

IN THE MATTER OF THE REAL ESTATE ACT, R.S.A. 2000 c. R-5

AND IN THE MATTER OF Tasnim Ahmed, a real estate associate registered with Calgary Independent Realty Ltd. o/a CIR Realty

INTRODUCTION

1. The Executive Director of the Real Estate Council of Alberta conducted an investigation into whether the conduct of Tasnim Ahmed, a real estate associate registered with Calgary Independent Realty Ltd. o/a CIR Realty, is deserving of sanction and whether he breached the requirements of the *Real Estate Act*, RSA 2000, c. R-5 (the "**Act**") or the Rules prescribed pursuant thereto (the "**Rules**") or the Code of Conduct prescribed pursuant thereto (the "**Code of Conduct**") in force October 1, 1999, through October 1, 2006.
2. The Executive Director and Tasnim Ahmed hereby agree to resolve all matters against him on the terms and conditions set out herein.

AGREED STATEMENT OF FACTS

3. Tasnim Ahmed ("**Ahmed**") has been an industry member since August 30, 1978 and was at all relevant times registered with Calgary Independent Realty Ltd. o/a CIR Realty ("**CIR**"). There is no discipline history.

Sale of the Arrowwood Store and Purchase of C.'s Property by Ahmed

4. 574305 Alberta Ltd. ("**574305**") is a corporation registered on July 20, 1993. E. A. is the sole director and shareholder.
5. On **September 3, 1999**, 574307 became the registered owner of a property located in the village of Arrowwood, Alberta. The lands included a General Store. At some point after transfer a trailer was put on the land for use as a residence. The lands and buildings are hereafter referred to as the "**Store**".
6. The Royal Bank of Canada registered a mortgage of \$112,500.00 on the title held by 574305 on the date of transfer.
7. At the same time, 574305 had a loan from Royal Bank in the amount of \$9180.00. This loan was secured by a personal guarantee given by E.A. in a Guarantee and Postponement of Claim agreement he signed on August 23, 1999.
8. The Royal Bank registered the debt on the Personal Property Registry on August 23, 1999. The registration expired on August 23, 2009.

9. On **May 30, 2000** Ahmed obtained a Commercial Listing Contract between CIR Realtors and 574305, for the sale of the Store. The sale price was "\$238,000 + stock". The listing expiry was December 30, 2000. The Commission was 5%.
10. On **June 2, 2000**, Ahmed obtained a copy of title for the Store which showed the mortgage.
11. The first listing expired without a sale and on **February 11, 2001**, Ahmed obtained a second listing for the Store. The sale price was "\$198,000 + stock". The listing expiry was July 31, 2002. The Commission was 5%.
12. On **March 26, 2001**, 574305 entered into two Canada Small Business Financing Loan agreements with the Royal Bank of Canada. One was for \$31,212.00, with principal payments of \$306 monthly commencing June 1, 2002, and the second was of \$97,537.50, with principal payments of \$956.25 monthly commencing June 1, 2002.
13. Ahmed did not determine whether these loans were assumable or whether they were secured. Ahmed did not determine the relationship between these loans, the prior loan and the mortgage on title. These loans were not assumable.
14. On **April 1, 2002**, Ahmed wrote to a potential buyer and advised as follows:

... There is an existing Small Business Loan of about \$125,000 + \$9,000 personal loan for the mobile home. **Stock value is about \$40,000 to \$50,000.** Upon purchasing the share of the Corporation, **you may assume the SBL.** Please notice the title. Present owner paid \$167,000 in 1999. Then they added a home worth \$18,000 minimum. ... (emphasis added)
15. The second listing expired and on **September 18, 2002** Ahmed obtained a third listing for the Store. The sale price was "\$155,000 + stock". The expiry date was March 31, 2003. The commission was 5%.
16. The value of the stock came from E.A. and Ahmed took no steps to verify the value of the stock.
17. On a **November 25, 2002**, MLS listing printout, Ahmed provided the following description:

General Store and Deli 3745 sq. ft. building + 1190 sq. ft. residence. Share purchase. Low down payment. A good start for a young family. Good school ... Seller motivated. **Stock value are [sic] \$45,000.** (emphasis added)
18. In January, 2003, B.C. and J.C. ("**C.'s**") contacted Ahmed regarding the Store.

