THE REAL ESTATE COUNCIL OF ALBERTA

IN THE MATTER OF s. 39(1)(b) and s. 41 of the *Real Estate Act*, R.S.A. 2000, c. R-5

AND IN THE MATTER OF a hearing concerning the conduct of **Real Estate Strategies Group Inc.** as an unlicensed real estate broker

Hearing Panel members:	Richard Parker, Chair Lynn Patrick Patti Beaudry
Appearing:	Mr. Terry Davis, legal counsel on behalf of the Executive Director Mr. Alan Penner, an officer of and on behalf of Real Estate Strategies Group Inc.
Hearing Date:	May 25 and 26, 2006

DECISION OF A HEARING PANEL OF THE REAL ESTATE COUNCIL OF ALBERTA

WHEREAS the Executive Director of the Real Estate Council of Alberta has, pursuant to the Act, conducted an investigation in respect to the conduct of Real Estate Strategies Group Inc and assessed an Administrative Penalty pursuant to a Notice dated October 7, 2005;

AND WHEREAS Real Estate Strategies Group, by a notice in writing dated November 2, 2005, requested an appeal of the Administrative Penalty pursuant to the Act;

AND WHEREAS Real Estate Strategies Group, by their former legal counsel tendered the sum of $1,000 on November 2, 2005 to the Executive Director as security for costs pursuant to the Bylaws;

AND WHEREAS the Executive Director issued a Notice of Hearing dated October 7, 2005 pursuant to the Bylaws.

I) INTRODUCTION

On October 7, 2005, pursuant to his authority in section 83 of the Real Estate Act (the "Act"), the Executive Director ("Executive Director") of the Real Estate Council of Alberta ("RECA") imposed an administrative penalty on Real Estate Strategies Group Inc. ("RESG"). The penalty arises out of a determination by the Executive Director of breach of section 17 of the Act (trading in real estate and/or holding oneself out as trading in real estate without the required authorization from RECA).

Pursuant to section 35 of the RECA Bylaws, RESG appealed the administrative penalty to this Panel which takes the form of a hearing de novo. On May 25 and 26, 2006, evidence was presented and arguments made in relation to this matter.

II) EVIDENCE

A total of six exhibits were presented, two of which were binders containing a number of documents. Two witnesses appeared on behalf of the Executive Director, being Ms. Fairilee Clermont, an investigator with RECA and E.W. , the complainant in this matter. Alan Penner, an officer, testified on behalf of the RESG.

Ms. Clermont as the investigator appointed by the Executive Director to investigate RESG after receiving an initial complaint from E.W. confirmed from the investigation that at the time of the transactions in question in this matter in 2002 and 2003 neither RESG, nor its officers, Mr. Penner, or Mr. David Bamber appeared on the records of RECA to hold a any form of license from RECA authorizing them to trade in real estate. It was also confirmed by the witness that from transcripts she obtained from interviews with Mr. Penner and Mr. Bamber that it was acknowledged that RESG was not licensed and that it had conducted trades in real estate in Alberta in the 2002 and 2003 time periods

E.W. gave evidence that his occupation is as a real estate developer and that in 2002 and 2003 he was involved in the Penhorwood development in Fort MacMurray Alberta, the development that is the subject of this matter (the "project"). A corporation, 970365 Alberta Ltd., was established in May 2002 with 10 shareholders, one of which was E.W. for the purpose of holding title to project and facilitating the financial contributions of the investors and loans. The project contemplated construction of seven buildings containing 168 strata title units and the sale of those individual units to members of the public. E.W. , as the lead officer of the corporation caused the corporation to look for marketing strategies to sell the condominiums and in the course of such pursuit approached RESG for this purpose because RESG had a reputation of successfully marketing condominiums and had developed a substantial following of investor clients. Negotiations took place over time starting with an offer by RESG to acquire 2 of the 7 buildings in the project through a number of proposals that finally met with the approval of the corporation and RESG and a formal agreement dated June 19, 2002 was entered with RESG. The agreement contemplated RESG marketing and facilitating the sale of the condominium units and receiving commissions for their efforts. E.W. confirmed that pursuant to its obligations under the agreement, RESG took active steps to market the project for the purpose of facilitating the sale of condominium units. RESG's efforts did result in a number of sales being 67 or 68 out of 71 sales which was a target number established as an incentive level failing which there would be an adjustment of the commission level.

