

## 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 Kassem Mohamed Jarrah, Formerly a real estate associate registered with Twin Oakes Real Estate 1993 Inc. operating as Re/Max House of Real Estate and currently unregistered

Hearing Panel Members:           Lynn Patrick, Chair  
  Dennis Shandruk  
  Ralph Salomons

Appearing:                           Drew Saly, counsel on behalf of the Executive Director

Hearing Date:                       November 12, 27, 2009  
  February 4, 2010

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

#### II) INTRODUCTION

The hearing into the matter of Kassem Mohamed Jarrah commenced via teleconference on November 12, 2009. Mr. Jarrah was not present at that time and the Panel requested that the Executive Director submit documentation outlining the service of the Notice of Hearing. The Panel adjourned the hearing until November 27, 2009 at 9:30 am. On November 27, 2010, the hearing reconvened with evidence presented by the Executive Director concerning service. On December 8, 2010, the Panel issued a written decision stating they were satisfied that service had been effected correctly and under the legislation. The Panel ordered the hearing be reconvened on February 4 at 9:30 am. Mr. Jarrah was not present on February 4, 2010 as he was not in the country. However he was provided with information that would allow him to participate via teleconference if he choose to do so.

#### II) ALLEGATIONS

Mr. Jarrah was called before a Hearing Panel to answer to the following allegations set out in the Notice of Hearing:

1. In **December of 2003**, S.R., a paralegal with [(a "law office")] whom you knew at the time, gave A.S. your name and contact information.
2. A.S. contacted you and you agreed to meet with him.

3. During a meeting with A.S. at a Tim Horton's store on 52<sup>nd</sup> Street, south of 16<sup>th</sup> Avenue NW in Calgary, you spoke of A.S.'s plan to purchase a property for the purpose of renovating and then selling for a profit.
4. You further met with A.S. on or about **January 5, 2004** at the same Tim Horton's and had further discussions regarding the renovation of properties for profit.
5. As a result of these meetings and statements you made, A.S. *formed the belief* that you had agreed to assist A.S. to obtain financing to purchase a property which A.S. would then renovate and sell with A.S. and you dividing any profit from the sale.
6. At or about this time, A.S. contacted real estate associate A.M. registered with Re/Max Real Estate Central, to assist A.S. in finding a property to purchase and renovate.
7. On **January 8, 2004**, Re/Max Real Estate Central obtained a listing from The Royal Bank as seller for a property at 6043 Madigan Drive NE ("the Property"). The property was a foreclosure property which was what A.S. was looking for.
8. A.M. made an appointment with A.S. to view this property at 3:00 pm on **January 12, 2004**.
9. A.S. called you on January 12, 2004, to advise you of this appointment. As a result you attended this appointment to view the property and identified yourself as A.S.'s "partner".
10. While viewing the property you did not identify yourself to A.M. as an industry member.
11. During the viewing, you and A.S. had discussions following which you suggested that A.S. make an offer on the Property which A.S. did. You knew that A.S. had made an offer and the price of the offer. You also made representations to A.S. such that A.S. formed the belief at this meeting that you would make arrangements to obtain financing for the purchase.
12. On **January 12, 2004**, A.M. prepared Real Estate Purchase Contract #196900 naming A.S. as buyer. The offered purchase price offered was \$137,500 with new financing of \$101,250 to be approved by January 22, 2004 and with possession on February 15, 2004. This contract was accepted January 13, 2004, with final signing on January 14, 2004.
13. On **January 15, 2004**, an amendment to contract 196900 was made dividing the initial deposit of \$3000 into two payments of \$1500.00.
14. On or about **January 15, 2004** A.S. asked to borrow \$750.00 from S.R., paralegal at [(a "law office")]. S.R. obtained the money from you in the form of a personal loan from you to S.R..
15. You were aware that this loan to S.R. would be provided to A.S. to be used as the deposit for the Madigan property.
16. On **January 17, 2004**, A.S. left Calgary due to a family matter and advised A.M. that you would arrange the financing to complete the purchase of the Property by A.S.. You made no arrangements for financing.
17. On **January 21, 2004**, with knowledge of the A.S. offer, you prepared an offer for the Property on Real Estate Purchase contract 0171738291 on behalf of buyer H.E.. This was for a purchase price of \$138,000 with new financing of \$96,000 to be approved by January 26, 2004 and possession by February 17, 2004.
18. H.E. is your son-in-law.

