

THE REAL ESTATE COUNCIL OF ALBERTA

IN THE MATTER OF a Hearing under Part 3 of the *REAL ESTATE ACT*, R.S.A. 2000, c.R-5 (the "Act")

AND IN THE MATTER OF a Hearing regarding the conduct of **KA CHUN KEVIN CHEUNG**, Mortgage Associate, currently licensed, and licensed at all material times with MA Mortgage Architects O/A Mortgage Architects

Hearing Panel Members: [K.K], Chair Panel member

[M.G], Panel member

[J.D], Panel member

Hearing Date: June 11, 2024, via video conference

Counsel for the Registrar: Tracy Leonardo, Real Estate Council of Alberta

Licensee: Ka Chun Kevin Cheung, Self Represented

DECISION ON CONDUCT DESERVING OF SANCTION AND DECISION ON SANCTION

OVERVIEW AND DECISION SUMMARY

1. On April 7, 2024 the Licensee, Ka Chun Kevin Cheung (the "Licensee") signed an Admission of Conduct Deserving of Sanction pursuant to section 46 of the Real Estate Act (the "Act"), which the Real Estate Council of Alberta ("RECA") Board of Directors accepted on May 15, 2024. The Licensee and the Registrar of RECA (the "Registrar") subsequently presented a Joint Submission of Sanction to this Hearing Panel.
2. We find that the Licensee, Ka Chun Kevin Cheung, breached sections 42(b) and 69(a) of the *Real Estate Act Rules* (the "Rules"), and that this behaviour is conduct deserving of sanction. We accept the joint recommendation on sanction and impose the following sanctions in relation to the Licensee's conduct:
 - (a) cancellation of the Licensee's license as a mortgage associate for a period of one year commencing at 4:30 p.m. MST on Friday, June 14, 2024;

- (b) the Licensee must successfully complete all educational requirements before being eligible to apply for a new authorization from the Real Estate Council of Alberta, as if he had never previously had authorization from the Real Estate Council of Alberta;
- (c) the Licensee must pay a fine of \$5000 for a breach of Rule 42(b) of the Rules;
- (d) the Licensee must pay a fine of \$1,500 for a breach of Rule 69(a) of the Rules; and
- (e) the Licensee shall pay no costs for the investigation and proceedings.

EXHIBITS

- 3. The following exhibits were entered at the hearing:
 - (a) Exhibit 1: Notice of Hearing;
 - (b) Exhibit 2: Statutory Declaration of Amber Deroche confirming the Licensee was served with the Notice of Hearing;
 - (c) Exhibit 3: Admission of Conduct Deserving of Sanction;
 - (d) Exhibit 4: Motion passed by the RECA Board of Directors; and
 - (e) Exhibit 5: Joint Submission on Sanction.

ADMITTED FACTS AND BREACHES

- 4. The Licensee admitted the following facts in Schedule A to the Admission of Conduct Deserving of Sanction:
 - (a) The Licensee has been licensed as a Mortgage Associate since June 13, 2016.
 - (b) The Licensee is currently and was at the material time registered as a Mortgage Associate with MA Mortgage Architects O/A Mortgage Architects (the "Brokerage").
 - (c) The Licensee was previously registered as a mortgage broker with the Grand Financial Group Ltd. O/A Dominion Lending Centres Grand Financial prior to joining Mortgage Architects on May 5, 2021.
 - (d) In December 2020, Mr. M and Ms. Z were interested in buying a newly built home in Calgary and sought out the Licensee's services.
 - (e) In January 2021, Mr. M and Ms. Z made an offer on a property with Jayman BUILT (the "Builder"). However, at this time, there were no vacant lots present. Mr. M and Ms. Z decided to wait for the next phase of lots.
 - (f) On January 21, 2021, the Licensee obtained a credit bureau report for Mr. M and Ms. Z.
 - (g) In May 2021, the Builder released new lots. Mr. M and Ms. Z decided to put in an offer for a lot and construction of a home.

