

THE REAL ESTATE COUNCIL OF ALBERTA

**IN THE MATTER OF** an Appeal Hearing pursuant to Part 3 of the *REAL ESTATE ACT*, R.S.A. 2000, c.R-5 (the "**Real Estate Act**") regarding the conduct of **JERRY WALTER MASTRE**, Real Estate Broker of Mastre Property Management Ltd.

Hearing Panel Members: [W.K], Chair (Public Member)  
[J.F], Panel Member  
[B.W], Panel Member

Jerry Walter Mastre on his own behalf

G. Zha on behalf of the Registrar of the Real Estate Council of Alberta

Hearing Dates: September 30<sup>th</sup> and October 1<sup>st</sup> 2024

**DECISION OF THE HEARING PANEL**

**I. BACKGROUND**

1. A complaint naming Jerry Walter Mastre ("**Mastre**" or the "**Licensee**"), Real Estate Broker of Mastre Property Management Ltd ("**Mastre Property Management**"), was received by the Registrar and investigated under file #012739 (the "**Compliant**"). In reviewing the Complaint, the Registrar determined that a breach had not occurred and, on August 29, 2022, the Complaint was refused pursuant to Section 38.1 of the *Real Estate Act*, RSA 2000, c R-5 (the "**Act**").
2. The complainant filed an appeal of the Registrar's decision under s. 40(1) of the Act (the "**Appeal**") and that Appeal was heard by a Hearing Panel on April 19, 2024 (the "**Complainant Appeal Panel**").
3. On May 2, 2024, the Complainant Appeal Panel determined that there was sufficient evidence of conduct deserving of sanction to warrant a hearing on this matter pursuant to s. 40(2) of the Act.
4. On August 7, 2024, the Licensee was served with a Notice of Hearing articulating that there was sufficient evidence of conduct deserving of sanction to warrant a hearing with respect to the following alleged breaches of the Act:
  - a. Whether the Licensee provided incompetent service, contrary to s. 41(b) of the Rules, based on the following particulars:

- i. failing to require the tenant to sign a move in inspection ("**Count #1**");
    - ii. failing to properly account for, or, alternatively, not depositing into a trust account, the security deposit paid by the tenant ("**Count #2**"); and
  - b. Whether the Licensee fulfilled their fiduciary obligations to their client, contrary to s. 41(d) of the Rules based on the following particulars:
    - i. Agreeing to a monthly rent amount without his client's authority ("**Count #3**"); and
    - ii. Allowing the tenant to occupy the property at issue rent free between July 15, 2021 and August 1, 2021 in exchange for the tenant cleaning up the house and the yard without his client's authority to do so. ("**Count #4**").
5. This Hearing Panel was appointed to conduct a Hearing of the Complaint, in accordance with section 41(1)(b) of the Act, for contravention of sections 41(b) and 41(d) of the Real Estate Act Rules (the "**Rules**").
6. For the reasons outlined below, the Hearing Panel
  - a. accepts the facts listed in the Parties' Agreement of Conduct Deserving of Sanction with respect to Count #1 and finds there is Conduct Deserving of Sanction with respect to Count #1,
  - b. dismisses the Complaint with respect to Counts #2 and #3, and
  - c. finds conduct deserving of sanction with respect to Count #4 and the Licensee's failure to obtain instructions in allowing the tenant to occupy the property at issue rent free between July 15, 2021 and August 1, 2021.

## II. AGREED FACTS

7. In accordance with the Agreement of Conduct Deserving of Sanction submitted by the Parties and entered as Exhibit #2, the Hearing Panel finds that:
  - a. Mastre has been licensed as a Real Estate Broker with the Real Estate Council of Alberta ("**RECA**") since October 2003;
  - b. Mastre has been registered with Mastre Property Management since the start of his license;
  - c. On June 28, 2021, Mastre, as an agent for Mastre Property Management, entered into a Management Agreement with [A.V] (the "**Complainant**");
  - d. From June 28, 2021 to July 31, 2022, Mastre provided property management services for the Complainant at his property located at

[ADDRESS] (the “**Property**” or “**Premises**”). This was during the COVID-19 pandemic when persons were advised to social distance;

- e. On July 14, 2021, a tenant entered into and signed a one-year lease agreement to rent and reside at the Premises. The start date of the lease was August 1, 2021 and the end date of the lease was July 31, 2022;
- f. On or around July 15, 2021, Mastre completed an “Accommodation Inspection Report” of the premises, without the tenant. This report was never signed by the tenant;
- g. Mastre authorized the tenant to take possession and move into [ADDRESS] in or around third week of July 2021. The lease agreement was not amended;
- h. Mastre did not conduct a move-in inspection with the tenant and did not require the tenant to sign a move-in inspection;
- i. From the end of July 2021 onwards, the tenant raised a number of problems in the property requiring repair and maintenance, including issues with the hot water tank, appliances (i.e. washing machine, oven, microwave, fridge, dishwasher), electricals, doorbell, fireplace, doors, bathroom and shower, and windows and blinds;
- j. The problems in the property became a source of conflict between Mastre and the Complainant for the duration of their agent and client relationship.