19. At this time, there was some concern on your part as to whether Re/Max Real Estate Central would receive and present the offer by H.E. on the Madigan property given that the A.S. offer had been accepted but was still conditional. At this time you spoke with your broker delegate, G.M., concerning how to present the H.E. offer.
20. You did not advise G.M. that H.E. was your son-in-law nor did you advise G.M. of your prior association with A.S. and the accepted offer on the property.
21. On **January 21, 2004**, you sent offer 0171738291 by fax to *the attention of M.S.*, broker with Re/Max Real Estate Central requesting "Please present this offer as a backup offer I have client who insist on sending this offer. Please let me know. Thank you."
22. Neither the fax nor the offer disclose that you and the seller are related.
23. The H.E. offer was accepted as a backup offer by the seller.
24. On **January 22, 2004**, CIBC issued a letter to A.S. stating that the bank was "unable to provide mortgage financing due to your credit history."
25. A.S. was not able to waive the conditions of his contract and the H.E. offer was accepted. H.E. obtained title to the property on **February 10, 2004**.
26. On **March 18, 2004**, H.E. signed listing agreement 0172150380 authorizing Twin Oakes Real Estate 1993 Inc. operating as Re/Max House of Real Estate ("Re/Max House") to act as his agent with you representing Re/Max House.
27. At this time you did not inform your broker that you were related to H.E..
28. On **March 18, 2004**, you posted the H.E. listing on MLS and did not disclose on this listing that you were related to the seller.
29. On or about **March 23, 2004**, you met with A.S. to receive an offer from A.S. to purchase the property from H.E..
30. You did not disclose to A.S. that you were related to H.E..
31. There were three offers made by A.S. to H.E. to which you assisted H.E. in making counter offers.
32. You did not provide copies of these offers from A.S. and the counter offers by H.E. to you brokerage.
33. On **March 25, 2004**, H.E. signed a termination of listing agreement 0172150380.
34. From the time A.S.'s purchase contract was accepted until the property was sold to H.E., A.S. believed that he would be renovating the property and purchased kitchen cabinets and carpet. These cabinets and carpet were delivered to the property.
35. On **April 1, 2004**, A.S. sold the cabinets and carpet to you for \$2000.00.
36. You did not inform his broker of this purchase.
37. On **March 23, 2004**, A.S. wrote a letter to M.Z., broker with Re/Max House, complaining about your conduct with respect to the Madigan property.
38. On **March 29, 2004**, A.S. filed a lawsuit naming you and H.E.. You filed a Defence to this action on April 14, 2004.
39. At some time following receipt of A.S.'s complaint M.Z. convened a meeting with G.M., broker delegate, and yourself to obtain information from you regarding the complaint. During this meeting you did not inform M.Z. or G.M. of the following:

- That you had been involved in discussions with A.S. regarding the purchase and renovation of properties and that A.S. had formed some expectations as to assistance that you would provide with respect to financing;
- That you had provided money to S.R. knowing that it would be used by A.S. as part of the paid by A.S.;
- That you had knowledge of the A.S. offer and A.S.'s financing situation when drafting H.E.'s offer and used that knowledge to make an offer that was \$500 more than the A.S. offer; and
- That H.E. was your son-in-law.

Rather, you only represented to M.Z. and G.M. that A.S. was intent on some plan of extortion and denied all allegations in the complaint related to your involvement with A.S..

40. As a result of a subsequent complaint to RECA by A.S. an investigation was commenced into the Madigan property transaction and information was obtained that you had not disclosed a family relationship in the foregoing transaction. As a result the investigation was expanded to examine other transactions involving family relations.

