

THE REAL ESTATE COUNCIL OF ALBERTA

IN THE MATTER OF a hearing under Part 3 of the *Real Estate Act*, R.S.A. 2000, c. R-5, regarding the conduct of **Kaukab Saher**, a Real Estate Associate, currently registered with Vision Realty Inc. o/a Century 21 Bravo Realty

Hearing Panel Members: [K.S], (Chair, Public Member)
[S.D], (Panel Member Licensee)
[J.L], (Panel Member Licensee)

Hearing Date: November 4, 2022

Appearing: Mitali Kaul, Counsel for the Registrar
No appearance by Kaukab Saher

Decision of the Hearing Panel

Introduction

1. On November 4, 2022, this Panel conducted a Hearing, under Part 3 of the *Real Estate Act*, RSA 2000, c. R-5 (the *Act*), into allegations of Conduct Deserving of Sanction against Kaukab Saher (Saher).
2. In accordance with section 46 of the *Act*, Saher and the Registrar entered into an Agreement on Facts and Breaches (Exhibit 5) and provided a Joint Submission on Sanction (Exhibit 6).
3. Saher elected not to attend the hearing. However, her Licensing History was entered into the record (Exhibit 4).
4. Upon review of Saher's Licensing History, the Agreement on Facts and Breaches, and the Joint Submission on Sanction, and upon hearing the submissions of counsel for the Registrar, the Hearing Panel determined that Saher engaged in conduct deserving of sanction. In particular, she breached sections 17(b) and 18(2) of the *Act* and *Real Estate Act* Rules (the *Rules*) 41(d) and 45(3).
5. Pursuant to its powers under section 43 of the *Act*, the Hearing Panel imposes the following sanctions in relation to Saher's conduct:

a. Monetary Fines:

- i. For the breach of section 17 (b) of the *Act*: \$10,000;
- ii. For the breach of section 18(2) of the *Act*: \$1,500;
- iii. For the breach of Rule 45(3) of the Rules: \$1,000; and
- iv. For the breach of Rule 41(d) of the Rules: \$4,000.

b. Costs: Saher must pay \$1,000 in costs for the investigation and proceedings.

6. The Panel's reasons are set out below.

Issues

7. Part 3 of the *Act* contemplates a two-stage process. First, the Hearing Panel must find that the Licensee engaged in conduct deserving of sanction. Second, if the Hearing Panel determines that the conduct of a Licensee is 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 the Council;
- b. An order reprimanding the Licensee;
- c. An order imposing any conditions or restrictions on the Licensee and on that Licensee's carrying on of the business of a Licensee that the Hearing panel, in its discretion, determines appropriate;
- d. An order requiring the Licensee to pay to the Council a fine, not exceeding \$25,000, for each finding of conduct deserving of sanction;
- e. An order prohibiting the Licensee from applying for a new authorization for a specified period of time or until one or more conditions are fulfilled by the Licensee;
- f. Any other order agreed to by the parties.

8. To determine the appropriate sanction under the second stage of this process, the Hearing Panel considers a number of factors (the *Jaswal* Factors), including:

- a. The nature and gravity of the proven allegations;
- b. The age and experience of the Licensee;
- c. The previous character of the Licensee and, in particular, the presence or absence of prior complaints or convictions;
- d. The age and mental condition of the Licensee;
- e. The number of times the conduct deserving of sanction was proven to have occurred;
- f. The role of the Licensee in acknowledging what occurred;

- g. Whether the Licensee had already suffered serious financial or other penalties as a result of the allegations having been made;
 - h. The impact of the incident on the victim, if any;
 - i. Mitigating circumstances;
 - j. Aggravating circumstances;
 - k. The need to promote specific and general deterrence and thereby protect the public and ensure safe and proper conduct of the profession;
 - l. The degree to which the conduct deserving of sanction proven was regarded, by consensus, as being the type of conduct that would fall outside the range of permitted conduct; and
 - m. The range of sanctions imposed in other similar cases.¹
- 9. In addition to the *Jaswal* Factors, where the Licensee and the Registrar have reached an agreement on conduct and sanction, the Hearing Panel must take this agreement into account in deciding on an appropriate sanction.
- 10. The Hearing Panel applies the "Public Interest Test" in considering the agreement on sanction proposed by the parties. Under the Public Interest Test, the Hearing Panel will only depart from the parties' agreement on sanction where the proposal would "bring the administration of justice into disrepute."²
- 11. That is, the Hearing Panel must ask whether the proposed sanction is
 - "so markedly out of line with the expectations of reasonable persons aware of the circumstance of the case that they would view it as a break down in the proper functioning of the...justice system."³
- 12. The Public Interest Test sets an extremely high bar to justify intervention by the Hearing Panel. As the Supreme Court of Canada noted:
 - "Rejection denotes a submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down. This is an undeniably high threshold — and for good reason"⁴
- 13. Given the above, the issues in this matter are:
 - a. Did Saher engage in conduct deserving of sanction?

