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

AND IN THE MATTER OF a Hearing concerning the conduct of **Taiwo Odetunde**, while registered as a Real Estate Broker with Bayside Realty Inc.

Hearing Panel members:	Kevan Ladner, Chair Darrell Cook Marjorie King
Appearing:	Ms. Naomi Nind, legal counsel on behalf of the Executive Director Mr. Taiwo Odetunde, on his own behalf
Witnesses:	Mr. Thomas Glenn Ms. Caroline Girgis Ms. Myrtle Sharp Ms. Deanna Wolf Mr. Steve Wolf Mr. Taiwo Odetunde
Hearing Date:	October 19, 2005

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

I) INTRODUCTION

The Hearing Panel held a hearing into the conduct of Taiwo Odetunde, while registered as a Real Estate Broker with Bayside Realty Inc. The Hearing Panel was composed of Kevan Ladner (Chair), Darrell Cook and Marjorie King.

The Hearing took place on October 19, 2005. In attendance at the hearing were Naomi Nind, legal counsel on behalf of the Executive Director of the Real Estate Council of Alberta, and Taiwo Odetunde, on his own behalf.

II) ALLEGATIONS

Taiwo Odetunde was called before the Hearing Panel to answer to the following allegations set out in the Notice of Hearing:

1. **THAT** between August 25, 2004 and November 30, 2004, contrary to section 25(1)(d) of the *Real Estate Act* and the fiduciary duty you owed to your principal, you failed to disburse money held in trust

with respect to a trade in accordance with the *Real Estate Act* Rules and with the terms of the trust governing the use of that money. This is conduct deserving of sanction, particulars of which are as follows:

(a) On or about August 25, 2004, you were the listing broker for the sale of residential property legally known as Plan 0312894, Block 6, Lot 1 (the "Property") on behalf of the owners, Pierre Gaudette and Christina Gaudette (the "Sellers").

(b) By a Residential Real Estate Purchase Contract, dated August 25, 2004 (the "Contract"), the Sellers agreed to sell and Steve Wolf and Deanna Wolf (the "Buyers") agreed to buy the Property. The closing date for this transaction was October 1, 2004 (the "Closing Date").

(c) You were a dual agent acting for both the Sellers and the Buyers in the sale transaction for the Property.

(d) Pursuant to the Contract, the Buyers gave you two cheques in the total amount of $22,000.00 as a deposit (the "Deposit") for the purchase of the Property.

(e) In or about the end of August 2004, you deposited the Deposit into the trust account (the "Bayside Trust Account") maintained by your brokerage, Bayside Realty Inc. ("Bayside").

(f) The purchase of the Property did not close on the Closing Date, and on or about October 4, 2004, the Buyers requested the return of the Deposit. You refused or otherwise failed to follow the instructions of your principals and refund the portion of the Deposit in the Bayside Trust Account or act in accordance with the terms of the Contract.

(g) In or about mid-November 2004, you transferred by three cheques the portion of the Deposit remaining in the Bayside Trust Account (the "Trust Funds") to Bayside's general account (the 'Bayside General Account").

(h) At or about the end of November 2004, the Trust Funds were no longer in the Bayside General Account and had not been returned to the Bayside Trust Account.

(i) Cheques drawn on the Bayside General Account in November and December 2004 included payments to you personally, a travel agent and a telecommunications company.

2. **THAT** between August 25, 2004 and November 30, 2004, contrary to section 25(1)(c) of the *Real Estate Act* and the fiduciary duty you owed to your principal, you failed to keep money received in trust separate from money belonging to you or Bayside. This is conduct deserving of sanction, particulars of which are set out in paragraph 1 herein.

3. **THAT** in or about November 2004, contrary to section 7(c) of the *Code of Conduct* and the fiduciary duty you owed to your principal, you participated in fraudulent or unlawful activities in connection with a real estate transaction when you withdrew that portion of the Deposit held in the Bayside Trust Account for your own use or for Bayside's business expenses. This is conduct deserving of sanction, particulars of which are contained in paragraph 1 herein.

4. **THAT** in or about late August and September 2004, contrary to section 2(e) of the *Code of Conduct* and the fiduciary duty you owed to your principal, you failed to disclose all relevant information to your clients or alternatively, to your principals, the Buyers, when you failed to advise them of a substantial encumbrance registered against the title of the Property. This is conduct deserving of sanction, particulars of which are as follows:

(a) You were a dual agent acting for both the Sellers and the Buyers in the sale transaction for the Property.

(b) In addition to the mortgage that the Buyers were to assume in the purchase of the Property, you were aware of a second mortgage or other encumbrance registered against the title of the Property in the amount of some $655,000.00 (the "Encumbrance").

(c) At no time did you advise the Buyers prior to the Closing Date of the existence of the Encumbrance.

(d) The Encumbrance was an impediment to the Buyers' purchase of the Property that prevented the transaction from closing on the Closing Date.

5. **THAT** between December 2004 and May 2005, contrary to Rule 21(1)(b) of the *Real Estate Act* Rules, you failed to be actively engaged in the management of your brokerage, Bayside. This is conduct deserving of sanction, particulars of which are set out in paragraph 1 herein and as follows:

(a) In or about December 2004, you left Canada on a trip to Africa and did not return until May 2005.

(b) You failed to ensure that Bayside's brokerage accounting for the 2004 fiscal year was filed with the Real Estate Council of Alberta within three months of Bayside's fiscal year end.

(c) In or about mid-January 2005, Bayside's telephone and fax numbers were disconnected and remained out of service for at least three months.

(d) During your absence, Bayside had an agent, Vibert Dawkins, who was responsible for at least two trades in real estate. No records of these trades were maintained at the offices of Bayside.

(e) During your absence, you did not arrange for a temporary broker. Neither did you delegate your responsibilities to Mr. Dawkins prior to your departure.

(f) You left signed blank cheques for the Bayside Trust Account with your daughter, who was not authorized to trade in real estate.

6. **THAT** between December 2004 and May 2005, contrary to Rule 21(1)(e) of the *Real Estate Act* Rules, you failed to ensure the business of your brokerage, Bayside, was carried out competently and in accordance with the *Real Estate Act*, the Bylaws and the Rules. This constitutes conduct deserving of sanction, particulars of which are set out in paragraphs 1 and 5 herein.

7. **THAT** between December 2004 and May 2005, contrary to Rule 21(1)(f) of the *Real Estate Act* Rules, you failed to ensure there was an adequate level of supervision of Bayside's agent, Mr. Dawkins. This constitutes conduct deserving of sanction, particulars of which are set out in paragraph 5.