(Collectively, the “**Agreed Facts**”).

- 8. The Agreed Facts were admitted and entered for the entirety of the Hearing and for all breaches and sanctions referred to a hearing by the Complainant Appeal Panel.

### III. **AGREED BREACH**

- 9. Where a hearing panel has ordered a hearing pursuant to a section 40 complainant appeal and the registrar maintains the position that there is no conduct deserving of sanction, the parties will not normally be in a position to enter into compromises respecting conduct deserving of sanction. However, in this case, Count #1 was not part of the original complaint, rather it was introduced by the hearing panel that heard the complainant appeal based on the investigation evidence it reviewed. Furthermore, Mastre admitted to the charges in the count. In these circumstances, it is appropriate for the Parties to enter into an agreement on Conduct Deserving of Sanction for Count #1.
- 10. Within Exhibit #2, and with respect to Count #1, the Parties acknowledged and agreed that Jerry Mastre failed to provide competent service, contrary to s. 41(b)

of the Rules. This Panel accepts the Parties' agreement and agrees that Mastre breached section 41(b) of the Rules with respect to Count #1.

11. Competent service, s.41(b), is not specifically defined in the Rules or the Act and what constitutes competent service for an agent is determined by practice, policy and precedent. The Rules and related legislation, such as the *Residential Tenancies Act*, SA 2004, c R-17 ("**RTA**"), can also inform what competent service entails. In addition, the Real Estate Council of Alberta provides a helpful Information Bulletin on Competence: *Pethick (Re)*, 2022 ABRECA 43 at para 24.
12. Section 19(1) of the *RTA* requires that a landlord and tenant "shall" inspect the residential premises within one week before or after a tenant takes possession of the residential premises (an "**Inspection Report**").
13. While there are exceptions to section 19(1) of the *RTA* and instances where a failure to complete an Inspection Report are justified, Mastre agreed to forego the time and expense of conducting a hearing of this alleged breach, expressed remorse for the conduct in question, and has acknowledged that the issues that arose at the Premises shortly after the tenant's occupation may have been resolved or potentially avoided had there been a move-in inspection with the tenant and a signed move-in Inspection Report by the tenant (the "**Agreed Breach**").
14. Sanction and costs with respect to this Agreed Breach will be addressed collectively in the Phase 2 analysis.

#### IV. ISSUE(S)

15. The central issues remaining before the Hearing Panel are as follows:
  - a. Did the Licensee fail to provide competent service contrary to section 41(b) of the Real Estate Act Rules by failing to properly account for, or, alternatively, failing to deposit into a trust account, the security deposit paid by the tenant?
  - b. Did the Licensee fail to fulfill their fiduciary obligations to their client, contrary to s. 41(d) of the Rules by:
    - i. Agreeing to a monthly rent amount without his client's authority;  
or
    - ii. Allowing the tenant to occupy the Property rent free between July 15, 2021 and August 1, 2021 without his client's authority to do so?

#### V. STANDARD OF REVIEW

16. In accordance with section 41(1)(b) of the *REA*, a Hearing Panel shall hold a hearing of the Complaint upon the decision by the Complainant Appeal Panel under section 40(2) that a hearing should be held.

17. The Hearing Panel's review of the Complaint is *de novo* and must be made independently and without deference to any underlying decision of the Complainant Appeal Panel.

## VI. FACTS

18. In addition to the Agreed Facts, the Hearing Panel makes the following findings of fact described below that were not substantively contested at the Hearing (except where stated):
  - a. In October of 2020, the Complainant was renovating the Property in the hopes of leasing the Premises to a potential tenant.
  - b. In or around this time, he contacted Mastre Property Management to find out about the services it provided and to potentially engage Mastre Property Management to assist in renting out the Property once all renovations had been completed.
  - c. Mastre reached out to the Complainant in response and advised that he wanted to visit the Property to view it, in-person, while the renovations were being completed.
  - d. On or around October 7, 2020, Mastre attended the Property and completed a "Prospective Client Property Feature Sheet" which he advised was his normal practice when retaining a new client (Exhibit #8) (the "**Property Feature Sheet**"). The Property Feature Sheet indicates, in addition to general structural comments, Mastre's notes written during the visit which include, without limitation:
    - i. "Decks needs Repair;"
    - ii. "Ceiling Repair;"
    - iii. Date Available: "in a month or two (negotiable);"
    - iv. Expected Rental Rate: \$2,300-\$2,500; and
    - v. "Needs to have work done!"
  - e. It was not until several months later, on or around June 28, 2021, that the Complainant and Mastre entered into a formal agreement to have Mastre Property Management act as agent exclusively to rent, lease, operate, and manage the Property (Exhibit #13) (the "**Management Agreement**").
  - f. The salient terms of the Management Agreement with respect to addressing the Complaint, include, without limitation, the authority provision which states:

**Agent Authority:** The owner hereby gives to the Agent the following authority and powers and agrees to assume the expenses in connection herewith:

3(a) To advertise the availability for rental of the herein described premises or any part thereof, and to display "for rent" signs thereon; to sign, renew and/or cancel leases for the premises or any part thereof; to collect rents due or to become due and give receipts therefore; to terminate tenancies and to sign and serve in the name of the owner such notices as are appropriate; to institute and prosecute actions; to evict tenants and to recover possession of said premises; to sue for in the name of the Owner and recover rents and other sums due; and when expedient, to settle, compromise and release such actions or suits or reinstate such tenancies. Any lease executed for the Owner by the agent shall not exceed "One" Year (Unless other wise agreed).

- g. On July 13, 2021, [J.G], Mastre Property Management's Tenant and Service Coordinator ("[J.G]"), reached out to the Complainant by email with respect to the Property as follows:

I hope you are well and enjoying your day.

I have an application to run by you.

Single female with two children. One is an adult with a full time job and the other is 17, starting University in the fall. She is Director of a medical clinic and makes an excellent salary per year.

Her credit check was excellent, no issues or concerns at all.

Her current landlord has stated they have been great tenants to have, they are very quiet and respectful and always paid rent on time. The reason for their move is that she is selling her home, otherwise she would have kept them on as tenants.

They are looking to move in ASAP for a 1 year lease at \$2250 per month.

Please do let us know if you approve.

Thank you,

(the "Approval Request").

- h. The Complainant acknowledged that he did agree to the Approval Request though claimed, as outlined below, that it was due to the coercion of [J.G].
- i. The tenant signed a Lease Agreement on July 14, 2024 (Exhibit #4) which was to commence on August 1, 2021.
- j. On July 14, 2021, the tenant provided a deposit of \$2,250.00 (the "**Deposit**") which was placed into Mastre Property Management's "Trust Security" account (the "**Trust Account**") (Exhibit #11).
- k. Thereafter, Mastre acknowledged he had authorized the tenant to take possession and move into Property and that they had done so on or around the third week of July 2021 (roughly July 21, 2021) but that he could not confirm exactly when the tenant had moved into the Property.
- l. Mastre confirmed that the tenant had been allowed to take possession of the Property prior to the commencement of the Lease in exchange for the tenant "cleaning up the house and the yard" but this agreement with the tenant does not appear to have been documented in writing (the "**Cleaning Agreement**").
- m. Mastre also confirmed that the Complainant was never notified of the Cleaning Agreement prior to its commencement.
- n. On or around July 28, 2021, the Complainant became aware that the tenant had already moved into the Property prior to the commencement of the Lease.
- o. The Complainant thereafter sent an email to [J.G] seeking clarification of, among other things: "The actual date of tenant's physical occupation of the Property" and requesting that the lease be amended to provide for the "actual date of possession by the tenant", collectively, the "**Lease Amendment Request**" (Exhibit #7).
- p. Thereafter the Complainant, in several written communications, sought clarification and confirmation of the "actual date of possession by the tenant."
- q. Notwithstanding repeated written requests by the Complainant for the "actual date of possession by the tenant," (Exhibit #7) the Lease Amendment Request was not responded to in a meaningful way and the Lease was never amended to reflect an earlier move in date.
- r. The Deposit remained in the Trust account until July 26, 2022, when it was provided to the owner as the final rent payment for the Lease on or around July 26, 2022. The Panel makes this finding on a balance of probabilities as there is no evidence the Deposit left the trust account prior to that time.

## VII. DISCUSSION AND FINDINGS

19. The complaint raises the issue of whether the Licensee acted competently and within its fiduciary obligations, in the delivery of services; and in accordance with RECA Rules 41(b) and 41(d). Section 41 of the RECA Rules requires that, among other things, the Licensee must:
- a. s.41(a) act honestly;
  - b. s.41(b) provide competent service;
  - c. s.41(d) fulfill their fiduciary obligations to their clients;
  - d. s.41(g) practice in strict accordance with the Act, Regulations, By-Laws and any other laws that govern trading in real estate ...

