

IN THE MATTER OF THE *REAL ESTATE SERVICES ACT*

S.B.C. 2004, c.42 as amended

AND

IN THE MATTER OF THE QUALIFICATION FOR LICENSING OF

PAUL JAMES EHMANN

REASONS FOR DECISION

DATE AND PLACE OF HEARING:	December 6, 2018 Office of the Real Estate Council Vancouver
QUALIFICATION HEARING COMMITTEE:	Karen Ameyaw Len Hrycan Thelma O’Grady (Chair)
COUNSEL FOR THE REAL ESTATE COUNCIL:	Kristine Mactaggart Wright, Esq.
APPLICANT:	Paul James Ehmann appearing on his own behalf
WITNESS:	Richard Pater -Applicant’s proposed Managing Broker

INTRODUCTION

[1] This hearing was conducted pursuant to section 10 of the Real Estate Services Act, S.B.C. 2004, CH. 42 (the “RESA”) and section 2-6 of the Rules (the “Rules”) of the Real Estate Council of British Columbia (the “Council”) to determine whether Paul James Ehmann satisfied the Council that he is currently of good reputation and is suitable to be licensed under the Act, provided he meets all the other requirements for licensing under RESA.

DECISION

[2] The Hearing Committee is satisfied that Paul Ehmann is currently of good reputation and suitable to be licensed, subject to conditions and restrictions on his licence as per Section 15 of the RESA.

[3] Reasons for the Hearing Committee’s decision are set out below.

ISSUES

[4] There were three issues for the Hearing Committee in this qualification hearing:

- (a) Does Mr. Ehmann meet the statutory burden to satisfy the Council that he is “of good reputation and suitable to be licensed” and that he “has not been disciplined by a professional body...for reasons that reveal the applicant is unfit to be a licensee”, as required by Section 10 of the RESA?
- (b) If the Hearing Committee is not satisfied that Mr. Ehmann is currently of good reputation or suitable to be licensed, it may want to suggest a timeframe before which Mr. Ehmann may reapply.
- (c) If the Hearing Committee determines that Mr. Ehmann is suitable for licensing, should it impose any conditions on his license?

PROCEEDINGS

[5] Section 2-6 of the Rules provides:

If the council considers there may be an issue as to whether an applicant is qualified to be licensed, then

- (a) in accordance with Section 10 [qualifications for obtaining licence] of the Act, or
- (b) at the level and in the category for which the applicant is applying,

the Council may direct that the matter is to be dealt with by way of a hearing conducted by a hearing committee.

The Notice of Qualification Hearing was sent to the Applicant advising him of the issues listed above.

[6] Section 10 of the RESA provides:

An applicant for a new license or license renewal must satisfy the Real Estate Council that they meet the following applicable requirements:

- (a) the applicant is of good reputation and suitable to be licensed at the level and in the category for which the applicant is applying;

...

(d) in all cases, the applicant has not:

- i. been refused a licence under real estate, insurance, mortgage broker or securities legislation in British Columbia or in another jurisdiction,
- ii. held a licence that was suspended or cancelled under real estate, insurance, mortgage broker or securities legislation in British Columbia or in another jurisdiction,
- iii. been disciplined by a professional body, or

- iv. been convicted of an offence
for a reason that reveals the applicant to be unfit to be a licensee;

(e) in all cases, the applicant meets any other qualification requirements.

Accordingly, the burden lies on each applicant to satisfy Council, on the balance of probabilities, that he or she is qualified.

[7] Section 13 of the RESA states that before refusing to issue a licence the Council must provide the applicant with an opportunity to be heard respecting the matter.

[8] Section 15 of the RESA states:

(1) Subject to this section, the Real Estate Council may, as it considers necessary or desirable in relation to a specific licence,

- (a) impose conditions and restrictions on the licence,
- (b) vary a condition or restriction applicable to the licence,

...

(2) The powers under subsection (1)(a) or (b) to impose or vary a condition or restriction are exercisable only:

- (a) on or before the date on which the licence is issued, with effect on or after that date, or
- (b) on the written application or with the written consent of the licensee.

(3) Before imposing or varying a condition or restriction as referred to in subsection (2)(a), the Real Estate Council must give notice to the applicant and provide the applicant with an opportunity to be heard respecting the matter.

(4) If the Real Estate Council imposes or varies a condition or restriction as referred to in subsection (2)(a), it must:

- (a) provide the applicant with written notice of the condition or restriction and the reasons for it, and
- (b) advise the applicant of the right to appeal under Division 4 [Appeals to Financial Services Tribunal] of Part 4.