E.W. described the sale process as one involving RESG obtaining an offer to purchase together with a cheque representing the deposit from a client and presenting it to the corporation for acceptance. When acceptance was made and the deposit sent to the solicitors for the corporation in trust the accepted offer was returned to RESG for delivery to the client and specific reference was made to a sale agreement with a M.C. and S.C. dated October 21, 2002 as being a typical transaction and indicative of the services being provided

by RESG. E.W.'s evidence was that RESG had no other role in respect to the project and that despite matters being discussed at various stages of the negotiations in the end the agreement between the parties was simply one of RESG being a selling agent for the condominiums with commissions being the only form of remuneration. Although there was a target level of 71 condominiums for RESG to sell it was not an exclusive arrangement as other selling agents were involved in the project such as the project contractor. A marketing brochure was developed by a joint effort of RESG and the corporation and E.W. confirmed that this brochure was put together specifically for RESG's marketing efforts and sales program however variations were made for other selling agents and RESG had no exclusive ownership of that material.

Under both direct and cross-examination E.W. testified that RESG was never an owner of the project or the property, nor was it ever a shareholder of the corporation, nor did it hold any interest in any shareholder of the corporation and it did not have an option to become an owner or shareholder. No monies were ever invested in any way by RESG in the land or the project, nor was any interest earned by the efforts of RESG or its officers and none of them served as a consultant or advisor. It was acknowledged by E.W. that RESG intended to purchase the last two or three condominium units which were needed to reach its incentive level by using its unpaid sales commissions as its down payment. However, ultimately, for various reasons including a dispute between the corporation and RESG that was settled, RESG did not conclude this ownership plan. E.W. testified that all design and build matters were the sole responsibility of the contractor Prairie Communities Corp. and RESG had no responsibilities in that regard.

The evidence produced on behalf of RESG was through Mr. Penner who was an officer and director and he testified on behalf of RESG. Mr. Penner admitted that RESG's activities in the project would, in his opinion, constitute trading in real estate as contemplated by the Act. RESG distributed the marketing brochure to its established list of client investors and other prospective purchasers, and as a result of its efforts a number of sale agreements were concluded and compensation was earned. Mr. Penner acknowledged that RESG received this financial compensation for its efforts on the project. However, he stated that RESG's compensation was considered not to be commission but rather the compensation should be viewed as RESG's share of the profits as co-developer of the project.

Mr. Penner also acknowledged that at no material time in this matter did RESG hold a license from RECA authorizing it to trade in real estate. He indicated that RESG took the position that as a co-developer, it had a substantial interest in the project and would therefore come within the licensing exemption in section 2(1) of the Act. Mr. Penner stated that in this regard RESG entered this project on the understanding that it was a co-developer, not merely a marketer or seller's agent, and that throughout the negotiations the documents in exhibit disclose that was always its intended role. He further admitted that RESG did not ever acquire an ownership interest in the project or the corporation. Mr. Penner referenced that certain of the documents from the negotiations show that RESG had an option to acquire a 10% to 20% ownership interest in the numbered company. Mr. Penner suggested that RESG made a number of construction recommendations and changes, and it was financially involved by way of maintaining holdbacks that were required because of construction deficiencies.

SUBMISSIONS AT HEARING

FOR THE EXECUTIVE DIRECTOR

Mr. Davis acknowledged to the panel that although the Administrative Penalty has been levied, that alone does not constitute evidence of guilt and the burden of proof is still on the Executive Director to prove a breach of the Act, Rules or Bylaws. He stated that the assumption of the Hearing Panel must be that RESG is innocent until proven guilty. The matter is, he agreed, a hearing de novo.

