

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 Vipul Dhawan, Mortgage Associate, currently with 9191712 Canada Inc. o/a Dominion Lending Centres "Mortgages are Marvellous" and conduct brokerage is Enrich Mortgage Group Ltd. o/a Mortgage Alliance - Enrich Mortgage Group

Hearing Panel Members: [G.F], Chairperson
[R.F]
[K.M]

Counsel for the Registrar: I. Nazir, Barrister & Solicitor

Counsel for the Licensee: Wayne D. Gillis, Barrister & Solicitor

Hearing Date: December 12, 2024, via Video Conference

Hearing Panel Decision

Background:

On December 12, 2024, a Notice of Hearing (Exhibit 1) was issued and according to the Affidavit of Service (Exhibit 2), on November 23, 2024, the Notice of Hearing was personally served on Vipul Dhawan, (the "Licensee"). The hearing was scheduled for, and it proceeded, on December 12, 2024.

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

1. On or about December 10, 2021, the Licensee physically, sexually or emotionally abused, [J. A.], contrary to section 42(f) of the *Real Estate Act* Rules when the Licensee:

- a. grabbed [J. A.'s] chest without consent.
2. On or around December 10 and 11, 2021, you engaged in conduct that undermined public confidence in the industry, or brought the industry into disrepute, contrary to s.42(g) of the *Real Estate Act* Rules when the Licensee:
 - b. grabbed the chest of his [L. T.], on two instances without consent; and
 - c. grabbed and squeezed [L. T.]'s thigh without consent.

The Hearing:

On December 12, 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") 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 RECA Board of Directors Motion dated November 20, 2024, accepting the statements of admission of 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:

1. The following facts are admitted.
2. The Licensee has been licensed as a mortgage associate with the Real Estate Council of Alberta ("RECA") since April 2019.
3. The Licensee is currently registered with 9191712 Canada Inc. o/a Dominion Lending Centres "Mortgages Are Marvellous".
4. At the time of the conduct deserving of sanction, the Licensee was registered with Enrich Mortgage Group Ltd o/a Mortgage Alliance – Enrich Mortgage Group.
5. The Licensee has remained employed as a Mortgage Associate in the industry from shortly after December 11, 2021 to the present.

6. On or about December 10, 2021, the Licensee attended a [HOLIDAY PARTY] in Calgary, Alberta. [REDACTED].
7. During this event, [J.A.] ("J.A."), was sitting at a table. Between 9:30 p.m. and 10:00 p.m., the Licensee reached across the table and grabbed [J.A.]'s chest with his right hand for one second.
8. At or around 10:00 p.m. the Licensee approached [L.T.] ("L.T."), and briefly grabbed her chest.
9. At approximately 11:00 p.m., the event made its way to the [LOCATION] in Calgary, Alberta.
10. At or around 2:00 a.m. on December 11, 2021, the Licensee grabbed [L.T.]'s chest for the second time. The Licensee also grabbed [L.T.]'s thigh and squeezed it, causing bruising on her leg. Both incidents were transitory in nature.
11. The Licensee was extremely intoxicated.

Admitted Breaches

This Hearing Panel accepts the Admission, based upon the following breaches admitted as being conduct deserving of sanction:

1. On or around December 10, 2021, the Licensee abused [J.A.] and acted contrary to s.42(f) of the *Real Estate Act* Rules when the Licensee:
 - a) grabbed [J.A.]'s chest without consent.
2. On or around December 10 and 11, 2021, the Licensee engaged in conduct that undermines public confidence in the industry, or brings the industry into disrepute, contrary to s.42(f) of the *Real Estate Act* Rules when the Licensee:
 - b) Grabbed [L.T.]'s chest on two incidents without consent; and
 - c) Grabbed and squeezed [L.T.]'s thigh without consent.

Phase 2 – Sanction and Costs

Sanction

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.