8. **THAT** between December 2004 and May 2005, contrary to Rule 21(1)(g) of the *Real Estate Act* Rules, you failed to ensure the Bayside Trust Account and the records of this account were maintained in accordance with the *Real Estate Act*, the Bylaws, the Rules and the law as it relates to trustees. This constitutes conduct deserving of sanction, particulars of which are set out in paragraphs 1, 5 and 9.

9. **THAT** by the end of December 2004, contrary to Rule 42(4) of the *Real Estate Act* Rules, you failed to file with the Real Estate Council of Alberta Bayside's brokerage accounting within three months after the end of Bayside's fiscal year. This constitutes conduct deserving of sanction, particulars of which are as follows:

(g) The end of Bayside's 2004 fiscal year was September 30, 2004.

(h) You failed to file Bayside's brokerage accounting for the 2004 fiscal year as required by Rule 42(1) of the *Real Estate Act* Rules by the end of December 2004.

10. **THAT** between December 2004 and May 2005, contrary to Rule 36(1) of the *Real Estate Act* Rules, you failed to ensure that Bayside had all the required records for any trades in real estate conducted by the brokerage. This constitutes conduct deserving of sanction, particulars of which are set out in paragraph 5 herein.

11. **THAT** on or about August 25, 2004, contrary to section 4(d) of the *Code of Conduct*, you participated in the creation of a contract that you knew or ought to have known was false or misleading when you recklessly stated the amount of the mortgage that the purchaser was to assume in a residential real estate purchase contract. This constitutes conduct deserving of sanction, particulars of which are as follows:

(a) By the terms of the Contract, the Buyers were to assume the current mortgage on the Property (hereinafter the "Mortgage").

(b) You wrote the amount of the Mortgage that the Buyers agreed to assume in the Contract.

(c) The amount of the Mortgage that the Buyers in fact had to assume was approximately $4,000.00 more than what you had stated in the Contract.

(d) The Buyers would not have agreed to purchase the Property if they had known the true amount of the Mortgage that they would have to assume.

12. **THAT** between December 2004 and May 2005, contrary to section 38(4) of the *Real Estate Act* and section 7(d) of the *Code of Conduct*, you failed to cooperate with a person conducting an investigation and provide requested information. This constitutes conduct deserving of sanction, particulars of which are as follows:

(a) By letter dated January 31, 2005, an investigator duly appointed to conduct an investigation under the *Real Estate Act* informed you that an investigation had been commenced into your conduct and requested your response to the allegations against you no later than February 22, 2005. You did not respond to this letter.

(b) By letter dated March 1, 2005, the investigator again requested your response to the allegations against you no later than March 16, 2005. You did not respond to this letter.

III) PRELIMINARY MATTERS

Though no preliminary matters were raised prior to hearing evidence at the Hearing, Mr. Odetunde did raise two jurisdictional issues during the Hearing and we feel that it is important to address those in this decision. The first issue raised by Mr. Odetunde was whether or not the Hearing Panel had jurisdiction to rule on allegations relating to fraud. During the hearing, we observed that an allegation of misconduct found in the Notice of Hearing related to a potential breach of s.7(c) of the Code of Conduct. As such, within the context of the allegations of misconduct set out in the Notice of Hearing, including s.7(c), we ruled we had jurisdiction to determine whether or not there was "participation in fraudulent or unlawful activities."

The second issue of jurisdiction raised by Mr. Odetunde was whether the Executive Director had the ability to commence an investigation into the conduct of an industry member whose conduct was complained about by someone other than a person involved in the real estate transaction at issue. During the Hearing, we ruled that pursuant to s. 37 and 38 of the *Real Estate Act*, "a person", any person, may make a complaint about the conduct of an industry member and that complaint may be investigated by the Executive Director or a person appointed by the Executive Director.

IV) EVIDENCE

A total of 4 exhibits were presented, of which one was a binder containing 40 tabs. Six witnesses appeared on behalf of the Executive Director, including Thomas Glenn, Caroline Girgis, Myrtle Sharp, Deanne Wolf, Steve Wolf and Taiwo Odetunde.

Thomas Glenn confirmed that he represented the sellers that hired Mr. Odetunde to sell their property. The property in question had two mortgages on it, one mortgage was to a conventional lender and the other was to a construction company. The second mortgage was related to a much larger financing package for a piece of property in southeast Calgary. When the offer to purchase was made, Mr. Glenn started negotiating with the construction company's lawyer to remove the second mortgage from the title. Eventually, the lawyer for the holder of the second mortgage was satisfied and said the second mortgage would be discharged, but the consent to do so did not come until a week after the transaction was supposed to close. Mr. Glenn informed the buyer's lawyer that the deal was ready to close on October 8, but he was told that the buyers did not intend to close. Mr. Glenn had a number of discussions with the buyer's lawyer about closing the deal. It was made clear to Mr. Glenn that time was of the essence to the buyers, and the deal did not close then or on a later date. As well, the buyers, on the scheduled possession day, found out that the mortgage they were to assume was approximately $4,000 less than the purchase contract said, which would force the buyers to pay an additional $4,000 up front, in cash, to take possession. Some of the communication with the buyer's lawyer confirmed that Mr. Odetunde was willing to cut his commission by $2,000 (Tab 36, Exhibit A), to split the $4,000 difference and close the deal.

Mr. Glenn also testified that Mr. Odetunde was in touch with the buyer or the buyer's lawyer throughout the first week of October to try and get the deal to close. Transferring documents were late in being

tendered, but Mr. Glenn testified that things happen all the time that delays such documents. He stated that when people are willing, the deal closes.

Mr. Glenn received an Originating Notice of Motion dated October 12, 2004 (Tab 32, Exhibit A) directing the sellers and the seller's real estate agent, Mr. Odetunde, to return the deposit to the buyers. The buyer's lawyer took the position that because the sellers were not ready to close the deal on possession date, October 1, the buyers wanted their $22,000 deposit returned to them. Pursuant to the March 2005 order of Justice Macleod (Tab 37, Exhibit A), Mr. Glenn's law firm returned to the buyers the portion of the $22,000 deposit held by his firm, which was $5,342.24.

Mr. Glenn does not recall having any discussions with Mr. Odetunde about the return of deposit monies. However, if he had been contacted by Mr. Odetunde, Mr. Glenn said that he would never have instructed Mr. Odetunde to pay himself commission on the collapsed sale.

Mr. Odetunde questioned Mr. Glenn about the significance of the $4,000 difference in the mortgage assumption amount. Mr. Glenn answered that it was approximately one percent of the purchase price and that it would be a significant amount to some people, but not to others. Mr. Glenn testified that in this case, that amount became significant when it appeared to be an excuse to get the buyers out of the transaction.