Mr. Davis submitted that through the evidence before the panel it was clear that in summary RESG has admitted that it was trading in real estate without a license. The evidence further shows that RESG's activities resulted in numerous purchases of condominium units within the project and by the further admission RESG conducted trades in real estate.

The only remaining issue is whether RESG is exempt from the requirement to hold a licence in respect to its trades in real estate. The claimed exemption in question requires that RESG have a "substantial interest" in the property that was sold. The interpretation RECA places on this exemption is that substantial means an interest greater than 331/3 %.

The Act further requires that the interest be in real estate and not in the project. When the evidence of the ownership of the land, improvements and the corporation are examined there is no evidence of any direct interest of RESG. There were references in some of the draft documents leading up to the final agreement between the parties of an option or right to participate but by the admission of Mr. Penner those rights or options were never exercised and disappeared before the final agreement was signed. In this case it is clear that RESG had no ownership interest in either the property or the numbered company that owned the property. While it may have contemplated acquiring an ownership interest in the project, it did not do so.

Mr. Davis submitted that on the contention that RESG was a co-developer of the project there was no evidence of any participation in the financing, no obligation to the contractor nor any evidence that RESG bore any risk other than not achieving its sales threshold such that it did not earn its maximum potential rate of commission. He further submitted that the term "co-developer" of itself does not confer an interest in real estate.

Mr. Davis concluded his argument by submitting that at no time did an interest in real estate either directly or indirectly appear to accrue to RESG and in any event nothing as substantial as 331/3 % was even discussed by the parties. There were no agreements of consultancy or advisory services present nor was any remuneration sought by or paid to RESG on that basis.

RESG ARGUMENT SUMMARY

Mr. Penner began his closing submissions by stating that substance in the matter of the subject always trumps form. He argued that the Panel ought to look beyond the documents and consider the function that RESG actually fulfilled in this project and the intellectual capital brought to the project. In doing so, it becomes clear that RESG had much more interest than simply a real estate broker. They were for all purposes a co-developer and partner in the

project. He cited legal precedent cases which he submitted indicate that substantial interest can be either a legal or an equitable interest in property. In this case, given its involvement as co-developer and partner, RESG at least had an equitable interest in the property and the project. This interest, he argued, is sufficient to satisfy the "substantial interest" requirement for the licensing exemption.

Mr. Penner submitted that the fact that RESG did not exercise its option to purchase shares in the numbered company is irrelevant. He then submitted that RESG put itself at risk on an ongoing basis by being co-developers of the project, and this should be sufficient to establish the required substantial interest.

Mr. Penner further stated that the intent of the licensing requirement in the Act is to protect the public from unscrupulous or untrained people, and the requirements ought to be interpreted and applied in this light. He submitted that RESG certainly does not fall into the unscrupulous or untrained categories, and as such there was no issue about creating a danger to the public by trading in real estate without a license.

Mr. Penner submitted that the Executive Director imposed the administrative penalty in question outside the permissible three-year time frame specified in the Bylaws. As such, for this reason alone, the penalty is invalid and improper.

Finally, Mr. Penner stated that the Administrative Penalty that was issued against RESG has a very harsh effect on his character and reputation, and has created the potential for a prejudicial ruling in an ongoing lawsuit arising out of this project. He asked that we defer our decision in this matter until the lawsuit is resolved.

In his rebuttal submissions Mr. Davis addressed the three-year deadline issue by noting that the Executive Director's administrative penalty decision is dated October 7, 2005. The C. sale transaction underlying the administrative penalty was dated October 21, 2002, and is therefore within the three-year requirement. Mr. Davis acknowledged that to characterize the October 21, 2002 transaction as an unlicensed trade in real estate, it was necessary to refer to and consider discussions and activities leading up to the signing of the October 21 deal. Although some of these discussions and activities occurred outside the three-year period, Mr. Davis argued that they have to be viewed as at October 21, 2002 because that is the date the agreement was signed and the commission became payable to RESG.

