

THE REAL ESTATE COUNCIL OF ALBERTA

IN THE MATTER OF Section s.48 of the *REAL ESTATE ACT*, R.S.A. 2000, c.R-5 (the "Act")

AND IN THE MATTER OF an Hearing regarding sanctions and costs determined as a result of findings in the conduct Hearing dated May 24 – June 3, 2022 of ASLAM CHAUDHRI, Real Estate Associate, currently unregistered, previously registered with **Grand Realty & Management Ltd. o/a Grand Realty** and with **Urban Real Estate Services Ltd. o/a Urban-Realty** and with **Discover Real Estate Ltd.** and with **1853147 Alberta Ltd. o/a Engel & Volkers Calgary** and with **Calgary Independent Realty Ltd. o/a CIR Realty**

Appeal Panel Members: [A.B], Chair
[B.W]
[J.L]

Submissions provided by: Chaudhri, Aslam, Licensee

Ms. Gen Zha, Counsel for the Registrar of the Real Estate Council of Alberta

Hearing Date(s): By written submissions only

DECISION

The Licensee has appealed the Hearing Panel decision, file #009089 under s.48(1) of the *Real Estate Act*, RSA 2000 c.-R.5 (*Act*). The impugned decisions were issued on October 31, 2022 and January 4, 2023 (2023 ABRECA 1). In its decisions the Hearing Panel found a breach of s. 42(b) of the Act, and imposed sanctions of license cancellation for 1 year; prohibition from applying for licensing until all educational and examination requirements are met; a fine in the amount of \$15,000 and costs in the amount of \$21,292.50.

The Licensee filed his appeal on February 3, 2023.

For the purpose of this appeal the Licensee's submits that the Hearing Panel's decision is unreasonable under the following grounds:

1. The Hearing Panel breached the principles of natural justice;
 - a. By misapplying the evidence;
 - b. By failing to consider the Licensee's closing arguments;

- c. By allowing the complaint to proceed in violation of s.37(2) of the Real Estate Act.
2. The Licensee requests the decision of the Hearing Panel be quashed.

Preliminary Matter

This Panel issued direction on March 6, 2024 to the parties concerning the holding of an oral hearing. Until that time it was unclear that there was consensus by the parties as to how the matter would be conducted. The parties responded on March 19, 2024, that they wished to proceed with the Appeal by written submissions only. Further, the Appellant submitted an email request that this Panel not be Panel members as "they were dishonest in the July 13, 2023 Hearing."

The July 13, 2023 hearing addressed the Licensee's application to have costs waived for the provision of transcripts. For reasons described therein, this Panel denied the waiving of costs. The Appellant provided no further reasoning or detail in relation to the dishonesty and this Panel affirms its neutrality, none of the Panel members has any affiliation or connection with any of the parties in this matter. The Panel's application of the law to the facts does not give rise to dishonesty, without something more being advanced by the Appellant. We would not recuse ourselves.

Introduction

The original hearing into this matter was held over a period of two weeks, from May 24, 2022 to June 3, 2022. The Hearing Panel made the following findings in their decision 2023 ABRECA 1:

1. Licensee Chaudhri's conduct is deserving of sanction for breaching sections of the *Real Estate Act* Rules; and specifically, that Licensee Chaudhri engaged in fraudulent activities in connection with the provision of his services, contrary to *section 42(b)* of the *Real Estate Act* Rules; as cited in the Notice of Hearing paragraphs a, b and d, as alleged by the Registrar, when Licensee Chaudhri:
 - a) agreed to act for [S.C] and [A.C], and despite knowing that [A.C] was unemployed, the Licensee Chaudhri represented in his emails to [L.L], that [A.C] was employed.
 - b) represented falsely to [L.L] that [A.C]'s employer was a small business; [A.C]'s employer did not have a formal paystub system; [A.C]'s boss was out of the office and that was why the Licensee indicated he will send the paycheques in a separate email; and [A.C]'s was employed by [H. INC].
 - c) not proven.
 - d) Sent false documents to [L.L] for the mortgage transaction despite knowing that the information was not true.

Licensee Chaudhri admitted to RECA Conduct Review Officer [R.B], and the evidence is overwhelming, that Licensee Chaudhri knowingly sent false details regarding [A.C]'s employment history, as stated on the mortgage application form, to [L.L], along with a fraudulent employment letter and fraudulent paycheques. It is also clear from the admissions of Licensee Chaudhri, that he knew the employer's business did not have a formal paystub system, that the "boss" was out of the office, and that [A.C] was not employed by [H. INC].

