

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 Toni Hideki Tsim, Real
Estate Associate, currently and all material times registered with EXP Realty of
Canada Inc. o/a EXP REALTY

Hearing Panel: [G.F], Chairperson
[A.S]
[D.T]

Counsel for the Registrar: Tracy Leonardo

Counsel for the Licensee: Chuk'Dimiri, Barrister & Solicitor, Osuji & Smith
Lawyers

Hearing Panel Decision

Background:

On July 4, 2024, a Notice of Hearing (Exhibit 1) was issued and according to the Affidavit of Service (Exhibit 2), on July 16, 2024, the Notice of Hearing was personally served on Toni Hideki Tsim, (the "Licensee"). The hearing was scheduled for July 30, 2024; and it proceeded on that date.

The Notice of Hearing alleged that the Licensee engaged in conduct deserving of sanction when:

1. Between February and September 2022, the Licensee failed to provide competent service contrary to section 41(b) of the *Real Estate Act* Rules:
 - a. The Licensee was retained by a Buyer to flip a property at [ADDRESS 1] (the "property"), that was subject to a purchase contract but prior to closing the Buyer entered into a listing agreement with the Licensee. The Buyer warranted the Buyer had authority to sell the property. The Licensee, on behalf of the Licensee's Brokerage, agreed to market the

property by placing signs and advertising information about the property online.

- b. The Licensee proceeded to advertise the property online on the Licensee's social media by using pictures created by the agent for the Seller of the property. The Seller's agent saw the pictures and demanded that the Licensee stop using the pictures. The Licensee failed to immediately remove the pictures.
 - c. The Licensee failed to confirm the Licensee's client had possession of the property or permission from the Seller to place "for sale" signs on the property before installing the Licensee's signs at the property.
 - d. The Licensee failed to complete several transaction records required by the Licensee's brokerage on this transaction and three other transactions even after the Licensee's broker asked about the records and after being asked by a RECA investigator as part of an investigation.
2. Between February and September 2022, the Licensee made a representation or carried on conduct that was reckless or intentional and that mislead or deceived any person or is likely to do so contrary to section 42(a) of the *Real Estate Act Rules*:
 - a. The Licensee had "for sale" signs created that included a picture of the Licensee and an unlicensed individual ("[A.D]").
 - b. The signs included contact information suggesting that either the Licensee or the other person on the sign could be contacted about purchasing the for sale property.
 - c. The sign did not state that [A.D] was unlicensed.
 - d. The sign could mislead people to believe that [A.D] was licensed to trade in real estate.
 - e. The Licensee posted this sign on other properties for which the Licensee was agent for the Seller.
3. Between February 2022 and July 2023, the Licensee failed to provide to the Licensee's Broker in a timely manner all original documentation and copies of original documents provided to the parties or maintained by other brokerages related to a trade in real estate and required under the Act and Rules, contrary to section 53(c) of the *Real Estate Act Rules*:

- a. The Licensee was agent for parties on several properties including the following:
 1. [ADDRESS 1]
 2. [ADDRESS 2]
 3. [ADDRESS 3]
 4. [ADDRESS 4]
 - b. The Licensee did not submit records for the Licensee's work on these properties to the Licensee's brokerage including the following:
 1. Consumer relationship acknowledgement forms;
 2. Relevant title searches;
 3. Corporate searches related to parties for whom the Licensee was acting;
 4. FINTRAC individual identification information records; and
 5. Comparative market analyses.
4. Between May and June 2023, the Licensee withheld, destroyed, concealed or refused to produce any books, documents, records or other things required for the purpose of an investigation, contrary to section 38(4.1) of the *Real Estate Act*:
- a. The Licensee did not provide bank account records for Onyx Real Estate Inc, despite several requests from the investigator.

The Hearing:

On July 30, 2024, the hearing of this matter proceeded. The Registrar and the Licensee were each represented by legal counsel. Neither the Registrar nor the Licensee objected to the composition of the Hearing Panel.

Phase 1 – Conduct Deserving of Sanction

At the request of the Registrar and the Licensee, the Admission of Conduct Deserving of Sanction (the "Admission") was admitted into evidence (Exhibit 3) as the agreed facts and breaches in the hearing of this matter, and the breaches constitute conduct deserving of sanction. RECA Board Resolution 2024-4 effective as of July 4, 2024 was admitted into evidence (Exhibit 4).