Caroline Girgis, former audit administrator for RECA, confirmed that Mr. Odetunde's brokerage financial records were due to RECA by December 31, 2004 and that he did not submit them by that date. On March 7, 2005, Ms. Girgis sent an e-mail (Tab 6, Exhibit A) to Joseph Fernandez, manager of Compliance Audit and Investigations with RECA, informing him that the Bayside Realty financial records were due to RECA by December 31, 2004. It also detailed Ms. Girgis' attempts to contact Mr. Odetunde in January and March 2005. On March 28, 2005, Ms. Girgis, via e-mail, informed Mr. Fernandez that faxes and e-mails she had tried to send to Bayside did not go through (Tab 7, Exhibit A). On March 28,, 2005, an additional letter was sent to Mr. Odetunde regarding Bayside's late accounting report for fiscal year 2004. Mr. Odetunde was informed in the letter that if the accounting report was not provided to RECA by March 31, 2005, a request would be made to the Executive Director to suspend his licence (Tab 10, Exhibit A). The second page of Tab 10 shows that the fax did not go through.

The same letter was sent to Mr. Odetunde via registered mail (Tab 11, Exhibit A), only it said Mr. Odetunde had until April 8, 2005 to provide Bayside's accounting report. Ms. Girgis testified that the registered mail letter came back to her. Ms. Girgis also attempted to send an e-mail containing the same information as the letters at Tab 10 and Tab 11 to Mr. Odetunde, and the e-mail was also returned to her with a message that the e-mail address did not exist (Tab 12, Exhibit A). Mr. Odetunde asked Ms. Girgis if RECA has since received Bayside Realty's accounting report for fiscal year 2004 and she stated that she does not know as she is no longer in that position.

Myrtle Sharp testified that she was the investigator appointed to look into the Odetunde matter after RECA received a complaint letter from the Wolfs. Ms. Sharp sent Mr. Odetunde a letter on January 31, 2005 (Tab 3, Exhibit A) and again on March 1, 2005 (Tab 4, Exhibit A) asking him to provide a response to the complaint letter RECA received and to provide documents related to the Wolf purchase transaction that did not close. Tab 5, Exhibit A was entered as a complete list of the attempts Ms. Sharp made to contact Mr. Odetunde from January 17, 2005 to April 19, 2005. Ms. Sharp hand delivered a

letter (Tab 13, Exhibit A) to Mr. Odetunde's daughter at his home office on April 25, 2005 to inform him that RECA was expanding its investigation.

Ms. Sharp went through Tab 26 through Tab 31, which were bank statements from the Bayside Realty trust account and the Bayside Realty general account, and cashed cheques. The bank statement for the trust account showed a $7,000 deposit on August 26, a $5,000 deposit on September 2, a $15,000 deposit on September 9 and a $3,795.40 deposit on September 30. Page 3 of Tab 27 showed withdrawals from the trust account, including a cheque for $5,342.24 written to the law firm of Lowe, Glenn and Card (the balance of the buyer's deposit, over and above the commission payable to the brokerage's real estate agent) on September 13, a cheque for $4,397.70 on September 30, and in November 2004, three cheques written, totaling approximately $16,000, which was the balance of the $22,000 deposit for the transaction that did not close. The cheques written in November 2004 totaling $16,000 were for deposit in the Bayside general account. The bank statements for the Bayside Realty general account, found at Tab 28 of Exhibit A, show deposits that accord with the withdrawals made from the trust account. Throughout November 2004, a number of cheques were written and withdrawals made from the Bayside general account, the effect being that the Bayside general account had almost no money by the end of November 2004. Cheques written during that time period included a payment to Mr. Odetunde for Bayside management fees, Telus, an accountant, a bookstore, Mr. Odetunde's daughter and a $3,000 cheque that was originally read to be payable to Sprint Travel but was changed to read a private individual's name.

When Ms. Sharp visited Bayside, she also took photocopies of the Bayside trust account cheque book that contained blank cheques signed by Mr. Odetunde.

Ms. Sharp interviewed Mr. Odetunde on May 24, 2005 and a transcript was produced(Tab 40, Exhibit A). Mr. Odetunde told Ms. Sharp that he deposited the $22,000 deposit from the buyers (the Wolfs) into the Bayside trust account and later paid out $5,342.24 to Lowe, Glenn and Card after subtracting his commission from the deposit. Ms. Sharp said it was Mr. Odetunde's belief that since the buyers were backing out of the deal, he was entitled to claim the purchase deposit. He told Ms. Sharp that the sellers agreed to give him the entire deposit to pay him back for advertising. During that same interview, Mr. Odetunde said he told his agent, Mr. Dawkins, that he would be out of the country and that in his absence, Mr. Dawkins could work with Charmaine Odetunde, his designated agent. During the interview, Mr. Odetunde also said he was not aware of the second mortgage until the day the deal was supposed to close, but that even if he had been, he would not have been able to disclose the information to the buyer as it would not have been in the best interests of the sellers.

Deanna Wolf was the next witness. She confirmed that she complained to RECA about Mr. Odetunde's refusal to return the $22,000 deposit. Ms. Wolf and her common-law husband, Steve Wolf, went to view the property, for which Mr. Odetunde was the listing agent. The Wolfs decided to purchase the property and gave Mr. Odetunde two deposit cheques totaling $22,000. Ms. Wolf testified that her and her husband visited the property on October 1, to take possession, and the terms that were supposed to be fulfilled by possession date had not been, including cleaning the barn and fixing some electrical. Mr. Odetunde told them at that time that he could not give them the keys for the property and they would have to contact their lawyer. That is when the Wolfs found out that there was a second mortgage on the property and the title could not be transferred to them. That was also when the Wolfs found out that the mortgage assumption was $4,000 less than they thought and as a result they would need an additional $4,000 to $5,000 cash to take possession.

When the deal did not close on October 1, 2004, the Wolfs got in touch with Mr. Odetunde to request their deposit be returned to them. At the same time, the sellers' lawyer, Mr. Glenn, was attempting to clear the title of the property so that the deal could close. About a week later, the title was clear and the Wolfs were advised that they could take possession. The Wolfs decided they did not want to close the deal and eventually went to court and got an order for Bayside Realty to return their $22,000 deposit. Ms. Wolf testified that they have only received a little more than $5,000 back and that came by way of the seller's lawyer, Mr. Glenn.

Steve Wolf confirmed that he was also a party to the complaint against Mr. Odetunde regarding the collapse of their purchase transaction. The Wolfs signed a contract to assume a $363,000 mortgage, but later found out that the mortgage amount being assumed was different than what they thought it was. Mr. Wolf confirmed the facts that Ms. Wolf detailed in her testimony. They were unable to take possession of the property on possession day because of the difficulty with the second mortgage and they did not want to take possession because terms on their purchase agreement had not been met. Mr. Wolf testified that his lawyer, Richard Cragg, informed him and his wife that the issue with the second mortgage could drag on.

