

THE REAL ESTATE COUNCIL OF ALBERTA

A Hearing Under Part 3 of the *Real Estate Act*,
R.S.A. 2000, c.R-5

AND IN THE MATTER OF a Hearing regarding the conduct of Licensee, Anna Trojanowicz, a licensed Real Estate Associate currently registered with Century 21 All Stars Realty Ltd. formerly registered with Century 21 Platinum Realty Inc. o/a Century 21 Platinum Realty, 1572162 Alberta Ltd. o/a Century 21 Platinum Realty and 921325 Alberta Limited o/a Century 21 Platinum Realty

Hearing Panel Members: [AB], Chair
[L.M]
[J.M]

Appearances: Elsie Saly, Counsel for the Registrar of the Real Estate
Council of Alberta ("RECA")

Anna Trojanowicz
Philip J. Prowse, Counsel for Anna Trojanowicz

Hearing Date: December 20, 2022, via video conference

**DECISION ON CONDUCT DESERVING OF SANCTION AND
DECISION ON SANCTION AND COSTS**

A. Introduction

The Licensee, Anna Trojanowicz ("A. Trojanowicz"), is a licensed real estate associate with Century 21 All Stars Realty Ltd.; previously registered with Century 21 Platinum Realty Inc. o/a Century 21 Platinum Realty, 1572162 Alberta Ltd. o/a Century 21 Platinum Realty and 921325 Alberta Limited o/a Century 21 Platinum Realty.

The Hearing relates to conduct that occurred in 2009. A. Trojanowicz has been a licensed real estate associate since 2004.

B. Documents submitted to the Hearing Panel

The parties submitted to the Hearing Panel the Statutory Declaration with the attached Notice of Hearing dated November 28, 2022, which was Exhibit "1".

An Admission of Conduct of Deserving of Sanction signed by A. Trojanowicz and her Counsel on August 26th, 2022, was submitted and entered as an Exhibit "2".

Real Estate Council of Alberta ("RECA") Board resolution accepting the admission, dated November 28, 2022, was entered as Exhibit "3".

The parties also submitted a Joint Submission on Sanction, dated August 29, 2022, which was entered as Exhibit "4".

The caselaw provided to the Hearing Panel was:

- *Jaswal v. Medical Board (Nfld.)*, 1996 CanLII 11630 (NL SCTD);
- *Adams v. Law Society of Alberta*, 2000 ABCA 240 (CanLII);
- Letter of Reprimand, *Real Estate Council of Alberta, Marilyn Anne Curry*, Case 010727;
- Notice of Administrative Penalty, *Real Estate Council of Alberta, Mary Lou Carbage*, Case 003956;
- Decision on Conduct, *Real Estate Council of Alberta v. Soon Thieu*,
- Admission of Conduct & Settlement, *Real Estate Council of Alberta v. Nadia Glavonjic*, Case 000052
- Conduct Decision, *Real Estate Council of Alberta v. Jameel Dasouki*, Case 003217
- Administrative Penalty, *Real Estate Council of Alberta v. Jeffrey Robert Harding*, Case 003443
- Letter of Reprimand, *Real Estate Council of Alberta v. Troy Leavitt*, Case 005786
- Letter of Reprimand, *Real Estate Council of Alberta v. Megan Mohr*, Case 005806
- Decision on Sanction and Costs, *Real Estate Council of Alberta v. John William Osborne*, Case 006660;
- Administrative Penalty, *Real Estate Council of Alberta v. Doris Theriault*, Case 004372
- *R. v. Anthony-Cook* 2016 SCC 43, 2016 Carswell 2929

C. Agreed Breaches and Agreed Facts

1. The conduct deserving of sanction agreed to by A. Trojanowicz was:

- a. A. Trojanowicz did not provide competent service, contrary to s. 41(b) of the *Real Estate Act Rules*:
- i. She involved herself in the creation of trade records by filling in parts of the forms and allowing [M.B] to add to the forms she partially filled in.

- ii. She faxed forms she knew or should have known were filled with errors and omissions to [M.C] with no explanation or instructions.
 - iii. She faxed forms which were confusing, not legally binding and not applicable to a sale between [M.B] and [M.C] without any explanation.
 - iv. She faxed an Individual Identification form to [M.C] seeking her date of birth and driver license number without justification.
- b. A. Trojanowicz failed to ensure her role was clearly understood by third parties, contrary to s. 41(e) of the *Real Estate Act Rules*:
- i. She communicated with her long-time friend advising that units were available from [M.B].
 - ii. She represented the purchase price for the units were a "great deal".
 - iii. She faxed trade forms to [M.C] for the purpose of purchasing of units in the property.
 - iv. She faxed trade forms to [M.C] which related to agency by a brokerage which were confusing and not applicable.
 - v. This conduct misled [M.C] to believe that A. Trojanowicz was acting as her agent.
 - vi. A. Trojanowicz never clearly explained to [M.C] that she was not her agent, that she was assisting [M.B] and that she was also interested in purchasing units in the property.