Finally, Mr. Davis submitted that potential impact on RESG's reputation and the ongoing lawsuit should not be relevant considerations when determining whether or not RESG is in breach of the Act and deserving of an Administrative Penalty. RECA has a regulatory duty that overrides any such considerations.

III) FINDINGS

The Executive Director concluded that RESG breached section 17 of the Real Estate Act (trading in real estate and/or holding oneself out as trading in real estate without the required authorization) and imposed an administrative penalty pursuant to the RECA Bylaws.

There are three main issues in this matter:

1. Did RESG trade in real estate?
2. If yes, was RESG authorized to trade in real estate?
3. If not, was RESG exempt from the requirement to be authorized by the Act?

And one sub-issue

4. That, in any event, the administrative penalty was imposed more than three years after the alleged violation occurred, and as such the limitation period in the Bylaws protects RESG from penalty.

We will deal with each of these arguments separately below.

1. Exemption Argument:

Legislative Provisions:

It is appropriate to set out the provisions in the Real Estate Act that are relevant to this matter.

Section 17:

No person shall

(a) trade in real estate as a real estate broker,
(b) ...
(c) ...
(d) advertise himself ..., or in any way hold himself ... out as, a ... real estate broker

unless that person holds the appropriate authorization for that purpose issued by the Council.

Section 1(definitions):

(v) "real estate broker" means
  (i) a person who, for another or others and for consideration or other compensation .... trades in real estate ...
  (ii) a person who holds out that the person is a person referred to in subclause (i);

(x) "trade" means
  (i) a disposition or acquisition of, or transaction in, real estate by sale, purchase, agreement for sale, exchange, option, lease, rental or otherwise,
  (ii) an offer or attempt to list real estate for a disposition or transaction referred to in subclause (i);
  (iii) ...
  (iv) ...

or

(v) any act, advertisement, conduct or negotiation, directly or indirectly in furtherance of any activity referred to in subclauses (i) to (iv).

Section 2:

(1) ... this Act as it relates to trading in real estate does not apply to
(c) a person
- (i) who acquires real estate or any interest in real estate,
- (ii) who disposes of real estate owned by that person or in which that person has a substantial interest, or
- (iii) who is an official or employee of a person acquiring or disposing of real estate within the meaning of subclause (i) or (ii),

Discussion:

There is no dispute about the following central facts:

- The activities that are the subject of this appeal constitute "trading in real estate" as defined in the Act.
- RESG marketed or advertised the property with the intent of facilitating sales, and a number of sales did occur as a result of RESG's marketing and sales activities.
- RESG charged a fee for the marketing and sales services it provided.
- At no time did RESG have an authorization pursuant to the Act to trade in real estate as a real estate broker.
- At no time was RESG the owner of, nor did it have an ownership interest in, the property at issue in these proceedings.

Section 2 of the Act effectively provides an exemption from licensing where a person trades in real estate in which he has a substantial interest. The intent, obviously, is to ensure that property owners do not require a license or authorization from RECA simply to sell their own property.

The thrust of RESG's position is that while it was trading in real estate, it fell within the exemption in section 2(1)(c)(ii), and as such it did not require an authorization to trade in real estate. Specifically, RESG states that its trading activities related exclusively to real estate in which it had a "substantial interest". Since the Act does not apply to a person who trades in real estate in which he has a substantial interest, the section 17 requirement for an authorization does not apply. Although RESG was not the legal owner of the property in question, it takes the position that "substantial interest" as that term is used in section 2, does not require it to be the registered owner or even to have a legal ownership interest in the property. Instead, substantial interest can be satisfied by a much lower interest in the property.

We have carefully considered the circumstances and arguments put forward by the parties in this case and we have concluded that RESG did not fall within the section 2 exemption when it carried on its trading activities.