¹ *Jaswal v Newfoundland (Medical Board)*, 1996 CanLII 11630 (NL SC).

² *R v Anthony-Cook*, 2016 SCC 37 at para 32.

³ *R v Anthony-Cook*, *supra* at para 33.

⁴ *R v Anthony-Cook*, *supra* at para 34.

- b. Considering the *Jaswal* Factors, the Hearing Panel's authority under Section 43 of the *Act*, and the Public Interest Test, is the Joint Submission on Sanction submitted by the parties acceptable in this case?
- c. If the Joint Submission on Sanction is not acceptable in this case, what is the appropriate sanction, in light of the *Jaswal* Factors?

Relevant Facts

- 14. The relevant facts in this matter were set out in an Agreement on Facts and Breaches signed by Saher and the Registrar which states:

Agreed Facts

- 1. Ms. Saher has been licensed as a real estate associate with the Real Estate Council of Alberta ("RECA") since March 26, 2010.
- 2. At the time of the conduct deserving of sanction, Ms. Saher was registered with Vision Realty Inc. o/a Century 21 Bravo Realty and continues to be registered at the same brokerage.
- 3. Mr. [sic] Saher has no prior discipline history with RECA.
- 4. On December 28, 2016, RECA received a complaint by [Ms. L], a lawyer on behalf of her client [Mr. Y] regarding Ms. Saher's conduct.
- 5. [Mr. Y] was looking to purchase a property and was referred to Ms. Saher through a friend.
- 6. In their initial meeting in May 2016, [Mr. Y] informed Ms. Saher that he was a cab driver and wasn't sure if he would be approved for a mortgage as his income fluctuates. Ms. Saher informed [Mr. Y] that she knew a mortgage associate who could help him, but he would have to pay a fee to this individual.
- 7. Ms. Saher provided [Mr. Y] with the name of [Mr. A], a mortgage broker in Vancouver, British Columbia. Ms. Saher informed [Mr. Y] that [Mr. A] would require payment of \$3000.00 to assist with the mortgage. [Mr. Y] negotiated this payment down to \$2000.00.
- 8. [Mr. A] and Ms. Saher knew each other through a friend and had worked on one deal before. There was no fee structure arrangement between the two.
- 9. [Mr. Y] did not know the process of buying a house and obtaining a mortgage in Canada and he informed Ms. Saher of this information.
- 10. On May 14, 2016, [Mr. Y] entered into an Exclusive Buyer Representation Agreement with Century 21 Bravo Realty with Ms. Saher being the brokerage representative. The agreement began on May 14, 2016 and ended on November 30, 2016. This agreement established a client relationship between [Mr. Y] and Ms. Saher.

11. On May 14, 2016, [Mr. Y] signed a Consumer Relationships Guide whereby Ms. Saher owed fiduciary responsibilities to her client, [Mr. Y].
12. Ms. Saher showed numerous properties to [Mr. Y]. [Mr. Y] told Ms. Saher right from the start that the 5% funds for the down payment would come from his tax-free savings account and the remainder from his line of credit.
13. On September 15, 2016, Ms. Saher showed [Mr. Y]... (the "Property").
14. On September 17, 2016, [Mr. Y] put an offer of \$370,000.00 on the Property. He was informed by Ms. Saher that the seller would not take anything less than \$378,000.00 and that the seller had rejected his offer. [Mr. Y] did not want to pay more than \$375,000.00, however, Ms. Saher encouraged [Mr. Y] to buy the house at \$378,000.00 informing him that there wouldn't be much difference in the mortgage payments between \$375,000.00 and \$378,000.00. [Mr. Y] eventually made an offer of \$378,000.00 on the Property.
15. On September 19, 2016, [Mr. Y's] offer of \$378,000.00 on the Property was accepted.
16. Based on the purchase contract, the seller of the Property was [MG] who was represented by [Mr. W] as the real estate associate from the brokerage of Real Estate Professional Inc.
17. Based on the purchase contract, [Mr. Y] had to pay \$5000.00 as the initial deposit 48 hours after the offer was accepted by the seller. He further had to pay an additional \$5000.00 deposit upon removal of conditions.
18. The purchase contract stipulated that [Mr. Y] had to secure new financing before September 26, 2016, and that the property inspection conditions had to be fulfilled before September 26, 2016. The possession date of the property [sic] was November 28, 2016.
19. On September 19, 2016, [Mr. A] advised [Mr. Y] that because he was using funds from his line of credit towards the down payment, [Mr. A] would say that the money was a gift and use a gift letter to get [Mr. Y] qualified for a mortgage. [Mr. A] asked [Mr. Y] as to who he could use as an individual to say the gift money was from. [Mr. Y] informed him that his friend [Mr. D] could be that individual.
20. On September 20, 2016, [Mr. Y] wrote a bank draft to Real Estate Professionals Inc. for the initial deposit of \$5000.00.
21. On September 22, 2016, Ms. Saher advised [Mr. Y] that she had been informed by [Mr. A] that he had been approved for a mortgage by First National, and that he needed to provide her his documents, which she would forward to [Mr. A]. [Mr. Y] was not provided any documentation of this initial approval.
22. Ms. Saher collected [Mr. Y's] financial documentation such as tax assessment and tax returns and sent it to [Mr. A]. Ms. Saher had no documentation authorizing her to receive the confidential documentation from [Mr. Y].

