

## **THE REAL ESTATE COUNCIL OF ALBERTA**

**IN THE MATTER OF** sections 48, 49 and 50  
of the *Real Estate Act*, R.S.A. 2000, c. R.-5 (the "Act")

**AND IN THE MATTER OF** an Appeal of a Hearing Panel decision regarding the conduct of **Murti Goll (also known as Krishan GOLL)**, currently registered as an agent with Signet Real Estate Ltd. o/a Signet Commercial, and at all material times hereto registered as agent for Calgary Independent Realty Ltd. o/a C.I.R.

**Appeal Panel members:** Lynn Patrick, Chair  
Ted Zaharko  
Norm Jensen

**Appeal Date:** October 2, 2006

### **REHEARING OF APPEAL ON SANCTION AND COSTS**

#### **I) BACKGROUND**

In a decision of an Appeal Panel of RECA dated the 25th of November, 2005, a decision of a Hearing Panel dated May 19, 2005 was upheld. The decision of the Hearing Panel was restricted to sanction and costs because there was an agreed statement of facts and the only remaining issue was sanctions together with a consideration of a claim for costs by the Executive Director.

The Appellant then appealed the Appeal Panel's decision to the Alberta Court of Queen's Bench. In an oral decision, as yet unreported, Rawlins, J. directed the matter to be reheard as to an accounting of the costs awarded against the Appellant much as in the same way as would occur in a taxation of costs in court proceedings with substantiation to be provided. Additionally, the Court directed that although the quantum of the penalty and the costs were not changed, that the Appeal Panel provide comment toward the consideration given to the Appellant as a result of his cooperation in providing an agreed statement of facts and how that impacted the consideration of the amounts of the costs and penalty.

The Appeal Panel directed the parties to make written submissions on the costs substantiation issue and proceeded to a hearing on October 2, 2006 without oral representations.

#### **II) SUMMARY OF PROCEEDINGS AND SUBMISSIONS**

The Appeal Panel received a detailed submission from the Executive Director in which it was pointed out that the amount awarded of \$17,904.96 was a reduction from the amount incurred of \$23,949.21. The Executive Director made a further submission that in recognition of the directions of the Court in addressing the co-operation of the Appellant and in considering and following the principles set forth in the prior decisions of the courts cited by Rawlins, J. being the *Jaswal v. Newfoundland Medical Board*, *Pottie v Nova Scotia Real Estate Commission* and *K.C. v. College of Physical Therapists of Alberta*, that the costs be reduced by a further amount of \$5,968.32 to \$11,936.54.

The parties have made a joint recommendation to the Appeal Panel that the quantum of the costs be set at an agreed amount of \$10,000.00. This, it would appear, indicates that the material in submission by the Executive Director meets the test set forth by the Court in accounting to the Appeal Panel and to the Appellant in arriving at the amount now being recommended.

Correspondence has been received by the Appeal Panel confirming the agreement to the recommended quantum of costs. The Appeal Panel remains obligated, notwithstanding, to follow the directions of the Court and ensure that the taxation test is met.

The specific direction made by Rawlins, J. at page 89 of the decision is as follows:

"In the result I dismiss the appeal except to the extent of the cost sanction and remit that matter back to the appeal panel to provide to the appellant the background information for these costs much in the same way that would occur on a taxation.

Further the appeal panel shall reconsider the cost sanction having regard to the co-operation of the appellant and provide supplementary reasons in regard to that consideration."

In the Jaswal case the Court stated that among other things consideration is to be given to the degree of cooperation of a party against whom the costs are being sought and made a reduction of 40% to the costs being claimed.

There was also some indication that Rawlins, J. in this case felt it was necessary to address that factor in the penalty sanction as well. The parties were not requested to make any submissions on this issue as the matter relates to the Panel, in its decision, expressing specifically whether or not the sanction was appropriate given the seriousness of the admitted breaches as well as the cooperation factor.

### **III) DECISION**

The Appeal Panel accepts the recommendation of the parties to set the quantum of costs payable by the Appellant at \$10,000.00 and that reducing the claim for costs from the previous award of \$17,904.96 to such amount takes into account the cooperation of the Appellant in this matter.

The Appeal Panel re-affirms the amount of the fine at \$15,000.00 and is satisfied that such amount reflects the serious nature of the offences admitted in this matter but also takes into consideration the cooperation of the Appellant.

### **IV) REASONS**

The rulings and direction given by the Court in this matter has set a new standard for the establishment of costs claimed by the Executive Director in sanction hearings involving matters under the Real Estate Act of Alberta. The degree of substantiation of the costs is now equivalent to "much in the same way that would occur on a taxation". The decision follows the previous cases and is the persuasive directive panels will need to follow to satisfy the standard of review necessary to support any claim of costs to a RECA hearing or appeal panel.

Having set forth what the new standard for the establishment of costs now requires, we have reviewed the detail of the costs set forth in written submission of the Executive Director and find that they

substantiate the costs claimed against the Appellant and that the joint recommendation made by the parties of the sum of \$10,000.00 takes into account the consideration given to the Appellant in respect to his cooperation in avoiding the costs and associated difficulties of a full hearing.

**V) ORDERS**

The Decision of the Appeal Panel dated November 22, 2005 stands except to the extent the Court in *Murti Goll v. Real Estate Council of Alberta* [April 5, 2006], unreported QB Decision, allowed the appeal thereof on costs. In respect to the quantum of costs ordered to be paid by the Appellant to the Executive Director the sum now stands in the amount of \$10,000.00.

It is hereby ordered that Mr. Goll pay costs in the amount of \$10,000, as agreed to by both parties.

This decision was made on October 2, 2006

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