#### 308 Whiteland Drive NE

41. On **January 5, 2003**, you obtained a listing for a property at 308 Whiteland Drive NE, Calgary, which was owned by your wife, A.J.. You did not disclose on the MLS posting that you were related to the seller.
42. On **January 6, 2003**, you prepared Real Estate Purchase Contract 186168 identifying yourself as agent for both buyer and seller on this property. You did not disclose in writing that you were related to the seller nor did you obtain written consent to act in dual agency. On January 20, 2003, you obtained an acknowledgment of disclosure signed by only one buyer.
43. In the purchase contract the amount of the deposit was inserted after the contract was executed. You did not obtain initials to this change to the executed contract.

#### 123 Templevale Place NE

44. On **January 31, 2003**, you prepared Real Estate Purchase Contract 186170 as agent for both buyers and sellers of a property at 123 Templevale Place NE, Calgary. This contract discloses in writing "The Buyers are related to the Realtor who is both the Selling and Listing Realtor".
45. You did not obtain written consent to dual agency.

#### 384 Whiteridge Crescent NE

46. On **February 17, 2003**, you acted as agent for your son U.J. as buyer in the purchase of 384 Whiteridge. You did not disclose in writing on the purchase contract that you were related to the buyer.
47. This relation was disclosed on a separate piece of paper created subsequently and this disclosure was not provided to your brokerage as a trade record.

#### 240 Whitestone Crescent NE

48. On **May 5, 2004**, acting for your daughter and son-in-law as buyers, you prepared a purchase contract for purchase of this property. The offer was accepted though you did not disclose in writing your relation to the buyers. On an amendment on May 18, 2004, you disclosed that you were related.

#### 504 Whitehill Place NE

49. On **June 5, 2003**, you executed a Listing Agreement on behalf of Re/Max House between Re/Max House and your son M.J.. On the MLS listing you did indicate that you were related to the owner. You did not however advise your broker that M.J. was your son. The buyer was also your son, U.J..
50. **June 8, 2003**, you prepared Real Estate Purchase Contract 241508, acting as agent for both buyer and seller. You did not obtain written consent to act in dual agency.

#### 75 Whitefield Close, NE

51. On **June 5, 2003**, Seller A.B. signed a listing contract with Re/Max House represented by you. On **June 8, 2003**, A.B. consented to you acting in dual agency. On **June 10, 2003**, you acted for your son, U.J., and prepared an offer which was accepted thereby selling A.B.'s property to "U.J. or S.K. and / or Nominee".
52. You did not disclose that you were related to the buyer U.J..
53. You did not advise your brokerage that you were acting for your son in this transaction.
54. You did not amend the contract to nominee 1049217 Alberta Ltd. a company registered on **May 28, 2003** with U.J. as sole director. Notwithstanding the property was transferred to this company on June 18, 2003.
55. You did not advise your brokerage that this company had purchased the property.

#### U.J. Concurrent Purchases

56. At all times material hereto, your son, U.J., resided with you at 384 Whiteridge Crescent, NE.
57. U.J. purchased 75 Whitefiled Close NE on **June 10, 2003** and his company took title on **June 18, 2003**, for \$154,358 cash and mortgage. The mortgage assumed was for \$146,858.

58. U.J. also purchased *504 Whitehill Place NE June 8, 2003*, taking a transfer of title on **July 17, 2003**, for \$133,500 cash and mortgage with the mortgage in the amount of \$131,581.
59. You drafted the purchase contracts for both transactions and acted as agent for U.J. and M.J.. You were aware that to obtain financing for 504 Whitehill Place U.J. would be required to provide the lender with an undertaking or representation that he, U.J., intended to reside at 504 Whitehill Place NE. You were further aware that U.J. did not move out of 384 Whiteridge Crescent, NE and continued to reside there throughout his ownership of 504 Whitehill Place NE.
60. You failed to advise your broker of this information.

