

THE REAL ESTATE COUNCIL OF ALBERTA

IN THE MATTER OF Section 39(1)(b)(i), s.41(1)(a) and s. 47 of the
REAL ESTATE ACT, R.S.A. 2000, c.R-5

AND IN THE MATTER OF a Hearing regarding the conduct of
KRISHAN LAL MALL, Real Estate Associate, registered at all material times
hereto with Twin Oakes Real Estate 1993 Inc., operating as Re/Max House of
Real Estate, Brokerage

Hearing Panel Members: Ms. Christine Zwozdesky, Chair
Mr. Lynn Martin
Ms. Rita Aggarwala

Appearances: Mr. Krishan Lal Mall, for Mr. Mall

Ms. Lily Nguyen, for the executive director of
the Real Estate Council of Alberta

Hearing Date: October 13, 2016 via teleconference

DECISION

UPON considering the evidence, materials submitted, and submissions made
at the hearing of this matter;

THE HEARING PANEL HEREBY FINDS AS FOLLOWS:

A. Introduction

On August 15, 2016, following an investigation, the executive director ("ED") of the Real Estate Council of Alberta ("RECA") issued a Notice of Hearing, alleging that Mr. Krishan Lal Mall contravened sections 2(a), 3(b) and 4(a) of the Code of Conduct in effect at the time of the alleged contraventions. These sections of the Code of Conduct deal with misrepresentation, fiduciary obligations and dual agency, respectively.

On August 16, 2016, Mr. Mall submitted a statement of Admission of Conduct Deserving Sanction in respect of the Notice of Hearing.

On August 16, 2016, the ED accepted the Admission of Conduct Deserving Sanction, which includes an Agreed Statement of Facts,

which in turn, includes a list of agreed breaches of the Code of Conduct.

On October 3, 2016, the parties submitted a Joint Submission on Sanction.

A hearing was conducted on October 13, 2016 via teleconference to determine the appropriate sanction for Mr. Mall (the "**Hearing**").

On October 26, 2016, following a request for additional submissions on sanction by the hearing panel (the "**Panel**"), the parties submitted a Supplementary Joint Submission on Sanction.

B. Issues

Section 47(2) of the *Real Estate Act* ("**REA**"), in effect at the time of the conduct at issue, states:

If a statement of admission of conduct is accepted, each admission of conduct in the statement in respect of any act or matter regarding the industry member's conduct is deemed for all purposes to be a finding of the Hearing Panel that the conduct of the industry member is conduct deserving of sanction.

Section 47(2) of *REA* currently in force is the same.

At the Hearing, Mr. Mall made a number of unsworn statements which appeared to contradict what was admitted to in the Agreed Statement of Facts. The Panel asked Mr. Mall (who was not under oath) if he was now recanting from what he had admitted to in the Agreed Statement of Facts. Mr. Mall stated that he was in agreement with the Agreed Statement of Facts, that he had input into the Agreed Statement of Facts and that he understood that the Hearing was proceeding based on the Agreed Statement of Facts.

The Panel finds that Mr. Mall agreed to the Agreed Statement of Facts and willingly executed the Admission of Conduct Deserving Sanction, and that he was fully aware and in agreement with the Hearing proceeding based on the Admission of Conduct Deserving Sanction and the Agreed Statement of Facts therein. Mr. Mall also understood that he had a right to have legal counsel represent him, but he chose not to retain a lawyer.

Mr. Mall's Admission of Conduct Deserving Sanction addresses all of the matters in the Notice of Hearing, and was accepted by the ED. Section 47(2) of *REA* accordingly applies to deem each admission of conduct in the Admission of Conduct Deserving Sanction to be a finding by this Panel of conduct deserving of sanction.

Accordingly, the only issue to be determined by this Panel is the issue of an appropriate sanction. To that end, the Panel must consider the deemed facts and circumstances, in conjunction with the Joint Submission on Sanction and Supplementary Joint Submission on Sanction submitted by the parties.

