

**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 Vishwa Naidu, Agent, formerly  
registered to 921325 Alberta Ltd. o/a C-21 Platinum Realty and North Star Realty Corporation o/a  
Sutton Group-North Star Realty at all times material hereto

**Hearing Panel members:** Lynn Patrick, **Chair**  
Glen Chapman  
Graham Downey

**Appearing:** Ms. Leela Ramaswamy, legal counsel on behalf of the Executive  
Director  
R.G., legal counsel on behalf of Vishwa Naidu  
Mr. Vishwa Naidu

**Witnesses:** D.M.  
J.M.  
S.H.  
B.O.  
C.S.  
I.C.  
D.D.  
S.L.  
B.G.  
D.G.  
R.D.  
D.C.  
L.Y.  
C.L.  
Mr. Vishwa Naidu

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

**I) INTRODUCTION**

The Hearing Panel held a hearing into the conduct of Vishwa Naidu, while registered as a real estate agent with 921325 Alberta Ltd. and North Star Realty Corporation. The Hearing Panel was composed of Lynn Patrick (Chair), Glen Chapman and Graham Downey.

The Hearing took place from April 3 to April 7, 2006. In attendance at the hearing were Leela Ramaswamy, legal counsel on behalf of the Executive Director of the Real Estate Council of Alberta, R.G., legal counsel on behalf of Vishwa Naidu as well as Vishwa Naidu.

## II) ALLEGATIONS

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

- 1) THAT between the dates of June 25, 2001 and August 17, 2001, you traded in real estate on behalf of yourself by purchasing a property located at 11303 – 93 Street, Edmonton, through M-Vis Enterprises Inc. thereby acquiring a direct or indirect interest in this property as a buyer, without first disclosing in writing to the parties to the trade that you were licensed as an agent under the *Real Estate Act Rules* made pursuant to the *Real Estate Act*, R.S.A. 2000, c. R-5, and that you were associated with the C-21 Platinum Realty Brokerage, contrary to section 28(a) of the *Real Estate Act Rules*, made pursuant to the *Real Estate Act*, R.S.A. 2000, c. R-5. This is conduct deserving of sanction, the particulars of which may include but are not limited to the following:
  - a. THAT on June 25, 2001, you in your capacity as a real estate agent submitted an Offer to Purchase for a property located at 11303 – 93 Street, Edmonton, on behalf of the buyer, M-Vis Enterprises Inc., to S.L., real estate agent acting for the seller of this property, Cooperative Trust.
  - b. THAT on this Offer to Purchase (hereinafter “OTP”), you were listed as the buyer’s representative and it was written on this OTP that “sole shareholder of buyer is a licensed agent in Province of A.B. Buyer may sell for gain or loss at later date. (sic)”
  - c. THAT nowhere on this OTP was it written that you were the sole shareholder and sole director for M-Vis Enterprises Inc..
  - d. THAT this Offer to Purchase was your initial written communication with S.L. with respect to the trade of this property.
  - e. THAT at no time did you disclose in writing to S.L. or to Cooperative Trust that you were the sole shareholder and sole director of M-Vis Enterprises Inc..
  - f. THAT since the inception of M-Vis Enterprises Inc., you have at all times been the corporation’s sole director and sole shareholder.
  - g. THAT on June 26, 2001, M-Vis Enterprises Inc. entered into a Real Estate Purchase Contract as the buyer for the purchase of this property with Cooperative Trust for \$36 000.
- 2) THAT between the dates of October 8, 2001 and January 2, 2003, you knowingly or recklessly misrepresented the potential market value of a property located at 11303 – 93 Street, Edmonton, contrary to section 4(e) of the *Code of Conduct* made pursuant to the *Real Estate Act*, R.S.A. 2000, c. R-5. This is conduct deserving of sanction, the particulars of which may include but are not limited to the following:
  - a. THAT M-Vis Enterprises Inc., a corporation to which at all times since its inception you have been the sole director and sole shareholder, purchased the property located at 11303 – 93 Street, Edmonton, from Cooperative Trust on June 26, 2001 for \$36 000.

- b. THAT on June 13, 2001, prior to listing this real estate property, S.L. prepared a memorandum for his client, Cooperative Trust, setting out his opinion of the property's value. In this memorandum, S.L. writes the following:
    - i. THAT he was of the opinion that this property was worth its lot value, which he estimated to be approximately \$33 900.
    - ii. THAT there were structural problems with the home that was located on this property which included a foundation with severe horizontal cracking that also collapsed inwards.
    - iii. THAT if the home located on this property were to become fully restored and in excellent condition, the property would sell "at the most for \$75 000".
  - c. THAT on November 17, 2001, M-Vis Enterprises Inc. sold this property to J.B. for \$103 500 by way of a Real Estate Purchase Contract entered into by both M-Vis Enterprises Inc. and J.B. on November 17, 2001. The purchase of this property was funded in part by mortgage funds obtained through Canada Trust which at the end of the trade were paid to M-Vis Enterprises Inc..
  - d. THAT you advised D.M., a Real Estate Council of Alberta Investigator appointed to investigate these matters relating hereto, that you renovated this property after M-Vis Enterprises Inc. had purchased it. You also advised D.M. that you had a property evaluation prepared after the renovations were completed which set out that the real estate property was worth the purchase price that J.B. had paid for it.
  - e. THAT J.M., a neighbour to this real estate property, observed that superficial repairs were performed on the foundation of the home located on this property by way of the visible cracks on the outside of the foundation being filled in.
  - f. THAT according to the renovation receipts that you have provided to the Real Estate Council of Alberta, the renovations to this property took place between October 15, 2001 and December 15, 2001.
  - g. THAT during the Real Estate Council of Alberta's investigation into this matter, you were asked by D.M. to provide the property valuation mentioned in paragraph 2d) and to-date, you have failed to do so.
  - h. THAT Capital Health declared this property to be Unfit for Human Habitation in its Executive Officer's Order to you and J.B. dated February 7, 2002.
  - i. THAT in this Executive Officer's Order, it was noted that this real estate property's foundation was in disrepair.
- 3) THAT on or about November 22, 2001, you accepted a deposit directly from J.B. for a real estate trade and failed to ensure that this trust money was deposited in accordance with the Real Estate Purchase Contract entered into between M-Vis Enterprises Inc. and J.B. and that you also failed to ensure that this trust money was deposited in accordance with section 25 of the *Real Estate Act*, contrary to section 23 (d) of the *Real Estate Act Rules* made pursuant to the *Real Estate Act*, R.S.A. 2000, c. R-5. This is conduct deserving of sanction, the particulars of which may include but are not limited to the following:
- a. THAT when M-Vis Enterprises Inc. sold the property located at 11303 – 93 Street, Edmonton to J.B., J.B. provided you with an initial \$1000 deposit.
  - b. THAT you acted as a real estate agent on behalf of both M-Vis Enterprises and J.B. with respect to this trade as set out by the Real Estate Purchase Contract, the Trade Record

Sheet for this trade, and the Informed Dual Agency Consent Form signed by J.B. on November 14, 2001.

- c. THAT this trade between M-Vis Enterprises Inc. and J.B. was being handled through the C-21 Platinum Realty brokerage, the brokerage with which you authorized to trade during this time, as set out in the documents mentioned in paragraph 3b).
  - d. THAT one of the terms of the Real Estate Purchase Contract entered into between M-Vis Enterprises Inc. and J.B. for this trade was that all deposits were to be delivered in trust to C-21 Platinum Realty.
  - e. THAT the Addendum to the Real Estate Purchase Contract form completed by yourself on November 22, 2001 set out that the \$1000 deposit was given to M-Vis Enterprises Inc. and not to C-21 Platinum Realty.
  - f. THAT you advised the Real Estate Council of Alberta's investigator, D.M., that you received this \$1000 deposit and that you did not submit it to C-21 Platinum Realty.
- 4) THAT on or about November 22, 2001, you failed to provide all documentation or trade records required under the *Real Estate Act Rules* made pursuant to the *Real Estate Act*, R.S.A. 2000, c. R-5 to your broker B.O., when you failed to submit the \$1000 deposit provided to you by J.B. to B.O. or to C-21 Platinum Realty, contrary to section 23(e) of the *Real Estate Act Rules* made pursuant to the *Real Estate Act*, R.S.A. 2000, c. R-5. This is conduct deserving of sanction, the particulars of which are set out in paragraph 3).
- 5) THAT between the dates of October 17, 2003 and April 29, 2005, you failed to provide information that was requested of you by D.M., the Real Estate Council of Alberta Investigator who was appointed to investigate matters relating hereto, contrary to section 7(d) of the *Code of Conduct* made pursuant to the *Real Estate Act*, R.S.A. 2000, c. R-5 and section 38(4) of the *Real Estate Act*. This is conduct deserving of sanction, the particulars of which may include but are not limited to the following:
- a. THAT on October 17, 2003, D.M. sent you a letter advising you that as part of an investigation that he was conducting pursuant to the Real Estate Council of Alberta's authority under the *Real Estate Act*, you were requested to provide to him all of your cellular telephone and pager records.
  - b. THAT to-date, you have failed to submit these records to the Real Estate Council of Alberta.
- 6) THAT between the dates of December 7, 2004 and April 29, 2005, you intentionally made inaccurate and misleading statements to D.M., the Real Estate Council of Alberta Investigator who was appointed to investigate matters relating hereto, contrary to section 7(d) of the *Code of Conduct* made pursuant to the *Real Estate Act*, R.S.A. 2000, c. R-5 and section 38(4) of the *Real Estate Act*. This is conduct deserving of sanction, the particulars of which may include but are not limited to the following:
- a. THAT during the investigation conducted by D.M., you advised him that J.B. had provided the cash to close for the sale of the property located at 11303 – 93 Street, Edmonton that J.B. purchased from M-Vis Enterprises Inc..

- b. THAT when D.M. asked you to provide him with evidence of this, you in turn provided to him a copy of a cheque issued to M-Vis Enterprises Inc. from the trust account of the law firm Venkatraman & Associates dated November 26, 2001.
  - c. THAT further investigations by D.M. into the source of funds for this \$27 000 revealed that this money came by way of a cheque dated November 23, 2001, made payable to Venkatraman & Associates from 586951 Alberta Ltd. in the amount of \$27 000.
  - d. THAT 586951 Alberta Ltd. is a corporation whose sole directors are B.O. and D.O.M. and whose sole shareholders are B.O. and D.O.M..
  - e. THAT B.O. through 586951 Alberta Ltd. loaned M-Vis Enterprises Inc. \$27 000 on November 23, 2001 in the form a cheque dated November 23, 2001 made payable to Venkatraman & Associates.
  - f. THAT at all times since the inception of M-Vis Enterprises Inc., you have been the corporation's sole shareholder and sole director.
  - g. THAT A.B., J.B.'s mother, maintains that in November 2001 J.B. did not have \$27 000 to provide the cash to close for this trade.
  - h. THAT J.B. did not provide the cash to close for the property he purchased from M-Vis Enterprises Inc. on November 17, 2001.
- 7) THAT between the dates of July 29, 2003 and October 7, 2003, you traded in real estate when you attempted to purchase a property located at 9837 – 156 Street, Edmonton, through Manie Properties Inc., and thereby attempted to acquire a direct or indirect interest in this property as a buyer, without first disclosing in writing to the parties to the trade that you were licensed as an agent under *the Real Estate Act Rules* made pursuant to the *Real Estate Act*, R.S.A. 2000, c. R-5, and that you were associated with the Sutton Group-North Star Realty brokerage, contrary to section 28(a) of the *Real Estate Act Rules* made pursuant to the *Real Estate Act*, R.S.A. 2000, c. R-5. This is conduct deserving of sanction, the particulars of which may include but are not limited to the following:
- a. THAT on July 29, 2003, you submitted an Offer to Purchase (hereinafter "OTP") for a property located at 9837 – 156 Street, Edmonton to C.A., real estate agent acting on behalf of the sellers of this property, K.W. and P.W. (the W.'s).
  - b. THAT on this OTP, you were listed as the buyer's representative and it was also written on this OTP that "sole shareholder of buyer is licensed agent in Province of A.B. Buyer may sell for gain or loss at later date. (sic)"
  - c. THAT nowhere on this OTP was it written that you were the sole shareholder and sole director for Manie Properties Inc..
  - d. THAT this OTP was your initial written communication to C.A., the sellers' representative.
  - e. THAT at no time did you disclose in writing to C.A. or to K.W. and P.W. that you were the sole shareholder and sole director for Manie Properties Inc..
  - f. THAT at all times since the inception of Manie Properties Inc., you have been the corporation's sole shareholder and sole director.
- 8) THAT between the dates of July 29, 2003 and October 7, 2003, you participated in the creation of a document and/or form of communication that you knew or ought to have known was false or misleading, contrary to section 4(d) of the *Code of Conduct* made pursuant to the *Real Estate Act*,