#### Failure to Cooperate During an Investigation

61. As a result a complaint made by A.S. concerning Jarrah's conduct, a letter notifying you of an investigation dated July 6, 2005, was sent by investigator R.L..
62. A further letter dated December 1, 2005, requesting specific records and information from you, was then sent to you by investigator R.L.. This letter requested that you provide RECA with the following:
  - A detailed list of all trades where you have acted as an agent on behalf of family or business associates. Please include the addresses for these properties, copies of all document or records you may have in relation to these properties, and an explanation detailing whether or not you disclosed your relationship to all parties involved in the transaction.
  - As discussed on November 30, 2005, please provide a copy of your cell records for the following period; December, 2003, and January to April, 2004.
  - A list of all Corporations, Businesses, Partnerships or other similar organizations of which you are currently involved in or have been involved.
  - A complete list of all properties of which you have an interest either owned, co-ownership, partnerships or similar relationships in Alberta. This may include an interest in residential, commercial or rural properties, personal interest in a business, development or project as related to real property in Alberta.
  - A detailed list of your personal bank account numbers with institutions within Canada, including accounts where you possess signing authority. Please include the location of these accounts including the address information for the branch office where these accounts are currently serviced.
  - Provide a copy of the cancelled cheque for funds (\$750) you provided to S.R. on or about January, 2004. If the funds were provided in cash, please provide a copy of your bank statement indicating the withdrawal for this purpose. Please include an explanation for the provision of these funds to S.R..
63. A further letter dated December 12, 2005, requesting specific records and information from you, was sent to you by RECA investigator R.L., requesting the following:
  - A detailed list of all clients and/or persons where you provided interim financing in relation to a trade in real estate. Please include in your explanation contact information – addresses, phone number etc...; details of the properties for which the financing was provided; copies of all documents created during the course of providing these funds (contracts, bank records etc.); copies of your financial records indicating the transfer of funds for the purposes of interim financing including copies of cancelled cheques, deposit records indicating repayment, records detailing any interest received above principal; copies of all records including correspondence you may have had with S.R. in relation to

the provision of interim financing; copies of financial records in relation to \$750.00 you provide to S.R. on or about January, 2004; and your explanation as to whether or not you notified your broker of your role in providing interim financing to persons in relation to a trade in real estate. If the funds detailed in this request were not provided by you directly but were provided by a corporation or business in which you possess an interest please detail this and include all the previous information requested.

- Please sign a waiver of confidentiality regarding all records held by [(a "law office")], 4909 – 17<sup>th</sup> Avenue SE, Calgary, in relation to your provision of interim financing to clients and/or persons in relation to trades in real estate. Please ensure this waiver details a waiver of confidentiality regarding finances you provided whether or not these monies were provided from your personal funds or those funds held by a corporation in which you hold an interest.

64. You did not provide the requested records.

65. By reason of the matters described herein, your conduct is deserving of sanction in that you:

6034 Madigan Drive NE, Calgary

(a) Failed to act fairly, honestly and with integrity with a non-client, A.S., contrary to **section 7(b) of the Code of Conduct**, as follows:

- You were reckless in word and conduct such that you knew or ought to have known that A.S. believed you had agreed to provide financing or otherwise participate in the purchase of Madigan Property;
- You mislead or in the alternative were reckless in failing to ensure A.S. understood your position with respect to the Property (see para 3, 4, 5, 11, 14, and 15);
- As a result of A.S.'s reliance on your representations and conduct, you obtained confidential information about A.S.'s negotiation, purchase price and the terms of his contract for the purchase of the property, and failed to disclose to A.S. that you had commenced representing your son-in-law as a client with respect to purchasing the property (see para 11 and 17).