C. Conclusion on Sanction

For the reasons that follow, the Panel holds that the following sanction, which is substantially the same as that agreed to by the parties, is warranted in these circumstances:

1. Mr. Mall's real estate license shall be suspended for a period of not less than two months, which period will commence immediately upon the service of this Decision on Mr. Mall, unless the ED, in his sole discretion, agrees in writing to substitute a different date for commencement of the two-month period.
2. Mr. Mall shall pay, in full, within a reasonable timeline to be determined by the ED, the following fines to the Real Estate Council of Alberta:
 - Breach of Code of Conduct 4(a): \$8,000;
 - Breach of Code of Conduct 2(a): \$4,000;
 - Breach of Code of Conduct 3(b): \$1,500.
3. Mr. Mall shall pay, in full, within a reasonable timeline to be determined by the ED, \$2,000 to RECA for costs of the investigation and proceedings.
4. As a condition of lifting the suspension of his real estate license set out in paragraph 1 above, Mr. Mall shall complete the following education requirements from the Fundamentals of Real Estate course at his own expense and shall notify RECA in writing that he has done so:
 - Unit 2: *Real Estate Act*, Rules and Regulations
 - Unit 4: Consumer Relationships

- Unit 5: Contract Law
- Unit 6: Real Property law and Related Legislation
- Unit 12: Ethics, Professionalism and Risk Reduction.

If the education requirement above is not available, the ED may substitute a similar course at his sole discretion.

5. A copy of the Joint Submission on Sanction and Supplementary Joint Submission on Sanction will be placed on Mr. Mall's licensing file with RECA and may be considered as a factor on sanction in any future conduct proceedings.
6. RECA may publish the Joint Submission on Sanction and Supplementary Joint Submission on Sanction in a manner and form it deems to be appropriate.
7. Should Mr. Mall be unable to comply with the deadlines determined by the ED for items 2 and 3 above, he may request an extension by submitting to the ED, prior to the deadline, a request in writing stating a reason for requesting the extension and a time frame for completion. The ED shall, in his sole discretion, determine whether a time extension will be granted and will notify Mr. Mall in writing if the extension has been granted.
8. In the event that Mr. Mall fails to comply with any of the sanction/cost orders set out above, Mr. Mall's license to practice shall be immediately suspended.

D. The Facts

The Agreed Statement of Facts, as deemed by section 47(2) of *REA* to be findings of this Panel, is substantially reproduced from the Admission of Conduct Deserving Sanction and provided in Schedule "A" of these reasons.

E. The Breaches

Also included in Mr. Mall's Admission of Conduct Deserving Sanction are the following agreed breaches of the Code of Conduct in effect at the time of the conduct deserving of sanction (capitalized terms are defined in the Agreed Statement of Facts at Schedule A of these reasons):

1. In or around June 2006, Mall knowingly or recklessly made representations to the Complainants in the course of marketing properties that were untrue in a material respect contrary to section 4(a) of the Code of Conduct ["An industry member must not knowingly or recklessly make any representations in the course of advertising or marketing properties or mortgages that are untrue in any material respect"] in that he informed the Complainants:
 - a. that the Property was an excellent investment because the asking price did not reflect the subdivision potential of the Property;
 - b. that the Property could be quickly and easily subdivided into between 7 and 14 lots at little expense;
 - c. that there was significant potential for profit either from reselling the Property after doing some work towards subdivision or from subdividing the Property and selling subdivided lots; and
 - d. that the subdivision process was underway and could be taken over by the Complainants if they purchased the Property.
2. On or around June 16-17, 2006, Mall failed to fulfill his fiduciary obligation to the Complainants contrary to section 2(a) of the Code of Conduct ["An industry member must act in the clients' best interests"] in that:
 - a. He failed to include a financing condition in the T./B. Purchase Agreement;
 - b. He failed to include a term in the T./B. Purchase Agreement that it was conditional on the sellers closing the W. Purchase Agreement or otherwise acquiring legal authority to dispose of the Property;
 - c. He included a term to the effect that the Complainants' \$250,000 deposit on the Property was releasable to the Sellers immediately, before the Sellers were expected to acquire legal ownership of the Property pursuant to the W. Purchase Agreement;
 - d. He advised the Complainants to enter into the M. Mortgage when he knew that they did not have the financial capacity to carry the M. Mortgage; and
 - e. Alternatively to the above Allegations 1(a) to (d), he failed to adequately advise the Complainants of the

risks associated with doing the acts set out in Allegations 1(a) to (d);

