

**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 Soon Thieu, a real estate associate at all material times registered with Unison Realty Group Ltd. and presently registered with Discover Real Estate Ltd.

Hearing Panel Members: Brian Klingspon, Chair  
Norm Jensen  
Wayne McAlister

Hearing Date: July 21, 2011

Appearing on behalf of: Stephanie L. Erickson, on behalf of the Executive Director  
Soon Thieu on his own behalf

Witnesses: Carla Sasley

**DECISION OF A HEARING PANEL OF THE REAL ESTATE COUNCIL OF ALBERTA  
ON CONDUCT DESERVING OF SANCTION**

I) INTRODUCTION

This is a hearing on conduct deserving of sanction.

The Panel received into evidence a Statement of Agreed Facts signed by counsel for the Executive Director and by Soon Thieu. Carla Sasley, an Investigator appointed by the Executive Director also testified as a witness for the Executive Director. Mr. Thieu called no witnesses but did testify on his own behalf. The Hearing Panel heard evidence and submissions on the issue of whether there was conduct deserving of sanction.

II) ALLEGATIONS

The allegations are set out in the Notice of Hearing which is attached as **Schedule "A"** to this decision. The allegations concern the representations in an

MLS listing sheet and his conduct in connection with a significant deposit that was not paid by a buyer.

III) FINDINGS OF FACT

The Panel received and reviewed a Statement of Agreed Facts from counsel for the Executive Director who confirmed that this was also signed by Mr. Thieu. Mr. Thieu confirmed his signature on the Statement of Agreed Facts as well.

The facts on which the allegations are based are not at issue. Mr. Thieu acted for a client in connection with two transactions involving the same house. His client bought a house and then listed it with the intention of doing renovations and selling for a profit.

Mr. Thieu's client offered to purchase the property by a purchase contract dated September 21, 2006. This offer was accepted the same day. Transfer of title was completed on September 27, 2006 and possession was obtained October 1, 2006. The purchase price was \$235,000.

On October 3, 2006, Mr. Thieu's client signed a listing contract for the same property intending to renovate and resell. The list price was \$289,900.

Upon obtaining this listing Mr. Thieu prepared an MLS listing sheet on October 3, 2006 stating as follows:

**Total renovated from top to down [sic]. House has been upgraded: new painting, kitchen, bath rooms, ceramic tile in kitchen, flooring in bathroom, stair way, new counter top, new light fixtures and many upgraded ... [sic]**

Renovations were not commenced by October 3, 2006 but were undertaken and completed by December 12, 2006, when Mr. Thieu's client accepted an offer on the property for \$280,000.

The December 12, 2006 purchase was to be paid by an initial deposit of \$75,000 to be paid no later than December 14, 2006 and in trust to the seller personally.

At or about this time Mr. Thieu and his client became aware that the deposit was not available because the buyer was attempting to obtain the deposit by refinancing her primary residence. Mr. Thieu's client and the buyer were friends and this delay was acceptable to Mr. Thieu's client.

The deposit was paid to Mr. Thieu's client on January 9, 2007.

During the hearing, counsel for the Executive Director called the investigator to enter the original complaint letter. The complaint is anonymous and dated October 6, 2006. It expresses concern over the increase in price of the property

over a short period of time and raises the question as to whether this was a mortgage fraud incident.

After close of the case of the Executive Director, Mr. Thieu entered a document which was an illustration of events in these two transactions. Some information on the illustration was incorrect and was corrected by counsel for the Executive Director.

#### IV) FINDINGS RE CONDUCT DESERVING OF SANCTION

The Panel recognizes the concern raised in the complaint. A property being purchased at one price and immediately after marketed at a significantly increased price with representations of renovations is a warning flag of possible mortgage fraud. A subsequent transaction where a deposit is represented in the purchase contract but never paid is warning flag of possible mortgage fraud as well.

In this case there was no mortgage fraud and fraud was never brought up in the submissions of the Executive Director apart from being mentioned in the complaint letter.