- (h) On June 11, 2021, the Licensee met with Mr. M and Ms. Z to discuss mortgage options. The parties signed a client engagement letter and a service agreement at this time.
 - (i) On June 12, 2021, the Licensee drafted a mortgage approval letter (the "Letter") for Mr. M and Ms. Z, which was provided to the sales manager for the Builder.
 - (j) The mortgage approval letter was on Dominion Lending Centre letterhead for a Calgary property. It included a purchase price of \$754,039.00 and other information such as the down payment, insurance premium, Canada Mortgage and Housing Corporation ("CMHC") number, loan amount, and terms of the loan. The lender on the Letter was Equitable Bank.
 - (k) The Letter was false. There was no mortgage approval issued by Equitable Bank.
 - (l) Upon receipt of the Letter, the Builder's sales manager noted some discrepancies and referred it to the Builder's financial department for review where it was determined the Letter contents were false and there was no approval by Equitable Bank.
 - (m) When confronted, the Licensee attempted to discourage the Builder from reporting the fraudulent mortgage letter to RECA.
 - (n) The Licensee failed to advise the broker at Mortgage Architects of his creation of the Letter.
 - (o) Mr. M and Ms. Z secured a mortgage through their own bank instead and were able to complete the purchase of the property without assistance from the Licensee.
5. The Licensee admitted that the following breaches of the Rules are conduct deserving of sanction:
- (a) He participated in fraudulent or unlawful activities in connection with the provision of services or in any dealings contrary to Rule 42(b) of the Rules, by fraudulently writing a mortgage approval letter on June 11, 2021 which he communicated to the Builder to induce the Builder to proceed with a transaction.
 - (b) He failed to deal in mortgages in the name that appears on that individual's license and in the name of the mortgage brokerage with which that individual is registered contrary to Rule 69(a) of the Rules:
 - (i) On June 12, 2021 he wrote a fraudulent mortgage approval letter on behalf of Dominion Lending Centres Grand Financial.

- (ii) He was registered with the brokerage MA Mortgage Architects O/A Mortgage Architects at the time.
6. The Admission of Conduct Deserving of Sanction listed the following facts as relevant factors to be considered on sanction:
- (a) Mitigating factors:
 - (i) The Licensee agreed to forego the time and expense of a hearing, saving witnesses the inconvenience and stress of appearing, by entering into the Consent Agreement;
 - (ii) He has shown remorse and taken ownership of his actions;
 - (iii) He has no prior discipline history with RECA.
 - (b) Aggravating factors:
 - (i) He intentionally drafted mortgage documents with fraudulent information to mislead the Builder;
 - (ii) He put his clients' interests in jeopardy by his conduct;
 - (iii) He attempted to discourage a complaint being made to RECA against him after his wrongdoings were caught.

ANALYSIS ON CONDUCT DESERVING OF SANCTION

7. Sections 46 and 47 of the Act provide the following regarding a statement of admission of conduct deserving of sanction:

46(1) A licensee may, at any time after the commencement of proceedings under this Part and before a Hearing Panel makes its findings in respect of the licensee's conduct, submit to the Board a statement of admission of conduct deserving of sanction in respect of all or any of the matters that are the subject-matter of the proceedings.

(2) A statement of admission of conduct may not be acted on unless it is in a form acceptable to the Board and meets any additional requirements set out in the bylaws.

47(1) If a statement of admission of conduct is accepted, the Board shall immediately refer the matter to a Hearing Panel, and in that case the Hearing Panel shall deal with the matter as if it had been referred to it under section 39(1)(b).

(2) If a statement of admission of conduct is accepted, each admission of conduct in the statement in respect of any act or matter regarding

the licensee's conduct is deemed for all purposes to be a finding of the Hearing Panel that the conduct of the licensee is conduct deserving of sanction.

8. We have carefully considered the Admission of Conduct Deserving of Sanction and find that the Licensee participated in fraudulent or unlawful activities in connection with the provision of services or in any dealings contrary to Rule 42(b) of the Rules. We also find that the Licensee failed to deal in mortgages in the name that appears on that individual's license and in the name of the mortgage brokerage with which that individual is registered contrary to Rule 69(a) of the Rules.
9. Pursuant to sections 46 and 47 of the Act, we find that the conduct of the Licensee is conduct deserving of sanction. This concludes Phase 1 of the hearing, and we will now proceed to Phase 2, which deals with sanction.

ANALYSIS ON SANCTION

10. Section 43 of the Act gives the Hearing Panel the discretionary authority to order a sanction where a licensee's conduct has been found to be deserving of sanction:

43(1) If a Hearing Panel finds that the conduct of a licensee was conduct deserving of sanction, the Hearing Panel may make any one or more of the following orders:

- (a) an order cancelling or suspending any licence issued to the licensee by an Industry Council;
- (b) an order reprimanding the licensee;
- (c) an order imposing any conditions or restrictions on the licensee and on that licensee's carrying on of the business of a licensee that the Hearing Panel, in its discretion, determines appropriate;
- (d) an order requiring the licensee to pay to the Council a fine, not exceeding \$25 000, for each finding of conduct deserving of sanction;
- (d.1) an order prohibiting the licensee from applying for a new licence for a specified period of time or until one or more conditions are fulfilled by the licensee;

(e) any other order agreed to by the parties.

