

THE REAL ESTATE COUNCIL OF ALBERTA

IN THE MATTER OF Section 39(1)(b)(i), s.41 and s.47(1) of the *REAL ESTATE ACT*,
R.S.A. 2000, c.R-5

AND IN THE MATTER OF a Hearing regarding the conduct of STEVE SEDGWICK,
currently registered with Noralta Real Estate Inc. operating as Royal Lepage Noralta
Real Estate

Hearing Panel Members: Stan Mills, Chair
Stan Kushner
Julia Jones

Appearances: Tracy Leonardo, Counsel for the Executive Director of the
Real Estate Council of Alberta ("RECA")
Philip J. Prowse, Counsel for Steve Sedgwick

Hearing Date: October 22, 2018

DECISION OF A HEARING PANEL ON CONDUCT DESERVING OF SANCTION AND DECISION ON SANCTION AND COSTS

A. Introduction

The parties submitted to the Hearing Panel an Admission of Conduct Deserving of Sanction document signed by Mr. Sedgwick and dated October 5, 2018 that included a Schedule with Agreed Breaches and Agreed Facts. The document is attached to this Decision as Schedule "A". The parties also submitted a Joint Submission on Sanction dated October 18, 2018 which is attached to this Decision as Schedule "B".

Mr. Sedgwick, the Industry Member, has been authorized to trade in real estate since 2001. The conduct deserving of sanction admitted to by Mr. Sedgwick occurred in 2017 and was with respect to a forged Exclusive Buyer Representation Agreement (the "Agreement"). When his clients, the complainants, asked if they had signed an Agreement, he forged their signatures by copying and pasting their signatures from a previously signed document and presented it as having been executed by them. The conduct deserving of sanction was also with respect to Mr. Sedgwick's conduct during the RECA investigation wherein he presented the forged Agreement as having been signed by his clients. He also stated he had obtained a handwriting analysis report and included quoted excerpts from the alleged report in his correspondence with RECA but did not provide the report.

Mr. Sedgwick admitted to breaching section 38(4)(a) (it was incorrectly referred to as section 38(4)(b) in the Admission of Conduct Deserving of Sanction but was corrected in the Joint Submission on Sanction which was executed on a later date) of the *Real Estate Act* and *Real Estate Act Rule 42(b)*.

Section 38(4)(a) of the *Real Estate Act* was breached when Mr. Sedgwick:

- presented a forged Agreement to the RECA investigator claiming it was an original copy
- made a misrepresentation to the RECA investigator that he had obtained a handwriting analysis report regarding the forged document but failed to provide the report when requested; and
- provided a false written statement to RECA stating the Agreement was signed and that he had an original version and continued to be dishonest in his written response and other communications throughout the RECA investigation

The second breach was of *Real Estate Act Rule 42(b)* which was breached when Mr. Sedgwick:

- lied to his client when they asked if they had signed an Agreement;
- fraudulently created an Agreement by copying and pasting the initials and signatures of his clients from a different document
- lied to his broker when he questioned him about the Agreement, which was to his benefit and to ensure that he would receive commission; and
- sent an email to the clients with the forged Agreement to convince his clients that they had entered into a contract, which was to his benefit and to ensure he would receive commission

The parties jointly proposed sanction for these breaches as follows:

- fine of \$10,000.00 for the breach of section 38(4)(a) of the *Real Estate Act*
- fine of \$15,000.00 for the breach of *Real Estate Act Rule 42(b)*
- three (3) month suspension of his authorization to trade in real estate under the *Real Estate Act*
- completion of an educational upgrade course: Ethics, Professionalism and Risk Reduction within six months of the Hearing Panel's decision being issued; and
- costs of the investigation and proceedings in the sum of \$1,590.00 which includes the cost of a forensic document examiner report

B. Issues

1. Whether the conduct admitted to by Mr. Sedgwick constituted conduct deserving of sanction; and

2. If the conduct is deserving of sanction, whether the sanctions proposed by the parties in the joint submission on sanction is appropriate in the circumstances.

