

THE REAL ESTATE COUNCIL OF ALBERTA

IN THE MATTER OF Rule 14 of the Real Estate Act Rules, pursuant to the *Real Estate Act*, S.A. 1995, c.R-4.5

AND IN THE MATTER OF a request by the Applicant, Harpreet Randhawa, for review of the decision of the Executive Director of the Real Estate Council of Alberta

Hearing Panel Members:

David Hicks, Chairman
Charlotte Sutherland
Andy Haugen

Appearances:
(by written submission only)

Harpreet Randhawa - on his own behalf
Monica Burman - on behalf of the Executive
Director of the Real Estate Council of Alberta

Hearing Date:

Thursday, October 17, 2002
(By conference call among Panel members only)

DECISION

UPON reviewing and considering the written submissions and other materials submitted by Harpreet Randhawa ("the Applicant") and the Executive Director;

THE HEARING PANEL HEREBY FINDS AS FOLLOWS:

A. Background Facts

On approximately June 14, 2002 the Applicant completed and submitted to the Real Estate Council of Alberta ("RECA") a Real Estate (Real Estate Agent / Associate Broker) License Application. The application form disclosed that the Applicant had been convicted of an offence or offences during the previous five years. Relevant supporting documents were then provided as required by RECA policy. These documents included a one-page summary of convictions from the Calgary Police Service, and several pages of narrative from the Applicant describing the circumstances surrounding the convictions.

The convictions in question are as follows:

October 10, 1996 - Conviction for *failure to attend Court* contrary to the Criminal Code.

March 6, 2000 - Conviction for *possession of a weapon* contrary to the Criminal Code.

March 6, 2000 - Conviction on *two counts of mischief* contrary to the Criminal Code.

November 23, 2000 - Conviction of *possession of a scheduled substance* contrary to the Controlled Drugs and Substances Act.

February 2, 2001 - Conviction of *Assault causing bodily harm* contrary to the Criminal Code.

In addition, the Criminal Record discloses several other criminal convictions, two of which occurred more than 5 years prior to the application. These convictions were for Assault and two convictions for failure to comply with Recognizance.

B. Executive Director's Decision

On July 12, 2002, the Executive Director advised the Applicant in writing that the License application was being denied on the basis of section 12(d) of the *Real Estate Act* Rules. Section 12(d) provides as follows:

12. The Executive Director may refuse to issue a license to a person where the Executive Director is of the opinion that

(d) it would not be in the public interest to license that person.

The Executive Director concluded that in light of the criminal convictions, it would not be in the public interest to issue a license to the Applicant.

On August 2, 2002 the Applicant formally made written request for a review of the Executive Director's decision. That request resulted in the Hearing and this Decision.

C. Applicable Legislation

This review and the Panel's decision in this matter are governed by section 14 of the Real Estate Act Rules ("Rules") which RECA has adopted pursuant to the *Real Estate Act*. The components of section 14 that are relevant to this review are as follows:

- 14(1) A person who has been refused a licence under Rule 12 may request a review of the decision by a Hearing Panel
- (2) The Hearing Panel is not required to afford the person requesting the review the opportunity to make oral representations or to be represented by counsel if the person is, in the opinion of the Panel, afforded adequate opportunity to make written representations.
- (4) The Hearing Panel may conduct any enquiries, in addition to those made by the Executive Director, that it considers appropriate for the purposes of the review and, in the case of a refusal of a licence, may treat the request for review as an original application for a licence.
- (5) The Hearing Panel shall serve its decision in writing on the person requesting the review and, where the decision upholds the decision of the Executive Director, the decision shall be accompanied by reasons.
- (6) The Hearing Panel's decision is final.

As noted above, the relevant portion of Rule 12 is as follows:

12. The Executive Director may refuse to issue a license to a person where the Executive Director is of the opinion that

- (d) it would not be in the public interest to license that person.

D. Scope of Review Pursuant to Rule 14

Unlike other provisions in the applicable legislation, Rule 14 uses the term "review" rather than "appeal". The Rule applies only to decisions made under Rule 12, which necessarily involve the exercise of the Executive Director's discretion and opinion. It might, therefore, be argued that use of the term "review" rather than "appeal" indicates a more restrictive jurisdiction for Hearing Panels to interfere with the Executive Director's decision.

