

THE REAL ESTATE COUNCIL OF ALBERTA

IN THE MATTER OF s. 39(1)(b) and s. 41 of the *Real Estate Act*, R.S.A. 2000, c. R-5

AND IN THE MATTER OF a Hearing concerning the conduct of
Shailend Sharma, while registered as a Real Estate Agent
with Calgary Independent Realty Ltd., o/a C.I.R.

Hearing Panel members: Eric Stewart, Chair
Patti Beaudry
Stephen Cohen

Appearing: Mr. Terry Davis, legal counsel on behalf of the Executive Director
Mr. Shailend Sharma, on his own behalf

Hearing Date: November 2, 2005

DECISION OF A HEARING PANEL OF THE REAL ESTATE COUNCIL OF ALBERTA

I) INTRODUCTION

The Hearing Panel held a hearing into the conduct of Shailend Sharma, registered as a Real Estate Agent with Calgary Independent Realty Ltd., o/a C.I.R. The Hearing Panel was composed of Eric Stewart (Chair), Patti Beaudry and Stephen Cohen.

The Hearing took place via teleconference on November 2, 2005. In attendance at the hearing were Terry Davis, legal counsel on behalf of the Executive Director of the Real Estate Council of Alberta, and Shailend Sharma, on his own behalf.

II) ALLEGATIONS

Shailend Sharma was called before the Hearing Panel to answer to the following allegations set out in the Notice of Hearing:

1. **THAT** between March and July 2003, in the City of Calgary, contrary to section 7(b) of the *Code of Conduct*, you failed to act fairly, honestly and with integrity when dealing with non-clients by entering into or continuing various residential real estate listing contracts when you considered the asking prices to be unreasonably high and thereby allowed yourself to be used in the commission of a fraudulent scheme to place high ratio mortgages on these properties. This is conduct deserving of sanction, particulars of which are as follows:

- (a) On or about March 3, 2003, you, as agent for Calgary Independent Realty Ltd., operating as C.I.R. (hereinafter "C.I.R."), entered into a listing contract with A.F. for the sale of residential property municipally known as 401 – 22nd Avenue N.E., Calgary. The

asking price was \$234,900, and you knew that this price was at least \$35,000 above the market value of this property and was, therefore, unreasonably high.

- (b) On or about March 23, 2003, you, as agent for C.I.R., entered into a listing contract with A.F. for the sale of residential property municipally known as 261 – 23rd Avenue N.E., Calgary. The asking price was \$198,00, and you knew that this price was unreasonably high.
- (c) On or about April 11, 2003, you, as agent for C.I.R., entered into a listing contract with A.F. for the sale of residential property municipally known as 2130 – 17th Avenue S.W., Calgary. The asking price was \$259,888. Even though you knew that the initial asking price was at least \$20,000 above the market value of the property, you agreed a month later at the insistence of A.F. to raise the asking price to \$299,000.
- (d) On or about May 24, 2003, you, as agent for C.I.R., entered into a listing contract with A.F. for the sale of residential property municipally known as 2021 – 37th Street S.E., Calgary. The asking price was \$179,900 and you knew that this price was unreasonably high.
- (e) You took no active steps to terminate the aforementioned listing contracts and merely allowed these contracts to expire at the end of their term.
- (f) You prepared listing sheets for some or all of the above-mentioned properties containing the inflated asking prices and submitted them to the MLS system.
- (g) As a result, you allowed yourself to be used in the commission of a fraudulent scheme to place high ratio mortgages on the above-mentioned properties.

2. **THAT** between March and July 2003, in the City of Calgary, contrary to section 4(a) of the *Code of Conduct*, you knowingly or recklessly made misrepresentations about residential properties that you had listed for sale in the course of marketing such properties. This is conduct deserving of sanction, particulars of which are as follows:

- (a) With respect to the listed residential property at 401 – 22nd Avenue N.E., Calgary, you prepared a listing sheet and submitted it to the MLS system, knowing that some of the information contained therein was inaccurate.
- (b) With respect to the listed residential property at 261 – 23rd Avenue N.E., Calgary, you prepared a listing sheet and submitted it to the MLS system, knowing that some of the information contained therein was inaccurate.
- (c) With respect to the listed residential property at 2130 – 17th Avenue S.W., Calgary, you prepared a listing sheet and submitted it to the MLS system knowing that some of the information contained therein was inaccurate.