The Hearing Panel concludes that Licensee Chaudhri sent the false information, and made these representations, facilitated the fraudulent approval of a mortgage application. Because of the convincing evidence that Licensee Chaudhri did so, the panel accepts and gives weight to [S.C]'s evidence that Licensee Chaudhri, or someone assisting Licensee Chaudhri, created the false documents. [S.C]'s evidence is consistent with Licensee Chaudhri's admissions.

In light of Licensee Chaudhri's admissions to RECA Conduct Review Officer [R.B], Chaudhri's argument that [S.C]. created the false documents, and that [S.C]. duped Licensee Chaudhri into being a mere messenger for [S.C] in sending the false documents to [L.L], is not accepted nor given any weight.

Based on the conclusion that Licensee Chaudhri knowingly sent false documents to [L.L], the Hearing Panel does not need to determine if Licensee Chaudhri:

- i) directed any particular person, including Licensee [G.S]., to fill in the details on the false application; and
- ii) told [S.C] which false details to write on the false mortgage application form.

The Hearing Panel does not find on the evidence before it in this case, that Licensee Chaudhri asked Licensee [G.S] to create a fraudulent employment letter and fraudulent paycheques. There was evidence that Licensee Chaudhri and Licensee [G.S]. worked in the same office location, and as a result of their professional relationship, the possibility of Licensee Chaudhri asking Licensee [G.S] to create and pass false documents existed. However, the possibility is insufficient to prove, on the balance of probabilities, that in this case, Licensee [G.S] was asked by Licensee Chaudhri, to create a fraudulent employment letter and fraudulent paystubs. The Hearing Panel finds that based on all of the evidence presented in this case, the Registrar did not meet its burden of proof, regarding allegation "c".

As an Appeal Panel, we are empowered under the Act to:

50(4) The Appeal Panel shall, within a reasonable time from the date of the conclusion of all proceedings before it, do one or more of the following:

- (a) make any finding or order that, in its opinion, ought to have been made by the Hearing Panel;
- (b) quash, confirm or vary the finding or order of the Hearing Panel or substitute or make a finding or order of its own;

(c) refer the matter back to the Hearing Panel for further consideration in accordance with any direction that the Appeal Panel makes.

Prior to and during the course of the original hearing several applications before the Hearing Panel were made; one to compel a Witness made by the Appellant, which was denied, the Hearing Panel determining the requested information was neither relevant or material after hearing the testimony of [S.C] during the course of the hearing; one as to the admissibility of "Licensee Chaudhri's RECA audio video interview recording (Exhibit 13b) and the RECA audio video transcript (Exhibit 13c)" made by counsel for another party, the Hearing Panel found that the evidence in question was not admissible; also a request by the Appellant for an adjournment so that he might retain counsel. The Appellant elected to proceed without counsel on May 30, 2022.

The Appellant also made a motion questioning the jurisdiction of the Hearing Panel given deficiencies in the complaint filed by the Complainant. The Hearing Panel found that the complaint submitted met the requirements of the Real Estate Act, s. 37(2) and that the Hearing Panel did have the jurisdiction to deal with the matter.

The Appellant made an application before this Panel to waive costs of producing a transcript under s.48(9) of the Act. Application was made on February 24, 2023. On July 13, 2023 an application hearing was held and this Panel rendered its decision on August 10, 2023, denying the request to waive costs and providing a timeline for payment of fees in the event a transcript of the proceedings was still wanted by the Appellant. Further guidance was provided in the event the Appellant wished to proceed with the Appeal.

Did the Hearing Panel breach the principles of natural justice?

In order to clearly understand what a breach of the principles of natural justice are, we must first clarify what those principles are. In general, the principles of natural justice require that every person engaged in a system of justice, in this case a hearing before an administrative tribunal, can "legally" expect to know the case against them and to present their case; to be notified of proceedings; to be heard by an unbiased trier of fact, to have a decision made by the trier(s) of fact.

Reducing those elements to their various parts

- a) was the Licensee aware of the allegations and was he provided with information concerning those allegations?