### Competent Service - Rule 41(b) - Count #1 and #2

20. The Agreed Breach (Count #1) is addressed above. Regarding Count #2 dealing with depositing the security amount into trust, this Hearing Panel finds the Licensee acted competently to collect the Deposit as required and deposit it to the Trust Account.
21. Generally speaking, the lease of the Property proceeded predominantly as outlined in the Approval Request and in accordance with the terms of the Management Agreement; though not necessarily to the satisfaction of the Complainant.
22. Section 44(1) and 44(5) of the *RTA* requires that a landlord shall Deposit each security deposit consisting of money received by the landlord into an interest-bearing trust account within two (2) banking days after receiving the deposit and shall keep security deposit records that show, with respect to each tenant, the date of receipt of a security deposit by the landlord, and the amount of the security deposit.
23. Section 2 of the *Security Deposit Interest Rate Regulation*, Alta Reg 190/2004 requires that, for the purposes of section 45(1) of the *RTA*, the annual rate of interest: "is the rate that is 3% below the rate of interest that is in effect on November 1 of the previous year for cashable one-year guaranteed investment certificates held or offered by Alberta Treasury Branches Financial."
24. For the entirety of the duration that the Deposit was in the Licensee's Trust Account, no interest would have been payable on the Deposit, since the annual rate of interest was less than 3%. Nor did the Registrar meet the burden of proving the Trust Account was an interest-bearing account or that the funds were not recorded or accounted for. To the contrary, the records presented show that the Deposit was collected and accounted for as required by the *RTA* and its Regulations (See for example the Cash Flow Statements provided at Exhibit #12).



Counts #3 and #4

25. Rule 41(d) requires that licensees must fulfill their fiduciary obligations to their clients. This requires that Licensees must act in [the utmost] good faith and for the best interests of the client. As noted by the panel in *Dasouki (RE)*, 2017 CanLII 147870 (AB RECA) ("*Dasouki*"):

While we do not intend to provide an exhaustive list of all things that comprise the duty, it includes such things as honesty, loyalty and good faith in all dealings with the client, avoiding conflicts of interest as between the industry member and the client, as well as full and complete disclosure of all facts material to a transaction. A fact is material if it could reasonably influence the client's decision to make or accept an offer or to enter into a transaction, and failing to disclose such a fact that an industry member is, or ought reasonably to be, aware of could constitute a breach of fiduciary duty. [emphasis added]

[(the "**Fiduciary Obligations**")]

26. The questions before the Panel are
- a. whether, Mastre had his client's authority to agree to a monthly rent amount or if in failing to obtain that authority, he breached his fiduciary obligations, and
  - b. whether, in allowing the tenant to occupy the Property rent free between July 15, 2021 and August 1, 2021 in exchange for the tenant cleaning up the house and the yard, without his client's authority, Mastre breached his Fiduciary Obligations.
27. With respect to Count #3 and the acceptance by Mastre Property Management of a monthly rent amount lower than what the Complainant subsequently stated his "minimum" to be, we do not find any breach of Rule 41(d). Specifically, we find Mastre fulfilled his duty of honesty, good faith and loyalty in agreeing to the monthly rent amount of \$2250 and that, in any case, the Complainant freely agreed to that amount, without any coercion.
28. In reaching this conclusion, the Panel did consider the Complainant's Oral submissions including, without limitations, the following submissions that:
- a. [J.G] and the Complainant spoke on the phone with respect to the Approval Request shortly after its receipt;
  - b. [J.G] coerced [the Complainant] into the lease for \$2,250 when his orally stated minimum for rent was \$2,500/month; and
  - c. Mastre Property Management had not shared the full details of the efforts taken to advertise the Property prior to providing the Approval Request,

(collectively, the “**Minimum Rent Concerns**”).

29. Notwithstanding the considerable written communication that was provided as between the Parties following the Approval Request sought by [J.G], neither party was able to provide any written communications from Mastre Property Management or the Complainant either acknowledging the Approval Request or raising the Minimum Rent Concerns until several months after the tenant had already begun occupying the Property.
30. Notably, during the material time period, the Complainant was not residing in Canada, was not in a position to communicate with the tenant, and was reliant on Mastre Property Management to find a tenant for the Property in accordance with the terms of the Management Agreement. This gave rise to a fiduciary duty for Mastre to act in good faith in the Complainant’s best interests.
31. It is not clear, on exclusive reading of the Management Agreement, whether express authority was required prior to evoking the Agent’s Authority to sign a new lease so long as that lease did not exceed one year. Within the exception of the language reflecting that “[a]ny lease executed for the [Complainant] by [Mastre Property Management] shall not exceed “One” Year (Unless other wise agreed),” there is no language within the “Agent Authority” granted in the Management Agreement itself that specifies or limits the minimum rent that must be sought for the Property or what if anything must be “other wise agreed” prior to acting on the Agent’s Authority to “sign, renew, and/or cancel leases for the premises or any part thereof.” (Exhibit #13). Accordingly, as a fiduciary, Mastre was required to ensure any lease entered was in the best interests of the Complainant
32. In this case, the evidence is that after two weeks on the market and a price reduction, an offer came in that Mastre believed was in the best interest of the Complainant to accept, based on Mastre’s knowledge of the home and the market, and the fact that there had been no interest in the home for two weeks. In an effort to secure the Complainant the best outcome, Mastre entered the lease on the Complainant’s behalf.
33. In addition, [J.G] informed the Complainant of the pending offer, a material fact in the decision of whether or not to accept it. This panel finds the Complainant agreed to the offer, on a balance of probabilities, and that he was not coerced into accepting it, as he claims.
34. The Complainant’s oral evidence embellished that which was outlined in the initial written complaint (Exhibit #6). Specifically, it alleged that he told [J.G] during the phone call on July 14, 2021 that he wanted \$2500, not \$2250. However, because 1) there was an ongoing pandemic, 2) he was out of the country, 3) [J.G] told him it would be illegal to change the terms at this point, 4) [J.G] told him the property would not rent for another eight or nine months, and 5) [J.G] told him Mastre would cancel the property management contract if he did not accept the offer, the Complainant was forced to accept the offer.