##### Count 1

Turning to the first allegation we must determine whether the statement about renovations in the MLS listing sheet constitutes conduct deserving of sanction.

It was not an accurate representation at the time it was made and we find that Mr. Thieu was aware that it was not accurate when he wrote the representation. In order to make an accurate representation at the time of writing it, he would need words that qualify when the renovations were to be done, such as stating that they were “to be done” or were “planned” or otherwise intended. The meaning of the representation we find was that the renovations were already done.

Rule 42(a) states that industry members “must not make representations or carry on conduct that is reckless or intentional and that misleads or deceives any person or is likely to do so.”

We find Mr. Thieu did intentionally draft the representation and the statement was likely to lead a person to believe the renovations were already done.

The difficulty with finding a breach however is with whether the effect of that statement on the MLS listing sheet would either mislead or deceive a person.

The actual listing sheet at issue was not entered into evidence. The Panel is therefore drawing on its knowledge of the MLS system and the written

reservations on the MLS entries that state that representations may not be accurate. Further the existence or progress of renovations is something easily detected when a prospective buyer views a property and there were latent renovations described in this representation which could have been observed.

We find that it is not likely that a person would be actually misled or deceived by this representation in a material way where renovations are underway and were in fact completed.

We therefore find that there is no breach of the section on the basis that a person would not be misled or deceived to their detriment by this MLS listing sheet. It may form an understanding that renovations are complete but this would be confirmed by viewing the property taking into account the reservations on the MLS sheet. Given that the renovations were commenced shortly after and completed, we cannot find that the understanding imparted by the representation actually would mislead in a material or detrimental way.

If we are wrong about this interpretation of “mislead or deceive” or the application of the facts to this Rule and the representation is a breach of Rule 42(a) we find that the conduct is not deserving of sanction. We make this finding given that there is no definition of what constitutes conduct deserving of sanction in the legislation. We also take notice of our professional experience in the industry which self-regulation is meant to allow this Panel to do. This practice is, to our knowledge, common among industry members for properties being renovated prior to sale.

In all but the most exceptional cases a breach of a section of the Act or legislation will be sufficient to constitute conduct deserving of sanction, however we are given the jurisdiction and responsibility to determine whether conduct, whether a breach of a rule or not, is deserving of sanction. In this case we find that renovations were intended and were commenced shortly after the listing. We find that the conduct of Mr. Thieu in this case, though not meeting the standard set by the Rule, is not deserving of sanction in this case.

It is our view that this sort of practice is not, however, to be commended. We are concerned about the widespread use of the practice and how it may be used to hide actual intent to deceive. We urge all representations to be as accurate as possible and verified in all cases.

### **Count 2**

On the second count we find that Mr. Thieu breached the Rule and that his conduct is conduct deserving of sanction.

Money that is identified as a deposit is a form of assurance for the seller that the transaction will proceed and represents potential compensation if it does not complete. Contract terms should reflect what the parties actually intend and

where the parties have agreed to depart from what is already contracted an industry member has an obligation to their client to properly document those changes.

Mr. Thieu, failed to protect his client's interests. There should have been an amendment of the contract drafted and executed either waiving the deposit or extending the time for delivery of a deposit. This was not done and is a failure to meet a level of competence required in these circumstances.

We find Mr. Thieu breached Rule 41(b) and this is conduct deserving of sanction.

V) ORDERS

Having found Soon Thieu's conduct to be deserving of sanction the Hearing Panel requests submissions on sanction by the Executive Director be provided to the Panel Legal Clerk within 14 days of service of this decision. Panel legal Clerk will then provide these to Mr. Thieu.

Mr. Thieu will have 14 days from receiving the Executive Director's Submissions to provide his submissions to Panel Legal Clerk. Panel Legal Clerk will then provide these submissions to the Executive Director.

The Executive Director will have a further 7 days to provide Panel Legal Clerk with Rebuttal submissions if any. Panel Legal Clerk will then provide the Rebuttal if any to Mr. Thieu and will provide all submissions to the Panel.