R.S.A. 2000, c. R-5. This is conduct deserving of sanction, the particulars of which may include but are not limited to the following:

- a. THAT on July 30, 2003, Manie Properties Inc. entered into a Real Estate Purchase Contract as the buyer of the property located at 9837 – 156 Street, Edmonton with the sellers of this real estate property, K.W. and P.W..
  - b. THAT one of the terms of this Real Estate Purchase Contract was that Manie Properties Inc. was to provide an initial \$1000 deposit plus an additional \$4000 deposit upon condition removal.
  - c. THAT on July 30, 2003, you advised C.A., real estate agent acting on behalf of the sellers, that you would be providing the initial \$1000 deposit on July 31, 2003 in the early morning.
  - d. THAT C.A.'s brokerage, Prudential Spencer Real Estate did not receive this initial \$1000 deposit until August 1, 2003.
  - e. THAT this \$1000 deposit was paid by way of a cheque issued to Prudential Spencer Real Estate from the account of Manie Properties Inc..
  - f. THAT on August 7, 2003 this \$1000 cheque was returned to Prudential Spencer Real Estate as a result of a stop payment that was placed on the cheque on August 1, 2003.
  - g. THAT on August 6, 2003, the conditions were removed as per the terms of the Real Estate Purchase Contract but that on this same date, you failed to provide to C.A. the additional \$4000 deposit.
  - h. THAT on August 8, 2003 and August 11, 2003, C.A. contacted you to advise that she had not received the additional \$4000 deposit.
  - i. THAT on August 11, 2003, C.A.'s brokerage, Prudential Spencer Real Estate, received the additional \$4000 deposit by way of a cheque issued to Prudential Spencer Real Estate from the account of Manie Properties Inc..
  - j. THAT on August 15, 2003, C.A. was advised that this \$4000 cheque was returned to the brokerage as a result of there being insufficient funds in the account from which this cheque was issued.
  - k. THAT on August 15, 2003, C.A. left a message for you advising that she required the additional \$4000 deposit as soon as possible.
  - l. THAT on August 16, 2003, you left a message on C.A.'s cellular telephone voice mail advising that you would look after this on August 18, 2003.
  - m. THAT on August 18, 2003, you spoke with C.A. and advised her that you would bring in the \$4000 deposit by 4:30 p.m. that same day.
  - n. THAT you failed to bring in the \$4000 deposit on August 18, 2003.
  - o. THAT on August 19, 2003, C.A. attempted to contact you about the \$4000 deposit by paging you and leaving messages for you on your cellular telephone voice mail.
  - p. THAT after August 18, 2003, you did not contact C.A. until October 7, 2003 when you sent her a letter "as per" Manie Properties Inc. advising that the corporation was no longer in a position to complete the Real Estate Purchase Contract it entered into with K.W. and P.W. on July 30, 2003.
  - q. THAT it was later discovered that that the initial \$1000 deposit that had been submitted to Prudential Spencer Real Estate was returned on August 7, 2003 as a result of a stop payment that had been placed on this cheque on August 1, 2003.
- 9) THAT between the dates of April 28, 2003 and September 25, 2003, you traded in real estate on behalf of yourself by purchasing property located at 9422 – 156 Street, Edmonton, through M-Vis

Enterprises Inc. and thereby acquiring a direct or indirect interest in this property as a buyer, without first disclosing in writing to the parties to the trade that you were licensed as an agent under the *Real Estate Act Rules* made pursuant to the *Real Estate Act*, R.S.A. 2000, c. R-5, and that you were associated with the Sutton Group-North Star Realty Brokerage, contrary to section 28(a) of the *Real Estate Act Rules* made pursuant to the *Real Estate Act*, R.S.A. 2000, c. R-5. This is conduct deserving of sanction, the particulars of which may include but are not limited to the following:

- a. THAT on April 28, 2003, you submitted an Offer to Purchase (hereinafter "OTP") on behalf of M-Vis Enterprises Inc. for a property located at 9422 – 156 Street, Edmonton, to C.S., real estate agent acting on behalf of the seller of this property, H.P..
  - b. THAT on this OTP, you were listed as the Buyer's representative and that it was also written on this OTP that "sole shareholder of buyer is a licensed agent in Province of A.B. Buyer may sell for gain or loss at later date. (sic)"
  - c. THAT nowhere on this OTP was it written that you were the sole shareholder and sole director for M-Vis Enterprises Inc..
  - d. THAT this OTP was your initial written communication with C.S. with respect to the trade of this real estate property.
  - e. THAT at no time did you disclose in writing to C.S. or to H.P. that you were the sole shareholder and sole director of M-Vis Enterprises Inc..
  - f. THAT since the inception of M-Vis Enterprises Inc., you have at all times been the corporation's sole director and sole shareholder.
  - g. THAT on April 29, 2003, M-Vis Enterprises Inc. and H.P. entered into a Real Estate Purchase Contract for the purchase this real estate property at the price of \$95 000.
- 10) THAT between the dates of May 7, 2003 and September 25, 2003, you directly or indirectly acquired an interest in a real estate property located at 9422 – 156 Street, Edmonton, for yourself and then negotiated for its trade to another person without first disclosing in writing to H.P., the owner of this real estate property, the complete details of this negotiation for trade, contrary to section 28(c) of the *Real Estate Act Rules* made pursuant to the *Real Estate Act*, R.S.A. 2000, c. R-5. This is conduct deserving of sanction, the particulars of which may include but are not limited to the following:
- a. THAT you acquired an interest in the property located at 9422 – 156 Street, Edmonton when M-Vis Enterprises Inc., a corporation to which at all times since its inception you have been the sole shareholder and sole director, entered into the Real Estate Purchase Contract with H.P. on April 29, 2003 for the purchase of this property.
  - b. THAT on May 7, 2003, of M-Vis Enterprises Inc. assigned its interest in this trade as a buyer to I.C..
  - c. THAT after M-Vis Enterprises Inc. assigned its interest in this trade to I.C., you failed to advise H.P. or C.A. in any way of this assignment.
  - d. THAT after M-Vis Enterprises Inc. assigned its interest in this trade to I.C., M-Vis Enterprises Inc. then sold this property to E.D. and D.O.D. on August 16, 2003 for \$105 000.
  - e. THAT you failed to initially disclose to H.P. or C.S. the details of this sale to E.D. and D.O.D..

- 11) THAT between the dates of April 29, 2003 and May 8, 2003, you participated in the creation of a document and/or form of communication that you knew or ought to have known was false or misleading contrary to section 4(d) of the *Code of Conduct* made pursuant to the *Real Estate Act*, R.S.A. 2000, c. R-5. This is conduct deserving of sanction, the particulars of which may include but are not limited to the following:
- a. THAT the terms of the Real Estate Purchase Contract entered into between M-Vis Enterprises Inc. and H.P. on April 29, 2003 set out that M-Vis Enterprises Inc. was to provide an initial \$1000 deposit and a further \$3000 deposit upon condition removal.
  - b. THAT the terms of the Real Estate Purchase Contract set out that the initial \$1000 deposit was to be deposited by the seller's brokerage within 2 days of the date of acceptance of the Offer to Purchase.
  - c. THAT on May 1, 2003, a cheque for \$1000, issued from the account of Manie Properties Inc., was delivered to C.S.'s brokerage on May 1, 2003.
  - d. THAT on May 5, 2003, this \$1000 cheque was returned to Re/MAX Excellence because a stop payment had been placed on this cheque.
  - e. THAT the stop payment was placed on this \$1000 cheque on May 1, 2003.
- 12) THAT between the dates of August 15, 2003 and August 16, 2003, you participated in the creation of a contract that you knew or ought to have known was not legally binding, contrary to section 6 (c) of the *Code of Conduct* made pursuant to the *Real Estate Act*, R.S.A. 2000, c. R-5. This is conduct deserving of sanction, the particulars of which may include but are not limited to the following:
- a. THAT on August 2, 2003, M-Vis Enterprises Inc. was struck from the Alberta Corporate Registries as a result of the corporation's failure to pay its annual fees.
  - b. THAT at all times since the inception of M-Vis Enterprises Inc., you have been the sole shareholder and sole director of the corporation.
  - c. THAT on August 16, 2003, you prepared the Real Estate Purchase Contract between M-Vis Enterprises Inc. and E.D. and D.O.D. with respect to the property located at 9422 – 156 Street, Edmonton.
  - d. THAT this Real Estate Purchase Contract set out that M-Vis Enterprises Inc. was selling this property to E.D. and D.O.D..
  - e. THAT M-Vis Enterprises Inc. was not a legal entity on August 16, 2003, and as such did not have the capacity to sell this property to E.D. and D.O.D. as it was not in existence.
- 13) THAT on or about May 15, 2004, you failed to render a competent service by participating in the creation of a contract that you knew or ought to have known did not reflect any agreements that were already in place when you failed to fully and adequately draft and execute an assignment of sale agreement between your client C.L. and C.H.S. and M.N., contrary to section 6(c) of the *Code of Conduct* made pursuant to the *Real Estate Act*, R.S.A. 2000, c. R-5. This is conduct deserving of sanction, the particulars of which may include but are not limited to the following:
- a. THAT on May 15, 2004, you drafted and executed an assignment of sale agreement between your client C.L. and C.H.S. and M.N. with respect to a property located at 9102 – 151 Street, Edmonton.