3. On or around June 16-17, 2006, Mall acted for more than one party without providing full disclosure and obtaining a dual agency agreement in writing contrary to section 3(b) of the Code of Conduct ["An industry member must only act for one party in a transaction, unless there is full disclosure to all parties, and the dual agency is agreed to in writing"] in that:
 - a. while Mall was representing the Complainants as buyers in the T/B. Purchase Agreement, he was also representing the sellers M.W. and [("number")] Alberta Ltd. in the same purchase agreement;
 - b. he was also representing the sellers M.W. and [("number")] Alberta Ltd. as the buyers in the W. Purchase Agreement;
 - c. W. was not independent of Mall because she worked as his assistant at the real estate brokerage, was dependent on him for income, and looked to him for advice and direction with regards to the sale of the Property;
 - d. the seller [("number")] Alberta Ltd. was a corporation owned and controlled by S.M., who was Mall's former spouse and the mother of his children;
 - e. Mall was not independent of S.M. because he had a close personal relationship with her and also had ongoing business dealings with her;
 - f. Mall contracted to receive a commission of 5% of the purchase price, or \$71,250, from the sellers M.W. W and [("Number")] Alberta Ltd., and
 - g. Mall did not disclose the above information at 4(a) to (f) to the Complainants.

As explained above, these breaches are all deemed to be conduct deserving of sanction, under section 47(2) of *REA*. With respect to the alternative breach 2(e) above, the panel finds that Allegations 1(a) to 1(d) were material misrepresentations made contrary to section 2(a) of the Code of Conduct.

F. Reasons for Sanction

Section 43 of *REA* in force at the time of Mr. Mall's conduct deserving of sanction states,

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

- (a) an order cancelling or suspending any authorization issued to the industry member by the Council;
- (b) an order reprimanding the industry member;
- (c) an order imposing any conditions or restrictions on the industry member and on that industry member's carrying on of the business of an industry member that the Hearing Panel, in its discretion, determines appropriate;
- (d) an order requiring the industry member to pay to the Council a fine, not exceeding \$25 000, for each finding of conduct deserving of sanction;
- (e) any other order agreed to by the parties.

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

In determining the appropriate sanction for these breaches, the Panel has the benefit of oral submissions by the ED and Mr. Mall, as well as written joint submissions on sanction (the Joint Submission on Sanction and Supplementary Joint Submission on Sanction) by the parties.

The Joint Submission on Sanction states, and the ED submitted at the Hearing, that the Panel must give due consideration to the Joint Submission on Sanction, so as not to undermine the parties' efforts at co-operation. Reference is made to the Saskatchewan Court of Appeal decision *Rault v. The Law Society of Saskatchewan*, 2009 SKCA 81, where Hunter J.A. notes the similarities between disciplinary proceedings and criminal investigations and explains that discipline committees have a duty to consider joint submissions. At para. 19, Hunter J. A. explains,

If the parties negotiating a compromise agreement cannot expect their efforts will be respected, there is little incentive to attempt to negotiate a resolution. For this reason, joint submissions on sentence should be considered by the Discipline Committee in a principled way similar to the jurisprudence in criminal matters...

The Supreme Court of Canada has just recently clarified the process by which joint submissions should be considered in criminal matters, in *R. v. Anthony-Cook*, 2016 SCC 43, a judgment which was rendered on October 21, 2016, 8 days following the Hearing in this matter. In that case, Moldaver J. explains at para. 32 that the legal test to be applied in determining whether it is appropriate to depart from a joint submission is the public interest test. Under this test, joint submissions on sentences (or sanctions in this case) should not be departed from unless the proposed sanction "would bring the administration of justice into disrepute or is otherwise contrary to the public interest." The threshold for departure from joint submission is high, and requires the Panel to consider whether a reasonable person aware of the circumstances would lose confidence in the institution if the jointly proposed sanction were imposed.

The first Joint Submission on Sanction requested, among other things, a two-month license suspension, as well as a five-course education requirement to be completed within six months, which six-month period could be extended upon request, at the ED's discretion.

The Panel questioned whether it would be in the public interest for Mr. Mall, once he is found to be in breach of a number of fundamental provisions of the Code of Conduct, to resume practice as a real estate agent before undertaking and completing re-training related to the admitted breaches. The Joint Submission on Sanction allows this possibility since the suspension period is much shorter than the re-training period. The Panel therefore requested that the parties provide submissions with respect to the possibility of making the license suspension contingent on the completion of the education requirement. The parties replied with the Supplementary Joint Submission on Sanction, agreeing that such a condition would promote public safety and that Mr. Mall could quickly complete the courses online. They jointly modified the original jointly proposed sanction accordingly.

