



January 4, 2024

IN THE MATTER OF: THE REAL ESTATE SERVICES ACT

- and -

IN THE MATTER OF: RAHIM OMAR MIRZA

**REASONS FOR DECISION
OF THE SETTLEMENT HEARING PANEL
THE MANITOBA SECURITIES COMMISSION**

Hearing Date: December 28, 2023

Panel:

Panel Chair:	Mr. D. Cheop, K.C.
Member:	Ms. D. Metcalfe

Appearances:

S. Zagozewski)	Counsel for The Manitoba Securities Commission
K. Sharma		

G. Fleetwood)	Counsel for Rahim Omar Mirza
K. Schade		

Background

On August 30, 2023, an Amended Notice of Hearing and an Amended Statement of Allegations of Staff of The Manitoba Securities Commission (Commission) were issued under subsection 59(1) of *The Real Estate Services Act* (RESA) for a hearing to consider

- (a) Whether or not it is in the public interest to order that the registration of Rahim Omar Mirza (Mirza) as salesperson under RESA be suspended or cancelled;
- (b) Whether the Manitoba Real Estate Association should be ordered to pay an amount out of the Real Estate Reimbursement Fund pertaining to Mirza in connection with a trade or transaction in real estate;
- (b) Whether or not Mirza be required to pay the costs of and incidental to the hearing; and
- (c) Such further and other orders as the Commission may deem appropriate.

In the Amended Statement of Allegations, Staff of the Commission alleged that Mirza committed fraudulent acts within the meaning of RESA in respect of a trade or transaction in real estate, namely regarding the state of the foundation in a condominium unit for which he acted in a dual agency relationship for both the buyer and the seller.

Settlement Agreement

Subsequent to the issuance of the Amended Notice of Hearing, Staff of the Commission and Mirza negotiated a Settlement Agreement (Settlement Agreement) dated December 22, 2023 in connection with this proceeding.

On December 28, 2023 this hearing panel of the Commission met to consider the Settlement Agreement. After reviewing the Amended Notice of Hearing, the Amended Statement of Allegations and the Settlement Agreement and hearing the submissions of counsel for Staff of the Commission and Mirza, the panel accepted the Settlement Agreement and indicated that the reasons for doing so would follow. These are those reasons.

Reasons for the Approval of the Settlement:

The Settlement Agreement was the product of a negotiation between counsel for Staff of the Commission and counsel for Mirza, both of whom recommended acceptance. When considering a settlement agreement, a Commission panel must recognize the negotiation process and give significant weight to the agreement reached by the parties. Our role is to determine if the agreed upon sanctions are within the boundaries of what a reasonable person, aware of the circumstances, would consider to be in a range of reasonable outcomes. There is an extremely high threshold to be met in order for a recommended settlement agreement to be rejected.

The Settlement Agreement sets out a statement of facts agreed to by Staff and Mirza and includes acknowledgements by Mirza that, in connection with the sale of the condominium in question:

- his conduct in the transaction was contrary to the public interest

- he failed in his primary duty to protect, promote and act in the best interest of his client, the buyer
- his conduct under the joint representation agreement did not meet the standard of being fair, impartial and providing full disclosure to his client, the buyer

The Settlement Agreement proposes the following sanctions for Mirza:

1. a 30 day suspension of his registration under RESA to begin on January 1, 2024, with the final day of the suspension to be January 31, 2024
2. the payment of costs in the amount of \$6,000.00 dollars by him on or before December 31, 2023, with payment of this amount being a condition of his registration
3. conditions of registration as determined by the Registrar being imposed on him for one year beginning the day after the suspension of registration is concluded
4. completion by him of a course of education on ethics as acceptable to the Registrar within one year of the day on which the suspension of registration begins.

Counsel for Mirza highlighted a number of points in his submission as to why this Settlement Agreement should be approved, including that:

- Mirza was young at the time of the events in question
- Mirza has not been subject to any other complaints to the Commission
- he was remorseful for the way he had conducted himself and had sent a letter of apology to Commission Staff
- he acknowledged his conduct fell below the standard required
- he had settled the civil action brought by the buyer of the condominium in question to her satisfaction

The threshold issue that a panel must also consider in connection with a proposed Settlement Agreement that its approval would be in the public interest. In our view, the sanctions imposed on Mirza in the Settlement Agreement will have the necessary deterrent effect for the industry as well as to prevent future improper conduct. In addition, we noted that Mirza has separately reached a financial settlement with the buyer, with the result that the claim for financial compensation was withdrawn by Staff of the Commission.

Approval of the Settlement Agreement resolves the matter quickly, efficiently and with certainty. The settlement avoids the time and costs associated with a contested hearing process. In addition, the Settlement Agreement itself becomes public so can serve as a general deterrence for others in the industry for future improper conduct.

In the panel's view the Settlement Agreement falls within the acceptable parameters in the circumstances, and as a whole the resolution would be in the public interest and would also serve as a general deterrent to the industry.

For these reasons, the panel concludes it is in the public interest to approve the settlement agreement.

"D. Cheop"
David Cheop
Panel Chair

"D.J. Metcalfe"
Deborah Metcalfe
Member