The Licensee was provided with notice dated November 3, 2021 for a hearing to commence on December 13, 2021. This notice also listed the allegations against the Licensee. As indicated above, other matters intervened and the Hearing did not

proceed until May 30, 2022. The Appellant has not made submissions to indicate that he was not provided with notice or information that would allow him to address the allegations. In relation to notice and disclosure we find there was no breach of natural justice.

b) Did the Licensee have opportunity to present his case.

Having been provided with notice and disclosure, a critical corollary is the Appellant's opportunity to present his case. Evidence from an earlier application of the Appellant indicates that the Hearing lasted 9 days and produced 49 hrs of recorded hearing. One hundred and seven exhibits were entered. That, in and of itself, is not evidence of the opportunity to present a case, but it does suggest significant material and information was covered over the course of the hearing. More specifically, it is the Appellant's position that the Hearing Panel failed to accept certain facts and that is what led to the wrong outcome in the Appellant's view.

One of the claims of the Appellant is that the Hearing Panel failed to give sufficient weight to the Appellant's closing arguments. It is unclear to this Panel what elements of the closing argument of the Appellant at the time of the original hearing were disregarded. A tribunal has the discretion to weigh and apply evidence before it. The closing argument is a final opportunity of the parties to persuade the tribunal of their position by further explaining how their evidence supports their theory of the matter. A closing argument is not evidence. A tribunal has the discretion to accept or reject any or all of the arguments put forward, they need not provide reasons for rejecting an argument where they have otherwise dealt with the evidence related to the argument in their reasoning. There is no breach of natural justice related to the consideration of closing arguments.

c) Was the decision made by the triers of fact and were the triers of fact biased?

There is no question that the Hearing Panel that heard the evidence and argument of the parties was also the Panel that made the decision as written and presented to the parties at the outcome of the hearing process.

Considering the allegation of bias, it is to be considered from the perspective of a reasonable person viewing the matter. More specifically the test is well known: ... "the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information. In the words of the Court of Appeal, that test is "*what would an informed person, viewing the matter realistically and practically — and having thought the matter through — conclude ...*" [Emphasis added.] p. 394 *Committee for Justice and Liberty v. National Energy Board*, [1978] 1 S.C.R. 369

In the leading case of *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 (CanLII), [2019] 4 SCR 653 the Supreme Court of Canada had this to say:

[126] That being said, a reasonable decision is one that is justified in light of the facts: *Dunsmuir*, at para. 47. The decision maker must take the evidentiary record and the general factual matrix that bears on its decision into account, and its decision must be reasonable in light of them: see *Southam*, at para. 56. The reasonableness of a decision may be jeopardized where the decision maker has fundamentally misapprehended or failed to account for the evidence before it. In *Baker*, for example, the decision maker had relied on irrelevant stereotypes and failed to consider relevant evidence, which led to a conclusion that there was a reasonable apprehension of bias: para. 48. Moreover, the decision maker's approach would *also* have supported a finding that the decision was unreasonable on the basis that the decision maker showed that his conclusions were not based on the evidence that was actually before him: *ibid*.

The Appellant has provided no direct evidence of bias. In his October 13, 2023 submission he states "it is unfortunate that my three (3) past HEARING experiences with RECA have been poor due to dishonesty and crooked system." As noted above in his March 19, 2024 email the Appellant considers both Hearing and Appeal Panels biased.

Further matters on Appeal

What the Appellant is asking this Appeal Panel to do is to review the evidence from the original hearing which in some cases was presented as a preliminary application; the exclusive buyer representation agreement and the jurisdictional question. The Appellant specifically references certain information, how it was seen by the Hearing Panel and how it should more properly be seen. Our role is not to review and reweigh the evidence. For the purpose of the Appeal when we review the decision and whether the Hearing Panel failed to consider relevant evidence, we look to the decision of the Hearing Panel, and their review of the evidence to determine if their decision is "justified in light of the facts".

Considering our role and what guidance can be had, we turn to *Yee v CPA Alberta* 2020 ABCA 98, looking to paragraph 35:

[35] When reviewing the decision of a discipline tribunal, the appeal tribunal should remain focused on whether the decision of the discipline tribunal is based on errors of law, errors of principle, or is not reasonably sustainable. The appeal tribunal should, however, remain flexible and review the decision under appeal holistically, without a rigid focus on any abstract standard of review: *Halifax (Regional Municipality) v Anglican Diocesan Centre Corporation*, 2010 NSCA 38 at para. 23, 290 NSR (2d) 361. The following guidelines may be helpful:

