

## THE REAL ESTATE COUNCIL OF ALBERTA

**IN THE MATTER OF Section 35(5) and 35(7) of the Bylaws made pursuant to the  
Real Estate Act and Section 41 of the Real Estate Act, S.A. 1995, c. R-4.5**

**AND IN THE MATTER OF an Appeal to a Hearing Panel  
of an Administrative Penalty assessed against James Y-C Lam,  
Designated Representative of Bravo Realty Limited o/a Century 21 Bravo Realty**

### **BACKGROUND**

This is an appeal to a hearing panel of an Administrative Penalty assessed against James Y-C Lam, designated representative of Bravo Realty Limited o/a Century 21 Bravo Realty (hereinafter "Century 21 Bravo Realty"). The appeal is heard pursuant to section 35 of the by-laws of the Real Estate Act.

The Administrative Penalty was assessed as a result of a determination by the Executive Director that there is sufficient evidence of conduct deserving of sanction against Mr. Lam and Century 21 Bravo Realty in that they breached Rule 23(2) of the Real Estate Act.

It is the position of the Executive Director that Mr. Lam, as the designated representative of Century 21 Bravo Realty, is responsible for ensuring and confirming that H.L. was registered as a real estate salesperson with the Real Estate Council of Alberta and that all fees and other amounts were paid in accordance with the Rules and by-laws of the Real Estate Act prior to employing H.L. to trade in real estate.

### **FACTS AND ISSUES**

The conduct giving rise to the Executive Director's decision to assess an Administrative Penalty was that Mr. Lam and Century 21 Bravo Realty employed H.L. to trade in real estate when he was unauthorized to do so.

H.L. commenced employment with Century 21 Bravo Realty on April 27, 1997 as a real estate salesperson. Mr. Lam requested that H.L. submit an application for salesperson registration to the Real Estate Council of Alberta, however H.L. failed to do so. On or about that same day, H.L. commenced trading in real estate and continued to do so for approximately three months. Mr. Lam did not make an inquiry to ensure that H.L. was authorized to trade in real estate.

In his submissions, Mr. Lam admits that H.L. traded in real estate on behalf of Century 21 Bravo Realty when he was not authorized to do so. Mr. Lam also admits that at the relevant time he did not follow up and ensure that H.L. was registered with the Real Estate Council of Alberta.

Century 21 Bravo Realty has subsequently gone on to RECA's electronic registration procedure under which Mr. Lam now clearly knows whether or not Century 21 Bravo Realty's salespersons are registered with RECA. The administrative deficiency revealed by this case has, therefore, been remedied.

In his Notice of Appeal dated November 19, 1998, Mr. Lam sets out the following three reasons for his appeal:

1. He instructed H.L. to attend the Real Estate Council of Alberta to submit his application and pay his fees and that he assumed he would do so.
2. H.L. registered with the Calgary Real Estate Board and it was reasonable to assume that he also would register with the Real Estate Council of Alberta. Further, he submits that the Calgary Real Estate Board could have advised the Real Estate Council of Alberta that H.L. was trading in real estate.
3. The format and wording of the old applications for registration of a salesperson, leaves an impression that the salesperson would already be hired at the time he completed the application and as such all agents who completed the form would necessarily be in breach of the Real Estate Act.

### **The Real Estate Act**

Rule 23(2) of the Real Estate Act provides as follows:

No agent shall employ a person to trade in real estate or deal as a mortgage broker, as the case may be, unless

- (a) that person meets the requirements of the Act, these Rules and the by-laws, and;
- (b) all levies, assessments, premiums, dues, administrative penalties and other amounts that are payable under or pursuant to the Act, or these Rules or the by-laws or any predecessor enactments in respect of that person have been paid.

### **Findings**

We find that H.L. traded in real estate on behalf of Century 21 Bravo Realty when H.L. was not authorized to do so. As such, Century 21 Bravo Realty and James Lam, as

the designated representative breached Rule 23(2) of the Real Estate Act. This is conduct deserving of sanction.