- b. THAT the agreement in place was that C.L., who had previously entered into a Real Estate Purchase Contract as the buyer of this real estate property, was assigning his interest in this trade as a buyer to C.H.S. and M.N..
  - c. THAT you failed to obtain M.N.'s signature on this written assignment of sale agreement.
- 14) THAT between the dates of April 25, 2003 and January 14, 2004, you traded in real estate on behalf of yourself by purchasing a property located at 4016 – 117 Avenue, Edmonton, through M-Vis Enterprises Inc. thereby acquiring a direct or indirect interest in this property as a buyer, without first disclosing in writing to the parties to the trade that you were licensed as an agent under the *Real Estate Act Rules* made pursuant to the *Real Estate Act*, R.S.A. 2000, c. R-5, and that you were associated with the Sutton Group – North Star Realty brokerage contrary to section 28(a) of the *Real Estate Act Rules* made pursuant to the *Real Estate Act*, R.S.A. 2000, c. R-5. This is conduct deserving of sanction, the particulars of which may include but are not limited to the following:
- a. THAT on April 25, 2003, you submitted an Offer to Purchase (hereinafter "OTP") on behalf of M-Vis Enterprises Inc. for a property located at 4016 – 117 Avenue, Edmonton, to L.Y., real estate agent, who was acting on behalf of the seller of this real estate property, E.K..
  - b. THAT on this OTP, you were listed as the buyer's representative and it was written on the OTP that "sole shareholder of buyer is licensed agent in Province of A.B Buyer may sell for gain or loss at later date. (sic)"
  - c. THAT nowhere on this OTP was it written that you were the sole shareholder and sole director of M-Vis Enterprises Inc..
  - d. THAT this OTP was your initial written communication with L.Y. and E.K..
  - e. THAT at no time during your dealings with L.Y. or E.K. did you disclose to them in writing that you were the sole shareholder and sole director of M-Vis Enterprises Inc.
  - f. THAT since the inception of M-Vis Enterprises Inc., you have at all times been the corporation's sole director and sole shareholder.
  - g. THAT on April 26, 2003, M-Vis Enterprises Inc. entered into a Real Estate Purchase Contract as the buyer for this real estate property with the seller, E.K..
- 15) THAT between the dates of April 29, 2003 and January 14, 2004, you directly or indirectly acquired an interest in a real estate property located at 4016 – 117 Avenue, Edmonton, for yourself and then negotiated for its trade to 715553 Alberta Ltd. without first disclosing in writing to E.K., the owner of this property or to her legal representative, the complete details of this negotiation for trade, contrary to section 28(c) of the *Real Estate Act Rules* made pursuant to the *Real Estate Act*, R.S.A. 2000, c. R-5. This is conduct deserving of sanction, the particulars of which may include but are not limited to the following:
- a. THAT on April 26, 2003, M-Vis Enterprises Inc. entered into a Real Estate Purchase Contract as the buyer of the real estate property located at 4016 – 117 Avenue, Edmonton.
  - b. THAT on April 29, 2003, M-Vis Enterprises Inc. assigned its interest in this trade as the buyer to 715553 Alberta Ltd..
  - c. THAT at all times since the inception of M-Vis Enterprises Inc., you have been the corporation's sole shareholder and sole director.

- d. THAT you failed to disclose in writing at any time to E.K. or L.Y., real estate agent who was acting on behalf of E.K. in the sale of this property, that this trade had been assigned to a different buyer, 715553 Alberta Ltd..
- 16) THAT between the dates of April 26, 2003 and May 9, 2003, you participated in the creation of a document and/or form of communication that you knew or ought to have known was false or misleading, contrary to section 4(d) of the *Code of Conduct* made pursuant to the *Real Estate Act*, R.S.A. 2000, c. R-5. This is conduct deserving of sanction, the particulars of which may include but are not limited to the following:
- a. THAT the terms of the Real Estate Purchase Contract mentioned in paragraph 14) set out that the buyer was to provide an initial \$1000 deposit and an additional \$4000 deposit upon condition removal.
  - b. THAT on April 29, 2003, you delivered a cheque for \$5000 to L.Y., real estate agent who was acting on behalf the seller of this property, E.K..
  - c. THAT this \$5000 cheque was issued from the bank account of Manie Properties Inc.
  - d. THAT on May 2, 2003, a stop payment was placed on this cheque.
  - e. THAT on May 9, 2003, you provided L.Y. with a \$5000 bank draft as replacement funds for the cheque that you previously delivered to him on April 29, 2003.
- 17) THAT between the dates of April 29, 2003 and June 16, 2004, you failed to keep your broker, D.G., aware of the activities being performed by yourself on behalf the brokerage to which you were registered, Sutton Group – North Star Realty, contrary to section 23(f) of the *Real Estate Act Rules* made pursuant to the *Real Estate Act*, R.S.A. 2000, c. R-5. This is conduct deserving of sanction, the particulars of which may include but are not limited to the following:
- a. THAT you failed to submit the April 29<sup>th</sup>, 2003 assignment of sale mentioned in paragraph 15) to D.G. or to Sutton Group North Star Realty.
  - b. THAT you never advised D.G. of the assignment of sale mentioned in paragraph 15).
  - c. THAT when M-Vis Enterprises Inc. submitted the Offer to Purchase and entered into the trade with E.K. mentioned in paragraph 14), you conducted this trade through the Sutton Group-North Star Realty brokerage.
  - d. THAT the assignment of sale document mentioned in paragraph 13) that you drafted and executed between C.L. and M.N. and C.H.S. on May 15, 2004 was not submitted to D.G. or to the Sutton Group-North Star Realty brokerage until June 16, 2004.
  - e. THAT your broker, D.G. did not become aware of this assignment of sale agreement mentioned in paragraph 13) that took place on May 15, 2004 until June 16, 2004, when this agreement was submitted to the Sutton Group-North Star Realty brokerage.
- 18) THAT between the dates of November 14, 2003 and January 27, 2004, you participated in unlawful activity in connection with the real estate property located at 4016 – 117 Avenue, Edmonton, contrary to section 7(c) of the *Code of Conduct Rules* made pursuant to the *Real Estate Act*, R.S.A. 2000, c. R-5. This is conduct deserving of sanction, the particulars of which may include but are not limited to the following:

- a. THAT the terms of the Real Estate Purchase Contract (hereinafter "REPC") mentioned in paragraph 16) set out that if the trade failed to close by the closing date set out in the REPC, the \$5000 deposit would then be forfeited to the seller, E.K. and the seller's brokerage, RE/MAX Excellence.
- b. THAT the REPC's closing date was August 1, 2003.
- c. THAT the trade failed to close by August 1, 2003 because 715553 Alberta Ltd. failed to provide the cash to close required by the REPC.
- d. THAT when 715553 Alberta Ltd. took over the REPC, it did so under the same terms and conditions that M-Vis Enterprises Inc. had entered into.
- e. THAT on November 17, 2003, 715553 Alberta Ltd. placed a caveat on the property located at 4016 – 117 Avenue, Edmonton.
- f. THAT E.K.'s lawyer made an application in Master's Chambers on January 27, 2004, in order to apply to have this caveat placed by 715553 Alberta Ltd. removed.
- g. THAT before this hearing date, you spoke with L.Y. and advised him that if the \$5000 deposit were returned, this caveat would be removed.
- h. THAT on January 27, 2004, Master R. Wacowich granted E.K.'s application and ordered that the caveat placed by 715553 Alberta Ltd. be discharged and also ordered that M-Vis Enterprises Inc. and 715553 Alberta Ltd. pay to E.K. \$500 for costs.

### III) EVIDENCE

A total of 57 exhibits were presented, which were located throughout five separate binders. Fifteen witnesses appeared on behalf of the Executive Director. Vishwa Naidu testified on his own behalf.

There are 18 allegations of misconduct against Mr. Vishua Naidu and of the 18 the first 6 have to do with transactions conducted respecting the acquisition, financing and sale of property in Edmonton Alberta at 11303 93 Street. In this and succeeding portions of the decision they will be referred to as "Counts". The Hearing Panel heard evidence from D.M. who was appointed as the investigator in regard to the complaints respecting this property that had been received by the Executive Director. The evidence consisted of the contracts of purchase and resale, information on value and condition of the dwelling, documentation with respect to renovation material and witnesses evidence in respect to the extent of the renovations carried out by Mr. Naidu. The Panel was also provided with information regarding the ownership interests of Mr. Naidu in his corporation M-Vis Enterprises Inc. and its ownership of the legal title to 11303 93 Street as well as about various encumbrances upon the title at the material times relating to this property from the date of its purchase from Co-operative Trust Company to its purchase and finance by J.B. through the ultimate mortgage default and condemnation by Capital Health, an agency of the City of Edmonton. D.M. also provided evidence that the resale to J.B. was carried out even though the renovations were not complete and that the deposit described in the resale contract was not made in trust to the real estate broker as required but to Mr. Naidu personally. Additional evidence obtained from the law firm representing Mr. Naidu and his interests provided details of the sources of funds for the purchase by J.B.. This information was corroborated by evidence from the broker with whom Mr. Naidu was then associated who was also a source of funds for Mr. Naidu in such transactions. D.M. also gave evidence with respect to his requests for documentation to support Mr. Naidu's version of events surrounding this property and that much of that much of that material was not produced for various reasons given by Mr. Naidu.

Counts 7 and 8 relate to property in Edmonton Alberta at 9837 156 Street and D.M. provided evidence obtained in the investigation of these allegations. The Offer To Purchase document relating to Count 7 provided an endorsement in respect to the disclosure by Mr. Naidu of his status as a licensee purchasing for himself. This occurred in 4 transactions described in Counts 1, 7, 9 and 14. The evidence in these cases indicated that a corporation was the purchaser, that the corporations, M-Vis Enterprises Inc or Manie Properties Inc. were owned and controlled by Mr. Naidu, but that the disclosure endorsement did not contain Mr. Naidu's name as the shareholder. The evidence relating to Count 8 provided by D.M. provided details of the course of conduct by Mr. Naidu regarding cheques tendered by Mr. Naidu as deposits funds to the real estate agent representing the sellers. The bank records and copies of cheques and file records of the sellers' agent backed up the version of events provided by sellers' broker D.C. with respect to the stop payment or lack of funds available to honor the cheques.

Counts 9, 10, 11 and 12 relate to property in Edmonton Alberta at 9422 156 Street. The evidence of D.M. with respect to this property and these allegations related to the disclosure of the interest of Mr. Naidu in similar circumstance to that in Count 7. In the transactions respecting this property the Hearing Panel also heard evidence from the sellers' agent C.S. regarding a stop payment of the deposit cheque and from I.C. and D.O.D. who were parties to transactions wherein Mr. Naidu purported to dispose of his interest to the C.'s but then sold it to D.O.D. before closing the purchase with the original seller and without notifying that seller or his agent. D.M. also provided evidence that the purchasing corporation owned by Mr. Naidu at the time of these transactions had been struck from the corporate registry for failure to file annual returns.

Count 13 relates to property in Edmonton, Alberta at 9102 151 Street. Mr. Naidu brought an Offer To Purchase by C.L., who was the individual hired by Mr. Naidu to renovate the property at 11303 93 Street, which was dealt with by B.G. as agent for the sellers. The evidence was that although C.L. made the offer, the deposit cheque was from R.D.. The purchase offer failed to close because R.D. did not provide the balance of funds and gave evidence that Mr. Naidu, who was a relative, would take care of the rest of the deal. However, caveats appeared on title from C.L. and from C.H.S.. An Assignment of Agreement between C.L. and C.H.S. and M.N. was in evidence from D.M., however it had not been signed by C.H.S. and had not been given to B.H. or the seller nor was it provided to D.G. who was by that point of time the new broker for Mr. Naidu..

The remaining Counts 14, 15, 16, 17 and 18 relate to property in Edmonton Alberta located at 4016 117 Avenue. D.M. provided evidence respecting Count 14 that this again was an offer by Mr. Naidu's corporation and same endorsement as appeared in Counts 1, 7 and 9 respecting the requirement to disclose the interest of a licensee making a purchase on his own behalf. Further evidence from D.M. disclosed that prior to closing the purchase Mr. Naidu effected an assignment by the purchasing corporation to a numbered corporation without disclosure to the seller or her agent L.Y.. Evidence from L.Y. dealt extensively with a cheque tendered as a deposit from another of Mr. Naidu's corporations upon which payment was stopped and delay in obtaining funds for the deposit. D.G. again as the broker for Mr. Naidu gave evidence that no information respecting the assignment was forthcoming to him as broker. Further evidence was provided by L.Y. respecting the activities of Mr. Naidu concerning caveats registered against the title to this property by the numbered corporation to which the assignment had been made and by Mr. Naidu's corporation. Although the purchase failed because of a failure to provide the funds to close the caveats were registered claiming an interest under the offer to purchase and the assignment and were part of an effort to recover the deposit of \$5,000.00. The

matter proceeded before the Court of Queen's Bench in January of 2004 at which time the issues respecting the discharge of the caveats was resolved and the title cleared.