Mr. Wolf filed an Originating Notice of Motion (Tab 32, Exhibit A) to get the deposit money back from Bayside Realty and completed an affidavit and a supplemental affidavit in support of the Notice of Motion. Mr. Wolf also confirmed that he and his wife's $22,000 deposit has yet to be returned to them, other than approximately $5,000 that was returned by Mr. Glenn.

Under questioning by Mr. Odetunde, Mr. Wolf confirmed that the signature on the purchase contract was his and that he and his wife had refused the offer for a home inspection. Mr. Wolf also stated that he asked Mr. Odetunde for the deposit back because of the lien on the property and the fact that he and his wife would need that $22,000 to buy another property as it was all borrowed money and he and his wife did not want to let the money go. He stated that they were excited about moving into the house, until they found out about the second mortgage and saw that terms of the contract had not been fulfilled.

Under redirect, Ms. Nind asked Mr. Wolf if he received the mortgage verification information (Tab 18, Exhibit A) and he stated that she would have to ask Ms. Wolf as the number the information was apparently faxed to was her mother's house.

Vibert Dawkins was the next witness. Mr. Dawkins is a real estate agent and has known Mr. Odetunde for approximately 20 years. Mr. Dawkins is now registered with Homelife Realty Advisors, but used to be an agent at Mr. Odetunde's brokerage, Bayside Realty, and was an agent with Bayside Realty in August 2004. Mr. Dawkins testified that one of the reasons he left Bayside is because it was getting difficult to do transactions in the absence of Mr. Odetunde, as Mr. Odetunde was not accessible to him. Mr. Dawkins confirmed that he was interviewed by Ms. Sharp. During that interview he told Ms. Sharp that he had met with Mr. Odetunde about a month before Mr. Odetunde left. Mr. Odetunde had told him that he would be going overseas if he received money from a transaction he was waiting for to close. In Mr. Odetunde's absence, Mr. Dawkins had no one to contact for assistance.

Mr. Odetunde was the last person to give testimony. Mr. Odetunde testified that he faxed mortgage verification documents to a number provided to him by Ms. Wolf and that he told her they would discuss

the arrears if Mr. Wolf liked what he saw at the property. Mr. Odetunde knew that the sellers were being foreclosed on and says he did not disclose that fact or the fact that there was a second mortgage on the property because it addresses the seller's reasons for selling, and would breach his dual agency responsibilities. He suggested to the Wolfs that they make a conditional offer, including a condition such as a home inspection, but they refused. When the deal did not close on October 1, Mr. Odetunde says he received a phone call from Mr. Wolf telling him that they had found another property and that they would like their deposit money returned to them. Mr. Odetunde says he received an Originating Notice of Motion asking for the return of the deposit money. Mr. Odetunde testified that he should have a right to commission, and that even though there was a dispute between the buyer and the seller, it does not negate the payment of commission. Mr. Odetunde took the position that the $22,000 was a forfeited deposit and he had a right to it. He had not told the Wolfs about the second mortgage because they were not to assume it and therefore it was not relevant information to the buyers.

Mr. Odetunde confirmed that he kept his portion of the deposit (Tab 26, Exhibit A) payable in trust upon authorization of release. He sent a letter to Mr. Cragg (Tab 33, Exhibit A) stating that he would deal with the extra money in trust in accordance with the purchase contract. Mr. Odetunde then took the position that the money was payable as commission and transferred the funds into the Bayside general account before spending them. Mr. Odetunde also stated that it is no business of the Hearing Panel's how the money was spent. Upon questioning from the Hearing Panel, Mr. Odetunde stated that he did not understand that the Originating Notice of Motion was served in order to end the dispute about the deposit monies.

Mr. Odetunde does not deny that he left the country and that he signed blank trust cheques for while he was away in case Mr. Dawkins were to complete transactions in his absence. Mr. Odetunde also testified that he provided all financial records for Bayside Realty's 2004 fiscal year to RECA by mid-October 2004. But, he admitted he did not sign the back of monthly trust reconciliations because he was out of the country. He said he left his daughter, Charmaine, in charge in his absence, but that she was not a real estate agent. He said he delegated her duties in writing to her, but he cannot find the delegation.

V) SUBMISSIONS

Ms. Nind submitted that Mr. Odetunde received a $22,000 deposit from the Wolfs, which he deposited into Bayside Realty's trust account. The transaction did not close on October 1, 2004, and throughout the first week of October, via telephone call and a lawyer's letter to Mr. Odetunde, the buyers requested the return of their $22,000 desposit. Mr. Odetunde refused to refund the deposit contrary to the terms of the purchase contract. In October 2004, Mr. Odetunde was aware via Originating Notice of Motion that there was a court claim filed by the Wolfs for the return of their deposit. Mr. Odetunde transferred the deposit monies from the Bayside trust account into the Bayside general account. By the end of November 2004, the deposit monies were no longer in the Bayside general account, having been spent on business expenses, salaries, books and other things. There is also evidence that Mr. Odetunde used some of the monies to travel to Nigeria. Mr. Odetunde says that in retrospect, he should have deposit the Wolfs deposited money into a lawyer's trust account, but in this case he did not.

The Executive Director submits that Mr. Odetunde breached s.25(1)(d) and s.25(1)(c) of the *Real Estate Act*, s.7(c) and s.2(e) of the *Code of Conduct*. Mr. Odetunde did not keep trust monies separate from Bayside Realty's general account and he withdrew those monies for his own personal use and

business expenses, therefore not fulfilling the fiduciary duties owed to his clients, the buyers, and engaging himself in unlawful activities related to real estate. Ms. Nind also submitted that in not advising the buyers of the second mortgage on the property, Mr. Odetunde breached s.2(e) of the *Code of Conduct*, for failing to disclose all relevant information.

In addition, Mr. Odetunde was overseas from November 2004 until May 2005. During that time, Mr. Odetunde failed to ensure that Bayside Realty's accounting was filed with RECA within three months of the fiscal year end. By January 2005, the Bayside Realty contact phone numbers had been disconnected and remained out of service for three months. Also during that same time period, Mr. Odetunde's agent, Mr. Dawkins, completed two real estate transactions, but records from those transactions were not forwarded to the brokerage nor were they reviewed by Mr. Odetunde, as the broker. Also during his absence, Mr. Odetunde failed to delegate a temporary broker and instead, left blank trust cheques with his daughter, who was not then and has never been an industry member. As a result, Mr. Odetunde was in breach of Rule 21(1)(b), Rule 21(1)(e), Rule 21(1)(f), Rule 21(1)(g), Rule 42(4) and Rule 36(1).