19. On **January 7, 2003**, Ahmed obtained written consent from the C.'s to act as dual agent for both them as buyers and 574305 as seller.
20. On **January 9, 2003**, Ahmed drafted a Commercial Real Estate Purchase Contract numbered 26409 ("**Store Purchase Contract**") between the C.'s and 574305.
21. Ahmed identified the C.'s in the contract as "new shareholders".
22. The Store Purchase Contract was a form document with information filled in by Ahmed. The word "Share" was inserted in the title of the form in handwriting by Ahmed. He did not obtain initials for this alteration.
23. Neither the C.'s or A.'s instructed Ahmed to draft an agreement for the sale of shares in 574305.
24. In addition to the C.'s and E.A. signing the Store Purchase Contract, Ahmed also had E.D.A., wife of E.A., sign this contract. She was not a shareholder, director or officer of 574305.
25. The total price in the Store Purchase Contract was \$150,000.00 to be paid as follows:

\$5,000.00 Initial Deposit,
\$117,000.00 Assumption of Mortgage,
\$18,000 Seller Financing personal loan @ 10%, 5 yrs,
\$10,000.00 Balance Owing

26. Completion Day under the contract was March 1, 2003.
27. Paragraphs 3.1 of the Store Purchase Contract stated:

The Initial Deposit and any Additional Deposits (collectively the "Deposits") shall be delivered in trust to CIR Realtors.

28. Paragraph 3.5 of the Store Purchase Contract stated:

The Deposits shall be held in trust for both the Seller and the Buyer and shall be:

(a) applied against the Commission and paid directly out of trust for the benefit of the brokerage(s) when the Commission is earned in accordance with the terms of any commission agreement;

(b) forthwith refunded to the Buyer if this Offer is not accepted, a condition is not satisfied or waived (as per clause 8.8) or the Seller fails to perform this Contract; and (emphasis added)

(c) forfeited to the Seller if this Offer is accepted and all conditions are satisfied or waived and the Buyer fails to perform on this Contract.

29. Paragraph 4.5 of the Store Purchase Contract stated:

The Seller shall pay and discharge any financial encumbrance which is not by this Contract specifically assumed by the Buyer. The Seller's lawyer shall be permitted to pay and discharge any encumbrances from the sale proceeds and shall do so within a reasonable time.

30. Paragraph 8.1 of the Store Purchase Contract stated:

Buyer's Financing Condition: It is a condition precedent to this Offer that the Buyer is able to place a new mortgage(s) and/or assume the existing mortgage(s) upon terms acceptable to the Buyer in order to fund the purchase of the Property. The Buyer shall have an opportunity to obtain such financing before 9 p.m. on the 15 day of January, 2003.

31. Paragraph 8.2 of the Store Purchase Contract stated:

Buyer's Due Diligence Condition: It is a condition precedent of this Offer that the Buyer shall have until before 9 p.m. on the 15 day of January, 2003 to inspect and accept the Property, the Permitted Encumbrances and all relevant information and records relating thereto. **The Seller agrees to provide at its cost the following documents** (emphasis added) within five (5) business days after the date of final acceptance of this Offer:

(a) such financial information respecting the Property as the Buyer may reasonably request;

(b) copies of all other contract currently pertaining to the property;
...

(d) copies of any other pertinent documents, correspondence, work orders and deficiency notices from the municipality, if any, in the possession of the Seller;
...

(i) other documents as listed below or as listed on Schedule "B" attached hereto and forming part of this Contract. Schedule "C" attaché for section 7.5 & 8.5.

32. Attached to the Store Purchase Contract were Schedules "A" through "D".

33. Schedule "B" consisted of two pages titled "Arrowwood Grocery List of Equipment". Certain items were crossed out. The items crossed out were not initialed though the page was initialed at the bottom.

34. Schedule "C" stated additional conditions of the contract:

Section 7.5 The following terms and conditions are to be part of the Contract #26409

...

d) Buyers' solicitor will withheld Five Thousand (\$5,000.00) Dollars in trust for a period of Thirty – (30) days after the date of possession to ensure that no outstanding encumbrances or liabilities are against the Corporation. If any such encumbrances or liabilities appear within 30 days from possession date, then the money owed will be deducted from the trust funds. If no such encumbrances or liabilities exist against the Corporation, then the entire amount will be released to the Seller after the Thirty – (30) day period expires.

e) Seller (previous shareholders) to indemnify the Buyer (new shareholders) from any legal or governmental liabilities or obligations that may arise in the future due to negligence or oversight by the Seller. Such indemnification will be limited for a period of sixty – (60) days and will only apply for the periods prior to the possession date.