35. Of note, the written complaint (Exhibit #6), which provides significant detail about the communications that took place on or around July 14, 2024, makes no reference to [J.G] purporting that it would be "illegal to change the terms at this point" or that [J.G] advised "Mastre would cancel the property management contract if [the Complainant] did not accept the offer," thereby forcing him to do so. Both these allegations were significant but were made without any demonstrable evidence to corroborate them and therefore garnished minimal weight.
36. Mastre's evidence was that the Complainant seemed happy to have the house rented and had not voiced any of the Minimum Rent Concerns at that time. He further confirmed that he could not speak to communications he was not a part of which had been initially relayed to him by [J.G].
37. The Panel prefers Mastre's evidence, despite the Complainant's contrary testimony.
38. Firstly, as noted above, there is no written evidence about the Complainant's requirement of \$2500 per months' rent. Nor is there any written evidence that the Complainant rejected the Approval Request.
39. Of additional concern, the Complainant was unable to outline any written communications to Mastre Property Management either previous to or following the Approval Request outlining or articulating the Minimum Rent Concerns until several months after the tenant had already begun occupying the Property. This is in stark contrast to the considerable written communication between Mastre and the Complainant relating to the early move-in date discussed below.
40. The Panel finds, and the evidence relating to Count #4 shows, the Complainant addresses issues he is not content with immediately, in writing, and often. There is no contemporaneous written communication about the Complainant's disagreement to the rental amount, nor that he felt he was forced into the lease. In the Panel's view, it is reasonable to infer that this is because he was not forced into the lease, rather he weighed the pros and cons of the offer presented and agreed it was best to proceed given his current situation, even though it was not ideal.
41. The Panel recognizes the Complainant's evidence is direct testimony whereas Mastre's evidence is second-hand knowledge (i.e. he was not part of the conversations on July 14, 2021 and [J.G] did not testify). However, the Complainant's lack of follow-up, in contrast to how he approached his concerns with respect to the early move-in, leads the Panel to conclude that Mastre did believe he was acting both with the Complainant's agreement and in his best interest in entering the lease agreement.
42. Conversely, and as a result, with respect to Count #4, this Panel does find a breach of Rule 41(d).

43. As articulated above, the Fiduciary Obligations require loyalty and good faith in all dealings with the client, including “the full and complete disclosure of all facts material to a transaction:” *Dasouki* at page 18. While we will not comment on whether entering a cleaning agreement without advising a client, in and of itself, is a breach of Rule 41(d), certainly after the client/Complainant sought clarification on the details of that arrangement, but was ostensibly denied, a breach arose.
44. For greater clarity, failing to obtain the Complainant’s consent prior to entering an agreement with the tenant to “clean up the house and the yard” in exchange for an earlier move-in date could, in many circumstances be within the agent’s authority and certainly within the best interests of a given client (that will all depend on the management agreement, the timing of the arrangement, and parties at issue).
45. Where a breach of Rule 41(d) can arise, and in this case does arise, is in circumstances where a client has expressly sought disclosure of facts, material to a transaction and those actions taken on their behalf, and has been denied or ostensibly ignored. In this circumstance, the evasiveness in the responses provided by Mastre Property Management in response to the reasonable requests by the Complainant regarding the early move-in gives rise to a breach of Rule 41(d).
46. This Panel finds that immediately after discovering someone was living in his property and then being informed by Mastre Property Management that the Cleaning Agreement had been entered, the Complainant repeatedly sought clarification as to the details of that arrangement which were never substantively responded to. This withholding of information was contrary to Mastre’s fiduciary duty of loyalty, honesty and good faith.
47. It remains unclear why Mastre Property Management chose to withhold the details of the Cleaning Agreement, but it is the finding of this Panel that, in doing so, it breached its obligations to the Complainant with respect to Rule 41(d), under Count #4.
48. To conclude, this Hearing Panel has determined, on a balance of probabilities, that Mastre contravened section 41(d) of the Rules and is therefore deserving of sanction in accordance with section 43 of the Act.

## CONCLUSION AND ORDER

49. After considering the evidence and the respective submissions of the Parties, the Hearing Panel has concluded that in or around July of 2021 the Licensee failed to conduct an Inspection Report and therefore failed to provide competent service, contrary to s. 41(b) of the Rules (The Agreed Breach) and further failed to provide full and complete disclosure of all facts material to the Lease Agreement giving rise to a breach of Rule 41(d).