D. Applicable sections of the *Real Estate Act* and *Real Estate Act Rules*

A. Trojanowicz admits to conduct deserving sanction for the following breaches of the *Real Estate Act Rules*:

- a. 41(b) of the *Real Estate Act Rules*; A Licensee must;

- (b) Provide competent service
- b. 41(e) of the ***Real Estate Act Rules***; A Licensee must;
 - (e) ensure the role of the licensee is clearly understood by their clients and third parties;

E. Conduct Deserving of Sanction

As A. Trojanowicz's statement of admission of conduct was accepted by the RECA Board of Directors, pursuant to section 47(2) of the *Real Estate Act*, the conduct is deemed to be a finding of the Hearing Panel that the admitted conduct is conduct deserving of sanction. Accordingly, the Hearing Panel finds that A. Trojanowicz engaged in conduct deserving of sanction, specifically that she breached Rules 41(b) and (e) of the *Real Estate Act Rules*.

F. Joint Submission on Sanction

The Hearing Panel's finding concludes Phase 1 of the Hearing. The Hearing Panel then considered the Joint Submission on Sanction which was presented in the written and agreed upon in submission of the parties:

The Registrar and the Licensee proposed the following sanction:

Breach	Fine
Rule 41(b) and (e)	\$1500 per breach,
TOTAL	\$3000.00

Authority for Sanction

A Hearing Panel's authority to impose sanction on a licensee whose conduct has been found to be deserving of sanction is described at section 43 of the *Real Estate Act*:

43(1) If a Hearing Panel finds that the conduct of a licensee was conduct deserving of sanction, the Hearing Panel may make any one or more of the following orders:

- a. an order cancelling or suspending any authorization issued to the licensee by an Industry Council;
- b. an order reprimanding the licensee;

- c. an order imposing any conditions or restrictions on the licensee and on that licensee's carrying on of the business of a licensee that the Hearing Panel, in its discretion, determines appropriate;
- d. an order requiring the licensee to pay to the Council a fine, not exceeding \$25,000, for each finding of conduct deserving of sanction;
- 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 a licensee under subsection (1), order the licensee to pay all or part of the costs associated with the investigation and hearing determined in accordance with the bylaws.

Factors on Sanction

The Panel must consider the facts of the case in relation to the breach and the supporting case law when deciding on a sanction.

Jaswal lists factors relevant to a decision about sanction:

- the nature and gravity of the proven allegations
- the age and experience of the licensee
- the previous character of the offender and, in particular, the presence or absence of prior complaints or convictions
- the number of times the offence was proven to have occurred
- the role of the licensee in acknowledging what occurred
- whether the licensee had already suffered serious financial or other penalties as a result of the allegations having been made
- impact of the incident on the victim, if any
- mitigating circumstances
- aggravating circumstances
- the need to promote specific and general deterrence and thereby protect the public and ensure the safe and proper conduct of the profession
- the need to maintain the public's confidence in the integrity of the profession
- the degree to which the offensive conduct that was found to have occurred was clearly regarded, by consensus, as being the type of conduct that would fall outside the range of permitted conduct and
- the range of sentence in other similar cases (Precedents).

General deterrence refers to the effect a sanction will have on others in the future: will it dissuade others from similar conduct? General

deterrence is also about what the public and industry would consider a reasonable response to the conduct.

Specific deterrence refers to the effect a sanction will have on the subject of the sanction: will it dissuade them from repeating the conduct? Here the Panel can weigh factors like the subject's financial circumstances, their remorse or lack of remorse, etc. and what impact a sanction will have on them personally.

Mitigating and aggravating factors refer to evidence which make the conduct less serious (mitigating) or more serious (aggravating). While all of the above factors can be thought of as mitigating or aggravating, the last 2 items refer to factors not specifically enumerated in *Jaswal*.

Factors in the Present Matter

Below are the Registrar's and Licensee's analysis of the relevant *Jaswal* factors.

- Age and Experience of the Licensee

A. Trojanowicz has been a Licensee since 2004 and is 64 years old. She has been a Real Estate Associate since 2004 and completed Agency Fundamentals in 2007. Her experience at the time of the incident was limited.

- The Previous Character of the Licensee

A. Trojanowicz has no previous disciplinary history, this is mitigating.

- The Number of Times the Offence was Proven to have Occurred

There was a breach of each of subsection of 41(b) and (e) effecting the same individual who believed they were being assisted by this licensed professional when they were not.

