

THE REAL ESTATE COUNCIL OF ALBERTA

IN THE MATTER OF subsections 39(1)(b) and 41 of the *Real Estate Act*,
S.A.1995, c. R-4.5, as amended

AND IN THE MATTER OF a Hearing concerning the conduct of Alison Douglas, Broker, registered at all
material times hereto with 672630 Alberta Ltd. o/a Rundle Property Management

Hearing Panel members: Jack Peat, **Chair**
Ken Green
Richard Parker

Appearing: Mr. Todd Lee, legal counsel on behalf of the Executive Director
Ms. Alison Douglas did not appear

Witnesses: A.H.
J.T.
E.L.
T.R.
B.L.
M.S.
E.M.
J.F.
D.P.
M.M.

**DECISION OF A HEARING PANEL OF THE REAL ESTATE COUNCIL OF ALBERTA ON
CONDUCT**

I) INTRODUCTION

The Hearing Panel held a hearing into the conduct of Alison Douglas, while registered at all material times hereto with 672630 Alberta Ltd. o/a Rundle Property Management. The Notice of Hearing was addressed to both Douglas and 672630 Alberta Ltd. o/a Rundle Property Management (hereinafter "Rundle"), and contains separate allegations against both of them.

The Hearing took place on November 30, 2006. In attendance at the hearing was Todd Lee, legal counsel on behalf of the Executive Director of the Real Estate Council of Alberta. Neither Alison Douglas, nor Rundle, nor their representatives appeared, and the Hearing proceeded in their absence.

At the conclusion of the Hearing, the Panel orally delivered its decision on conduct, concluding that Ms. Douglas and Rundle are guilty of conduct deserving of sanction. The Panel indicated that reasons for

the decision would follow. The Panel then permitted Mr. Lee to make submissions on Sanction and reserved its decision in this regard.

Below we have set out the reasons for our decision on conduct deserving of sanction. Our decision on sanction is being issued separately.

II) PRELIMINARY ISSUES

At the commencement of the Hearing, Mr. Lee made submissions regarding the absence of Douglas' and Rundle. It was submitted that every effort was made to advise Douglas and Rundle of the Hearing the date. Mr. Lee submitted six affidavits from process servers indicating their service or attempt at service of various documents on Douglas and Rundle with respect to this matter. Mr. Lee submitted that as a result of the exhaustive measures taken to advise Douglas and Rundle of the proceedings, the Hearing could proceed in their absence, as provided for in the Notice of Hearing, which had been served on Douglas and Rundle on July 4, 2006.

Having reviewed the evidence and heard Mr. Lee's submissions, the Panel agreed to proceed with the Hearing in Douglas' and Rundle's absence.

Mr. Lee made further submissions regarding the allegations, as set out in the Notice of Hearing. He submitted that the complainants with respect to the Counts 11 through 17 titled Vistas, did not wish to give evidence at the Hearing and thus no evidence would be called with respect to these allegations.

III) ALLEGATIONS

The following allegations are set out in the Notice of Hearing:

The Big House

1. At all relevant times, Douglas and Rundle were industry members for the purposes of the Real Estate Act, R.S.A. 2000, c. R-5 and amendments thereto. Douglas was at all relevant times licensed as Rundle's broker. On or before July 1, 2001, Rundle entered into an agreement (the "Agreement") with the Owners: Condominium Plan #0112206 (the "Big House"). Further to the terms of the Agreement, Rundle collected and administered trust money on the Big House's behalf, which consisted of contributions for the control, management or administration of real estate. The Agreement provided that Rundle "agreed to perform the following services ... :"

- "(e) Maintain records of all receipts and expenditures relating to the Properties and submit the following reports to the Corporation:
 - (i) summary of revenue and expenses, monthly
 - (ii) summary of accounts receivable, monthly
 - (iii) summary of cash and reserves in the hands of the Manager, monthly
 - (iv) balance sheet accruals, as requested, with appropriate supporting documents each month;"

Rundle used software called Caseware to manage monies received and disbursed on behalf of the Big House. Rundle created a web site on which it posted monthly accounting records that were prepared using the Caseware software. Big House was able to access these accounting records from Rundle's web site. However, the accounting records provided to the Big House by Rundle did not meet the requirements of s. 2(e) of the Agreement, nor did they otherwise constitute a statement of receipts and disbursements that recorded: (i) the balance carried forward from the statement of the previous month; (ii) money and the amount received as rent for the use of real estate, for the control, management or administration of real estate and for any other trade in real estate; (iii) the amount of each disbursement and to whom it was made; and (iv) the balance at the end of the month (a "Statement of Receipts and Disbursements"). Rather, the accounting records prepared by Rundle consisted of a running total of amounts received during the course of any given year (i.e. -from January 1 to December 31). The foregoing is conduct deserving of sanction, the particulars of which include, but are not necessarily limited to:

- a) Rundle failed to provide a proper Statement of Receipts and Disbursements, and any other records as agreed to by Rundle and the Big House, contrary to s. 50(1) of the Rules;
- b) Douglas, as Rundle's broker, failed to ensure the business of Rundle was carried out competently and in accordance with the Act, the Bylaws, and these Rules, contrary to s. 21(1)(e) of the Rules; and
- c) Furthermore, or in the alternative, Douglas failed to ensure the required trust accounts and trust account records were maintained in accordance with the Act, the Bylaws, these Rules and the law as it relates to trustees, contrary to s. 21 (1)(g) of the Rules,

all of which occurred in Banff, Alberta.

2. From July, 2001 to December, 2002, Rundle purportedly addressed a number of issues on behalf of the Big House, including:

- I) Dealings with Epcor to correct electricity metres being connected to wrong units;
- II) Dealings with the Town of Banff to correct municipal address numbering issues; and
- III) Dealings with the developer of the Big House project, Trico, to remedy deficiencies with common property.

Rundle did not charge any amount for these services under the monthly invoices delivered by Rundle to the Big House between July 1, 2001 and December, 2002. Rather, after Rundle was given informal notice of Big House's intention to terminate the Agreement on December 17, 2002, Rundle rendered an account for \$4,950.00 based on an hourly rate of \$45.00 x 110 hours, plus GST of \$346.50, for a total invoice of \$5,296.50, purportedly for the services described above. Nothing under the terms of the Agreement permitted Rundle to charge an hourly rate of \$45.00 for services provided to the Big House. Paragraph 8 of the Agreement stated as follows:

"8. In discharging its responsibilities ...", the Manager shall not make any single expenditure ... exceeding \$500 without the prior written consent of the Corporation unless such expenditure or obligation is provided for in the current budget approved by the Corporation for the Properties, unless required to deal with emergency conditions which may involve a danger to life or property or may threaten the safety of the Property or the Unit owners and occupants thereof."

The \$5,296.50 invoiced to the Big House was not provided for in the relevant budget. The matters described above did not involve "emergency conditions" as defined under paragraph 8 of the Agreement. On or about on December 19, 2002, \$5,296.50 was withdrawn from the Big House's operating account by Rundle, notwithstanding that Rundle did not have the prior written consent of the Big House to do so. The foregoing is conduct deserving of sanction, the particulars of which include, but are not necessarily limited to:

- a) Rundle was required by the rules to keep and operate a trust account on the Big House's behalf, and failed to disburse money received or held in trust in respect of a dealing or trade only in accordance with the rules and with the terms of the trust governing the use of that money, contrary to s. 25(1)(d) of the Real Estate Act;
- b) Douglas, as Rundle's broker, failed to ensure the business of Rundle was carried out competently and in accordance with the Act, the Bylaws, and these Rules, contrary to s. 21(1)(e) of the Rules; and
- c) Furthermore, or in the alternative, Douglas failed to ensure the required trust accounts and trust account records were maintained in accordance with the Act, the Bylaws, these Rules and the law as it relates to trustees, contrary to s. 21 (1)(g) of the Rules,

all of which occurred in Banff, Alberta.

3. The Big House set up a reserve fund as required under the Condominium Property Act, R.S.A. 2000, c. C-22 and amendments thereto. The reserve fund was deposited in a trust account that was controlled by Rundle at all relevant times. Rundle was given informal notice of Big House's intention to terminate the Agreement on December 17, 2002. On or about January 27, 2003, the Big House gave formal written notice to Rundle of its intention to terminate the Agreement effective January 31, 2003 (the "Termination Letter"). The following transfers were made from the reserve fund account to the operating account controlled by Rundle without the Big House's permission:

- | | | |
|------|-------------------|------------|
| i) | December 19, 2002 | \$1,000.00 |
| ii) | January 29, 2003 | \$3,500.00 |
| iii) | February 3, 2003 | \$2,500.00 |

The money deposited into the operating account from the reserve fund was then used to pay for expenses other than repairs to, or replacement of, depreciating property, which in turn caused the Big House to breach s. 27(2) of the Condominium Property Regulation, Alta. Reg 168/2000. Further to all

of the foregoing, the reserve fund was reduced from \$10,753.11 as at November 29, 2002 to \$3,754.29 as at February 11, 2003. The foregoing is conduct deserving of sanction, the particulars of which included, but are not necessarily limited to:

- a) Rundle was required by the rules to keep and operate a trust account on the Big House's behalf, and failed to disburse money received or held in trust in respect of a dealing or trade only in accordance with the rules and with the terms of the trust governing the use of that money, contrary to s. 25(1)(d) of the Real Estate Act;
- c) Furthermore or in the alternative, Rundle failed to practice in strict accordance with the Act, Rules, Bylaws and Regulations and any other laws that govern trading in real estate in Alberta, contrary to s. 7(a) of the Code of Conduct;
- d) Furthermore, or in the alternative, Rundle failed to render competent service to the Big House, contrary to s. 6 of the Code of Conduct;
- e) Douglas, as Rundle's broker, failed to comply with the Code of Conduct, contrary to s. 21(1)(a) of the Rules;
- f) Furthermore, or in the alternative, Douglas failed to ensure the business of Rundle was carried out competently and in accordance with the Act, the Bylaws, and these Rules, contrary to s. 21(1)(e) of the Rules; and
- g) Furthermore, or in the alternative, Douglas failed to ensure the required trust accounts and trust account records were maintained in accordance with the Act, the Bylaws, these Rules and the law as it relates to trustees, contrary to s. 21(1)(g) of the Rules,

all of which occurred in Banff, Alberta.