Again, going back to the particulars of the Wolf transaction, Ms. Nind submitted that in improperly disclosing the amount of the mortgage to be assumed by the Wolfs in the purchase contract, Mr. Odetunde created a false contract, contrary to s.4(d) of the *Code of Conduct*. In conclusion, Ms. Nind submitted that in not responding to RECA requests for information from January to April 2005, Mr. Odetunde failed to cooperate with investigators. Mr. Odetunde was out of the country during this time period, but he should have made arrangements for RECA matters to be dealt with in his absence. Because he did not make such arrangements, he was in breach of s.38(4) of the *Real Estate Act* and s.7(d) of the *Code of Conduct*, for failure to cooperate.

Mr. Odetunde submitted that the issue is not whether or not he properly disbursed monies held in trust, as the monies received from the Wolfs was a deposit and he was entitled to the deposit as commission, and he submitted that there was no conduct deserving of sanction. Furthermore, Mr. Odetunde submitted that it is within the rights of a brokerage to disperse commissions and that recipients of those commissions are entitled to spend that money in any way they choose. Mr. Odetunde, speaking on behalf of Bayside Realty, takes the position that Mr. Odetunde was entitled to the money and where he spent it is not an issue. He submitted that the Real Estate Council should only be concerned if the deposit monies were transferred to the general account prior to possession date.

Mr. Odetunde also indicated that there is no evidence of fraud before the Hearing Panel as Mr. Wolf testified that no signatures had been forged and the document itself was not forged. Mr. Odetunde also submitted that there was no breach of trust.

With regard to the allegation that he acted contrary to s.7(c) of the *Code of Conduct*, Mr. Odetunde submitted that it was a preposterous allegation as he did not misinterpret anything on the mortgage verification documents provided to him by Bridgewater Financial and that he used that document to the best of his knowledge. It was also during this submission that Mr. Odetunde stated that the Hearing Panel does not have the jurisdiction to make a finding on allegations of fraud. He submitted that the buyers were aware of the second mortgage but they now have amnesia, but that he did not breach his fiduciary duties to the buyers.

In regards to him being overseas from November 2004 until May 2005, Mr. Odetunde did not dispute that, however he did submit that no one was harmed – financially or otherwise – by his absence. Regarding the records from Mr. Dawkins' transactions, Mr. Odetunde submitted that it is only a RECA recommendation that such records are kept by a brokerage and it is not mandatory. He also submitted that Bayside Realty's financial records for 2004 were provided to RECA no later than November 2004.

Finally, regarding the allegation that he did not cooperate with investigators, Mr. Odetunde submits that he will leave that for the Hearing Panel to decide as he was out of the country and it was not physically possible for him to respond to RECA requests for information in his absence, and that he met with RECA investigators within five days of his return to Canada in May 2005.

VI) FINDINGS

We have made the following findings on sanction after due consideration to all witnesses and documentary evidence presented. Nonetheless, we do not find it necessary to go through each piece of evidence individually and make findings. There was little contradictory evidence presented at the hearing, however on numerous occasions throughout, Mr. Odetunde viewed the actions he admitted to as not being conduct deserving of sanction. As a result, the conduct itself was rarely in dispute, but what was in dispute is whether or not that conduct was conduct deserving of sanction.

Regarding the allegations contained herein, we find that there is conduct deserving of sanction on allegation one through ten, and we find that there is no conduct deserving of sanction on allegation 11 and 12. A detailed explanation for each allegation is given below.

1) We find that Mr. Odetunde is in breach of s.25(1)(d) of the *Real Estate Act* and we conclude that his conduct in this regard is conduct deserving of sanction. Mr. Odetunde was a dual agent, acting for the sellers and the buyers in the sale and purchase of a property. The buyers gave two cheques, totaling $22,000, to Mr. Odetunde as a deposit for the purchase of the property and Mr. Odetunde deposited the cheques into Bayside Realty Ltd.'s trust account. The sale did not close on the closing date, October 1, 2004, or on a later date, and the buyers requested the return of their deposit. The purchase contract (Tab 19, Exhibit A) stated that if a dispute were to arise about entitlement to the deposits between the buyers and the sellers, the monies were to be deposited into a lawyer's trust account. Mr. Odetunde was aware that a dispute had arisen as to entitlement to the deposit monies as he received an Originating Notice of Motion (Tab 32, Exhibit A) from the buyer's lawyer dated October 12, 2004, asking for the return of the $22,000 deposit. By way of fax sent to the buyer's lawyer on October 13, 2004, Mr. Odetunde acknowledged receipt of the Originating Notice of Motion asking for the deposit money to be returned to the buyers and stated that he would hold the money in the Bayside Realty trust account until receiving further instructions from the Court of Queen's Bench.

In or about mid-November 2004, Mr. Odetunde transferred the remaining deposit funds from the Bayside trust account to Bayside's general account. By the end of November 2004, the funds were no longer in the Bayside general account or the Bayside trust account, nor had they been returned to the buyers or their lawyer. Mr. Odetunde transferred and spent the funds notwithstanding that he received the Notice of Motion asking for the return of the funds in October 2004. It was clear from the evidence Ms. Nind presented that trust monies were not disbursed according to the terms of trust, and Mr. Odetunde presented no evidence to contradict this finding.

2) We find that Mr. Odetunde is in breach of s.25(1)(c) of the *Real Estate Act* and we conclude that his conduct in this regard is conduct deserving of sanction. Despite receiving an Originating Notice of Motion in October 2004 requesting the return of $22,000 held in the Bayside Realty trust account, in or around mid-November 2004, Mr. Odetunde transferred by three cheques the portion of the $22,000 deposit remaining in the Bayside trust account into the Bayside general account. In doing so, Mr. Odetunde failed to keep money received in trust separate from money belonging to himself or to Bayside Realty. Mr. Odetunde did not deny having received the Notice of Motion and nor does he deny having transferred the money.

3) We find that Mr. Odetunde is in breach of s.7(c) of the *Code of Conduct* and we conclude that his conduct in this regard is conduct deserving of sanction. Mr. Odetunde did not have the authority to transfer the deposit monies received from the buyers to the Bayside general account or to release them to himself because the sale did not close and the deposit monies were in dispute. In withdrawing the portion of monies held in the Bayside trust account for Bayside's business expenses or his own personal expenses, Mr. Odetunde participated in fraudulent or unlawful activities in connection with a real estate transaction.

4) We find that Mr. Odetunde is in breach of s.2(e) of the *Code of Conduct* and we conclude that this conduct in this regard is conduct deserving of sanction. Mr. Odetunde did not disclose to the buyers that there was a substantial second mortgage on the property they were purchasing. Especially in light of his dual agency position, Mr. Odetunde had a fiduciary duty to the buyers to inform them of the second mortgage. At the hearing, Mr. Odetunde stated that the second mortgage was a confidential matter and that he could not disclose the information to the buyers. We find that the personal financial circumstances of the sellers, that is that the property might have been foreclosed on, would have been confidential but the existence of a second mortgage is not confidential. In fact, we find that the offer to purchase should have been subject to the release of the second mortgage. It could have very easily been included as a seller's condition. We find that the existence of the second mortgage was one of the issues that prevented the transaction from closing.

