

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 regarding the conduct of **MARTIN ZACHER**,
Broker registered at all material times hereto with
TWIN OAKES REAL ESTATE (1993) INC., o/a Re/Max House of Real Estate

Hearing Panel members: Al Dredge, **Chair**
Bev Andre
Richard Parker

Appearing: Mr. Todd Lee, legal counsel on behalf of the Executive Director
T.S. , legal counsel on behalf of Martin Zacher
Mr. Martin Zacher

Witnesses: Ms. Maggie Monney
G.M.

Hearing Dates: April 19 and June 26, 2006

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

I) INTRODUCTION

The Hearing Panel held a hearing into the conduct of Martin Zacher, while registered as a real estate broker with Twin Oakes Real Estate Inc., o/a Re/Max House of Real Estate. The Hearing Panel was composed of Al Dredge (Chair), Bev Andre and Richard Parker.

The Hearing took place on April 19 and June 26, 2006. In attendance at the hearing were Todd Lee, legal counsel on behalf of the Executive Director of the Real Estate Council of Alberta, T.S. , legal counsel on behalf of Martin Zacher and Martin Zacher.

II) ALLEGATIONS

Martin Zacher was called before the Hearing Panel to answer to the following allegations set out in the Notice of Hearing:

1. You were at all relevant times the broker for a brokerage called Twin Oakes Real Estate (1993) Inc. o/a Re/Max House of Real Estate ("Re/Max House"). On or about October 29, 2002, the Executive Director of the Real Estate Council of Alberta served upon you a notice under which conditions

were placed upon the licence of an industry member named Z.G. who had applied to become licensed as an agent with Re/Max House. The conditions on Z.G.'s licence included the following:

1. Z.G. is required to meet (the "Meetings") with her Broker on or before the 5th day of each month. The purpose of the Meetings between Z.G. and her Broker is to ensure the Broker is aware of and can review all of the trade activities conducted by Z.G. on behalf of the brokerage. During the monthly Meeting, Z.G. must disclose to her Broker all trade activities that she has conducted on behalf of the Brokerage during the preceding month.
2. ... Z.G. must provide a statutory declaration to the Real Estate Council of Alberta confirming that she has participated in the [monthly] Meetings with her Broker and a statement that the monthly Meetings covered all trade activities that Z.G. conducted on behalf of the Brokerage in the past year.
3. Z.G.'s Broker cannot delegate the monthly meetings...."

On or about November 1, 2002, Z.G. was issued a licence through Re/Max House that was subject to the conditions described above. Between November 5, 2002 and December 5, 2003, you and Z.G. met, however, you failed to review all of the trade activities conducted by Z.G. on behalf of the Re/Max House, or you otherwise delegated the review of those trade activities to others employed by Re/Max House. The foregoing is conduct deserving of sanction, the particulars of which include:

- a) You failed to be actively engaged in the management of Re/Max House, contrary to s. 21(1)(b) of the Rules;
- b) You failed to ensure that the business of Re/Max House was carried out competently and in accordance with the Act, the Bylaws and the Rules, contrary to s. 21(1)(e) of the Rules;
- c) You failed to ensure that there was an adequate level of supervision for Z.G., contrary to s. 21(1)(f) of the Rules; and
- d) You failed to practice in strict accordance with the Act, Rules, Bylaws and Regulations and any other laws that govern trading in real estate or mortgage transactions in Alberta, contrary to s. 7(a) of the Code of Conduct

all of which happened in Calgary, Alberta.

2. Further to the allegations in paragraph one above, on or about December 10, 2003, you swore a statutory declaration under which you warranted that you had "on the dates and times listed, [met] with [Z.G.] for the purposes of complying with the Order issued." Thirteen documents were appended to the statutory declaration which warranted that you and Z.G. had met on a monthly basis between December, 2002 and December, 2003, at which Z.G. had fully disclosed to you all trades that she had done on behalf of the brokerage. However, Z.G. had not fully disclosed to you all trades that she had done on behalf of the brokerage, of which you

knew or ought to have known. The foregoing is conduct deserving of sanction, the particulars of which include that you provided a statutory declaration to the Executive Director which you knew, or ought to have known, was false or misleading, contrary to s. 4(d) of the Code of Conduct, all of which happened in Calgary, Alberta.