If no submissions are received from the Executive Director or from Mr. Thieu within the time allocated, the Hearing Panel will proceed to make a decision with respect to sanction without the benefit of those submissions.

This decision was made on this 21<sup>st</sup> Day of July, 2011.

*Brian Klingspon, Chair*

*Norm Jensen*

*Wayne McAlister*

**Schedule "A"**

**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, as amended

**AND IN THE MATTER OF** a Hearing regarding the conduct of SOON THIEU, while registered as a Real Estate Associate with Unison Realty Group Ltd.

**NOTICE OF HEARING**

**TO: SOON THIEU**  
2521 Catalina Boulevard N.E.  
Calgary, Alberta T1Y 6S3

**TAKE NOTICE** that you are required to attend a hearing before a Hearing Panel at 9:30 a.m. on July 21 and July 22, 2011, in the City of Calgary, in the Province of Alberta, at the offices of the Real Estate Council of Alberta, located at Suite 350, 4954 Richard Rd SW, Calgary, Alberta T3E 6L1.

**AND FURTHER TAKE NOTICE** that you will be required to answer the following charges:

1. That between September 2006 and December 2006, in the City of Calgary, Alberta, contrary to the *Real Estate Act* Rules (October 1, 2006) (the "Former Rules"), Rule 42(a), you made representations that were reckless or intentional and that misled or deceived any person or were likely to do so by creating an MLS listing sheet in relation to a property located at 1702 52 St NE, Calgary, Alberta (the "Property"), stating the Property had been totally renovated, when you knew renovations had not been commenced, and listing the Property for an increased price that anticipated completed renovations when you knew the renovations had not been commenced. This is conduct deserving of sanction, particulars of which are as follows:

- (a) On or about September 20, 2006, the Property was listed on MLS for \$229,990. The MLS listing sheet noted that there had been "Major upgrades in the past couple of years". The evidence suggests that in 2004 the Property had been renovated with a new furnace, new front window, refinished hardwood floors and a new bathtub.
  - (b) On or about September 21, 2006, you created a Residential Real Estate Purchase Contract on behalf of T.T., as buyer, offering \$235,000. Title to the Property was transferred to T.T. on or about September 27, 2006.
  - (c) On or about October 3, 2006, you created a Listing Contract which provided for an asking price for the Property of \$289,900.
  - (d) You did not complete a comparative market analysis, but rather increased the purchase price on the basis of renovations that were intended to take place.
  - (e) On October 3, 2006, you created a MLS listing sheet stating that the Property had been totally renovated from top to bottom.
  - (f) The renovations to the Property had not commenced and were not completed at the time you created the Listing Contract and the MLS listing sheet, but rather the listing sheet and asking price anticipated such renovations.
  - (g) The renovations were completed over a period of three to four months after the Property was listed and cost approximately \$20,000. The renovations that were completed to the Property included renewal of hardwood floors, new flooring in the kitchen and bathroom, tiling in the kitchen and bathroom and interior painting.
2. That between December 2006 and January 2007, in the City of Calgary, Alberta, contrary to the Former Rules, Rule 41(b), you failed to provide competent service by failing to ensure a deposit was paid in accordance with the terms of a purchase contract, failing to ensure the transaction was properly documented by completing a Waiver of Condition when a deposit was not received as contemplated or alternatively, failing to complete a written extension for the payment of such deposit. This is conduct deserving of sanction, particulars of which are as follows:

- (a) In the evening of December 12, 2006, a Residential Real Estate Purchase Contract was created in respect of the Property listing T.T. as seller and T.H. as buyer (the "Purchase Contract"). The offered purchase price was \$280,000. The Purchase Contract provided for an initial deposit in the amount of \$75,000. The Purchase Contract stated that the transaction was a private sale and the deposit was to be delivered in trust to the seller, T.T. T.T. accepted T.H.'s offer later that evening.
- (b) Pursuant to the Purchase Contract, the initial deposit was supposed to be paid directly to T.T. no later than December 14, 2006.
- (c) The initial deposit was not paid by December 14, 2006 apparently because T.H. was refinancing her home to obtain the deposit funds. The initial deposit was not paid until on or about January 9, 2007, the closing date of the transaction, when T.H.'s refinancing funds were transferred through the trust account of Nikitiuk and Blain, Barristers and Solicitors.
- (d) No Waiver of Conditions or extension of conditions document was created for the transaction.