On December 12, 2024, during Phase 2 of the hearing, counsel for the Licensee and counsel for the Registrar put forward that the Admission of Conduct Deserving of Sanction (Exhibit 4) at Paragraph 15 set out the following relevant mitigating factors:

- a. The Licensee has no previous history of misconduct.
- b. The Licensee has had no further misconduct in the industry since December 11, 2021 meriting sanction.
- c. The Licensee has taken full responsibility for his actions and has expressed remorse for the conduct in question.
- d. By making these admissions, the licensee has agreed to forego the time and expense of a hearing and has spared the Complainant and other witnesses the need to testify.

The Admission of Conduct Deserving of Sanction (Exhibit 4) at Paragraph 16 set out the following relevant aggravating factors:

- a. The Licensee abused [J.A.] and [L.T.] on four instances during a single event.
- b. The Licensee's misconduct has had a distressing and negative impact on his victims.
- c. The Licensee's conduct is serious and harms the reputation of the industry.
- d. There is a need to promote specific and general deterrence to ensure that the Licensee and other industry members understand this conduct is wrong and will be met with consequences.

The parties made the following submissions with respect to sanction:

The Registrar's position on sanction was that this Hearing Panel should issue:

- a) an order suspending, for a period of 14 months, any authorization issued to the Licensee by the Council; and
- b) no request was made regarding a fine.

In addition to reviewing the agreed mitigating and aggravating factors, the Registrar submitted that public confidence in the profession is of utmost importance and that RECA must demonstrate to the public that its obligation to protect the public is taken seriously; and for that reason, the sanction must be severe. The Registrar submitted that there is no RECA precedent for a case of this type; and this hearing panel may look to precedents from other regulatory bodies for guidance. The Registrar submitted that grabbing of the chest involved a sexualized area of the body.

The Licensee's position on sanction was that:

- a) a suspension of 14 months is inappropriate; and
- b) a reprimand and a fine would be appropriate.

The Licensee's counsel submitted that a suspension of 14 months may adversely impact the Licensee by preventing a return to work in the industry; the Licensee's admission helped the victims by sparing them from giving evidence and testifying at a hearing; the Licensee was extremely intoxicated, and the Licensee's conduct was out of character for the Licensee and transitory. The Licensee's counsel submitted that grabbing of the chest could involve contact with an armpit or collarbone; and therefore the "chest" is not a sexualized area of the body.

This Hearing Panel determined that it does not need to find whether the chest is a sexualized area of the human body, because the unwelcome grabbing of a person's chest, thigh or any area of the body, is an invasive, intrusive and intolerable abuse of one's physical power, as well as physically abusive and emotional abusive. Abuse of power, physical abuse and emotional abuse cannot be tolerated in the industry. This hearing panel also finds that the Licensee's accountability for these unacceptable and highly inappropriate forms of conduct is not diminished by extreme intoxication.

In determining sanction, this Hearing Panel considered the jointly agreed aggravating and mitigating factors set out in the Licensee's Admission of Conduct, in the context of the relevant factors outlined in *Jaswal v Newfoundland (Medical Board)*¹:

¹ 1996 Can LII 11630 (NL SC) at paragraph 36

a. The Nature and Gravity of the proven allegations

The Licensee's breaches of Rule 42(f) and 42(g) are serious in nature and gravity. This Hearing Panel accepts the Licensee's Admission of Conduct.

It is of the utmost importance that Licensees conduct themselves in manner that respects a person's physical integrity and emotional dignity. The Licensee engaged in multiple acts of "grabbing" a person who had not consented to physical contact, nor would have reasonably expected such physical contact, from another person. It is particularly offensive that the Licensee is a professional, who was attending a[n] event. It is an agreed fact that one incident of "grabbing" resulted in physical bruising of the victim; the other "grabbing" incidents were invasive, and potentially emotionally damaging to the victims.