(5) The power under subsection (1)(c) to remove a condition or restriction is exercisable at any time on the Real Estate Council's own initiative or on the written application of the licensee.

EVIDENCE

- [9] The documentary evidence before the Hearing Committee consisted of 18 exhibits as listed in the List of Exhibits.
- [10] The Council received an initial application for a Licence in the category of representative for trading services from the Applicant, dated December 8, 2017, and received in January 2018 (the "Initial Application").
- [11] The 64-year-old Applicant was registered with the Saskatchewan Real Estate Commission ("SREC") as a salesperson commencing January 21, 1981.
- [12] In his Initial Application, the Applicant responded "yes" to Question 6 about whether he had been disciplined by a professional body, and noted "see attached".
- [13] Attached to the Initial Application was a 2008 Decision of the SREC reported at 2008 SKREC 7. At page 8 of its decision the SREC noted two previous discipline decisions for the Applicant from the SREC.
- [14] In an email dated May 3, 2018, the SREC Registrar noted that the two previous discipline decisions of the SREC were in decisions dated January 13, 2000 and March 28, 2006, and that the Applicant had since paid the fines SREC levied. The applicant's registration history in Saskatchewan was also attached.
- [15] The Applicant was suspended by SREC in 2008, for not completing an educational upgrading ordered by the SREC.
- [16] The Applicant updated his Application for a Licence in an application dated July 6, 2018 and received by Council on July 11, 2018. That Application was not signed by his proposed Managing Broker. The proposed Managing Broker then signed the updated application on July 13, 2018 (collectively, the "Updated Application").
- [17] In the updated Application he responded "yes" to Question 6, and also "yes" to Questions 4 and 5 about any court orders or judgments respecting real estate services or mortgages in respect of the Application or in respect of any business of which the Applicant was an owner, director or officer, and included a number of attachments.
- [18] The attachments to his Updated Application related broadly to three court orders or judgments:
- a. *No. 1 Lawn & Yard Care Inc. v Weyburn Trailer Court Ltd. et al*, reported at 2006 SKQB 63;
 - b. Residential Tenancy issues at a property located at 2060 Halifax Street, Regina (the "Property"); and
 - c. Mortgage foreclosure proceedings in respect of the Property.

- [19] The Updated Application also included news articles from the www.cbc.ca website titled “Controversial Landlord says he was only trying to help” and “Regina Landlord ordered to pay former tenants \$20K” (the “CBC Articles”).
- [20] Counsel for Council argued that she sought to rely on the CBC Articles not for the truth of its contents, but for what it demonstrated about the Applicant’s reputation.
- [21] In a Notice of Hearing dated October 29, 2018, the Applicant was given notice that his Application had been set down for a hearing.
- [22] The Applicant produced six Letters of Reference. The first letter was dated March 29, 2018, and signed by his proposed Managing Broker, Rick Pater. In it he states that he found the Applicant to be of good character and would be pleased to welcome him to his firm.
- [23] In a second letter dated May 16, 2018, Mr. Pater stated that he had read the 2000, 2006 and 2008 SREC Discipline Decisions, and was aware of the judgments. He also stated that he had known the Applicant for a number of years and felt that the Applicant had learned from his previous mistakes.
- [24] The other four Reference Letters, while praising the Applicant, do not set out that the authors are aware of the prior discipline cases or judgments against the Applicant. We therefore place no reliance on these four letters.
- [25] The Applicant testified orally at the hearing on December 6, 2018. He stated that he understands the seriousness of his position and is facing the mistakes he made in the past.
- [26] There is no evidence suggesting that the Applicant acted out of greed or with an intent to defraud.

REASONS FOR DECISION

- [27] The onus is on the Applicant to demonstrate that he is, on a balance of probabilities, currently of good reputation, and suitable to be licensed. Evidence must be scrutinized with care and must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test.
- [28] We are guided by the Council’s “Good Reputation” Guidelines, which is a Council-approved document that provides guidance to applicants, and to qualification committees, about what hearing committees may consider when assessing an applicant’s past and their current reputation, suitability and fitness.
- [29] The Council’s Good Reputation Guidelines (“Guidelines”) reiterate that every applicant for a licence must, among other things, be of “good reputation”. General business and personal reputation... and/or whether an applicant has been disciplined by a professional body will be reviewed when considering an application’s “good reputation”.

[30] The Guidelines also provide rehabilitation factors that may be considered by a hearing committee when determining whether an applicant has fully rehabilitated himself or herself and is currently of good reputation and suitable to be licensed within Section 10 of the RESA. These include:

(a) Restitution to any person who has suffered monetary losses as a result of the conduct in question.