EVIDENCE

A total of 12 exhibits were presented, which were contained within a binder, including the original Notice of Hearing, a letter to Mr. Zacher regarding Z.G.'s licensing conditions dated October 29, 2002, a statutory declaration sworn by Mr. Zacher dated December 10, 2003, as well as transcripts of investigation interviews, among others. Two witnesses appeared on behalf of the Executive Director, including Maggie Mondey and G.M. Martin Zacher testified on his own behalf.

The first witness called by Mr. Lee, on behalf of the Executive Director, was Maggie Mondey. Ms. Mondey is an investigator for RECA. She indicated that as a result of the investigation of Z.G., there were some unusual things discovered regarding Mr. Zacher's broker responsibilities with respect to Z.G., at which point Ms. Mondey indicated she began an investigation of Mr. Zacher. She examined the binder, containing exhibits one through 12, and verified various documents from her investigation throughout. Mr. Lee asked Ms. Mondey to read certain parts of a transcript, marked as exhibit eight, from an interview conducted by Ms. Mondey with Mr. Zacher. Mr. Zacher stated in this interview that he understood Z.G. had been sanctioned by RECA and that there was a requirement for him to follow up with those requirements to supervise her. Later in that interview, Mr. Zacher stated that he did not review the consent agreement which outlined the requirement that Z.G. be supervised. Mr. Zacher stated, however, that he was not aware that one of the issues with respect to Z.G. was competence. He submitted that he primarily left Z.G. under G.M.'s supervision and that her files were monitored on a daily basis at his office. He stated that as a result of this daily monitoring by G.M., he did not interpret the purpose of his meetings with Z.G. to be a review of her files and transactions.

Under cross-examination, Ms. Mondey stated that with respect to exhibit five, the directions contained within the letter dated October 29, 2002, were for Z.G. to disclose to her broker all trade activities she had conducted on behalf of the brokerage during the prior month. She agreed with T.S.'s statement that these directions were for Z.G., not her broker. Ms. Mondey agreed that there was no reason to believe that Mr. Zacher and Z.G. did not meet on or before the 5th day of each month. She stated that there was no evidence to the contrary that they met each month as stated in Mr. Zacher's affidavit, marked as Exhibit nine. Ms. Mondey agreed with T.S. statement that Z.G. had directed N.O. to seek legal counsel with respect to the H.A. to N.O. transaction, as this was an unusual transaction.

Under re-direct from Mr. Lee, Ms. Mondey stated that G.M. had either advised Z.G. to direct her client, N.O., to seek legal counsel with respect to this transaction, or that once she had advised N.O. to seek legal counsel, G.M. told her it was the proper recommendation to have made to N.O. Ms. Mondey stated that N.O. suffered a loss of about \$8,000 as a result of this transaction. She went on to state that Mr. Zacher was not involved in the transaction with N.O. and the recommendation for him to seek legal counsel.

The next witness to be called on behalf of the Executive Director was G.M. . G.M. stated that he was the Branch Manager with RE/MAX House of Real Estate at the time. When referred to Exhibit 12, which was his job description with the brokerage, G.M. submitted that this job description accurately depicted his role there at that time. G.M. submitted that he was aware that any delegation to him from Mr. Zacher needed to be in writing. However, he submitted that Mr. Zacher did not give him any written delegation with respect to Z.G. , instead Mr. Zacher orally advised him to supervise her. He stated that he spoke with Z.G. late one night with respect to the N.O. transaction and told her to advise him to seek legal counsel and that these were his instructions to her, not Mr. Zacher's instructions.