5) We find that Mr. Odetunde is in breach of Rule 21(1)(b) of the *Real Estate Act* Rules and we find that his conduct in this regard is conduct deserving of sanction. The facts of this allegation were not in dispute at the hearing. In being out of the country from December 2004 until May 2005, Mr. Odetunde was not actively engaged in the management of his brokerage, Bayside Realty Ltd., and he did not appoint a broker delegate. Though Mr. Odetunde testified that he was in touch with his daughter about the brokerage during his absence, he did not deal with any ongoing Real Estate Council of Alberta matters, such as his delayed submission of his brokerage's accounting for the 2004 fiscal year. As such, we find that Mr. Odetunde was not actively engaged in the management of his brokerage during that time period. Further to the above, we want to note that we find the most serious of the particulars of this allegation is that Mr. Odetunde left signed blank cheques for the Bayside trust account with his daughter, who was not authorized to trade in real estate.

6) We find that Mr. Odetunde is in breach of Rule 21(1)(e) of the *Real Estate Act* Rules and we find that his conduct in this regard is conduct deserving of sanction. It was clear at the Hearing that Mr. Odetunde did not know how to do the job of a real estate broker. To this day, Mr. Odetunde does not see a problem with having transferred the $22,000 deposit from the Bayside trust account to the Bayside general account and then spending it on Bayside business expenses or on his own personal expenses. He maintains that he had a right to the deposit monies despite the fact that in March 2005

the Court of Queen's Bench ordered Mr. Odetunde to repay $22,000 to the buyers, which to this day he has not done. Furthermore, Mr. Odetunde did not believe that his agent, Mr. Dawkins, needed broker supervision in his absence as he does not do many transactions. It is not for Mr. Odetunde to decide if an agent requires broker supervision. The fact is, as a broker, Mr. Odetunde has a responsibility to ensure the business of his brokerage is carried out competently even if he is out of the country.

7) We find that Mr. Odetunde is in breach of Rule 21(1)(f) of the *Real Estate Act* Rules and we find that his conduct in this regard is conduct deserving of sanction. As outlined above, Mr. Odetunde was out of the country from November 2004 until May 2005. In his absence, there was no broker delegate at his brokerage, Bayside Realty Ltd., and his agent, Mr. Dawkins continued to complete real estate transactions without any supervision from Mr. Odetunde. Again, the facts pertaining to this allegation were not in dispute at the hearing. Though Mr. Odetunde states that he was not worried about Mr. Dawkins as he does not complete many transactions in a year, it is not for Mr. Odetunde to decide if an agent requires supervision. As a broker, Mr. Odetunde's responsibility is to ensure that his agents, even if there is only one, have adequate supervision.

8) We find that Mr. Odetunde is in breach of Rule 21(1)(g) of the *Real Estate Act* Rules and we find that his conduct in this regard is conduct deserving of sanction. Brokers must read, sign and date monthly trust account reconciliations, and Mr. Odetunde himself testified that he did not sign monthly trust account statements while he was absent from Bayside during the period November 2004 to May 2005. The fact that Mr. Odetunde left blank signed trust account cheques with his daughter, who was not an authorized industry member, and that money unlawfully flowed from the Bayside trust account into the Bayside general account and was ultimately spent on Bayside business purchaser or Mr. Odetunde's personal purchases is further evidence that Mr. Odetunde failed to ensure the Bayside trust account and the records of the trust account were properly maintained.

9) We find that Mr. Odetunde is in breach of Rule 42(4) of the *Real Estate Act* Rules and we find that his conduct in this regard is conduct deserving of sanction. Brokers must file their brokerage's financial statements with RECA within three months of their year-end. The Bayside Realty Ltd. fiscal year ends on September 30 and financial statements must be submitted to RECA by December 31 of that same year. Bayside Realty's financial statements were not submitted within three months of the brokerage's fiscal year end. This fact was confirmed by Ms. Girgis' testimony. At various times during the Hearing, Mr. Odetunde stated that he filed the financial records with RECA by the beginning of November 2004, but there was no documentary evidence to support this and it contradicts the oral testimony given by Ms. Girgis. Other times during the Hearing, Mr. Odetunde testified that those records were eventually submitted to RECA and that he paid a late filing fee, but no other evidence, documentary or otherwise, supported Mr. Odetunde's submission. We find that Ms. Girgis is a more credible witness as Mr. Odetunde gave two different versions of events and we find that he did not file the financial records within three months of his brokerage's fiscal year end.

10) We find that Mr. Odetunde is in breach of Rule 36(1) of the *Real Estate Act* Rules and we find that his conduct in this regard is conduct deserving of sanction. Mr. Odetunde himself admitted that Bayside did not maintain records of transactions conducted by its agent, Mr. Dawkins, and stated that real estate agents do not have to bring their transaction records to their brokerage. That is incorrect. Brokerages must maintain transaction records for all transactions carried out under the banner of the brokerage and in not doing so, Mr. Odetunde acted contrary to Rule 36(1) of the *Real Estate Act* Rules.

11) We find that Mr. Odetunde is not in breach of s.4(d) of the *Code of Conduct* and we find there is no conduct deserving of sanction. The purchase contract (Tab 19, Exhibit A) stated a mortgage assumption with an approximate principal balance of $363,600. The mortgage assumption amount was actually $359,000 – therefore requiring that the buyers pay the difference ($4,000) on possession. The mortgage verification form (Tab 18, Exhibit A) itself is confusing and could have led to the mistake made by Mr. Odetunde in stating an incorrect assumption amount on the purchase contract. Tab 18 states that the mortgage balance is $363,613.69, including interest. Arrears were listed as $4,175.93, but it does not say whether the mortgage balance includes the arrears or not. We also find that being wrong on the mortgage assumption value, in this case approximately $4,000 or one percent of the purchase price, is well within an acceptable margin of error. We were persuaded by Mr. Odetunde's oral testimony that he had done his due diligence with regard to obtaining information about the mortgage. He contacted the company that held the mortgage, Bridgewater Financial, obtained the mortgage information in writing from them and then used the information provided by Bridgewater Financial to complete the purchase contract.