(b) Traded in real estate on behalf of another person without first disclosing in writing to the parties to the trade that you were an industry member licensed under the Rules contrary to **section 28(a) (ii) of the Rules**, as follows:

- Upon meeting A.M. as the listing agent for the purpose of viewing a property for sale you failed to identify yourself as an industry member. (see para 10)

(c) Failed to act fairly, honestly and with integrity with a non-client, A.S., contrary to **section 7(b) of the Code of Conduct**, as follows:

- Upon meeting A.M. in order to view the Madigan property you misrepresented yourself as the "partner" of A.S. when this was not true. (see para 9)

(d) Failed to keep your broker informed of the activities he was performing on behalf of the brokerage contrary to **section 23(f) of the Rules** as follows:

- You did not inform your broker that you were acting as agent for your son-in-law as buyer and that you had been in discussions with the other

- buyer, A.S., who had an offer already accepted on the property. (see para 17, 19 and 20)
- (e) Failed to disclose at the commencement of negotiations that you were related to the buyer you were agent for contrary to **section 3(d) of the Code of Conduct** as follows:
- On the H.E. offer you faxed there was no indication that he was related to the buyer. (see para 21)
- (f) Failed to keep your broker informed of the activities you were performing on behalf of the brokerage contrary to **section 23(f) of the Rules** as follows:
- You did not inform your broker that you were acting as agent for a family member. (see para 26 and 27)
- (g) Failed to disclose at the commencement of negotiations that you were related to the seller you were agent for contrary to **section 3(d) of the Code of Conduct** as follows:
- On entering information for the purpose of marketing the Madigan property on the MLS system, you failed to indicate that you were related to the seller. (see para 28)
- (h) Failed to disclose at the commencement of negotiations that you were related to the seller you were agent for contrary to **section 3(d) of the Code of Conduct** as follows:
- On meeting with A.S. to receive his offer to purchase you failed to inform A.S. that you were related to the seller. (see para 29 and 30)
- (i) Failed to provide all documentation or trade records required by the Rules to the broker contrary to **section 23(e) of the Rules** as follows:
- You did not retain and provide to your brokerage copies of the offers and counter-offers produced during the negotiation with A.S. on the property. (See para 31 and 32)
- (j) Failed to keep your broker informed of the activities you were performing on behalf of the brokerage contrary to **section 23(f) of the Rules** as follows:
- While continuing to assist H.E. in the marketing of the property you purchased cabinets and carpet to be used by H.E. in the renovation of the property for the purpose of resale and did not inform you broker of this. (See para 35 and 36)
- (k) Failed to keep your broker informed of the activities you were performing on behalf of the brokerage contrary to **section 23(f) of the Rules** as follows:
- Upon being asked to provide your broker with information about the complaint by A.S., you did not provide important information about your history with A.S. and the subsequent purchase of the property by your son-in-law H.E.. (See para 39)
- (l) Made representations or carried on conduct this is reckless or intentional and that misleads or deceives any person or is likely to do so, including participating in a form of communication that the member knows or ought to know is false or misleading contrary to **section 4(d) of the Code of Conduct** as follows:

- What you did advise your broker of in response to the complaint by A.S. was that A.S. was instigating a false claim against you and that you had no relation to A.S. which was false and was intended to dissuade your broker from investigating the complaint further. (See para 39)

### 308 Whiteland Drive NE

- (m) Failed to disclose at the commencement of negotiations that you were related to the seller you were agent for contrary to **section 3(d) of the Code of Conduct** as follows:
- You did not disclose on the listing on MLS for the purpose of marketing to the property to potential buyers that you were related to the seller. (See para 41)
- (n) Failed to disclose at the commencement of negotiations that you were related to the seller you were agent for contrary to **section 3(d) of the Code of Conduct** as follows:
- You did not disclose at commencement of negotiations with the buyer and seller that you were related to the seller. (See para 42)
- (o) Failed to obtain consent in writing to acting as dual agent prior to entering into a real estate transaction contrary to **section 3(c) of the Code of Conduct** as follows:
- You did not obtain consent to acting in dual agency prior to entering into the transaction. (See para 42)
- (p) Failed to render a competent service including participating in the creation of a contract you knew or ought to have known was not legally binding and confusing contrary to **section 6(c) of the Code of Conduct** as follows:
- You entered a material change on the face of a real estate purchase contract after it had been executed by the parties and failed to have this amendment properly executed through the initials of the parties to the contract, which resulted in the amendment being non-binding or subject to uncertainty and dispute. (See para 43)