23. [Mr. A], however was not the individual doing the mortgage approval. It was in fact [Mr. S] a mortgage associate at the Mortgage Centre – Axis Mortgage in British Columbia who was dealing with the mortgage process.
24. [Mr. Y] did not know who [Mr. S] was, and never had any communication with him during the entire transaction.
25. At the time that Ms. Saher referred [Mr. Y] to [Mr. A], [Mr. A] was on long term disability and not authorized to do mortgages in British Columbia. [Mr. A] used to be a mortgage specialist at Scotiabank.
26. On September 22, 2016, [Mr. S] send the conditional mortgage commitment from First National to [Mr. A].
27. On September 23, 2016, [Mr. Y] asked [Mr. A] how much his mortgage was going to be. [Mr. A] informed him that Ms. Saher would bring the mortgage documents for his review and for his signature.
28. On September 23, 2016, [Mr. Y] asked Ms. Saher how much his mortgage payments would be, and she informed him that she would explain that to him when they met up.
29. [Mr. Y] believed he could ask either [Mr. A] or Ms. Saher about the mortgage as they both knew the same information.
30. On September 23, 2016, [Mr. S] asked [Mr. A] to have [Mr. Y] sign a consent form.
31. On September 23, 2016, First National provides a mortgage commitment with numerous conditions including confirmation of satisfactory gift letter from immediate family member only, confirmation of down payment and income.
32. Ms. Saher knew that [Mr. S] was doing the mortgage but never asked [Mr. A] why that was the case. Further, Ms. Saher did not inform [Mr. Y] of this fact either.
33. Mr. S communicated with Ms. Saher on two occasions, once at the beginning of the transaction to make sure she knew [Mr. Y], and once at the end when the mortgage transaction was declined.
34. [Mr. S] believed that [Mr. A] was going to explain the mortgage commitment to [Mr. Y].
35. [Mr. A] sent the mortgage commitment to Ms. Saher who told [Mr. Y] to sign the mortgage commitment. Ms. Saher did not go through the mortgage commitment with [Mr. Y] and did not know if [Mr. A] explained it to [Mr. Y] prior to him signing. At no point, did anyone explain the mortgage commitment to [Mr. Y].
36. Ms. Saher had [Mr. Y] sign the mortgage commitment and completed the gift letter as well. Ms. Saher was informed by [Mr. A] what to write on the gift letter and got [Mr. Y] to sign it.
37. Ms. Saher provided the completed gift letter to [Mr. Y] to get him to sign it by the gifter [sic], [Mr. D].