4. Further to the terms of the Termination Letter, the Big House agreed to pay Rundle an amount equal to the property management fee for February and March, 2003 in lieu of the 60 days notice required under the Agreement. On or about January 29, 2003, Rundle withdrew two months of property management fees from the Big House's operating account. On or about February 3, 2003, Rundle withdrew the property management fee for February, 2003, notwithstanding that Rundle had already received payment for February, 2003's property management fee. On or about March 3, 2003, Rundle withdrew the property management fee for March, 2003, notwithstanding that Rundle had already received payment for March, 2003's property management fee. The foregoing is conduct deserving of sanction, the particulars of which included, but are not necessarily limited to:

- a) Rundle was required by the rules to keep and operate a trust account on the Big House's behalf, and failed to disburse money received or held in trust in respect of a dealing or trade only in accordance with the rules and with the terms of the trust governing the use of that money, contrary to s. 25(1)(d) of the Real Estate Act;

- b) Douglas, as Rundle's broker, failed to ensure the business of Rundle was carried out competently and in accordance with the Act, the Bylaws, and these Rules, contrary to s. 21(1)(e) of the Rules; and
- c) Furthermore, or in the alternative, Douglas failed to ensure the required trust accounts and trust account records were maintained in accordance with the Act, the Bylaws, these Rules and the law as it relates to trustees, contrary to s. 21(1)(g) of the Rules,

all of which occurred in Banff, Alberta.

5. Following receipt of the Termination Letter, Rundle was to deliver to the Big House all records in its possession that related to the Big House, including those records which Rundle was required to maintain under the terms of the Agreement, as well as those required under the Act, the Rules and the Code of Conduct, on or before January 31, 2003. Sometime after January 31, 2003, Rundle delivered what it purported to be were all of the records it had for the Big House. The records provided were incomplete, and in particular, they never included copies of cancelled cheques or invoices to substantiate disbursements made from the operating account managed by Rundle on the Big House's behalf. The foregoing is conduct deserving of sanction, the particulars of which include, but are not necessarily limited to:

- a) Rundle failed to provide the information referred to in subsection 50(1) of the Rules within a reasonable period of time following a request from the client, or as otherwise agreed to by the brokerage and the client, contrary to s. 50(2) of the Rules;
- b) Douglas, as Rundle's broker, failed to ensure the business of Rundle was carried out competently and in accordance with the Act, the Bylaws, and these Rules, contrary to s. 21(1)(e) of the Rules; and
- c) Furthermore, or in the alternative, Douglas failed to ensure the required trust accounts and trust account records were maintained in accordance with the Act, the Bylaws, these Rules and the law as it relates to trustees, contrary to s. 21(1)(g) of the Rules,

all of which occurred in Banff, Alberta.

6. Sometime in either 2002 and 2003, or in both 2002 and 2003, Rundle destroyed all Big House accounting records in Rundle's possession following the submission of year end financials for 2001 and 2002 to Collins Barrow, or otherwise delivered all such records to Collins Barrow, and failed to keep copies for itself. This conduct is deserving of sanction, the particulars of which include, but are not necessarily limited to, the following:

- a) Rundle failed keep in Alberta records and books of account of the industry member's dealings and trades and accounting records, and failed to keep those records and books of account for a period of 3 years after they came into existence, contrary to s. 25(9) of the Act;

- b) Douglas, as Rundle's broker, failed to ensure the business of Rundle was carried out competently and in accordance with the Act, the Bylaws, and these Rules, contrary to s. 21(1)(e) of the Rules; and
- c) Furthermore, or in the alternative, Douglas failed to ensure the required trust accounts and trust account records were maintained in accordance with the Act, the Bylaws, these Rules and the law as it relates to trustees, contrary to s. 21(1)(g) of the Rules,

all of which happened in Banff, Alberta.

II. B.L.

7. On or before July 1, 2002, Rundle entered into a Agreement (the "Agreement") with B.L. to collect on behalf of the owner, or other person in charge of real estate, money payable as rent for the use of the real estate ("property management services") with respect to a property municipally described as #41, 127 Carey Drive, Canmore, Alberta (the "Rental Property"). As at the time Rundle began to provide property management services to B.L., the Rental Property was occupied by a tenant named S.C., who signed a lease with a term commencing July 1, 2002 and ending June 30, 2004. On or about December 15, 2002, Rundle discovered that S.C. had abandoned the Rental Property. Rundle failed to promptly advise B.L., or in the alternative, failed to advise B.L. at all, that S.C. had abandoned the Rental Property. The foregoing is conduct deserving of sanction, the particulars of which include, but are not necessarily limited to, the following:

- a) Rundle failed to disclose all relevant information regarding the Rental Property to B.L., contrary to s. 2(e) of the Code of Conduct;
- b) Douglas, as Rundle's broker, failed to comply with the Code of Conduct, contrary to s. 21(1)(a) of the Rules; and
- c) Furthermore, or in the alternative, Douglas failed to ensure the business of Rundle was carried out competently and in accordance with the Act, the Bylaws, and these Rules, contrary to s. 21(1)(e) of the Rules,

all of which occurred in Canmore, Alberta.

8. The terms of the Agreement included the following:

"[Rundle] agrees and [B.L.] authorizes [Rundle], to do any and all lawful things necessary for the fulfillment [sic] of this agreement, ..., including, (but not limited to) the following:

- (c) To hire, ... all persons required for the proper operation, maintenance and repair of the building.... The Agent agrees to consult with the Owner to secure prior approval before any repairs and/or services are rendered."

In or about January, 2003, Rundle hired R.R. to clean the Rental Property, who in turn issued an invoice in the amount of \$175.00 on or about January 15, 2003, which Rundle paid from money held in trust for the benefit of B.L.. Rundle did not consult with B.L. before retaining R.R., notwithstanding the terms of the Agreement as described above. The foregoing is conduct deserving of sanction, the particulars of which include, but are not necessarily limited to, the following:

- a) Rundle acted outside the scope of the authority given to it by B.L., contrary to s. 2(c) of the Code of Conduct;
- b) Furthermore, or in the alternative, Rundle was required by the rules to keep and operate a trust account on B.L.'s behalf, and failed to disburse money received or held in trust in respect of a dealing or trade only in accordance with the rules and with the terms of the trust governing the use of that money, contrary to s. 25(1)(d) of the Real Estate Act;
- c) Douglas, as Rundle's broker, failed to comply with the Code of Conduct, contrary to s. 21(1)(a) of the Rules;
- d) Furthermore, or in the alternative, Douglas failed to ensure the business of Rundle was carried out competently and in accordance with the Act, the Bylaws, and these Rules, contrary to s. 21(1)(e) of the Rules; and
- c) Furthermore, or in the alternative, Douglas failed to ensure the required trust accounts and trust account records were maintained in accordance with the Act, the Bylaws, these Rules and the law as it relates to trustees, contrary to s. 21(1)(g) of the Rules,

all of which happened in Canmore, Alberta.

9. In or about January, 2003, Rundle hired Mountain Parks Professional Cleaners to clean the Rental Property, who in turn issued an invoice in the amount of \$181.90 on or about January 28, 2003, which Rundle paid from money held in trust for the benefit of B.L.. Rundle did not consult with B.L. before retaining Mountain Parks Professional Cleaners, notwithstanding the terms of the Agreement as described above. The foregoing is conduct deserving of sanction, the particulars of which include, but are not necessarily limited to, the following:

- a) Rundle acted outside the scope of the authority given to it by B.L., contrary to s. 2(c) of the Code of Conduct;
- b) Furthermore, or in the alternative, Rundle was required by the rules to keep and operate a trust account on behalf of B.L., and failed to disburse money received or held in trust in respect of a dealing or trade only in accordance with the rules and with the terms of the trust governing the use of that money, contrary to s. 25(1)(d) of the Real Estate Act;

c) Douglas, as Rundle's broker, failed to comply with the Code of Conduct, contrary to s. 21(1)(a) of the Rules;

d) Furthermore, or in the alternative, Douglas failed to ensure the business of Rundle was carried out competently and in accordance with the Act, the Bylaws, and these Rules, contrary to s. 21(1)(e) of the Rules; and

e) Furthermore, or in the alternative, Douglas failed to ensure the required trust accounts and trust account records were maintained in accordance with the Act, the Bylaws, these Rules and the law as it relates to trustees, contrary to s. 21(1)(g) of the Rules,

all of which happened in Canmore, Alberta.

10. In or about January, 2003, Rundle found a tenant for the Rental Property, A.L.. A lease of the Rental Property with a term commencing February 1, 2003 and ending February 28, 2004 was signed by A.L. on or about January 19, 2003. On or about November 28, 2003, B.L.'s legal counsel sent a letter to Rundle terminating the Agreement effective immediately. Notwithstanding the foregoing, Rundle continued to provide property management services to the Rental Property, and in particular, on or about November 30, 2003, Rundle sent a letter to A.L. confirming Rundle, as B.L.'s representative, accepted A.L.'s termination of the tenancy effective December 31, 2003, prior to the expiration of the term of the lease on February 28, 2004. Rundle confirmed in the November 30, 2003 letter that Rundle would apply A.L.'s security deposit held in trust by Rundle to the rent due for December, 2003. Rundle did not have B.L.'s permission to allow Rundle to apply A.L.'s security deposit to the rent due for December, 2003. Furthermore, the terms of the Agreement required Rundle to hold the security deposit subject to the following terms:

"To hold security deposit monies received by the tenant, The Agent will hold these monies in a Trust Account, which will be paid out to the tenant, once their lease is terminated (minus any expenses, unpaid rent, etc.)."

After A.L. vacated the tenancy, it was determined that approximately \$600 had to be spent in order to repair and clean the Rental Property. Further to the terms of the lease signed by A.L., A.L. was responsible for these expenses. However, as Rundle had allowed the security deposit to be applied to the rent due for December, 2003, B.L. had no recourse to the security deposit that was to be held in trust by Rundle to pay for such repairs and cleaning to the Rental Property. This conduct is deserving of sanction, the particulars of which include, but are not necessarily limited to, the following:

a) By continuing to provide property management services after B.L. terminated the Agreement:

- i) Rundle failed to act in accordance with B.L.'s lawful instructions, contrary to s. 2(b) of the Code of Conduct; and
- ii) Furthermore, or in the alternative, Rundle acted outside of the authority given to Rundle by B.L., contrary to s. 2(c) of the Code of Conduct;

b) By agreeing to apply A.L.'s security deposit to the rent due in December, 2003:

- i) Rundle failed to act in B.L.'s best interests, contrary to s. 2(a) of the Code of Conduct;
 - ii) Furthermore, or in the alternative, Rundle acted outside of the authority given to Rundle by B.L., contrary to s. 2(c) of the Code of Conduct; and
 - iii) Furthermore, or in the alternative, Rundle was required by the rules to keep and operate a trust account on behalf of B.L., and failed to disburse money received or held in trust in respect of a dealing or trade only in accordance with the rules and with the terms of the trust governing the use of that money, contrary to s. 25(1)(d) of the Real Estate Act;
- c) Douglas, as Rundle's broker, failed to comply with the Code of Conduct, contrary to s. 21(1)(a) of the Rules;
- d) Furthermore, or in the alternative, Douglas failed to ensure the business of Rundle was carried out competently and in accordance with the Act, the Bylaws, and these Rules, contrary to s. 21(1)(e) of the Rules; and
- e) Furthermore, or in the alternative, Douglas failed to ensure the required trust accounts and trust account records were maintained in accordance with the Act, the Bylaws, these Rules and the law as it relates to trustees, contrary to s. 21(1)(g) of the Rules,

all of which happened in Canmore, Alberta.

