

**THE REAL ESTATE COUNCIL OF ALBERTA**

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

**AND IN THE MATTER OF** Brandon James Antonini, a mortgage  
associate, currently registered with Mortgage Architects and  
formerly registered with Westcor Mortgages

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

Hearing Panel Members: Lynn Patrick, Chair  
Kevin Clark  
Cindy Dubray

Appearing: Drew Saly, Legal Counsel for the Executive  
Director  
Matthew Epp, Legal Counsel for Mr. Antonini

**I) INTRODUCTION**

A hearing concerning the conduct of Brandon Antonini ("Mr. Antonini") took place on April 5, 2011 by way of teleconference. The Hearing Panel consisted of Lynn Patrick (Chair), Kevin Clark, and Cindy Dubray. Drew Saly appeared as Legal Counsel on behalf of the Executive Director. Matthew Epp appeared as Legal Counsel on behalf of Mr. Antonini.

**II) ALLEGATIONS**

Mr. Antonini was before the Hearing Panel in order to answer the following allegations set out in the Notice of Hearing:

1. You have been an industry member since April 9, 2003.
2. From April 9, 2003 through to February 16, 2007, you were registered with Westcor Mortgages Inc. o/a Westcor Mortgages.
3. On February 26, 2007 you became registered with Mortgage Architects Inc o/a Mortgage Architects and you are presently registered with that brokerage.

4. J.W. owned of an older house at 517 23 Avenue NE, Calgary. A.B. owned a condo at 102, 112 23 Avenue SW, Calgary. Both are educated, employed and have good credit. J.W. and A.B. (“the Couple”) intended to build a new house together using equity from their existing properties. In July of 2006 they retained a builder to draft plans for a new home.
5. The Couple approached several banks and did advise of their plan to use proceeds from a mortgage to tear down J.W.’s house at 517 23 Avenue NE and build a new one on the site. They were unable to find a bank that could assist them.
6. In early January of 2007, the Couple met with Mr. Antonini. They advised Mr. Antonini of their intention to apply the value of their current properties toward a newly constructed home on the site of J.W.’s existing home.
7. On January 11, 2007, J.W. submitted an application for mortgage on his property through Westcor’s website.
8. On January 13, 2007, J.W. signed a mortgage application with Firstline Mortgages for a loan amount of \$294,912 with a property value of \$300,000. The purpose indicted on the application was “refinance”.
9. On January 14, 2007, you drafted and sent an email to the Couple which stated as follows:

Hi A.B. and J.W.,

A.B., as per your telephone request. This is a basic outline of the mortgage financing that will pertain to the new residence on 517 23<sup>rd</sup> Avenue NE.

Step 1

**An equity take out on J.W.’s residence at 517, 23<sup>rd</sup> Avenue NE.** This will be done 2 weeks prior to commencement of the demolishing of the structure. I will obtain an approval next week, and the mortgage will fund (funds released) two weeks prior to the tear down. The mortgage will be for 90% of the appraised value. Let’s assume a value of 320k. The mortgage will be for an approximate amount of 293760 including all CMHC fees. The mortgage will be fully open (no penalty when it is paid out), the principal and interest will be no more than \$1680.00 per month. The mortgage proceeds will yield approximately 160 – 170 k to facilitate draws to the builder. Once we receive a schedule from the builder we can determine when they are looking for draws, and how much they are expecting at each state of completion. When we receive this information we will know when to proceed to step 2.

Step 2

**An equity take out at 102, 112, 23<sup>rd</sup> Avenue SW.** This will be done when required (i.e.. the proceeds from step one are running out). We can remove up to 90% of the value of the condo. Let’s assume a value of

280k. The mortgage will be for an approximate amount of 257040 including all CMHC fees. The approximate amount of the Principal and Interest payment will be 1288.75 per month. The mortgage proceeds will yield approximately 120 – 130 k to facilitate further draws to the builder. The mortgage will be a 5 year fully discounted mortgage if you plan to keep the condo as a rental, or fully open if you are unsure or want to sell the condo upon completion of the new house.