Section 8.5 Additional Buyers' Conditions:

a) Buyers to sell their home located at 4 Atlanta Cr. SE, Calgary, Alberta before 9 p.m. February 15, 2003. Failing to do so this Contract will become null and void and Buyers Deposit will be returned in full.

b) Buyers to be approved by the Royal Bank of Canada, Drumheller, AB., as sole shareholders of 574305 Alberta Ltd. before 9 p.m. January 15, 2003. Failing to do so this Contract will become null and void and Buyers Deposit will be returned in full.

35. C.'s provided the Initial Deposit in the amount of \$5,000.00 to Ahmed by cheque on **January 9, 2003**, payable to "CIR Realtors".
36. CIR's commission pursuant to the Listing Contract of September 18, 2002, would have been \$7,500.00 upon closing of the Store Purchase Contract.
37. The Store Purchase Contract did not deal with either a transfer of shares or transfer of stock/inventory.
38. Ahmed did not obtain accounting records for the C.'s nor did he involve himself in identifying what documents or records should be delivered to the C.'s under paragraph 8.2 in order to complete this transaction.
39. Shortly after **January 9, 2003**, C.'s travelled to Drumheller to inquire at the Royal Bank branch there about assuming the mortgage and/or small business loans. They were advised that the loans could not be assumed and they would need to qualify for any new small business loan in their own names.

They further had a mortgage on their property so could not qualify for an additional mortgage on the Store.

40. **January 15, 2003**, passed without either waiver of conditions or fulfillment of conditions.

41. The \$5,000.00 deposit was not returned to the C.'s.

42. On **January 20, 2003**, the Royal Bank sent a letter to the attention of E.A. regarding the August 23, 1999, Guarantee which stated:

Upon examination of financial information furnished as at August 31, 2002 the Bank has determined that the Company was in non-compliance of the postponement of shareholder's loans in that the amount of \$32,649 was withdrawn.

The Bank requests written advice by February 14, 2003 as to when and how the foregoing breach will be remedied.

43. On **January 28, 2003**, Ahmed obtained Listing contract #153911 for the sale of the C.'s home in Calgary ("C.'s Listing"). The sale price was \$204,900.00 with expiry of the listing on April 30, 2003. The Commission was 5% of the first \$100,000.00 and 3% of the balance, a commission of \$8,147.00 if the list price were obtained.

44. Paragraph 10.1 of the C.'s Listing states:

You will pay the Real Estate Commission to the Brokerage:

(a) if the Property is sold, exchanged or otherwise disposed of by you or anyone else during the term of this Contract;

(b) if, during the term of this Contract, a person contacts you directly or through a brokerage or inspects the Property and the Property is then sold, exchanged or otherwise disposed of by you or anyone else to that person within 90 days after the Expiry Date. This clause will not apply where you have signed another listing contract after the Expiry Date and a Real Estate Commission is payable to another brokerage according to the terms of that other listing contract as a result of the sale or disposition; or

(c) if you have signed a Purchase Contract with a buyer who is willing and able to complete the sale but you refuse to complete the sale.

45. Ahmed completed a Comparative Market Assessment for the C.'s property at this time. The "Suggested Sale Price" was \$193,324.00 to \$198, 219.00.

46. On **January 28, 2003**, Ahmed obtained a copy of title for the C.'s property. Title showed the C.'s became registered owner on December 21, 2000. On title was a mortgage with the Royal Bank of Canada in the amount of \$165,580.00 registered December 21, 2000 and a Vendor's Lien caveat registered on February 7, 2001.
47. On **February 13, 2003**, Ahmed drafted a Real Estate Listing Contract Extension / Amendment Agreement which the C.'s signed. This Agreement lowered the list price on the C.'s Listing to \$202,800.00 and increased the commission to 6% of the first \$100,000.00 and 3% of the remainder, providing a commission of \$9,168.00 if the list price were obtained.
48. On **March 5, 2003**, Ahmed obtained the C.'s signature on a Listing Contract Termination which terminated the C.'s Listing subject to the following condition:

The Seller agrees with the Brokerage that:

1. It **shall not sell**, exchange and/or lease, or accept an offer for the sale, exchange and/or lease of the said Property during the term of 90 days from the date of this Termination Agreement.
2. In the event that the Seller **breaches any of the terms of the Termination Agreement the Seller shall immediately pay to the Brokerage as liquidated damages a sum equal to the Real Estate Commission** as set out in the said Listing Contract.