It is Mr. Lam's responsibility, as a designated representative, to ensure that his salespersons are authorized to trade in real estate with the Real Estate Council of Alberta. It is not enough for Mr. Lam to assume that his salesperson will become authorized, nor to rely upon the Calgary Real Estate Board to notify the Real Estate Council of Alberta of the status of Mr. Lam's salespersons. Further as H.L. did not submit an application for registration to the Real Estate Council of Alberta, the issue of the application is irrelevant to this appeal.

### DECISION

Pursuant to section 35(7) of the by-laws made pursuant to the Real Estate Act, we hereby confirm the Administrative Penalty of \$1,000.00.

We further award costs of the appeal against Mr. Lam in the amount of \$1,950.00, a breakdown of which is attached hereto as schedule "A".

Pursuant to section 34(1) of the by-laws, the Administrative Penalty and costs must be paid within thirty (30) days of receipt of this Decision.

DATED this \_\_\_\_\_ day of JANUARY, 1999

\_\_\_\_\_  
"Thomas O. Davis"

Thomas O. (Tim) Davis  
Hearing Panel Chairman

\_\_\_\_\_  
Darrell W. Cook  
Hearing Panel Member

\_\_\_\_\_  
Rick Campos  
Hearing Panel Member

the designated representative breached Rule 23(2) of the Real Estate Act. This is conduct deserving of sanction.

It is Mr. Lam's responsibility, as a designated representative, to ensure that his salespersons are authorized to trade in real estate with the Real Estate Council of Alberta. It is not enough for Mr. Lam to assume that his salesperson will become authorized, nor to rely upon the Calgary Real Estate Board to notify the Real Estate Council of Alberta of the status of Mr. Lam's salespersons. Further as H.L. did not submit an application for registration to the Real Estate Council of Alberta, the issue of the application is irrelevant to this appeal.

### DECISION

Pursuant to section 35(7) of the by-laws made pursuant to the Real Estate Act, we hereby confirm the Administrative Penalty of \$1,000.00.

We further award costs of the appeal against Mr. Lam in the amount of \$1,950.00, a breakdown of which is attached hereto as schedule "A".

Pursuant to section 34(1) of the by-laws, the Administrative Penalty and costs must be paid within thirty (30) days of receipt of this Decision.

DATED this \_\_\_\_\_ day of JANUARY, 1999.

---

Thomas O. (Tim) Davis  
Hearing Panel Chairman

---

"Darrell W. Cook"  
Darrell W. Cook  
Hearing Panel Member

---

Rick Campos  
Hearing Panel Member

the designated representative breached Rule 23(2) of the Real Estate Act. This is conduct deserving of sanction.

It is Mr. Lam's responsibility, as a designated representative, to ensure that his salespersons are authorized to trade in real estate with the Real Estate Council of Alberta. It is not enough for Mr. Lam to assume that his salesperson will become authorized, nor to rely upon the Calgary Real Estate Board to notify the Real Estate Council of Alberta of the status of Mr. Lam's salespersons. Further as H.L. did not submit an application for registration to the Real Estate Council of Alberta, the issue of the application is irrelevant to this appeal.

### DECISION

Pursuant to section 35(7) of the by-laws made pursuant to the Real Estate Act, we hereby confirm the Administrative Penalty of \$1,000.00.

We further award costs of the appeal against Mr. Lam in the amount of \$1,950.00, a breakdown of which is attached hereto as schedule "A".

Pursuant to section 34(1) of the by-laws, the Administrative Penalty and costs must be paid within thirty (30) days of receipt of this Decision.

DATED this 4th day of JANUARY, 1999.

---

Thomas O. (Tim) Davis  
Hearing Panel Chairman

---

Darrell W. Cook  
Hearing Panel Member

---

"Rick Campos"  
Rick Campos  
Hearing Panel Member

### **Schedule**

Pursuant to s. 30 of the Bylaws made pursuant to the Real Estate Act, the costs are determined in accordance with the following:

30(1)(b)		
(ii)	General Hearing Costs including but not limited to disbursements, document preparation, legal representative of Council	\$ 410.00
(iv)	Hearing administration costs including but not limited to hearing secretary salary, honoraria of hearing panel members	\$ 540.00
(v)	Legal fees	\$800.00
(vi)	Other miscellaneous costs re: Notice of Hearing	<u>\$ 200.00</u>
	<b>TOTAL</b>	<b>\$1,950.00</b>