C. Applicable sections of the *Real Estate Act* and *Real Estate Act Rules*

Sections 46 and 47 of the *Real Estate Act* refer to situations where the Industry Member admits to conduct deserving of sanction, as follows:

46(1) An industry member may, at any time after the commencement of proceedings under this Part and before a Hearing Panel makes its findings in respect of the industry member's conduct, submit to the executive director a statement of admission of conduct deserving of sanction in respect of all or any of the matters that are the subject matter of the proceedings.

(2) A statement of admission of conduct may not be acted on unless it is in a form acceptable to the executive director and meets any additional requirements set out in the rules.

47(1) If a statement of admission of conduct is accepted, the executive director shall immediately refer the matter to a Hearing Panel, and in that case the Hearing Panel shall deal with the matter as if it had been referred to it under section 39(1)(b).*

(2) If a statement of admission of conduct is accepted, each admission of conduct in the statement in respect of any act or matter regarding the industry member's conduct is deemed for all purposes to be a finding of the Hearing Panel that the conduct of the industry member is conduct deserving of sanction.

*Section 39(1)(b) states that the Executive Director may refer a matter to a Hearing Panel if he or she determines there is sufficient evidence of conduct deserving of sanction.

Mr. Sedgwick admitted he breached section 38(4)(a) of the *Real Estate Act* and *Real Estate Act Rule* 42(b) which are as follows:

38(4) A person who is required under subsection (2)* to answer the questions of a person conducting an investigation

- (a) shall co operate with the investigator and promptly respond to the questions, and

*Section (2) states: A person conducting an investigation may

- (a) by notice in writing demand that any person produce to the investigator any books, documents, records and other things in that person's possession or under that person's control that are relevant to the investigation,
- (b) demand that any person answer any questions that are relevant to the investigation,
- (c) copy by electronic or other means, and keep copies of, anything produced under clause (a), and
- (d) record by audio or video or by other means any answers provided under clause (b).

42 Industry members must not:

- (b) participate in fraudulent or unlawful activities in connection with the provision of services or in any dealings;

D. Exhibits

The following exhibits were entered at the Hearing:

- 1) Notice of Hearing dated September 17, 2018
- 2) Affidavit of Service dated September 28, 2018
- 3) Admission of Conduct Deserving of Sanction dated October 5, 2018
- 4) Joint Submission on Sanction dated October 18, 2018 and case law to support:

Tab 1 *Jaswal v. Medical Board (Nfld.)*, 1996 CanLII 11630 (NL SCTD);

Tab 2 *Adams v. Law Society of Alberta*, 2000 ABCA 240 (CanLII);

Tab 3 *Law Society of Upper Canada v Lambert*, 2014 ONLSTH 158 (CanLII);

Tab 4 *Checkley, Glen*, Real Estate Council of Alberta 2014;

Tab 5 *Banwait, Rajwant Kaur*, Real Estate Council of Alberta 2014;

Tab 6 *Lalji, Aliya*, Real Estate Council of Alberta 2016;

Tab 7 *Palibroda, Richard*, Real Estate Council of Alberta 2008;

Tab 8 *Marsh, Christy*, Real Estate Council of Alberta 2013;

Tab 9 *Fan, Stephanie*, Real Estate Council of Alberta 2012;

Tab 10 *R. v. Anthony-Cook*, 2016 SCC 43, 2016 CSC 43, 2016 Carswell BC 2929;

- 5) Statement of Mr. Sedgwick.

E. Submissions

Counsel for the Executive Director presented an oral summary of the Joint Submission on Sanction, including a review of the authorities provided. Counsel for Mr. Sedgwick concurred with the summary and submitted that Mr. Sedgwick agreed to the proposed joint sanction.

It was submitted that the Hearing Panel ought to consider the relevant factors set out in *Jaswal v. Medical Board (Nfld.)*, *supra*, when assessing whether the jointly proposed sanction was appropriate. A summary of those factors and their application to Mr. Sedgwick's conduct and circumstances, as well as the joint submissions, as presented to the Hearing Panel are summarized below.

The age and experience of the Industry Member

Mr. Sedgwick is currently 43 years old and was authorized to trade in real estate since 2001. He served as Chairman of the Board for the Realtors Association of Edmonton in 2016. Given his lengthy experience in the industry, he ought to have been aware that his conduct was unacceptable.

