commercial real estate licence;
- c. The Licensee asked for a letter of intent from the potential client's mortgage broker to secure a showing without a commercial real estate licence; and
- d. The Licensee provided advice regarding the purchase of commercial properties to the potential client without a commercial real estate licence.

2. On December 8, 2021, the Licensee did not comply with the Education Code of Conduct for Learners, Principle 2, which states that Learners will at all times conduct themselves with honesty, integrity, and respectfulness, per s. 41(k) of the *Real Estate Act Rules*:

- a. The Licensee told the educational institution administering the commercial real estate exam that they had a medical reason for not being vaccinated, which was untrue. The educational institution required that all exam takers be vaccinated before sitting for the exam unless they had an exemption.
- b. The Licensee told the third-party commercial real estate exam provider they had been admitted to the testing centre when they had not, in an attempt to bypass rebooking and repaying for the exam.
- c. The Licensee told the third-party commercial real estate exam provider that the exam would not load on the computer in the testing centre, which was not true, in an attempt to bypass rebooking and repaying for the exam.
- d. The Licensee was disrespectful on the phone to staff employed by the third party commercial real estate exam provider.

3. Between November 23, 2021, and December 31, 2021, the Licensee made representations or carried on conduct that was reckless or intentional and that could mislead or deceive any person or was likely to do so, contrary to s. 42(a) of the *Real Estate Act Rules*:

- a. The Licensee told a potential client that they were arranging showings for commercial properties when they were not;
- b. The Licensee told a potential client that they were unable to arrange showings for commercial properties because the selling agents were not getting back to them, which was untrue;
- c. The Licensee told a potential client that they had reviewed financials for commercial properties when they had not;
- d. The Licensee provided a vaccination card with a QR code to the institution providing the commercial real estate exam which did not match their name, in an attempt to gain access to the exam;
- e. The Licensee told the Verification Centre at the institution providing the commercial real estate exam that they were just a visitor who was not going

to access labs or learning centres (vaccination not required) to persuade them to send communication to the administrators of the exam to allow them entry.

The Hearing:

On December 9, 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 Admission of Conduct Deserving of Sanction (the "Admission"), dated October 17, 2024, 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. RECA Board Resolution dated November 20, 2024, which accepted the Licensee's admission to conduct deserving of sanction, was admitted into evidence (Exhibit 4).

The parties presented no additional evidence.

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

1. The Licensee has been licenced as a Real Estate Associate with the Real Estate Council of Alberta ("RECA") since November 2020. He was licenced in Commercial Real Estate on March 14, 2022.
2. The Licensee is currently registered with Excellence Real Estate Edmonton Ltd. o/a Re/Max Excellence.
3. At the time of the conduct deserving of sanction, the Licensee was registered with Excellence Real Estate Edmonton Ltd. o/a Re/Max Excellence.
4. Between November 23, 2021, and December 31, 2021, the Licensee was communicating with potential client, [R.B] ("[R.B]"). [R.B] was referred to him from another real estate associate. [R.B] was looking to purchase a commercial property prior to the end of the year.
5. The Licensee did not advise [R.B] that he was not licensed in commercial real estate. Despite this, he proceeded to send property listings to [R.B], reviewed financial statistics

on the properties, and offered advice on the possible commercial purchases. Further, he inquired about [R.B.]'s budget and asked for a letter of intent from their mortgage broker so that they could view a property.

6. During the same period, on December 8, 2021, the Licensee attended the Northern Alberta Institute of Technology ("NAIT") to sit for an exam to obtain his licence in commercial real estate.

7. At the time, NAIT had a Covid-19 Policy that stated that everyone coming to campus, including students, staff, contractors and visitors, would need to be fully vaccinated and would have to provide proof of vaccination. The policy further stated that rapid testing results would not be accepted as an alternative.

8. The Covid-19 Policy was provided to the Licensee when he scheduled his examination. The instructions also included that if a candidate did not meet the requirements, they may be denied entry and miss the exam.

9. When the Licensee attempted to check in for his exam, he was advised that he needed to provide proof of vaccination. He provided a negative test result instead. He was told that this was not acceptable. He admitted that he was not vaccinated at that time.

10. Shortly after the Licensee was denied entry to the exam, he returned with proof of vaccination. The proof of vaccination was in an older format and did not include a QR code. The last name on the proof of vaccination matched, but the first name appeared to have been photoshopped.

11. The Licensee was told that he needed to provide proof of vaccination that included a QR code. He indicated that he did not have that. He was told that he could easily access it through the Alberta Government website and was given time to do so.

12. The Licensee then stated that he did have a QR code. The NAIT Assessment Services Coordinator scanned the QR code, and the name associated with the code did not match that of the Licensee. The Licensee then said, "ok I'm not vaccinated, I just really need to write the exam". He was denied entry.

13. The Licensee then said he had a medical reason for not being vaccinated. He was told that he could apply for an exemption. He was directed to the Verification Centre to inquire further about an exemption.