38. [Mr. Y] asked [Mr. D] if [Mr. Y] could transfer money to [Mr. D] and [Mr. D] would transfer the money back to him. [Mr. D] agreed, and [Mr. Y] transferred him \$10,000.00 which was transferred back by him.
39. [Mr. D] never signed the gift letter nor did he ever meet Ms. Saher. It was not his signature on the gift letter and the spelling of his name was incorrect.
40. On September 24, 2016, Ms. Saher asks [Mr. Y] for the \$2000.00 payment for [Mr. A's] fee and tells [Mr. Y] to pay this or she will look bad.
41. Ms. Saher did not ask [Mr. A] as to why he was asking for a fee as he should have been paid by the lender.
42. On September 25, 2016, Ms. Saher asked [Mr. Y] to send her [Mr. D's] address and phone number as she needed it for the gift letter and had to submit it to [Mr. A].
43. On September 25, 2016, [Mr. A] asks [Mr. Y] to give Ms. Saher the \$2000.00 fee owed to him.
44. On September 26, 2016, [Mr. Y] informs [Mr. A] that he has given Ms. Saher the \$2000.00 as he requested.
45. Ms. Saher did not have an agreement with [Mr. A] so she could accept money on his behalf. Ms. Saher also did not have an agreement with [Mr. Y] to accept the money.
46. On September 26, 2016, [Mr. Y] signed the notice to waive the financing and home inspection conditions on the instructions of Ms. Saher. Ms. Saher did not explain the risk of signing the waiver to [Mr. Y], and he had no idea what he was signing. Ms. Saher informed [Mr. Y] that if he did not sign the waiver, he would lose the house.
47. [Mr. A] directed Ms. Saher to pay \$1500.00 to him and give \$500.00 cash to an individual in Tim Hortons in Westwinds. Ms. Saher did not ask any questions about this transaction and followed through with the instructions.
48. On October 14, 2016, [Mr. A] informed Ms. Saher that First National had denied [Mr. Y's] mortgage due to inconsistencies in the gift letter and [Mr. Y's] credit bureau. This information was relayed to [Mr. Y] by Ms. Saher. [Mr. Y] was further informed that his mortgage could be approved on 15% down payment but [Mr. Y] refused.
49. [Mr. Y] asked Ms. Saher for his money back when his mortgage was denied. However, Ms. Saher said she couldn't give him the money back. [Mr. Y] told her he was going to the police, and she told him he would get arrested if he went to the police.
50. On November 3, 2016, [Mr. Y] requests Ms. Saher to give back his tax assessment and T1 General and [Mr. Y] and his friend met Ms. Saher to get his financial documents back.
51. On November 7, 2016, [Mr. Y] contacted Kahne Law Office to deal with the property transaction not closing and getting his deposit back.
52. On November 28, 2016, the closing date for the property [sic], [Mr. Y] did not have mortgage financing. As the funding was never received for this transaction, the deal collapsed and [Mr. Y] lost his deposit.

53. [Ms. L], legal counsel for [Mr. Y] assisted him with having a portion of the deposit returned back to him.

Agreed Breaches

1. It is agreed that the above conduct is deserving of sanction for the following breaches:
 - a. Ms. Saher, while carrying on business as a licensee dealt as a mortgage broker without having the appropriate authorization for that purpose issued by the Council contrary to Section 17(b) of the *Real Estate Act*:
 - i. During the transaction, Ms. Saher obtained financial documentation including [Mr. Y's] tax assessments and T1 General to provide to [Mr. A].
 - ii. Ms. Saher did not have any written agreement with [Mr. Y] explaining as to why she needed these financial documents in her position as a real estate associate.
 - iii. [Mr. Y] was first informed by Ms. Saher that his mortgage had been preapproved for the property transaction.
 - iv. [Mr. A] emailed Ms. Saher the First National mortgage commitment documentation.
 - v. Ms. Saher informed [Mr. Y] that she would explain to him his monthly mortgage amount.
 - vi. Ms. Saher further advised [Mr. Y] to sign the commitment letter from First National without any explanation of the document.
 - vii. Ms. Saher further completed the gift letter on [Mr. A's] instructions that was required as part of the mortgage approval.
 - viii. [Mr. Y] was first informed by Ms. Saher that his mortgage was no longer approved.
 - ix. Ms. Saher was involved in the whole mortgage transaction from beginning to end.
 - b. Ms. Saher received money while carrying on business as a licensee without having entered into a service agreement with the person who provided the money or on whose behalf the money was to be held contrary to Section 18(2) of the *Real Estate Act*:
 - i. During their initial meeting, Ms. Saher informed [Mr. Y] that she knew a mortgage broker who could assist him with obtaining mortgage approval but [Mr. Y] would have to pay him a fee.
 - ii. Ms. Saher provided [Mr. Y] with the name of [Mr. A] who was a mortgage broker in Vancouver, British Columbia.