11. In the Joint Submission on Sanction, the Registrar and the Licensee jointly propose we accept the following sanction against the Licensee:

- (a) cancellation of the Licensee's license as a mortgage associate for a period of one year commencing at 4:30 p.m. MST on Friday, June 14, 2024;
- (b) the Licensee must successfully complete all educational requirements before being eligible to apply for a new authorization from RECA, as if he had never previously had authorization from RECA;
- (c) a fine of \$5,000 for a breach of Rule 42(b) of the Rules;
- (d) a fine of \$1,500 for a breach of Rule 69(a) of the Rules; and
- (e) the Licensee shall pay no costs for the investigation and proceedings.

12. The Registrar and the Licensee submitted that a RECA Hearing Panel must consider the specific facts of the case and particularly the Licensee when deciding on a sanction. In support of this submission, the parties referred to the Newfoundland Supreme Court Trial Division's decision in *Jaswal v Newfoundland (Medical Board)* 1996 CanLII 11630 (NL SC) at para. 35, which exemplifies that there are several considerations relevant to a decision on sanction in professional disciplinary hearings:

- (a) the nature and gravity of the proven allegations;
- (b) the age and experience of the Licensee;
- (c) the previous character of the Licensee and in particular the presence or absence of any prior complaints or convictions;
- (d) the number of times the offence was proven to have occurred;
- (e) the role of the Licensee in acknowledging what had occurred;
- (f) whether the Licensee had already suffered serious financial or other penalties as a result of the allegations having been made;
- (g) the impact of the incident on the victim, if any;
- (h) the presence or absence of any mitigating circumstances;
- (i) the presence or absence of any aggravating circumstances;
- (j) the need to promote specific and general deterrence and thereby to protect the public and ensure the safe and proper conduct of the profession;
- (k) the need to maintain the public's confidence in the integrity of the profession;
- (l) the degree to which the offensive conduct that was found to have occurred was clearly regarded, by consensus, as being the type of conduct that would fall outside the range of permitted conduct;

(m) the range of sentence in other similar cases.

13. The parties also cited the Law Society of British Columbia's decision in *Re Martin*, 2007 LSBC 20 regarding the factors to consider if a hearing panel is considering imposing a suspension:

- (a) elements of dishonesty;
- (b) repetitive acts of deceit or negligence;
- (c) significant personal or professional conduct issues.

14. The Registrar and the Licensee submitted that the factors to consider are based on the facts presented in the hearing evidence or from additional evidence entered in Phase 2 of the hearing.

15. The Registrar and the Licensee applied the applicable *Jaswal* factors to the facts of this hearing as follows:

(a) *The age and experience of the Licensee:*

The Licensee is 35 years old and has been licensed with RECA since June 13, 2016. He had been practicing in the industry as a mortgage broker for approximately 4.5 years when the conduct deserving of sanction occurred. Due to his years of experience, he ought to have known that his conduct in this matter was unacceptable.

(b) *The previous character of the Licensee:*

The Licensee has no previous disciplinary history.

(c) *The number of times the offence was proven to have occurred:*

There were two incidents resulting in two breaches. The Licensee drafted and provided a fraudulent mortgage approval letter and dealt in mortgages in the name of a mortgage brokerage that he was not registered with.

(d) *The nature and gravity of the proven allegations:*

The Licensee's breach of Rule 42(b) is serious in both nature and gravity, because it negatively affects the position of trust, professionalism and integrity in which industry professionals are placed. The Licensee acted in a way to deceive all parties involved. Similarly, his breach of Rule 69(a) is serious in both nature and gravity as it negatively affects the credibility of industry members.

(e) The need to maintain the public's confidence in the integrity of the industry:

- (i) To maintain public confidence in the real estate industry, real estate professionals must be knowledgeable and able to provide proper advice and accurate documentation to their clients. When a real estate professional provides inaccurate and misleading documentation that does not cover all required components, public confidence in the industry is seriously compromised.
- (ii) The parties referred to the Alberta Court of Appeal's decision in *Adams v. Law Society of Alberta*, 2000 ABCA 240, which held that public confidence in a profession should be of the utmost importance to disciplinary bodies. They also cited *Law Society of Upper Canada v. Lambert*, 2014 ONLSTH 158, where a Law Society of Upper Canada hearing panel noted that when considering an appropriate sanction for misconduct, the panel must consider that a profession's most valuable asset is its collective reputation.
- (iii) The Licensee's breaches of Rules 42(b) and 69(a) impacts the collective reputation of the real estate industry and the public confidence that its reputation should inspire.