According to the Act, an authorization is required in order to "trade" in real estate "as a real estate broker" (section 17(a)). "Trade" is defined as including a purchase or sale of real estate, but it is not restricted to just a purchase and sale. Trading activities also include any "act, advertisement, conduct or negotiation, directly or indirectly in furtherance of" a purchase or sale of real estate (section 1(x)).

The section 2 exemption, however, is narrower. The exemption does not apply to all of the activities that constitute trading as defined in the Act. It only applies to some of these activities. Specifically, as it relates to this case, the exemption applies only to acquisition and disposition of real estate (section 2(c)). It does not apply to such things as advertisement, negotiation, etc. for the purpose of acquiring or disposing of real estate.

Moreover, it is only trading "as a real estate broker" for which an authorization is required. Pursuant to Section 1(v), the key element in this regard is trading in real estate "for compensation". On this basis, it is the charging of a fee that triggers the requirement for an authorization. Put another way, if a person accepts payment in connection with a trade, they must be a real estate broker.

The cumulative effect of these sections is that if a person is carrying out trading activities for compensation, they must have an authorization from RECA. The limited exemption applies only where the person is simply *acquiring* real estate or where they are *disposing* of real estate they have a substantial interest in. However, based on the wording of the legislation, the *exemption can never apply* to someone who is charging a fee to advertise or negotiate for the purchase or sale of property. The exemption simply does not go this far.

The above interpretation makes sense because it is consistent with the obvious intent of the legislation. Where a person is buying or selling their own property (or property they have a substantial interest in) the Act does not apply and there is no licensing requirement. This would generally include advertising and negotiating activities in relation to that property because they would not usually be charging themselves a fee for this service. However, where a person is charging a fee to advertise or negotiate, or where they are charging a fee to facilitate a purchase or sale of property they do not have a substantial personal interest in, then the person is carrying out real estate broker activities and this is exactly what the legislation is aimed to regulate.

On this basis, clearly RESG is in violation of section 17(a) of the Act because it marketed and advertised the sale of property for a fee without having an authorization from RECA to do so.

As indicated, RESG's argument at the Hearing was that although it traded in real estate as a broker (i.e. for compensation), it was entitled to the section 2 exemption because it had a "substantial interest" in the property. Much of the evidence and argument was directed and the question of what constitutes a "substantial interest" in property. However, this argument ignores the fact that the exemption does not apply to RESG's activities in advertising and marketing the property for compensation. Since the exemption can never apply to these activities, RESG is in violation of section 17 and it is not necessary for us to determine whether or not it had a substantial interest in the property.

As a result, we conclude that the exemption is not available to RESG for its advertising and marketing activities. It is not necessary for us to make a finding, and indeed we make no finding, on the issue of what constitutes a "substantial interest" in property and whether RESG had such an interest in this case.

2. Limitation Argument:

In the present case, the Executive Director exercised his discretion to issue an administrative penalty to punish what he considered to be RESG's violation of section 17 (trading in real estate as a broker without an authorization). This discretion to issue an administrative penalty is authorized by sections 39 and 83 of the Act in conjunction with Part 4 of the Real Estate Council Bylaws.

Part 4, section 36 of the Bylaws provides that any administrative penalty issued by the Executive Director must be issued "within 3 years after the date on which the contravention.... is alleged to have occurred, but not after that date."

RESG argues that the Executive Director was out of time in this case because any violation occurred more than three years before the administrative penalty was issued.

As indicated, the administrative penalty here was issued on October 7, 2005. In order to comply with the three year time period, therefore, RESG's alleged violation must have occurred on or after October 7, 2002. In this case the issue is complicated by the fact that the sale on which the Executive Director relies (the C. transaction) occurred after October 7, 2002, but the Executive Director is relying at least in part on the activities leading up to the sale, and many of these activities occurred prior to October 7, 2002. In other words, the activities that are alleged to constitute a violation of the Act straddle the three-year time frame.