### 123 Templevale Place NE

- (q) Failed to obtain consent in writing to acting as dual agent prior to entering into a real estate transaction contrary to **section 3(c) of the Code of Conduct** as follows:
- You did not obtain consent to acting in dual agency prior to entering into the transaction. (See para 45)

### 384 Whiteridge Crescent NE

- (r) Failed to disclose at the commencement of negotiations that you were related to the buyer you were agent for contrary to **section 3(d) of the Code of Conduct** as follows:

- You did not disclose at commencement of negotiations with the buyer and seller that you were related to the buyer. (See para 46)
- (s) Failed to provide all documentation or trade records required by the Rules to the broker contrary to **section 23(e) of the Rules** as follows:
- You did not provide your brokerage with a copy of a record of disclosure of your relationship with a party to a transaction that you obtained from a party to a transaction and which had been provided late and not in accordance with the Code. (See para 47)

240 Whitestone Crescent NE

- (t) Failed to disclose at the commencement of negotiations that you were related to the buyers you were agent for contrary to **section 3(d) of the Code of Conduct** as follows:
- You did not disclose at commencement of negotiations with the sellers that you were related to the buyers. (See para 48)

504 Whitehill Place NE

- (u) Failed to keep your broker informed of the activities you were performing on behalf of the brokerage contrary to **section 23(f) of the Rules** as follows:
- You did not advise you broker you were related to both of the brokerage's clients. (See para 49)
- (v) Failed to obtain agreement in writing to acting as dual agent prior to entering into a real estate transaction contrary to **section 3(c) of the Code of Conduct** as follows:
- You did not obtain written consent from your two sons for whom you were acting as agent. (See para 50)

75 Whitefield Close NE

- (w) Failed to disclose at the commencement of negotiations that you were related to the buyer you were agent for contrary to **section 3(d) of the Code of Conduct** as follows:
- You did not disclose your relationship to the buyer at commencement or at the time of any offer made by your son. (See para 51 and 52)
- (x) Failed to keep your broker informed of the activities you were performing on behalf of the brokerage contrary to **section 23(f) of the Rules** as follows:
- You did not disclose to you broker that you were related to the brokerage's client. (See para 53)
- (y) Failed to keep your broker informed of the activities you were performing on behalf of the brokerage contrary to **section 23(f) of the Rules** as follows:
- You did not provide any record or disclosure to your brokerage that a company controlled by your son was the buyer of the property in this transaction. (See para 54 and 55)

### U.J. Concurrent Purchases

- (z) Failed to keep your broker informed of the activities you were performing on behalf of the brokerage contrary to **section 23(f) of the Rules** as follows:
- The information you possessed was of concern as an indication of possible mortgage fraud. You failed to provide information to the brokerage so that the brokerage could ensure that it was not facilitating illegal activity and was in compliance with the requirements of section 7(c) of the Code of Conduct then in force. (See para 56 to 60)

### Failure to Cooperate During an Investigation

- (aa) Failed to cooperate fully with, and provide any information requested to, any representative of the Real Estate Council of Alberta carrying out their responsibilities under the legislation contrary to **section 7(d) of the Code of Conduct** and **section 38(4) of the Real Estate Act** then in force as follows:
- You received requests for documents and information known to be in your possession or power to obtain and you failed to provide these or provide any explanation as to why they could not be provided. (See Para 61 to 64)

## III) EVIDENCE

The Panel received an Admission of Conduct Deserving of Sanction pursuant to s. 46 of the *Real Estate Act* from Mr. Jarrah. Mr. Jarrah admitted to the allegations of fact and a breach of provisions of the *Real Estate Act Rules* as contained in the Notice of Hearing with the exception of several allegations that were withdrawn by the Executive Director, and admitted that his conduct in this regard was conduct deserving of sanction. The withdrawn allegations are: (b), (c), (h), (i), (j), (k), (l), (n), (aa) subparagraphs of #65 in the Notice of Hearing.

Three Exhibits were introduced: The Notice of Hearing, Exhibit 1; the signed s.46 Admission of Conduct Deserving of Sanction, Exhibit 2; the Affidavit of D.A., confirmation of service of full disclosure of the investigation file and a draft of the Admission on January 7, 2010, Exhibit 3 and the Affidavit of F.F., confirmation that the draft documents were also couriered to Mr. Jarrah in Lebanon on January 16, 2010.