The Joint Submission on Sanction canvasses a number of factors the parties have taken into account in arriving at the proposed sanction, including:

- The Complainants were unsophisticated purchasers;
- The Complainants suffered actual harm;
- Mr. Mall benefited from the conduct;
- Mr. Mall's conduct puts the reputation of the industry and the level of public confidence in the industry at risk;
- Specific and general deterrence are required;
- Mr. Mall cooperated in the investigation and acknowledged his conduct was deserving of sanction;
- Mr. Mall has no disciplinary history with RECA;
- Mr. Mall's conduct was not malicious or fraudulent; and
- Mr. Mall has suffered serious health conditions since the time of the events in issue.

The Joint Submission on Sanction also considers a number of non-binding authorities to assist in arriving at an appropriate sanction.

Having considered the Joint Submission on Sanction and Supplementary Joint Submission on Sanction in the circumstances of this case, the Panel is satisfied that the jointly proposed sanctions fall within the reasonable range of sanctions for Mr. Mall's conduct, and accordingly orders the sanctions enumerated above in Section C of these reasons.

The Panel would like to thank the parties for their efforts to co-operate and to provide joint submissions to the Panel where possible, throughout this Hearing.

Certified and Dated at the City of Calgary in the Province of Alberta, this 21st day of November, 2016.

Hearing Panel of the
Real Estate Council of Alberta

Christine Zwozdesky, Hearing Panel Chair

Schedule "A" – Agreed Facts from Admission of Conduct Deserving Sanction

1. Mall was initially licensed as a real estate associate on June 30, 2004. Mall was a real estate associate registered to Twin Oaks Real Estate 1993 Inc., operating as Re/Max House of Real Estate, from June 30, 2004 until May 17, 2013, when his registration was terminated. Mall was re-licensed on October 5, 2015 with 969801 Alberta Inc., operating as Avenue Commercial.
2. In or around the spring or summer of 2006, Mall learned that a property ("Property") comprising approximately 32 acres located at [{"address"}] in Bragg Creek, AB, was for sale. At the time, the Property was 44% owned by [{"number"}] Alberta Ltd., 28% owned by [{"number"}] Alberta Ltd. and 28% owned by [{"number"}] Alberta Ltd. ("the Numbered Corporations").
3. Mall was interested in the Property's subdivision potential. Accordingly, he contacted R.P. of [{"Company Name"}], a subdivision consultant, and J.W., a property appraiser.
4. Mall met with R.P. and discussed the Property and subdivision generally. However, R.P. did not provide Mall with an opinion about the feasibility of subdividing the Property including, in particular an opinion on current zoning, the likelihood of a successful application to change zoning, and the number of subdivided lots that was likely for each type of zoning.
5. Mall viewed the Property with J.W. and discussed its potential value if subdivision was successful. J.W. provided Mall with a qualified appraisal that was premised on Mall's information that the Property could be successfully subdivided into a certain number of lots. J.W. had no independent knowledge of the Property's subdivision potential.
6. In early June 2006, Mall approached M.W., who worked as his assistant at Re/Max House of Real Estate, to see if she was interested in purchasing the Property.
7. Mall was aware that:
 - a. M.W. was an unsophisticated purchaser who had never purchased a property for subdivision or development;
 - b. M.W. did not have the financial capacity to purchase the Property, since her main source of income was the

approximately \$40,000 a year she made working as his assistant;
and

- c. M.W. considered Mall to be experienced in real estate and would rely on his advice and direction with regards to the purchase of the Property.

8. Mall advised M.W. of the following:

- a. The Property was a good investment because it had excellent subdivision potential; and
- b. It did not matter that M.W. did not have the financial capacity to purchase the Property because Mall would arrange for funds for purchase from his former spouse, S.M., who was M.W.'s friend, or from mortgage financing.

9. As a result of Mall's advice, M.W. informed Mall that she wished to purchase the Property.

10. On June 14, 2006, Mall wrote an unconditional purchase offer on behalf of the buyer "M.W. and or nominee" to the seller "[("Name")]," which was accepted. Mall intended the "nominee" in the purchase agreement to be S.M. or a corporation owned and controlled by her. The terms of the purchase agreement ("W. Purchase Agreement") were as follows:

- a. purchase price of \$1,150,000
- b. \$5,000 initial deposit on signing
- c. additional deposit of \$250,000 due June 21, 2006; and
- d. closing date of September 29, 2006.

