

IN THE MATTER OF THE REAL ESTATE ACT,
S.A. 1995, C.R-4.5 (the Act), AND

IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF MICHAEL M. JAMES,
REGISTERED WITH THE REAL ESTATE COUNCIL
OF ALBERTA(RECA) AS A BROKER WITH SIGNET
REAL ESTATE LTD..

HEARING PANEL MEMBERS: Barry Gogal, Chair
Lynn A. Patrick (Mr.)
Glen Chapman

HEARING DATE: October 8, 2003

APPEARING : RECA: Todd Lee, Barrister & Solicitor
Industry Member: Michael M. James
Witnesses: Debra Bunston
Fairilee Clermont
Michael M. James

WRITTEN DECISION

INTRODUCTION

This matter came before the Hearing Panel pursuant to a Notice Of Hearing in writing dated August 22, 2003 alleging Michael M. James to be an Industry Member pursuant to the *Real Estate Act*, R.S.A. 2000, c. R.-5 (the "Act") and that Michael M. James acted in breach of s. 7(d) of the Code of Conduct of RECA and of s. 38(2) of the Act

PART A - FINDINGS

1. PRELIMINARY FINDINGS

(1.1) The Hearing Panel consists of qualified members duly appointed and that there has been no challenge made in respect of any member by the Industry Member.

(1.2) The Industry Member has been duly served with all required notices in respect to the complaint made against him and of this Hearing pursuant to the Rules and the Act and has received disclosure of all material documents, records and evidence in this matter.

(1.3) A quorum of the Hearing Panel was present at all material times.

(1.4) The Hearing Panel is duly constituted and has jurisdiction in this matter.

(1.5) Michael M. James is an Industry Member and is subject to the provisions of the Act, and the Rules and Bylaws adopted by RECA pursuant to the Act.

2. FINDINGS OF FACT

(2.1) A complaint was made by P.R. and C.R. to RECA respecting the Industry Member, notice of which was given in writing dated February 19, 2000 to the Industry Member.

(2.2) The notice in writing of February 19, 2000 also informed the Industry Member that the Executive Director was appointing an investigator to conduct an investigation as required by Part 3 of the Act and demanded that copies of all documents related to the transaction and a written statement describing events throughout the transaction be provided..

(2.3) At or about the same time the complainants brought an action in Provincial Court against the Industry Member.

(2.4) The Industry Member by letter dated March 9, 2000 provided copies of two documents to the investigator Debra Bunston and informed her that he had returned the deposit to complainants.

(2.5) On or about January 30 and 31, 2002 the investigator, Debra Bunston telephoned the Industry Member for a total of 4 calls. Tape recordings of part of the second call and all of the third call as well as the fourth call were made by the investigator and were entered in evidence. On each occasion the Industry Member responded in an un-cooperative manner and in the last two calls on January 30 and the one call on January 31 threatened the investigator with legal action.

(2.6) The Industry Member took considerable objection to being telephoned at a number which he had provided to RECA and on January 30, 2002 the investigator delivered a further request in writing requesting the cooperation of the Industry Member and the production of four specific sets of documents and a general request for any other relevant items. The letter also requested the Industry Member to appear at the RECA offices on February 11, 2002 bringing with him the requested documents.

(2.7) During the meeting of February 11, 2002 between the Industry Member and the investigator, the Industry Member continued to be uncooperative, personally insulted Debra Bunston, renewed the threat of legal proceedings against her and failed to produce all of the requested documents.

(2.8) The Executive Director subsequently appointed two additional investigators in respect to the complaint being Fairlee Clermont and Gerry Drysdale. Through attendance at the office of the Industry Member and at the offices of his legal counsel they were able to establish a sufficient file of documents such that the investigation was able to be completed.

(2.9) The Industry Member by his own admission instituted legal proceedings against Debra Bunston alleging undue activities on her part in carrying out the investigation, of which there is no evidence at this Hearing. This action was struck by the Court on the basis that the Act protects an investigator from such actions in the pursuit of their assigned duties. The Industry Member acknowledged that allegations in the pleadings were untrue and that he knew the action could not be maintained because of the statutory provisions but instituted and continued with it nevertheless until it was struck.

(2.10) The Industry Member displayed to the investigator and to the Hearing Panel a complete lack of remorse for his actions.

PART B DECISION

Based upon the forgoing findings the Hearing Panel finds that the Executive Director was correct to commence and pursue an investigation of the Industry Member in this matter and the lapse of approximately twenty three months from the original notice to the telephone requests by the investigator to allow the civil proceedings to be completed was reasonable in the circumstances. It is the decision of the Hearing Panel that the Industry Member failed to cooperate fully with the representative of RECA contrary to the provisions of s. 38(2) of the Act and contrary to s. 7(d) of the Code of Conduct and that such conduct is deserving of sanction.

PART C REASONS

1. The Industry Member's claim that the matters upon which the Executive Director relied in commencing the investigation were resolved in the civil court proceeding is unfounded and is not a valid reason to excuse the Industry Member from having to conduct himself in a manner required by the Act and the Code of Conduct and is not in the public interest for a licensee.
2. The Industry Member's acknowledgment that he personally sued the investigator during the course of the investigation because he did not like her is conduct that is not in the public interest for a licensee..
3. The Industry Member's further acknowledgment that he selectively decided which documents were relevant to the investigation is conduct that is not in the public interest for a licensee.
4. Persons licensed in Alberta under the Act have ethical, legal and regulatory responsibilities and are expected to be knowledgeable in dealing with their responsibilities under the Act and Code of Conduct. RECA must be satisfied that such persons to whom it issues licenses will know and understand their responsibilities and properly carry out their obligations and in so doing they will conduct themselves properly They must exhibit an unqualified support for the legal and ethical guidelines set by the regulatory body for the industry.

5. The Industry Member has not demonstrated an understanding of, nor support for the legal and ethical guidelines of the industry and as such we conclude that in the circumstances of this case he is deserving of sanction.

THEREFORE IT IS HEREBY ORDERED THAT MICHAEL M. JAMES:

1. Be suspended from authorization as a real estate broker in Alberta by the Real Estate Council of Alberta for a period of 3 months commencing the next day following service of this Order upon Michael M. James ,
2. Pay the Real Estate Council of Alberta a fine in the amount of \$5,000.00 which sum must be paid before the forgoing suspension is ended,
3. Pay investigation and hearing costs in the amount of \$11,124.40 which sum must be paid before the forgoing suspension is ended, and
4. Within 6 months of the date of this decision complete the following course offered by Alberta Real Estate Association, namely: Real Estate Brokerage-class room version.

Failure to complete the prescribed course shall be grounds for the Executive Director to reinstate the suspension until completion thereof.

Failure to pay the forgoing fine or costs shall result in the forgoing suspension continuing until payment has been made or arrangements are made for payment satisfactory to the Executive Director. Failure to make payment thereof or to complete the course required hereunder shall be grounds for refusal by the Executive Director to grant or renew any authorization requested from the Real Estate Council of Alberta by Michael M. James

Dated this 23 day of Oct, 2003

"Barry Gogal"
Barry Gogal, Hearing Panel Chairman

"Glen Chapman"
Glen Chapman, Hearing Panel Member

"Lynn Patrick"
Lynn Patrick, Hearing Panel Member