Mr. Jarrah provided handwritten notes through the Executive Director, which he requested be presented to the Panel. These were marked as Exhibit A for identification. The Executive Director objected to these notes being entered as an exhibit of evidence and did not admit the truth of the contents but did not object if they were accepted simply as submissions by Mr. Jarrah. The Panel accepted the notes as Exhibit 5 without comments as to value or purpose for consideration.

## IV) SUBMISSIONS

The Panel heard submissions on sanction from the Executive Director.

Mr. Jarrah has no prior disciplinary history. His authorization represents approximately 5 years in the industry prior to the time of the contraventions. Most of the contraventions were identified as a result on the investigation into the Madigan property complaint. This original investigation suggested a practice by Mr. Jarrah of not properly disclosing his role and associations to people he was dealing with professionally. Although this practice has not caused damage to the public, the practice puts Mr. Jarrah and the industry at risk of being perceived as dishonest or lacking in integrity. Mr. Jarrah’s admission alleviated the need for witnesses and reduced the time and expense associated with an actual hearing. It was suggested that while both general and specific deterrence were relevant considerations in every case of sanction, specific deterrence was the more significant factor to address in this case. Mr. Jarrah is not currently registered but remains licensed. He states that he intends to return to the industry. His conduct demonstrates a need for deterrence through a sufficient fine and correction through education. The number of contraventions found is an aggravating factor. The transactions involved family and friends which may support a finding that Mr. Jarrah was more likely uninformed or at worst sloppy and not motivated by gain or dishonesty. The Executive Director submitted that mitigating factors outweigh aggravating factors in this case and the fine amounts therefore may be imposed at an amount lower than would be imposed in the absence of such mitigating factors.

The sanction requested by the Executive Director was as follows:

1. That Mr. Jarrah is ordered reprimanded for contravention of section 7(b) of the Code of Conduct;
2. That Mr. Jarrah pay fines as indicated or otherwise as the Panel finds appropriate. The Executive Director requests a fine amount for each contravention:

6043 Madigan Drive NE

(a)	<b>Code 7(b)</b> failure to act fairly, honestly and with integrity with a non-client	<b>Order of Reprimand</b>
(d)	<b>Rule 23(f)</b> failure to inform broker of activity	\$100.00
(e)	<b>Code 3(d)</b> failure to disclose his relation to a party in a transaction	\$200.00
(f)	<b>Rule 23(f)</b> failure to inform broker of activity	\$100.00
(g)	<b>Code 3(d)</b> failure to disclose his relation to a party in a transaction	\$200.00
	<b>Sub-total</b>	<b>\$1200.00</b>

308 Whiteland Drive NE

(m)	<b>Code 3(d)</b> failure to disclose his relation to a party in a transaction	\$200.00
(o)	<b>Code 3(c)</b> failure to obtain consent to dual agency	\$500.00

(p)	<b>Code 6(c)</b> failure to provide competent service	\$200.00
	<b>Sub-total</b>	<b>\$1100.00</b>

123 Templevale Place NE

(q)	<b>Code 3(c)</b> failure to obtain consent to dual agency	<b>\$500.00</b>
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384 Whiteridge Crescent NE

(r)	<b>Code 3(d)</b> failure to disclose his relation to a party in a transaction	\$200.00
(s)	<b>Rule 23(e)</b> failure to provide trade records to his broker	\$100.00
	<b>Sub-total</b>	<b>\$300.00</b>

240 Whitestone Crescent NE

(t)	<b>Code 3(d)</b> failure to disclose his relation to a party in a transaction	<b>\$200.00</b>
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504 Whitehill Place NE

(u)	<b>Rule 23(f)</b> failure to inform broker of activity	\$100.00
(v)	<b>Code 3(c)</b> failure to obtain consent to dual agency	\$500.00
	<b>Sub-total</b>	<b>\$600.00</b>