11. M.W. and S.M. or S.M.'s corporation were Mall's clients for the purpose of representing them in the W's Purchase Agreement.

12. M.W. paid the \$5,000 initial deposit on the W. Purchase Agreement. M.W. did not provide any additional funds toward the purchase of the Property.

13. On June 14, 2006, prior to the signing of the W. Purchase Agreement, Mall had also approached R.T. and M.B. to see if they were interested in purchasing the Property. Mall knew R.T. and M.B. from his business dealings with their renovation and cabinetmaking business, and also from the community. Mall had been on friendly terms with M.B. for approximately 20 years.

14. Mall knew, or should have known, that R.T. and M.B:
 - a. were unsophisticated real estate developers who had never acquired property for subdivision or development before,
 - b. were looking for a low-risk investment,
 - c. relied on Mall for his information and advice, and
 - d. did not have the financial capacity to purchase the Property without financing.
15. In the course of marketing the Property to R.T. and M.B, Mall made the following representations about the Property, which were not true and accurate:
 - a. that the Property was an excellent investment because the asking price did not reflect the subdivision potential of the Property;
 - b. that the Property could be quickly and easily subdivided into between 7 and 14 lots at little expense;
 - c. that there was significant potential for profit either from reselling the Property after doing some work towards subdivision or from subdividing the Property and selling subdivided lots;
 - d. that the subdivision process was well underway and could be taken over by R.T. and M.B if they purchased the Property; and
 - e. that R.T. and M.B could easily obtain appropriate financing to purchase the Property and pay for the subdivision process.
16. Sometime between June 14 and 17, 2006, R.T. and M.B contacted Mall to inform him that they were interested in purchasing the Property. Mall informed the Complainants at that time that M.W. had already entered into an agreement to purchase the Property, but that she would likely agree to re-sell the Property to the Complainants for the price of \$1,425,000. Mall made the following representations about M.W. to the Complainants, which were not true and accurate:
 - a. that M.W. had begun the engineering work on the Property for subdivision;
 - b. that M.W. was in the process of subdividing the Property; and
 - c. that R.T. and M.B could take over the subdivision process initiated by M.W.
17. As a result of Mall's representations about the Property and M.W.'s progress toward subdivision, R.T. and M.B decided that they wished to make M.W. an offer to purchase the Property for \$1,425,000.
18. On June 17, 2006, Mall arranged a purchase agreement between M.W. and "nominee" as sellers ("the Sellers") of the Property and R.T. and M.B as purchasers of the Property. At R.T.'s request, his wife, Mrs. T., was

listed as the purchaser with M.B. although Mrs. T. had not dealt with Mall directly and relied on her husband for all of her information about the Property.

19. All of M.B. R.T. and Mrs. T. ("the Complainants") were Mall's clients for the purpose of the R.T. and M.B Purchase Agreement.
20. The purchase agreement dated June 17, 2006 ("R.T. and M.B Purchase Agreement") contained the following terms:
 - a. purchase price of \$1,425,000
 - b. initial deposit of \$5,000 on signing
 - c. additional deposit of \$250,000 due June 21, 2006
 - d. closing date of September 15, 2006, which was subsequently amended to September 30, 2006.
21. The Sellers agreed to pay Mall a commission of 5% of the purchase price plus GST, or \$71,250 plus GST, for brokering the sale of the Property pursuant to the R.T. and M.B. Purchase Agreement.
22. Mall did not advise the Complainants of the following facts:
 - a. that the Sellers were already his clients pursuant to the W. Purchase Agreement;
 - b. that the seller "nominee" on the R.T. and M.B Purchase Agreement was intended to be S.M. or a corporation owned and controlled by her;
 - c. that M.W. was not independent of Mall for any or all of the following reasons:
 - i. she was his assistant at Re/Max House of Real Estate and therefore dependent on Mall for her employment;
 - ii. she was an unsophisticated real estate investor who was dependent on Mall for advice and direction; and
 - iii. she was a friend of S.M.'s and relied upon S.M. to provide the necessary financing for the W. Purchase Agreement;
 - d. that S.M. was not independent of Mall for any or all of the following reasons:
 - i. that she was his former spouse and the mother of his children;
 - ii. that she and Mall remained on good terms and worked closely together as parents; and