50. As the Parties were earlier advised, the Hearing Panel reserved its decision on sanction and costs pending the outcome of the Hearing. The Parties have provided their joint submissions on sanction with respect to the Agreed Breach and are now directed to provide further submissions on the Breach of Rule 41(d) on sanctions and costs in writing, not to exceed five pages.
51. Given the unique procedural circumstances where the Registrar has chosen not to take a position on sanction and costs, we therefore specifically direct that the Registrar provide written submissions on a representative range of precedents in these circumstances, in addition to any other submissions they wish to provide, on or before January 3, 2025.
52. The Licensee may respond in writing to the Registrar's submission on or before January 17, 2025.

Dated the 17<sup>th</sup> day of December, 2024, in the City of Calgary in the Province of Alberta.

“Signature”

[W.K], Hearing Panel Chair

THE REAL ESTATE COUNCIL OF ALBERTA

**IN THE MATTER OF** a Hearing pursuant to Part 3 of the *REAL ESTATE ACT*, R.S.A. 2000, c.R-5 (the "**Act**") regarding the conduct of **JERRY WALTER MASTRE**, Real Estate Broker of Mastre Property Management Ltd.

Hearing Panel Members: [W.K], Chair (Public Member)  
[J.F], Panel Member  
[B.W], Panel Member

Appearances: Jerry Walter Mastre on his own behalf  
G. Zha on behalf of the Registrar of the Real Estate Council of Alberta

Hearing Dates: September 30<sup>th</sup> and October 1<sup>st</sup> 2024

Phase 1 Decision Date: December 17, 2024

Written submission on Costs and Sanction Received: Written Submissions by Registrar – January 2, 2025  
Written submissions by Licensee – January 9, 2025

**DECISION ON COSTS AND SANCTION**

**VIII. BACKGROUND**

53. This Hearing Panel was appointed to conduct a Hearing pursuant to Part 3 of the *Real Estate Act*, RSA 2000, c R-5 (the "**Act**") regarding the conduct of Jerry Walter Mastre ("**Mastre**" or the "**Licensee**"), Real Estate Broker of Mastre Property Management Ltd ("**Mastre Property Management**"), regarding a complaint received by the Registrar and investigated under file #012739 (the "**Complaint**").
54. In reviewing the Complaint, the Registrar determined that a breach had not occurred and, on August 29, 2022, the Complaint was refused pursuant to Section 38.1 of the *Act*. The complainant filed an appeal of the Registrar's decision under s. 40(1) of the *Act* (the "**Appeal**") and that Appeal was heard by a Hearing Panel on April 19, 2024 (the "**Complainant Appeal Panel**").
55. On May 2, 2024, the Complainant Appeal Panel determined that there was sufficient evidence of conduct deserving of sanction to warrant a hearing on this matter pursuant to s. 40(2) of the *Act*.

56. This Hearing Panel was appointed to conduct a Hearing of the Complaint, in accordance with section 41(1)(b) of the *Act*, for contravention of sections 41(b) and 41(d) of the *Real Estate Act Rules* (the "**Rules**").
57. On December 17, 2024, following a contested Hearing, the Hearing Panel concluded that in or around July of 2021 the Licensee failed to conduct an Inspection Report and therefore failed to provide competent service, contrary to s. 41(b) of the Rules (the "**Agreed Breach**") and further failed to provide full and complete disclosure of all facts material to the Lease Agreement (as outlined in the Decision) giving rise to a breach of Rule 41(d) of the Rules (the "**Decision**").
58. As the Parties were earlier advised, the Hearing Panel reserved its decision on sanction and costs pending the outcome of the Hearing. The Parties have now provided their joint submissions on sanction and costs with respect to the Agreed Breach and provided further written submissions on the Breach of Rule 41(d).
59. For the reasons outlined below, the Hearing Panel
  - a. Accepts the facts, sanctions, and costs as listed and articulated in the Parties' Agreement of Conduct Deserving of Sanction with respect to Count #1 (as defined in the Decision); and
  - b. finds that a letter of reprimand, as contained herein, is an appropriate and fitting sanction with respect to the Licensee's failure to obtain instructions in allowing the tenant to occupy the property at issue, rent free, for all or part of the period between July 15, 2021 and August 1, 2021.

## IX. AGREED FACTS ON SANCTION AND COSTS

60. In accordance with the Agreement of Conduct Deserving of Sanction submitted by the Parties and entered as Exhibit #2, the Hearing Panel finds that:

The following are relevant as mitigating factors:

- a) Mastre has no disciplinary history.
- b) Mastre has agreed to forego the time and expense of conducting a hearing of this breach.
- c) Mastre has expressed remorse for the conduct in question.

The following are relevant as aggravating factors:

- a) Problems in the property arising shortly after the tenant's occupation of the premises may have been resolved and/or avoided had there been a move-in inspection with the tenant and a signed move-in inspection report by the tenant.

(Collectively, the "**Agreed Factors on Sanction**").

61. The Agreed Factors on Sanction were admitted and entered for the entirety of the Hearing and for all breaches and sanctions referred to a hearing by the Complainant Appeal Panel: Exhibit #14.

