

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 **Harvey Layton**, Agent, registered at all material times hereto with Graham Realty Inc.

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

I) INTRODUCTION

The Hearing Panel held a hearing into the conduct of Harvey Layton, agent, registered at all material times hereto with Graham Realty Inc., located in Calgary, Alberta. The Hearing Panel was composed of Beverly Andre (Chair), Glen Chapman and Richard Campos.

The Hearing took place on November 25, 2004. In attendance at the hearing were Monica Burman, on behalf of the Executive Director of the Real Estate Council of Alberta, and Harvey Layton, on his own behalf.

II) ALLEGATIONS

Harvey Layton was called before the Hearing Panel to answer to the following allegations set out in the Amended Notice of Hearing:

1. **THAT** in the period of July 2001 to September 2001, you, Harvey Layton, in breach of Rule 23(b) made pursuant to the *Real Estate Act*, R.S.A. 2000, c. R-5, failed to trade in real estate only in the name that appears on your licence and in the name of the brokerage which appears on your licence.

Particulars include:

You actively marketed and sold approximately sixteen (16) condominium units in Calgary for a developer, E. Davis Developments (the "Developer"), and accepted a commission of approximately \$26,756.70 in the name of Layton Corp., a corporation in which you are the sole share holder [sic], at the same time you were a registered real estate agent for Graham Realty Inc.

The manner in which you carried out the sales activities for the Developer at the time, did not allow for an exemption under section 2 of the *Real Estate Act*, more specifically there were no deductions (Canadian Pension Plan (CPP), Employment Insurance (EI), or Income Tax) taken at source by the Developer for you to indicate you were an employee of the Developer.

This is conduct deserving of sanction.

2. **THAT** in the period of July 2001 to September 2001, you, Harvey Layton, in breach of Rule 24(1) (c) made pursuant to the *Real Estate Act*, R.S.A. 2000, c.R-5, accepted a commission or other

remuneration of approximately \$26,756.70 for a trade, when you accepted payment from the Developer for the marketing and sale of approximately sixteen (16) condominium units in Calgary. The commissions were required to be paid through the brokerage, Graham Realty Inc. with which you were registered.

This is conduct deserving of sanction.

3. **THAT** in the period of July 2001 to September 2001, you, Harvey Layton, in breach of Rule 23(e) made pursuant to the *Real Estate Act*, R.S.A. 2000, c.R-5, failed to provide all documentation or trade records required under these Rules to the broker when you marketed and sold approximately sixteen (16) condominium units in Calgary for the Developer.

This is conduct deserving of sanction.

4. **THAT** in the period of September 30, 2001 to December 19, 2002, you, Harvey Layton, in breach of section 17 (c) the *Real Estate Act*, R.S.A. 2000, c.R-5 (prior to October 1, 2004), effective October 1, 2004 in breach of section 17(d) of the *Real Estate Act* R.S.A. 2000, c.R-5, held yourself out as a real estate agent without the appropriate authorization for that purpose issued by the Council.

Particulars include:

On September 27, 2001, the Real Estate Council of Alberta ("RECA") received your real estate agent/associate broker licence renewal application that was signed and dated September 24, 2001. You declared on the renewal application that you had completed the required eighteen (18) Mandatory Continuing Education ("MCE") credits. RECA Licensing determined you had earned only 6 of the 18 MCE credits.

On September 29, 2001, RECA Licensing notified you and your broker, L.G. , via fax to the office of Graham Realty Inc., of your incomplete MCE credits and of your education requirements which needed to be complete prior to RECA being able to process your renewal application.

On September 30, 2001, your real estate agent's licence expired.

On October 5, 2001, RECA Licensing sent a letter to you at your last known home address, as provided on the renewal application, notifying you that your authorization had expired as of September 30, 2001. A copy of the letter was also mailed to the broker at Graham Realty Inc.

During the time you were unlicensed you conducted one residential real estate transaction (the "Transaction") in which you represented your own interests.

The Transaction involved the purchase of a rural property, 15167 Big Spring Road RR1 in Airdrie (the "Airdrie Property"). The particulars of your activities in relation to the transaction are as follows:

On January 19, 2002, you submitted an offer to purchase on behalf of yourself and your wife for the Airdrie Property. The offer to purchase was accepted the same day.

You included a Disclosure statement on the offer which states:

"It is acknowledged that the Buyer, Harvey Layton is an associate broker, being registered with Graham Realty, of Calgary and that while the intent of the purchase is for the buyer's use and enjoyment, it may be resold in the future. (sic)"

The Buyer's Representative was listed as Harvey Layton, with the Brokerage Name of Graham Realty on the offer to purchase.

You did not earn a commission on the transaction.

You actively held yourself out as a real estate agent in the Transaction, despite the fact you were unlicensed throughout the entire period.

This is conduct deserving of sanction.

III) **EVIDENCE**

The Hearing Panel received an Admission of Conduct Deserving of Sanction pursuant to section 46 of the *Real Estate Act* from Ms. Burman and Mr. Layton. In the document, signed by Mr. Layton, 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 Amended Notice of Hearing and admitted that his conduct in this regard was conduct deserving of sanction.

IV) **SUBMISSIONS**

Ms. Burman and Mr. Layton requested that the Hearing Panel accept the Admission of Conduct Deserving of Sanction.

In regard to sanction, Ms. Burman provided the Hearing Panel with a Consent Agreement and an Administrative Penalty as precedents to be considered by the Hearing Panel, as well as an Estimated Schedule of Costs, with a total of \$7,055.

Ms. Burman asked the Hearing Panel to consider a fine of \$4,500, costs of \$1,000 and, as a condition of Mr. Layton's authorization to trade in real estate, successful completion of the Alberta Real Estate Association's Professional Responsibilities course within six (6) months.

Ms. Burman submitted that because Mr. Layton co-operated throughout the investigation and signed an Admission of Conduct Deserving of Sanction, on behalf of the Executive Director, she was asking the Hearing Panel to consider costs in this matter to be fixed at \$1,000.

Mr. Layton submitted to the Hearing Panel that Ms. Burman's submissions on sanction were excessively harsh. He stated that he did not act with ill intent, and as such asked the Hearing Panel to consider sanctions that leaned more toward an educational requirement.

V) **FINDINGS**

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

VI) ORDERS

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. Layton pay a fine of \$4,500 within 60 days of receipt of this decision.
2. Mr. Layton pay costs totaling \$1,000 within 60 days of receipt of this decision.
3. Mr. Layton complete the "Professional Responsibilities" course offered by the Alberta Real Estate Association within six months of receipt of this decision. If this course is not available in this time frame, an extension may be granted at the sole discretion of the Executive Director.

Dated this 16 day of December, 2004.

"Beverly Andre"

Beverly Andre, Chair

"Glen Chapman"

Glen Chapman

"Richard Campos"

Richard Campos