Under cross-examination, G.M. stated that the monthly meetings between Mr. Zacher and Z.G. occurred, however, he was not privy to what was discussed during those meetings, as he did not participate in them. G.M. submitted that he understood the instructions in the October 29, 2002 letter to be the obligation of Z.G. , to disclose to her broker all trade activities at the end of each month. G.M. stated that at the time he was hired, he had ongoing commitments as an AREA instructor and as such, he was out of the office frequently; however, he was available twenty-four hours a day by phone to be contacted by agents at the brokerage.

Under re-direct by Mr. Lee, G.M. submitted that he did not review the paperwork with respect to files as they were sent to the main office daily. He stated that because of his outside commitments, he did not want to delay the process by holding the files for his review for when he was able to review them.

Mr. Zacher was called by T.S. , to testify on his own behalf. He stated that he has been in the real estate business for 38 years. Mr. Zacher submitted that Z.G. was hired based on G.M.'s recommendation. Z.G. worked out of the southeast office, with the understanding that G.M. would have to monitor her closely, as stipulated by the RECA guidelines. He submitted that he met with Z.G. each month and she outlined her transactions and sales from the previous month. He also stated that her trade activity was he reviewed by him or his delegate on a daily basis. Mr. Zacher stated that Z.G. kept record of their meetings, as required, and they both signed these. He submitted that his understanding of the October 29, 2002 letter was that Z.G. needed to be closely monitored, either by himself or G.M. , but he did not understand it to mean that he was solely responsible for her monitoring.

Under cross-examination by Mr. Lee, Mr. Zacher stated that he was not aware that Z.G. had waived conditions with respect to the N.O. transaction on or about February 3, 2003 nor was he aware that the purchase contract had been amended by the parties or of how disclosed the commission deal she had with H.A. . Mr. Zacher submitted that part of G.M.'s job was to supervise Z.G. . He submitted that he would not have reviewed the listing agreements or any offers to purchase when meeting with Z.G. on a monthly basis as he or his delegate would have already reviewed her sales files.

SUBMISSIONS

Mr. Lee first submitted that Mr. Zacher agreed to take on an agent that had been disciplined for her failure to render competent service, although he was unaware of the Hearing Panel order at the time of

hiring. He submitted that Mr. Zacher did not have an adequate understanding of the licensing requirements for Z.G. . He stated that the monthly meetings he held with Z.G. were not in accordance with the requirement, as the only information disclosed to Mr. Zacher would have been at Z.G.'s choosing, as Mr. Zacher stated that her files were not brought into the meetings. Mr. Lee stated that the evidence demonstrates that these monthly meetings were more in-line with chats than an in-depth discussion of Z.G.'s transactions throughout the previous month.

Mr. Lee submitted the issue is the monitoring of Z.G. with respect to Mr. Zacher. He submitted that what may be reasonable supervision for one agent may not be reasonable for another. The purpose of the monthly meetings between Mr. Zacher and Z.G. was in order to have detailed discussions about each of her transactions.

It was submitted by Mr. Lee that there was a delegation of the supervision of Z.G. to G.M. . However, this delegation had to be in writing, which G.M. testified that he was given only verbal instructions to closely monitor Z.G. . Mr. Lee submitted that if the delegation was not in writing, it was not an effective delegation and contrary to the Rules.

Mr. Lee submitted that by Mr. Zacher's own admission, he did not supervise his agents. Mr. Lee stated that this is his duty under the Rules to supervise his agents. He submitted that things can be delegated, however, in special circumstances like those of Z.G. , the delegation must be made clear, which it was not.

With respect to the issue of Mr. Zacher swearing a false statutory declaration, Mr. Lee submitted it was impossible for Mr. Zacher to swear to the contents of the declaration since he did not have a clear understanding of the licensing conditions imposed on Z.G. and what was required of him in terms of supervision. Although Mr. Lee stated that Mr. Zacher swore a false statutory declaration, he was not suggesting that he deliberately tried to defy the order, he just never properly informed himself of what the order meant and what his role was to be. Mr. Lee stated that there was no member of the public that suffered a loss as a result of Mr. Zacher's actions.