III. Vistas

11. On or about December 4, 2001, The Owners: Condominium Plan #9912085 ("Vistas") signed a Agreement with Rundle to manage the condominium corporation's property (the "Agreement"). Further to the terms of the Agreement, Rundle collected and administered trust money on Vistas' behalf which consisted of contributions for the control, management or administration of real estate. The Agreement provided that Rundle "agreed to perform the following services"

- "(e) Maintain records of all receipts and expenditures relating to the Properties and submit the following reports to the Corporation:
 - (i) summary of revenue and expenses, monthly
 - (ii) summary of accounts receivable, monthly
 - (iii) summary and cash and reserves in the hands of the Manager, monthly
 - (iv) balance sheet accruals, as requested, with appropriate supporting documents each month;"

Rundle used software called Caseware to manage monies received and disbursed on behalf of Vistas. Rundle created a web site to which it posted monthly accounting records that were prepared using the Caseware software. Vistas was able to access these accounting records from Rundle's web site. However, the accounting records provided to Vistas by Rundle did not meet the requirements of s. 2(e) of the Agreement, nor did they otherwise constitute a statement of receipts and disbursements that recorded: (i) the balance carried forward from the statement of the previous month; (ii) money and the amount received as rent for the use of real estate, for the control, management or administration of real estate and for any other trade in real estate; (iii) the amount of each disbursement and to whom it was made; and (iv) the balance at the end of the month (a "Statement of Receipts and Disbursements"). Rather, the accounting records prepared by Rundle consisted of a running total of amounts and received during the course of any given year (i.e. - from January 1 to December 31). The foregoing is conduct deserving of sanction, the particulars of which include, but are not necessarily limited to:

- a) Rundle failed to provide a proper Statement of Receipts and Disbursements, and any other records as agreed to by Rundle and Vistas, contrary to s. 50(1) of the Rules;
- b) Douglas, as Rundle's broker, failed to ensure the business of Rundle was carried out competently and in accordance with the Act, the Bylaws, and these Rules, contrary to s. 21(1)(e) of the Rules; and
- c) Furthermore, or in the alternative, Douglas failed to ensure the required trust accounts and trust account records were maintained in accordance with the Act, the Bylaws, these Rules and the law as it relates to trustees, contrary to s. 21(1)(g) of the Rules,

all of which occurred in Canmore, Alberta.

12. Section 2(g) of the Agreement provided Rundle with the authority to retain an accountant to review Vistas' financial records on an annual basis. However, section 8 of the Agreement required Rundle to obtain Vistas' written permission before incurring any "contractual obligation exceeding \$500.00." Rundle retained Collins Barrow to review Vistas' financial records for the fiscal year ending December 31, 2002. Rundle did not have Vistas' permission, written or otherwise, to pay more than \$500 for Collins Barrow's review of the financial records for the year ending December 31, 2002. On or about March 17, 2003, Collins Barrow submitted an invoice to Rundle for its review of the financial records for the year ending December 31, 2002 totalling \$561.75, which Rundle paid from the trust account it operated on behalf of Vistas on or about April 6, 2003. The foregoing is conduct deserving of sanction, the particulars of which include, but are not necessarily limited to, the following:

- a) Rundle was required by the rules to keep and operate a trust account on behalf of Vistas, and failed to disburse money received or held in trust in respect of a dealing or trade only in accordance with the rules and with the terms of the trust governing the use of that money, contrary to s. 25(1)(d) of the Real Estate Act;
- b) Douglas, as Rundle's broker, failed to ensure the business of Rundle was carried out competently and in accordance with the Act, the Bylaws, and these Rules, contrary to s. 21(1)(e) of the Rules; and

- c) Furthermore, or in the alternative, Douglas failed to ensure the required trust accounts and trust account records were maintained in accordance with the Act, the Bylaws, these Rules and the law as it relates to trustees, contrary to s. 21(1)(g) of the Rules,

all of which happened in Canmore, Alberta.

13. Sections 10 and 11 of Agreement stated the following regarding termination of the agreement:

- “10. This agreement shall terminate at the end of the period specified in Clause (1) unless prior to that date;
 - a) upon fundamental breach of this Agreement by either party, the other party gives notice of termination;
 - b) upon reckless or grossly negligent conduct of the Manager in performing the services under this Agreement, the Corporation gives notice of termination; or
 - c) after 60 days written notice of any complaint, fault or omission on the part of either party, upon failure of the defaulting party to satisfy or correct such complaint, fault or omission, in accordance with this Agreement, the By-laws or the general law, the complaining party gives notice of termination; ...

Any notice of termination given under this clause shall take effect on the last day of the month in which notice was given.”

- “11. Upon the termination of this Agreement, the Manager shall continue to have the following obligations:
 - 1) immediately transfer to the Corporation or its designate all capital reserves in its control, if any, or deliver up the means of such control;
 - 2) as soon as is practical, deliver to the Corporation all contracts, correspondence, documents, post dated cheques and other records belonging to the Corporation;
 - 3) within 60 days thereafter, transfer control of all Corporation funds and render final accounting to the Corporation.”

On or about June 1, 2003, Vistas sent a letter to Rundle terminating the Property Management for cause (the “Termination Letter”), particulars of which were included in the Termination Letter. As grounds for termination were alleged by Vistas, the effective termination date under clause 10 of the Agreement was June 30, 2003. Vistas expressly instructed Rundle to transfer to Vista’s new property manager the reserve fund set up by Rundle on Vistas’ behalf on or before June 30, 2003, further to s. 11 of the Agreement. Rundle refused to follow those instructions, and the capital reserve fund was not transferred to Vista until August 27, 2003. This conduct is deserving of sanction, the particulars of which include, but are not necessarily limited to, the following:

- a) Rundle was required by the rules to keep and operate a reserve fund trust account on Vistas' behalf, and failed to disburse money received or held in trust in respect of a dealing or trade only in accordance with the rules and with the terms of the trust governing the use of that money, contrary to s. 25(1)(d) of the Real Estate Act;
- b) Douglas, as Rundle's broker, failed to ensure the business of Rundle was carried out competently and in accordance with the Act, the Bylaws, and these Rules, contrary to s. 21(1)(e) of the Rules; and
- c) Furthermore, or in the alternative, Douglas failed to ensure the required trust accounts and trust account records were maintained in accordance with the Act, the Bylaws, these Rules and the law as it relates to trustees, contrary to s. 21(1)(g) of the Rules,

all of which happened in Canmore, Alberta.

14. Section 8 of the Agreement required Rundle to obtain Vistas' written permission before incurring any "contractual obligation exceeding \$500.00." After receiving the Termination Letter, Rundle created an invoice for "redrafting of bylaws for Wilson Way." The amount of the invoice was \$975.00. Contrary to paragraph 8 of the Agreement, Rundle did not have Vistas' prior written consent to incur a debt in excess of \$500 for re-drafting Vistas' bylaw. This conduct is deserving of sanction, the particulars of which include, but are not necessarily limited to, the following:

- a) Rundle was required by the rules to keep and operate a trust account on Vistas' behalf, and failed to disburse money received or held in trust in respect of a dealing or trade only in accordance with the rules and with the terms of the trust governing the use of that money, contrary to s. 25(1)(d) of the Real Estate Act;
- b) Douglas, as Rundle's broker, failed to ensure the business of Rundle was carried out competently and in accordance with the Act, the Bylaws, and these Rules, contrary to s. 21(1)(e) of the Rules; and
- c) Furthermore, or in the alternative, Douglas failed to ensure the required trust accounts and trust account records were maintained in accordance with the Act, the Bylaws, these Rules and the law as it relates to trustees, contrary to s. 21(1)(g) of the Rules,

all of which occurred in Canmore, Alberta.

15. After delivery of the Termination Letter, Vistas agreed to pay Rundle property management fees of \$100 per month for the months of July and August, 2003. Rundle withdrew property management fees for July and August, 2003, to which it was entitled. However, Rundle also withdrew property management fees totalling \$100 in September, 2003, notwithstanding that it was not entitled to do so further to the terms of the Agreement, and further to the express instructions of Vistas. This conduct is deserving of sanction, the particulars of which include, but are not necessarily limited to, the following:

- a) Rundle was required by the rules to keep and operate a trust account on Vistas' behalf, and failed to disburse money received or held in trust in respect of a dealing or trade only in

accordance with the rules and with the terms of the trust governing the use of that money, contrary to s. 25(1)(d) of the Real Estate Act;

- b) Douglas, as Rundle's broker, failed to ensure the business of Rundle was carried out competently and in accordance with the Act, the Bylaws, and these Rules, contrary to s. 21(1)(e) of the Rules; and
- c) Furthermore, or in the alternative, Douglas failed to ensure the required trust accounts and trust account records were maintained in accordance with the Act, the Bylaws, these Rules and the law as it relates to trustees, contrary to s. 21(1)(g) of the Rules,

all of which occurred in Canmore, Alberta.

16. Under the terms of s. 11(3) of the Agreement, Rundle was to transfer control of all funds held by Rundle on Vistas' behalf and render a final accounting to Vistas following receipt of Vistas' termination letter by no later than August 31, 2003. Rundle did not transfer control of the Vistas' operating account until September 2, 2003, which allowed Rundle to withdraw the \$100 property management fee to which Rundle was not entitled. This conduct is deserving of sanction, the particulars of which include, but are not necessarily limited to, the following:

- a) Rundle was required by the rules to keep and operate a trust account on Vistas' behalf, and failed to disburse money received or held in trust in respect of a dealing or trade only in accordance with the rules and with the terms of the trust governing the use of that money, contrary to s. 25(1)(d) of the Real Estate Act;
- b) Douglas, as Rundle's broker, failed to ensure the business of Rundle was carried out competently and in accordance with the Act, the Bylaws, and these Rules, contrary to s. 21(1)(e) of the Rules; and
- c) Furthermore, or in the alternative, Douglas failed to ensure the required trust accounts and trust account records were maintained in accordance with the Act, the Bylaws, these Rules and the law as it relates to trustees, contrary to s. 21(1)(g) of the Rules,

all of which occurred in Canmore, Alberta.

