

IN THE MATTER OF sections 48(10) and 48(11) of the *Real Estate Act*, R.S.A. 2000, c. R-5, as amended

AND IN THE MATTER OF AN Application for a Stay of a Hearing Panel Order concerning the conduct of Sameer Kalia, a real estate associate, registered at all material times hereto to Century 21 A.L.L. Stars Realty Ltd. Brokerage

**DECISION OF A HEARING PANEL OF THE REAL ESTATE COUNCIL OF ALBERTA ON AN APPLICATION FOR A STAY OF AN ORDER OF A HEARING PANEL**

Hearing Panel: Stan Mills, Chair  
Terry Brooke  
Rita Aggarwala

Application Date: November 23, 2018

Oral Submissions From: Murray Engelking, Legal Counsel on behalf of the Industry Member  
Andrew Bone, Legal Counsel on behalf of the Executive Director

**I) INTRODUCTION**

The hearing into the conduct matters of Sameer Kalia was held at the Real Estate Council of Alberta offices from September 17 to 18, 2018. On October 10, 2018, the Hearing Panel appointed to hear this matter (the “**Panel**”) issued its written decision on conduct and found that Sameer Kalia had committed conduct deserving of sanction with respect a number of the allegations alleged in the Notice of Hearing. On November 23, 2018, the Panel issued its written decision on sanction and costs (the “**Decision**”). The Panel ordered the following:

- a) That Sameer Kalia pay a fine in the amount of \$20,000;
- b) That Sameer Kalia pay costs in the amount of \$13,294;
- c) That Sameer Kalia’s authorization to trade in real estate be suspended for a period of 3 months; and
- d) That Sameer Kalia successfully complete the following courses:
  - a. Unit 4 - Consumer Relationships;

b. Unit 12 - Ethics, Professionalism and Risk Reduction.

On November 23, 2018, Mr. Kalia filed a Notice of Intent to Appeal the Hearing Panel's decision on sanction and costs. He had not filed a Notice of Appeal as of the date this application was heard.

On December 5, 2018, the Panel heard Mr. Kalia's stay application. The Panel granted Mr. Kalia's application on December 5, 2018, on the condition that Mr. Kalia pursue his appeal expeditiously. The written reasons for the Panel's decision follow.

## **II) ISSUES**

The issue for the Panel to determine is whether Mr. Kalia ought to be granted a stay of the Decision, pending its appeal. Counsel have agreed that the three-part stay test is applicable, namely:

1. Is there a serious matter to be appealed?
2. Would Mr. Kalia suffer irreparable harm if the stay were not granted?
3. Does the balance of convenience favour the granting of a stay?

## **III) SUMMARY OF SUBMISSIONS**

Counsel for Mr. Kalia indicated that Mr. Kalia is appealing the decision on sanction only ("Phase 2"), and not the decision on findings ("Phase 1"). As part of the sanction ordered by the Panel, Mr. Kalia's authorization to trade in real estate was to be suspended for a period of 3 months. Counsel for Mr. Kalia explained that this suspension went into effect immediately following receipt of the Panel's November 23, 2018 Phase 2 decision. If the Decision was not stayed, Mr. Kalia's appeal of that portion of the Decision would be moot, as he would have already served the suspension. This would constitute irreparable harm to Mr. Kalia, as his livelihood would be put on hold.

With respect to the balance of convenience, Mr. Kalia's counsel argued that the balance favours granting a stay. The fact that Mr. Kalia is unable to earn a living outweighs any potential harm to the public. In support of this, counsel pointed out the Mr. Kalia's impugned conduct took place some 5 years ago, with no recurring problems; the Executive Director did not seek an interim suspension at that time; and any immediate risk to the public is therefore minimal.

Counsel for the ED agreed in large part with Mr. Kalia's submissions. Counsel for the ED pointed out that the findings of the Panel were appropriate, and that Mr. Kalia's conduct was serious. However, given that there was no history of disciplinary issues, the ED would agree to the stay, provided the appeal proceeds in a timely matter.

#### IV) REASONS AND ORDER

The Panel agrees that this is a situation in which a stay ought to be granted, despite the serious Phase I findings of fact. The issue being appealed is a serious issue, involving a serious sanction; Mr. Kalia will suffer irreparable harm should the stay not be granted and the appeal panel overturn this Panel's decision regarding suspension; and provided the appeal proceeds expeditiously, the balance of convenience lies with granting the stay.

The Panel accordingly orders that a stay of its Decision be granted to Mr. Kalia, pending the hearing of his appeal. The stay is granted on the condition that Mr. Kalia pursue his appeal expeditiously.

Date at the City of Lethbridge in the Province of Alberta, this 18 day of December, 2018

Hearing Panel of the  
Real Estate Council of Alberta

A handwritten signature in black ink, appearing to read 'Stan Mills', written over a horizontal line.

Stan Mills, Hearing Panel Chair