

**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 **Harpal Mangat**, real estate associate, at all material times registered with Ashmont Realty Ltd

Hearing Panel: Wayne McAlister, Chair  
Norm Jensen  
Marjorie King

Appearing: Aruna Marathé on behalf of the Executive Director  
Harpal Mangat on his own behalf

Hearing Date: October 26, 27, 2010

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

I) INTRODUCTION

The hearing into the matter of Harpal Mangat was held at the RECA offices on October 26 and 27, 2010 to determine whether Mr. Mangat contravened:

- s. 38(4) of the *Real Estate Act*, by making false or contradictory statements and failing to provide documentation to RECA investigators.
- s.4(b) of the Code of Conduct by marketing a property without the seller's knowledge or consent
- s.4(c) of the Code of Conduct that he was party to an agreement or conspiracy to conceal any latent defects or pertinent facts in relation to a property by not informing the buyers and/or the buyers' agent of a property that it contained an illegal suite and was the subject of a City of Calgary removal order.

Note: The Notice of Hearing cites s.4(c) of the Rules in relation to the third allegation against Mr. Mangat. Based on the description of the section, "where a party to an agreement or conspiracy to conceal any latent defects or pertinent details in relation to any property or mortgage..." the Panel believes that s.4(c) of the Code of Conduct should have been cited. The Panel believes that the description and particulars that were included were reasonable particulars of the matter in respect of which the hearing was held as described under s.41 (3) of the *Act*. The error did not prevent Mr. Mangat from knowing what the issue was against him nor was it a barrier to his opportunity to respond.

### III) FACTS

Mr. Mangat listed a home at 55 Anaheim Crescent NE Calgary. The property contained a basement suite which was described as a mother-in-law suite in the MLS listing. The buyer's complaint was that Mr. Mangat did not tell either them or their agent that the property contained an illegal mother in-law suite nor did he tell them the suite was the subject of a removal order by the City of Calgary prior to the purchase of the property. During the investigation of this complaint RECA discovered there were two owners of the property in questions but only one's name and signature appeared on the listing contract and the purchase contract.

### IV) EVIDENCE

The Historical Land Titles certificate, exhibit 4, showed the previous owners of the property to be Seller A and Seller B, father and daughter. The Listing Contract, exhibit 5, listed only Seller B's name as the seller of the property and contained only Seller B's signature. The Purchase Contract, exhibit 8, contained only Seller B's name as the seller of the property and contained only Seller B's signature. Seller A testified that he had full knowledge that the property was being sold and that he gave Mr. Mangat full authority to sell the property but was out of the country at the time and the only way to communicate was by phone. Mr. Mangat testified that he had the seller's verbal authority to sell the property but did not have the authority in writing nor did he have a power of attorney. Mr. Mangat further testified that when the seller returned to Canada, he drove him to the lawyer's office so he could sign the transfer papers.

With regards to the basement suite, Mr. Mangat testified that the buyer's agent was aware the mother-in-law suite was illegal and had to be removed. In the May 14, interview with a RECA investigator, Mr. Mangat stated that it was all done verbally and there was a trust factor with the other realtor. He admitted that common practice would have been for him to place the words "illegal suite" in additional terms and had it initialed by both parties. A City of Calgary inspector testified that his notes indicated he spoke to Mr. Mangat on August 1, 2007 and during that conversation Mr. Mangat informed him that he and the owner were aware the suite needed to be removed but the owner was out of the province until September 1, 2007. The inspector recalled that he was satisfied with Mr. Mangat's assurance that the suite would be removed and he could give one more extension to rectify the situation. Mr. Mangat testified that he recollected telling the inspector who the owner of the property was in the August phone call but that was all the conversation was about. The City inspector testified that he spoke to someone who identified himself as Harpal Mangat on September 13, 2007. The person, whom the inspector believed to be Harpal Mangat, informed him that the basement kitchen was being removed and would be completed in 2 weeks as the basement tenants were now using the

upstairs. The inspector further testified that he visited the property on October 12, 2006 and spoke to the new owners as they were moving in. He informed them the basement suite was illegal and they were very upset. On November 12, 2006 he again visited the property and found the entire basement kitchen to be removed. When asked by a panel member if the general public would know what R1A zoning would mean, the inspector answered no. When asked to confirm that a realtor would know what it meant, the inspector answered that he was surprised by the lack of knowledge of land use bylaws by many realtors. During the May 14, 2007 interview, Mr. Mangat indicated that he had not spoken to a City of Calgary investigator on September 13, 2007 as he was in B.C. and did not have his cell phone with him. His phone, left in Calgary, could have been answered by someone else, possibly his father or his wife or another person who helps him in his business.

Mr. Mangat testified when he was with his mother on family business and they did all their business in cash. Therefore there were no receipts for hotels, gas or food, the exception being the receipt for repair of a tire that was supplied by the investigator.