3. **THAT** in or about May 2003, in the City of Calgary, contrary to section 4(d) of the *Code of Conduct*, you participated in the creation of a contract that you knew or ought to have known was false or misleading. This is conduct deserving of sanction, particulars of which are as follows:

- (a) On or about May 24, 2003, you, as agent for C.I.R., entered into a listing contract with A.F. for the sale of residential property located at 2021 – 37th Street S.E., Calgary.
 - (b) Because you considered the asking price for this property to be unreasonably high, you had no intention of marketing this property.
 - (c) You took no steps to market this property.
4. **THAT** between March and July 2003, in the City of Calgary, contrary to section 6 of the *Code of Conduct*, you failed to render a competent service. This is conduct deserving of sanction, particulars of which are set out in Counts #1, #2 and #3 herein.
5. **THAT** between March and May 2003, in the City of Calgary, contrary to section 4(d) of the *Code of Conduct*, you participated in the creation of contracts, documents or other forms of communication which you knew or ought to have known were false or misleading. This is conduct deserving of sanction, particulars of which are as follows:
- (a) Between March and May 2003, you entered into or continued four listing contracts with A.F. for the sale of residential properties that you knew you would not be selling. The properties were situated at one or more of the following locations:
 - (ii) 401 – 22nd Avenue N.E., Calgary;
 - (iii) 261 – 23rd Avenue N.E., Calgary;
 - (iv) 2130 – 17th Avenue S.W., Calgary; and
 - (v) 2021 – 37th Street S.E., Calgary.
 - (b) You prepared listing sheets and submitted them to the MLS system knowing that some of the information was inaccurate with respect to the following properties:
 - (i) 401 – 22nd Avenue N.E., Calgary;
 - (ii) 261 – 23rd Avenue N.E., Calgary;
 - (iii) 2130 – 17th Avenue S.W., Calgary.
 - (c) With respect to residential property located at 2130 – 17th Avenue S.W., Calgary, you provided A.F., the seller, with a feature sheet that contained to your knowledge an inflated asking price of \$299,500.
6. **THAT** in or about May 2003, in the City of Calgary, contrary to section 23(e) of the *Real Estate Act Rules*, you failed to provide all documentation or trade records to your broker in relation to a real estate transaction. This is conduct deserving of sanction, particulars of which are as follows:
- (a) On or about May 24, 2003, you, as agent for C.I.R., entered into a listing contract with A.F. for the sale of residential property located at 2021 – 37th Street S.E., Calgary.

(b) You did not provide a copy of the listing contract for this property to your broker.

7. **THAT** between March and May 2003, in the City of Calgary, contrary to section 23(f) of the *Real Estate Rules*, you failed to keep your broker informed of your activities performed on behalf of the brokerage. This is conduct deserving of sanction, particulars of which are as follows:

- (a) On or about March 3, 2003, you, as agent for C.I.R., entered into a listing contract with A.F. for the sale of residential property located at 401 – 22nd Avenue N.E., Calgary. Later A.F. advised you that he had a buyer for the property and requested that you terminate the listing contract. You did not terminate the listing contract but instead let it expire. You did not inform your broker about this sale or about A.F.'s refusal to pay a commission.
- (b) On or about April 11, 2003, you, on behalf of C.I.R., signed an Amendment to the Real Estate Listing Contract for residential property located at 2130 – 17th Avenue S.W., Calgary to increase the asking price from \$259,888 to \$299,000. You did not inform your broker of this amendment.
- (c) On or about May 24, 2003, you, as agent for C.I.R., entered into a listing contract with A.F. for the sale of residential property located at 2021 – 37th Street S.E., Calgary. You did not inform your broker of this contract or of your intention not to market this property.

III) **EVIDENCE**

We received an Admission of Conduct Deserving of Sanction pursuant to section 46 of the *Real Estate Act* from Mr. Davis. In the document, signed by Mr. Sharma, he admitted to the allegations of fact and breaches of provisions of the *Real Estate Act*, Rules and Code of Conduct as contained in the Notice of Hearing, and admitted that his conduct in this regard was conduct deserving of sanction.

IV) **SUBMISSIONS**

The Executive Director and Mr. Sharma entered into a Joint Admission on Sanction, however Mr. Sharma maintained the right to make submissions on cost separate from those of the Executive Director.

The Joint Submission on Sanction suggested a fine of \$3,500 and completion of the Alberta Real Estate Association's Professional Responsibilities course.

During Mr. Davis's submission on sanction, he detailed three previous RECA disciplinary decisions for the Hearing Panel to consider. One of those cases, the Schmidt matter, involved 27 properties and Mr. Schmidt did not cooperate with RECA investigators. As a result, he was ordered to pay a \$7,500 fine and was suspended for a period of one year. That Hearing Panel found that Mr. Schmidt was involved in the mortgage fraud scheme and was wilfully blind. Mr. Sharma, it was submitted, was too inexperienced as a real estate agent to be considered wilfully blind, his matter only involved four properties and he cooperated with RECA investigators. As such, the fine ordered to Mr. Sharma should be less than that which was ordered to Mr. Schmidt.