Licensees have a legal duty to ensure that their actions do not cause physical or emotional harm to anyone, whether a colleague, a client, a member of the public or a family member. Regulatory bodies require their members to uphold legal and societal norms, by acting in a manner that respects the integrity and dignity of other people. In this case, the victimized [persons] had a reasonable expectation that they would be physically and emotionally safe, at a function

Instead of adhering to legal, professional and societal norms, the Licensee became severely intoxicated and engaged in deliberate acts, the nature of which go beyond the bounds of acceptable behavior, and that created physical harm. According to the Admission, the Licensee's misconduct also had a "distressing and negative impact on his victims". This Hearing Panel does not need to make a finding as to whether or not the chest is a "sexualized area" of the body, to conclude that the Licensee's actions of acting without consent to grab another person's chest and thigh, are unwelcome, intrusive, a battery in law, and a very aggravating factor.

b. The Age and Experience of the Licensee

The Licensee is 47 years old and began working in the industry in 2019. The Licensee has a history in family medicine, and experience as a project manager. The Licensee obtained a mortgage broker's license in Ontario, in 2019. The Licensee completed educational requirements to

become a Licensee; and during that training, should have been exposed to concept related to professional responsibilities. The Licensee's employment was terminated in 2022. The Licensee's failure to recognize and act upon professional responsibilities, that were known, or should have been known, to the Licensee, is an aggravating factor

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

The Licensee has no disciplinary history; nor has there been another reported incident of this nature since 2021. This factor is mitigating.

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

Four invasive physical acts, physical injury, two victims, an extended period of hours over which the physical acts occurred, coupled with the context of the Licensee's actions in grabbing the chest and thigh, is an aggravating factor.

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

The Licensee admitted and acknowledged that the Licensee committed conduct deserving of sanction. The Licensee's admission helped preserve resources in avoiding the cost of a hearing; and spared the victims the stress of testifying at a hearing. This factor is mitigating.

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

Other than being informed the Licensee's employment was terminated in 2022, for reasons that were not disclosed, no evidence was provided regarding the Licensee suffering any financial or other penalties in relation to this matter. This factor is neither mitigating nor aggravating.

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

The Admission, at 16(b) provides that the Licensee's misconduct has had a "distressing and negative impact" on the Licensee's victims. This factor is aggravating.

h. Mitigating circumstances

The Licensee's legal counsel submitted that the Licensee's judgment was impaired due to extreme intoxication, and as a result, the Licensee's impairment should be a mitigating factor. This Hearing Panel does not accept that the Licensee's unacceptable conduct can be mitigated by becoming extremely intoxicated at a function.

The Licensee agreed to forego the time and expense of a hearing, saving witnesses the inconvenience and stress of appearing at a hearing; and the Licensee took responsibility for the Licensee's actions. These factors are mitigating.

i. Aggravating Circumstances

See a, b, d and g above, and k below.

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

This Hearing Panel accepts the oral submission of both parties that in this case, due to no prior incidents, and no recurring incidents, and the Licensee's expression of remorse, there is not a high likelihood of recurrence. There is no need for specific deterrence; but there is a need for general deterrence. So far as specific deterrence is concerned, the Licensee's counsel submits that the Licensee is aware that his actions were wrong and will not be tolerated; and there can be serious consequences for not complying with the Rules and the Act.

So far as general deterrence is concerned, all Licensees must understand that sanctions will be imposed if a Licensee abuses any person, by engaging in unwanted and unacceptable physical contact; and that by doing so, the Licensee has failed to act in a manner that upholds the public's confidence in the real estate industry.

