

## **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  
**RON CARL. STADER**, Broker, 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. Ron Stader, 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 Ron Stader, Broker, 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 Ron Stader, on his own behalf.

#### **II) ALLEGATIONS**

Ron Stader 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 *Real Estate Act* Rule 21(1)(e), you failed to ensure the business of the brokerage was carried out competently and in accordance with legislative requirements, particulars of which are as follows:
  - (a) In May 2002 an agent registered with your brokerage, B.S. , 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 ("the transaction").

- (b) B.S. did not obtain written acknowledgement of dual agency consent from the parties before the purchase contract was entered into. After the purchase contract was signed, B.S. only obtained dual agency consent from the buyer. You did not ensure that dual agency consent was properly obtained by B.S. in the transaction.
- (c) 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. You did not ensure that the \$5,000 deposit was delivered or that the purchase contract was appropriately amended to reflect any change in agreement between the parties relating to delivery of the \$5,000 deposit in the transaction.
- (d) B.S. 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.
- (e) B.S. 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. You failed to ensure that the purchase contract amendment form was appropriately amended in the transaction.
- (f) B.S. 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. You failed to ensure that the purchase contract was appropriately amended to reflect any change in agreement between the parties with respect to removal of conditions and/or delivery of the \$30,000 deposit.
- (g) 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. The buyer filed a civil action for the return of the deposit and was successful.

### **III) EVIDENCE**

We received an Admission of Conduct Deserving of Sanction pursuant to section 46 of the *Real Estate Act* from Mr. Stader. In the document, signed by Mr. Stader, he admitted to the allegations of fact and a breach of provisions of the *Real Estate Act Rules* 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 two Hearing Panel decisions as precedents for their consideration.

Ms. Nind asked the Hearing Panel to consider a fine of \$1,000, payment of costs in the amount of \$500.

Ms. Nind outlined for the Hearing Panel the breach contained in the Notice of Hearing, for which Mr. Stader signed an Admission of Conduct Deserving of Sanction. The breach contained in the Notice of Hearing was Rule 21(1)(e). Ms. Nind submitted that although Mr. Stader was in breach of the above mentioned section, 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. Stader. Ms. Nind pointed out that the precedent cases involved fines ranging from \$1,000 to \$2,000 and stated that \$1,000 was a reasonable fine when considering this matter against the precedents referred to, since there was only one breach contained within the Notice of Hearing for Mr. Stader. Though the Estimated Schedule of Costs submitted by Ms. Nind itemized costs in the amount of \$1,618.06, the Executive Director is only seeking costs of \$500. She submitted the mitigating factors for the proposed reduction of costs were that Mr. Stader 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. Ms. Nind also submitted that the Executive Director was not requesting any education for Mr. Stader since Mr. Stader is an experienced broker.

Mr. Stader indicated that he agrees with Ms. Nind's submissions on sanction, as he has willingly entered into a Joint Submission on Sanction.

#### **V) FINDINGS**

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

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

We were persuaded by the Joint Submission on Sanction from both Ms. Nind and Mr. Stader with respect to fines and costs. When examining the precedent cases referred to by Ms. Nind, we believe that a fine in the amount of \$1,000, along with costs of \$500, as submitted to the Hearing Panel by Ms. Nind is appropriate.

We also accept Ms. Nind's submissions regarding education. Since Mr. Stader is an experienced broker, no education is hereby ordered.

**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. Stader pay a fine of \$1,000.
2. Mr. Stader pay costs of \$500.

This decision was made on July 27, 2006

"Ron Sullivan"

Ron Sullivan, Chair

Bev Andre

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~~Bev~~/Andre

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"Cheryl King"

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