Mr. Naidu gave evidence in his own behalf and on behalf of his corporations M-Vis Enterprises Inc. and Manie Properties Inc. His explanation of the source of the disclosure endorsement that was used on the various offers to purchase to indicate the licensee interest in the purchaser corporation came from sources in the industry and was not of his own creation and was to some extent supported by other industry member witnesses that appeared at the hearing. Part of his evidence was the material circulated by the Alberta Real Estate Association as an example of a recommended disclosure and the name of the licensee was absent in that material. Mr. Naidu was unable to provide any or all evidence to back up his contentions on value, expenditures and source of funds in respect to the property at 11303 93 Street. Likewise he was unable to provide satisfactory reasons about the failure to have funds on hand to pay his cheques and thus stopped payment or bounced the cheque. The repeated failure to provide disclosure of the interests of others that he was developing in the various properties was not explained other than a failure on the part of the electronic technology employed to convey the information. Nothing to confirm these instances was provided and other electronic and telephone communication records were never produced despite repeated requests for them by the investigator. His evidence respecting the caveats on 4016 117 Ave. and the proceedings surrounding the applications to obtain their discharge that he was attempting to facilitate the discharges because the purchaser was in default was made less credible by other evidence that he was actively trying to recover the deposit that had been forfeit in out of court negotiations.

#### **IV) SUBMISSIONS**

##### **Executive Director's Submissions**

##### **Counts 1, 7, 9, 14**

Ms. Ramaswamy submitted that with respect to the first Count, the Offer to Purchase stated that a corporation was the proposed purchaser of this property and it also set out that a licensed agent was the sole shareholder and director of this company and that Mr. Naidu was the proposed buyer's agent. However, Ms. Ramaswamy submitted that it was not explicitly set out who the licensed agent was and that by not putting in writing that he was the sole shareholder and director of M-Vis Enterprises, Mr. Naidu breached Rule 28(a). With respect to Count 7, Ms. Ramaswamy submitted that Mr. Naidu had attempted to acquire an interest in the property located at 9837 – 156<sup>th</sup> Street, without first disclosing in writing to the parties to the trade that he was licensed as an agent under the *Real Estate Act Rules*. Ms. Ramaswamy submitted that the Executive Director's position with respect to this allegation is the same as stated for Count 1. The ninth Count was in regard to Mr. Naidu trading in real estate on behalf of himself without first disclosing in writing to the parties to trade that he was licensed as a real estate agent. Ms. Ramaswamy submitted that the Executive Director's position in regard to this allegation is the same as set out in Count 1. It was also submitted that C.S. was made aware by Mr. Naidu, verbally, that he was making the offer to purchase through his corporation and that he was the sole shareholder of M-Vis Enterprises Inc. With respect to Count 14, Ms. Ramaswamy submitted that the Executive Director's position was the same as set out for Count 1. However, she acknowledged that Mr. Naidu had a conversation with L.Y. prior to submitting the offer to purchase that he would be faxing in an offer

through his corporation. As well, L.Y. was aware that Mr. Naidu was the sole shareholder of M-Vis Enterprises Inc. as well as a licensed agent when he received the offer.

## **Count 2**

With respect to the second Count, Ms. Ramaswamy submitted that the evidence heard by the Hearing Panel clearly establishes that Mr. Naidu misrepresented the potential market value of the property located at 11303 – 93 Street. Mr. Naidu stated in his testimony that because this property was in a state of renovations and repairs when J.B. purchased it, he decided not to have J.B. pay the cash to close in the amount of \$27,000; however this was not reflected in the Real Estate Purchase Contract or the Land Titles search. Ms. Ramaswamy submitted that as such, a purchase price paid for a property impacts a property's potential market value, thus misrepresenting the potential market of the property in question. She also submitted that since not all of the renovations were complete and the sale price of the property was meant to reflect the value of the property after renovations, the property was not worth the \$103,500 at the time J.B. purchased the property which also indicates a misrepresentation of the potential property market value.

## **Count 3**

With respect to the third Count, Ms. Ramaswamy submitted that Mr. Naidu accepted the \$1,000 initial deposit directly from J.B., although he had no trust account, therefore the deposit was not deposited into trust. It was submitted that this is a breach of s.23(d) of the *Real Estate Act Rules*. Ms. Ramaswamy submitted that this was stated by Mr. Naidu during his testimony during the Hearing.

## **Count 4**

The fourth Count was in regard to failing to provide all documentation or trade records. Ms. Ramaswamy stated that since Mr. Naidu directly accepted the deposit money from J.B. and not putting that money into a trust account as required, he was unable to keep any trust records. Ms. Ramaswamy submitted that as a result of this, Mr. Naidu was in breach of s.23(e) of the *Real Estate Act Rules*.

## **Count 5**

Mr. Naidu, as stated in Count 5, failed to provide all required documentation to D.M., the RECA investigator. Mr. Naidu acknowledged during his testimony that he did not provide cell phone and pager records that had been requested by D.M.. Mr. Naidu stated that some of the records were with his lawyer who did not return them to him, also that some records were destroyed due to a flood in his basement. However, as stated in Mr. Naidu's testimony, he did not attempt to obtain these records by contacting the cellular provider or the brokerage. Ms. Ramaswamy submitted that regardless of the reasons for not providing these records, Mr. Naidu is still in breach of s.38(4) of the *Real Estate Act Rules* and s.7(d) of the *Code of Conduct* by failing to provide information that was requested by a RECA investigator.

## **Count 6**

Ms. Ramaswamy submitted in regards to Count 6, that Mr. Naidu made inaccurate and misleading statements to D.M., a RECA investigator. She stated that Mr. Naidu had advised D.M. that the cash to

close for the transaction with respect to the property located at 11303 – 93<sup>rd</sup> Street, Edmonton, was provided by J.B., as indicated by D.M. during his testimony. Mr. Naidu also denied that he had provided the cash to close for this transaction. Ms. Ramaswamy submitted that evidence presented at the Hearing with regard to a cheque in the amount of \$27,000 dated November 23, 2001 from 586951 Alberta Ltd. and made payable to Venkatraman & Associates, was received by Venkatraman & Associates. This was credited to J.B.' \$27,000 initial deposit in this transaction. Ms. Ramaswamy submitted that this supports the position that Mr. Naidu provided the \$27,000 initial deposit. During Mr. Naidu's testimony, he stated that J.B. never provided the \$27,000 cash to close, however during his December 21, 2004 interview with D.M.; he stated that J.B. had provided the cash to close.

### **Count 8**

With respect to Count 8, Ms. Ramaswamy submitted that Mr. Naidu was misleading with his interactions with C.A., by providing cheques which he later placed stop payments on, without advising her that he had done so. Ms. Ramaswamy also submitted that C.A. was further misled by Mr. Naidu when he removed the conditions from the purchase contract and failed to provide the additional deposit the same day. During Mr. Naidu's testimony, he acknowledged that his conduct with respect to C.A. was misleading. As a result, Ms. Ramaswamy submitted that Mr. Naidu was in breach of s.4(d) of the *Code of Conduct*.

### **Counts 10, 15**

Ms. Ramaswamy submitted, with respect to Count 10, that after Mr. Naidu acquired an interest for himself in this real estate located at 9422 - 156<sup>th</sup> Street, Edmonton; however, he then negotiated for its first trade to I.C. and then to the D.'s. This was done prior to the closing date on the property. Ms. Ramaswamy submitted that Mr. Naidu had an obligation to disclose the full negotiation details to H.P. or to C.S., the real estate agent for the seller. As this was not done, Ms. Ramaswamy submitted that this was a breach of s.28(c) of the *Real Estate Act Rules*. With respect to Count 15, Ms. Ramaswamy submitted that the Executive Director's position was the same as stated for Count 10. She submitted that either L.Y. or E.K. should have been advised of the assignment since it was completed prior to the completion date as set out in the purchase contract between M-Vis Enterprises Inc. and E.K.. As a result of this, Ms. Ramaswamy submitted that Mr. Naidu breached s.28(c) of the *Real Estate Act Rules*.

### **Count 11**

With respect to Count 11, Ms. Ramswamy submitted that Mr. Naidu participated in the creation of a document and/or communication that he knew or ought to have known was false or misleading to C.S.. Mr. Naidu had informed C.S. that he would drop off the initial deposit cheque on April 30, 2003 when in fact she did not receive it until May 1, 2003. Mr. Naidu had placed a stop payment on this cheque and advised her that this was an accident made while doing on-line banking, when in fact this was done through the Bank of Montreal's telephone banking system. As well, Mr. Naidu informed C.S. that he would provide a cheque for \$4,000 on May 5, 2003 although she did not receive it until May 8, 2003. As a result, Mr. Naidu was in breach of s.4(d) of the *Code of Conduct*.

### **Count 12**

Count 12 was in regard to Mr. Naidu participating in the creation of a contract he knew or ought to have known was not legally binding. Mr. Naidu entered into a purchase contract between M-Vis Enterprises and D.O.D. and E.D.. At the time, M-Vis Enterprises Inc. had been struck from the registry and thus dissolved. Although Mr. Naidu submitted during his testimony that he was not aware that M-Vis Enterprises Inc. did not exist at the time he entered into the purchase contract with the D.'s, Ms. Ramaswamy submitted that this was something he should have known since he was sent two letters by P.V. advising that the company would be dissolved if the Annual Returns were not filed, as shown through the exhibit that was entered into evidence. Ms. Ramaswamy submitted that as a result of this, Mr. Naidu was in breach of s.6(c) of the *Code of Conduct*.

### **Count 13**

Ms. Ramaswamy submitted, with respect to Count 13, that Mr. Naidu failed to fully and adequately draft and execute an assignment between C.L. and C.H.S. and M.N.. Since Mr. Naidu never obtained M.N.'s signature on the assignment, without having a statement included on the assignment that C.H.S. was authorized to sign on her behalf, Mr. Naidu was in breach of s.6(c) of the *Code of Conduct*. As well, Mr. Naidu failed to have the signatures witnessed which could impact whether or not the contract was legally binding.

### **Count 16**

Ms. Ramaswamy stated, with respect to Count 16, that this is similar to Counts 8 and 11. She submitted that L.Y. was misled by Mr. Naidu with respect to the deposits and stop payments that had been placed on the cheques provided without advising L.Y. of this. As a result, Ms. Ramaswamy submitted that Mr. Naidu was in breach of s.4(d) of the *Code of Conduct*.

### **Count 17**

With respect to Count 17, Ms. Ramaswamy submitted that Mr. Naidu failed to keep various records in relation to a trade. As a result of failing to advise of an assignment to 715553 Alberta Ltd., Mr. Naidu was in breach of s.23(f) of the *Real Estate Act Rules*. Mr. Naidu failed to keep D.G. advised of his activities being performed on behalf of the brokerage with respect to this transaction.

### **Count 18**

The final allegation against Mr. Naidu was Count 18, dealing with unlawful activity in relation to the transaction with respect to the property located at 4016 – 117<sup>th</sup> Avenue, Edmonton. Ms. Ramaswamy submitted that the caveat placed on this property was unlawful, as shown through the evidence. As well, Mr. Naidu failed to provide the remainder of the purchase price for this transaction to the seller by the date as stated in the purchase contract. Ms. Ramaswamy submitted that since Mr. Naidu appeared in Masters Chambers and stated that they would not be proceeding with the caveat, this demonstrates that Mr. Naidu was involved in placing the caveat. Since the placement of the caveat had been determined as unlawful through the removal in Masters Chambers, Mr. Naidu was in breach of s.7(c) of the *Code of Conduct*.



### Written Submissions of the Member

#### **Counts 1, 7, 9, 14**

R.G. made his submissions regarding Count 1. He submitted that the wording used by Mr. Naidu in his disclosure statement was obtained from the Edmonton Real Estate Board. He stated that the Members of the industry who testified at the Hearing stated that they were aware that Mr. Naidu was the individual referred to as the sole shareholder of the company referred to in the disclosure statement. R.G. submitted that no evidence was introduced during the Hearing, besides the opinion of D.M. who he submitted was not an authority on the matter of disclosure to indicate that Mr. Naidu failed to comply with Rule 28. He submitted that Counts 7, 9, and 14 were similar to Count 1 and as such, the argument for each of these is the same as for Count 1.