- iii. Ms. Saher informed [Mr. Y] that [Mr. A] would require payment of \$3000.00 to assist with the mortgage. [Mr. Y] negotiated this payment down to \$2000.00.
 - iv. On September 24, 2016, Ms. Saher asks [Mr. Y] for the \$2000.00 payment for [Mr. A's] fee.
 - v. On September 25, 2016, [Mr. Y] informed [Mr. A] that he had given Ms. Saher the \$2000.00 as he requested.
 - vi. [Mr. A] directed Ms. Saher to pay \$1500.00 to him and give \$500.00 cash to an individual in Tim Hortons in Westwinds.
 - vii. There was never any service agreement signed between [Mr. Y] and Mr. [sic] Saher or between Ms. Saher and [Mr. A] regarding this payment.
- c. Ms. Saher failed to take reasonable steps to ensure that the licensee who she referred to her client was in fact authorized to carry out the activities for which the referral was made contrary to Rule 45(3) of the *Real Estate Act Rules*.
 - i. During their initial meeting, Ms. Saher informed [Mr. Y] that she knew a mortgage broker who could assist him with obtaining mortgage approval but [Mr. Y] would have to pay him a fee.
 - ii. Ms. Saher provided [Mr. Y] with the name of [Mr. A] who was a mortgage broker in Vancouver, British Columbia.
 - iii. [Mr. A] did not have a license issued by the Real Estate Council of Alberta to practice as a mortgage broker in the Province of Alberta.
 - iv. Ms. Saher did not take any steps to ensure that [Mr. A] was authorized to deal with mortgages in Alberta.
 - v. Further, Ms. Saher did not take any steps to ensure that [Mr. A] was still employed at Scotiabank in British Columbia as a mortgage broker.
 - vi. [Mr. A] was on long term disability at the time and was not authorized to process mortgages even in British Columbia.
- d. Ms. Saher failed to fulfil her fiduciary obligations to her client contrary to Rule 41(d) of the *Real Estate Act Rules*:
 - i. On May 14, 2016, [Mr. Y] entered into an Exclusive Buyer Representation Agreement with Century 21 Bravo Realty where Ms. Saher was the designated agent acting on behalf of the brokerage.
 - ii. The Exclusive Buyer Representation Agreement began on May 14, 2016 and ended on November 30, 2016.
 - iii. This established a client relationship between Ms. Saher and [Mr. Y].

- iv. On May 14, 2016, Ms. Saher also signed a Consumer Relationships Guide with [Mr. Y] which stated the responsibilities she owed to her client.
- v. Ms. Saher showed multiple properties to [Mr. Y] who then decided to put an offer on [the Property].
- vi. Ms. Saher referred a mortgage associate by the name of [Mr. A] to [Mr. Y] who was not authorized to deal in mortgages in Alberta.
- vii. Ms. Saher informed [Mr. Y] that he would have to pay [Mr. A] a fee so that he could assist him in obtaining a mortgage approval.
- viii. Ms. Saher failed to inquire from [Mr. A] as to why he was charging a fee, and instead requested that her client [Mr. Y] pay the fee.
- ix. Ms. Saher failed to inform [Mr. Y] that [Mr. A] was not doing the mortgage approval, but [Mr. S] was instead.
- x. On September 26, 2016, [Mr. Y] waived the financing and home inspection condition.
- xi. Ms. Saher failed to explain to [Mr. Y] about the risks of signing the waiver regarding financing and home inspection.
- xii. On October 14, 2016, Ms. Saher informed [Mr. Y] about the mortgage being denied by First National and how this could impact him losing his deposit.
- xiii. [Mr. Y] informed Ms. Saher that he wanted his documents back and his deposit. Ms. Saher informed him that could not happen.
- xiv. [Mr. Y] informed Ms. Saher that he would go to the Police to complain if he didn't receive his money back.
- xv. On October 15, 2016, Ms. Saher threatened her own client, [Mr. Y] of being arrested if he went to the Police to complain.

Analysis

Issue #1 – Did Saher engage in conduct deserving of sanction?

15.

The Registrar alleges that Saher engaged in conduct deserving of sanction in that she violated section 17(b) and 18(2) of the Act as well as Rule 45(3) and 41(d) of the Rules. The Hearing Panel agrees that Saher engaged in conduct deserving of sanction.