The previous character of the Industry Member

Mr. Sedgwick had no disciplinary history.

The number of times the offence was proven to have occurred

There was one breach of *Real Estate Act Rule 42(b)* and multiple breaches of the failure to cooperate with a RECA investigator under section 38(4)(a) of the *Real Estate Act*.

The nature and gravity of the proven allegations

Mr. Sedgwick's behavior negatively effects professionalism and trust with clients which is fundamental to the real estate industry. His conduct was serious in nature and gravity as it impacts the industry's credibility and the trust clients place in the real estate industry.

The need to maintain the public's confidence in the integrity of the real estate industry

It was submitted that real estate associates must practice in strict compliance with the *Real Estate Act* and the *Real Estate Act Rules* in order to maintain the integrity of the industry. Public confidence in the industry is compromised when a real estate associate does not comply with the *Real Estate Act* or the *Real Estate Act Rules*.

In *Adams v. Law Society of Alberta*, *supra*, the Alberta Court of Appeal noted that public confidence in a profession should be of the utmost importance to disciplinary bodies:

A professional misconduct hearing involves not only the individual and all the factors that relate to that individual, both favorably and unfavorably, but also the effect of the individual's misconduct on both the individual client and generally on the profession in question. This public dimension is of critical significance to the mandate of professional disciplinary bodies.

In *Law Society of Upper Canada v Lambert*, *supra*, a hearing panel for the Law Society of Upper Canada added that a profession's most valuable asset is its collective

reputation and this must be considered in determining an appropriate sanction. The hearing panel stated:

When determining the appropriate penalty for this misconduct, the panel is guided by the reasons or purposes for a penalty order in discipline matters set out in *Law Society of Upper Canada v. Strug* and in *Bolton, supra*, in which Sir Thomas Bigham M.R. stated at p.519, "A profession's most valuable asset is its collective reputation and the confidence which that inspires".

It was submitted that Mr. Sedgwick's conduct undermined the trust the public places in real estate professionals when they enter into agreements for services with industry members. Therefore, both a fine and suspension are required to maintain and protect public confidence in the Alberta real estate industry.

The role of the industry member in acknowledging what occurred

Mr. Sedgwick took responsibility for his actions and signed an agreement pursuant to section 46 of the *Real Estate Act*.

Impact of the incident on the complainant

The complainants incurred over \$3000.00 in expenses for a handwriting analysis and legal costs to hire counsel to withdraw from the fraudulent Agreement.

The complainants could not continue their search for a new home until they were able to negotiate a release from their Agreement with Mr. Sedgwick and the brokerage. They had to deal with the stress associated with closing the sale transaction on their existing home, as conditions remained that they had to satisfy while they were trying to end their relationship with Mr. Sedgwick and work with the brokerage.

General and specific deterrence

General deterrence refers to the effect a sanction issued in one case will have dissuading others to become involved in the same conduct. It was submitted that there was a need for general deterrence as industry members generally must recognize that harm to public confidence in the Alberta real estate industry comes with sanctions.

It was submitted that there was also a need for specific deterrence in this matter. Specific deterrence refers to the effect a sanction has to correct the conduct of the person who is sanctioned. Although Mr. Sedgwick did not have a discipline history and there was no evidence that he engaged in the same conduct prior to or after the investigation, his lack of acknowledgement of the gravity of his conduct and his willingness to lay blame with the complainants and their influence on his behaviour, required specific deterrence.

Mitigating circumstances

Mr. Sedgwick admitted he created a fraudulent Agreement and entered into an Admission of Conduct Deserving Sanction, reducing the time and expense of a hearing.

Previous sanctions in similar circumstances

Breach of *Real Estate Act* Rule 38(4)(a)

1. *Glen Checkley, supra*

This was an administrative penalty issued in June 2014. Mr. Checkley failed to respond to multiple requests for information from a RECA investigator. He eventually responded that he either would not provide the information or was unable to locate or produce records. He was found to breach section 38(4) of the *Real Estate Act* and was issued a penalty of \$10,000.00.