## X. JOINT SUBMISSION ON SANCTION

62. The Licensee and Registrar entered into an Agreement of Conduct Deserving of Sanction with respect to Count #1 (as defined in the Decision) and the finding that the Licensee had failed to provide competent service, contrary to s. 41(b) of the Rules in failing to require the tenant to sign a move in inspection prior to the commencement of the tenancy.
63. This Panel accepted the Parties' agreement that Mastre breached section 41(b) of the Rules with respect to Count #1 and identified that it would address sanction and costs for the Agreed Breach collectively in its Phase 2 analysis.
64. The Parties provided a joint submission outlining that an appropriate sanction for breaches of Rule 41(b), in analogous circumstances, typically involved a fine of between \$2,500 and \$4,500 and referred the panel to a number of analogous decisions including: *Dasouki (Re)*, 2017 CanLII 147870 (AB RECA), *MacLean (Re)*, 2019 ABRECA 117, and *Friesz (Re)*, 2011 ABRECA 003 (the "**Joint Submission**"): Exhibit #14.
65. In the Joint submission, the Parties directed the Hearing Panel to the oft-cited factors articulated in *Jaswal v Medical Board (Nfld)*, 1996 CanLII 11630 which are relevant to a decision on the appropriate sanction to be applied in administrative proceedings (the "**Jaswal Factors**") and that precedent outlined that sanction for this type of breach may vary within a range of reasonable sanctions with aggravating and mitigating factors moving what is reasonable within that range.
66. In this case, the Parties jointly submitted that, given the aggravating and mitigating *Jaswal* Factors reviewed, and given the precedents reviewed, the proposed sanction of \$3,000.00 would be just and appropriate.
67. The imposition of a sanction is a decision to be made by the Hearing Panel and while joint submissions are not binding, a departure from a joint submission requires a tribunal to provide reasons for that departure.
68. The Supreme Court of Canada addressed the test that should be used when considering whether to depart from a joint submission: *R. v Anthony-Cook*, 2016 SCC 42 and provided guidance on how to determine whether a departure from an agreement is warranted, primarily taking into account what is referred to as the "public interest" test (paras 49-60).
69. Under the public interest test, a tribunal should not depart from a joint submission on sanction unless the proposed sanction would bring the administration of justice into disrepute or would otherwise be contrary to the public interest.
70. In this instance, the Licensee and the Registrar have agreed on a sanction and the Joint Submission addressed the relevant factors on sanctions in these circumstances each supported by precedent. Furthermore, the count in question is not one where the Registrar has taken a position that no breach occurred so the *Anthony-Cook* test is reasonable to apply. This Hearing Panel finds that the Joint Submission is just and appropriate and would therefore not bring the administration of justice into disrepute or would it otherwise be contrary to the public interest.



71. Accordingly, the Hearing Panel accepts the Parties' Joint Submission with respect to sanctions and costs arising from the conduct deserving of sanction under Count #1.

## XI. ISSUES

72. Having accepted the Parties joint submission with respect to Count #1, and having concluded that under section 41(d) of the Act that the Licensee had engaged in further conduct deserving of sanction under Count #4, the remaining issues before the Hearing Panel are as follows:
- a. What is the appropriate sanction for the breach by the Licensee of section 41(d) of the Act; and
  - b. Should the Hearing Panel make an award as to costs of the investigations and hearings that gave rise to the above finding.

## XII. THE REGISTRAR'S SUBMISSION ON SANCTION AND COSTS

73. The Registrar, in light of the Jaswal Factors referenced above, provided a number of comparable cases for past breaches of Rule 41(d) including, without limitation: *Webster (Re)*, 2024 ABRECA 16, *Soufi (Re)*, 2023 ABRECA, and *Duncan (Re)*, 2024 ABRECA 36.
74. It was the Registrar's submission that in each of the precedents reviewed and provided, the appropriate sanction for breaches of Rule 41(d), in analogous circumstances, typically involved either a fine of \$1,500 or a letter of reprimand (each with no costs).
75. With respect to its submissions on Costs, the Registrar referenced the "Jinnah Presumption" arising from the seminal case of *Jinnah v Alberta Dental Association and College*, 2022 ABCA 336 ("*Jinnah*"). The Court in *Jinnah* found that in the case of self-regulated professions, "the profession as a whole should bear the costs in most cases of unprofessional conduct," and costs should only be imposed where there are compelling reasons including the:
- a. Breach was especially serious;
  - b. Subject was a "serial offender" – this can mean there was only one prior discipline;
  - c. Subject failed to cooperate with the investigation and extended the use of resources of the regulator; or
  - d. Subject participated in hearing misconduct which made the hearing more expensive.
- (collectively, the "**Jinnah Presumption**").
76. In reference to the Jinnah Presumption, the Registrar submitted that: "while fiduciary duty is very important, the breach falls on the lower end of the spectrum, the licensee is not a serial offender, he has cooperated with the investigation, and he has not engaged in any hearing misconduct," accordingly, the Register submitted that no costs should be ordered.