Section 17(b) of the Act

16. Section 17(b) provides that “no person shall...deal as a mortgage broker...unless that person holds the appropriate license for that purpose issued by the Industry Council relating to that industry.”
17. Saher admits, and her Licensing History confirms, that she did not have a license to deal as a mortgage broker.
18. Notwithstanding the lack of license, Saher was involved in the mortgage transaction from beginning to end. She was the person who obtained Mr. Y’s financial information and shared it with the prospective lender. She was the person who obtained the mortgage commitment letter, had Mr. Y sign it, and submitted it to the prospective lender. She also prepared the gift letter.
19. Saher was also the person who communicated directly with Mr. Y about the mortgage. She advised Mr. Y that he had received pre-approval. She told Mr. Y that she would explain the monthly mortgage payments to him.
20. Based on the evidence provided, the Hearing Panel agrees that Saher was acting as a mortgage broker and that she did not have a license to do so.

Section 18(2) of the Act

21. Section 18(2) of the Act prohibits licensees from receiving money in the course of carrying on business unless, before receiving the money, the licensee enters into a service agreement with the person providing the money. The service agreement must expressly acknowledge the trust arrangement between the payor and the licensee and set out the terms on which the money will be received, held, and disbursed.
22. Saher admits that she received \$2,000 from Mr. Y to pay to Mr. A as Mr. A’s fee for assisting Mr. Y in obtaining a mortgage. She further admits that she did not have a service agreement with Mr. Y. There was no agreement expressly confirming that she held the \$2,000 received from Mr. Y in trust and there was no agreement setting out the terms on which Saher would hold or disburse the funds to Mr. Y.
23. Based on the evidence provided, the Hearing Panel agrees that Saher received funds from Mr. Y without first entering into an adequate service agreement in relation to those funds.

Rule 45(3) of the Real Estate Act Rules

24. Under Rule 45(3) of the Rules, licensees who refer other licensees must take reasonable steps to ensure that the person they are referring is, in fact, authorized to carry out the activity for which the referral was made.
25. Saher admits that she referred Mr. Y to Mr. A. Although she represented Mr. A to Mr. Y as a mortgage broker, she made no effort to confirm that Mr. A was licensed as a mortgage broker in Alberta or in British Columbia.
26. Notably, Saher made no inquiries about Mr. A's status in circumstances that begged an explanation. Specifically, Mr. A charged Mr. Y a fee, which is unusual as, if he were acting as a mortgage broker, Mr. A ought to have been paid by the lender. Additionally, Saher was aware that Mr. A was not the person completing the mortgage approval process. Rather, Mr. S completed this task.
27. Based on the evidence provided, the Hearing Panel agrees that Saher referred Mr. A to Mr. Y as a mortgage broker and that she failed to take reasonable steps to ensure that Mr. A was authorized to act as a mortgage broker.

Rule 41(d) of the Real Estate Act Rules

28. Under Rule 41(d) of the Rules, licensees must fulfill their fiduciary obligations to their clients.
29. Saher admits that, pursuant to the Exclusive Buyer Representation Agreement signed by Mr. Y on May 14, 2016, she had fiduciary obligations to Mr. Y as her client.
30. Fiduciaries must always put the interests of their client ahead of their own. The evidence demonstrates that she failed to fulfill her obligations on multiple occasions by putting her own interests and wishes ahead of Mr. Y's.
31. First, as noted above, she referred Mr. A to Mr. Y as a mortgage broker without taking any reasonable steps to ensure that Mr. A was authorized to act as a mortgage broker. This is especially problematic from a fiduciary obligation perspective because Saher was aware that aspects of the mortgage broker relationship between Mr. Y and Mr. A were unusual.
32. Specifically, Mr. A was not the one personally performing the mortgage approval and Mr. A demanded that Mr. Y pay him a \$3,000 fee.
33. Saher did not tell Mr. Y that Mr. A was not the person performing the mortgage approval. Moreover, notwithstanding the fact that the mortgage broker would normally have been paid by the lender, Saher did not make any inquiries regarding the basis for Mr. A's fee.

34. Not only did Saher not tell Mr. Y that Mr. A's demand for a fee was unusual, she went so far as to pressure Mr. Y to pay it, telling him that if he did not pay "she will look bad". She clearly put her interests ahead of Mr. Y's and did not discharge her fiduciary obligation with respect to her referral to Mr. A.
35. Second, Saher advised Mr. Y to waive his conditions with respect to financing and home inspection without explaining the risks of doing either to him. In doing so, she clearly did not have his best interest in mind and her failure to provide him with an appropriate warning regarding the risks resulted in a substantial loss to Mr. Y.
36. Third, when Mr. Y became frustrated that Saher could not get his deposit back, and threatened to go to the police, Saher threatened her own client that he would be arrested if he went to the police. By this point it ought to have been apparent to Saher that she had misconducted herself in respect of the transaction involving Mr. Y. Rather than try to assist him to address some of the harm she had caused or even acknowledge her own failings, Saher threatened Mr. Y in an apparent effort to keep him from reporting what had happened.
37. This was a gross breach of Saher's fiduciary duty to her client. Mr. Y was new to the process of buying a home in Canada and clearly unaware of his rights. Saher attempted to take advantage of this lack of knowledge to prevent her own misconduct from coming to light.
38. Based on the evidence provided, the Hearing Panel agrees that Saher failed to fulfill her fiduciary obligations to Mr. Y on multiple occasions.