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

There is a high need to maintain the public's confidence in the integrity of the real estate profession. It is of the utmost importance to disciplinary bodies that the public have confidence in a profession.² A profession's

² *Adams v Law Society of Alberta* 2000 ABCA 240 at page 3

most valuable asset is its collective reputation and the confidence that which it inspires.³ Licensees must understand how important it is to treat others with respect, and to act in a manner that does not compromise the physical or emotional safety of another person. Public confidence in the industry is compromised when a Licensee becomes extremely intoxicated. Public confidence in the industry is compromised even further, when a Licensee engages in unwelcome physical contact with another person. Regardless of whether the Licensee's admission of grabbing the chest is viewed by other Licensees and the public as sexual in nature, there is a need for all Licensee's, and the public, to be made aware that each and every person should be able to rely upon a Licensee to respect the integrity of another person's body.

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

l. The range of sentence in similar cases.

The Registrar cited precedents that, although not binding upon this Hearing Panel, are based upon facts that range from physical assault to sexual assault and where professional misconduct was found to have occurred. The Registrar's counsel is correct that no precedent was exactly on point for a s.42(g) breach, arising from identical facts to this case. The Licensee's counsel emphasized that most of the precedent cases involved inappropriate sexual touching, whereas in this case, the admission is that physical, not sexual, contact occurred. In this Panel's analysis, it is noted that the Licensee's physical contact was more than unwanted touching; it involved grabbing to the point of physical injury i.e. bruising.

The precedent cases imposed sanctions, fines and penalties of:

Martin⁴ 6 month suspension, conditions and costs \$2,500

³ *Law Society of Upper Canada v Lambert*, 2014 ONLSTH 158 (Can LII) at para 17

⁴ *Law Society of British Columbia v David John Martin* (1998), involving a finding of professional misconduct based upon allegations of inflated accounts, overturning a decision of the hearing panel awarding a reprimand, suspension for 6 months, and \$35,000 in costs. On appeal, the Applicant was ordered to be reprimanded, fined \$20,000 and pay \$35,000 in hearing costs.

Adams ⁵	disbarment upheld on appeal
Lambert ⁶	20 month suspension, costs \$7,250
Davis ⁷	6 month suspension, 1 physical assault, costs \$2,500
Cheba ⁸	10 month suspension, conditions, fine \$10,000, costs \$99,000
Faul ⁹	deregistration plus costs
Parente ¹⁰	21 month suspension, reprimand, \$3,000 expenses
Grabowski ¹¹	voluntary surrender of teaching license

The Registrar's submission proposing a 14 month suspension is within the range of reasonable and appropriate precedents citing similar breaches. After considering the *Jaswal* factors, and the range of precedent cases, this Hearing Panel finds that a 14-month suspension of the Licensee's license is a mid-range sanction for professional misconduct that involves inappropriate, unwelcome and demeaning physical contact.

This Hearing Panel finds that although \$10,000 in fines is at the upper end of the precedent cases, this case is also comparable to *Cheba* in that there is a finding of professional misconduct based upon inappropriate gestures, involving multiple people. The \$10,000 fine demonstrates the seriousness with which this Hearing Panel regards the Licensee's conduct; and in particular, the intrusive nature of the offences,

⁵ *Paul J Adams vs Law Society of Alberta*, (1997) AB CA, sexual exploitation of a 16-year-old client and breach of fiduciary duty. Court of Appeal confirmed disbarment.

⁶ *Law Society of Upper Canada vs Jack Stephen Lambert* (2014), professional misconduct, suspended for 20 months, conditions upon return to practice, costs \$7,250, upheld on appeal.

⁷ *David H Davis, Law Society of MB*, (2024) 2 counts of professional misconduct involving the physical assault of an articled student, 3 prior disciplinary complaints upheld, 6-month suspension upheld, conditions on practice, mental health counselling, \$2,500 in costs.

⁸ *AB Dental Association & College v Cheba*, Hearing Tribunal Decision Summary (2020), unprofessional conduct, multiple sexual gestures and comments to staff and a member of the public. Ten month suspension, \$10,000 fine, ethics course, peer survey, investigative and hearing costs \$99,621.41 and practice conditions.

