

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 **James Leahy**, Broker, registered at all material times hereto with Protec Property Management and Realty Ltd., Brokerage

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

I) INTRODUCTION

The Hearing Panel held a hearing into the conduct of James Leahy, Broker, registered at all material times hereto with Protec Property Management and Realty Ltd., Brokerage, located in Edmonton, Alberta. The Hearing Panel was composed of Norman Jensen (Chair), Richard (Dan) McClelland and Lynne Scrima.

The Hearing took place via teleconference on October 14, 2004. In attendance at the hearing were Todd Lee, on behalf of the Executive Director of the Real Estate Council of Alberta, and James Leahy, on his own behalf.

II) ALLEGATIONS

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

1. James Leahy ("Leahy"), as broker for Protec Property Management and Realty Ltd. ("Protec"), failed to prepare and review Protec's monthly bank reconciliations within thirty days of each month end for the entirety of 2001 and 2002, and for the months in between January 1, 2003 and September 30, 2003. Leahy also failed to acknowledge his review of Protec's monthly bank reconciliations by signing and dating the monthly bank reconciliation within 30 days of receipt of the prior month's banks statements. The foregoing is conduct deserving of sanction, particulars of which include the following:

- a) Leahy failed to prepare monthly bank reconciliations within 30 days of the prior month's statement for all trust accounts, contrary to Rule 38(1); and
- b) Leahy failed to review the monthly bank reconciliation within 30 days of the prior month's bank statements, and failed to acknowledge the review by signing and dated the monthly reconciliation, contrary to Rule 38(3);

all of which happened in Edmonton, Alberta.

2. Leahy was aware of a trust shortage in Protec's trust accounts in the amount of \$3,246.01 as at September 30, 2001, however, notwithstanding the foregoing, he failed to deposit the brokerage's own money to rectify the trust shortage until May 20, 2002, nor did he inform the Executive Director, either in writing, or at all, about the trust shortage. It was ultimately determined that the September 30, 2001

trust shortage of \$3,246.01 was in fact a shortage of \$6,478.28, which was rectified on May 20, 2002. The foregoing is conduct deserving of sanction, the particulars of which include the following:

- a) Leahy allowed a payment out of a trust or pooled trust account which created a negative balance in a client's ledger, contrary to Rule 39;
- b) Leahy failed to fund the trust account shortage as soon as he became aware of the trust shortage, contrary to Rule 40; and
- g) After failing to immediately rectify the trust shortage, Leahy failed to notify the Executive Director in writing of the September 30, 2001 trust shortage and what corrective action the brokerage was taking, contrary to Rule 41;

all of which happened in Edmonton, Alberta.

3. Leahy allowed a trust shortage to be created in Protec's trust account on January 3, 2001 in the amount of \$443.53. The trust shortage was caused by a Protec employee writing a cheque on Protec's trust account for \$500.00 that ought to have come from Protec's general account, contrary to the terms of trust under which the trust monies were deposited. The trust shortage was rectified on August 28, 2002, the same day upon which Leahy became aware of the trust shortage. The foregoing is conduct deserving of sanction, the particulars of which include:

- a) Leah[sic] allowed a payment out of trust or pooled trust account which created a negative balance in a client's ledger, contrary to Rule 39; and
- b) Leahy failed to disburse money in accordance with the terms of trust governing that money, contrary to s. 25 (1)(d) of the Act,

all of which happened in Edmonton, Alberta.

4. Leahy failed to file Protec's Representations to Council and an Accountant's report in the form and containing the information required by the Executive Director within three months of Protec's September 30, 2001 year end. The foregoing is conduct deserving of sanction, and in particular, the said conduct constitutes a breach of Rule 42(4), all of which happened in Edmonton, Alberta.

5. Further to all of the particulars alleged under paragraphs 1-4 of this Notice of Hearing, or in the alternative to the allegations of conduct deserving of sanction under paragraphs 1-4 of this Notice of Hearing, Leahy's conduct is deserving of sanction, the particulars of which include the following:

- a) Leahy failed to ensure that Protec's trust accounts and trust account records were maintained in accordance with the Act, the Bylaws and Rules, contrary to Rule 21(g); and
- b) Leahy failed to ensure that Protec's business was carried out competently and in accordance with the Act, the Bylaws and Rules, contrary to Rule 21(e),

all of which happened in Edmonton, Alberta.

III) **EVIDENCE**

The Hearing Panel received an Admission of Conduct Deserving of Sanction pursuant to section 46 of the *Real Estate Act* from Mr. Lee and Mr. Leahy. In the document, signed by Mr. Leahy, 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

Mr. Lee and Mr. Leahy requested that the Hearing Panel accept the Admission of Conduct Deserving of Sanction.

In regard to sanction, Mr. Lee provided the Hearing Panel with six (6) prior Hearing Panel decisions as precedents to be considered by the Hearing Panel. He also provided the Hearing Panel with an Estimated Schedule of Costs, with a cost total of \$5,641.68.

Mr. Lee asked the Hearing Panel to consider a fine of \$6,000, costs (estimated) of \$5,641 and the Alberta Real Estate Association's "Reducing Risk in Commercial Real Estate and Property Management" course. Mr. Lee also asked the Hearing Panel to consider implementing two further conditions upon which Mr. Leahy could retain his authorization to trade in real estate. One such condition was that Mr. Leahy, through his accountant, be required to report his monthly accounting statements to the Executive Director for six months. The second condition was that Mr. Leahy provide a detailed policy and procedures manual for staff at his brokerage to avoid accounting problems in the future.

Further to those submissions, Mr. Lee said there was good co-operation on the part of Mr. Leahy, no public harm resulted from the accounting deficiencies, a dispute with a third party accounting firm created a delay in the overall process, and Mr. Leahy's Admission of Conduct Deserving of Sanction saved time and money in the overall process.

In regard to sanction, Mr. Leahy made no comment with regard to the fine asked for by Mr. Leahy. Nor did he question the suggested education requirement. He also stated that he has already taken steps to ensure staff at his brokerage are aware of proper accounting procedures and policies. He did, however, ask the Hearing Panel to consider lesser costs because he had been told previously by Mr. Lee that costs were estimated to be \$3,500. Mr. Lee responded that costs of \$3,500 were estimated if Mr. Leahy had proceeded under a different process (consent agreement), which was effectively a settlement offer. Had Mr. Leahy gone that route, this matter would not have proceeded to a contested hearing and would have resulted in lower costs. However, the matter proceeded in a different way and Mr. Lee's submission on costs reflects the desire for cost recovery.

V) FINDINGS

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

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. Leahy pay a fine of \$5,000 within 60 days of receipt of this decision.

2. Mr. Leahy pay costs totaling \$4,891.62 within 60 days of receipt of this decision.
3. Mr. Leahy complete the "Reducing Risk in Commercial Real Estate and Property Management" course before November 30, 2005. If this course is not available in this time frame, an extension may be granted by the Executive Director.
4. As a condition of his authorization to trade in real estate, Mr. Leahy is to provide a detailed policy and procedure manual for staff, and report monthly trust account reconciliations to the Executive Director from December 2004 to May 2005, inclusive.

Dated this 8 day of December, 2004.

"Norman Jensen"

Norman Jensen, Chair

"Richard (Dan) McClelland

Richard (Dan) McClelland

"Lynne Scrima"

Lynne Scrima