This clause replaces the provisions of 10.1 of the Real Estate Listing Contract.
(emphasis added)

49. On **March 10, 2003**, Ahmed obtained the signatures of the C.'s and 574305 on a Mutual General Release, which released the parties "from all claims" under the Store Purchase Contract.
50. On **March 10, 2003**, Ahmed then drafted an agreement titled "Asset Lease and Interim Agreement" ("**ALIA**").
51. The ALIA identifies 574305 as Landlord and the C.'s as Tenants. Significant terms of the ALIA are as follows:
...
 2. The tenant has inspected the assets of the business and agrees to lease the same as it stands. It is agreed that there is no representation, warranty, collateral agreement, zoning, municipal permit or licenses or condition affecting the said assets of the agreements of the lease, other than as expressed in writing.

3. The Lease price shall be \$150,000 to be allocated as follows I Land \$20,000 II Building \$82,500 III Furniture, fixtures, equipments \$47,500 Total \$150,000 (b) Tenant agrees to pay for the inventory in the following manner: Stocks to be sold at wholesale price. Any outdated stock to be discarded: Stocks to be counted by professional stock takers. Landlord and Tenant will share the expenses equally. Value of existing stocks not to exceed \$30,000.

4. Other than the deposits, the Tenant shall pay the Lease Price by cheque, lawyer's trust cheque, bank draft or other agreed value as follows:

\$5000.00 Initial Deposit
\$117,000.00 Assumption of Mortgage
\$18,000.00 @ 10% 5 yrs \$382.45 per month Landlord financing
\$10,000.00 Balance owing
\$150,000.00 Total

7. d. This Agreement will contain an Option for the Tenant to buy this property and business at any time within the 24 months of possession date. In such event all the terms of the contract will remain unchanged, except the financing owed to the Royal Bank of Canada must be paid out.

8. d. An Agreement on the part of the Landlord containing warranties and representation required by the Tenants' solicitor, and all such other documents, instruments and assurances that may be required either by the Landlord or the tenant to close the contract

9. The Landlord acknowledges that the closing funds may have to held in trust until searches can be obtained and completed in respect of the assets being leased.

...

11. The deposit shall be forthwith refunded to the Tenant without interest and deduction if the offer is not accepted or a condition is not satisfied or the Landlord fails to perform this Contract. However, if this offer is accepted and all conditions are satisfied and the Tenant fail to perform this Contract, the deposit shall be subsequently forfeited on account of liquidated damages and the Landlord may also take such other remedies against the Tenant as the Landlord has at law.

52. Possession and payment of balance owing were both set for March 29, 2003.

53. No conditions for the sale of the C.'s home, approval for financing or assumption of financing were included in the ALIA.

54. Ahmed did not provide that the Landlord must use proceeds of sale to pay off the SBLs where those were not assumable.

55. Ahmed had not taken any steps to confirm the value of the inventory yet inserted the figure of \$30,000.00 into the ALIA.