The parties presented no additional evidence.

This Hearing Panel makes its findings of fact, breaches and conduct deserving of sanction based upon the Admission. This Hearing Panel required no further information or evidence from the parties; and during the hearing, this Hearing Panel accepted the Admission based upon the following admitted facts:

1. The Licensee was first licensed as a real estate associate on October 15, 2021;
2. At all material times, the Licensee was registered with EXP Realty of Canada Inc. o/a EXP Realty.
3. On February 6, 2022, sellers [R.L and T.L], and buyer [****903 Ltd] entered into a purchase contract for the property at [ADDRESS 1] (the "property"). The closing date was April 13, 2022. The Seller's agent was [S.H] ("[S.H]").
4. On March 31, 2022, the parties completed an amendment to the purchase contract to change the Buyer's name to [G.C] ("[G.C]") and to change the closing date to April 14, 2022.
5. On April 11, 2022, the parties amended the purchase contract to change the closing date to April 19, 2022. The Buyers included a term that they would pay the Seller's \$350.00 for the delay in closing the contract.
6. On May 3, 2022, the Licensee entered into an exclusive seller representation agreement with [G.C] for the sale of the property
7. Around May 5, 2022, the Licensee erected a sign on the property, marketing it for sale by owner with herself and [A.D] ("[A.D]") as the Seller's agents. [A.D] was not licensed in real estate in Alberta at the time that the sign was erected on the property.
8. Although the amended closing date on the purchase contract was April 19, 2022, the deal did not actually close until May 12, 2022 due to funding issues.
9. The Licensee did not confirm that title had transferred for the property to the Buyer [G.C] prior to erecting the sign or signing the exclusive seller representation agreement.
10. The Licensee advertised the property on social media as off market, utilizing the photographs taken by the Seller's agent, [S.H].
11. Despite being asked by [S.H] to remove the photographs, the Licensee did not take them off her social media until approximately three months later.
12. The Licensee removed the sign from the property after being asked by [S.H] to remove it.
13. The Licensee did not provide documentation to the Licensee's brokerage, including consumer relationship guides, titles, corporate searches, FINTRAC (Individual Identification information Record) and comparative market analyses for the property or the following other properties:

1. [ADDRESS 2]
2. [ADDRESS 3]
3. [ADDRESS 4]
14. Despite the Licensee's broker consistently asking the Licensee to complete the documents required for the files related to the above properties, the Licensee did not provide them.
15. On May 25, 2023, the investigator asked the Licensee to provide bank account records (including confirmation of signing authority) for Onyx Real Estate Inc. and Onyx Real Estate Partners Inc. for the period of March 2022 to May 15, 2023. The deadline for the records to be provided was June 5, 2023.
16. On June 2, 2023, the Licensee provided onboarding documents for Onyx Real Estate Partners Inc., but not bank account records.
17. On June 3, 2023, the investigator reminded the Licensee that the investigator needed bank account records for both accounts and for the dates specified in the original request.
18. On June 5, 2023, the Licensee emailed the investigator that the Licensee only had access to one account (Onyx Real Estate Partners Inc.). The Licensee provided the bank account records for Onyx Real Estate Partners Inc. The statements were dated for the period June 30, 2022 to December 31, 2022.
19. On June 6, 2023, the investigator reminded the Licensee that the investigator had yet to receive the bank account records and signing authority for Onyx Real Estate Inc.
20. On June 6, 2023, the Licensee emailed the investigator stating that the Licensee had already provided the signing authority for the bank accounts for both Onyx Real Estate Inc. (received that day) and Onyx Real Estate Partners Inc. The Licensee stated that the Licensee had provided bank account records or Onyx Real Estate Partners Inc. already.
21. On June 6, 2023, the investigator reminded the Licensee that the investigator had yet to receive any bank account records pertaining to Onyx Real Estate Inc.
22. On June 6, 2023, the Licensee provided onboarding documents for the bank account for Onyx Real Estate Inc.
23. On June 6, 2023, the investigator requested again that the bank account records for Onyx Real Estate Inc. be provided. The investigator reminded the Licensee that the Licensee holds a 50% share of Onyx Real Estate Inc and has signing authority, therefore the Licensee should have access to the account.
24. On June 6, 2023, the Licensee acknowledged that the Licensee has signing authority of the bank account for Onyx Real Estate Inc. The Licensee indicated

that the bank account had never been used. The Licensee asked the investigator "...may I ask why this is needed?"