...

(d) Stability of family life and fulfillment of parental and familial responsibilities subsequent to conduct in question.

(e) Correction of business practices resulting in injury to others or potential to cause injury.

(f) Significant or conscientious involvement in community, religious congregation, or privately sponsored programs designed to provide social benefits or ameliorate social problems.

(g) Change in attitude from that which existed at the time of the conduct in question as evidenced by relevant sources such as:

- testimony of the applicant;
- evidence from family members, friends, or other persons familiar with the applicant's previous conduct and with the subsequent attitudes and behavior patterns;

...

[31] These Guidelines do not bind the Council or this Hearing Committee, but they provide notice of how hearing committees will generally approach issues of good reputation, suitability and fitness. Likewise, the Notice of Hearing is provided to applicants to give notice of the issues giving rise to a qualification hearing but cannot restrict the Hearing Committee's jurisdiction to consider whether the Applicant has met the requirements for a licence under Section 10 of the RESA.

[32] A tribunal is not bound to rely solely on the law as presented by the parties: *International Woodworkers of America, Local 2-69 v. Consolidated-Bathurst Packaging Ltd.* [1990] 1 S.C.R. 282 (S.C.C) at para 32. The Hearing Committee may therefore note that the good reputation, suitability and fitness requirement under the RESA are similar to the "good character" and "fitness" requirements of other professions in British Columbia and elsewhere in Canada.

[33] A hearing committee of the Law Society of British Columbia summarized good character and fitness principles in *Applicant 3 (Re)*, 2010 LSBC 23. Fitness encompasses good character, and in the context of the legal profession quoted the principle that "a lawyer must not only show that he or she has all the attributes of good character – honesty being one of them – the lawyer must also show that he or she has other attributes from which a forecast of future integrity can be made" (at para. 19). The panel noted that the standard is not one of perfection, but an

applicant must establish good character at the time of the hearing (at para. 19), and that the determining factor is the public interest (at para 23).

- [34] We note that the Applicant expressed remorse and takes responsibility for his actions. He testified that over the intervening years, he has come to understand the mistakes he made and why. He has re-established relationships with his children and grandchildren and is in a new stable relationship. He is respected in his community and deemed a good employee. He has learned from his mistakes and turned his life around.
- [35] Of concern to the panel was a judgment of \$19,474.04 against the Applicant made in 2010. It was a judgment obtained by the Saskatchewan Office of Residential Tenancies when tenants of the Applicant had to move because the Applicant's building was being foreclosed. The tenants were ultimately assisted by Saskatchewan social services to obtain new accommodation. No one pursued the Applicant over this judgment, and only one of the tenants is listed on the Applicant's Credit Report as "disposition unknown".
- [36] The Hearing Committee was not satisfied with the limited information regarding this unpaid judgment and directed further questions to the Applicant and Counsel for the Council to be answered in written submissions. The Applicant then made further inquiries in to the status of this judgment and confirming it remained open and unpaid, he drove from British Columbia to Saskatchewan in late December 2018 and paid the judgment in full. He provided proof of the payment in his written submissions. As a result, the Applicant has now made full restitution of all outstanding judgments.
- [37] This Hearing Committee also places a significant reliance on the evidence of Robert Pater who is a current licensee in good standing since 1986. With full knowledge of the Applicant's prior conduct, he is prepared to offer a realtor position to the Applicant under his supervision. Thus, there is a definite plan in place with a committed managing broker who will directly supervise the Applicant to ensure that he adheres to any restrictions or conditions imposed on his licence.

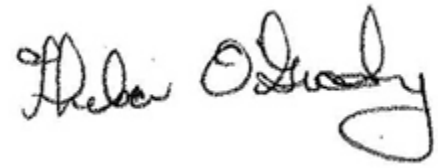
CONDITIONS

- [38] Overall, the Applicant's evidence and submissions satisfies the Hearing Committee, on the balance of probabilities, that he is suitable for licensing subject to the following conditions to protect the public:
- 1) Paul Ehmann's licence will be restricted to RE/MAX Elk Valley Realty, or another brokerage acceptable to the Council (the "Brokerage"), for a period of not less than twenty-four (24) months following his licensing.
 - 2) Paul Ehmann will be subject to enhanced supervision by his managing broker, as set out in these conditions, for a period of not less than twenty-four (24) months following his licensing (the "Enhanced Supervision Period").