- The Nature and Gravity of the Proven Allegations

The Joint Submission on Sanction highlights the significant impact representations and actions taken by a licensee can have on members of the public who are ignorant concerning representation and agency related to the real estate industry. Members of the public may rely blindly on a licensee, which is why there is a duty to clearly and completely disclose the nature of the relationship and duties of the representation.

The client in this case was not knowledgeable about the difference between agency and customer status, she should have been able to rely on her friend, A. Trojanowicz to assist in that understanding.

Further, the forms created were significantly below an acceptable standard of competence.

- The Role of the Licensee in Acknowledging What Occurred

A. Trojanowicz admitted her misconduct and is taking responsibility by entering into an agreement before the Panel and not requiring a hearing. This is mitigating.

- The Need to Maintain Public Confidence in the Industry

The public must have confidence that they can rely on the accuracy and honesty of everything real estate associates tell them.

Public confidence is engaged by these breaches. This is aggravating.

In *Adams* the Alberta Court of Appeal noted that public confidence in a profession should be of utmost importance to disciplinary bodies (at p. 2):

[6]... A professional misconduct hearing involves not only the individual and all the factors that relate to that individual, both favorably and unfavorably, but also the effect of the individual's misconduct on both the individual client and generally on the profession in question. This public dimension is of critical significance to the mandate of professional disciplinary bodies.

- Specific Deterrence

A. Trojanowicz's lack of previous record, experience as broker, admission and the low gravity of the breaches indicate there is a low need for specific deterrence. Modest fines will appropriately address this.

- General Deterrence

There is no need for general deterrence beyond the publication of this decision. It will serve as a deterrent in the industry from similar type of conduct in the future.

Precedents:

Precedents are not binding on the Hearing Panel but can help the Panel impose sanctions consistently to comparable conduct.

While the Panel is grateful for the guidance of the cases put before us, we would only require reliance on those should we take the position that what the parties have agreed to by way of sanction is not appropriate. We have no misgivings that justice is not being served by the fine agreed to and a review of the case law indicates that the agreed to penalty falls within the range of penalties previously imposed.

Sanction

Based on precedent and the other *Jaswal* factors, the Counsel for the Registrar and for the Licensee jointly submit that a fine of \$1500 per breach is appropriate in this case.

The parties agreed A. Trojanowicz should pay no costs in this matter.

The Agreement between the Registrar and Licensee

A further factor is that the parties have reached an agreement on conduct and on sanction taking into account the relevant factors.

The Supreme Court of Canada addressed the test that should be used when considering whether to depart from an agreed outcome in the case *R v. Anthony-Cook* (2016), the “public interest” test:

[32] Under the public interest test, a trial judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest. But, what does this threshold mean? Two decisions from the Newfoundland and Labrador Court of Appeal are helpful in this regard.

[33] In *Druken*, at para. 29, the court held that a joint submission will bring the administration of justice into disrepute or be contrary to the public interest if, despite the public interest considerations that support imposing it, it is so “markedly out of line with the expectations of reasonable persons aware of the circumstances of the case that they would view it as a break down in the proper functioning of the criminal justice system”. And, as stated by the same court in *R. v. O. (B.J.)*, 2010 NLCA 19 (N.L. C.A.) (CanLII), at para. 56, when assessing a joint submission, trial judges should “avoid rendering a decision that causes an informed and reasonable public to lose confidence in the institution of the courts”.

At paragraphs 49-60, the Court in *Anthony-Cook* also outlines the procedure decision makers must follow if they want to depart from a joint submission.

The Registrar and Licensee submit the proposed sanction is within an appropriate range that the Panel can accept.

The Registrar acknowledges that this matter has suffered from significant delay in being brought to closure and that is mitigating toward the Licensee. Further mitigating is the completion of the transactions in favour of the client.

G. The Hearing Panel's Decision

The Hearing Panel considered the sanction that was jointly proposed by the parties and found it appropriate given all the factors to be considered as set out in *Jaswal, supra*.

The Hearing Panel also considered *R v. Anthony-Cook, supra* and the public interest test set out in that case. The public interest test states a trial judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest. The Hearing Panel finds that it should not depart from the joint submission on sanction as the proposed sanction would not bring the administration of justice into disrepute and it is not contrary to public interest.

H. Conclusion

Pursuant to section 47(2) of the *Real Estate Act*, the Hearing Panel has determined that A. Trojanowicz engaged in conduct deserving of sanction by failing to provide competent service to [M.C] and for failing to ensure her role was clearly understood. For the reasons set out in this decision, the Hearing Panel agrees with the sanction jointly proposed by the parties and pursuant to section 43 of the *Real Estate Act*, the Hearing Panel orders the following sanction:

- I. \$3000.00 penalty for both breaches, \$1500 per breach;

This Decision is dated this 18th day of January 2023

"Signature"

[A.B], Hearing Panel Chair