**AND FURTHER TAKE NOTICE** that the Hearing Panel may make one or more orders outlined in section 43 of the *Real Estate Act*, including but not limited to an Order cancelling or suspending any authorization issued to you by the Council, an Order requiring you to pay a fine, and an Order requiring you to pay the costs of the Hearing.

**AND FURTHER TAKE NOTICE** that the following Hearing Panel members will hear the charges against you (and the evidence in support of same):

1. Wayne McAlister
2. Brian Klingspon
3. Norm Jensen
4. Marsha Graham (Alternate)

**AND TAKE NOTICE** if you have any objections to the composition of the Hearing Panel, you must notify the Real Estate Council of Alberta of your objections, together with the reasons for your objections, within 14 days of receipt of this Notice of Hearing. If you fail to object to the

composition of the Hearing Panel within 14 days, the proposed Hearing Panel will hear the charges against you

**AND TAKE NOTICE** that the Hearing Panel will accept either oral or written submissions or both and, unless otherwise ordered by the Hearing Panel, written submissions must be received by the Hearing Panel within 15 days after the date on which all evidence has been received by the Hearing Panel.

**AND FURTHER TAKE NOTICE** that this is a formal notice for you to attend this hearing. The Hearing Panel may proceed with the hearing in your absence and may make a decision in your absence. If the Hearing Panel finds that your conduct is deserving of sanction, the Hearing Panel may assess the cost of the hearing and/or the cost of the investigation against you, in addition to any sanctions arising from your conduct.

**DATED** at the City of Calgary, in the Province of Alberta, this 22<sup>nd</sup> day of June, 2011.

**REAL ESTATE COUNCIL OF ALBERTA**

Per:

*Bob Myroniuk*  
Executive Director

cc: Stefanie Erickson  
Parlee McLaws LLP,  
Counsel for the Executive Director

cc: Graham B. Mayne, Broker  
Discover Real Estate Ltd.

## THE REAL ESTATE COUNCIL OF ALBERTA

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*Real Estate Act*, R.S.A. 2000, c. R-5, as amended

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Hearing Panel: Brian Klingspon, Chair  
Norm Jensen  
Wayne McAlister

Hearing Date: July 21, 2011

Written Submissions from: Stephanie L. Erickson, on behalf of the Executive Director  
Soon Thieu on his own behalf

### DECISION OF A HEARING PANEL OF THE REAL ESTATE COUNCIL OF ALBERTA ON SANCTION AND COSTS

#### I) INTRODUCTION

The Hearing into whether the industry members conduct had conduct deserving of sanction took place on July 21, 2011. The Hearing Panel issued a written decision finding conduct deserving of sanction on one of two allegations. The Panel requested written submissions on sanction and costs from the parties.

#### II) SUMMARY OF SUBMISSIONS ON SANCTION

##### *Submissions from the Executive Director*

Counsel for the Executive Director provided a review of the factors that may affect a decision on sanction as set out in the cases *Jaswal v. Newfoundland Medical Board*, [1996] N.J. no. 50 (T.D.), *Pottie v. Nova Scotia Real Estate Commission*, [2005] N.S.J. No. 276 (S.C.), and *K. C. v. College of Physical Therapists of Alberta*, [1999] A.J. No. 973 (C.A.). These factors were adopted as appropriate for the purpose of determining sanction under Part 3 of the Real Estate Act in the case of *Murti Goll v. Real Estate Council of Alberta* [(April 5, 2006), unreported QB decision, pp.89-95]

