

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, as amended

AND IN THE MATTER OF a Hearing concerning the conduct of Gerard Yoofi Hagan, formerly registered as a real estate associate with XCD Realty Inc. o/a XCD Realty Inc. and currently registered with Sterling Realty (Alberta) Ltd. o/a Sterling Real Estate as a real estate associate

Hearing Panel Members: Robert Telford
Cheryl King
Eric Stewart

Appearing: Drew Saly on behalf of the
Executive Director
Gerard Hagan on his own behalf
S.P.

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

I) INTRODUCTION

A hearing concerning the conduct of Gerard Hagan, real estate associate registered with XCD Realty Inc. o/a XCD Realty Inc. and currently registered with Sterling Realty Alberta)Ltd. 0/a Sterling Real Estate was held via teleconference on July 13, 2010. The Hearing Panel consisted of Robert Telford, Cheryl King and Eric Stewart. Drew Saly acted as counsel on behalf of the Executive Director and Gerard Hagan acted on his own behalf. Mr. Hagan was accompanied by his broker, S.P..

II) ALLEGATIONS

Mr. Hagan was called to hear the following allegations:

1. On April 10, 2001, you were charged with 3 counts of contravening the Criminal Code of Canada. The charges were as follows:

Count 1

Between the 7th day of April, 2001, and the 9th day of April 2001, both dates inclusive, at or near Edmonton, Alberta, did unlawfully and fraudulently personate M.O. with intent to gain advantage for himself, to wit: obtain a motor vehicle, contrary to section 403(a) of the Criminal Code of Canada.

Count 2

On or about the 7th day of April, 2001, at or near Edmonton, Alberta, did knowing that a document, to wit, a forged cheque, was forged, unlawfully use, deal with or act upon the said document as if it were genuine. Contrary to section 368(1)(a) of the Criminal Code of Canada.

Count 3

On or about the 9th day of April, 2001, at or near Edmonton, Alberta, did, knowing that a document, to wit: a forged cheque, was forged, unlawfully use, deal with or act upon the said document as if it were genuine, contrary to section 368(1)(a) of the Criminal Code of Canada.

2. On June 11, 2001, you pled guilty to Count 1 and Count 2 and you were given a conditional sentence of 18 months probation with restrictions on travel, a curfew as well as an order to refrain from use of drugs or alcohol.
3. Count 3 was withdrawn by the Crown Prosecutor.
4. On May 28, 2005, you completed a Real Estate Agent / Associate Broker Registration Application. The form instructs as follows:
Please read each of the following questions carefully and answer truthfully.
5. You answered Question 20 as follows:
In the last **FIVE** years, have you been convicted of any offence under any law of any Country, Province or State (excluding traffic violations)? **No**
6. You then completed the Affidavit attached to this application form. The Affidavit instructs as follows:
Note: All questions must be answered completely and truthfully. The making of a false statement on this Affidavit constitutes a Criminal Offence and is punishable by law. Any Affidavit containing false or misleading information may result in the refusal of this application and the suspension or cancellation of any authorization issued thereupon.
7. In the Affidavit you swore as follows:
I, Gerard Hagan of the City of Edmonton in the Province of Alberta, Do Solemnly Swear as Follows:
 1. I have read and understand all questions and statements. All information on this application is true.
 2. I understand and accept the duties and responsibilities of an Agent/Associate Broker as set out in Rule 23.
 3. I agree to comply with the Real Estate Act, Rules, Code of Conduct and laws that apply to all industry members trading in real estate in Alberta.Sworn before me at the City of Edmonton in the Province of Alberta, This 28 day of May AD 2005.
8. In reliance on the contents of this Application you were issued a Registration Certificate by the Real Estate Council of Alberta on May 31, 2005, thereby allowing you to trade in real estate in Alberta as an industry member.
9. On September 15, 2005, you signed a Registration Renewal form on which you declared as follows:
Part E Declaration
I understand and accept the responsibilities of an agent as set out in the Rules. I agree to comply with the *Real Estate Act*, Rules, Code of Conduct and laws that apply to all industry members trading in real estate in Alberta. I have read and understand all questions and statements. All information on this application is true. I hereby apply for renewal of my agent / associate broker licence for the 2005/06 licensing period.
10. On September 7, 2007, you completed another Application for Licence Registration. Part C instructs as follows:
These questions apply to any and all situations and/or events preceding the date of this application. Please read each of the following questions carefully and answer truthfully:

11. You answered Question 20 as follows:
20. Have you been found guilty or convicted of any criminal offence or any other offence under any law of any country, province or state, excluding offences for which a pardon has been granted or provincial or municipal highway traffic offences resulting in monetary fines only? **NO**
12. As part of this Application you also swore an Affidavit concerning the truth of your answer. The Affidavit instructs as follows:
All questions must be answered truthfully and completely. Making a false statement on this affidavit constitutes a criminal offence and is punishable by law. Any affidavit containing false or misleading information may result in the refusal of the application and suspension or cancellation of any authorization issued thereupon.
13. You swore the following Affidavit:
I Gerard Hagan ... Do Solemnly Swear I have read and understand all questions and statements. All information on this application is true.
14. In reliance on the contents of this Application you remained authorized by RECA to trade in real estate as an industry member.
15. By reason of the matters described herein your conduct is deserving of sanction as follows:
- (a) Obtained authorization to trade in real estate by fraud as follows:
- Pursuant to s.17 of the *Real Estate Act* and section 4(4) of the Rules in force May 28, 2005 made pursuant to the *Real Estate Act*, no person may trade in real estate or hold himself out as a real estate associate without authorization;
 - You provided a false answer concerning your prior criminal conviction in an authorization application;
 - You then swore falsely in your Affidavit that your “no” answer concerning any prior criminal conviction was true;
 - RECA relied on this answer and attestation of its truth to issue an authorization to you.
- (b) Obtained renewal of registration by fraud and/or contrary to **section 41(a) of the Rules and/or section 42(a) and (b) of the Rules made pursuant to the *Real Estate Act*** as follows:
- Pursuant to s.17 of the *Real Estate Act* and section 6(4) of the Rules in force September 7, 2007 made pursuant to the *Real Estate Act*, no person may trade in real estate or hold himself out as a real estate associate without authorization;
 - Pursuant to Rule 6(3) a real estate associate may renew a registration certificate prior to September 30 in a calendar year;
 - You provided a false answer concerning your prior criminal conviction in an authorization renewal application;
 - You then swore falsely in your Affidavit that your answer concerning your prior criminal conviction was true.
 - RECA relied on this answer and attestation of its truth to renew authorization to you.

III) EVIDENCE

The Panel received an Admission of Conduct Deserving of Sanction pursuant to s. 46 of the *Real Estate Act* from Mr. Gerard Hagan. In the document, signed by Mr. Hagan, he admitted to the allegations of fact and a breach of provisions of the *Real Estate Act Rules* as contained in the Notice of Hearing and admitted that his conduct in this regard was conduct deserving of

sanction. Three documents were entered as exhibits; the Notice of Hearing, exhibit 1, the Affidavit of Service, exhibit 2 and the signed s.46 Admission of Conduct Deserving of Sanction which is attached to this decision.