Issue #2 – Considering the Jaswal Factors, and the Hearing Panel's authority under Section 43 of the Act, and the Public Interest Test, is the Joint Submission on Sanction submitted by the parties acceptable in this case?

The Hearing Panel has reviewed the Joint Submission on Sanction (Exhibit 6) as well as the precedents relied upon by the parties. We acknowledge that the monetary penalties and costs award proposed were similar to the precedents included.

39. However, the Hearing Panel was troubled by the fact that, of all the potential sanctions outlined in section 43 of the Act, monetary penalties and a costs award were the only ones proposed in the Joint Submission on Sanction. Notably, the parties did not include a requirement (under section 43(1)(c)) that Saher complete supplemental training or a re-fresher course with respect to her obligations under the Act and the Rules, or any other conditions on her continuing practice.

40. Counsel for the Registrar indicated that a training requirement had been considered but was rejected due to a lack of information regarding the nature of available training programs following the divestiture of education and training from RECA's responsibility.
41. The Hearing Panel was not persuaded by this explanation. Notwithstanding RECA's divestiture of education and training, counsel for the Registrar indicated that other parties do provide education and training relevant to licensees. It is unclear why information about the programs offered by these third parties could not be obtained. Moreover, under section 43 of the Act, it would have been an option for this Panel to direct that Sahar attend a course that covers, for example, "fiduciary duties", without having to specify the course provider or identify a specific course offering.
42. The lack of an educational component or other conditions on Saher's practice as part of the sanction is a concern for the Hearing Panel because a significant *Jaswal* Factor is the need to promote specific and general deterrence. Sanctions that deter licensees from engaging in similar misconduct in the future protect the public and ensure safe and proper conduct of the profession. If the practice becomes that agreements on sanction focus on monetary penalties only, such sanctions risk becoming a mere license fee for misconduct, which dramatically undermines the objective of general deterrence.
43. With respect to specific deterrence, that is, the objective of reducing the likelihood that Saher will engage in similar misconduct in the future, we were troubled by some of the evidence. Specifically, Saher chose not to attend the hearing, which was held virtually and lasted only an hour or so.
44. While she is not required to do so, her failure, without explanation, to even take the time to attend the brief, online hearing of this matter, undermines the Registrar's assertion that Saher now appreciates the seriousness of her misconduct. Neither the Agreement on Facts and Breaches nor the Joint Submission on Sanction contained an explicit statement from Saher to the effect that she now understands her conduct was unacceptable nor a commitment to change. Her failure to attend deprived the Panel of the opportunity to ask her questions, the answers to which may have allayed this concern.
45. While the Registrar's counsel asserted that entering into the Agreement on Facts and Breaches had this effect, we have our doubts. There are many selfish reasons why a licensee might enter a "plea bargain". The Hearing Panel has less confidence in Saher's commitment to conduct herself differently (and in accordance with her obligations under the Act and the Rules) going forward.

46. With respect to general deterrence, that is, the objective of reducing the likelihood that other licensees will engage in similar misconduct in the future, the Hearing Panel also has concerns. We note that another *Jaswal* Factor is the degree to which Saher's actions were the type of conduct that would fall outside the range of permitted conduct for a licensee.
47. Saher's conduct deserving of sanction had significant negative consequences for her client, Mr. Y., and bears repeating:
- a. Saher referred Mr. Y, an inexperienced, first-time buyer in Canada, to Mr. A, without doing any diligence to determine whether Mr. A was authorized to act as a mortgage broker, and in circumstances that ought to have raised significant red flags and Mr. A's authority to act as a mortgage broker.
 - b. Saher held funds and important financial documents belonging to Mr. Y without any service agreement in place.
 - c. Saher failed to warn Mr. Y of the risks associated with waiving the financing conditions, again, in circumstances where those risks ought to have been front of mind.
 - d. Finally, when the predictable and unfortunate circumstances arose – namely Mr. Y being denied a mortgage and being unable to close the sale, Saher did not acknowledge her wrongdoing and took no steps to assist Mr. Y in mitigating the damage her conduct had caused. Rather, when Mr. Y threatened to shed light on her misconduct by going to the police, Saher threatened her own client in an effort to silence him.
48. These actions are shocking and fall well outside the range of permitted conduct in the circumstances. The Hearing Panel is concerned that monetary penalties and a costs award, without more, could be seen as merely a license to engage in similar misconduct in the future.
49. Had the matter not come to the Hearing Panel by agreement, the Hearing Panel may have imposed a more significant sanction on Saher, including directing her to undertake re-training with respect to her fiduciary obligations under the Act and the Rules.
50. That said, we are also mindful of the Supreme Court of Canada's direction that a joint submission on sanction should only be interfered with in the rarest of circumstances, where the failure to do so would bring the administration of justice into disrepute.
51. Joint submissions on sanction play an important role in the justice system, saving the parties, victims, and their witnesses the time, expense, stress, and