In our view, for two reasons, the administrative penalty in this case was issued within the three-year time limitation imposed by section 36 of the Bylaws. Although many of the marketing activities occurred prior to the three-year deadline, they only became a violation of the Act when the fee was charged or became chargeable. The entitlement to the fee was triggered when the sale occurred. This happened when the sale concluded, which was after the October 7, 2002 deadline. Second, at least some of the marketing and related activities in furtherance of the sale would have occurred immediately prior to the sale and this would be within the three-year limitation in any event.

As a result, we conclude that the Administrative Penalty in this case was issued within the three-year deadline as required by the Bylaws.

3. Other Matters Raised by RESG:

RESG raises two final matters for consideration. It argues that we ought to consider the impact that the Administrative Penalty has on the character and reputation of the company and

its principals, and it asks for us to defer our decision in this matter to avoid any potential adverse impact our findings might have in the lawsuit that is ongoing in relation to the project.

In our view, these two issues are not matters that we ought to be considering in rendering our decision. We agree with Mr. Davis that RECA and its hearing panels have a duty to the public and to the real estate industry to uphold and enforce the Act, Rules and Bylaws that govern us, and this duty supersedes the considerations raised by RESG. Indeed, if we refrained from adverse findings simply because they could be perceived as damaging to the reputation of the guilty, or potentially impacting legal proceedings, we would never be able to find that someone had breached the rules. This would render the Act, Rules and Bylaws essentially unenforceable and would undermine the entire purpose for RECA's existence.

As a result, we are not prepared to alter, vary or delay the conclusions reached above regardless of any impact on RESG or the legal proceedings.

IV) ORDERS

Based on the foregoing, the appeal is hereby dismissed and, as such, the Administrative Penalty is upheld, although as agreed at the hearing, the panel is prepared to receive submissions regarding the amount of the penalty. In addition, the Executive Director is entitled to costs of the Hearing.
During the Hearing there were no submissions made on costs or amount of the penalty. We therefore invite the parties to supply written submissions on the issues of the amount of the penalty as well as costs as follows:

- Mr. Davis will have two weeks from service of this decision to provide any written submissions he has regarding the amount of the penalty as well as costs. Any such submission shall be delivered to both the Hearing Secretary and to RESG within the two-week deadline.

- RESG shall provide any written submissions they may have within two weeks of receiving Mr. Davis' submission. Any such submission shall be delivered to both the Hearing Secretary and to Mr. Davis within the two-week deadline.

The Hearing Panel will then issue a written decision on costs as well as the amount of the penalty after considering the written submissions.

This decision was made on August 14, 2006.

"Richard Parker"
Richard Parker, Chair

Lynn Patrick

Patti Beaudry

This decision was made on August 14, 2006.

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THE REAL ESTATE COUNCIL OF ALBERTA

IN THE MATTER OF s. 39(1)(b) and s. 41 of the *Real Estate Act*, R.S.A. 2000, c. R-5

AND IN THE MATTER OF a hearing concerning the conduct of **Real Estate Strategies Group Inc.** as an unlicensed real estate broker

DECISION OF A HEARING PANEL OF THE REAL ESTATE COUNCIL OF ALBERTA ON COSTS

I) INTRODUCTION

The members of this Hearing Panel are Richard Parker (Chair), Lynn Patrick and Patti Beaudry. The Hearing into this matter took place on May 25 and 26, 2006. We issued a written decision on our findings in respect to the Appeal of an Administrative Penalty by the Real Estate Strategies Group Inc. (RESG) on June 8, 2006. Following the issuance of that decision, we requested submissions on costs of the Appeal from Mr. Davis, legal counsel on behalf of the Executive Director of the Real Estate Council of Alberta, and RESG, who was represented by Mr. Penner, a Director of RESG.

II) SUBMISSIONS ON COSTS

Submissions on sanction were provided in writing to us by Mr. Davis.

Mr. Davis provided us with four court decisions as precedent cases as well as an Estimated Schedule of Costs in the amount of $9,827.09.

Mr. Davis submitted that the original Administrative Penalty in the amount of $5,000 that was issued to RESG by the Executive Director was warranted, as RESG's breach was serious and merits that sanction.