T.S. made his closing submissions, stating that the requirements outlined in the Hearing Panel order as well as the October 29, 2002 letter, were the requirements imposed on Z.G. , not Mr. Zacher. He submitted that it was Z.G.'s responsibility to report her trade activities to her broker, she had to meet with her broker monthly in order to discuss all her monthly transactions, and she was required to provide information and documentation. T.S. submitted that nowhere does it state anything regarding supervision. The compulsion was on Z.G. to comply with the orders, which she did.

T.S. stated that Mr. Zacher testified that he looked at Z.G.'s files, he spoke with her on a monthly basis, and all of her files were in order. He submitted that Mr. Zacher was actively engaged in the brokerage, which was evident through its success and size. T.S. submitted that the orders were very specific. He stated that in the orders, there was nothing stipulated regarding the supervision of Z.G. , as such it cannot state that her broker is responsible for her supervision, as this was not a requirement outlined in the orders.

T.S. submitted that since the brokerage that Mr. Zacher owned was highly successful, the business would in turn have to be carried out competently in order to achieve the kind of success it had reached and maintained. T.S. submitted that there was no merit to the claims made in the allegations against Mr. Zacher, and as such, the matter must be dismissed.

FINDINGS

We have made the following findings on conduct deserving of sanction after due consideration of all witnesses and documentary evidence presented. Although all evidence presented at the hearing has been considered, we do not find it necessary to go through each piece of evidence individually and make findings.

Regarding the allegations contained herein, we find that there is conduct deserving of sanction on allegation one "a", allegation one "b" and allegation one "c", and we find that there is no conduct deserving of sanction on allegation one "d" and allegation two. We have found that Mr. Zacher was in breach of allegations one "a" through "c" with respect to Z.G., however, not with respect to the general practice of the brokerage. A detailed explanation for each allegation is given below.

1) We find that Mr. Zacher is in breach of s.21(1)(b) of the *Code of Conduct* and we conclude that his conduct in this regard is conduct deserving of sanction. It was alleged that Mr. Zacher failed to be actively engaged in the management of Re/Max House with respect to Z.G. We find this to be the case with respect to Z.G. As stated during G.M. testimony, Mr. Zacher had delegated some of his broker responsibilities to G.M. however, this was not done in writing, but rather verbally only. Since this delegation was not in writing, it is contrary to legislation, therefore Mr. Zacher is in breach of being actively engaged in the management of the brokerage. It was Mr. Zacher's responsibility to supervise the agents in his brokerage, which he admitted during testimony, he did not do as this was the responsibility of others. As Z.G. was a special case, there was an increased need for supervision. The evidence presented during the Hearing did not satisfy this requirement for a closer monitoring of Z.G. activities.

2) We find that Mr. Zacher is in breach of s.21(1)(e) of the *Code of Conduct*, and we find there is conduct deserving of sanction. It was alleged that Mr. Zacher failed to ensure that the business of Re/Max House was carried out competently and in accordance with the Act, the Bylaws and the Rules. We find that Mr. Zacher was in breach of s.21(1)(e) of the *Code of Conduct* with respect to Z.G. Mr. Zacher failed to adequately supervise Z.G. as shown through their monthly meetings. As stated by Mr. Zacher during his testimony, Z.G.'s files were not brought to the monthly meetings and Mr. Zacher could not clearly outline for the Hearing Panel what would have been discussed during these meetings. We find that Mr. Zacher did not closely review Z.G.'s files and transactions, to the satisfaction of the orders that were required, as outlined in the October 29, 2002 letter.