- (a) findings of fact made by the discipline tribunal, particularly findings based on credibility of witnesses, should be afforded significant deference;
- (b) likewise, inferences drawn from the facts by the discipline tribunal should be respected, unless the appeal tribunal is satisfied that there is an articulable reason for disagreeing;

(c) with respect to decisions on questions of law by the discipline tribunal arising from the profession's home statute, the appeal tribunal is equally well positioned to make the necessary findings. Regard should obviously be had to the view of the discipline tribunal, but the appeal tribunal is entitled to independently examine the issue, to promote uniformity in interpretation, and to ensure that proper professional standards are maintained;

(d) with respect to matters engaging the expertise of the profession, such as those relating to setting standards of conduct, the appeal tribunal is again well-positioned to review the decision under appeal. The appeal tribunal is entitled to apply its own expertise and make findings about what constitutes professional misconduct: Newton at para. 79. It obviously should not disregard the views of the discipline tribunal, or proceed as if its findings were never made. However, where the appeal tribunal perceives unreasonableness, error of principle, potential injustice, or another sound basis for intervening, it is entitled to do so;

(e) the appeal tribunal is also well-positioned to review the entire decision and conclusions of the discipline tribunal for reasonableness, to ensure that, considered overall, it properly protects the public and the reputation of the profession;

(f) the appeal tribunal may also intervene in cases of procedural unfairness, or where there is a reasonable apprehension of bias.

We would review the impugned decision with these guidelines in mind. The Appellant has suggested that the Hearing Panel failed to properly determine the relevance of three pieces of evidence, the Exclusive Buyer Representation Agreement (exhibit 41), a listing of emails and their time stamps – originally exhibit B 51, and a Mortgage application.

Firstly, reviewing the decision of the Hearing Panel in relation to the preliminary applications. At page 6 of the phase I decision and on the application by the Appellant to compel the disclosure of [A.K] documents (May 19, 2022 application), the Panel found that:

After hearing Case 009891, the hearing panel concluded that Witness [S.C].’s agency disclosure, and any exclusive Buyer Representation Agreement that may, or may not, have been entered into between [S.C]. and [A.K], along with any Offer to Purchase Agreement that was, or was not, facilitated by [A.K], are not relevant nor material to the issue before the panel: whether Licensee Chaudhri engaged in fraudulent activities in the delivery of his services. Licensee Chaudhri’s application for disclosure was denied.

The Appellant in his submission, indicates at “Addendum B” that “RECA kept hiding this evidence until I demanded it during the hearing on May 26, 2022, and they had no choice but to produce it. HEARING PANEL failed to take notice of it.” This is a statement without context, in the 36 pages provided by the Appellant, which is evidence from the original hearing, we cannot confirm what addendum B is. This

panel is not obligated to extrapolate context from the information where it is not clearly presented by one of the parties.

Relating to the mortgage application, the Appellant expressed the following concern:

Addendum C: MORTGAE APPLICATION is handwritten by [L.L] (Mortgage Broker and signed in my absence, by [S.C] and [A.C] (Buyers) but HEARING PANEL called it a fraud committed by (Aslam Chaudhri) because [S.C] asked me next day for favour to communicate (text) his message to [L.L]. A travesty of law by HEARING PANEL.

The Hearing Panel, in its decision, addressed the mortgage application as follows:

At page 10: The Hearing Panel considered the following admissions made by Licensee Chaudhri, during the RECA video interview (Exhibit 13 b), and as recorded in the written transcript (Exhibit 13c):

At page 34, Lines 16-25 and at Page 35, Lines 1 to 3, the Licensee admits to sending the following mortgage application documents to mortgage associate [L.L], on behalf of [S.C] and [A.C]:

Mortgage application stating that [A.C] was employed by [H. INC] for 4 years, earning a gross annual income of \$26,400 (Exhibit 6) 11

Service agreement

[H. INC] Employment Verification letter dated November 21, 2018

(Exhibit 13)

Notification of assessment

[H. INC] cheque stubs #000013 and #000020

At page 35, Lines 21 to 25, and at page 36, Lines 1 to 3, Licensee Chaudhri admits to supplying [L.L] with the mortgage application documentation, by emailing them to her.

At page 37, Lines 4 to 8, the Licensee admits that he received the mortgage application documents directly from [S.C].