uncertainty associated with a hearing. The time and cost savings also benefit the administration of justice overall.

52. The court or tribunal's respect for joint submissions or agreements on sanction, and willingness to accept them unaltered, is essential to reaping the benefits of such agreement. As the Court noted in *R v Anthony-Cook*:

...the most important factor in the "ability to conclude resolution agreements, thereby deriving the benefits that such agreements bring, is that of certainty". Generally speaking, accused persons will not give up their right to a trial on the merits, and all the procedural safeguards it entails, unless they have "some assurance that [trial judges] will in most instances honour agreements entered into by the Crown"

The Crown also relies on the certainty of joint submissions....

From the Crown's perspective, the certain or near certain acceptance of joint submissions on sentence offers several potential benefits. First, the guarantee of a conviction that comes with a guilty plea makes resolution desirable.... The Crown's case may suffer from flaws, such as an unwilling witness, a witness of dubious worth, or evidence that is potentially inadmissible — problems that can lead to an acquittal. By agreeing to a joint submission in exchange for a guilty plea, the Crown avoids this risk....

In addition to the many benefits that joint submissions offer to participants...they play a vital role in contributing to the administration of justice at large. The prospect of a joint submission that carries with it a high degree of certainty encourages accused persons to enter a plea of guilty. And guilty pleas save the justice system precious time, resources, and expenses, which can be channeled into other matters. This is no small benefit. To the extent that they avoid trials, joint submissions on sentence permit our justice system to function more efficiently...⁵

53. In this context, we are mindful of the Registrar's advice that, in the absence of the Agreement of Facts and Breaches and the Joint Submission, a fully contested hearing would have been required. Counsel for the Registrar indicated that not all the necessary witnesses would have been available to cooperate in the contested hearing had one been required. The absence, or lack of cooperation, of key witnesses could have caused Saheer's conduct, which was obviously deserving of sanction, to go unacknowledged and unpunished.

⁵ *R v Anthony-Cook*, *supra* at paras 37-40.

54. Interfering with a joint submission undermines the certainty upon which the Registrar relies in negotiating agreements on breaches and sanctions. We are loath to jeopardize future settlements in this manner.
55. Having considered the evidence presented and the Registrar's submissions, and considering the *Jaswal* Factors, the Hearing Panel is satisfied that the penalties proposed in the Joint Submission on Sanction are acceptable in this case. The Joint Submission on Sanction is not "so unhinged from the circumstances of the offence and the offender" that its acceptance would bring the administration of justice into disrepute.

Conclusion

56. The Hearing Panel finds that Saher engaged in conduct deserving of sanction. In particular, Saher violated sections 17(b) and 18(2) of the Act and Rules 45(3) and 41(d) of the Rules.
57. The Joint Submission on Sanction is accepted.
58. Pursuant to its powers under section 43 of the Act, the Hearing Panel imposes the following sanctions in relation to Saher's conduct:
- a. Monetary Fines:
 - i. For the breach of section 17 (b) of the Act: \$10,000;
 - ii. For the breach of section 18(2) of the Act: \$ 1,500;
 - iii. For the breach of Rule 45(3) of the Rules: \$ 1,000; and
 - iv. For the breach of Rule 41(d) of the Rules: \$ 4,000.
 - b. Costs: Saher must pay \$1,000 in costs for the investigation and proceedings.
59. We thank Counsel for the Registrar for her thorough and helpful submissions.

This decision was signed in the City of Edmonton and in the Province of Alberta on the 30th day of November 2022.

[K.S], Hearing Chair