#### **Count 2**

With respect to Count 2, R.G. submitted that the evidence presented was insufficient to make a finding of conduct deserving of sanction. He stated that although S.L. gave some evidence, he is not an expert, nor did he have detailed notes as to the condition of the property from the time that he prepared his estimate. He submitted that S.L. relied on photos and health inspector reports in order to make an evaluation of renovations that had been completed. He stated that some of the photographs were from before renovations began and some were from six months after Mr. Naidu had sold the property. S.L. made reference to extensive repairs being needed for the foundation of the property, however, the engineering report appeared to be contrary to that statement, although B. who wrote the report was not called as a witness nor was the report entered as evidence. R.G. stated that although Mr. Naidu may have erred in selling the property before renovations were complete, that is not a breach of the *Real Estate Act*.

#### **Counts 3, 4**

R.G. submitted, with respect to Count 3, that Mr. Naidu acknowledged his error by failing to place the deposit he received into trust. He stated that since Mr. Naidu was “dealing with himself” in this transaction, it was logical for him to act as he did. Mr. Naidu also placed an amendment document on the file within several days of the offer being accepted. R.G. submitted that Count 4 was redundant since it dealt with the same failure to deposit trust funds as set out in Count 3. He submitted that not depositing a cheque cannot be said to be a failure to provide documentation.

#### **Count 5**

Count 5 was in regards to Mr. Naidu failing to provide all requested documentation to a RECA investigator. R.G. submitted that some of the documents requested were dating back three years and that certain documents may not have been retained over such a lapse of time. He stated that cell phone and pager records would not have demonstrated anything relating to what may have been discussed or even who Mr. Naidu was speaking with. He submitted that the request for these documents was unreasonable. R.G. submitted that the only missing document of importance was the one in question which was not delivered to D.G.’s office. He submitted that Mr. Naidu cannot automatically be

considered partly at fault for this since he testified that he sent documents by fax from his home, and D.G. testified that his files were otherwise in order.

### **Count 6**

With respect to Count 6, R.G. submitted that there is no evidence which substantiates the claim that Mr. Naidu gave misleading or false information to D.M.. He stated that the fault for the \$27,000 loan being put on the wrong ledger was with the Venkatraman & Associates law office. He stated that Mr. Naidu had borrowed approximately \$1,000,000 from B.O.'s company with minimal documentation and it was understandable that it may not have been clear to P.V. the purpose and intention for all monies. He stated that P.V. was not called as a witness and as such, the confusing movement of funds cannot be assumed.

### **Count 8**

R.G. submitted, with respect to Count 8, that the facts presented as evidence do not constitute the creation of a false or misleading document. He submitted that Mr. Naidu was sloppy in handling some deposits; however, that does not constitute misleading documents. He stated that by Mr. Naidu not communicating the stop payments placed on certain deposit cheques, this may be grounds for censure but does not constitute a breach of s.4(d) of the *Code of Conduct*.

### **Count 10**

With respect to Count 10, R.G. submitted that s.28(c) of the *Real Estate Act Rules* does not require a realtor to report assignments or trades that do not exist at the time the offer is made but which arise at a later date. R.G. submitted that this was situation with Mr. Naidu and the assignment to the C.'s. As a result of this, Mr. Naidu could not have first disclosed this in writing since this was not his intention at the point of making the offer. If it was a requirement to advise subsequent assignments, he submitted that this would cause problems as the person would then be revealing confidential information about the assignee's business activities, which would be a breach of the Rules respecting client confidentiality. R.G. stated that the same logic applies when the assignment with the C.'s fell through and there was a subsequent assignment to D.O.D. and his son.

### **Count 11**

Count 11 pertained to the creation of a document that was false or misleading. R.G. submitted that that was not the case with Mr. Naidu. He stated that the preparation of a cheque that was later dishonoured does not constitute the creation of a document that was false or misleading. He submitted that Mr. Naidu had advised C.S. that he would get a replacement deposit for her as soon as possible, which he did. R.G. stated that Mr. Naidu created a problem by not submitting the deposit in accordance with the agreement which caused difficulties for the seller, however, the correct way of dealing with this is to make an amendment of the purchase contract to state that if a deposit is not received within the required time, the contract is void or voidable.

### **Count 12**

With respect to Count 12, R.G. stated that it was improper to refer to a contract made by a company that has been struck for failure to file annual returns as illegal. He submitted that Mr. Naidu made have bee sloppy in attending to his business, however, he had relied upon his lawyer to deal with these things and therefore it is reasonable that Mr. Naidu would not be aware of his company being struck from the registry. He submitted that this in itself does not constitute a breach of s.6(c) of the *Code of Conduct*. R.G. referred to the case of MacRae vs. Broder, which sets out the basic law that a company once struck-off is still capable of entering into binding legal obligations so long as it can be revived.

### **Count 13**

R.G. submitted, with respect to Count 13, that there was no evidence to substantiate the allegation that the assignment prepared by Mr. Naidu was inadequate from a legal standpoint. He stated that the assignment was in writing and signed and submitted that it is normal business practice for a husband to sign on behalf of himself and his wife. R.G. stated the only issue would be whether or not C.H.S. was the agent for M.N.. As a result, Mr. Naidu was not in breach of s.6(c) of the *Code of Conduct*.

### **Count 15**

With respect to Count 15, R.G. submitted that s.28(c) of the *Real Estate Act Rules* does not require a realtor to report subsequent assignments or trades. He submitted that at the time that Mr. Naidu acquired his interest, there were no negotiations for its trade to another person, and as a result, he could not have first disclosed his intentions in writing.

### **Count 16**

It was submitted, with respect to Count 16, that the communications between Mr. Naidu and L.Y. were not a matter of being false or misleading, rather they were optimistic estimations as to when the deposit funds would be provided. R.G. submitted that L.Y.'s main complaint of his interactions with Mr. Naidu was that there was a lack of communication, however, this is not a breach of s.4(d) of the *Code of Conduct*.

### **Count 17**

R.G. submitted, with respect to Count 17, that through D.G.'s testimony, he stated that he was not initially aware of the assignment on the E.K. property, however, he also stated that he did not endeavour to be familiar with the contents of each file since there were between 50 and 60 Members of the industry within his brokerage. Although there was no evidence submitted to indicate when the assignment was put on the file, the lawyers acting for both the seller and the buyer did become aware of it because there was correspondence as early as July 14, 2003 acknowledging the assignment. With respect to the E. property, R.G. submitted that the assignment to C.H.S. was noted on file only three weeks after the assignment was signed. Rule 23(f) requires that the member keep his broker informed of any changes, which is what occurred. It does not stipulate that the other broker or realtor, such as L.Y., needs to be kept informed. As such, R.G. submitted that Mr. Naidu was not in breach of Rule 23(f).

### **Count 18**

Finally, with respect to Count 18, R.G. submitted that Mr. Naidu stated during his testimony that he made the observation that S. would likely remove the caveat placed on the E.K. property if the \$5,000 deposit was returned to him. Mr. Naidu had stated that he had no contact with S. and therefore was not involved in attempting to retrieve the deposit. R.G. submitted that Mr. Naidu was not involved in any unlawful activity, as was alleged. He stated that the evidence given contrary to this was questionable and pointed out that S. was not called as a witness in this matter, nor were the lawyers who acted for the seller and buyer and as such, assumptions cannot be made regarding Mr. Naidu's involvement with S., the deposit and the caveat. He submitted that Mr. Naidu was not the person who caused the contract with E.K. to fall through, and Mr. Naidu cannot be held responsible for the failure of a buyer to complete the contract in accordance with its terms.

In conclusion, R.G. added that the only thing that had been proven during the Hearing was that Mr. Naidu had occasionally been sloppy in submitting deposits and slow in communicating with other Members of the industry. He also stated that there was no suggestion that any member of the public suffered a loss as a result of Mr. Naidu's conduct.

### **Executive Director's Rebuttal Submissions**

In Ms. Ramaswamy's rebuttal submissions, she stated that R.G. wrote that the level of proof required from the Executive Director is that of beyond a reasonable doubt, as is required in a criminal prosecution. However, she stated that according to James Casey in Regulations of Professions in Canada, the standard of proof to be applied at disciplinary hearings generally is that of a preponderance of probability.

### **Counts 1, 9, 14**

Ms. Ramaswamy submitted, with respect to Count 1, that the Edmonton Real Estate Board does not enforce the *Real Estate Act*, *Real Estate Act Rules*, *Code of Conduct* or *Bylaws*. She also stated that disclosure is required in this situation, and part of being made fully aware if being made aware of who exactly the consumer is dealing with. She submitted that with Mr. Naidu's wording, it was unclear who the licensed agent was or to which brokerage he was registered, which is not the revelation that section 2(a) of the *Real Estate Act Rules* requires. Ms. Ramaswamy submitted that these comments are also applicable to Counts 9 and 14.

### **Count 2**

With respect to Count 2, Ms. Ramaswamy submitted that even without an accredited real property appraiser, there is still overwhelming evidence that Mr. Naidu intentionally or recklessly misrepresented the potential market value of the property, as shown in the evidence and reiterated in Ms. Ramaswamy's first submissions. Ms. Ramaswamy submitted that S.L. was an experienced realtor, as he indicated in his testimony, and had extensive experience with respect to property renovations. Although S.L. was commenting on the property from photographs taken by Capital Health, Ms. Ramaswamy submitted that the condition of the foundation was still observable, as well as the condition

of the roof and the back porch. She submitted that these were crucial repairs that in S.L.'s opinion needed to be completed in order for the property to be at its maximum value. Ms. Ramaswamy submitted that although R.G. stated that S.L.'s testimony during the hearing was suspect since he had valued the property substantially below market value, there was no evidence introduced in the Hearing to justify this statement. She submitted that C.L.'s testimony lacked credibility, as he openly admitted that at the time of the renovations he had a problem with alcohol and was often not on-site during the renovations or was intoxicated on-site. As well, he was evasive during cross-examination, and Ms. Ramaswamy submitted that his testimony in general lacked candour. In response to R.G. stating that the Engineer's Report was not entered into evidence by the Executive Director, Ms. Ramaswamy submitted that since Mr. Naidu had paid for this report, it was confusing why R.G. had not entered it into evidence himself. Mr. Naidu had stated during his testimony that he had forgone a significant amount of the purchase price without having the fact that he sold the property before renovations were completed stated on any of the documents setting out the purchase price paid. As such, Ms. Ramaswamy submitted that by Mr. Naidu admitting this, he misrepresented the potential market value of the property. When Mr. Naidu was asked to provide evidence to justify the \$103,500 purchase price, such as receipts for renovations and materials, the appraisal that was prepared and the CMA he prepared, Mr. Naidu responded that some of these were lost and others were misplaced by his lawyer, or they were damaged in the flood in his basement. Ms. Ramaswamy submitted that these reasons given in his defence produced no air of reality and they should not be accepted by the Hearing Panel.

### **Count 3**

Ms. Ramaswamy submitted, with respect to Count 3, that Mr. Naidu, as an experience agent, knew or ought to have known that if a transaction is occurring through his brokerage, that is where the deposits have to go, as per the listing contract he entered into with his brokerage. Since Mr. Naidu failed to put the deposit monies into trust by accepting it directly, this is a breach. Ms. Ramaswamy submitted that by R.G.'s statement that Mr. Naidu's failure to place the initial deposit in trust was an error is acknowledging that Mr. Naidu was in breach of Section 23(d) of the *Rules* and 25 of the *Act*.

### **Count 4**

With respect to Count 4, Ms. Ramaswamy submitted that according to Black's Law Dictionary, which defines a document as "an instrument on which is recorded, by means of letters, figures, or marks, the original, official, or legal form of something, which may be evidentially used", a cheque falls within this definition. As such, not depositing a cheque is a failure to provide documentation or trade records and contrary to s.23(e) of the *Real Estate Act Rules*.