- iii. that she and Mall had ongoing business dealings and were frequently involved in the same or related real estate transactions.
 - e. that the Sellers had agreed to pay Mall a commission of 5% of the purchase price for the Property pursuant to the R.T. and M.B Purchase Agreement.
- 23. Mall did not obtain the Complainants' signature on a Dual Agency Agreement.
- 24. Mall did not refer the Complainants to independent advice.
- 25. Mall did not include the following conditions in the R.T. and M.B Purchase Agreement when he wrote it up, nor did he discuss with R.T. or M.B. the risk of not including the following conditions:
 - a. a financing condition, since R.T. and M.B needed financing to complete the purchase of the Property; and
 - b. a condition that the Sellers must acquire ownership of the Property, since at the time that the R.T. and M.B Purchase Agreement was signed, the Sellers were not yet owners of the Property.
- 26. When R.T. asked Mall about whether there should be conditions on the R.T. and M.B. Purchase Agreement, Mall told him "don't worry," or words to that effect.
- 27. Mall included a handwritten term ("the Handwritten Term") in the R.T. and M.B. Purchase Agreement that the additional deposit of \$250,000 due on June 21, 2006, was "releasable to seller" immediately upon payment, approximately three months before the Sellers were scheduled to close the purchase of the Property pursuant to the W. Purchase Agreement.
- 28. Mall did not explain to the Complainants why he included the Handwritten Term or the risk it created for the Complainants including, in particular, the risk of being unable to recover the additional deposit if the W. Purchase Agreement did not close and the Sellers did not acquire ownership of the Property.
- 29. On June 21, 2006, the Complainants provided a deposit of \$250,000 to R.B., the lawyer for the Sellers. The Complainants obtained the \$250,000 deposit from a combination of personal funds, proceeds from the sale of R.T.'s liquor store, money provided by a friend interested in investing with them and an \$85,000 loan.

30. Pursuant to the terms of the R.T. and M.B Purchase Agreement, R.B. released the \$250,000 additional deposit to the Sellers shortly after he received it.
31. After the signing of the R.T. and M.B Purchase Agreement, the Complainants sought assistance from Mall on how to obtain financing for the remainder of the purchase price on the Property. Mall informed the Complainants that they could take over a mortgage offer from [("Name")] Mortgage Inc. initially made to the Sellers in relation to the W. Purchase Agreement.
32. As a result of Mall's advice, the Complainants sought financing for the remainder of the purchase price through [("Name")] Mortgage Inc., which administered private mortgages. The Complainants were offered a private mortgage from lender V.M., which they accepted. The terms of the M. mortgage ("M. Mortgage") were as follows:
 - a. Principal of \$1,000,000;
 - b. Interest of 13% per annum;
 - c. Monthly interest-only payments of \$10,833
 - d. Payable in full on March 29, 2007
33. The Complainants did not have the financial capacity to carry the M. Mortgage. However, when M.B. expressed his concerns to Mall prior to committing to the M. Mortgage, Mall informed him "don't worry" or words to that effect. M.B. understood that the reason he did not have to worry was because Mall would find someone to purchase the Property before the Complainants had to make mortgage payments on the M. Mortgage.
34. In or around July 2006, Mall informed the Complainants that he was bringing them an offer from K. Investments Ltd. ("K.") to purchase the Property for \$1,650,000. The Complainants agreed to the offer.
35. Mall wrote up a purchase agreement ("K. Purchase Agreement") between K. as purchaser and M.B. and R.T. as sellers of the Property. The terms of the K. Purchase Agreement signed July 27, 2006 were as follows:
 - a. Purchase price of \$1,650,000
 - b. Initial deposit of \$50,000 on signing
 - c. Additional deposit of \$200,000 payable on August 30, 2006
 - d. Closing date of December 15, 2006.
36. Pursuant to a commission agreement signed July 27, 2006, the Complainants agreed to pay Mall 4% of the purchase price plus GST.