### **XIII. THE LICENSEE'S SUBMISSION ON SANCTION AND COSTS**

77. The Licensee was self-represented at both the Hearing and in their written submissions.
78. In their submissions, on both sanction and costs, the Licensee did not substantively address the submissions of the Registrar but wrote to reiterate that he took personal responsibility for the circumstances that have arisen and any challenges that may have arisen as a result. The Licensee asked the Hearing Panel to look favorably on his previous history of no recorded misconduct, long-time service in the industry, co-operation throughout the process, and that there was no indication of intent to breach the Rules.
79. The Licensee also advised of their commitment to further education and the implementation of additional processes at his brokerage to prevent similar issues from arising in the future. The Licensee further requested that the Tribunal note that, although the facts giving rise to the finding of conduct deserving of sanction occurred during the "challenging times [of the] (Covid Pandemic)" he has still spent considerable time addressing how best to respond to similar complications moving forward.

### **XIV. ANALYSIS**

80. The Licensee and his staff were not forthright with their client about the tenant's move-in date. However, the Hearing Panel accepts that the Licensee was attempting to ensure the Property was rented for a reasonable price during a difficult time. It was the Hearing Panel's finding that the Licensee was attempting to act in the client's best interest, but failing to respond to his client's requests ran counter to those efforts.
81. There was no evidence presented to the Hearing Panel that the Licensee's breach of Rule 41(d) was malicious. Accordingly, the appropriate sanction, in the absence of additional misconduct, is, as articulated in the cases provided by the Registrar, a fine of \$1,500.00 or a letter of reprimand.
82. Neither party argued for a deviation from this proposed sanction and the Hearing Panel confirms that, in light of the Agreed Sanction for a payment of \$3,000.00 from the Licensee with respect to these proceedings and in contemplation of the Licensee's favorable history and commitment to ongoing education, a global sanction that includes a letter of reprimand (as articulated herein) is an appropriate and just sanction in the circumstances.
83. With respect to costs, the role of the Hearing Panel is to evaluate whether exceptions to the general presumption, that costs are borne by the self-regulating body, were met.
84. In these circumstances, no such exception applies. The breach at issue:
  - a. Was not especially serious;
  - b. The Licensee was not a "serial offender;"
  - c. The Licensee cooperated with the investigation; and
  - d. The Licensee was not found to have engaged in any misconduct during the course of the proceedings.

85. While the Jinnah Presumption is rebuttable, neither party submitted that the facts of this matter give rise to any of the exceptions or that the Jinnah Presumption should be rebutted and this Hearing Panel finds no reason to deviate from the general presumption.

## **XV. LETTER OF REPRIMAND**

86. As outlined in the Decision, the Licensee allowed the tenant at issue to occupy the Property rent free without appropriately articulating that decision to the Complainant.
87. Generally speaking, the management agency agreement will set out the parameters under which a licensee and client agree to operate, and per evidence presented the agency agreement in this case provided a wide latitude of discretion by the Licensee in this regard.
88. The Licensee testified that they made the decision to grant the two week "rent-free incentive" ultimately to save the Complainant the cost of house and yard cleaning, which the Hearing Panel believes was an appropriate use of their discretion. However, the Complainant's dissatisfaction arose from the failure to disclose this arrangement when prompted by the Complainant and, in that failure, created an erosion in confidence in the arrangement and the perception of lost income for the Complainant.
89. In the interests of full disclosure, the Licensee may have wished to proactively present this information to the Complainant as one of the terms of the lease agreement or immediately when asked by the Complainant.
90. As a fiduciary, the Licensee must also ensure they have adequate resources to serve the client in an effective and timely manner. While unlicensed personnel may assist in providing administrative services and communications on behalf of the Licensee, they should not be the designated service provider and must always operate under direct supervision and oversight of the Licensee. The Licensee must be available at all times to deal with client escalations pertaining to licensed activities, such as negotiating leases or in answering questions pertaining to when and how those agreements were entered.
91. Failing to do so, in this instance, gave rise to the determination on a balance of probabilities that the Licensee had contravened section 41(d) of the Rules and was therefore deserving of sanction in accordance with section 43 of the Act.

**XVI. CONCLUSION AND ORDER**

- 92. In accordance with section 43(1)(d) and 43(1)(e) of the *Act*, the Hearing Panel confirms the Joint Sanction for payment by the Licensee in the amount of \$3,000.00.
- 93. In accordance with section 43(1)(b) of the *Act*, this Decision constitutes a letter of reprimand for the purposes of sanction with respect to the Licensee's breach of Rule 41(d) of the *Act*.
- 94. In accordance with section 43(2) of the *Act*, no further costs are payable.

Dated the 13<sup>th</sup> day of February 2025, in the City of Calgary in the Province of Alberta.

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"Signature"

[W.K], Hearing Panel Chair