- 3) Paul Ehmann must remain under the direct supervision of Richard Pater, the managing broker of the Brokerage, or a successor managing broker acceptable to the Council (the “Managing Broker”), during the Enhanced Supervision Period.
- 4) Paul Ehmann must keep the Managing Broker informed on a timely basis of the real estate services that he is providing and other activities he is engaging in and must consult with the Managing Broker in advance of taking any action regarding any questions or concerns he may have regarding compliance with the RESA, the Regulations, the Bylaws, the Rules and all other applicable legislation and the Brokerage’s policies and procedures.
- 5) Paul Ehmann must report all of his transactions to the Brokerage promptly, and ensure that no such transactions are constructed outside the Brokerage.
- 6) Paul Ehmann must not engage in the rental of any properties.
- 7) Paul Ehmann must ensure that all documents relevant to each transaction are provided to the Brokerage and contained in the deal file, including the contract of purchase and sale, all offers received for the listing, assignment agreements, addendums, trade records sheets, disclosure statement releases and other pertinent information.
- 8) The Managing Broker must provide a final report to the Council confirming:
 - a. that Paul Ehmann’s real estate services have been conducted under their direct supervision;
 - b. that Paul Ehmann’s activities have been carried out competently and in compliance with the RESA, the Regulations, the Bylaws, the Rules and all other applicable legislation, and in accordance with Brokerage’s policies and procedures;
 - c. that they have reviewed all documents signed by Paul Ehmann’s clients and that all documents relevant to the transaction have been provided to the client and are contained in the trade records files; and
 - d. the number of real estate transactions that Paul Ehmann has conducted and details regarding the client(s); and agency offered; and any customer relationships.
- 9) The Report will be reviewed by the Chair of the Council, who will determine if the requirement for enhanced supervision for the period set by Council has been met, and if not, will so advise the Managing Broker and Paul Ehmann and Paul Ehmann may elect to:
 - a. continue with enhanced supervision until the Chair of the Council is satisfied by further evidence that the required period and purpose of enhanced supervision has been met;or

- b. have his licence suspended until a further order is made by the Council under section 43(4) of (5) of the RESA.
- 10) The Managing Broker must immediately report to the Council anything of an adverse nature with respect to Paul Ehmann's real estate services, including failure on his part to observe the requirements of the RESA, the Regulations, the Bylaws, the Rules and all other applicable legislation, complaints received by the Brokerage, the nature of the complaint and the parties and how it was resolved.
- 11) The Managing Broker must ensure that Paul Ehmann and his unlicensed or licensed assistants, if any, receive adequate, appropriate and ongoing training with respect to their obligations under the RESA, Regulations, Bylaws, and Rules, and in accordance with the Brokerage's policies and procedures.
- 12) The Managing Broker must be provided with a copy of these conditions and, prior to the commencement of the Enhanced Supervision Period, must confirm in writing to the Council that they have read these conditions, are aware of their duties under these conditions, and agree to accept those duties. Any acceptable successor managing broker will also be provided with a copy of these conditions and must provide the same confirmation within 14 days of assuming the Managing Broker's duties.
- 13) If for any reason the Managing Broker is unable to perform any of the duties imposed herein, they must immediately advise Council of the inability.
- 14) If the Managing Broker is unable or unwilling to perform any of these duties and/or fails to meet their obligations under these conditions, Paul Ehmann's licence is suspended and will remain suspended until all conditions here are met or a further order is made by Council under section 43(4) or (5) of the RESA. Any suspension of Paul Ehmann's licence under this paragraph does not limit the Council's ability to take further disciplinary action for breach of the conditions or of the RESA, the Regulations, the Bylaws, the Rules and all other applicable legislation.
- [39] If Paul Ehmann fails to comply with any condition herein, his licence will be cancelled forthwith without further notice to him, pursuant to section 14(b) of RESA.
- [40] As required by Section 13 of the Act the applicant is advised he may appeal this decision imposing conditions and restrictions for licensing by filing a Notice of Appeal with the Financial Services Tribunal within 30 days of this decision.

DATED at VANCOUVER, BRITISH COLUMBIA this 4th day of February, 2019.