IV) SUBMISSIONS

Counsel on behalf of the executive director reviewed the facts as outlined in the signed s.46 Admission. Mr. Hagan had two criminal counts against him from 2001 when he first applied to RECA for authorization and again on a second application. On both applications he answered no to the question which asked about a criminal conviction and he swore affidavits on each occasion that the answers he gave were true. In all cases when there is an incorrect answer to this question, it prevents the executive director from doing his job in reviewing an application and addressing questions that may arise about the suitability of a person to enter the industry. The sanctions in the precedent cases given were varied. In the case of a bankruptcy not being reported, the sanction tended to be a bit lower but in cases of criminal charges not being reported was much higher. Some industry members have said they filled out the form too quickly or did not turn their minds to it properly. The question is often whether this is a matter of human failing or a deliberate intent to deceive. In this case where Mr. Hagan has deliberately withheld the information on two instances, the panel needs to consider cancellation which will remove the license and registration. Mr. Hagan would then have to re-apply and the registrar would then be able to make the determination of Mr. Hagan's suitability which is what should have happened in the first instance. If the panel does not consider cancellation then it should consider a 6 month suspension, a fine of \$2,500.00 and costs of \$1,500.00. Mr. Hagan signed the s.46 saving time for all parties concerned by taking that step.

S.P. spoke on behalf of Mr. Hagan. Since Mr. Hagan joined his brokerage, he had had no complaints of Mr. Hagan from the public. He did discuss the matter with Mr. Hagan after he learned about it. Mr. Hagan was a younger man and he did commit a crime but has a clean track record since then. Mr. Hagan is currently undergoing some serious health issues having had brain surgery for a tumour and recently had a baby. He does have a family to maintain. Mr. Hagan loves the real estate industry and has been a very good realtor. S.P. wanted the Panel to consider this when making their decision.

Mr. Hagan informed the Panel that he was given an 18 month conditional sentence as the court felt he wasn't a risk to the public and they allowed him to serve his sentence in the public with a curfew and reporting to a probation officer. This flipped the switch for him and changed his life around. He admitted to what he did, it is in the past and he has to move on. Mr. Hagan did admit to the Panel that he did intentionally make a false statement at the time of his application. Mr. Hagan was out of the country when he believed he agreed to a sanction of a 1 month suspension, a fine of \$2,000, costs and education. He informed Mr. Saly that he would sign when he returned. However, upon his return, Mr. Hagan learned that the Executive Director would be submitting a different sanction.

Counsel on behalf of the executive director responded by informing the Panel that all the communications between Mr. Hagan and himself were marked 'without prejudice' and intended only as a starting point in bringing about a resolution. The emails were not an agreement and counsel received instructions to proceed in a different manner before anything was signed. At any rate, the submissions are just that and regardless of the amount and type are not binding on

the Panel. The circumstances in this matter are live issues – someone does something when they are younger and it follows them around. There was an intention on Mr. Hagan’s part to deceive RECA and because of that there was a lack of opportunity for the registrar to inquire about how Mr. Hagan was now.

III) FINDINGS

On the basis of the returned Admission and section 47(2) of the *Real Estate Act*, the Hearing Panel finds that the conduct of Gerard Hagan is conduct deserving of sanction.

IV) ORDERS

The panel realizes the seriousness of the conduct admitted to by Mr. Hagan. However they believe that Mr. Hagan has rehabilitated himself since his criminal activity, he has served his debt to society and based on submissions by his broker he has served the public well since his authorization to deal in real estate was issued with absolutely no customer complaints. In addition he has completed the requirement for his real estate license and has been active in the industry for almost 5 years. Despite this rehabilitation the panel must still consider the conduct admitted to by the defendant regarding the swearing of false affidavits and the completion of inaccurate applications.

As a result of these findings of conduct deserving of sanction, and after due consideration of the submissions made by the parties regarding sanction, the Panel hereby orders the following sanctions which it considers to be reasonable, namely:

- 1) Mr. Hagan shall pay a fine of \$2,500.00.
- 2) Mr. Hagan shall pay costs of \$1,500.00.
- 3) Mr. Hagan’s authorization to deal in real estate shall be suspended for a period of 1 month.
- 4) Mr. Hagan shall complete Ethical Practices in Real Estate or a similar course as directed by the executive director within 6 months of this decision.

This Decision was made on 23rd July, 2010

Robert Telford, Chair

Cheryl King

Eric Stewart