(f) The role of the Licensee in acknowledging what had occurred

The Licensee was forthcoming with RECA about his conduct, however, he tried to discourage another industry professional from filing a complaint against him when his wrongdoings were initially discovered. The Licensee also failed to advise his broker of the fraudulent mortgage letter he had created. The parties submitted that the Licensee exhibits a sense of remorse and responsibility.

(g) Specific and general deterrence:

Although the Licensee has expressed remorse, his actions were reckless, careless and misleading, which necessitates specific deterrence in this matter. There is also a significant need for general deterrence, as licensees must recognize harm to public confidence in the reputation of RECA will result in sanctions. The Licensee's actions erodes public confidence in the industry. Licensees must also recognize that discouraging others from making a complaint against them when their wrongdoings were caught is very serious and unacceptable.

(h) Other aggravating factors:

The Licensee's behaviour was unacceptable, as he failed to report his fraudulent mortgage letter to his brokerage and attempted to give

misleading answers to another industry professional who questioned him about the false mortgage letter.

(i) *Other mitigating factors:*

By agreeing to sign the Admission of Conduct Deserving of Sanction and Joint Submission on Sanction, the Licensee has agreed to forego the time and expense of a hearing, which saved witnesses the inconvenience and stress of appearing. He also has no previous disciplinary history with RECA, demonstrated remorse for his actions, and cooperated with RECA investigators.

16. Although previous decisions are not binding on the Hearing Panel, the Registrar and the Licensee provided six RECA decisions for the Panel to consider:

- (a) *Merchant (Re)*, 2020 ABRECA 140
- (b) *Aulakh (Re)*, 2019 ABRECA 121
- (c) *Taschuk (Re)*, 2013
- (d) *Wolf (Re)*, 2002
- (e) *Broom-Hall (Re)*, 2021 ABRECA 125
- (f) *Randhawa (Re)*, 2012

17. The facts in the above decisions contained some factual similarities to this matter, including licensees committing fraudulent transactions and providing false and misleading documents, and all of the licensees had no prior discipline history. The previous decisions contained a range of fines, from a low range of no fine to a high range of \$84,000. Four of the previous decisions ordered a license cancellation, varying from 12 months to seven years. The Registrar submitted that a sanction in the lower range is typically for licensees who take some responsibility for their actions by entering joint submissions. The Panel has considered the previous decisions, and the aggravating and mitigating factors presented by the parties in reaching its decision for this case.

18. We must decide whether to accept the parties' proposed sanction, or whether the circumstances dictate that we should substitute our own sanction. In the Joint Submission on Sanction, the parties referred to the public interest test described in *R. v. Anthony-Cook*, 2016 SCC 43, where the Supreme Court of Canada confirmed that "under the public interest test, a trial judge should not depart from a joint submission on sentence unless the proposed sentence

would bring the administration of justice into disrepute or is otherwise contrary to the public interest.”

19. In order for a joint submission to bring the administration of justice into disrepute or be contrary to the public interest, it must be so “markedly out of line with expectations of reasonable persons aware of the circumstances of the case that they would view it as a break down in the proper functioning of the criminal justice system”. As explained by the court in *Anthony-Cook*, the threshold for interference in joint submissions for sanctions is high. In *Bradley v. Ontario College of Teachers*, 2021 ONSC 2303 the Ontario Superior Court of Justice held that the public interest test in *Anthony-Cook* applies to disciplinary bodies. The public interest test has previously been accepted by RECA panels as persuasive.
20. We find that the Joint Submission on Sanction is not contrary to the public interest in this case. We are satisfied that the parties have provided “a full description of the facts relevant to the offender and the offence” in order to give the Hearing Panel “a proper basis upon which to determine whether [the joint submission] should be accepted” (*Anthony Cook* at paragraph 54).
21. Pursuant to our powers under section 43 of the Act, we impose the following sanctions:
 - (a) cancellation of the Licensee’s license as a mortgage associate for a period of one year commencing at 4:30 p.m. MST on Friday, June 14, 2024;
 - (b) the Licensee must successfully complete all educational requirements before being eligible to apply for a new authorization from the Real Estate Council of Alberta, as if he had never previously had authorization from the Real Estate Council of Alberta;
 - (c) the Licensee must pay a fine of \$5000 for a breach of Rule 42(b) of the Real Estate Act Rules;
 - (d) the Licensee must pay a fine of \$1,500 for a breach of Rule 69(a) of the Real Estate Act Rules; and
 - (e) the Licensee shall pay no costs for the investigation and proceedings.

This decision was signed in the City of Calgary in the Province of Alberta on the 27th day of August, 2024.

“Signature”

[K.K], Hearing Chair