Counsel for the Executive Director also provided two precedents, YUIN, Gerritt Michael Willibrands, a consent agreement dated May 3, 2010 and BIRCH, Cherie Ann, a consent agreement dated June 29, 2009. Both Agreements were ratified by a Hearing Panel and contain contravention of Code Section 4 in force previously which prohibits representations that are false and misleading. The Yuin precedent is most similar to the present case. Mr. Yuin identified a company owner as his "brokerage" in a purchase contract he prepared and

also included a deposit in the contract which was never intended by the parties. The fine for contravention of s.4(d) was set at \$1500.00.

Counsel for the Executive Director argued that Mr. Thieu in the present case has been licensed for approximately 23 years and that the conduct found to be deserving of sanction in this case was serious. In spite of this Mr. Thieu has resisted acknowledging responsibility for the contravention and the importance of properly documenting the intentions of his client in matters of contract.

Counsel proposed a fine of \$1500.00 and require the successful completion of section 4 (Real Estate Act) of Phase 2 of the Real Estate Associates Program.

#### *Submissions from the Industry Member*

Mr. Thieu in his reply submitted that neither buyer or seller took issue with his conduct or suffered any loss or harm, that the complaint was anonymous and the reference to fraud in the complaint was unfounded and that the conduct found was a 'minor offense'.

Mr Thieu asked that the Panel issue a warning but no sanction in this case.

### III) SUMMARY OF SUBMISSIONS ON COSTS

Counsel for the Executive Director asked for an order that Mr. Thieu pay costs of \$4,442.12 which is 50% of the full costs of the investigation and hearing process of \$8,884.23.

Mr. Thieu made no submissions on the costs and we assume by asking for no sanction he also meant he should not be responsible for costs.

### IV) REASONS AND ORDERS

The Panel has taken into consideration the submissions of the parties and reviewed the cases and materials provided with those submissions.

Mr. Thieu's main argument is set as follows: "I deserve no sanction because I did no harm to anybody ..."

The premise behind professional standards is standards prevent harm from occurring to the public and members of the profession. The presence or absence of harm is a factor to consider in imposing sanction but does not determine whether there should be a sanction.

Mr. Thieu's further argument is that his conduct was not serious and that the finding of a breach or the imposition of a sanction is being motivated either for the benefit of the anonymous complainant or for RECA.

The conduct is serious. The failure to properly address the intentions of the parties to a contract through proper drafting of the contract and it's amendments can expose the parties to significant loss. This was stated in our decision on conduct and Mr. Thieu demonstrates resistance to this where he continues to argue the point.

This Panel enforces standards not simply on behalf of complainants but on behalf of the public and the profession. The seriousness of the conduct and Mr. Thieu's rejection of its seriousness requires a measure of specific deterrence to be addressed by a sanction. A fine of \$1500 is appropriate for that purpose.

With respect to costs, the Panel finds that a reduction of 50% of total costs is reasonable given the results of the hearing on conduct. We have reviewed the particulars of the time and disbursements set out in the Executive Director's submissions and find that these are reasonable. None of the amounts were challenged by Mr. Thieu and on reviewing the time time applied to tasks in bringing the matter through investigation and to hearing was appropriate we find the award of costs suggested to be reasonable.

The Hearing Panel hereby orders that Soon Thieu shall:

- a) pay a fine in the amount of \$1,500.00
- b) pay costs in the amount of \$4,442.12
- c) successfully complete Section 4 of Phase 2 of the Real Estate Associates program within 6 months of the date of service of this decision on Mr. Thieu, or if such course is not available, a similar course as directed by the Executive Director. The Executive Director may extend the deadline for completion of the course. It is Mr. Thieu's responsibility to advise the Executive Director if this course is not available and to advise the Executive Director when he has successfully completed the course.

This Decision is made on this 6<sup>th</sup> day of October, 2011

*Brian Klingspon, Chair*

*Norm Jensen*

*Wayne McAlister*