25. On June 6, 2023, the investigator emailed the Licensee and stated, "The documents are required as part of the investigation".

26. On June 6, 2023, the Licensee emailed the investigator and stated, "I will get the other bank statements to you ASAP".

27. The Licensee did not provide the bank account records.

Admitted Breaches

This Hearing Panel also accepts the Admission, based upon the following admitted breaches:

1. The Licensee failed to provide competent service contrary to Rule 41(b) of the *Real Estate Act* Rules when the Licensee:
 - a) was retained by a Buyer to flip a property at [ADDRESS 1] (the "property"), that was subject to a purchase contract but prior to closing the Buyer entered into a listing agreement with the Licensee. The Buyer warranted the Buyer had authority to sell the property. The Licensee, on behalf of the Licensee's brokerage, agreed to market the property by placing signs and advertising information about the property online.
 - b) proceeded to advertise the property online on the Licensee's social media by using pictures created by the agent for the Seller of the property. The Seller's agent saw the pictures and demanded that the Licensee stop using the pictures. The Licensee failed to immediately remove the pictures.
 - c) failed to confirm the Licensee's client had possession of the property or permission from the Seller to place "for sale" signs on the property before installing the Licensee's signs at the property.
 - d) failed to complete several transaction records required by the Licensee's brokerage on this transaction and three other transactions even after being asked about the records by the Licensee's broker and by a RECA investigator as part of an investigation.
2. The Licensee made a representation or carried on conduct that is reckless or intentional and that misleads or deceives any person or is likely to do so contrary to Rule 42(a) of the *Real Estate Act* Rules when the:
 - a) Licensee had "for sale" signs created that included a picture of the Licensee and an unlicensed individual ("[A.D]")

- b) signs included contact information suggesting that either the Licensee or the other person on the sign could be contacted about purchase [of] the for sale property.
 - c) sign did not state that [A.D] was unlicensed.
 - d) sign could mislead people to believe that [A.D] was licensed to trade in real estate.
 - e) Licensee posted this sign on other properties for which the Licensee was agent for the Seller.
- 3. The Licensee failed to provide to the Licensee's broker in a timely manner all original documentation and copies of original documents provided to the parties or maintained by other brokerages related to a trade in real estate and required under the *Act* and Rules, contrary to section 53(c) of the *Real Estate Act* Rules:
 - a) The Licensee was agent for parties on several properties including the following:
 - I. [ADDRESS 1]
 - II. [ADDRESS 2]
 - III. [ADDRESS 3]
 - IV. [ADDRESS 4]
 - b) The Licensee did not submit records for the Licensee's work on these properties to the Licensee's brokerage including the following:
 - I. Consumer relationship acknowledgement forms;
 - II. Relevant title searches;
 - III. Corporate searches related to parties for whom the Licensee was acting;
 - IV. FINTRAC individual identification information records; and
 - V. Comparative market analyses.
- 4. A person shall not withhold, destroy, conceal or refuse to produce any books, documents, records or other things required for the purpose of an investigation, contrary to section 38(4.1) of the *Real Estate Act*:
 - i. The Licensee did not provide bank account records for Onyx Real Estate Inc, despite several requests from the investigator.

Phase 2 – Sanction and Costs

Sanction

On July 30, 2024, during Phase 2 of the hearing, the Registrar and the Licensee put forward a Joint Submission on Sanction (the “Joint Submission”), that was entered into evidence as Exhibit 5, and that jointly proposed the following sanctions for breach of:

Rule 41(b)	\$1,500
Rule 42(a)	\$2,000
Rule 53(c)	\$1,500
s.38(4.1) of the Act	<u>\$2,000</u>
Total	\$7,000

The Joint Submission was that this Hearing Panel has authority to impose sanction pursuant to its authority set out in the *Real Estate Act* (“the Act”), s.43(1) that provides, among other things that:

If a Hearing Panel finds that the conduct of an licensee was conduct deserving of sanction, the Hearing Panel may make any one or more of the following:

- (a) an order cancelling or suspending any authorization issued to the Licensee by the 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 authorization 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.