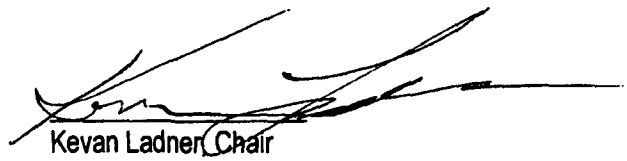
12) We find that Mr. Odetunde is not in breach of Rule 38(4) of the *Real Estate Act* Rules and s.7(d) of the *Code of Conduct*, and we find there is no conduct deserving of sanction. We could not find conduct deserving of sanction on this allegation as Mr. Odetunde was out of the country. That led to findings of conduct deserving of sanction on a number of other allegations, but we believe that if we were to find him guilty of conduct deserving of sanction on this count, it would be double jeopardy. On other allegations, we found that he was not actively engaged in the management of the brokerage and we found that he did not appoint a broker delegate to look after the brokerage in his absence. With regard to the non-cooperation issue, he was out of the country and could not respond to letters from RECA. Had he been in the country and not responding to RECA questions, it would be a different matter entirely.

VII) ORDERS

The Hearing Panel requests submissions on sanction by Ms. Nind within 14 days of service of this decision. Those submissions are to be sent directly to Mr. Odetunde and copied to the Hearings Coordinator. Mr. Odetunde then has 14 days from that date to make his written submissions. Mr. Odetunde is to forward his submissions to Ms. Nind and send a copy to the Hearings Coordinator. Ms. Nind then has 7 days to submit a final response to Mr. Odetunde's submissions on sanction. Upon doing so, Ms. Nind is to provide a copy to Mr. Odetunde and the Hearings Coordinator, who will forward all submissions on sanction to us.

If no response is heard from Ms. Nind or Mr. Odetunde within the allocated timeframes, we will make and issue a decision on sanction without the benefit of their submissions.

This decision was made on November 2, 2005.



Kevan Ladner, Chair

Darrell Cook

Marjorie King

This decision was made on November 2, 2005.

Kevan Ladner, Chair

Darrell Cook

Marjorie King

This decision was made on November 2, 2005.

Kevan Ladner, Chair

Darrell Cook

Marjorie King

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

AND IN THE MATTER OF a Hearing concerning the conduct of **Taiwo Odetunde**, while registered as a Real Estate Broker with Bayside Realty Inc.

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

I) INTRODUCTION

The members of this Hearing Panel are Kevan Ladner (Chair), Darrell Cook and Marjorie King. The Hearing into this matter took place on October 19, 2005. We issued a written decision on our findings in respect to the Executive Director's allegations of conduct deserving of sanction in this matter on November 2, 2005. Following the issuance of that decision, we requested submissions on sanction from Ms. Nind, legal counsel on behalf of the Executive Director of the Real Estate Council of Alberta, and Mr. Odetunde, the industry member who was not represented by legal counsel. In the course of providing written submissions on sanction, Mr. Odetunde retained legal counsel, John Sutherland, to make submissions on his behalf.

II) PRELIMINARY MATTER

We would like to address two typographical errors that are included in our decision on conduct. Paragraph "6)" on page 12 should read "the balance of the $22,000 deposit" instead of "the $22,000 deposit." Additionally, reference to "repay $22,000" in the fourth sentence in paragraph number "6)" on page 13 should read "repay the balance of the $22,000 not being held by the seller's lawyer."

II) SUBMISSIONS ON SANCTION

Submissions on sanction were provided in writing to us by Ms. Nind and Mr. Odetunde.

Ms. Nind first provided us with a Schedule of Costs in the amount of $10,722.20 and later provided us with a revised Schedule of Costs in the amount of $12,372.20 to reflect additional costs incurred as a result of two interim applications brought forward by Mr. Odetunde's lawyer, Mr. Sutherland.

Ms. Nind submitted that Mr. Odetunde has committed many significant breaches of the *Real Estate Act*. The breaches relating specifically to fiduciary duties owed to his clients respecting trust funds are most serious, particularly given that Mr. Odetunde fraudulently misappropriated the money and used it for his own personal expenses and his brokerage's expenses. The Executive Director is also concerned with Mr. Odetunde's failure to disburse money held in trust in accordance with the terms of trust governing such money, failure to keep trust money

separate and the leaving of signed blank trust cheques with a person not authorized to trade in real estate. Additionally, Mr. Odetunde has not demonstrated competency as a broker and has shown a fundamental misunderstanding of his fiduciary duties, dual agency obligations and that raises further competency issues. Ms. Nind submitted that Mr. Odetunde should not be authorized to trade in real estate as a broker for a period of five years (from the May 11, 2005 suspension date), should not be authorized to trade in real estate as an agent for five years (from the May 11, 2005 suspension date), be ordered to pay a $15,000 fine and costs in the amount of $12,372.20, and be ordered to successfully complete the Real Estate Broker's course before becoming authorized to trade as a broker and successfully complete the Real Estate Agent's course before becoming authorized to trade as a real estate agent.

Ms. Nind provided five precedent cases, all of which included industry member suspensions and she submitted that Mr. Odetunde's actions also warrant a suspension, both as a broker and as an agent. Though the two precedent cases provided involving brokers included only broker suspensions and not suspensions as an agent, Ms. Nind submitted that Mr. Odetunde's fraudulent and unlawful conduct in misappropriating more than $16,000 in trust monies and the use of such trust monies for his own personal and business expenses also warrants a suspension as an agent.

Mr. Sutherland began his submissions on sanction by reminding the Hearing Panel that Mr. Odetunde has been suspended since May 11, 2005 and that his interim suspension should be taken into consideration by the Hearing Panel in their determination of sanction. Mr. Sutherland also provided to the Hearing Panel 11 precedent cases for their review. None of the precedent cases included a suspension and none included a fine greater than $7,500.

Mr. Sutherland submitted that Mr. Odetunde was not qualified to present case law to the Hearing Panel at the hearing as it relates to forfeiture of deposits under the Real Estate Contract. Additionally, there is nothing to indicate that Ms. Nind submitted case law to the Hearing Panel at the hearing with respect to the forfeiture of the deposit and the legal effects thereof. Mr. Sutherland submitted that the deal did not close because of the refusal of the purchaser to close in breach of contract. The contract and the law provided for the forfeiture of the deposit in that case. The fact that the purchaser was disputing the forfeiture does not change the law that the deposit could be treated as forfeited. Again, the Hearing Panel did not have the benefit of the legal precedents in order to decide the issue as to whether the deposit had been forfeited and was then the property of the seller and became subject to the broker's entitlement to commission.

Mr. Odetunde also admitted to failing to file trust records within the time requirements as he had left for Nigeria and his accountant was unable to obtain his signature, but Mr. Sutherland submitted that as Mr. Odetunde has been a realtor for 23 years and for approximately half that time, he has been a broker, and he has no prior citations or complaints, the Hearing Panel should be lenient. In closing, Mr. Sutherland submitted that the facts do not establish any attempt to defraud and he asked the Hearing Panel to delay their decision on sanction until the civil case filed by the purchaser against Mr. Odetunde has been settled.

