

**REAL ESTATE COUNCIL OF ALBERTA**

**IN THE MATTER OF Subsection 39(1)(b) and 41 of the Real Estate Act, S.A. 1995,  
c. R-4.5**

**IN MATTER OF of an Appeal to an Appeal Panel by Irving Switzer**

**Between:**

**Irving Switzer, salesperson**

**Appellant**

**-and-**

**The Real Estate Council of Alberta**

**Respondent**

**Before the Appeal )  
Panel )**

**Heard this 23rd day of September  
1998, at Edmonton, Alberta**

**DECISION OF THE APPEAL PANEL**

Upon reviewing the record and notice of appeal dated June 30, 1998, upon reviewing the written submissions of both parties and upon hearing submissions of counsel for the Executive Director and upon hearing submissions of counsel for Irving Switzer, the Appeal Panel hereby confirms and varies the hearing panel decision and finds as follows:

1. there is no evidence that the hearing panel received evidence relating to the charges outside the presence of Mr. Switzer and his counsel and utilized said evidence in assessing its decision. The hearing panel had rendered its decision at the end the hearing and the only remaining issue was that of sanctions. Both counsel were given an opportunity to make submissions on the issue of sanctions and both were aware that the issue of costs was being left to the hearing panel's discretion. The Hearing panel did not meet with or seek submissions from counsel for the Executive Director regarding the issue of sanctions outside the presence of counsel for Mr. Switzer, but rather sought

information from their secretary. It is not contrary to the principles of natural justice that the hearing panel's secretary fulfill an administrative or clerical function by providing the panel with a schedule of costs.

2. upon a review of the record, we find that Mr. Switzer was holding himself out as a duly authorized real estate salesperson. Among other things, he provided the W.'s with a business card showing himself to be a realtor. He used Re/Max letterhead on material that he distributed as though he was still authorized to trade in real estate during a period in which this authorization was suspended.
3. there is evidence to conclude that the W.'s were aware that the gift letter was to indicate that they would be in receipt of a true gift - Mr. Switzer put that in writing on at least two occasions - and therefore we find that Mr. Switzer did not misrepresent information to the W.'s regarding the gift letter as set out in the charges. Nevertheless, there is evidence that Mr. Switzer was aware that the gift letter was not true and he therefore participated in or acquiesced in the provision of a gift letter to a financial institution when it was not true.
4. there is no evidence that Mr. Switzer intentionally provided false information or intentionally mislead the Real Estate Council of Alberta in completing his 1997 application. In fact, the only evidence is to the contrary. However, Mr. Switzer has admitted that the information provided was incorrect. His counsel sought and was granted leave to admit new evidence at the appeal which demonstrated that Mr. Switzer was also careless in completing his 1996 application to the Real Estate Council of Alberta. This is an indication of Mr. Switzer's attitude towards completing these affidavits or applications. The application process is a serious one. It is the basis upon which the Real Estate Council makes its decision to grant a license. We accept that Mr. Switzer did not have an intention to mislead or provide false information to the Real Estate Council of Alberta but we find that the incorrect information provided in 1997 was a misrepresentation to the Real Estate Council of Alberta. Nor was the supplying of incorrect information an isolated or innocent mistake. There does not appear to be any effort on the part of Mr. Switzer to read the questions and provide correct information. The application for authorization as a real estate broker in 1997 as well as the affidavit were completed recklessly and therefore this is conduct deserving of sanction.

With respect to the issue of sanctions, we confirm and vary the hearing panels decision and find as follows:

1. the 6 month suspension, which has already lapsed, is hereby confirmed.

2. the requirement that Mr. Switzer pay the costs of the hearing in the amount of \$5918.03 is hereby confirmed. However said costs do not have to be paid until March 31, 1999. Should Mr. Switzer not pay these costs by said date, his license will be revoked.
3. the requirement that Mr. Switzer's agent meet with him weekly and report monthly to the Real Estate Council of Alberta is hereby quashed.
4. although the decision of the hearing panel has been upheld in all material respects, the appeal was not unreasonable and therefore there are no costs awarded in this appeal.

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Glen Chapman, Chairman

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"Dan McClelland"

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Dan McClelland, Appeal Panel Member

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