### **Count 5**

In response to R.G.'s statements in regards to Count 5, Ms. Ramaswamy submitted that D.M.'s request for cell phone and pager records was reasonable within the context of the investigations. The reason for this was based on the complaint that was made from B.R.G. with respect to the property located at 11303 – 93<sup>rd</sup> Street, D.M. was possibly investigating a mortgage fraud situation, Therefore, Ms. Ramaswamy submitted that the request for these records was completely reasonable as these would provide records of who had been in contact with Mr. Naidu; since many of the Members of the industry D.M. spoke with in regards to this investigation, stated that they had Mr. Naidu paged or they had phoned him repeatedly on his cell phone in order to request payment of deposits. The evidence

introduced during the Hearing demonstrates the relevance of these records requested by D.M., and Ms. Ramaswamy submitted that there was no evidence introduced to suggest that the requested records were irrelevant, nor were R.G.'s submissions put to D.M. during his cross-examination.

### **Count 6**

Ms. Ramaswamy submitted in response to R.G.'s submissions with respect to Count 6, the evidence heard and submitted during the Hearing establishes that Mr. Naidu provided false or misleading information to D.M.. With respect to the \$27,000 in question during the Hearing, the evidence demonstrates that that money was applied to the transaction between M-Vis Enterprises Inc. and J.B., as shown by way of a \$27,000 down payment credited to J.B.. Although Mr. Naidu submitted that P.V. misapplied the money, Ms. Ramaswamy submitted that, as established in Count 2, Mr. Naidu's testimony lacked credibility and this was the only evidence stating that the \$27,000 down payment credited to J.B. was an error by P.V.. When D.M. questioned Mr. Naidu about this during the investigation, Mr. Naidu's response was that J.B. provided this money and that he did not. Ms. Ramaswamy submitted that if Mr. Naidu told D.M. that J.B. provided the \$27,000 when in fact there was no \$27,000, this is an inaccurate and misleading statement and is contrary to s.7(d) of the *Code of Conduct* and s.38(4) of the *Real Estate Act*.

### **Count 8**

With respect to Count 8, Ms. Ramaswamy submitted that the evidence presented at the Hearing and as set out in her first written submissions established that Mr. Naidu participated in the creation of a document and/or form of communication that he knew or ought to have known was misleading, contrary to s.4(d) of the *Code of Conduct*.

### **Counts 10, 15**

Ms. Ramaswamy submitted, with respect to Count 10, that the state of acquirement of the interest is in continuum and has not ceased between the period of final acceptance and the completion date. As such, if there has been a negotiation for the trade of the property in question, to another party by the initial purchaser who is an industry member, then s.28(c) of the *Real Estate Act Rules* demands that complete details of any negotiations for its trade to another person be disclosed. She stated that in a real estate purchase situation, a buyer does acquire an interest once final acceptance between the proposed purchaser and seller is achieved. The full interest in the property is not acquired until the full purchase price is paid and title has transferred. She further stated that this event generally happens at the time of the completion date set out in the Real Estate Purchase Contract. Ms. Ramaswamy submitted that the Executive Director's position with respect to Count 15 is the same as set out under Count 10.

### **Count 11**

In response to R.G.'s submissions with respect to Count 11, Ms. Ramaswamy stated that Mr. Naidu knew or ought to have known the predicament that sellers were left in when deposits cheques do not arrive on time. R.G. submitted that the fault with respect to the lack of understanding of importance of deposits lies with the real estate industry. In response to this, Ms. Ramaswamy stated that by C.S.

repeatedly calling Mr. Naidu about the deposit when she did not receive it according to the timeframe she was given, that in itself was emphasizing to Mr. Naidu the importance to her that she receive the deposit when it was promised. As such, Mr. Naidu was in breach of participating in the creation of a document and/or form of communication that he knew or ought to have known was false and misleading.

### **Count 12**

With respect to Count 12, Ms. Ramaswamy submitted that Mr. Naidu's statement that he had no reason to believe that his corporation had been dissolved at the time that M-Vis Enterprises Inc. had entered into a purchase contract with the D.'s was not supported by the evidence. She submitted that Mr. Naidu had been sent two letters from his lawyers, P.V., advising that if his annual returns were not filed, his company would be dissolved. Since these letters were sent to his residence, he should have read them and as such known that his corporation was dissolved. Ms. Ramaswamy submitted that the authority referred to by R.G., *MacRae vs. Broder*, was not applicable to M-Vis Enterprises Inc. since there was no evidence submitted during the Hearing to suggest that Mr. Naidu's corporation was ever revived. In fact, the evidence presented during D.M.'s testimony demonstrated that D.M. had done a corporate search and it showed that M-Vis Enterprises Inc. was still in struck status and that there was never an attempt to revive it. Since this was the situation, Ms. Ramaswamy submitted that Mr. Naidu was in breach of 6(c) of the *Code of Conduct*.

### **Count 13**

In rebuttal to R.G.'s submissions in regards to Count 13, Ms. Ramaswamy referred to paragraph 14 of the *Zukiwski vs. Yakmac Investments Ltd.* case. This paragraph indicates that since the owner of the company is not named on the document or that he signed as agent for the company, it cannot be inferred in what capacity he/she is signing.

### **Count 16**

With respect to Count 16, Ms. Ramaswamy submitted that as set out in the written submissions already submitted, the evidence sets out that Mr. Naidu did participate in the creation of a document and/or form of communication that he knew or ought to have known was false and misleading, contrary to s.4(d) of the *Code of Conduct*. She also submitted that non-communication is a form of communication.

### **Count 17**

Ms. Ramaswamy submitted, in response to R.G.'s submission for Count 17, that the issue was whether Mr. Naidu's broker was aware of the assignment, not whether the seller's lawyer was aware, or whether the other broker or realtor was made aware. D.G. testified that he was not made aware of the two assignments.

### **Count 18**

With respect to Count 18, Ms. Ramaswamy submitted that her submissions are the same as set out in the written submissions already submitted.

## V) FINDINGS

For the purposes of the decision document, each of the matters appearing in the Notice Of Hearing will be described as a Count and thus there will be 18 Counts to correspond with the 18 items or paragraphs in the Notice.

### Counts 1, 7, 9, 14

Breach of Section 28(a) of the Rules.

*An industry member shall not*

- a) *trade in real estate on behalf of himself or another person until the industry member has first disclosed in writing to the parties to the trade*
  - i) *any interest, direct or indirect, that the industry member or any other industry member has in the real estate as seller or buyer; and*
  - ii) *that the industry member is licensed under these Rules or is employed or associated with a licensed brokerage, as the case may be;*

The allegation is that the former Industry Member (Mr. Naidu) failed to satisfy the requirements of this Rule that requires disclosure of an industry member's personal interest in the transaction.

With respect to the particulars alleged in each of these Counts, it was established by the evidence of the Executive Director that an offer was made by a corporation in which the sole shareholder was Mr. Naidu. It was noted that in each offer there was a standard form of disclosure that provided that "sole shareholder of buyer is a licensed agent....." with some slight variations after those words but that essentially provided the same information. What was missing from that wording was the name of Mr. Naidu and the allegation is that this is the failure to disclose.

The Panel found that the disclosure made by Mr. Naidu, notwithstanding not containing his name, met the conditions of the Rule. No expert evidence was provided at the Hearing as to what degree of disclosure was required to satisfy the Rule. An opinion was offered by the investigator appointed by the Executive Director that the name of the industry member should have been added to the wording of the disclosure made by Mr. Naidu, however the Investigator was not qualified as an expert and no interpretive criteria nor any prior decisions on the interpretation were submitted to the Hearing Panel.

In the course of the cross-examination by the counsel for Mr. Naidu, witnesses called by the Executive Director, being either licensed brokers or agents indicated either that they considered that the disclosure made by Mr. Naidu was the usual wording used by licensees or that they had no misunderstanding based on the wording used and each witness indicated they knew that Mr. Naidu was the interested individual in question. In each Count Mr. Naidu used the same wording, and although his broker may have been common on more than one transaction in each case, Mr. Naidu was dealing with a different agent or broker on the part of the seller except in the case of the resale to J.B. of the 93<sup>rd</sup> Street property. Other evidence being that of C.L. strongly indicated that J.B. and Mr. Naidu knew each other and the transaction had other features that provided a degree of proof that could not lead to other than the conclusion that J.B. had been made aware of the interest of Mr. Naidu in the property.

### Count 2

Breach of Section 4(e) of the Code of Conduct



*An industry member must not make representations or carry on conduct that is reckless or intentional and that misleads or deceives any person or is likely to do so. This includes the following:*

- e) An industry member must not knowingly or recklessly misrepresent the potential market value, the revenue potential of properties or mortgage benefits.*

The allegation is that Mr. Naidu misrepresented the potential market value of the property at 93<sup>rd</sup> Street. Considerable evidence was led by counsel for the Executive Director in regard to the acquisition of the property by Mr. Naidu from Cooperative Trust ("Cooperative"), a subsequent attempt at renovation, a MLS listing, financing of the property and a resale to J.B. involving a mortgage financing of the purchase.

### Summary

S.L., who was the agent representing Cooperative had given Cooperative an estimate of value of the 93<sup>rd</sup> Street property following a foreclosure by Cooperative. This resulted in a listing of the property with S.L. for an asking price of \$34,900. Mr. Naidu, through his wholly owned corporation M-Vis Enterprises Inc., purchased the property for \$36,000 effective July 31, 2001. S.L. gave evidence that fully restored by renovations, he estimated at \$41,000 the property would cost \$76,000 and likely only sell for a maximum price of \$75,000.

The evidence of the renovation costs undertaken by Mr. Naidu was not complete. Mr. Naidu stated that part of the documentation relating to those costs was lost in a flood at his home or lost by his legal representative during an office re-location. The numerous receipts produced to the appointed investigator D.M. by Mr. Naidu during the investigation and produced in evidence were dated from mid-October through November and into December of 2001. The lead renovator, C.L., gave evidence of the work performed but was not certain about the costs because he was not allowed to purchase materials and admitted that he was inebriated much of the time the renovations were being performed, spending considerable time imbibing at a "pub" rather than at the site. The best guess from the evidence heard was that possibly \$20,000 worth of work and materials found their way to the project.

The next significant date is October 8, 2001 upon which Mr. Naidu caused M-Vis Enterprises Inc. to list the property for \$110,000 through the brokerage with which he was then registered. This was a Multiple Listing Service listing with the Edmonton Real Estate Board and, as such, obtained wide publication. The support information described many renovations as if they had been completed but noted that no showings would be permitted as "house under renovations". That was immediately followed on the same date by an amendment to the listing which stated that in addition to no showing being permitted that "Listing is under withdrawn". It appears clear that very little had been done to the property at that date.

On November 15, 2001 an individual by the name of J.B., whom, C.L. testified was one of his workmen, made an offer through Mr. Naidu and the brokerage in question to M-Vis Enterprises Inc., which Mr. Naidu accepted in such behalf, for the sum of \$103,500. This price consisted of \$77,625 in new financing and \$25,875 in cash to close November 30, 2001. A \$1,000 deposit shown on the offer did not find its way to the trust account of the brokerage, but rather the documents in evidence show it went directly to M-Vis Enterprises Inc. with the apparent agreement of J.B.. J.B. also waived the financing condition on November 22, 2001 which indicated new financing had been obtained.

Evidence of the new financing was obtained by the investigator D.M. from the law offices of Venkatraman & Associates which is supported by a search of the title from the Land Titles Office. The Toronto Dominion Bank caused a mortgage to be registered in amount of the new financing against the title of the property on December 4, 2001 which immediately followed a transfer to J.B. of that title. Thus J.B. had obtained and executed the loan documents with the bank. P.V. produced a letter dated November 23, 2001 stating that they represented J.B. had on deposit the cash to close the purchase of \$27,000 and a Statement of Receipts and Disbursements for J.B. showing the proceeds of the mortgage loan and the cash being dispersed.