14. The Licensee returned about 15 minutes later. He stated that the Verification Centre would be sending an email shortly allowing him to take the test. It was discovered that the Licensee had lied to the Verification Centre about his status on campus. He told

them that he was a visitor that was not utilizing labs or learning centres, which would allow him to provide a negative test instead of proof of vaccination. He was further denied entry to the exam.

15. The Licensee told the Assessment Services Coordinator that he had a "big deal" pending and he needed to write the exam. The Licensee then attempted to bribe the Assessment Services Coordinator several times, offering monetary gifts of \$1000 or a year of her salary. He was denied entry and was asked to leave the property.

16. On the same day, the Licensee also contacted the support line for Meazure Learning/Yardstick three times. Meazure Learning/Yardstick is a third-party exam provider that has a contract with RECA to administer exams to licensees.

17. Around 8:31 a.m., the Licensee contacted Meazure Learning/Yardstick to ask whether he had been marked as a no-show for the exam. He explained that he was at the testing centre waiting to hear if he will be able to sit for the exam. He was advised that he had not been marked as a no-show at that time.

18. Around 10:45 a.m., Meazure Learning/Yardstick contacted the Licensee to inform him that they had received confirmation that he had not been allowed access to the testing centre, therefore, he would have to re-purchase the exam. The Licensee stated that he had been admitted to the testing centre, but the exam would not load on the computer. He stated that Covid-19 had nothing to do with it; the only problem was that they couldn't get the exam going. He inquired about whether he could reschedule. A representative for Meazure Learning/Yardstick contacted NAIT to confirm. NAIT responded "I can confirm that he was not permitted to write with us this morning as he was unable to provide the proper form of vaccination." He was told that he would have to re-purchase the exam before rescheduling. The Licensee stated, "You guys are useless, absolutely useless".

19. Around 11:57 a.m., the Licensee contacted Meazure Learning/Yardstick again to advise that the information that NAIT was providing was wrong. He had been at the testing centre and because of the mix-up with the Covid policy, the exam must have timed out. He reiterated that he had been allowed into the testing centre. However, it was confirmed by Meazure Learning/Yardstick from two NAIT employees that he was denied entry. He was told that he was marked as a no-show by the testing centre. He was told again that his only option was to repurchase the exam and re-book. He stated, "its not that hard just fucking reschedule it". He stated that he would go back to the testing centre himself to confirm if they had marked him as a no-show.

20. Around 12:45 p.m., NAIT sent an email to Meazure Learning/Yardstick advising that the Licensee had been at the testing centre stating that because they marked him as a no-show, he was unable to reschedule his exam.

21. Meazure Learning/Yardstick replied: "Michael was informed multiple times of the rebooking procedure. He will need to log back into his MyReca account, purchase the exam, and rebook for a new date with a minimum of two business days' notice. This is the standard procedure for all candidates who miss their exam due to preventable circumstances. Michael was informed of NAIT's COVID-19 policy upon booking and was informed that any candidate who does not meet these requirements may be denied entry and miss their exam. He has contacted our customer service team three times that I'm aware, and was advised each time that he can repurchase the exam and rebook for a future date."

22. Around 1:15 p.m., the Licensee contacted Meazure Learning/Yardstick again advising that he had been to the testing centre, and they confirmed that they did not mark him as a no-show. He stated that since he was not marked as a "no-show" by the exam centre, he should be able to reschedule his exam instead of re-purchasing and re-booking. He was advised again that he was marked as a no-show by the testing centre. He was told the procedure he would have to follow to re-take the exam. He stated, "I've gone through enough fucking bullshit because of this, I have wasted too much of my time, I shouldn't have to pay for another exam".

23. In an interview with RECA on June 16, 2022, the Licensee admitted to the investigator that he had lied to Meazure Learning/Yardstick by telling them that he had gained access to the testing centre. He did this so that he could try to reschedule the exam rather than purchasing it again.

24. Additionally, the Licensee admitted that he lied to [R.B] about the commercial properties, including information about showings and financials, to buy time before he wrote his commercial real estate exam.

25. The licensee further admitted in the interview that he conducted activities in his interactions with Bahl that required a commercial real estate licence.

Admitted Section Breaches

This Hearing Panel also accepts the Admission, based upon the following admitted breaches:

1. The Licensee traded in real estate as a real estate broker without holding the appropriate licence for that purpose issued by the Industry Council relating to that industry, contrary to s. 17(a) of the Real Estate Act:

- a. The Licensee provided commercial property listings to his potential client [R.B].
 - b. The Licensee received financials of commercial properties from potential client [R.B].
 - c. The Licensee asked for a letter of intent from [R.B]'s mortgage broker to secure a showing.
 - d. The Licensee provided advice to his potential client related to the purchase of commercial properties.
2. The Licensee did not comply with the Education Code of Conduct for Learners, Principle 2 - Learners will at all times conduct themselves with honesty, integrity, and respectfulness, contrary to Rule 41(k) of the *Real Estate Act Rules*:
- a. The Licensee told the NAIT Assessment Services Coordinator that he had a medical reason for not being vaccinated.
 - b. The Licensee told Meazure Learning/Yardstick that he had been admitted to the testing centre when he had not.
 - c. The Licensee told Meazure Learning/Yardstick that the exam would not load on the computer in an attempt to reschedule the exam rather than re-purchase and re-book.
 - d. The Licensee was disrespectful to Meazure Learning/Yardstick staff on the phone.
3. The Licensee made representations or carried on conduct that was reckless or intentional and that mislead or deceived any person or is likely to do so contrary to Rule 42(a) of the *Real Estate Act Rules*:
- a. The Licensee told his potential client, [R.B], that he was arranging showings of commercial properties when he was not.
 - b. The Licensee represented to his potential client that he was unable to set up showings because the agent for the listing was not getting back to him which was not true.
 - c. The Licensee told his potential client that he had reviewed financials for commercial properties when he had not.
 - d. The Licensee presented a vaccination card that was not his to gain access to the commercial real estate exam.
 - e. The Licensee presented a proof of vaccination with a QR code that did not match his name to gain access to the commercial real estate exam.
 - f. The Licensee told the Verification Centre that he was just a visitor that was not accessing the labs or learning centres at NAIT to persuade them to send an email to the testing centre to allow him entry to the commercial real estate exam.

Phase 2 – Sanction and Costs

Sanction

On December 9, 2024, during Phase 2 of the hearing, the Registrar and the Licensee put forward a Joint Submission on Sanction (the “Joint Submission”), that was entered into evidence as Exhibit 5, and that jointly proposed the following sanctions for breach of:

Act 17(a)	\$12,500
Rule 41(k)	\$ 3,500
Rule 42(a)	<u>\$ 5,000</u>
Total	\$21,000

Additionally, both the Registrar and the Licensee agreed on a licence suspension of 1 month.

The Joint Submission was 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 a licensee was conduct deserving of sanction, the Hearing Panel may make any one or more of the following:

- (a) an order cancelling or suspending any authorization issued to the Licensee by the Council;
- (b) an order reprimanding the Licensee;
- (c) an order imposing any conditions or restrictions on the Licensee and on that Licensee’s carrying on of the business of 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 authorization for a specified period of time or until one or more conditions are fulfilled by the Licensee;
- (e) any other order agreed to by the parties.

The Joint Submission 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 accepts that it should not deviate from the Joint Submission unless the Joint Submission on sanction would bring the administration of justice into disrepute or otherwise be contrary to the public interest¹.

The proposed sanction for each breach is within the 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.

This Hearing Panel accepts the Joint Submission because it meets the relevant factors in deciding an appropriate sanction, as outlined in *Jaswal v Newfoundland (Medical Board)*².

Admitted Factors on Sanction

The following are relevant as mitigating factors agreed to by the parties:

1. The Licensee does not have a disciplinary history.
2. The Licensee has agreed to forego the time and expense of a hearing, saving witnesses the inconvenience and stress of appearing before a Hearing Panel by agreeing to this Submission.
3. The Licensee has taken responsibility for his actions.

The following are relevant as aggravating factors:

1. The Licensee repeatedly lied to try to gain access to the commercial real estate exam.
2. The Licensee repeatedly lied to try to reschedule his commercial real estate exam, rather than re-purchasing and re-booking.
3. The Licensee tried to bribe the NAIT Assessment Services Coordinator when he was denied entry to the exam.
4. The Licensee repeatedly lied to a potential client to bide time until he could obtain his commercial real estate licence.

The Joint Submission proposing a total of \$21,000 in fines and a one-month licence suspension is reasonable and appropriate when considering precedents citing the similar breaches. After considering the *Jaswal* factors, this Joint Submission proposing

¹ *R v Anthony-Cook* 2016 SCC 42

² 1996 Can LII 11630 (NL SC) at paragraph 36

a total of \$21,000 in fines and a once-month licence suspension is sufficient to demonstrate the seriousness with which this Hearing Panel regards the Licensee's conduct; and in particular, the nature of the offences. A total of \$21,000 in fines and a one-month licence suspension provides general deterrence to other members of the real estate profession and should instill confidence in the public. The Joint Submission of a total of \$21,000 in fines and a one-month licence suspension is not so unreasonable that it puts the administration of justice into disrepute. The one-month suspension will commence two weeks after the date of this decision, dated January 17, 2025. The Joint Submission is accepted as this Hearing Panel's decision on sanction.

Costs

The Joint Submission is that the Licensee pay no costs. This Hearing Panel accepts the Joint Submission and finds that no costs shall be imposed upon the Licensee. There are no compelling reasons to deviate from the Joint Submission. While the conduct admitted is serious, this Hearing Panel recognizes that the Licensee has no prior disciplinary history, and the Licensee co-operated by consenting to the Joint Submission. The Licensee's actions did not create a compelling reason to impose costs.

Signed this 17th day of January 2025 at the City of Calgary in the Province of Alberta.

"Signature"

[R.D], Hearing Panel Chair