17. Sometime in 2003, Rundle destroyed all Vistas' accounting records in Rundle's possession following the submission of year end financials for 2002 to Collins Barrow, or otherwise delivered all such records to Collins Barrow, and failed to keep copies for itself. This conduct is deserving of sanction, the particulars of which include, but are not necessarily limited to, the following:

- a) Rundle failed keep in Alberta records and books of account of the industry member's dealings and trades and accounting records, and failed to keep those records and books of account for a period of 3 years after they came into existence, contrary to s. 25(9) of the Act;

- b) Douglas, as Rundle's broker, failed to ensure the business of Rundle was carried out competently and in accordance with the Act, the Bylaws, and these Rules, contrary to s. 21(1)(e) of the Rules; and
- c) Furthermore, or in the alternative, Douglas failed to ensure the required trust accounts and trust account records were maintained in accordance with the Act, the Bylaws, these Rules and the law as it relates to trustees, contrary to s. 21(1)(g) of the Rules,

all of which happened in Canmore, Alberta.

IV. P.H. and A.H.

18. On or about January 20, 2000, Rundle signed a Agreement with P.H. & A.H. ("H.'s") to collect on behalf of the owner, or other person in charge of real estate, money payable as rent for the use of a rental property owned by H.'s which was located in Banff, Alberta. The term of the Agreement was for one year starting February 1, 2000. This Agreement was superceded by a further Agreement that had a one year term starting February 1, 2001. There was an automatic one year renewal unless the H.'s gave notice 30 days prior to the expiration of the original one year term. No such notice was given by the H.'s further to which the Agreement expired on January 30, 2003. No further written Agreement was ever entered into between Rundle and the H.'s. Notwithstanding the foregoing, Rundle continued to provide property management services, and received rent paid to Rundle as property manager by the H.'s tenant, from February 1, 2003 up to and including September, 2004. The foregoing is conduct deserving of sanction, the particulars of which include, but are not necessarily limited to, the following:

- a) Rundle received money in trust in respect of rent paid to Rundle as property manager by the H.'s tenant, notwithstanding that Rundle failed to ensure that the terms of the trust governing the use of the money were in writing and agreed to by Rundle and the H.'s, contrary to s. 25(2) of the Act;
- b) Douglas, as Rundle's broker, failed to ensure the business of Rundle was carried out competently and in accordance with the Act, the Bylaws, and these Rules, contrary to s. 21(1)(e) of the Rules; and
- c) Furthermore, or in the alternative, Douglas failed to ensure the required trust accounts and trust account records were maintained in accordance with the Act, the Bylaws, these Rules and the law as it relates to trustees, contrary to s. 21(1)(g) of the Rules,

all of which occurred in Banff, Alberta.

19. Section (vii) of the Agreement stated as follows:

"The Agent agrees ... To provide monthly statements to the Owner of all monies received and disbursed. These will include services rendered, expenses incurred for Owners and other lawful charges...."

In or about June, 2002, Rundle set up a website which its clients could access in order to obtain copies of the monthly financial statements prepared by Rundle. The H.'s used the website, and they were able

to access the monthly financial statements prepared by Rundle for their property. However, in or about May, 2004, the H.'s were unable to access the monthly financial statements. The H.'s so advised Rundle. There was no response from Rundle to the H.'s request for access to their monthly financial statements until September 13, 2004, when Rundle advised the H.'s via email that monthly financial statements would no longer be available on Rundle's website. Sometime in September, 2004, Rundle delivered copies of the monthly financial statements prepared by Rundle for May through September, 2004 to the H.'s. On or about September 21, 2004, the H.'s asked Rundle to provide copies of the monthly financial statements for January through April, 2004. On or about September 22, 2004, Rundle advised the H.'s that it no longer had possession of the H.'s monthly financial statements for January through April, 2004. Rundle was ultimately able to obtain copies of some, if not all, of those records from a third party, which in turn were delivered to the H.'s. The foregoing is conduct deserving of sanction, the particulars of which include, but are not necessarily limited to, the following:

- a) Rundle failed to follow the H.'s lawful instructions to provide them with monthly financial statements on a monthly basis, contrary to s. 2(b) of the Code of Conduct;
- b) Furthermore, or in the alternative, Rundle failed to provide the monthly financial statements to the H.'s within a reasonable period of time following a request from the client or as otherwise agreed to by Rundle and the H.'s, contrary to s. 50(2) of the Rules;
- c) Furthermore, or in the alternative, Rundle failed keep in Alberta records and books of account of the industry member's dealings and trades and accounting records, and failed to keep those records and books of account for a period of 3 years after they came into existence, contrary to s. 25(9) of the Act;
- d) Douglas, as Rundle's broker, failed to comply with the Code of Conduct, contrary to s. 21(1)(a) of the Rules;
- e) Furthermore, or in the alternative, Douglas failed to ensure the business of Rundle was carried out competently and in accordance with the Act, the Bylaws, and these Rules, contrary to s. 21(1)(e) of the Rules; and
- f) Furthermore, or in the alternative, Douglas failed to ensure the required trust accounts and trust account records were maintained in accordance with the Act, the Bylaws, these Rules and the law as it relates to trustees, contrary to s. 21(1)(g) of the Rules,

all of which happened in Banff, Alberta.

20. In or about August or September, 2004, the H.'s terminated Rundle as property manager. On or about September 9, 2004, the H.'s directed Rundle to provide them with a copy of the lease in effect on the property. Rundle refused to provide the H.'s with a copy of the lease. The foregoing is conduct deserving of sanction, the particulars of which include, but are not necessarily limited to, the following:

- a) Rundle failed to follow the H.'s lawful instructions to provide them with a copy of the H.'s tenant's lease, contrary to s. 2(b) of the Code of Conduct;
- c) Douglas, as Rundle's broker, failed to comply with the Code of Conduct, contrary to s. 21(1)(a) of the Rules;
- d) Furthermore, or in the alternative, Douglas failed to ensure the business of Rundle was carried out competently and in accordance with the Act, the Bylaws, and these Rules, contrary to s. 21(1)(e) of the Rules,

all of which happened in Banff, Alberta.

V. Non-Cooperation

21. Between 2003 and 2005, Rundle was the subject of several investigations undertaken by an investigator, M.M., who was appointed by the Executive Director of the Real Estate Council of Alberta pursuant to Part 3 of the Real Estate Act (the "Act"). After several unsuccessful attempts to arrange a meeting with Douglas, M.M. interviewed Douglas on or about December 8, 2004. Douglas had to leave the interview before M.M. was able to ask questions regarding all of the various matters under investigation. The December 8, 2004 interview was concluded on the express understanding that a further interview would have to be scheduled. M.M. made several unsuccessful attempts to arrange a second interview, including:

- i) On January 13, 2005, M.M. called Douglas, who indicated that she would not be able to meet with M.M. until February, 2005;
- ii) On January 18 and 21, 2005, M.M. left phone messages asking Douglas to contact her to set up an interview, to which Douglas did not reply;
- iii) On January 21, 2005, M.M. sent a letter to Douglas asking Douglas to contact her to arrange for the continuation of the interview which commenced on December 8, 2004. On or about February 6, 2005, Douglas responded via email that she would not be able to attend any interview due to undisclosed medical reasons;
- iv) On February 7, 2005, RECA attempted to contact Douglas by phone; the voice mail message indicated the Douglas was not accepting phone calls at this time;
- v) On February 7, 2005, M.M. sent both an email and a letter to Douglas asking Douglas to provide her with a letter from a medical doctor confirming that Douglas was medically unable to be interviewed by RECA, to which Douglas never responded;
- vi) On February 9, 2005, .M. attempted to contact Douglas by phone. The phone was disconnected and M.M. obtained a new phone number through directory assistance. M.M. called that number; the voice mail message indicated the Douglas was not accepting phone calls at this time. M.M. left a message asking Douglas to contact her, to which Douglas never responded;

- vii) On May 30, 2005, M.M. sent an email to Douglas asking Douglas to contact her. On May 30, 2005, RECA received an email with no text from Douglas in response to the May 30, 2005 email. .M. sent a follow up email on May 31, 2005, to which Douglas never responded.
- viii) On June 7, 2005, RECA contacted Douglas by phone. The person who picked up the phone identified herself as Douglas. .M. identified herself, and Douglas hung up the phone; and
- ix) On June 8, 2005, the Executive Director sent a registered letter to Douglas which summarized Douglas' failure to cooperate with RECA's investigation as described above, and which asked Douglas to explain her conduct on or before June 27, 2005. Douglas refused to accept delivery of the registered letter.

The foregoing is conduct deserving of sanction, the particulars of which include, but are not necessarily limited to, the following:

- a) Douglas and Rundle failed to cooperate fully with, and provide any information requested to, any representative of the Real Estate Council of Alberta carrying out their responsibilities under the legislation, contrary to s. 7(d) of the Code of Conduct; and
- b) Furthermore, or in the alternative, Douglas and Rundle failed to cooperate with a person conducting an investigation, contrary to s. 38(4) of the Real Estate Act,

all of which occurred in Banff, Alberta.

IV) EVIDENCE

A total of 11 exhibits were presented, including one binder with 54 tabs. Ten witnesses appeared on behalf of the Executive Director.

There are 21 allegations of misconduct against Ms. Alison Douglas and Rundle, which are separated into allegations of misconduct with respect to four different properties. Counts 1 through 6 are with respect to allegations of misconduct of Ms. Douglas and Rundle regarding the Big House.

Big House

Four witnesses were called with respect to the Big House allegations. J.T.J. testified in the capacity of officer of the corporation. She outlined the relationship between the Big House and Rundle Property and Alison Douglas. She submitted that Ms. Douglas was responsible for managing the condominium association's fund, taking care of the condominiums, looking after the daily business, maintenance, and banking, and that she was acting in the capacity of property manager through Rundle. Exhibit 1, Tab 2 was referred to. This Exhibit was the Condominium Management Agreement between the owners of the Big House condominiums and Rundle Property Management. This document clearly outlines the parameters of the agreement between the Big House and Rundle, including the maintaining of all receipts and expenditures relating to the properties, the contact information of the property manager for apparent emergencies, as well as stipulating that the manager could not make any expenditure in

excess of \$500.00 without prior written consent unless necessary in the case of an emergency. Also, upon the termination of the contract, the manager was obligated to immediately transfer all capital reserves in its control to the corporation. J.T. stated that the board had decided to terminate the contract after a period of time due to poor management by Rundle and Ms. Douglas. When documents were requested, Ms. Douglas would not return phone calls. After she had been advised that her services were terminated, Ms. Douglas had invoiced the Big House \$5,296.50 which she withdrew from the Big House bank account, without written consent. J.T. testified that she had never seen the invoice, as shown in Exhibit 1, Tab 4, prior to the Hearing. She further stated that there was no emergency with respect to the Big House at the time for which Ms. Douglas withdrew the aforementioned monies. As well, J.T. stated that the expenditure of that money was not in their current budget at the time. Finally, J.T. stated that documentation including records, that Ms. Douglas had in her possession with respect to the Big House at the time her services were terminated, she placed in a box and left it in front of her house, which had to be retrieved by a member of the board for the Big House and the records contained in that box were incomplete.