75 Whitefield Close NE

(w)	<b>Code 3(d)</b> failure to disclose his relation to a party in a transaction	\$200.00
(x)	<b>Rule 23(f)</b> failure to inform broker of activity	\$100.00
(y)	<b>Rule 23(f)</b> failure to inform broker of activity	\$100.00
	<b>Sub-total</b>	<b>\$400.00</b>

U.J. Concurrent Purchases

(z)	<b>Rule 23(f)</b> failure to inform broker of activity	<b>\$500.00</b>
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3. The Executive Director submits that prior to any application for registration in the future, Mr. Jarrah be required to successfully complete **Phase 2 of the REAP**.

4. That Mr. Jarrah pay costs of the investigation and hearing in an amount the Panel finds appropriate. A detailed accounting of costs totaling \$21,412.67 was submitted with a suggestion that an order of at least half of that amount would be appropriate.

## V) FINDINGS

On the basis of the returned Admission and section 47(2) of the *Real Estate Act*, these

admissions are deemed to be findings of the Hearing Panel that the conduct of Mr. Kassem Mohammed is conduct deserving of sanction. The handwritten notes submitted by Mr. Jarrah were not accepted as evidence because Mr. Jarrah was not present to identify him, nor could he be cross examined on their contents.

Mr. Jarrah was not a new industry member at the time of the contraventions. He appears to have moved around somewhat and there are gaps in his authorization but he retained his license giving him about 5 years of experience in the industry when these contraventions took place. In considering sanction, the Panel noted that Mr. Jarrah's failure to disclose conflict of interest in transactions involving his family appeared to be a pattern over the course of these transactions. The Panel questions Mr. Jarrah's understanding of the concept of conflict of interest, especially as it is inherent in transactions involving family members. The Panel noted that Mr. Jarrah either exhibited a lack of understanding for the need to report to his broker or intentionally failed to inform his broker of his activities in these transactions.

Because of the number of times, Mr. Jarrah failed to disclose conflict of interest and failed to report to his broker, the Panel is not convinced that these practices were merely sloppy or that Mr. Jarrah was uninformed. For this reason, the Panel feels that a license suspension is in order.

Although the Executive Director has asked for the fines to be assigned on a per contravention basis, the Panel is not inclined to agree with this method. As there is no way of quantifying the individual fines, the Panel believes a global fine is more appropriate in this case. The Panel looked at the similar cases presented and determined that a fine of \$5000 would be appropriate. The fine in Selanders was \$6500 for 18 instances of the industry member not reporting activities to his broker; Sharma was fined \$5000 as his involvement in mortgage fraud was attributed to inexperience; and Tkach was fined \$5000 when it was submitted that her actions were not 'intentional' but 'sloppy'.

The Panel notes that Mr. Jarrah did not initially cooperate with the investigation as he did not provide the requested information during the investigation. However, Mr. Jarrah eventually signed an admission of conduct deserving, alleviating the need for a longer hearing or witnesses. Because of this, the Panel has determined that ordering approximately half the costs would be appropriate.

As the Panel is ordering a suspension, it feels there is no need for a reprimand as requested by the Executive Director for contravention of section 7(b) of the Code of Conduct.

## VI) ORDERS

Based on the preceding, the Hearing Panel in this matter orders that:

1. Kassem Mohammed Jarrah's license be suspended for a period of 6 months from the date of service of this decision.
2. Kassem Mohammed Jarrah pay a fine of \$5000.
3. Kassem Mohammed Jarrah pay costs in the amount of \$11,000.
4. Kassem Mohammed Jarrah complete the entire industry education program with no exemptions before he may be re-licensed. This includes:
  - a. Understanding Designated Agency and Transactional Brokerage
  - b. Introduction to a Career in Real Estate
  - c. Fundamentals of Real Estate – Phase 2 of REAP
  - d. Real Estate Areas of Practice – Phase 3 of REAP

This Decision was made on 26<sup>th</sup> February, 2010

*Lynn Patrick, Chair*

*Ralph Salomons*

*Dennis Shandruk*