Mr. Davis submitted that mitigating factors in this case are that RESG have cooperated with both RECA investigators as well as the representative for the Executive Director throughout. As well, it was submitted that RESG's misconduct was not a deliberate contravention of the *Real Estate Act*.

Mr. Davis stated that aggravating factors in this matter was RESG's violation of s.17 of the *Real Estate Act* continued for approximately 15 months and for approximately 65 transactions and that this is a substantial period of time and number of transactions for such a contravention. As well, RESG argued that it was able to trade in real estate under the substantial interest exemption in the *Real Estate Act*, however, over the course of the project, it became apparent to RESG that it would not obtain such an interest. At such time, RESG should have realized the licensing requirements then applied to it in order to continue trading in real estate with respect to the Penhorwood transactions.

It is based upon these mitigating and aggravating factors that the Executive Director submitted that the Administrative Penalty in the amount of $5,000 was reasonable.

Mr. Davis submitted that RESG should be ordered to pay costs in the amount of $9,827.09 as outlined in the Schedule of Costs. Mr. Davis submitted that in light of a recent decision of Madam Justice Rawlins in *Murti Goll v. Real Estate Council of Alberta*, a more detailed accounting of costs much as in the same way as would occur in a taxation of costs in court proceedings with substantiation to be provided. As such, this should be provided to RECA panels in order to clearly outline the costs. As well, Madam Justice Rawlins outlined the factors for consideration for awarding hearing costs, such as the degree of success of the industry member, the necessity for calling all of the witnesses and whether the result of the Hearing could have been anticipated, among various others.

Mr. Davis then argued that in the applicable factors, the Executive Director met the test in order to order the full costs in this matter, including that the Executive Director was successful in the Hearing Panel upholding the finding of the Executive Director with respect to RESG's breach of s.17 of the *Real Estate Act* through the initial issuance of the Administrative Penalty.

Mr. Penner did not make any official submissions on costs. When he was contacted with respect to his submissions, he responded that he would not be making any written submissions on the issue of costs. He further stated that RESG would pay the amount the Hearing Panel considers reasonable in the circumstances.

III) ORDERS AND REASONS

The Hearing Panel considered the submissions made by Mr. Davis as well as Mr. Penner's choice not to make any submissions on the amount of the Administrative Penalty and the costs of this matter. In considering the amount of the Administrative Penalty assessed against RESG and whether to uphold or vary the amount, the Hearing Panel has not received any compelling argument that would force an alteration of the amount ordered to be paid, amounting to $5,000.

When considering the issue of costs in this matter, the Hearing Panel carefully considered the submissions made by Mr. Davis. In light of the recent Court of Queen's Bench decision of the Madam Justice Rawlins, the Hearing Panel looked for a detailed accounting of the costs being requested by the Executive Director. The accounting provided by Mr. Davis reflected that of a taxation of court and met the test as set out by Madam Justice Rawlins. Also, since no submissions were made on behalf of RESG on this issue, it appears that there is no disagreement with the amount of costs, as outlined in the Schedule of Costs provided by Mr. Davis. Since the arguments in this matter were mainly based on legal arguments of what constitutes a substantial interest, there was a considerable amount of time spend by legal counsel in order to prepare its case, as was apparent throughout the hearing.

The Hearing Panel feels that the submissions made by the Executive Director provided RESG with the background on where the amount of costs was derived. As such, there is nothing compelling the Panel to depart from the amount of the penalty ordered by the Executive Director.

As a result of the Hearing Panel's finding and the upholding the Executive Director's imposing of an Administrative Penalty for a contravention of s.17 of the *Real Estate Act*, we hereby order, pursuant to Section 35 (7)(b) of the *Bylaws* made pursuant to the *Real Estate Act*, that:

1. RESG pay an Administrative Penalty in the amount of $5,000.

2. RESG pay hearing costs of $9,827.09.

This decision was made on October 13, 2005.

"Richard Parker"
Richard Parker, Chair

Lynn Patrick

Patti Beaudry

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