### Step 3

**A new mortgage on 517, 23<sup>rd</sup> Avenue NE.** This will be done shortly before completion of the new home. This mortgage will replace the fully open financing we put on the property in Step 1. We will order an appraisal to determine value. If you decide to sell the condo, you can infuse the sale proceeds into the equity of the new home before or after possession. If you don't, there is not much difference in the size of the new mortgage (30k or so higher). This mortgage will be a hybrid (i.e. part fixed or variable rate, and part line of credit). This allows you to have access to 75% of the equity at all times for reduced future borrowing costs and efficient tax planning (Smith Manoeuvre). Once we have the documents from the builder I can tell you how much the mortgage is likely to be and what the payments will look like.

If you have any questions, do not hesitate to call.  
Brandon Antonini, AMP, B.Admin

10. On January 23, 2007, you prepared a Mortgage Summary for J.W. The mortgage amount was indicated to be \$294,912 secured by the property at 517 23 Ave NE. Comments to the lender stated "Insured refinance of existing principal residence for the purpose of investments".
11. On January 24, 2007, Firstline Mortgage, a mortgage lender, recorded the reason for the mortgage as "Refinance of Scotiabank mortgage for investment purposes."
12. You did not at any time inform Firstline Mortgage of the Couple's intention to tear down the existing house at 517 23 Ave NE.
13. Firstline Mortgage relied on information provided by you to approve the mortgage. Firstline would not have approved the mortgage to J.W. if informed of the intention to tear down the existing house.
14. On January 29, 2007, a mortgage commitment from Firstline Mortgage was provided to J.W. and on January 30, 2007 he signed the mortgage commitment from Firstline Mortgage for a loan amount of \$294,912.00 and an estimated property value of \$320,000.00.
15. On March 1, 2007, the Firstline Mortgages obtained CMHC approval to secure the mortgage.
16. On February 15, 2007, you terminated his consulting agreement with Westcor and thereafter moved to Mortgage Architects.

17. On February 28, 2007, J.W. replied by email to your email of January 14, 2007. Attached to the reply was the original email from you with J.W.'s reply as follows:

Hi Brandon,  
I received a letter confirming my mortgage insurance yesterday. I think we are close to the start point so I think we should proceed with step 1.  
Thanks,  
J.W.

18. As you were no longer with Westcor, this email was forwarded to the broker at Westcor. As a result of seeing your earlier email, J.W. was contacted by Westcor to advise that the mortgage could not proceed on the basis of tearing down the original house.
19. On March 6, 2007, Firstline was advised of the information about the intention to tear down J.W.'s house and the mortgage approval was cancelled. No funds were issued.
20. By reason of the matters described herein, your conduct is deserving of sanction as follows:
- (a) Participated in fraudulent activities contrary to **Rule 42(b)** and made representations or carried on conduct that is reckless or intentional and misleads or deceives any person or is likely to do so contrary to **Rule 42(a)** or in the:
- You knew of the Couple's intention to tear down the house at 517 23 Ave NE;
  - You obtained approval from a lender for a mortgage secured by both the house and land at 517 23 Ave NE;
  - You did not disclose to the lender that the mortgagor intended to use the proceeds of the mortgage to pay a builder to tear down the house and build a new house prior to submitting the mortgage application for approval or at any time prior to approval.
  - The Lender relied on information that was provided to them by you in making the decision to approve the mortgage.
  - The Lender would not have approved the mortgage if they had known the mortgagor was intending to tear down the house and relied on the information provided to them by you when approving the mortgage application.

### III) EVIDENCE

The Hearing Panel received a signed Admission of Conduct Deserving of Sanction pursuant to section 46 of the *Real Estate Act* from Mr. Antonini. Schedule A was attached to the signed Admission of Conduct Deserving of Sanction which set out the following:

## Schedule "A"

1. From April 9, 2003 through to February 16, 2007, I was registered with Westcor Mortgages Inc. o/a Westcor Mortgages.
2. J.W. was owner of an older house at 517 23 Avenue NE, Calgary. A.B. was owner of a condo at 102, 112 23 Avenue SW, Calgary. Both have good credit. J.W. and A.B. ("the Couple") intended to build a new house together using equity from their existing properties. In July of 2006 they retained a builder to draft plans for a new home.
3. The Couple approached several banks and advised of their plan to use proceeds from a mortgage to tear down J.W.'s house at 517 23 Avenue NE and build a new one on the site. They were unable to find a bank that could assist them.
4. On January 11, 2007, J.W. submitted an application for mortgage on his property through Westcor's website.
5. The Couple then made contact with me. They advised me of their intention to apply the value of their current properties toward a newly constructed home. I was aware that an option they were considering was to build a new home on the site of J.W.'s existing home.
6. On January 13, 2007, J.W. signed a mortgage application with Firstline Mortgages for a loan amount of \$294,912 with a property value of \$300,000. I indicated on the application that the purpose of the mortgage was "refinance".
7. On January 23, 2007, I prepared a Mortgage Summary for J.W. The mortgage amount was indicated to be \$294,912 secured by the property at 517 23 Ave NE. I entered comments to the lender as follows: "Insured refinance of existing principal residence for the purpose of investments".
8. J.W.'s mortgage application was submitted to Firstline Mortgage, a mortgage lender.
9. On January 24, 2007, Firstline Mortgage recorded the reason for the mortgage as "Refinance of Scotiabank mortgage for investment purposes."
10. I did not inform Firstline Mortgage of the Couple's intention to tear down the existing house at 517 23 Ave NE.
11. On January 29, 2007, a mortgage commitment from Firstline Mortgage was issued to J.W. and on January 30, 2007 J.W. signed the mortgage commitment from Firstline Mortgage for a loan amount of \$294,912.00 and an estimated property value of \$320,000.00.
12. On March 1, 2007, Firstline Mortgages obtained CMHC approval to secure the mortgage for J.W.

13. On March 6, 2007, Firstline Mortgage was advised of J.W.'s intention to tear down the house at 517 23 Avenue NE and cancelled the mortgage approval. No funds were issued.

By reason of the matters described herein, I made a representation that was reckless and misled a person contrary to Rule 42(a) of the Rules and this is conduct deserving of sanction

Mr. Antonini admitted to the facts and conduct set out in Schedule A and admitted as well that this conduct was conduct deserving of sanction. Mr. Saly advised that the Executive Director was not proceeding with the allegations set out in the Notice of Hearing and only with the sole allegation of a breach of Rule 42(a) of the *Real Estate Act Rules* as set out in Schedule A.

#### **IV) SUBMISSIONS**

Counsel on behalf of Executive Director and counsel on behalf of Mr. Antonini advised that they were jointly proposing a submission on Sanction and Costs for the Hearing Panel's consideration. The proposed Joint Submission was as follows:

- That Mr. Antonini pay a fine in the amount of \$10,000.00;
- That Mr. Antonini pay costs in the amount of \$3,000.00; and
- That Mr. Antonini complete the Professional Conduct course within 6 months from the date of the Hearing Panel's decision

Prior to the Hearing, both counsel jointly provided written submissions with respect to the proposed Joint Submission. These submissions were orally summarized by Mr. Saly on behalf of both parties at the hearing.

The mitigating factors present in this case were summarized by Mr. Saly as follows:

- Mr. Antonini was coming before the Hearing Panel without any prior disciplinary history.
- Mr. Antonini was very cooperative during the investigations process.
- With respect to the mortgage transaction, no funds were issued and the lender in this case continues to do business with Mr. Antonini.
- The borrowers in this case made no complaint against Mr. Antonini regarding his conduct and they did not suffer any financial loss as a result of the conduct.

The aggravating factors that were present in this case were summarized by Mr. Saly as follows:

- Full and accurate disclosure to a lender of the purpose of the intended mortgage funds is important, both to maintain the integrity of the mortgage market and also to ensure that mortgage commitments to borrowers, once given, can be relied on by the borrower in pursuing their transaction.
- Mr. Antonini was an experienced industry member when these events took place and as such was well aware of the need to be accurate in disclosing the purpose for which borrowers are seeking mortgage funds to the lender.
- The obligation to communicate true and complete relevant information in the mortgage application process is a serious one and this message must be communicated to the industry.