2. *Rajwant Kaur Banwait, supra*

This was a decision of a hearing panel in July 2014, with a decision on costs and sanction issued in October 2014. After Ms. Banwait received notice that she was the subject of a professional conduct review, she made some contact with the RECA investigator but neglected to provide requested information despite giving assurances that she would comply with the information requests. She was fined \$20,000.00 for two breaches of section 38(4) and Rule 41(h) of the *Real Estate Act Rules*.

3. *Aliya Lalji, 2016 RECA, supra*

This was a consent agreement ratified by a hearing panel in March 2016. Ms. Lalji was found to have breached *Real Estate Act Rules* 41(a) and 41(h). She provided an altered document to RECA during the investigation, was dishonest with RECA during the investigation, drafted a fraudulent letter to RECA and tried to influence possible witnesses in the investigation. She was fined a global sum of \$20,000.00 for breaches of Rules 41(a) and 41(h).

4. *Richard Palibroda, supra*

This was a consent agreement ratified by a hearing panel in January 2008. Mr. Palibroda was found to have breached *Real Estate Act Rule* 41(h) when he prepared a letter to the RECA Executive Director giving the appearance that he had made a disclosure to a different disciplinary body when he had not. He was fined a global amount of \$4,000.00 for breaches of the *Real Estate Act Rules* 15(3)(a), 40(1)(b), 41(h) and 38(4).

It was submitted that Mr. Sedgwick presented a forged document to RECA during the investigation in an attempt to mislead or deceive the RECA investigator which was similar to the conduct of Ms. Lalji and Mr. Palibroda.

It was also submitted that, similar to the conduct of Mr. Checkley and Ms. Banwait, Mr. Sedgwick did not provide documentation requested by the investigator, including a copy of a report from a document examiner. He claimed that he was unable to locate or produce a copy of the report, even though he included excerpts from the report in his written response to the RECA investigator.

Moreover, it was submitted that the conduct of Mr. Sedgwick was more egregious than that of Mr. Checkley and Ms. Banwait because they did not provide documentation to RECA as requested but Mr. Sedgwick provided information that was intentionally misleading. His actions were an attempt to influence the result of the investigation. Therefore, it was submitted that the appropriate sanction for the breaches of section 38(4)(a) of the *Real Estate Act* ought to be \$10,000.00.

Breach of *Real Estate Act* Rule 42(b):

1. *Christy Marsh, supra*

This was a consent agreement ratified by a hearing panel in December 2013. Ms. Marsh was found to have breached Rule 42(b) when she hired an unlicensed property inspector and provided him with a report from a previous property inspection so that he could use it as a template to create a false property inspection report for her client. She then provided this false inspection report to her client and lied about the method of payment for the report. She was fined \$7,000.00.

2. *Aliya Lalji, supra*

As cited above, this was a consent agreement ratified by a hearing panel in March 2016. Ms. Lalji was found to have breached Rule 42(b) for altering contracts, creating false documents and forging signatures on multiple documents that were relied on by third parties. She was fined \$20,000.00 for these breaches.

It was submitted that Mr. Sedgwick made false statements to his clients, his broker and to RECA during the investigation. Mr. Sedgwick was dishonest with multiple parties over time, in an attempt to cover his conduct and escape culpability, which was similar conduct to Ms. Marsh and Ms. Lalji.

It was also submitted that Mr. Sedgwick created a fraudulent Agreement which was conduct that was more egregious than that of Ms. Marsh. He was directly involved in the creation of a fraudulent document by copying and pasting the signatures of his clients from one agreement to another. Ms. Marsh participated in activities that led to a false document, but there was no clear indication that she solely created a forged inspection report.

Mr. Sedgwick's conduct was less egregious when compared to that of Ms. Lalji as his conduct was limited to the forgery of one document and not multiple documents. However, the inducement to create false documents to benefit the industry member was the same in both situations. Therefore, it was submitted that an appropriate sanction for Mr. Sedgwick's breach of *Real Estate Act Rule 42(b)* was \$15,000.00.