Although the loan proceeds were not dispersed until after December 4, 2001 there was a flurry of transactions that took place prior to registration of title. Prior to the date of the offer to purchase by J.B., P.V. had been in receipt of \$27,000 from 586951 Alberta Ltd. and credited it to the same trust account to which they credited the Toronto Dominion Bank loan proceeds obtained by J.B. in respect to the property in question. On November 25, 2001 J.B. signed a letter to P.V. releasing the \$27,000 cash to close to M-Vis Enterprises Inc.. The trust cheque from P.V. for such sum payable to M-Vis Enterprises Inc. is dated November 26, 2001 and their trust account logs show this the cash deposited with P.V. by 586951 Alberta Ltd. The Statement of Receipts and Disbursements For J.B. described this sum as "shortfall funds" received from 586951 Alberta Ltd.

Following the closing, 586951 Alberta Ltd. received \$46,999.99 from P.V. which represented the \$27,000 together with the amount of a previous loan made to Mr. Naidu and secured by a mortgage on the property between the acquisition dated and the resale date. M-Vis Enterprises Inc. collected a further \$24, 000 from P.V. being the balance of the proceeds less legal expenses and commission.

All of this took place notwithstanding the renovations had not been completed. Mr. Naidu testified that in support of the value of the property he had obtained an appraisal but could not produce a copy nor could he remember the name of the appraiser. He also testified that the \$27,000 credited to J.B. was a mistake by P.V. and that those were his monies which he had borrowed from 586951 Alberta Ltd. and that he had credited J.B. with \$27,000 for the unfinished renovations. B.O. of 586951 Alberta Ltd. testified that indeed the loan of \$27,000 was made at the request of Mr. Naidu and a promissory note was made by Mr. Naidu but that it was to be secured on the 93<sup>rd</sup> St. property and paid out with the existing loan when the sale and new financing were completed. P.V.'s extensive records of the receipt and use of the \$27,000 indicate there was no mistake as to the intent and use to which the \$27,000 was put and nothing produced by any of the witnesses contradict that evidence.

Further evidence of the failure to complete the renovations was provided by a neighbor and by a representative of Capital Health and the ultimate destiny of the property as being demolished showed that it may never have been fit for human habitation, at any material time in this transaction.

The Hearing Panel finds that the MLS listing and withdrawal, the OTP at \$103,500, the loan application documentation, the alleged appraisal, the estimations of the value of the renovations, and the solicitors' letter respecting the down payment all were part of an elaborate scheme by Mr. Naidu to establish a potential market value for the purpose of obtaining the mortgage loan. The sale value was contrived by activities of Mr. Naidu that he carried out to make it appear that J.B. had, by putting up his own cash or having received the down payment through something called a down payment gift letter, made a substantial investment in the property when in fact Mr. Naidu washed his own funds through the

solicitors' trust account and that such activity gave it the appearance that J.B. was a bona fide buyer. This misrepresentation is a breach of the Section and is conduct deserving of sanction.

**Count 3** Breach of Section 23(d) of the Rules and 25 of the Act

*An associate broker and agent must*

- d) *ensure that all transactions and the relevant documentation meet legislative requirements found under the Act, the Bylaws, and these Rules;*

These allegations also relate to the 93<sup>rd</sup> St property and are in regard to transaction involving a sale to J.B.. The particulars of the Count relating to the direct payment of the deposit to Mr. Naidu or his corporation were established by the evidence of the Executive Director and acknowledged by Mr. Naidu when he gave evidence during the hearing. This is a breach of the Act and the Rule and is conduct deserving of sanction.

**Count 4** Breach of Section 23(e) of the Rules

*An associate broker and agent must*

- e) *provide all documentation or trade records required under these Rules to the broker;*

This charge also stems from the 93<sup>rd</sup> St sale to J.B. in that in addition to failing to place the deposit in trust with the Broker, C-21 Platinum Realty, that Mr. Naidu did not provide the trade records of that sale to broker. The evidence of this failure and the failure to place the deposit in trust was provided by evidence of the broker B.O. who stated that the trade records dated November 15, 2001 did not go to the broker until the closing date of November 30, 2001. This is a breach and conduct deserving of sanction

**Count 5** Breach of section 7(d) Code of Conduct, and Section 38(4) of the Act

*7(d) of the Code of Conduct*

*An industry member must be professional in dealings with the public and other industry members. This includes the following:*

- d) *An industry member must 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.*

*38(4) An industry member shall co-operate with a person conducting an investigation.*

The failure to produce the cell phone and pager records was acknowledged by Mr. Naidu and there was an excuse offered that they were lost but no effort was made to replace any or all. This is conduct deserving of sanction although it did not appear to have a material impact on the matters under consideration in this matter.

**Count 6** Breach of Section 7(d) Code of Conduct and section 38(4) of the Act.

*7(d) of the Code of Conduct*

*industry member must be professional in dealings with the public and other industry members. This includes the following:*

- d) An industry member must 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.*

*38(4) An industry member shall co-operate with a person conducting an investigation.*

The allegation relates to the statement by Mr. Naidu to the investigator D.M. that J.B. produced the \$27,000 down payment on the sale of 93<sup>rd</sup> St. by Mr. Naidu to J.B.. The documentation produce by B.O. and P.V. proves the \$27,000 down payment did not come from J.B. as stated by Mr. Naidu but in fact was money borrowed by Mr. Naidu from B.O. and charged against the 93<sup>rd</sup> St. property along with other monies Mr. Naidu had secured against that property in favor of B.O.. It was only made to look as if J.B. had put up the funds. The panel finds that Mr. Naidu made misleading statements to the investigator and this is conduct deserving of sanction.

**Counts 8, 11, 16**

Breach of Section 4(d) of the Code

*An industry member must not make representations or carry on conduct that is reckless or intentional and that misleads or deceives any person or is likely to do so. This includes the following:*

- d) An industry member shall not participate in the creation of any contract, document or form of communication that the member knows or ought to know is false or misleading*

This allegation is that the cheque issued by Mr. Naidu as the combination of the two deposits required on the purchase of 9837 156 Street from the W.'s was NSF and was tendered as part performance of the OTP leading the seller's agent C.A. to believe that the contract was valid. This was the creation of a contract that Mr. Naidu knew was false and misleading. Mr. Naidu admitted as much both by letter to the broker for the seller and in his testimony. As such this is conduct deserving of sanction.

The difference in the Count 11 allegation respecting the purchase from H.P. of 9422-156<sup>th</sup> Street is that payment was stopped on the deposit cheque. Nonetheless, the cheque, which is a direction to a bank to pay funds from an account to a certain person, was countermanded before it could be cleared. This action led to the belief by the seller's agent, C.S., that the contract was valid. This was again the creation of a contract that Mr. Naidu knew was false and misleading. As such this is conduct deserving of sanction.

The facts in relation to Count 16 respecting the purchase of 4016 117 Ave from E.K. determined that payment had been stopped on a deposit cheque and again the Panel found that E.K.'s agent L.Y., having received the cheque, payment of which had been countermanded, was of the belief the contract was valid. This was again the creation by Mr. Naidu of a contract that he knew was false and misleading and this conduct is deserving of sanction.

**Count 10**

Breach of Section 28(c) of the Rules

*An industry member shall not*

- c) *directly or indirectly, acquire any interest in real estate for himself without first disclosing in writing to the owner of the real estate, or the legal representative of that owner, complete details of any negotiations for its trade to another person.*

The allegation is that Mr. Naidu acquired an interest in the property at 9422 – 156<sup>th</sup> Street without first disclosing that there were existing negotiations to trade the property to another person. What is essential to prove here is not that at the time of the offer there was no disclosure, but that at the time of closing that there were negotiations taking place. In other words what took place after the offer must be related to the vendor or the vendor's agent. They must have been in place prior to the closing. The evidence consisted of testimony by I.C. about her interest in the transaction and her memory was not clear; however, the Panel finds that the documentation indicates the negotiation took place after the offer and before the closing and thus on the balance of probabilities there is a breach of section 28(c) of the Rules proven. This is conduct deserving of sanction.

**Count 12** Breach of section 6(c) of the Code

*An industry member must render a competent service. This includes the following:*

- c) *An industry member shall not participate in the creation of any contract or document that the member knows or ought to know is not legally binding, confusing or does not reflect any agreements already in place.*

The allegation is that Mr. Naidu participated in the creation of a contract that he knows or ought to know is unenforceable. There was no evidence that convinced the panel that he knew the contract was unenforceable. This is a complex legal issue and even though the case cited has to do with the subject of corporations struck from the register it may be distinguished here because it dealt with the problem of the administration of the assets of the corporation held when the act of it being struck occurred. In this case however, Mr. Naidu was a sophisticated business person and knew of the nature of corporations because he controlled at least two corporations. This exposure to requirements of registration would lead one to believe that Mr. Naidu ought to have known that an offer made by a corporation that no longer existed would not be enforceable. Even though that may not have been his intention, it is conduct deserving of sanction because it was done without regard to the rule and the interests of the buyer or the seller and is a failure on the part of Mr. Naidu to render competent service.

**Count 13** Breach of section 6(c) Code

*An industry member must render a competent service. This includes the following:*

- c) *An industry member shall not participate in the creation of any contract or document that the member knows or ought to know is not legally binding, confusing or does not reflect any agreements already in place.*

This allegation relates to an assignment document prepared by Mr. Naidu with respect to the assignment of the interest of C.L. to C.H.S. and M.N. of property purchased by C.L. at 151<sup>st</sup> Street. The document was only signed by C.H.S. notwithstanding M.N. was named as a party. Although there was no signature by M.N., there was no determination nor was any evidence presented to indicate that the document was not legally binding and, inasmuch as it had not been tested. If it had been disputed successfully, or relied upon successfully that evidence was not brought before the Panel. The Panel

found that it of itself was not sufficient to satisfy the provisions of (c) and thus it was determined that this in itself was not conduct deserving of sanction.

**Count 15** Breach of section 28(c) of the Rules

*An industry member shall not*

- c) *directly or indirectly, acquire any interest in real estate for himself without first disclosing in writing to the owner of the real estate, or the legal representative of that owner, complete details of any negotiations for its trade to another person.*

Critical to the allegation of a breach of this Rule is proof that at the date of closing that negotiations were taking place with another party. In this case the offer was three days before the assignment date and 13 days before the money order deposit was made. The Panel finds this did meet the test of negotiations having taken place before the closing and thus Mr. Naidu's conduct is deserving of sanction.

**Count 17** Breach of 23(f) of the Rules

*An associate broker and agent must*

- f) *keep the brokerage informed of the activities being performed by the associate broker or agent on behalf of the brokerage;*

The evidence of D.G. who was Mr. Naidu's broker was that if the case of the 117<sup>th</sup> Avenue property Mr. Naidu did not inform him of the assignment to S. is a breach of the Rule and in the case of C.L. to C.H.S. assignment, D.G. learned of the assignment from the sellers broker, K.S.. In each case there is a breach of the requirement that the broker be advised of the activities of the agent, in this case Mr. Naidu, and this is conduct deserving of sanction.

**Count 18** Breach of Rule 7(c)

*An industry member must be professional in dealings with the public and other industry members. This includes the following:*

- c) *An industry member must not participate in fraudulent or unlawful activities in connection with real estate or mortgage transactions.*

The allegation is of unlawful or illegal conduct by Mr. Naidu. It relates to the 117 Avenue property after a caveat was filed by the assignee S. somewhat after the contract was in default. There is evidence that Mr. Naidu interfered in the disposition of the caveat actions by the seller but the Panel could not determine in what context this was a fraudulent or unlawful activity. It may have been an ill advised or offensive and in some other respect flawed conduct on the part of Mr. Naidu, but there was not sufficient evidence presented to convince the Panel on the balance of probabilities that this was fraudulent or unlawful activity in connection with the real estate transaction.