Mr. Davis submitted that the Executive Director has arrived at a total fine of \$3,500, by assigning a \$1,000 fine to each of the three properties for which Mr. Sharma prepared MLS listing feature sheets

using grossly inflated selling prices. For the fourth property, the one that Mr. Sharma did not actively market, but had signed a Listing Agreement for, Mr. Davis suggested a \$500 fine for failing to advise his broker of the Listing Agreement.

As Mr. Sharma has already completed the mandatory Mortgage Fraud Awareness course, Mr. Davis submitted that he be ordered to complete the AREA Professional Responsibilities course.

Mr. Davis, on behalf of the Executive Director, submitted for costs of \$7,607.68. The bulk of those costs were as a result of 200 hours of investigative time and 25 hours of legal counsel's time. Mr. Sharma submitted that as a number of other industry members were interviewed during the investigation into his own behaviour, the costs of the investigation should be split between himself and those other industry members.

V) FINDINGS

The Hearing Panel accepts the Admission of Conduct Deserving of Sanction and finds that Mr. Sharma's conduct is conduct deserving of sanction as set out in the Notice of Hearing.

VI) ORDERS AND REASONS

We have carefully considered the Joint Submission on Sanction presented to us by Mr. Davis and Mr. Sharma and we agree that the fine suggested is appropriate in these circumstances. Mr. Davis submitted that Mr. Sharma was not a willful participant in a mortgage fraud scheme and given his inexperience as a real estate agent, he was taken advantage of, and there was no evidence to the contrary. We agree with this submission.

Despite Mr. Sharma's inexperience, though, a fine is still required – both to punish Mr. Sharma for his willingness to list properties at grossly inflated prices and to send a message to the industry as a whole that any involvement in mortgage fraud will not be tolerated, even if it is as a somewhat unwilling participant.

We agree with the Joint Submission that the AREA Professional Responsibilities course is appropriate given that Mr. Sharma has already completed the Mortgage Fraud Awareness course.

With regard to costs, we were persuaded by Mr. Sharma's submissions and we agree that 200 hours of investigations time is excessive. As a result, we think a reduction in costs from that which was submitted for by Mr. Davis is in order. We think that 100 hours of investigation time is more appropriate in this matter. Not only that, but as Mr. Sharma cooperated throughout the RECA hearing process, we do not think it is fair to hammer such an inexperienced industry member with such high hearing costs.

However, despite Mr. Sharma's submission that we order some costs to be paid by other industry members, we do not have that ability. Mr. Sharma is the only industry member whose actions are before us today and regardless of whether any other industry members were involved in these transactions, we are only to consider the actions of Mr. Sharma.

As a result of our finding of conduct deserving of sanction, we hereby order, pursuant to section 43 of the *Real Estate Act*, that:

1. Mr. Sharma pay a fine of \$3,500.
2. Mr. Sharma pay costs of \$5,607.68.
2. Mr. Sharma successfully complete the Alberta Real Estate Association's Professional Responsibilities course by May 1, 2006. If this course is not available in this timeframe, an extension may be granted or a course substituted at the sole discretion of the Executive Director. This course cannot be used for credits in the required professional development program for agents and brokers.

This decision was made on November 2, 2005

"Eric Stewart"

Eric Stewart, Chair

Patti Beaudry

Stephen Cohen

1. Mr. Sharma pay a fine of \$3,500.
2. Mr. Sharma pay costs of \$5,607.68.
2. Mr. Sharma successfully complete the Alberta Real Estate Association's Professional Responsibilities course by May 1, 2006. If this course is not available in this timeframe, an extension may be granted or a course substituted at the sole discretion of the Executive Director. This course cannot be used for credits in the required professional development program for agents and brokers.

This decision was made on November 2, 2005

Eric Stewart, Chair

"Patti Beaudry"

Patti Beaudry

Stephen Cohen

1. Mr. Sharma pay a fine of \$3,500.
2. Mr. Sharma pay costs of \$5,607.68.
2. Mr. Sharma successfully complete the Alberta Real Estate Association's Professional Responsibilities course by May 1, 2006. If this course is not available in this timeframe, an extension may be granted or a course substituted at the sole discretion of the Executive Director. This course cannot be used for credits in the required professional development program for agents and brokers.

This decision was made on November 2, 2005

Eric Stewart, Chair

~~Patti Beaudry~~

"Stephen Cohen"

Stephen Cohen