⁹ *Law Society of Alberta v Faul*, 2022 ABLs 12, in appropriate sexual touching found to be unprofessional conduct. Deregistration, plus costs to be determined.

¹⁰ *Real Estate Council of BC v Giuseppe Nicola (Joe) Parente* (2018), Sexually inappropriate conduct, multiple victims, Consent Order agreeing to reprimand, prohibited from applying for licenses for 21 months, course work, and expenses \$3,000.

¹¹ *Ontario College of Teachers v Grabowski*, 2009 ONOCT 21, professional misconduct, sexual touching of the buttocks of colleagues over 12 years, letters of apology, resignation, return to the profession not guaranteed, plus workplace harassment coursework.

which are more significant than *Cheba* wherein sexual commentary, but not physical touching occurred. A total of \$10,000 in fines provides general deterrence to other members of the real estate profession and should instill confidence in the public. A fine of \$10,000 is well within the range of fines permissible under the *Act*.

Costs

The Registrar's counsel submitted that pursuant to *Jinnah v Alberta Dental Association and College*¹² the Licensee pay \$2,215 in costs, being the low end of investigative costs incurred by RECA. The Licensee's counsel submitted that pursuant to civil litigation outcomes concerning success on the merits, this hearing panel should be guided by those principles when considering costs, and the Licensee pay no costs.

This hearing is an administrative regulatory matter; therefore, this Hearing Panel is required to adhere to the *Jinnah*¹³ principles, rather than civil court practices, when considering costs.

In this instance, the Licensee admitted his conduct, and by doing so, the Registrar was not required to incur the cost to conduct a hearing of the complaint. On that basis, *Jinnah* could be followed to direct that no costs be awarded against the Licensee. However, unlike *Jinnah*, the Licensee engaged in serious unprofessional conduct; being an exception to the *Jinnah* principle to warrant a costs award against a Licensee. Due to the Licensee's serious unprofessional conduct, the Hearing Panel accepts the Registrar's submission that deviating from *Jinnah* and awarding costs at the low end of \$2,215 is fair and reasonable.

Conclusion

Pursuant to the *Act*, s. 43, it is the unanimous decision of this Hearing Panel that the Licensee engaged in conduct deserving of sanction when:

- a. on or about December 10, 2021, the Licensee physically, sexually or emotionally abused, [J.A], contrary to s.42(f) of the Real Estate Act Rules, when he grabbed [J.A.]'s chest without consent;
- b. on or about December 10, 2021 and December 11, 2021, the Licensee engaged in conduct that undermined public confidence in the industry, or brought the industry into disrepute, contrary to s.42(g) of the Real Estate Act Rules, when he grabbed the chest of [L.T.], on two instances without consent;

¹² 2022 ABCA 336 at paragraphs 140 to 144

¹³ *Jinnah* at 1

- c. on or about December 10, 2021 and December 11, 2021, the Licensee engaged in conduct that undermined public confidence in the industry, or brought the industry into disrepute, contrary to s.42(g) of the Real Estate Act Rules, when he grabbed and squeezed [L.T.]'s thigh without consent; and

and pursuant to the *Act, s.43(1)(a)*, it is the Order of this Hearing Panel that:

having engaged in 4 acts of conduct deserving of sanction on December 10, 2021, and December 11, 2021, the Licensee's license shall be suspended for 14 months, commencing as of the date of this decision; and

pursuant to the *Act, s.43(1)(d)*

the Licensee shall pay \$10,000 in fines, for the total of 3 findings of conduct deserving of sanction; and

pursuant to the *Act, s.43(2)*

in addition to having dealt with the conduct of the Licensee under the *Act s.43(1)*, this Hearing Panel orders the Licensee pay \$2,215 for part of the costs associated with the investigation and hearing as determined in accordance with the Real Estate Act Bylaws.

Signed this 7th day of February 2025 at the City of Calgary in the Province of Alberta.

"Signature"

[G.F], Hearing Panel Chair