

**THE REAL ESTATE COUNCIL OF ALBERTA**

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

**AND IN THE MATTER OF** a Hearing regarding the conduct of  
**BERND A. O. SEIFERT**, Agent, while registered with  
Calgary Independent Realty Ltd.

**Hearing Panel members:** Ron Sullivan, Chair  
Bev Andre  
Cheryl King

**Appearing:** Ms. Naomi Nind, legal counsel on behalf of the Executive Director  
Mr. Bernd Seifert, on his own behalf

**Hearing Date:** July 27, 2006

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

**I) INTRODUCTION**

The Hearing Panel held a hearing into the conduct of Bernd Seifert, Agent, registered at all material times hereto with Calgary Independent Realty Ltd. The Hearing Panel was composed of Ron Sullivan (Chair), Bev Andre and Cheryl King.

The Hearing took place on July 27, 2006 via teleconference. In attendance at the hearing were Naomi Nind, legal counsel on behalf of the Executive Director of the Real Estate Council of Alberta and Bernd Seifert, on his own behalf.

**II) ALLEGATIONS**

Bernd Seifert was called before the Hearing Panel to answer to the following allegations set out in a Notice of Hearing:

1. **THAT** on or about May 2002 concerning the purchase and sale of 1040-12 Avenue S.W., in the City of Calgary, contrary to *Code of Conduct* section 6(a), you failed to render competent service in a real estate transaction. This is conduct deserving of sanction, particulars of which are as follows:
  - (a) In May 2002 you acted as a dual agent in the purchase by S.J. (buyer) and sale by M.E. and H.E. (sellers) of property at 1040-12 Avenue S.W. in Calgary, Alberta.

- (b) The purchase contract provided for an initial deposit of \$5,000, which was to be held by the buyer's lawyer until removal of the buyer's conditions and then was to be held by the sellers' lawyer. The \$5,000 deposit was never delivered. The purchase contract was not amended to reflect any change in agreement between the parties relating to delivery of the \$5,000 deposit.
  - (c) You completed a purchase contract amendment form to amend the original purchase contract by changing the amount of the deposit from \$5,000 to \$30,000, changing the purchase price from \$435,000 to \$430,000, and changing the completion date from July 1, 2002 to September 1, 2002.
  - (d) You subsequently amended the same purchase contract amendment form by changing the completion date from September 1, 2002 to November 1, 2002 and then back to September 1, 2002, which changes were not initialed by the parties.
  - (e) You delivered the \$30,000 deposit to the sellers' lawyer notwithstanding that the written terms of the contract provided that the deposit was payable to the sellers' lawyer after removal of the buyer's conditions, and notwithstanding that the buyer had not removed his conditions. The purchase contract was not amended to reflect any change in agreement between the parties relating to removal of conditions and/or delivery of the \$30,000 deposit.
  - (f) The transaction did not close and the buyer demanded the return of his \$30,000 deposit. The sellers' lawyer refused to return the \$30,000 deposit.
  - (g) At the request of the buyer, you signed a document dated May 28, 2002, which stated that the deal between the parties was null and void and which demanded the return of the deposit to the buyer.
  - (h) The buyer filed a civil action for the return of the deposit and was successful.
2. **THAT** between on or about May 2002 concerning the purchase and sale of 1040-12 Avenue S.W., in the City of Calgary, contrary to *Code of Conduct* section 6(c), you participated in the creation of a contract or documents that you knew or ought to have known were not legally binding, confusing or did not reflect any agreements already in place. This is conduct deserving of sanction, particulars of which are set out in paragraph 1 herein.
3. **THAT** between on or about May 2002 concerning the purchase and sale of 1040-12 Avenue S.W., in the City of Calgary, contrary to *Code of Conduct* section 3(c), you failed to obtain informed dual agency consent in writing before entering into a real estate transaction. This is conduct deserving of sanction, particulars of which are set out in paragraph 1(a) herein and as follows:
- (a) You did not obtain written acknowledgement of dual agency consent from the parties before the purchase contract was entered into.
  - (b) After the purchase contract was signed, you only obtained dual agency consent from the buyer.