E.L. was called on behalf of the Executive Director. He was a member of the Board. He stated that there had been various issues with respect to Ms. Douglas' management of the property. He stated that there were occasions when emergency situations arose where Ms. Douglas was unavailable to attend to them and advised that she was not to be contacted outside her normal working hours. When referred to the invoice from Rundle for \$5,291.50, marked as Tab 4 of Exhibit 1, E.L. indicated he had never seen that document prior to the Hearing. He further stated that the money, amounting to \$5,296.50, which Ms. Douglas withdrew from the Big House bank account, was done without the permission of the Big House board. E.L. was referred to several other tabs indicating payments and withdrawals from the Big House bank account. He submitted that none of these transactions were authorized by the board. Under Tab 7 of Exhibit 1 was a bank statement for the Big House. E.L. stated that he understood the withdrawal to be a payment for two months for Ms. Douglas, which she had withdrawn without permission. This occurred two days after she had been served with a letter terminating her as the property manager with Rundle for the Big House. T.R. was called next. He submitted that Ms. Douglas was terminated on December 12, 2003, as he recalled, as the board was unhappy with her conduct and procedure, as well, she was hard to reach and was uncooperative.

Finally, E.M. was called to testify on behalf of the Executive Director with respect to the Big House. E.M. submitted that he was asked by the board of the condominium corporation to manage the property following termination of the contract with Douglas and Rundle. E.M. submitted that he had attempted to retrieve records from Rundle with respect to the Big House. He stated that he contacted Ms. Douglas directly with a letter stating his request, to which he never received a reply. E.M. stated he was told that Ms. Douglas had provided E.L. with everything that needed to be provided, which was incorrect. He stated that all records he received with respect to the Big House were from January 2003 onwards, however the Big House corporation was in existence in both 2001 and 2002. When referring to a reserve fund for the Big House, E., stated that it was at zero when he started and a special assessment had to be implemented to start up the reserve fund.

B.L.

B.L. testified with respect to the allegations 7 through 10. She stated that Ms. Douglas was hired as a property manager with Rundle Property to manage a condominium she and her husband had purchased in Canmore. She submitted that she had written a complaint to RECA regarding her dissatisfaction with Ms. Douglas' performance as a property manager with respect to her property. B.L. outlined her relationship with Ms. Douglas and Rundle. She stated that she never received signed copies of various documents. She said that there were various issues that caused concern for her and her husband, such as a definite lag time to answers their questions. She stated that the relationship with Ms. Douglas deteriorated due to a lack of communication. B.L. was referred to Tab 12 of Exhibit 1, which contained the property management agreement between B.L. and Ms. Douglas with Rundle. B.L. stated that they had a tenant, S.C., occupying the property for a term of 12 months. Once S.C. had left, a new tenant was secured. When the new tenant went to register with the town that he was occupying the property, he was informed he could not register as the utility bill was outstanding from the previous tenant. The town of Canmore sent B.L. a letter indicating this. B.L. stated that she was unaware that S.C. had vacated the property and as such, was unaware that a new tenant was moving in. B.L. said she discovered that S.C. had not paid her rent and had left the country in mid-December. B.L. referred to the particulars contained within the property management agreement between Rundle and B.L.. It outlined that any expense required for the operation, maintenance and repair of the building had to be approved by the owners prior to any repairs or services are rendered. B.L. then referred to Tab 16 of Exhibit 1, which was a bill to B.L. for cleaning of the property. B.L. submitted that Ms. Douglas never contacted her for this expense before it occurred. This amount was taken out of the damage deposit of the tenant.

A.L. entered into a tenancy agreement for B.L.'s property subsequent to S.C.'s departure. B.L. understood the term of this lease to be for a 12-month period. B.L. stated that in November, 2003, her and her husband secured D.P. to be their new property manager. On November 28, 2003, S.A.C., a lawyer acting on behalf of B.L., sent a letter to Ms. Douglas and Rundle advising that the contract with the L.'s was terminated due to the failures to carry out the duties outlined in the management contract. B.L. stated that Ms. Douglas continued to act as the property manager until the end of December. Ms. Douglas had agreed with A.L. that he could move out of the property one month prior to the end of the term of his lease and she agreed to let him use his damage deposit as his last month's rent. She did this without consulting the L.'s. B.L. stated that the property was not left in a clean state; however, as Ms. Douglas had applied A.L.'s damage deposit to his rent, the L.'s were unable to use that to cover the cost of cleaning the property after A.L. had left.

In relation to the L.'s complaint, D.P. was called on behalf of the Executive Director. D.P. stated that B.L. had been his client since December 1, 2003. He stated that he had contacted the tenant in B.L.'s property, A.L., to inform him that there was a change in property management for the property. Within a week, D.P. was informed that the tenant had given notice with the previous manager that he would be vacating the property by the beginning of December. D.P. stated that he had prepared a security deposit refund statement for B.L., Tab 21, Exhibit 1, and estimated that \$1,600 was owed to B.L.. Upon vacating the property, the property was inspected, however, it was left unclean, some damage done, and with rent unpaid. He stated that he was not able to use the damage deposit to have the property cleaned as the tenant had made arrangements with Rundle not to pay the December month's rent and his damage deposit would be used to cover that month's rent. D.P. stated that he had notified A.L. that the previous management company had been terminated; however, he never received any additional monies from A.L..

P.H. & A.H.

A.H. was called by the Executive Director. A.H. submitted that she had filed a complaint with RECA against Ms. Douglas and Rundle Property Management. She stated that Ms. Douglas provided property management services to her through Rundle. A.H. submitted that she had various issues with Ms. Douglas, particularly with respect to attaining financial records and documents from Ms. Douglas for her property. Monthly accounting statements were difficult to obtain from Ms. Douglas. She stated that she did receive some statements, however it was infrequent. She requested these statements several times, however, Ms. Douglas failed to provide them. Ms. Douglas later established a website where A.H. was able to retrieve financial statements with a password. However, after a time, the password stopped working and Ms. Douglas would not provide her with a new code, although A.H. made repeated requests for this. A.H. was referred to the document contained under Tab 22 of Exhibit 1, which was the property management agreement between Rundle and P.H. and A.H.. A.H. stated that she never signed a contract with Ms. Douglas, however, she understood this to be the agreement between them and that she understood that Rundle or Ms. Douglas would provide monthly statements to her relative to her property in Banff. She stated that she made requests to Ms. Douglas to obtain statements, however, it took 6 months to get any statements and there were some statements which she had never received. A.H. stated that she contacted RECA since she was unable to get any satisfactory responses from Ms. Douglas and Ms. Douglas was difficult to contact.

Non-Cooperation

The Executive Director next called M.S., an investigator employed with RECA. At the time of the investigation with respect to Ms. Douglas and Rundle, M.S. was the intake investigator. Her job at the time was to open an investigation file, to contact and advise Ms. Douglas of the investigation, to gather brokerage documents from her and to initiate the exchange of information between Ms. Douglas and the complainant from Big House. M.S. verified various documents contained in the evidence binder, marked as Exhibit 1, as documents she received from Ms. Douglas at the onset of the investigation. When questioned on the tone of phone conversations between M.S. and Ms. Douglas, M.S. indicated that some conversations were adversarial and Ms. Douglas was not being as cooperative as she could have been.

J.F. was called by the Executive Director. J.F. is the Director of Audit and Investigations with RECA since its inception. He stated that .M. was appointed to investigate this matter and he had numerous discussions with M.M. regarding this investigation. He stated that as a result of the lack of cooperation by Ms. Douglas, it was his decision to start a non-cooperation investigation. Correspondence was attempted with Ms. Douglas from J.F.. A letter was sent to Ms. Douglas by him, which was refused. J.F. stated that his letter, dated June 8, 2005, was never responded to by Ms. Douglas.

The final witness called on behalf of the Executive Director was M.M., a former investigator with RECA. M.M. submitted that she conducted the investigation with respect to Rundle and Ms. Douglas. She stated that a series of complaints prompted RECA to begin an investigation into Ms. Douglas and Rundle. M.M. referred to various documents, including communication with Ms. Douglas, and verified that these were documents she had collected during her investigation in this matter. M.M. stated that she met with Ms. Douglas for an interview, December 8, 2004, however, Ms. Douglas had to cut the interview short, however, the interview was not concluded. She stated that she was unable to meet with Ms. Douglas again, although she had made various attempts to contact her to schedule a further

interview. M.M.'s attempts at contacting Ms. Douglas are documented under Tabs 29 and 30 of Exhibit 1. M.M. had attempted to call Ms. Douglas again on February 7, 2005. When she phoned this number, she got a recording stating that the indicated person she was calling had chosen not to take calls. M.M. further referred to various emails she had sent to Ms. Douglas. She received only two responses to her emails, one with only a blank screen.

I) **SUBMISSIONS**

Big House – Counts 1, 2, 3, 4, 5 and 6

It was submitted by the Executive Director that with respect to the first Count, Rundle failed to provide records as agreed to by Rundle and the Big House. There is an obligation on the part of the property manager, to run and maintain records with respect to monthly accounting. What was provided by Ms. Douglas was a running total and not a monthly accounting. Since the terms of the property management agreement stated that there would be a month to month accounting, it was submitted that Rundle was in breach of s.50(1) of the Rules. Since Ms. Douglas was the broker of Rundle, Ms. Douglas is in breach of s.21(1)(e) of the Rules. The Executive Director stated that under RECA's legislation, Ms. Douglas and Rundle are separate entities and as such, there are two separate breaches for the failure to produce the monthly accounting records.

With respect to Count 2, the Executive Director submitted that two days after Rundle and Ms. Douglas were given informal notice of Big House's intention to terminate their agreement, Ms. Douglas produced an invoice for services rendered, totalling \$5,296.50. She withdrew this amount from the Big House bank account, stating an hourly rate of \$45.00 an hour for services. As per the terms of the agreement, the manager was not permitted to make any single expenditure in excess of \$500.00 without prior written consent. As well, nowhere was it stated in the agreement that Rundle could charge that hourly rate for its services. It was stated that consent for this was not given, as was testified to, and as such, Rundle is in breach of s.25(1)(d) of the *Real Estate Act*. Ms. Douglas, as the broker for Rundle, was in breach of s.21(1)(e) of the Rules, as a result of the aforementioned actions. Finally, it was submitted by the Executive Director that Ms. Douglas failed to ensure the required trust accounts and trust account records were maintained in accordance with legislation and as such, is in breach of s.21(1)(g) of the Rules. Finally, it was submitted that the withdrawal of the money for services rendered was done with malice and spite, as indicated by the timing of the withdrawal.