The Joint Submission meets RECA’s mandate to set and enforce standards of professional conduct and to protect the public; and while not binding upon this Hearing Panel, this Hearing Panel accepts that it should not deviate from the Joint Submission unless the Joint Submission on sanction would bring the administration of justice into disrepute or otherwise be contrary to the public interest¹.

¹ *R v Anthony-Cook* 2016 SCC 42

This Hearing Panel accepts the Joint Submission that the principles stated by the Supreme Court of Canada in *Anthony-Cook* apply to this disciplinary hearing; and as a result, this Hearing Panel should not deviate from the Joint Submission of the parties unless the proposed sanction would be “markedly out of line with the expectations of reasonable persons aware of the circumstances of the case² ...” and that ... “cause an informed and reasonable public to lose confidence in the institution of the courts”³.

The proposed sanction for each breach is within the appropriate range that this Hearing Panel can accept and that would not cause an informed and reasonable public to lose confidence in RECA panels as an institution.

This Hearing Panel accepts the Joint Submission because it meets the relevant factors in deciding an appropriate sanction, as outlined in *Jaswal v Newfoundland (Medical Board)*⁴:

a. The Nature and Gravity of the proven allegations

The Licensee’s breaches of Rule 41(b) 42(a), (53(c) and the *Act*, s.38(4.1) are serious in nature and gravity. This Hearing Panel accepts the Joint Submission that:

- i) it is of the utmost importance that Licensees complete all required documentation for their real estate files. The Licensee had multiple opportunities to provide the required documents, yet failed to produce them. Despite repeated requests from the Broker, and the RECA investigator, the Licensee failed to complete the required records. The Licensee indicated that the records were not completed due to procrastination, and for no appropriate reason.
- ii) the Licensee was reckless in using marketing material that included the name of an unlicensed person. the Licensee failed to perform due diligence in ensuring that the individual was licensed in Alberta. The Licensee did not take steps to ensure that the individual named on the for sale signs was a licensed Alberta real estate agent.

² *R v Druken* 2006 NLCA 67, 261 Nfld & PEIR 271 at paragraph 29

³ *R v O* (B.J.) 2010 NLCA 19 (NLCA) (Can LII) at paragraph 56

⁴ 1996 Can LII 11630 (NL SC) at paragraph 36

- iii) the Licensee was negligent in marketing a property for sale when the Licensee did not have permission from the Sellers to post a for sale sign; and
- iv) the Licensee's breach of section 38(4.1) of the Act was especially egregious because Licensee are expected to co-operate with an investigation; and despite several requests for bank account records, did not do so. These factors are aggravating.

b. The Age and Experience of the Licensee

The Licensee is 28 years old and was first authorized as a real estate associate in October 2021. The Licensee completed the educational requirements to become a Licensee; and should have had this information foremost in mind. This factor is aggravating. However, the Licensee had limited experience in the real estate industry; and that factor is mitigating.

c. The Previous Character of the Licensee and the presence or absence of prior complaints

The Licensee has no disciplinary history. This factor is mitigating.

d. The Number of Times the offence was proven to have occurred.

Although multiple properties were involved in this matter, the Joint Submission is that the Licensee be charged with one breach of Rule 41(b), 42(a), 53(c) and s38(4.1) of the Act, due to the close proximity in time for each property transaction. This factor is aggravating.

e. The Role of the Licensee in acknowledging what occurred.

The Licensee acknowledged that the Licensee:

- i) did not have paperwork that was required on the Licensee's real estate files; and
- ii) procrastinated in providing the required paperwork.

This factor is mitigating.

- f. Whether the Licensee suffered serious financial or other penalties as a result of the allegations

No evidence was provided regarding the Licensee suffering any financial or other penalties in relation to this matter. This factor is neither mitigating nor aggravating.

- g. Impact of the incident on the victim, if any

No evidence was provided regarding the impact of the Licensee's conduct upon the Seller, the Seller's agent or any member of the public who viewed, or relied upon, the marketing materials. Nor was evidence provided regarding the impact of the Licensee's conduct upon the Licensee's brokerage. This factor is neither mitigating nor aggravating.