37. K. paid the initial deposit of \$50,000 and the additional deposit of \$200,000 to R.B., who acted as the lawyer for the Complainants as sellers in the K. Purchase Agreement.
38. The W. Purchase Agreement closed as scheduled, with the purchasers ultimately named as M.W. and [{"Number"}] Alberta Ltd., an Alberta corporation owned and controlled by S.M.
39. The R.T. and M.B. Purchase Agreement also closed as scheduled, with the Sellers ultimately named as M.W. and [{"Number"}] Alberta Ltd.
40. Mall collected commission of \$5,000 on the W. Purchase Agreement and \$71,250 plus GST on the R.T. and M.B. Purchase Agreement.
41. However, prior to the closing of the K. Purchase Agreement, R.T. and M.B. were informed by Mall that K. did not intend to close the K. Purchase Agreement. M.B. then telephoned a representative of K. and was informed by the representative that the reason K. would not close was because the subdivision potential on the Property had been significantly overstated. The representative informed M.B. that the maximum subdivision potential was three lots. The telephone call lasted five minutes.
42. K. did not close the K. Purchase Agreement and forfeited its deposits of \$250,000. A portion of this money was returned to the Complainants.
43. As a result of K.'s failure to close the K. Purchase Agreement, the Complainants decided to pursue the alternative initially suggested to them by Mall, which was to subdivide the Property themselves and sell the subdivided lots. The Complainants wished to move quickly, since they did not have the financial capacity to continue to pay the mortgage payments on the M. Mortgage.
44. In early 2007, the Complainants, acting on Mall's recommendation, hired R.P. and [{"Company Name"}], to proceed with subdivision of the Property.
45. The Complainants also sought Mall's assistance in paying for some of the mortgage payments on the M. Mortgage and Mall did provide some funds toward paying the M. Mortgage. Nevertheless, in February 2007, the Complainants defaulted on the February monthly payment of the M. Mortgage. On March 29, 2007, the M. Mortgage became due in full but the Complainants did not make payment.
46. In May 2007, R.T. and M.B. received [{"Company Name"}]'s feasibility study ("Feasibility Study"). The Feasibility Study concluded that the

current zoning permitted only 3 lots, and additional lots could be obtained only on successful application to change the zoning, which was a speculative endeavor. The Feasibility Study assessed the chance of subdivision as follows:

- a. In the time frame of 1-5 years, the chance of subdivision was "very good" for 3 lots, "fair" for 4 lots, "fair to poor" for 6 lots and "poor" for 7 lots.
 - b. In the time frame of 5-9 years, the chance of subdivision was "very good" for 3 lots, "good" for 4 lots, "fair" for 6 lots and "fair to poor" for 7 lots.
 - c. In the time frame of 10-25 years, the chance of subdivision was "very good" for 3 lots, "good" for 4 lots, "fair" for 6 lots and "fair to poor" for 7 lots.
 - d. The subdivision potential for more than 7 lots was remote.
47. The Complainants did not have the financial capacity to pursue subdivision further or to continue to carry the M. Mortgage.
 48. On May 1, 2007, M. filed a Statement of Claim for the Complainants' outstanding indebtedness under the M. Mortgage and, in default of payment, an order for sale or foreclosure and possession of the Property. The Complainants did not defend the action and M. received default judgment.
 49. As part of foreclosure proceedings, M. obtained an appraisal report on the Property from E. Appraisal & Consulting Services Ltd. ("E. Report") The E. Report dated September 17, 2007, appraised the Property at \$1,050,000.
 50. On September 11, 2008, an order of foreclosure was granted against the Complainants and the Complainants' interest in the Property was extinguished. The Property was ultimately sold in foreclosure proceedings. Because the sale price was lower than the Complainants' outstanding indebtedness, they did not receive any money back.
 51. Following the Complainants' default on the Property, their credit rating was negatively impacted and they have had difficulty obtaining personal and business loans since that time.
 52. The Complainants also suffered significant financial losses which included, but were not limited to:
 - a. deposits of \$250,000 paid on the R.T. and M.B. Purchase Agreement, which were partially offset by an indeterminate

amount of at least \$50,000 that was provided to them from the deposits forfeited by K. pursuant to the K. Purchase Agreement;

- b. monthly interest-only payments made to [{"Mortgage Company"}]from October 2006 to January 2007, less an indeterminate amount contributed by Mall; and
- c. financing and legal fees and other expenses relating to the purchase and financing of the Property.