It was submitted by the Executive Director that with respect to Count 3, Ms. Douglas made three transfers of money between December 19, 2002 and February 3, 2003. This money was transferred from the trust account to the operating account. The money was then used to pay expenses other than for repairs. In January, 2003, two withdrawals were made for property management fees, one on January 7, 2003 and one on January 29, 2003, as shown in Tab 7, Exhibit 1. It was submitted that the timing of these withdrawals was suspect and there was no evidence of approval from the Big House to do this. The Executive Director submitted that these transactions were deliberate and spiteful. As a result of these transactions, Rundle was in breach of s.25(1)(d) with respect to trust accounts. It was further submitted that Rundle failed to practice in strict accordance with legislation that governs trading, contrary to s.7(a) of the Code of Conduct. Rundle also failed to render competent service, contrary to s.6 of the code of Conduct. Ms. Douglas, as Rundle's broker, was in breach of s.21(1)(a) of the Rules, s.21(1)(e) of the Rules and s.21(1)(g) of the Rules as a result of her actions.

The Executive Director submitted with respect to Count 4, that the Big House agreed to pay Rundle two months property management fee for February and March, 2003, in lieu of the 60 days notice required under the agreement. Rundle proceeded to withdraw money for two months of property management fees from the operating account on January 29, 2003. Then on February 3, 2003, Rundle withdrew the property management fee for February, 2003. On March 3, 2003, Rundle withdrew the property management fee for March, 2003, as shown in the banking records. Effectively, Ms. Douglas, as Rundle's broker, paid herself twice for these months. As such, Rundle was in breach of s.25(1)(d) of the *Real Estate Act*, by failing to disburse money in trust in accordance with the rules governing the terms of the trust governing the use of that money. Ms. Douglas, as Rundle's broker, was thus in breach of s.21(1)(e) of the Rules as well as s.21(1)(g) of the Rules.

With respect to Count 5, the Executive Director submitted that Rundle was in breach of s.50(2) of the Rules for failing to provide information within a reasonable period of time following the request from the Big House; Ms. Douglas, as Rundle's broker, was in breach of s.21(1)(e) of the Rules and s.21(1)(g) of the Rules by failing to act competently and failing to ensure the required trust accounts and trust records were maintained in accordance with legislation. The Executive Director submitted testimony by representatives of the Big House stating that they had made requests of Ms. Douglas to provide them with all of the records for the Big House. When the records were provided to the Big House, they were incomplete. They did not contain copies of cancelled cheques or invoices to substantiate certain disbursements made from the operating account which was managed by Rundle. As such, the Executive Director submitted that Rundle and Ms. Douglas were in breach of the aforementioned sections of the Rules.

It was submitted by the Executive Director that Rundle was in breach of s.25(9) of the Act and Ms. Douglas was in breach of s.21(1)(e) of the Rules and s.21(1)(g) of the Rules. It was submitted that there was a failure to maintain all records and books of accounts for a period of 3 years after they came into existence, that the business of the brokerage was not carried out competently and that there was a failure to maintain the required trust accounts and their records in accordance with the legislation. It was submitted that the records were destroyed by Rundle once they had been delivered to Collins Barrow, therefore Rundle had no record of the documents from 2001 or 2002.

B.L. – Counts 7, 8, 9 and 10

The Executive Director submitted that Rundle was in breach of s.2(e) of the Code of Conduct with respect to the L. property, as outlined in Count 7. As well, Ms. Douglas was in breach of s.21(1)(a) of the Rules and s.21(1)(e) of the Rules. It was proven that S.C. has abandoned her lease of B.L.'s property. The lease was for a two-year term beginning July 1, 2002. On or about December 15, 2002, Rundle discovered that S.C. had abandoned the property. Rundle failed to advise B.L. of this and therefore this amounts to conduct deserving of sanction of the aforementioned sections of the Code and Rules.

With respect to Count 8, the Executive Director submitted that Rundle was in breach of s.25(1)(d) of the *Real Estate Act* and s.21(1)(a) of the Rules. As well, it was submitted that Ms. Douglas was in breach of s.21(1)(e) of the Rules and s.21(1)(g) of the Rules. Rundle hired cleaning services in or about January, 2003, provided by R.R., for B.L.'s property which was paid from money held in trust. B.L. was not consulted prior to hiring someone to clean the property, as B.L. testified. As a result of this, Rundle

and Ms. Douglas, as Rundle's broker, were in breach of the aforementioned sections of the Act and Rules.

It was submitted by the Executive Director that Rundle was in breach of s.2(c) of the Code of Conduct and s.25(1)(d) of the *Real Estate Act*. It was further submitted that Ms. Douglas, as Rundle's broker, was in breach of s.21(1)(a) of the Rules, s.21(1)(e) of the Rules and s.21(1)(g) of the Rules, as contained in Count 9. It was shown that in or about January, 2003, Rundle hired Mountain Parks Professional Cleaners to clean the B.L. property. An invoice for this work was sent and was paid by Rundle by money held in trust on January 28, 2003. Rundle did not consult with B.L., as B.L. testified, and as such, there is conduct deserving of sanction with respect to the allegations, as outlined above.

The Executive Director submitted with respect to Count 10, that Rundle was in breach of s.2(b) of the Code of Conduct and s.2(c) of the Code of Conduct by continuing to provide property management services after being terminated by B.L.. It was submitted that Rundle entered into an agreement with A.L., the tenant of B.L.'s property, allowing him to break his lease prior to the agreed end date. This agreement was made after Rundle had already been terminated as the property manager for this property. The Executive Director further submitted that Rundle was also in breach of s.2(a) of the Code of Conduct, s.2(c) of the Code of Conduct and s.25(1)(d) of the *Real Estate Act*. Rundle agreed to apply A.L.'s damage deposit to the rent due in December, 2003, without notifying B.L. or getting her consent. As a result, the Executive Director submitted that this is conduct deserving of sanction. Finally, it was submitted that Ms. Douglas, as Rundle's broker, was in breach of s.21(1)(a) of the Rules, s.21(1)(e) of the Rules and s.21(1)(g) of the Rules, for the same reasons as outlined for Rundle.

P.H. and A.H.

It was submitted by the Executive Director that Rundle was in breach of s.25(2) of the *Real Estate Act* and that Ms. Douglas, as Rundle's broker, was in breach of s.21(1)(e) of the Rules and s.21(1)(g) of the Rules, with respect to Count 18. It was submitted that the written agreement between Rundle and the H.'s was for a one year term beginning February 1, 2000 which was superceded by a further agreement with a one year term starting February 1, 2001. There was an automatic one year renewal unless a 30-day notice was given. As no notice was given, the agreement expired on January 30, 2003, however, Rundle continued to provide property management services from February 1, 2003 until September, 2004. As there was no written agreement, there was nothing governing the terms of services Rundle and Ms. Douglas were providing, therefore any monies Rundle or Ms. Douglas received with respect to this property is a breach.

With respect to Count 19, it was submitted by the Executive Director that Rundle breached s.2(b) of the Code of Conduct, s.50(2) of the Rules, and s.25(9) of the *Real Estate Act*. Furthermore, Ms. Douglas, as Rundle's broker, was in breach of s.21(1)(a) of the Rules, s.21(1)(e) of the Rules and s.21(1)(g) of the Rules. Rundle and Ms. Douglas failed to provide the H.'s with monthly financial statements, as was outlined in their property management agreement. It was stated that a website had been set up in order for clients to access their monthly financial statements. However, from May, 2004 until September, 2004, the H.'s were unable to access the website. It was submitted that A.H. had attempted to request a new password for the website from Ms. Douglas, however, was unsuccessful in getting one. On September 14, 2004, the H.'s requested copies of their financial statements. On September 22, 2004, the H.'s were advised by Rundle that they no longer had possession of the statements for January to April, 2004. Rundle later obtained copies of these from a third party and provided them to the H.'s. As

a result of these circumstances, it was submitted by the Executive Director that Rundle and Ms. Douglas, as Rundle's broker, breached the aforementioned sections of the *Real Estate Act*, Rules and Code of Conduct.

With respect to Count 20, the Executive Director submitted that Rundle was in breach of s.2(b) of the Code of Conduct and Ms. Douglas was in breach of s.21(1)(a) of the Rules and s.21(1)(e) of the Rules. It was submitted that Rundle was terminated at the property manager of the H.'s property by the H.'s on or about August or September, 2004. The H.'s requested a copy of the lease in effect on the property on September 9, 2004, at which point Rundle refused to provide this to them. As such, the Executive Director submitted that Rundle and Ms. Douglas breached the sections of the Code of Conduct and Rules, as outlined above, and that this is conduct deserving of sanction.

Non-Cooperation

With respect to Count 21, the Executive Director submitted that Ms. Douglas breached s.7(d) of the Code of Conduct and s.38(4) of the *Real Estate Act* by failing to cooperate with an investigation and the RECA investigator. The investigator's attempts at contact and requests for information were used to substantiate the alleged breaches by Ms. Douglas, indicating the attempts at contact and the various requests for information, which Ms. Douglas failed to respond to.

II) FINDINGS

The Hearing Panel has made the following findings on conduct after due consideration of all witnesses and documentary evidence presented. Although all evidence presented at the hearing has been considered, the Hearing Panel does not find it necessary to go through each piece of evidence individually and make findings.

Regarding the allegations contained herein, the Hearing Panel finds that there is conduct deserving of sanction on all counts except for Counts 11 through 17 with respect to the Vistas allegations which are hereby formally dismissed. We infer from the evidence with respect to the Big House allegations that Ms. Douglass' conduct (and therefore Rundle's conduct) was malicious and spiteful and as such, this is considered very serious. With respect to the B.L. allegations and the H.'s allegations, Ms. Douglas' conduct did not appear to be malicious or spiteful, however, it did constitute a breach of the provisions in question and is therefore determined to be deserving of sanction. The allegation with respect to non-cooperation is considered to be a serious issue also. A detailed explanation for each allegation is given below.

Big House – Counts 1, 2, 3, 4, 5

With respect to the particulars alleged in each of these Counts, it was established by the evidence of the Executive Director that there is conduct deserving of sanction and that Rundle and Ms. Douglas, as Rundle's broker, were in breach of the outlined sections of the *Real Estate Act*, Rules and Code of Conduct.

The evidence confirms that Rundle failed to provide a proper Statement of Receipts and Disbursements to the Big House. The terms of the agreement between Rundle and the Big House are clearly outlined

in the document marked as Tab 2, Exhibit 1. The testimony given by the representatives of the Big House further supports that Rundle and Ms. Douglas did not provide all the records as required in the agreement. The records provided by Rundle did not meet the obligations of the agreement and as such, the Hearing Panel finds Rundle to have breached s.50(1) of the Rules. Since there was an obvious failure to follow the terms of the agreement, the Hearing Panel finds Ms. Douglas to have breached s.21(1)(e) of the Rules, in that she failed to carry out the business of Rundle competently and in accordance with the Act, the Bylaws, and the Rules. Ms. Douglas also breached s.21(1)(g) of the Rules by not following the terms of trust as outlined in the agreement, nor did the records meet the requirements of s.2(e) of the agreement. As such, Rundle's conduct and the conduct of Ms. Douglas are found to be deserving of sanction.