3) We find that Mr. Zacher is in breach of s.21(1)(f) of the *Code of Conduct* and we conclude that his conduct in this regard is conduct deserving of sanction. It was alleged that Mr. Zacher failed to ensure that there was an adequate level of supervision for Z.G. Because Z.G.'s competency was an issue as indicated by the orders given by RECA, it was required that Z.G. have a higher level of supervision than was standard for most agents. We find that Mr.

Zacher failed to do this in the context of the October 29, 2002 letter. The letter required that the broker, no one else, was aware of and could review, with the intent being that the broker "should" review, all of the trade activities Z.G. did on behalf of the brokerage. We feel that it is clear that Mr. Zacher failed to do this. Although Mr. Zacher delegated the supervision to G.M. with respect to Z.G., Mr. Zacher had a responsibility to review her files himself. There was no evidence presented during the Hearing to demonstrate that Mr. Zacher had an adequate level of review in place for himself for reviewing Z.G.'s files.

4) We find that Mr. Zacher is not in breach of s.7(a) of the *Code of Conduct*, and we find there is no conduct deserving of sanction. It was alleged that Mr. Zacher failed to practice in strict accordance with the Act, Rules, Bylaws and Regulations and any other laws that govern trading in real estate or mortgage transactions in Alberta. We find that Mr. Zacher's breaches were only in regards to the orders placed on Z.G. We do not feel that Mr. Zacher was in breach of anything other than failing to comply with the orders with respect to Z.G. As a result, we are unable to find that Mr. Zacher's conduct with regard to this allegation is conduct deserving of sanction.

5) We find that Mr. Zacher is not in breach of s.4(d) of the *Code of Conduct*, and as such, we find there is no conduct deserving of sanction. It was alleged that Mr. Zacher provided a statutory declaration to the Executive Director which he knew, or ought to have known, was false or misleading with respect to Mr. Zacher and Z.G. having met on a monthly basis between December, 2002 and December, 2003, at which Z.G. had fully disclosed to him all trades that she had done on behalf of the brokerage. We find that with respect to allegation one "d" and allegation two, one flows out of the other. At the time that Mr. Zacher provided a statutory declaration to the Executive Director, he believed he had complied with the orders with respect to Z.G. Although the Hearing Panel has found that he was not in compliance with the orders, he did not make a false statutory declaration, since he signed it believing that he had complied. However, the Hearing Panel believes that had Mr. Zacher had any questions regarding the orders with respect to Z.G., it was his responsibility to seek clarification with the Executive Director on the orders.

ORDERS

The Hearing Panel requests submissions on sanction by Mr. Lee within 14 days of service of this decision. Those submissions are to be sent directly to T.S. and copied to the Hearings Coordinator. T.S. then has 14 days from that date to make his written submissions. T.S. is to forward his submissions to Mr. Lee and send a copy to the Hearings Coordinator. Mr. Lee then has 7 days to submit a final response to T.S.'s submissions on sanction. Upon doing so, Mr. Lee is to provide a copy to T.S. and the Hearings Coordinator, who will forward all submissions on sanction to the Hearing Panel.

If no response is heard from Mr. Lee or T.S. within the allocated timeframes, we will make and issue a decision on sanction without the benefit of their submissions.

This decision was made on June 26, 2006.

"Al Dredge"

Al Dredge, Chair

Bev Andre

Richard Parker

This decision was made on June 26, 2006.

Al Dredge, Chair

"Bev Andre"

Bev Andre

Richard Parker

This decision was made on June 26, 2006.

Al Dredge, Chair

Bev Andre

"Richard Parker"

Richard Parker

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 regarding the conduct of **MARTIN ZACHER**,
Broker registered at all material times hereto with
TWIN OAKES REAL ESTATE (1993) INC., o/a Re/Max House of Real Estate

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

I) INTRODUCTION

The members of this Hearing Panel are Al Dredge (Chair), Bev Andre and Richard Parker. The Hearing into this matter took place on April 19, 2006 and June 26, 2006. The Hearing Panel issued a written decision on our findings in respect to the Executive Director's allegations of conduct deserving of sanction in this matter on June 26, 2006. Following the issuance of that decision, the Hearing Panel requested submissions on sanction from Mr. Lee, legal counsel on behalf of the Executive Director of the Real Estate Council of Alberta, and Mr. Zacher, the industry member who was represented by legal counsel, T.S.