**VI) SUMMARY OF REASONS**

On the whole, the evidence presented by the Executive Director convinced the Hearing Panel that on the balance of probabilities, Mr. Naidu's conduct in all but Counts 1, 7, 9, 14, 13 and 18, was in breach of the Act, Rules and Code of Conduct and that his conduct is deserving of sanction.

The evidence of the witnesses with respect to the 93<sup>rd</sup> St. transactions was far more clear and left no doubt that the transactions had a pattern indicating a plan to inflate the value by deception. Mr. Naidu's explanations were not credible.

Other patterns that became evident were as to his practice of issuing cheques and then stopping payment, which again indicated a plan to tie up a property and execute a flip transaction without regard to his legal obligations as a licensee.

The Panel only accepted his evidence with respect to the disclosure of his interest as a real estate agent in that it seemed to be supported by other licensees that gave evidence. There is sufficient confusion as to what exactly must be said that on the balance of probabilities he met the test and nothing could be pointed out to the Panel that made it clear what exactly was required to satisfy this section of the Rules.

## **VII) ORDERS**

The Hearing Panel requests submissions on sanction by the Executive Director within 14 days of service of this decision with hardcopies to be provided to Mr. Naidu or to his legal counsel and the Hearings Coordinator.

Mr. Naidu then has 14 days from that date to make his written submissions to the Hearing Panel with copies to be provided to the Executive Director and to the Hearings Coordinator.

The Executive Director then has 7 days to submit a rebuttal to Mr. Naidu's submissions on sanction. Upon doing so, the Executive Director is to provide a copy to Mr. Naidu or to his legal counsel and the Hearings Coordinator.

If no submissions are received from the Executive Director or Mr. Naidu within the allocated timeframes, the Hearing Panel will proceed to make a decision with respect to sanction without the benefit of those submissions.

This decision was made on June 23, 2006.

*Lynn Patrick, Chair*

*Glen Chapman*

*Graham Downey*

**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 Vishwa Naidu, Agent, formerly registered to 921325 Alberta Ltd. o/a C-21 Platinum Realty and North Star Realty Corporation o/a Sutton Group-North Star Realty at all times material hereto

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

**VIII) INTRODUCTION**

The members of this Hearing Panel are Lynn Patrick (Chair), Glen Chapman and Graham Downey. The Hearing into this matter took place from April 3 to April 7, 2006. We 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 23, 2006. Following the issuance of that decision, we requested submissions on sanction from Ms. Ramaswamy, legal counsel on behalf of the Executive Director of the Real Estate Council of Alberta, and Mr. Naidu, who was represented by legal counsel.

**II) SUBMISSIONS ON SANCTION**

Submissions on sanction were provided in writing to us by Ms. Ramaswamy, legal counsel on behalf of the Executive Director, and Mr. Naidu, who was represented by legal counsel, R.G., as was requested by the Hearing Panel.

Counsel for the Executive Director provided us with a detailed Schedule of Costs in the amount of \$68,638.62, however, it was reduced by 20% based on an 80% success rate with having a finding of conduct deserving of sanction on 12 out of the allegations, as outlined in the Notice of Hearing. With a reduction of 20% of the total estimated costs, that equaled \$54,910.90 in costs being sought by the Executive Director. Ms. Ramaswamy submitted that the Hearing Panel fine Mr. Naidu in the range of \$20,000-\$30,000. It was further submitted that Mr. Naidu's authorization to trade in real estate should be suspended for 3 to 5 years. Ms. Ramaswamy further submitted that Mr. Naidu be required to successfully complete the Real Estate Agent's program offered by the Alberta Real Estate Association as well as take and pass the provincial qualifying exam prior to having his license to trade in real estate reinstated. Finally, Ms. Ramaswamy submitted that Mr. Naidu be required to successfully complete the AREA Mortgage Fraud Awareness course.

Ms. Ramaswamy submitted that there are various factors which needed to be considered with respect to Mr. Naidu's sentencing, including the safety of the public, such as the deterrence such a penalty would impose on Mr. Naidu; the maintenance of public confidence in RECA and its regulation of the industry; and consistency in penalties. A serious aggravating factor in this matter is Mr. Naidu's lack of remorse as well as a lack of acknowledgement of any wrongdoing on his part. Finally, the seriousness of Mr. Naidu's actions, in particular, with respect to Mr. Naidu's dishonest actions and the fraud which



was found by the Hearing Panel. Since the public was negatively affected by Mr. Naidu's dishonest actions, Ms. Ramaswamy submitted that this calls for a harsher penalty.

In Mr. Naidu's submissions, it was submitted that as Mr. Naidu voluntarily resigned from the industry as well as his acknowledgement of his errors and his written apologies to other members, a suspension of 2 to 3 years would be appropriate. In terms of a fine, it was submitted that fines totaling \$5,000 were adequate. Mr. Naidu agreed with counsel for the Executive Director's submissions regarding all educational requirements. Finally, it was submitted that costs in excess of \$5,000 for this matter would be unreasonable. Counsel for Mr. Naidu stated that certain facts were not in dispute, and had the Executive Director reduced these facts into an Agreed Statement of Facts, that would have significantly reduced the length of the Hearing, and in turn, would drastically have reduced the costs of the Hearing.

It was submitted that with respect to Counts 3, 4, 5, 10, 11, 12, 15, 16, and 17, only a reprimand should be issued to Mr. Naidu in terms of sanction. With respect to Count 8, it was submitted that a fine of \$1,000 would be appropriate for Mr. Naidu's contravention of Rule 28(c) with respect to the property located at 9422 – 156<sup>th</sup> Street, Edmonton.

With respect to Count 2, it was submitted that a fine amounting to \$2,000 would be appropriate and in support of this, R.G. submitted an appraisal report dated November 1, 2001, prepared by R.O.D., which it was suggested, supported the claim of Mr. Naidu as to the value of the property located at 11303 - 93<sup>rd</sup> Street, Edmonton.

Counsel for the Executive Director responded to the submission of an appraisal report on 11303 - 93<sup>rd</sup> Street, Edmonton, prepared by R.O.D. that was included in Mr. Naidu's submissions. Ms. Ramaswamy objected to this evidence being introduced to the Hearing Panel as it was not entered during the Hearing portion of this matter. It was stated that evidence that is to be considered by a decision maker must be presented at the Hearing and since this was not done, the Executive Director has not been afforded the opportunity to cross examine the evidence.

Finally, it was submitted by counsel for Mr. Naidu that a fine of \$2,000 would be appropriate for Count 6 as it relates to the property located at 11303 - 93<sup>rd</sup> Street, Edmonton.

With respect to Mr. Naidu's submissions regarding an Agreed Statement of Facts, Counsel for the Executive Director submitted that efforts made through Mr. Naidu's legal counsel were not successful. As such, the Executive Director had to proceed to a fully contested Hearing.

Some adjustments were made to the costs being sought by the Executive Director. The Case Presenter's time was adjusted to show the total time at 501.25 hours. This increased the total costs of the Hearing to \$69,734.62. With the amount reduced by 20%, this equaled costs of \$55,787.67.

### **III) ORDERS AND REASONS**

We have considered the submissions made by both counsel for the Executive Director and Mr. Naidu. We have found that Mr. Naidu's misconduct was of a serious nature. Therefore, we agree with the Executive Director's submission that the fine should be a substantial one. We feel that a fine in the

amount of \$20,000.00 is warranted due to the aggravating factors outlined in Counsel for the Executive Director's submissions on sanction. We consider such a fine to be reasonable.

With respect to the issue of costs, the Hearing Panel also considered the recent Court of Queen's Bench decision by Madam Justice Rawlins in the matter of Murti Goll. In that decision, Madam Justice Rawlins outlined the test when considering costs, which stated that a more detailed accounting of costs must be provided, much in the same way as would occur in a taxation of costs in court proceedings with substantiation to be provided. We feel that Ms. Ramaswamy met this test, in the detailed accounting for costs she provided with her submissions.

We considered Mr. Naidu's arguments with respect to the length of the Hearing being unnecessary, stating that an Agreed Statement of Facts could have significantly reduced the time required for this matter. This was Mr. Naidu's choice to enter into such an agreement with the Executive Director. It was found by the Hearing Panel that no attempt was made by Mr. Naidu to endeavor to enter into such an agreement. As such, the length of the Hearing was necessary in order to hear all the relevant evidence and arguments surrounding Mr. Naidu's dealings with respect to the allegations as set out in the Notice of Hearing. The Hearing Panel is satisfied that the hours required at the investigation stage were justified, as it resulted in an extensive number of allegations.

When considering the costs involved for the Case Presenter in this matter, as Ms. Ramaswamy is an employee of the Real Estate Council of Alberta, charging a fee of \$100 an hour does not take into account all of the presenter's activities. We accept the total hours of Ms. Ramaswamy however, as they mix legal and clerical hours, we have set the rate at \$75 an hour to accommodate that. As a reduction in the hourly rate has been made, the cost for the Ms. Ramaswamy's time in this matter is \$37,593.75. All other costs, as outlined in Ms. Ramaswamy's Revised Estimated Schedule of Costs are justified, with substantiation provided, where applicable. As such, with only one change being made to the Case Presenter's hourly rate, the total amount equals \$57,203.37, which the Hearing Panel considers reasonable.

Ms. Ramaswamy had further reduced the total costs of the Hearing by 20%, stating that her success in proving the allegations was 80%. The Hearing Panel does not feel that a percentage amount based on success is appropriate. As such, we do not feel that a reduction needs to be made based on the success of the Executive Director's case. Since the total cost (as calculated by the Hearing Panel after reducing the hourly rate for the Case Presenter's time, as well as not reducing the total amount by 20%), is very close to the amount being sought by the Executive Director in the amount of \$55,787.67, we accept this amount as the total costs of the Hearing. We feel that costs in the full amount, totaling \$55,787.67, as requested by the Executive Director in her final submissions are justified.

The Hearing Panel considered the submissions made with respect to Mr. Naidu's license suspension. Since both parties have submitted that Mr. Naidu's license should be suspended for several years, the Hearing Panel orders that Mr. Naidu's license to trade in real estate is suspended for a period of four years. As Mr. Naidu has currently been unlicensed for approximately one year, the Hearing Panel will give him credit for one year out of the four year suspension. As such, Mr. Naidu is able to re-apply for his license for October 1, 2009.

Finally, with respect to the request for Mr. Naidu to complete several real estate courses prior to re-application to the industry, Mr. Naidu agreed with the Executive Director's request. As such, the Hearing Panel finds that Mr. Naidu shall complete each course, as requested by the Executive Director.

As a result of our findings of conduct deserving of sanction, and after due consideration of the submissions made by the parties regarding sanction, we hereby order, pursuant to Section 43 of the *Real Estate Act*, the following sanctions which we consider to be reasonable, namely:

1. Mr. Naidu shall pay a fine of \$20,000.00.
2. Mr. Naidu shall pay hearing costs of \$55,787.67.
3. Mr. Naidu's license to trade in real estate is suspended for a period of four years. However, as Mr. Naidu has been unlicensed to trade in real estate for approximately one year, that shall be credited towards the four year suspension. As such, Mr. Naidu can re-apply to be licensed to trade in real estate October 1, 2009.
4. Mr. Naidu shall successfully complete the Alberta Real Estate Association's Real Estate Agent's program in its entirety, prior to becoming licensed to trade in real estate.
5. Mr. Naidu must take and pass the provincial qualifying exam prior to becoming licensed to trade in real estate.
6. Mr. Naidu must complete the Alberta Real Estate Association's Mortgage Fraud Awareness course, prior to becoming licensed to trade in real estate.

Should any of these courses not be available within the time frame, different courses shall be substituted at the sole discretion of the Executive Director. It is Mr. Naidu's responsibility to advise the Executive Director if any of these courses are not available.

This decision was made October 27<sup>th</sup>, 2006.

*Lynn Patrick, Chair*

*Glen Chapman*

*Graham Downey*