With respect to Count 2, the Hearing Panel found that Rundle was in breach of s. 25(1)(d) of the *Real Estate Act* and Ms. Douglas was in breach of s.21(1)(e) of the Rules and s.21(1)(g) of the Rules. The allegation of misconduct was that Rundle failed to keep and operate a trust account on behalf of the Big House and failed to disburse money held in trust in accordance with the rules and terms of trust. As it was demonstrated through the evidence contained under Tab7 of Exhibit 1, on December 19, 2002, there was a withdrawal made from the Big House operating account by Rundle amounting to \$5,296.50. There was testimony from representatives of the Big House that neither Ms. Douglas nor Rundle was given authorization to make this withdrawal. The Hearing Panel finds the timing of this withdrawal, being two days after being advised of the Big House's intention to terminate Rundle as the property manager, to be suspect and infers from this that Ms. Douglas' actions were intentional and malicious in nature. As such, Ms. Douglas' conduct and Rundle's conduct has been found to be deserving of sanction.

After considering the evidence presented for Count 3, the Hearing Panel found that Rundle breached s.25(1)(d) of the *Real Estate Act*. The evidence clearly showed that Rundle made three separate transfers of money from the trust account for the Big House to the operating account, which she then used to pay for various expenses other than repairs. As a result of these actions, Rundle caused the Big House to breach s.27(2) of the Condominium Property Regulation, Alta. Reg 168/2000. The Hearing Panel considers this to be very serious and again, goes to the malicious intent of the part of Ms. Douglas, as the broker for Rundle. Furthermore, the Hearing Panel has found Rundle to have breached s.7(a) of the Code of Conduct and s.6 of the Code of Conduct. It was clear through the evidence provided and the testimony of the witnesses that Rundle failed to practice in accordance with the legislation and to render competent service. Since Ms. Douglas and Rundle are considered separate entities under the legislation, the Hearing Panel finds Ms. Douglas' conduct to be deserving of sanction with respect to a breach of s.21(1)(a) of the Rules, s.21(1)(e) of the Rules and s.21(1)(g) of the Rules. As the broker for Rundle, Ms. Douglas is in breach of these sections. It was stated by witnesses that Ms. Douglas failed to maintain the required trust accounts and their records. This goes to further the Panel's finding of conduct deserving of sanction.

With respect to Count 4, the bank statements, as provided into evidence by the Executive Director, clearly shows that Rundle withdrew money for two months of property management fees from the operating account on January 29, 2003 and then proceeded on February 3, 2003 to withdraw the property management fee for February, 2003 and again, on March 3, 2003, to withdraw the property management fee for March, 2003. The witness' testimony clearly corroborates these statements. As such, the Panel finds that Rundle was in breach of s.25(1)(d) of the *Real Estate Act*, by failing to disburse money in trust in accordance with the rules governing the terms of the trust governing the use

of that money. Also, the Panel finds that Ms. Douglas, as Rundle's broker, was in breach of s.21(1)(e) of the Rules as well as s.21(1)(g) of the Rules and her conduct is found to be deserving of sanction with respect to this Count.

The Hearing Panel has found there to be conduct deserving of sanction with respect to Count 5. It was stated through the witnesses for the Big House that Rundle failed to provide complete records to the Big House following the termination of Rundle as property manager. The Panel heard testimony that Ms. Douglas had left a box containing some records on her property, which had to be retrieved by the Big House and that this box did not contain complete records, such as cancelled cheques or invoices for disbursements made by Rundle on behalf of the Big House.

With respect to Count 6, the Hearing Panel found there to be sufficient evidence for a finding of conduct deserving of sanction. There was evidence provided to the Hearing Panel and entered as Tab 10, Exhibit 11, which is a letter, dated January 30, 2003, from Ms. Douglas to M.S.. In this letter, Ms. Douglas states clearly that she did not have any of the financial records for the Big House. This statement satisfies the Hearing Panel that Rundle had failed to keep records and books of account of the dealings and trades and accounting records for a period of 3 years after they came into existence, contrary to s.25(9) of the *Real Estate Act*. Furthermore, it was stated that Ms. Douglas had rendered all records to Collins Barrow with respect to the Big House. This is in contravention of this section of the Act, as Rundle and Ms. Douglas, as Rundle's broker, needed to retain copies of all records for a period of 3 years, which was not done. Therefore, Ms. Douglas also failed to competently carry out the business of Rundle and act in accordance with the legislation and therefore the Panel finds Ms. Douglas to have contravened s.21(1)(e) of the Rules and s.21(1)(g) of the Rules. This amounts to conduct deserving of sanction for this Count.

B.L. – Counts 7, 8, 9, 10

The Hearing Panel found that Rundle failed to disclose all relevant information regarding the rental property to B.L., as alleged in Count 7. Rundle did not disclose to B.L. that S.C. had abandoned the property, which was relevant information for B.L.. As such, the Panel finds that Ms. Douglas, as Rundle's broker, is in breach of s.21(1)(a) of the Rules by her failure to comply with the Code of Conduct. Furthermore, Ms. Douglas' failure to disclose such relevant information to B.L. constitutes a failure on the part of Ms. Douglas to ensure the business of Rundle was carried out competently. As it was clearly her duty to disclose that S.C. had abandoned the property and she failed to do this, Ms. Douglas did not competently carry out the business of Rundle and was in breach of s.21(1)(e) of the Rules and Rundle's and Ms. Douglas' conduct is deserving of sanction.

With respect to Count 8, the evidence clearly shows that cleaning services were retained for the purpose of cleaning the B.L. rental property, as shown by the invoices supplied and contained in Tab 16 of Exhibit 1. B.L. testified that she had never been consulted in order to hire cleaners and only became aware after the invoice had been paid by Rundle out of money held in trust for B.L.. This constitutes a breach by Rundle of s.2(c) of the Code of Conduct by acting outside the scope of authority given to Rundle by B.L.. Furthermore, the Panel finds that since the invoice was paid out of monies held in trust for B.L., Rundle breached s.25(1)(d) of the *Real Estate Act*. Ms. Douglas, as Rundle's broker, is found to be in breach of s.21(1)(a) of the Rules and s.21(1)(e) of the Rules and s.21(1)(g). As such, the Panel finds Rundle's conduct and that of Ms. Douglas to be deserving of sanction.

Count 9 is similar in nature to Count 8. Rundle hired a cleaning service to clean B.L.'s rental property without first getting consent from B.L.. Again, Rundle paid an invoice for this service which was paid by Rundle out of money trust in trust for Ms. Douglas. Evidence was provided to substantiate the allegations in this count and as such, the Panel finds that Rundle was in breach of s.2(c) of the Code of Conduct and s.25(1)(d) of the *Real Estate Act*. Furthermore, the Panel finds that Ms. Douglas, as Rundle's broker, was in breach of s.21(1)(a) of the Rules, s.21(1)(e) of the Rules and s.21(1)(g) of the Rules and that Rundle's conduct and Ms. Douglas' conduct with respect to this Count is deserving of sanction.

There are separate elements to consider with respect to Count 10. It was stated by both B.L. and D.P. that A.L. had terminated his lease prior to the end of the one-year rental agreement. As both B.L. and D.P. stated during their testimony, neither were made aware of this until after A.L.'s notice had been given to and accepted by Ms. Douglas. On November 28, 2003, Ms. Douglas was given formal notice of the termination of Rundle as property manager for the L. property. It was shown that an agreement had been reached with A.L., allowing him to break his lease prior to the agreed end date and an arrangement was made between Ms. Douglas and A.L. that his damage deposit be used toward his outstanding rent. This was done after Rundle and Ms. Douglas were terminated as property manager for the property and without consent of B.L.. The Hearing Panel finds this to be conduct deserving of sanction for Rundle and Ms. Douglas. As such, the Panel finds Rundle to be in breach of s.2(b) of the Code of Conduct, s.2(c) of the Code of Conduct, s.2(a) of the Code of Conduct, s.2(c) of the Code of Conduct and s.25(1)(d) of the *Real Estate Act*. Furthermore, the Panel finds that Ms. Douglas, as Rundle's broker was in breach of s.21(1)(a) of the Rules, s.21(1)(e) of the Rules and s.21(1)(g) of the Rules. As a result of this, the Panel finds Rundle's conduct and Ms. Douglas' conduct to be deserving of sanction.

Vistas – Counts 11, 12, 13, 14, 15, 16, 17

As no evidence was produced at this Hearing with respect to allegations 11 through 17, as contained in the Notice of Hearing, these allegations were not proven and are accordingly dismissed.

P.H. and A.H. – Counts 18, 19, 20

The Property Management Agreement between the H.'s and Rundle at Tab 23 of Exhibit 1, clearly outlines the term of the agreement. The agreement was for a 12-month term, which was renewable for a further 12-month period, unless written notice of termination of the agreement was given. A.H. stated that no notice was given and it was understood that this contract was extended for the additional 12-month period. As this contract outlined the beginning of the term as the 1st day of February, 2001, this contract was only valid until the last day of January, 2003. However, as stated by A.H. and as shown by the evidence, Rundle continued to act as property manager for the H.'s property from February 1, 2003 to September, 2004. As there was no written agreement outlining the terms of any agreement for that period, all services rendered by Rundle and Ms. Douglas, as Rundle's broker, were not contained in a valid, written contract. As such, the Panel finds that money Rundle received as rent from the tenant was received contrary to s.25(2) of the *Real Estate Act*. Furthermore, Ms. Douglas was in breach of s.21(1)(g) of the Rules. Also, as Rundle did not have a valid written contract for that period, Ms. Douglas, failed to ensure the business of Rundle was carried out competently, contrary to s.21(1)(e) of the Rules.

With respect to Count 19, as Ms. Douglas did not provide the H.'s with monthly financial statements, as outlined in the property management agreement, the Panel finds Rundle to have breached s.2(b) of the Code of Conduct. A.H. stated during testimony that she had been provided with a code to access a website set up by Rundle for clients to access and obtain copies of monthly financial statements. However, in May, 2004, A.H. stated that she was no longer able to access the website and she contacted Rundle, however did not receive a response until September 13, 2004, as shown by the evidence at Tab 25 of Exhibit 1. A.H. then contacted Ms. Douglas on September 21, 2004, found at Tab 26, Exhibit 1, requesting that the financial statement from January to April, 2004 be faxed to her. September 22, 2004, Ms. Douglas responded to A.H. requested by stating that she no longer had possessions of the monthly financial statements. The Panel finds that Rundle was in breach of s.50(2) of the Rules, by failing to provide the financial statements within a reasonable amount of time following A.H.'s request. As well, the Panel finds that Rundle failed to keep records for the three-year period after they came into existence, as stated Ms. Douglas in her September 21, 2004 email to A.H., which is a breach of s.25(9) of the *Real Estate Act*. Furthermore, the Panel finds Ms. Douglas, as Rundle's broker, to be in breach of s.21(1)(a) of the Rules, s.21(1)(e) of the Rules and s.21(1)(g) of the Rules. As such, the Panel finds Rundle's conduct and Ms. Douglas' conduct to be deserving of sanction.