In our view, however, although the wording is curious, read as a whole, it is clear that Rule 14 is not intended to restrict the Hearing Panel's jurisdiction. This is evidenced by subsection (4) which expressly contemplates the Panel completely reconsidering the original application and, therefore, potentially substituting its opinions for that of the Executive Director.

As a result, we conclude that in reviewing the decision under Rule 14, the Panel is entitled to completely reconsider the merits of the application, and exercise its own opinion on the matters set out in Rule 12.

E. Rule 14(2) - Hearing by Written Submission Only

On August 2, 2002, the Applicant made written submissions addressed to the Hearing Panel. These submissions set out his arguments for overturning the Executive Director's decision and attach certain documents for consideration.

On October 2, 2002 Monica Burman made written submissions on behalf of the Executive Director and in response to the Applicant's submissions. The Executive Director's submissions included certain background documents. We have been advised that these submissions and documents were also provided to the Applicant.

Pursuant to Rule 14(2) we find that the Applicant has been afforded an adequate opportunity to make written representations and has in fact done so. As such, we conclude that oral representations are not necessary in this case, and the Panel is in a position to decide this matter on the basis of the written material before it.

F. Decision

The issue here is a fairly narrow one: Do the prior criminal convictions mean that it would not be in the public interest to license the Applicant?

In our opinion the answer to this question must be yes.

Although the convictions in question are not the most serious offences one can commit, they are, in our opinion, sufficiently serious to cause significant concern from a licensing perspective. As indicated above, they include such matters as possession of a weapon, assault and willful destruction of property. These are not merely trifling transgressions. Indeed, the courts found them sufficiently serious to justify imposition of periods of probation and jail time; they were not dealt with merely by way of monetary penalty.

The Applicant says that he takes full responsibility for his past actions and appreciates the seriousness of them. He indicates that he would like to become licensed so he can start a new career and change the past "negatives" into a "positive". While we applaud the

Applicant's desire to change his destructive and criminal behaviour of the past, we do note that only a short time has passed since the last of the convictions (the February 2001 conviction for assault causing bodily harm). Moreover, the past behaviour shows a complete disregard for authority and for the law. In this regard we note the convictions for failure to comply with recognizance and failure to attend court, as well as the fact that some of the criminal acts occurred while the Applicant was still on probation for prior offences.

Real estate practitioners licensed in Alberta have ethical, legal and regulatory responsibilities to the public and to other members of their profession. RECA must have some confidence that the people it licenses will make every effort to comply with the legislation governing the profession, and to adhere to the rules, directives and ethical guidelines of the regulatory body. Given the Applicant's past criminal behaviour (particularly the number and nature of the convictions) and his demonstrated disregard for rules and authority, there can be no such confidence in this case.

We want to make it clear that we are not suggesting that no one can ever be licensed if they have a criminal record (whether within the five years preceding their application for a license or otherwise). Certainly, we recognize that people can alter the course of their lives and go on to become productive and valuable members of the real estate or any other profession. However, each case must be evaluated on its specific circumstances. In this case the Applicant's convictions are, in our opinion, of a serious nature, and there has not been enough "conviction free" time pass to confidently conclude that the Applicant has indeed changed the attitudes and behaviour of his past.

Finally, we must address another issue raised in the written submissions. The Applicant says that when he first began the Real Estate 1000 course he spoke to one of the instructors about his criminal record and "HE/SHE" assured the Applicant that only "fraud/breach" type of charges would affect his chances of obtaining a license. He says that based on this understanding he continued with the course.

In our view, this submission by the Applicant is irrelevant to the issue before us. We make no comment on what may or may not have been said by an instructor. The simple answer is that it is RECA and its Executive Director that makes licensing decisions in accordance with the applicable legislation and rules, not a course instructor.

As a result, we conclude that in the circumstances of this case, it would not be in the public interest to issue a license to the Applicant.

G. Disposition

Based upon the foregoing, we hereby find that, the Executive Director was correct to

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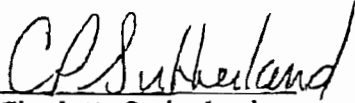
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refuse to issue a license to the Applicant. As such, pursuant to Rule 14, we uphold the Executive Director's decision.

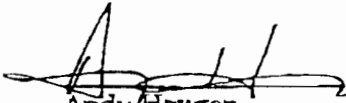
Dated this 18th day of October, 2002.



David Hicks
Hearing Panel Chairman



Charlotte Sutherland
Hearing Panel Member



Andy Haugen
Hearing Panel Member