Thelma O'Grady, Chair
Qualification Hearing Committee



Karen Ameyaw
Qualification Hearing Committee



Len Hrycan
Qualification Hearing Committee

RECBC File #17-570

LIST OF EXHIBITS

Exhibits from the Hearing on December 6th:

- | | |
|------------|--|
| Exhibit 1 | Notice of Qualification Hearing |
| Exhibit 2 | Letter from Kristine Mactaggart Wright of the Real Estate Council of British Columbia re: Notice of Qualification Hearing, dated November 8, 2018, Acknowledged by The Applicant November 9, 2018 |
| Exhibit 3 | Letter from Kristine Mactaggart Wright of the Real Estate Council of British Columbia re: Material for Qualification Hearing, dated November 19, 2018, acknowledged by The Applicant November 23, 2018 |
| Exhibit 4 | Letter from Kristine Mactaggart Wright of the Real Estate Council of British Columbia re: Notice of Qualification Hearing dated November 8, 2018, acknowledged by Richard Pater on November 28, 2018 |
| Exhibit 5 | Letter from Kristine Mactaggart Wright of the Real Estate Council of British Columbia re: Material for Qualification Hearing, dated November 19, 2018, acknowledged by Richard Pater |
| Exhibit 6 | Book of Documents of the RECBC |
| Exhibit 7 | Schedule 1 |
| Exhibit 8 | Load Agreement Between 101016302 SASKATCHEWAN LTD. Operating as Elite Security (2003) Ltd and by Design Homes LTD executed as of the 27th day of April 2007 |
| Exhibit 9 | Letter from Lucke Law Prof Corp, signed by Darryl Luck, date July 20, 2009 re: Refinancing |
| Exhibit 10 | Fire Inspection Report, City of Regina, Dated December 2, 2009, follow up issued December 4, 2009 |
| Exhibit 11 | Certificate of Registration issued by The Saskatchewan Real Estate Commission re: The Applicant for the Period of July 11, 2008 to June 30, 2009 |
| Exhibit 12 | Licence History for Richard Pater |

Exhibits to be marked as requested by Counsel for Counsel in the Supplemental Submissions of the Real Estate Council of British Columbia

- | | |
|------------|---|
| Exhibit 13 | Letter from Kristine Mactaggart Wright of the Real Estate Council of British Columbia to Paul Ehmann dated September 28, 2018 re: advising qualification hearing required, with Good Reputation Guidelines attached |
| Exhibit 14 | Email correspondence from Kristine Mactaggart Wright of the Real Estate Council of British Columbia to Paul Ehmann dated October 18, 2018 re: staff's |

concern about the incomplete information relating to the Proceedings and an invitation to supplement gaps in his Application to Council

- Exhibit 15 Credit Report dated December 18, 2018 re: Paul Ehmann
- Exhibit 16 Email correspondence from Paul Ehmann to Kristine Mactaggart Wright dated December 18, 2018 re: consent to Credit Report
- Exhibit 17 Email correspondence from Paul Ehmann to Kristine Mactaggart Wright dated December 19, 2018 attaching:
- Consent and Authorization for Credit Report dated December 19, 2018
 - Province of Saskatchewan Judgement Registry print-out dated December`18, 2018 re: outstanding judgment
 - Email correspondence from Doug Jameson, Deputy Director, Office of Residential Tenancy dated December 19, 2018
 - Copy of Tenancy Judgment dated January 26, 2010
 -

Exhibit to be marked as submitted by the Applicant in his Supplemental Submissions:

- Exhibit 18 Sheriff's Officer's Provisional Receipt, dated December 27, 2018 at Regina, Saskatchewan

AUTHORITIES CITED BY THE PARTIES

1. Council's "Good Reputation" Guidelines
2. Excerpts from the *Legal Profession Act*
3. Excerpts from the *Real Estate Rules*
4. Excerpts from the *Real Estate Services Act*
5. Behroyan (Re), 2018 CanLII 50247 (BC REC)
6. Re: Denise Rennee Decary, August 13, 2018
7. Hassanali (Re) 2008 CanLII 75207 (BC REC)
8. Re: Jon Donald Hugh Kingsbury, November 18, 2013
9. Christie Anne MacKay, May 31, 2017
10. Roshinsky (Re), 2011 CanLii 27679 (BC REC)
11. Schiebel (Re), 2009 CANLII 14370 (BC REC)
12. Schiebel (Re), 2015 CANLII 90763 (BC REC)
13. Douglas Warren Welder, January 25, 2018
14. Mainland (Re), 2014 LSBC 56
15. McRoberts (Re), 2010 LSBC 19
16. R. v Dougan, 2015 BCPC 35
17. Ehmann (Re), 2006 SKREC 2
18. Ehmann (Re), 2008 SKREC 7
19. Ehmann v Ehmann. 2004 SKQB 430
20. Khosla v RECBC, September 13, 2000
21. No. 1 Lawn and Yard Care Inc. v Weyburn Trailer Court Ltd. et al, 2006 SKQB 63
22. Raeburn v Langen, 2008 BCSC 1342, aff'd 2009 BCCA 465