In her reply submissions on sanction and costs, Ms. Nind submitted that though Mr. Sutherland maintains Mr. Odetunde was not qualified to present case law to the Hearing Panel at the

hearing, Mr. Odetunde had been advised of his right to legal representation in the correspondence that was served on him along with the Notice of Hearing (Exhibit B). Ms. Nind also replied to Mr. Sutherland's specific submission that the Hearing Panel had no case law in front of it with respect to forfeiture of deposits. It is the understanding of the Executive Director that Mr. Sutherland is seeking a nominal sanction in this case on the basis that Mr. Odetunde was entitled to the deposit and if case law respecting forfeiture had been before the Hearing Panel, the Hearing Panel would not have found misconduct. Ms. Nind submitted that during the Hearing, she presented the applicable provisions of the *Real Estate Act*, Rules, *Code of Conduct*, and the Listing and Purchase Contract, which governed the transaction. Specifically, section 3 of the Purchase Contract, which provided that the complainants' deposit was to be held in trust for the parties, and in the case of a dispute between the parties as to entitlement to the deposit, the deposit should be paid into a lawyer's trust account.

Additionally, Ms. Nind submitted that the issue is not whether a court would ultimately find that the seller and, through the seller Mr. Odetunde, was entitled to all or part of the deposit. The issue is whether Mr. Odetunde was entitled to take the deposit out of trust when he did and Ms. Nind submitted that he was not. Mr. Odetunde was aware that there was a legal dispute between the seller and the buyer as to the entitlement to the deposit and acknowledged in writing to legal counsel for the buyers that the deposit money would be held in his brokerage's trust account until receipt of further instructions from the Court of Queen's Bench. Furthermore, even if Mr. Odetunde was entitled to commission, which the Executive Director submits he was not, under the terms of the Listing Contract, Mr. Odetunde would have only been entitled to 50 percent of the forfeited deposit and not the amount of the deposit that he removed from trust in this case.

With respect to Mr. Sutherland's submission that the Hearing Panel delay its rendering of a decision pending the outcome of civil proceedings, Ms. Nind submitted that the obligation of RECA is to govern its industry members and to protect members of the public by pursuing disciplinary proceedings in a timely manner and proceedings should not be deferred in the face of related civil lawsuits. Additionally, section 42(e) of the *Real Estate Act* provides that evidence given by a witness at RECA hearings may not be used or received against such witness in any civil proceedings or proceedings under the Act except in respect of perjury or the giving of contradictory evidence. In closing, Ms. Nind submitted that the precedent cases submitted to the Hearing Panel in the Executive Director's submissions on sanction dated November 24, 2005 are more applicable to the circumstances of this case than the precedent cases identified in Mr. Sutherland's written submissions.

III) ORDERS AND REASONS

The most serious issue for us in deciding sanction was that Mr. Odetunde ignored the fact the deposit was disputed, took the money for his own use (or for that of his brokerage) and left the country. Failure to supervise his agent while he was out of the country, delegating certain responsibilities to an unlicensed individual and filing his trust records with RECA late remain conduct deserving of sanction, but for us, it is his actions relating specifically to his use of the deposit monies that make Mr. Odetunde's conduct deserving of a heavy sanction.

We do recognize that Mr. Odetunde has been an industry member for more than 23 years and that this is the first disciplinary proceeding he has been subject to and that is a mitigating factor. On the other hand, Mr. Odetunde's breaches are so serious that a suspension as a broker and an agent is warranted, but perhaps not as long as that which was recommended by Ms. Nind, in part, because of his 23-year history as an industry member without disciplinary proceedings.

It is also clear to us that Mr. Odetunde does not have a good grasp of his broker responsibilities nor does he completely understand the obligations of being in dual agency. As such, we agree with Ms. Nind that Mr. Odetunde is in need of significant education before re-entering the real estate industry as an industry member – broker or agent – in Alberta.

We agree with Ms. Nind's submission wholeheartedly that the issue is not whether a court would ultimately find that the seller and, through the seller Mr. Odetunde, was entitled to all or part of the deposit. The issue is whether Mr. Odetunde was entitled to take the deposit out of trust when he did and we previously found that he was not.

We were not persuaded by Mr. Sutherland's submission that we delay our decision on sanction pending the results of civil proceedings between the purchaser and Mr. Odetunde. RECA is responsible for regulating industry professionals in Alberta's real estate industry under the *Real Estate Act* and to defer a decision in this matter would unfairly stall this proceeding.

With respect to the payment of a fine and costs, we agree with Ms. Nind. Mr. Odetunde had numerous findings of conduct deserving of sanction and we think that these breaches warrant a significant monetary fine. We also believe that Mr. Odetunde should pay full costs as the industry as a whole should not incur costs as a result of Mr. Odetunde's misconduct.

As a result of our finding of conduct deserving of sanction, and after due consideration of the submissions made by the parties regarding sanction, we hereby order, pursuant to Section 43 of the *Real Estate Act*, as follows:

1. Mr. Odetunde's authorization to trade in real estate as a broker under the *Real Estate Act* is hereby suspended for a period of five years from May 11, 2005 (the date of the Interim Suspension Order of the Chair of the Real Estate Council).

2. Mr. Odetunde's authorization to trade in real estate as an agent under the *Real Estate Act* is hereby suspended for a period of 18 months from May 11, 2005 (the date of the Interim Suspension Order of the Chair of the Real Estate Council).

3. Mr. Odetunde shall pay a fine of $15,000

4. Mr. Odetunde shall pay hearing costs of $12,372.20

5. Prior to becoming authorized to trade under the *Real Estate Act* as a broker, Mr. Odetunde must successfully complete the Real Estate Broker's Program offered by the Alberta Real Estate Association, or equivalent program, in its entirety.

6. Prior to becoming authorized to trade under the *Real Estate Act* as an agent, Mr. Odetunde must successfully complete the Real Estate Agent's Program offered by the Alberta Real Estate Association, or equivalent program, in its entirety.

This decision was made on February 2, 2006.

Kevan Ladner, Chair

Darrell Cook

Marjorie King

6. Prior to becoming authorized to trade under the *Real Estate Act* as an agent, Mr. Odetunde must successfully complete the Real Estate Agent's Program offered by the Alberta Real Estate Association, or equivalent program, in its entirety.

This decision was made on February 2, 2006.

Kevan Ladner, Chair

Darrell Cook

Marjorie King

6. Prior to becoming authorized to trade under the *Real Estate Act* as an agent, Mr. Odetunde must successfully complete the Real Estate Agent's Program offered by the Alberta Real Estate Association, or equivalent program, in its entirety.

This decision was made on February 2, 2006.

Kevan Ladner, Chair

Darrell Cook

Marjorie King