56. It was verbally agreed by C.'s and E.A. that the \$5000.00 previously provided by the C.'s for the Store Purchase Contract and still held by CIR, would be applied as the Initial Deposit for the ALIA. This was not in the ALIA nor otherwise written as an agreement.
57. Ahmed did not define or assist the parties in determining documents and records required by the C.'s under paragraph 8(d) of the ALIA.
58. Ahmed did not advise either party to seek legal advice with respect to the ALIA prior to signing it.
59. On **March 18, 2009**, C.'s, through their counsel, filed a caveat on title for the Store pursuant to the ALIA.
60. On **March 19, 2003**, Ahmed provided a "Trade Record" form to CIR, his brokerage, advising of the "transfer" of the \$5000.00 in trust on behalf of the C.'s to the new transaction.
61. Further on **March 19, 2003**, the C.'s provided a bank draft in the amount of \$10,700.00 to, S.H., the lawyer who was acting for both 574305 and the C.'s in their purchase of the Store.
62. On **March 19, 2003**, Ahmed entered into Real Estate Purchase Contract 146550 with the C.'s to purchase their home. The price was \$194,000.00 paid as follows:
 - \$10,000.00 (commission) Initial Deposit
 - \$184,000.00 Balance Owing
63. A provision for deposits to be delivered in trust was not included in this contract.
64. The reference to "commission" of \$10,000.00 exceeded the amount owing to CIR under the Termination Agreement which was \$8,820.00 not for commission but in liquidated damages as per the February 13, 2003 amendment.
65. Ahmed did not provide his broker with a copy of this contract.
66. Ahmed did not refer the C.'s to seek independent advice on this transaction notwithstanding that to proceed with the transaction was a breach of the Listing Contract Termination.
67. Ahmed provided the C.'s with a form Realtor Disclosure Statement to the C.'s dated **March 19, 2003**, which stated "... I have a personal interest and involvement in the purchase or sale of the above mentioned property."

68. On **March 30, 2003**, Ahmed prepared a Payment Schedule of Inventory. This document stated the Store's inventory value to be \$34,600.00 and set out how it was to be paid:

\$20,000.00 cash or certified cheque to E.A.
\$03,000.00 [sic] from S.H. trust account
\$11,600.00 by assignment of proceeds upon the sale of Tenants property located at 4 Atlanta Cr. SE, Calgary, Alberta within 90 days from the date of above closing. The Landlord will charge a 10% simple interest until the amount is being paid.

69. Ahmed did not incorporate the Payment Schedule into the ALIA notwithstanding the ALIA stated the inventory price was "not to exceed \$30,000.00".

70. Ahmed did not provide any Tenants' conditions on the Inventory Schedule to avoid the contract obligations if the C.'s were not able to sell their house.

71. Ahmed did not include any obligation on the Landlord's part in the Inventory Schedule to pay out any loans secured by the inventory/stock.

72. In order to obtain the \$3000.00 "from S.H. trust account" on **March 30, 2003**, Ahmed had E.A. sign a Commission Reduction Agreement between CIR and 574305 to a "flat \$5,025.00 including GST." This reduced the Commission owed to CIR and created an excess in trust of \$3,000.00 which then became the money for the "loan" to the C.'s.

73. Then Ahmed had the C.'s sign an Acknowledgment of Funds Received. The document was drafted by Ahmed and stated:

We, B.C. and J.C. [sic] acknowledge the receipt of a sum of \$3000.00 from T.A.. The said amount is being paid towards the inventory purchase of Arrowwood General Store, 11 Railway Ave., Arrowwood, AB. Such funds will be paid to the [sic] E.A., the owner of above store vial S.H. Trust Account. The said Amount will bear an interest of 10% per annum simple interest and to be payable by the Borrower upon sale of their property located at 4 Atlanta CR. SE, Calgary, AB.

74. This Acknowledgment of Funds was not dated.

75. Ahmed did not advise his broker of this loan.

76. CIR's commission under the Commission Reduction Agreement for sale of the Store was \$4,785.71 (plus GST = \$5,025.00) and liquidated damages under the Listing Termination Agreement for sale of the C.'s property of \$8,820.00 totaled **\$13,605.71**. Ahmed however sought to obtain \$10,000.00 towards the purchase of the C.'s home, the \$3,000.00 purportedly loaned to

the C.'s, and the \$4785.71 for a total benefit of **\$17,778.71** from both transactions inclusive of GST.