Former RECA investigator, Vi Pickering testified that between March 2, 2007 and June 20, 2007, she sent Mr. Mangat three letters, numerous phone calls and a fax requesting information and documents with regards to the investigation into his conduct the executive director. Mr. Mangat attended three interviews and provided some, but not all of the information requested. On June 20, 2007, a letter signed by the executive director was sent to Mr. Mangat as a formal request for the remaining information. On July 17, 2007 a further letter signed by the executive director was sent to Mr. Mangat requesting forms Mr. Mangat had been provided at his last interview on July 10, 2007. Mr. Mangat asked Ms Pickering, under cross examination, if he had cooperated with the investigation and she replied, yes.

Mr. Mangat testified that he did cooperate with the investigation. He presented three waivers as evidence, exhibits 20, 21 and 22 that he had supplied to the investigator.

### III) FINDINGS

Notwithstanding that Mr. Mangat eventually provided the information requested of the RECA investigation, and notwithstanding the testimony of Ms Pickering when she agreed, with Mr. Mangat that he cooperated, it took five letters, three interviews and a time period of five months before the information was received. The Panel believes that when an industry member is under investigation and information is requested of him, it is imperative that the industry member provide that information within the deadlines given. Over the course of the investigation period, Mr. Mangat was given deadlines for providing information which were not met and when he did provide information, it was not

all the information which was requested in any given instance. In the Panel's view Mr. Mangat did not cooperate with the investigation and contravened s.38(4) of the *Act*. This is conduct deserving of sanction.

Notwithstanding the testimony confirming that Mr. Mangat had the permission of the absent owner to market and sell the property, he did not have the permission in writing. As well, both sellers' names and signatures were not included on the listing and the purchase contracts. In the Panel's view this is a breach of s.4(b) and conduct deserving of sanction.

While the basement suite itself is not a latent defect, the fact that it was illegal and under a removal order from the city of Calgary is a pertinent detail that was not disclosed in writing to the buyer and/or buyer's agent. There was contradictory testimony from the City inspector and Mr. Mangat as to whether or not Mr. Mangat knew about the removal order. The Panel believes that the inspector spoke to Harpal Mangat on August 1, 2006 and that Mr. Mangat informed him that he and the owner were aware the suite needed to be removed. While Mr. Mangat testified that the buyer's agent knew about the removal order, he did not present any corroborating evidence that he told the agent. Mr. Mangat did not write on the contract that the suite was illegal. The buyers did not know the suite was under a removal order until they were informed by the city inspector when they were moving in. The Panel does not believe that Mr. Mangat told the other agent because if the other agent knew, the Panel would expect the buyers to know. As s.4(c) of the Code of Conduct required Mr. Mangat to inform the agent or the buyers and as he did not tell them, this is a breach and conduct deserving of sanction.

It should be noted that it is Mr. Mangat's responsibility to ensure that any messages left on his cell phone or any other answering device during his absence are recorded and conveyed to him no matter who was in control of those devices. It does not appear from the respondent's testimony that this was the case.

#### IV) ORDERS

The Hearing Panel requests submissions on sanction by the Executive Director to be provided to Mr. Mangat and the Hearings Coordinator within 14 days of service of this decision. Mr. Mangat then has 14 days from that date to provide his submissions to the Executive Director and to the Hearings Coordinator. The Executive Director has 7 days to submit a rebuttal to Mr. Mangat's submissions on sanction to Mr. Mangat and the Hearings Coordinator.

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

This decision was made on 29<sup>th</sup> November, 2010

*Wayne McAlister, Chair*

*Norm Jensen*

*Marjorie King*

**THE REAL ESTATE COUNCIL OF ALBERTA**

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**AND IN THE MATTER OF** a Hearing regarding the conduct of **Harpal Mangat**, real estate associate, at all material times registered with Ashmont Realty Ltd

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

Hearing Panel: Wayne McAlister, Chair  
Norm Jensen  
Marjorie King

Hearing Date: October 25 and 26, 2010

Written Submissions from: Aruna Marathé, on behalf of the Executive Director  
Harpal Mangat on his own behalf

**I) INTRODUCTION**

The hearing in this matter took place on October 25 and 26, 2010. The Hearing Panel issued a written decision on their findings with respect to conduct deserving of sanction on November 29, 2010. The Panel requested written submissions on sanction and costs from counsel on behalf of the Executive Director of the Real Estate Council of Alberta, and Harpal Mangat.

**II) SUMMARY OF SUBMISSIONS ON SANCTION**

*Submissions from the Executive Director*

With regards to the contravention of s.38(4) of the *Act*, counsel on behalf of the Executive Director submitted that previous panels in the matters of James and Tse had assessed fines between \$5,000 and \$10,000 for failure to cooperate. In the James case, Mr. James did provide limited cooperation to RECA investigators and this was comparable to Mr. Mangat's case as Mr. Mangat did eventually cooperate with the investigators after causing delay.