Counsel for the Executive Director and counsel for Mr. Antonini provided the Hearing Panel with several cases for the Hearing Panel's consideration. The first case submitted was *Jaswal v. Newfoundland (Medical Board)* which Mr. Saly submitted sets out factors that a Hearing Panel can properly consider when coming to a decision on sanction. The factors enumerated in the decision are:

- the nature and gravity of the proven allegations;
- the age and experience of the offending member;
- the previous character of the member and in particular the presence or absence of any prior complaints or convictions;
- the age and vulnerability of the complainant or party harmed;
- the number of times the violation was proven to have occurred;
- the role of the member in acknowledging what had occurred;
- whether the offending member had already suffered other serious financial or other penalties as a result of the allegations having been made;
- the impact of the incident on the complainant or other victim;
- the presence or absence of any mitigating circumstances;
- the need to promote specific and general deterrence and, thereby, to protect the public and ensure the safe and proper practice in the industry;
- the need to maintain the public's confidence in the integrity of the industry;
- the degree to which the offensive conduct that was found to have occurred was clearly regarded, by consensus, as being the type of conduct that would fall outside the range of permitted conduct; and
- the range of sentence in other similar cases.

Counsel for the Executive Director and for Mr. Antonini also submitted 3 RECA Hearing Panel decisions for the Hearing Panel's review in support of the proposed joint submission.

In ***David Agema***, the industry member created a false invoice for a dishwasher which was meant to hide a monetary inducement that Mr. Agema had made. The

Hearing Panel sanctioned Mr. Agema by way of a fine in the amount of \$7,500.00.

In **Castle Kwan**, Mr. Kwan was a mortgage associate who had created a false Notice of Assessment in order to qualify for a mortgage. Mr. Kwan had been in the industry for 2 years when these events took place. The Hearing Panel sanctioned Mr. Kwan by way of a fine of \$10,000.00 along with a suspension of Mr. Kwan's authorization to deal in mortgages for a period of one year.

It was jointly submitted that Mr. Antonini's case seemed to fall somewhere between both of these previous cases.

The **Jeff Campbell** case was also submitted for the Hearing Panel's review as well. In this case, Mr. Campbell was found to have participated in fraudulent activity by failing to disclose his intentions to the mortgage lender. The Hearing Panel in this case sanctioned Mr. Campbell by way of a fine in the amount of \$5,000.00 and a suspension of 2 months.

It was submitted that Mr. Antonini's conduct was reckless as opposed to being motivated by profit. There was no benefit that would have been attained by Mr. Antonini by pursuing this conduct and there was no deliberate scheme to obtain financing which was not warranted by the value of the property. For these reasons, the Executive Director was not seeking a suspension in this particular case but instead was seeking the imposition of a significant fine.

## **V) REASONS and ORDER**

On the basis of the returned Admission of Conduct Deserving of Sanction and section 47(2) of the *Real Estate Act*, the Hearing Panel finds that Mr. Antonini's conduct was in breach of section 42(a) of the *Real Estate Act Rules* and that this conduct is conduct deserving of sanction.

The Hearing Panel accepts the Joint Submission put forth by both Mr. Saly and Mr. Epp and believes the sanction proposed by both parties to be reasonable. The Hearing Panel notes that this was a case where there was no loss or harm suffered by any member of the public and that while Mr. Antonini's actions were reckless, he did not undertake his activity as a result of being motivated by profit. We also note that no party made money or lost money as a result of the events that took place. There was also no intent to misrepresent or commit fraud. For all of these reasons, we would agree that a suspension of Mr. Antonini's authorization to deal in mortgages is not necessary in this situation.

There are aggravating factors as well, as pointed by Mr. Saly, namely that the integrity of the borrowing market must be maintained and as such, activity that is dishonest either by way of intent or recklessness must warrant a significant

penalty. The Hearing Panel feels that this is a case where the sanction needs to send a message of general deterrence to the industry and we feel that this sanction which includes the imposition of a significant fine accomplishes this.

The Hearing Panel orders the following:

- That Brandon Antonini pay a fine in the amount of \$10,000.00;
- That Brandon Antonini pay costs in the amount of \$3,000.00; and
- That within 6 months from the date this decision is served on Mr. Antonini, Mr. Antonini must complete the Professional Conduct course or if this course is unavailable a similar course at the sole discretion of the Executive Director, within 6 months from the date of this Hearing Panel's decision.

This decision was made on April 20, 2011.

*Lynn Patrick, Chair*

*Kevin Clark*

*Cindy Dubray*