77. On **March 31, 2003**, B.C. provided a bank draft in the amount of \$20,000.00 towards the Inventory to E.A., payable to "E.A.", not 574305.
78. On **March 31, 2003**, S.H. disbursed \$9,275.00 (\$10,000.00 - \$700.00 legal fees - \$25.00 Commission) to the A.'s with respect to the \$10,000.00 in the ALIA. A payment of \$25.00 was issued to CIR to complete the commission payment of \$5,025.00 of which \$5,000.00 was released from trust at CIR.
79. Ahmed entered a verbal agreement with the C.'s to become a tenant at 4 Atlanta Cr S.E. Calgary until the possession date of August 1, 2003. On **April 1, 2003** he took possession of the property without a written tenancy agreement.
80. On **April 4, 2003**, Royal Bank of Canada sent a letter to the C.'s confirming an agreement to extend the maturity date of their mortgage from January 15, 2006 to April 4, 2007. The letter indicated that Administrative fees were waived.
81. On **July 16, 2003**, the caveator on C.'s title filed an Amended Certificate of Lis Pendens and on **July 22, 2003**, filed a Statement of Claim against the C.'s to pursue the debt underlying the caveat. This was a debt of approximately \$18,000.00 based on a promissory note signed by the C.'s on December 1, 2000.
82. On **July 30, 2003**, Ahmed prepared and obtained the signature of the C.'s to an Amendment to Real Estate Purchase contract. This moved the closing date from August 1, 2003 to September 1, 2003 and further:

As previously agreed, in the event buyer assumes the existing mortgage the seller will reduce the original sale price of \$194,000 to \$190,500 a difference of \$3,500.00 which would have been the cost to discharge the existing mortgage.
83. On or about **Sept 1, 2003**, Ahmed attempted to have the C.'s sign another amendment to the purchase contract. They refused. Ahmed then refused to pay rent.
84. On **September 8, 2003**, Ahmed filed a caveat on C.'s title claiming an interest as Purchaser.

85. Ahmed did not advise his broker that he had placed this caveat.
86. On **October 7, 2003**, as a result of Ahmed failing to pay rent, C.'s hired a Bailiff who attended at the C.'s property to conduct a seizure for rent arrears. Ahmed immediately paid the rent arrears to the Bailiff.
87. On **November 19, 2003**, Ahmed filed an Originating Notice of Motion as Applicant seeking that the title to C.'s property be transferred to him notwithstanding that he had not tendered the purchase price.
88. The Court dismissed Ahmed's Motion.
89. At the end of December of 2003 C.'s obtained possession of their property.
90. C.'s defaulted on the terms of the ALIA due of the ongoing difficulty with the caveat on their home which prevented them from selling it. Further, disputes continued between the C.'s and E.A. over the assets, the trailer on the property being non-compliant and condition and the value of the inventory.
91. On **February 11, 2004**, as a result of an action started by 574305 the Court ordered the tenancy of the C.'s at the Store terminated and the C.'s to vacate the Store.

Bankruptcy

92. On **January 17, 2005** Ahmed filed for bankruptcy.
93. Ahmed did not notify the Executive Director or anyone at RECA of his bankruptcy.
94. Ahmed was discharged from bankruptcy on **December 13, 2005**.
95. On **September 13, 2006**, Ahmed swore an Application for Registration as an Associate and marked "No" in response to the question "Have you or has any business you owned or participated in as a director, officer, or manager been in bankruptcy or the subject of any bankruptcy proceedings or receivership actions?"

CONCLUSION

96. By reason of the matters described herein, it is agreed that Ahmed's conduct is deserving of sanction as follows:

Sale of the Arrowwood Store

- (a) Provided service that was not competent contrary to **s.6(a) of the Code of Conduct**:
- Made no investigation of the loans and mortgage attaching to the Store (para 5, 6, 7, 8 , 12, 13);
 - Made no investigation into the value of stock (para 14, 16, 17).
- (b) Made a representation that misleads or deceives a person or was likely to do so, contrary to **s.4(d) of the Code of Conduct**:
- Ahmed made a representation to a potential buyer that the small business loans held by 574305 could be assumed when this was incorrect (para 14).
- (c) Created a contract that the member knew or ought to know is confusing contrary to **s.6(c) of the Code of Conduct**:
- The Commercial Real Estate Purchase Contract # 26409 included references to shares and shareholders which were not appropriate in a sale of land and buildings as was sought by the buyer and seller (para 20, 21, 22, 23);
 - Ahmed had E.A. sign without knowing what association she had, if any, to the transaction (para 24);
 - Included alternations on Schedule "B" which were not initialed (para 33)
 - The entire contract failed to mention or deal with transfer of shares or the transfer of inventory (para 37).
- (d) Failed to disburse money held in trust in accordance with the rules and with the terms of the trust governing the use of that money contrary to **s.25(1)(d) of the Real Estate Act**:
- Ahmed did not obtain the \$5000.00 deposit held in trust by CIR for release to the C.'s once the Buyers conditions for Commercial Real Estate Purchase Contract #26409 were not met and the transaction could not close (para 28, 35, 41)
- (e) Failed to ensure that the terms of trust governing the use of money are in writing contrary to **s.25(2) of the Real Estate Act**:
- The deposit was transferred from one transaction to a subsequent one by oral agreement and not in writing (para 56);
- (f) Failed to act in client's best interests contrary to **s.2(a) of the Code of Conduct**:

- Ahmed was acting for both C.'s and 574305 (para 19);
- Did not take any steps to confirm documents and records required for the C.'s under Commercial Real Estate Purchase Contract #26409 (para 31, 38)
- Ahmed obtained the Termination of Listing agreement with the C.'s prior to obtaining any Mutual Release between the parties from Commercial Real Estate Purchase Contract #26409, exposing the C.'s to the possibility of having no listing service and an uncertain obligations under the purchase contract (para 48, 49);

ALIA

(g) Created a contract that the member knew or ought to know is confusing contrary to **s.6(c) of the Code of Conduct:**

- The ALIA creates a tenancy without a term (Para 51, 52);
- The ALIA provides a price paid by assumption of mortgage without ownership by the tenant (Para 51);

(h) Provided service that was not competent contrary to **s.6(a) of the Code of Conduct:**

- Took no steps to define the requirements under paragraph 8(d) of the ALIA that were needed by the C.'s (para 51, 57);
- The value of the inventory was not confirmed (Para 55);
- Failed to include the conditions for sale of the C.'s property, approval or assumption of financing that C.'s expected would apply to this contract in order to protect their interests (para 30, 34, 39, 53);
- Failed to provide that the proceeds under the ALIA be used to pay off any loans secured by any of the assets "leased" or purchased (para 29, 54)
- The Payment Schedule did not reference the ALIA or the limitation on the cost of the inventory (para 69);
- The Payment Schedule likewise did not provide any condition that it was subject to the C.'s selling their property (para 70) or that the proceeds of the Payment Schedule be used to pay off any debt secured by the inventory (para 71);
- Failed to refer clients for legal advice on the proper drafting to the contract (para 58).

Purchase of C.'s Property

(i) Failed to ensure that the C.'s were not taken advantage of and that the transaction was fair in every respect, and give the C.'s a reasonable opportunity to obtain independent advice contrary to **s.2(m) of the Code of Conduct:**

- Ahmed's CMA determined that the range of market value for the property was between \$193,324.00 and \$198,219.00 (para 45);
 - Ahmed offered a purchase price that was well below the CMA value (para 62);
 - Ahmed failed to include a Sellers condition that the caveat be removed and ultimately the C.'s purchase of the store was dependent on the removal of the caveat on their own property (para 46, 62);
 - Ahmed made the offer for purchase after the C.'s had executed the ALIA with no condition that they sell their home (para 51, 62);
 - At the time of the offer, C.'s were bound to the ALIA and had no listing service to assist in selling their home, yet were obligated under the Listing Contract Termination to pay pre-determined damages to CIR if they did sell their home (para 48);
 - The Initial Deposit was a fiction. It was damages owed to CIR for breach of the Termination Agreement and was less than the \$10,000.00 cited (para 43, 47, 62, 64);
 - The Amendment to lower the price for assumption of the mortgage carried the same conditions and vulnerability on the part of the C.'s (Para 82);
 - Ahmed did not refer them for independent advice at any time during this transaction (para 66).
 - The actions of Ahmed in dealing with damages owed to CIR as if they were his own, and rounding up various amounts all favoured his interests to the detriment of the C.'s (para 76).
 - Ahmed provided no written tenancy at will agreement when he moved into the C.'s property (para79).
- (j) Failed to provide a trade record required to his broker contrary to **Rule 23(e)**:
- Ahmed failed to provide a copy of the purchase contract between him and C.'s to his broker (see para 65)
- (k) Created a document that the member knew or ought to know is confusing contrary to **s.6(c) of the Code of Conduct**:
- Obtained an Acknowledgment for receipt of \$3000 which was not dated and was not received by the C.'s (para 73, 74)
- (l) Failed to keep his broker informed of the activities he was performing on behalf of the brokerage contrary to **Rule 23(f)**:
- Failed to inform the Broker of the \$3,000.00 loan which was money owing to CIR as commission (para 74);
 - Failed to inform the Broker of the use of damages owed to CIR in the purchase of the C.'s property (para 84, 85).