- h. Mitigating circumstances

No evidence was provided regarding mitigating circumstances that may have affected the Licensee's conduct.

The Licensee agreed to forego the time and expense of a hearing, saving witnesses the inconvenience and stress of appearing at a hearing; and the Licensee took responsibility for the Licensee's actions. These factors are mitigating.

The Licensee did not fully co-operate with the investigator, when the Licensee failed to provide bank records pertaining to Onyx Real Estate Inc. after three requests from the investigator. This factor is aggravating.

- i. Aggravating Circumstances

See a, b, d and h above; and i below.

- j. The need to promote specific and general deterrence and protect the public

This Hearing Panel accepts the Joint Submission that in this case, there is a need for specific deterrence, and general deterrence. So far as specific deterrence is concerned, the Licensee needs to understand that this type of behavior will not be tolerated; and there are serious consequences for not complying with the Rules and the Act. So far as general deterrence is concerned, all Licensees must understand that sanctions will be imposed if a Licensee fails to:

- i) act in a manner that upholds the public's confidence in the real estate industry; and

- ii) co-operate with an investigation.
- k. The need to maintain the public's confidence in the integrity of the real estate profession

There is a high need to maintain the public's confidence in the integrity of the real estate profession. It is of the utmost importance to disciplinary bodies that the public have confidence in a profession.⁵ A profession's most valuable asset is its collective reputation and the confidence that which it inspires.⁶ Licensees must understand how important it is to complete all the required documentation that pertains to a sale or a purchase. Public confidence in the industry is compromised when a Licensee markets the services of an unlicensed individual. The public should be able to rely upon a Licensee to ensure that a Licensee only promotes the services of licensed real estate agents.

- l. The Licensee's conduct falls outside the range of permitted conduct and is an aggravating factor.
- m. The range of sentence in similar cases.

The Joint Submission cites precedents that, although not binding upon this hearing panel, are comparable to the admitted facts of this case. The precedent cases-imposed fines of:

s.41(b)	\$1,500 to \$3,000
s.42(a)	Letter of reprimand to \$1,500
s.53(c)	\$1,500
<u>s.38(4) of the Act</u>	<u>\$5,000 to \$10,000</u>
Total	\$8,000 to \$16,000

The Joint Submission proposing a total of \$7,000 in fines is \$1,000 less than the total low end range of reasonable and appropriate fines for precedents citing the same breaches. After considering the *Jaswal* factors, this Hearing Panel finds that despite being \$1,000 lower than the low end range for precedents citing the same breaches, the Joint Submission proposing a total of \$7,000 in fines is sufficient to demonstrate the seriousness with which this Hearing Panel regards the Licensee's conduct; and in particular, the nature of the offences. A total of \$7,000 in fines provides general

⁵ *Adams v Law Society of Alberta* 2000 ABCA 240 at page 3

⁶ *Law Society of Upper Canada v Lambert*, 2014 ONLSTH 158 (Can LII) at para 17

deterrence to other members of the real estate profession and should instill confidence in the public. The Joint Submission of a total of \$7,000 in fines is not so unreasonable that it puts the administration of justice into disrepute. The Joint Submission proposing a total of \$7,000 in fines is accepted as this Hearing Panel's decision on sanction.

Costs

The Joint Submission is that pursuant to *Jinnah v Alberta Dental Association and College*⁷ the Licensee pay no costs. This Hearing Panel accepts the Joint Submission and finds that no costs shall be imposed upon the Licensee. There are no compelling reasons to deviate from the *Jinnah*⁸ principle that costs should not be awarded against a Licensee, when hearing a regulatory matter. While the conduct admitted is serious, this Hearing Panel recognizes that the Licensee has no prior disciplinary history and the Licensee co-operated by consenting to the Joint Submission. The Licensee's actions did not create a compelling reason to impose costs.

Signed this 21st day of August 2024 at the City of Calgary in the Province of Alberta.

"Signature"

[G.F], Hearing Panel Chair

⁷ 2022 ABCA 336 at paragraphs 140 to 144

⁸ *Jinnah* at 1