Counsel submitted that a fine of \$5,000 and a three month suspension would be appropriate sanction for contravention of s.38(4) of the *Act*.

With regards to the contravention of s.4(b) of the *Code*, counsel submitted that penalties ranging from \$1,500 to \$15,000 had been ordered in comparable cases

and that in Mr. Mangat's case, a fine of \$1,500 would be appropriate. Mr. Mangat put himself and his brokerage at risk by not obtaining written authorization or a copy of the power of attorney to market the property in spite of both owners knowing about the listing agreement and the purchase and both owners eventually signing the transfer papers.

With regards to the contravention of s.4(c) of the Code, counsel submitted that penalties varied depending on how many other contraventions there were, ranging from \$1,000 to \$10,000 and that in Mr. Mangat's case a fine of \$4,000 would be appropriate. In this matter Mr. Mangat did not disclose there was a municipal order to remove the suite, a fact that had a large impact on the finances of the buyer. Mr. Mangat did not follow his brokerage's written policies regarding disclosure of pertinent facts.

Counsel also submitted that an educational component be required and that Mr. Mangat should complete Section 4 of Phase 2 of REAP within 6 months of the decision date.

#### *Submissions from the Industry Member*

With regards to contravention s.38(4) of the Act, Mr. Mangat submitted that he cooperated with RECA investigators to the best of his ability and any delays were beyond his control. He was unable to initially obtain a signature from his wife and only after he received the letters and explained to his wife his responsibilities as a real estate associate, did she consent to sign the requested waivers. Mr. Mangat submitted that he did supply all the information requested and the time lapse was out of his control.

With regards to s.4(b) of the Code, Mr. Mangat submitted that a fine of \$500 would be appropriate. He submitted that he understood and realized that both parties' signatures' should have been on the contracts.

With regards to s.4(c) of the Code, Mr. Mangat submitted that he was not aware of any removal order of the basement suite and the owners made no disclosure of the fact of any removal order. Mr. Mangat submitted that he knew the basement suite was illegal and should have written it in the contract although he verbally explained it to the buyer's realtor and that a fine of \$1,000 would be appropriate.

### **III) SUMMARY OF SUBMISSIONS ON COSTS**

With regards to costs, counsel submitted that the full costs of the hearing be assessed against Mr. Mangat as Mr. Mangat's non-cooperation prolonged the investigation. Although Mr. Mangat admitted both verbally and in writing that he should have disclosed pertinent information and should have had written authorization of both owners for the transaction, he brought these matters to the hearing panel. This necessitated the calling of witnesses and also prolonged the time of the hearing. The full cost of the hearing amounts to \$17,875.37.

With regards to costs, Mr. Mangat submitted that he believed a costs assessment against him of \$2,000 would be appropriate.

#### **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.

With regards to the contravention of s.38(4) of the Act, the Panel feels that a fine of \$3,000 would be appropriate. Mr. Mangat did eventually provide documentation but not in a timely manner and we find this to be a mitigating factor. The Panel finds that a suspension of 2 months would be appropriate. The conduct of failing to cooperate is serious and this level of fine and suspension will support general deterrence.

With regards to the contravention of s.4(b) of the Code of Conduct, the Panel believes a fine of \$1,500 is appropriate. Mr. Mangat had verbal permission to market the home and having found Mr. Mangat to have breached this section notwithstanding this permission, we find this to be a mitigating factor on sanction in these circumstances. A fine is still appropriate for the failure to get the permission in writing or obtain a power of attorney.

With regards to the contravention of s.4(c) of the Code of Conduct, The Panel believes a fine of \$4,000 is appropriate. The testimony of the city inspector was critical in coming to this decision. The Panel believed the inspector when he testified that he informed Mr. Mangat that the suite had to be removed. This aggravating factor supports a higher fine.

With regards to costs, the Panel has reduced the amount from \$17,875.37 to \$15,585.00. The Panel felt the Executive Director spent too much time and emphasis on latent defect rather than failure to disclose and using our discretion with respect to an award of costs have reduced the number of hours accordingly.

The Hearing Panel hereby orders that Harpal Mangat:

- a) shall pay fines in the amount of \$8,500.00.
- b) shall pay costs in the amount of \$15,585.00.
- c) shall have his licence suspended for a period of 2 months from the date of this decision.
- d) shall successfully complete Phase 2 Section 4 of REAP within 6 months of the date of this decision.

Should this course not be available within the time frame, a different course may be substituted at the sole discretion of the Executive Director or the Executive Director may extend the deadline for the completion of the course. It is Mr. Mangat's

responsibility to advise the Executive Director if this course is not available or to advise the Executive Director when he has successfully completed the course.

This decision was made on 15<sup>th</sup> March, 2011

*Wayne McAlister, Chair*

*Norm Jensen*

*Marjorie King*