(m) Failed to act lawfully contrary to **s. 7(c) of the Code of Conduct**:

- Refused to pay rent while continuing to reside in the C.'s property (para 83, 86);

Bankruptcy

(n) Failed to notify the Executive Director of bankruptcy contrary to **Rule 15(3)(d)**:

- You did not notify the Executive Director in January or after when you entered into bankruptcy (para 93).

(o) Participated in unlawful activity contrary to **s. 7(c) of the Code of Conduct**:

- Provided a false answer in a sworn document (para 95).

SETTLEMENT TERMS

97. In settlement of the foregoing contraventions, it is agreed that the fines for each breach and contraventions are assessed as follows:

(a)	s.6(a) of the Code of Conduct	\$500.00
(b)	s.4(d) of the Code of Conduct	\$100.00
(c)	s.6(c) of the Code of Conduct	\$500.00
(d)	s.25(1)(d) of the Real Estate Act	\$200.00
(e)	s.25(2) of the Real Estate Act	\$500.00
(f)	s.2(a) of the Code of Conduct	\$200.00
(g)	s.6(c) of the Code of Conduct	\$200.00
(h)	s.6(a) of the Code of Conduct	\$500.00
(i)	s.2(m) of the Code of Conduct	\$6,000.00
(j)	Rule 23(e)	\$100.00
(k)	s.6(c) of the Code of Conduct	\$100.00
(l)	Rule 23(f)	\$500.00
(m)	s. 7(c) of the Code of Conduct	\$200.00
(n)	Rule 15(3)(d)	\$500.00
(o)	s. 7(c) of the Code of Conduct	\$1000.00
	Total Fines	\$11,100.00

98. Costs of the investigation will be paid by Ahmed in the amount of **\$1500.00**.
99. Tasnim Ahmed further agrees that he will within 6 months of ratification of this agreement complete **Phase 2 of the REAP**, or a similar course at the discretion of the Executive Director if that course is not available.
100. Tasnim Ahmed acknowledges that he has been given an opportunity to seek the advice of legal counsel and acknowledges that he is agreeing to the terms of settlement of his own free will.
101. Tasnim Ahmed is aware that a copy of this Consent Agreement will be placed on his file and may be reviewed and considered in any future disciplinary proceedings.
102. Tasnim Ahmed is aware the Real Estate Council of Alberta may publish the contents of this Consent Agreement.
103. Tasnim Ahmed hereby waives any rights he may have under the *Act* or otherwise to a review, hearing, appeal or other judicial proceeding involving the matter referred to herein.

These settlement terms are intended to resolve all matters described herein and, subject to the approval of the hearing Panel, the Executive Director will take no further action under the Act or before the courts in this regard.

IN WITNESS WHEREOF the undersigned agrees and accepts the terms and conditions of this settlement this 10 day of December, 2009.

Signed in the presence of)	
)	
<u>B.L.</u>)	
Witness)	<u>Tasnim Ahmed</u>

The Executive Director recommends to the Hearing Panel the proposed terms of settlement based on the Agreed Statement of Facts.

REAL ESTATE COUNCIL OF ALBERTA

D.T.
Witness to the signature
of Bob Myroniuk

Per:
Bob Myroniuk
Executive Director

AFFIDAVIT OF EXECUTION

CANADA) I, B.L. of
))
PROVINCE OF ALBERTA) the city of Calgary,
))
TO WIT:) in the Province of Alberta,
))
) MAKE OATH AND SAY THAT:

1. I was personally present and did see Tasnim Ahmed, named in the attached Consent Agreement, who is personally known to me to be the person named therein, duly sign and execute the same for the purpose named therein.
2. The same was executed at the City of Calgary, in the Province of Alberta, and that I am the subscribing witness thereto.
3. I know the said party and he is in my belief of the full age of eighteen years.

Sworn before me at the City of)
))
Calgary))
))
in the Province of Alberta,))
))
this 10 day of December 2009) B.L.
) _____
) (signature of witness)
))
A.S.)
A Commissioner for Oaths in and)
for the Province of Alberta.)