II) SUBMISSIONS ON SANCTION

Submissions on sanction were provided in writing to us by Mr. Lee and T.S.

Mr. Lee provided us with four prior Hearing Panel decisions as precedent cases as well as an Estimated Schedule of Costs in the amount of \$13,849.31.

Mr. Lee submitted that a substantial monetary penalty and completion of an educational requirement are necessary in order to deter Mr. Zacher from future similar misconduct.

As well, Mr. Lee submitted that a clear message needs to be sent to the industry, in particular to brokers, that any licensing conditions imposed on an industry member which impose duties on the broker must be strictly adhered to, as well as the close supervision of an industry member whose conduct has been disciplined for issues relating to competence.

Mr. Lee submitted that the mitigating factor in this case was that Mr. Zacher and his legal counsel have been reasonable cooperative with both RECA investigators as well as the representative for the Executive Director.

Mr. Lee stated that the aggravating factor was Mr. Zacher's continued refusal to acknowledge any wrongdoing in this matter.

Mr. Lee submitted that as Mr. Zacher was found to have conduct deserving of sanction in respect of three of the five allegations of misconduct in this matter, the industry member ought

to be ordered to pay a fine of \$6,000, pay costs in the amount of \$13,849.31, and to successfully complete the Real Estate Brokerage course within one year of the date of service of this decision.

T.S. submitted that the level of sanction should be an order of reprimand, that no fines be levied and no restrictions be placed on his activities. T.S. submitted that the direction given by RECA regarding supervision does not specify the type of supervision required by Mr. Zacher, and as such, there should be no penalty imposed. He further stated that the Hearing was originally scheduled for one day and the adjournment requested by the Executive Director in order to call an additional witness was detrimental to Mr. Zacher's submissions and closing as well as the Panel's ability to arrive at a decision, and he stated that the adjournment significantly extended the time of the Hearing as well as the costs.

With respect to the precedent cases referred to by Mr. Lee, T.S. submitted that these are not comparable with Mr. Zacher's case. He stated, however, that in the Marlin case, the issue of costs may be relevant to Mr. Zacher's case, where Mr. Marlin was ordered to pay costs of \$500. Finally, T.S. submitted that Mr. Zacher should be given only a reprimand and no costs in this matter, as there was no deliberate attempt to avoid the directions of the letter of the Executive Director by Mr. Zacher.

III) ORDERS AND REASONS

The Hearing Panel considered the submissions made by both Mr. Lee and T.S. . The Hearing Panel considered both the aggravating and mitigating factors, as stated by both parties.

Though T.S. submits that Mr. Zacher should not have any sanction or cost levied against him in this matter, the Hearing Panel finds that both are necessary.

With respect to the issue of sanction, the submissions by Mr. Lee requesting \$6,000 are considered to be excessive by the Hearing Panel. However, a simple reprimand, as requested by T.S. is not sufficient either. After considering both parties submissions and the precedent cases referred to, the Marlin case in terms of a fine appears to be most relevant to Mr. Zacher's case. However, as this was an Admission of Conduct Deserving of Sanction, pursuant to Section 46 of the *Real Estate Act*, the costs in the Marlin case are not relevant to Mr. Zacher's case as Mr. Zacher's matter proceeded to a fully contested Hearing.

In a recent decision by the Honorable Justice Rawlins in the Court of Queen's Bench in the matter of *Murti Goll vs. RECA*, it was determined that costs must be clearly outlined and justified, where possible. The Honorable Justice Rawlins directed the matter to be reheard, only with respect to the issue of costs, as to an accounting of the costs awarded against the Appellant much in the same way as would occur in a taxation of costs in court proceedings with substantiation to be provided.