### III) EVIDENCE

We received an Admission of Conduct Deserving of Sanction pursuant to section 46 of the *Real Estate Act* from Mr. Seifert. In the document, signed by Mr. Seifert, he admitted to the allegations of fact and breaches of provisions of the Code of Conduct as contained in the Notice of Hearing, and admitted that his conduct in this regard was conduct deserving of sanction.

### IV) SUBMISSIONS

Ms. Nind requested that the Hearing Panel accept the Admission of Conduct Deserving of Sanction.

Ms. Nind submitted to the Hearing Panel a joint submission on sanction, agreed to by the Executive Director; an Estimated Schedule of Costs; and three Hearing Panel decisions as precedents for their consideration. With respect to the issue of fines, there were separate submissions to be made by each party.

Ms. Nind asked the Hearing Panel to consider a fine of \$2,500, payment of costs in the amount of \$1,500 and successful completion of the Alberta Real Estate Association's "Agency Relationships" course.

Ms. Nind outlined for the Hearing Panel the various breaches contained in the Notice of Hearing, for which Mr. Seifert signed an Admission of Conduct Deserving of Sanction. The breaches contained in the Notice of Hearing were s.6(a) of the *Code of Conduct*, s.6(c) of the *Code of Conduct* and s.3(c) of the *Code of Conduct*. Ms. Nind submitted that although Mr. Seifert was in breach of the above mentioned sections, it was not done maliciously or with intent. She submitted that, as differentiated in the case of RECA vs. Astrid Grunberg, there is a difference distinguished between sloppiness or ignorance of professional requirements and intentional wrongdoing. She submitted the facts of this case do not indicate intentional wrongdoing on the part of Mr. Seifert. Ms. Nind pointed out that the precedent cases involved fines ranging from \$1,500 to \$3,500 and stated that \$2,500 was a reasonable fine when considering this matter against the precedents referred to. Though the Estimated Schedule of Costs submitted by Ms. Nind itemized costs in the amount of \$3,598.06, the Executive Director is only seeking costs of \$1,500. She submitted the mitigating factors for the proposed reduction of costs were that Mr. Seifert has been cooperative, he was willing to sign an Admission of Conduct Deserving of Sanction as well as enter into a Joint Submission on Sanction, except with respect to fines, for which separate submissions were made. Ms. Nind also submitted that Mr. Seifert should be required to successfully complete the Alberta Real Estate Association's course entitled "Agency Relationships" as part of the sanction to be imposed on him.

Mr. Seifert indicated that he agrees with Ms. Nind's submissions on sanction, aside from the proposed fine, as he has willingly entered into a Joint Submission on Sanction.

Mr. Seifert asked the Hearing Panel to consider a fine in the amount of \$1,000 as he is the single income earner in his family of six and also, because he has suffered significant financial costs as a result of this transaction, for which he has admitted various breaches.

## **V) FINDINGS**

We, the Hearing Panel, accept the Admission of Conduct Deserving of Sanction and find that Mr. Seifert's conduct is conduct deserving of sanction.

We considered the submissions made by both Ms. Nind and Mr. Seifert.

We were persuaded by the Joint Submission on Sanction from both Ms. Nind and Mr. Seifert with respect to costs and education. We were persuaded by Ms. Nind's submissions on fines. We believe that the proposed fine is reasonable given the breaches of Mr. Seifert. When examining the precedent cases referred to by Ms. Nind, we believe that a fine in the amount of \$2,500 is justified and reasonable. Therefore, we believe that a fine in the amount of \$2,500, along with costs of \$1,500 and the Alberta Real Estate Association's course, "Agency Relationships", as submitted to the Hearing Panel by Ms. Nind is appropriate.

## **VI) ORDERS**

As a result of our finding of conduct deserving of sanction, we hereby order, pursuant to section 43 of the *Real Estate Act*, that:

1. Mr. Seifert pay a fine of \$2,500.
2. Mr. Seifert pay costs of \$1,500.
3. Mr. Seifert successfully complete the Alberta Real Estate Association's Agency Relationships course within six months. If this course is not available in this timeframe, another course may be substituted at the sole discretion of the Executive Director. These courses cannot be used for credits in the required professional development program for agents and brokers.

This decision was made on July 27, 2006

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"Ron Sullivan"

Ron Sullivan, Chair

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Bev Andre

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Bev/Andre

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