Licensee Chaudhri's credibility is cast in doubt, when during the RECA interview (Exhibit 13c, Page 37, Lines 19 to 23) he stated that he did not recall sending the hand written mortgage application sent to him by [S.C] to [L.L]. This statement contradicts his recorded answers at Exhibit 13c, pages 35, 36 and 37.

Mortgage Advisor [L.L]'s evidence

Licensee Chaudhri's foregoing admissions are consistent with the evidence of [L.L], who testified that Licensee Chaudhri emailed her the above documents, in support of the Complainant's mortgage application. [L.L]'s oral testimony was consistent with the emails and attached documents, as exchanged between her and Licensee Chaudhri (Exhibit 6). [L.L]'s testimony is also consistent with Licensee Chaudhri's unsworn audio/video interview, wherein Licensee Chaudhri admitted to sending mortgage documents to [L.L], on behalf of the [S.C] and [A.C]. [L.L] testified that Licensee Chaudhri sent a November 29, 2018, email to her, stating that

[H. INC] "was a small business and did not have a payroll system".

The panel considered [L.L] to be a credible and sincere witness. She gave her

testimony without hesitation and was consistent in her answers. Her evidence is material and relevant to the issue of whether Licensee Chaudhri participated in the delivery of the documents to her, that are the subject of this complaint. No evidence from any witness, nor any evidence given by Licensee Chaudhri, contradicts the truthfulness of Licensee Chaudhri's admissions made during the RECA investigation interview (Exhibit 13b); or the accuracy of the transcript of that interview (Exhibit 13c); or the reliability of [L.L.]'s evidence. All of the foregoing clearly demonstrate that Licensee Chaudhri sent a false employment letter, a false mortgage application, misleading cheque stubs and other documents in support of the false mortgage application to Lem.

Again, it is not the role of the Appeal Panel to review the decision of the Hearing Panel on a de novo basis.

The Appellant's statement on the matter of the mortgage application amounts to provision of further evidence to prove that the Hearing Panel incorrectly assessed the evidence on the mortgage application. What this Panel sees is the Hearing Panel's careful consideration of the evidence before them, including assessing the credibility of those providing that evidence. It is not a travesty, but the function of the Hearing Panel to weigh the evidence. They are the triers of fact. We will not reassess those findings based on the unsupported allegations of the Appellant.

On the jurisdictional question in appeal. This application was answered as follows in the hearing proper;

Jurisdiction - Case: 009891 – Licensee Chaudhri

Licensee Chaudhri made a motion that pursuant to the *Act s. 37(2)*, the Hearing Panel did not have jurisdiction to hear the complaint against him, because of deficiencies in the online complaint made by [S.C] and [A.C]. (Exhibit 4). Licensee Chaudhri's position was that the initial complaint submitted to RECA, and upon which the investigation and hearing proceeded, did not include the Complainant's name(s), as required by the *Act s.37(1)(2)*.

The Hearing Panel reviewed Exhibit 4, being the written complaint submitted to RECA by [S.C] and [A.C]. The written complaint clearly states the names of the two complainants: [S.C] and [A.C]. The complaint also provides detailed particulars. The particulars cited are sufficient to authorize the Registrar to commence an investigation, pursuant to the *Act, s.38(1)*.

The Hearing Panel finds that the complaint submitted by [S.C] and [A.C] meets the requirements of the *Real Estate Act, s.37(2)*, and that RECA was entitled to act on their on-line submission, to conduct an investigation. As a result of the investigation, RECA proceeded under the *Act, s.39* to refer the matter to a Hearing Panel. Pursuant to the *Real Estate Act, s.41(1)* a Hearing Panel shall hold a hearing. The *Real Estate Act, s.42(a)*, authorizes the Hearing Panel to receive evidence relevant to the matter being heard. The Hearing Panel finds that it has jurisdiction to hear Case 009891 against Licensee Chaudhri

The finding by the Hearing Panel reviews the evidence available and finds that it sufficiently meets legislative requirements to allow RECA to conduct their investigation and proceed accordingly. That the Appellant submits that the complaint is to be both in writing and signed by the complainant; what s. 37(2) says is: “37(2) A complaint must be in writing and must include the name of the complainant and reasonable particulars of the complaint.” The Appeal Panel finds that the Hearing Panel’s reasons in this regard are sufficient and logical. There is no requirement that the complaint be signed.

On the whole, the Appeal Panel dismisses the Appeal of the Licensee for reasons set out above.

Dated on the 11th day of June, 2024

“Signature”

[A.B], Appeal Hearing Chair