Although certain costs are assigned amounts, such as Panel Honorarium and the Notice of Hearing, the disbursements and administrative costs were substantiated. However, the largest

cost occurred with respect to the hours for the Case Presenter, totaling \$7,500, more than half of the full costs being asked by the Executive Director. Although this is the single largest cost, there is no accounting for these hours. As such, the Hearing Panel does not feel that Justice Rawlins' test has been met in this matter. Mr. Lee submitted that he spent an estimated 75 hours with respect to this matter, however, there was no accounting for these hours provided, as set out by the test of the Honorable Justice Rawlins. Finally, since this matter was originally linked with another industry member and their respective case, and since there was no accounting of the Case Presenter's time, the Hearing Panel would further reduce the amount. In total, the Hearing Panel would reduce the Case Presenter's hours by 50% after taking into consideration all of the above.

After considering all of the submissions on costs made by both parties, the Panel finds that the second day of the Hearing, caused from the Executive Director's request for an adjournment, should be a cost that is borne by the Executive Director, as T.S. and Mr. Zacher were prepared to go forward with the Hearing on the original day of the Hearing. It was at Mr. Lee's request that the Hearing was adjourned and a second day was added, contrary to T.S.'s request that the Hearing continue on April 19, 2006. Since the second day of the Hearing was at the request of the Executive Director, the Hearing Panel has determined that these costs should not be imposed upon Mr. Zacher.

All of the adjournment applications have been removed as costs to be imposed on Mr. Zacher as his case had originally been linked to another industry member's and the adjournments were as a result of the other individual. The travel costs for the Hearing Panel were reduced from \$2,912.96 to \$864.05 since many of the costs were associated with the Hearing Panel traveling to Calgary for the second day of the Hearing. The disbursements have not been reduced since they were unaffected by the extension of the Hearing to a second day. After removing the majority of costs of the second day of the Hearing as noted above, except for the Panel Honorarium and the Hearings Coordinator costs as the Hearing would have taken a full day without the adjournment, the total costs equal \$7,275.40.

Secondly, out of five original allegations against Mr. Zacher, the Hearing Panel only made a finding of conduct deserving of sanction on three of those. As such, the Hearing Panel considered the amount of time taken to argue the two allegations where there was no finding made. It was determined that those two allegations took approximately 25% of the Hearing to argue these. So after all of the reductions the Hearing Panel has made to costs of the Hearing, a further 25% is subtracted from the total amount of the costs being sought by the Executive Director.

As a result of our finding of conduct deserving of sanction, the Hearing Panel hereby orders, pursuant to Section 43 of the *Real Estate Act*, that:

1. Mr. Zacher pay a fine of \$4,000.
2. Mr. Zacher pay hearing costs of \$5,456.55
3. Mr. Zacher complete and pass the Real Estate Brokerage course, which is a component of the Real Estate Brokers' Program, within one year of the date of service of this decision. Should

this course not be available within the time frame, another course shall be substituted at the sole discretion of the Executive Director. This course cannot be used for credits in the required professional development program for agents and brokers.

This decision was made on October 14, 2006.

"Al Dredge"

Al Dredge, Chair

Bev Andre

Richard Parker

this course not be available within the time frame, another course shall be substituted at the sole discretion of the Executive Director. This course cannot be used for credits in the required professional development program for agents and brokers.

This decision was made on October 14, 2006.

Al Dredge, Chair

"Bev Andre"

Bev Andre

Richard Parker

this course not be available within the time frame, another course shall be substituted at the sole discretion of the Executive Director. This course cannot be used for credits in the required professional development program for agents and brokers.

This decision was made on October 14, 2006.

Al Dredge, Chair

Bev Andre

"Richard Parker"
Richard Parker