

## THE REAL ESTATE COUNCIL OF ALBERTA

**IN THE MATTER OF** section 83 and section 41 of the *Real Estate Act*, R.S.A. 2000, c. R-5 and Part 4 of the *Real Estate Act Bylaws*

**AND IN THE MATTER OF** a hearing concerning the conduct of Glen Gregory, Broker, at all relevant times registered with 1363997 Alberta Ltd. o/a Realty Executives Meridian

Hearing Panel: Connie Leclair, Chair  
Cheryl Schindel  
Trent Gelmici

Appearing: Drew Saly on behalf of the Executive Director

Hearing Date: November 2, 2010

### A DECISION OF THE REAL ESTATE COUNCIL OF ALBERTA

#### I) INTRODUCTION

On August 12, 2010 the Executive Director of the Real Estate Council of Alberta, in accordance with s.83 of the *Real Estate Act*, determined that Glen Gregory contravened s.51(1)(j) of the Rules made pursuant to the Act and issued Mr. Gregory an Administrative Penalty in the amount of \$1,500. Mr. Gregory appealed the Administrative Penalty on August 20, 2010, providing a letter and a security for costs of \$1,000 as required under s.83.1 of the Act. A hearing was held on November 2, 2010 at the RECA offices. Mr. Gregory although duly informed of the date and time of the proceedings, was not in attendance at this hearing.

#### II) FACTS

Glen Gregory licensed and registered a real estate associate using the RECA Online system. The associate had completed the required Associate/Associate Broker Application for Licence and Registration form ("the form") and answered "Yes" to question 19. The form states that if question 19 is answered with a "Yes", copies of all relevant documentation along with the application must be sent to RECA for manual processing as RECA Online will not permit a registration to take place when any of questions 16 to 21 are answered in the positive. In spite of the "Yes" answer

provided by the real estate associate, Mr. Gregory entered a “No” answer in the response box for question 19 and proceeded with the online registration of the associate. This caused the associate to be licensed and registered without the application being forwarded to RECA for review prior to licensing.

## II) EVIDENCE

Counsel on behalf of the Executive Director entered the Notice of Hearing of the Appeal of an Administrative Penalty as Exhibit 1 and a collection of documents as Exhibit 2. These documents included the RECA Online Yes Answer Error Message; RECA Online Electronic Filer Agreement and the RECA Online User Manual, Real Estate Council of Alberta Estate Brokerage. Counsel pointed out that Tab 1 in Exhibit 2 was a sworn affidavit attesting to the service of the cover letter and the Notice of Hearing of the Appeal of an Administrative Penalty upon Glen Gregory. Counsel also stated that Mr. Gregory supplied the security for costs and so perfected his appeal and the Executive Director had no objections to the process.

S.D., RECA Information and Licensing Coordinator, testified on behalf of the Executive Director. S.D. identified Exhibit 2 Tab 8 page 2 as a copy of the paper application where the associate answered “Yes” to question 19; page 3 as a confirmation screen from the RECA Online system where the broker confirms the information entered in the system. Mr. Gregory answered “No” to question 19. Page 5 of that same Tab was a response from Glen Gregory to RECA’s request for further information. S.D. identified page 2 in Tab 2 as a print out of the input and confirmation page from RECA Online. Here, the broker is able to update any information and make any changes required. This page indicates a “Yes” answer to question 19. S.D. explained that if the information is correct the broker would click on the submit button at the end of the application. If Glen Gregory clicked the submit button after answering “Yes” to question 19, the system would not allow him to continue. Tab 4 in Exhibit 2 is the stop page that would have been displayed on the screen when Mr. Gregory attempted to submit the application with the “Yes” answer. In order to continue with the registration, he would have to change the “Yes” answer to a “No” answer. If all answers are “No” and the submit button is clicked, the associate would be registered. S.D. testified that if a broker answers “No” and obtains the confirmation screen that he has completed the application; he cannot go back and change his answers. He could not go back and indicate “Yes”. If Mr. Gregory was sitting in front of his screen attempting to register his associate, the input page with the “Yes” answer would have come first.

In fairness to Mr. Gregory, counsel on behalf of the Executive Director provided the Panel with Mr. Gregory's appeal documents. Mr. Gregory stated in his letter of appeal that the associate indicated "Yes" on his application but Mr. Gregory put "No" on question 19 in error while registering the associate with RECA Online. He discovered his error when he printed the form and immediately telephoned RECA and left a message. Mr. Gregory wrote that he sent a fax the same day, informing RECA of his error. When RECA called him back, he was informed that the associate would have his license terminated and he received a letter on May 26 with a procedure to follow. Mr. Gregory stated that he did not try to deceive RECA but made an error when answering the questions online.

## II) FINDINGS

The Panel confirms the Administrative Penalty of \$1500.

The Panel accepts the evidence presented by the Executive Director and the witness that the only way in which the copies of the Online application with the "Yes" answer could have been obtained was if Mr. Gregory indicated "Yes" and attempted to submit the application. When he was prevented from doing so, he went back and changed the answer to "No" in order to facilitate an Online application.

The correct procedure is clearly outlined in the RECA Online User Manual Real Estate Brokerage which was presented as Tab 6 in Exhibit 2. Page 16 directs the broker to the "Suitability Concerns" on the same page if there has been a "Yes" answer to any of the six questions asked. In this section, it states that brokerages will be unable to process applications online if the applicant has answered "Yes" to any of the six questions on the first page of the application, and informs brokers that the application must be processed by RECA and lists the documentation that must be provided along with said application.

Mr. Gregory's explanation of an error in registration in the form of a typo does not explain why he was attempting to register his associate online at all. Given a "Yes" answer to one of questions 16 – 21, there should have been no attempt to use the online registration system.

#### IV) SUBMISSION ON COSTS

The Executive Director submitted a request for costs in the amount of \$4140.50 plus panel members' travel expenses as submitted. There were no submissions from Mr. Gregory.

#### V) ORDERS

The Panel orders Glen Gregory:

- To pay the Administrative Penalty of \$1,500
- To pay costs in amount of \$4,560.50 for the following reasons:
  1. Mr. Gregory is an experienced broker with access to instructions for the use and limitations of RECA Online as a registration tool;
  2. Mr. Gregory has registered other associates in the past;
  3. Expenses incurred by the Executive Director in responding to Mr. Gregory's appeal were necessary and reasonable;
  4. Mr. Gregory has access to RECA Rules and Bylaws which outline the costs associated with matters proceeding.

This decision was made on 9<sup>th</sup> December, 2010

*Connie Leclair, Chair*

*Cheryl Schindel*

*Trent Gelmici*