With respect to Count 20, A.H. provided copies of emails indicating her request for a copy of the lease agreement from Ms. Douglas on September 9, 2004 and Ms. Douglas' response that she would not be releasing a copy of the lease agreement, stating that because it was a fixed term lease, it would be null and void. On this basis, the Hearing Panel finds that Rundle breached s.2(b) of the Code of Conduct. Furthermore, Ms. Douglas, as Rundle's broker, breached s.21(1)(a) of the Rules and s.21(1)(e) of the Rules. The Panel finds that Rundle's conduct and Ms. Douglas' conduct with respect to Count 20 to be deserving of sanction.

Non-Cooperation – Count 21

There were many documents entered into evidence to indicate Ms. Douglas' lack of cooperation with M.M.'s investigation. Further to this, M.M. stated during testimony that many requests for information and documents from Ms. Money to Ms. Douglas went unanswered. Also, M.M. had made various attempts at contacting Ms. Douglas through email, phone and mail; most of which went unanswered. Although there appeared to be a certain amount of cooperation on the part of Ms. Douglas at the onset of the investigation, that cooperation failed to be maintained by Ms. Douglas throughout the investigation process.

The Hearing Panel therefore finds that Ms. Douglas and Rundle were in breach of s.7(d) of the Code of Conduct and s.38(4) of the *Real Estate Act*, and therefore this is conduct deserving of sanction.

VII) SUMMARY OF DECISION AND ORDERS REASONS

On the whole, the evidence presented by the Executive Director convinced the Hearing Panel that Ms. Douglas' conduct and Rundle's conduct in all Counts, except for those as it relates to the Vistas allegation, was in breach of the Act, Rules and Code of Conduct. As such, the Executive Director has established that Ms. Douglas and Rundle are guilty of conduct deserving of sanction.

As indicated above, the Executive Director's counsel, Mr. Lee, was invited to make submissions on sanction after the Panel delivered its decision orally. Mr. Lee made those submissions and the Panel's decision on Sanction is being issued separately.

This decision was made on November 30, 2006.

Jack Peat, Chair

Ken Green

Richard Parker

THE REAL ESTATE COUNCIL OF ALBERTA

IN THE MATTER OF subsections 39(1)(b) and 41 of the *Real Estate Act*,
S.A.1995, c. R-4.5, as amended

AND IN THE MATTER OF a Hearing concerning the conduct of Alison Douglas, Broker,
registered at all material times hereto with 672630 Alberta Ltd.
o/a Rundle Property Management

Hearing Panel members: Jack Peat, **Chair**
Ken Green
Richard Parker

Appearing: Mr. Todd Lee, legal counsel on behalf of the Executive Director
Ms. Alison Douglas did not appear

**DECISION OF A HEARING PANEL OF THE REAL ESTATE COUNCIL OF
ALBERTA ON SANCTION**

III) INTRODUCTION

The Hearing Panel held a hearing into the conduct of Alison Douglas, while registered at all material times hereto with 672630 Alberta Ltd. o/a Rundle Property Management. The Notice of Hearing was addressed to both Douglas and 672630 Alberta Ltd. o/a Rundle Property Management (hereinafter "Rundle"), and contains separate allegations against both of them.

The Hearing took place on November 30, 2006. In attendance at the hearing was Todd Lee, legal counsel on behalf of the Executive Director of the Real Estate Council of Alberta. Neither Alison Douglas, nor Rundle appeared, and the Hearing proceeded in their absence.

At the conclusion of the Hearing, the Panel orally delivered its decision on conduct, concluding that Ms. Douglas and Rundle are guilty of conduct deserving of sanction. The Panel indicated that reasons for the decision would follow. The Panel then permitted Mr. Lee to make submissions on Sanction and reserved its decision in this regard.

The reasons for our decision on conduct have now been issued in a separate written decision. Below we have set out our decision on sanction.

II) SUBMISSIONS ON SANCTION

The Executive Director submitted that in light of the seriousness of the misconduct in this case, an appropriate sanction should include substantial fines for each transgression, an educational requirement, a suspension, and payment of costs. It is to be noted that Ms. Douglas and Rundle are not currently licensed. Therefore, an educational component would have to be a precondition of any

future licensing application, and a suspension would have to be served at the commencement of any re-licensing that may occur in future.

With respect to the matter of fines, the Executive Director submitted that there ought to be a separate fine for each of the various allegations in respect of which Ms. Douglas and Rundle have been found guilty of conduct deserving of sanction. It was submitted that the misconduct with respect to the Big House was the most serious, as the depletion of the reserve fund created serious problems for the condominium corporation. Furthermore, the timing of the large withdrawals raised a serious concern in that it goes to show malice and vindictiveness on the part of Ms. Douglas, and therefore Rundle, as Rundle acted through Ms. Douglas throughout. Two precedent decisions were referenced in this regard; *RECA v. Grenkie* and *RECA v. Dank*. In the Grenkie matter, a fine was issued in the amount of \$8,000 and in the Dank matter, there was a fine in the amount of \$4,000. It was submitted that the fines issued in these decisions are lower than what is being asked by the Executive Director in this matter because of the intent behind the actions of Ms. Douglas. The Executive Director submitted that the fine be in the range of \$10,000 to \$15,000 for the misconduct arising out of the Big House matter.

It was submitted with respect to the H.'s matter that this was an instance where poor service was provided by Rundle and Ms. Douglas. Referring to the precedent decision of Dank, it was submitted that the misconduct in relation to this matter was on the lower range of \$4,000.

With respect to the B.L. matter, it was submitted by the Executive Director that a fine be considered in the higher range of \$4,000, in being more similar to the Dank decision. It was stated that this was an instance of poor service on the part of Rundle and Ms. Douglas.

With respect to the finding of the non-cooperation allegation, it was submitted that a fine be assessed in the amount of \$5,000. To support this amount, a RECA precedent decision was referred to in the matter of *RECA v. James*. The Executive Director stated that the precedent case was a particularly egregious situation of non-cooperation by an industry member.

It was submitted that Ms. Douglas be required to successfully complete the Alberta Real Estate Association's Agent's Program in its entirety prior to any application she may make to re-enter the industry, as well as any further educational requirements in order to be licensed as an industry member.

Upon satisfaction of this, it was requested that Ms. Douglas serve a 3-month suspension once allowed to re-enter the industry. The *RECA c. Hasna* and *RECA v. James* precedent cases were referred to in terms of these restrictions being sought by the Executive Director.

Finally, the Executive Director submitted to the Hearing Panel that the full costs be awarded in this matter. A Schedule of Costs was provided to the Hearing Panel in the amount of \$17,517.52.

III) FINDINGS AND REASONS

The Hearing Panel has considered the submissions made by the Executive Director in this matter. The Panel has found that Ms. Douglas' and Rundle's conduct with respect to the Big House to be malicious and spiteful in intent, which is a serious concern. With respect to the H.'s and B.L. matters, the conduct

was more that of poor practice and not vindictiveness. The H.'s matter was found by the Panel to be on the lower range for a fine, using Dank as the precedent, as there was no financial harm done to the H.'s as a result of the misconduct. The B.L. matter was found to be somewhat more serious, in that B.L. had in fact suffered some financial loss as a result of the misconduct and poor practices. Finally, with respect to the non-cooperation finding, this is a serious concern for the Panel. Without the cooperation of industry members, it hinders RECA's ability to protect the industry from unscrupulous individuals. Therefore, the Hearing Panel agrees with the Executive Director's submissions that the fine should be a substantial one.

As such, the Hearing Panel sets a fine in the amount of \$15,000 with respect to the Big House matter. With respect to the H.'s matter, the Hearing Panel hereby sets a fine in the amount of \$2,000 for the reasons outlined above. The B.L. matter was somewhat more serious, as discussed above, and therefore the Hearing Panel sets a fine in the amount of \$4,000. Finally, the non-cooperation matter is also a serious concern and as such, the Hearing Panel orders a fine in the amount of \$5,000 for this breach. These fines total an amount of \$26,000.

The Hearing Panel accepts the Executive Director's submissions with respect to the educational component. As such, Ms. Douglas must successfully complete the Real Estate Agent's Program in its entirety prior to re-entering the industry and that any application by Ms. Douglas to re-enter the industry should not be approved until such requirements are complete. Further to this, should Ms. Douglas apply to become a broker, she must successfully complete the Broker's Program in its entirety prior to obtaining that license.

Finally, the Hearing Panel feels that a suspension for 3 months once Ms. Douglas has re-entered the industry to be acceptable. The malicious intent demonstrates in Ms. Douglas' actions with respect to the Big House warrants such a suspension. The Panel also orders that Ms. Douglas operate as an agent for a period of 2 years prior to being able to license as a broker.

Furthermore, the Hearing Panel concludes that Ms. Douglas and Rundle should be jointly responsible to pay full costs of this matter. The Panel considered the Schedule of Costs along with the supporting documentation. There were slight adjustments made to the amount being sought by the Executive Director. The Hearing Panel found there to be some inaccuracies, as all costs were totaled, including a variation in the Hearing Panel Honorarium amount, as well as the travel costs for Hearing Panel members. In terms of the cost for legal counsel, the Panel was satisfied that the documentation to support these hours satisfied the test of a taxation and due to the length of this matter and the number of complainants, the Panel finds that the costs for legal counsel to be reasonable. With the above noted variations made, the total costs amount to \$17,902.97.

IV) ORDERS

As a result of our finding of conduct deserving of sanction, and after due consideration of the submissions made by the Executive Director regarding sanction, we hereby order, pursuant to Section 43 of the *Real Estate Act*, as follows:

1. Ms. Douglas and Rundle shall pay a fine in the total amount of \$26,000.00.

2. Ms. Douglas shall successfully complete the Alberta Real Estate Association's Agent's Program in its entirety prior to re-entry to the real estate industry.
3. Upon re-entering the industry, Ms. Douglas must complete a 3-month suspension.
4. Ms. Douglas must operate for a period of not less than 2 years prior to being able to apply for a broker's license and she must successfully complete the Alberta Real Estate Association's Broker's Program in its entirety prior to receiving a broker's license. This course cannot be used for credits in the required professional development programs for agents and brokers.
5. Ms. Douglas and Rundle shall pay hearing costs in the total amount of \$17,902.97.

This decision was made December 5, 2006.

Jack Peat, Chair

Ken Green

Richard Parker