Suspension

It was submitted that the participation in fraudulent conduct, especially in creating false documents or forging signatures on documents, with the intention to mislead or deceive clients, other industry members and third parties was particularly egregious and harmful to the industry. As such, additional punitive measures, such as a suspension ought to be considered to encourage both specific and general deterrence. Similar suspension sanctions were imposed in the following cases:

1. Stephanie Yuen-Shen Fan, supra

This was a consent agreement ratified by a hearing panel in September 2012. Ms. Yuen-Shen Fan was found to have breached *Real Estate Act Rule 42(b)* for forging the signature of a tenant on a receipt for the return of a damage deposit on a property that she managed. She used this receipt to mislead the property owner to believe the tenant had received the funds when they had not. She was fined a global sum of \$12,000.00 and was suspended for 18 months.

2. Christy Marsh, supra

As cited above, Ms. Marsh was suspended for 3 months for breaching *Real Estate Act Rules 41(a), 41(b), 41(d) and 42(b) and 53(c)*. In regard to *Rule 42(b)*, she participated in fraudulent actions that led to a false inspection report that she presented to her client.

3. Aliya Lalji, supra

As cited above, this was a consent agreement ratified by a hearing panel in March 2016. Ms. Lalji was suspended for 18 months for breaches of *Real Estate Act Rules 42(a), 42(b), 41(h) and 41(a)*.

It was submitted that in consideration of the above cases, that an appropriate suspension of Mr. Sedgwick's authorization to trade in real estate under the *Real Estate Act* would be for a period of three months.

During the hearing Mr. Sedgwick read a statement to the Hearing Panel that stated, among other things, that he deeply regretted his conduct and was remorseful.

F. The Hearing Panel's Decision

Pursuant to section 47(2) of the Act, the admissions in the Admission of Conduct Deserving of Sanction document are deemed for all purposes to be a finding of this Hearing Panel and that conduct is conduct deserving of sanction. Accordingly, the Hearing Panel finds that Mr. Sedgwick engaged in conduct deserving of sanction, specifically that he breached Section 38(4)(a) of the *Real Estate Act* when he:

- presented a forged Agreement to the RECA investigator claiming it was an original document;
- made a misrepresentation to the RECA investigator that he had obtained a handwriting analysis report but failed to provide a complete copy of the report when requested;
- provided a false written statement to RECA stating the Agreement was signed and that he had an original version and continued to be dishonest in his written response and other communications throughout the investigation.

Mr. Sedgwick also breached *Real Estate Act Rule 42(b)* when he:

- lied to his client when asked if they had signed an Agreement;
- fraudulently created an Agreement by copying and pasting the initials and signatures of his clients from their Exclusive Seller Representation Agreement;
- lied to his broker when he questioned him about the Agreement, which was to his benefit and to ensure he would receive commission; and
- sent an email to the clients with the forged Agreement to convince his clients they had entered into a contract, which was to his benefit and to ensure he would receive commission.

The Hearing Panel considered the sanction that was jointly proposed by the parties and found it appropriate given all the factors to be considered as set out in *Jaswal, supra*.

The Hearing Panel also considered *R v. Anthony-Cook, supra* and the public interest test set out in that case. The public interest test states a trial judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest.

The authorities provided to the Hearing Panel supported the fines and suspension agreed to by the parties for breaches of the *Real Estate Act* and the *Real Estate Act Rule*. The Hearing Panel agrees that the educational course being proposed for Mr. Sedgwick to complete will assist him in performing services for his clients in the future.

G. Conclusion

Pursuant to section 47(2) of the *Real Estate Act*, the Hearing Panel has determined that Mr. Sedgwick engaged in conduct deserving of sanction. For the reasons set out in this decision, the Hearing Panel agrees with the sanction jointly proposed by the parties and pursuant to section 43 of the *Real Estate Act*, the Hearing Panel orders the following sanction:

- fine of \$10,000.00 for the breach of section 38(4)(a) of the *Real Estate Act*
- fine of \$15,000.00 for the breach of *Real Estate Act Rule 42(b)*
- three (3) month suspension of authorization to trade in real estate under the *Real Estate Act* commencing when the Hearing Panel's decision is issued
- completion of an educational upgrade course: Ethics, Professionalism and Risk Reduction within six months of the Hearing Panel's decision being issued; and
- costs of the investigation and proceedings in the sum of \$1590.00 which includes the cost of a forensic document examiner report.

This Decision is dated this 6th day of November, 2018.

Stan Mills, Hearing Panel Chair