



THE MANITOBA
SECURITIES
COMMISSION

December 3, 2020

IN THE MATTER OF: THE REAL ESTATE BROKERS ACT

- and -

IN THE MATTER OF: SARAH PAO

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

Hearing Dates: November 2, 2020 and November 17, 2020

Panel:

Panel Chair:	Ms. D.J. Metcalfe
Member:	Ms. A.E. Martens
Member:	Mr. D.A. Huberdeau-Reid

Appearances:

K. Laycock)	Counsel for The Manitoba Securities Commission
R. Buchwald)	Counsel Sarah Pao
S. Pao)	

Background Facts:

1. On March 18, 2019, a Notice of Hearing and Statement of Allegations were issued by the Manitoba Securities Commission (Commission) against Sarah Pao, for a hearing to commence June 5, 2019, alleging, among other things, that:
 - in 2013 and 2014, Pao acted as salesperson on the sale of 42 properties by three Manitoba First Nations to corporations owned by members of Pao's family, where she was a guarantor on mortgages that financed the transactions,
 - the selling price in each of the sales were made at substantially less than their appraised and assessed values,
 - she did not disclose her involvement in the transactions to her clients, the sellers of the properties,
 - in a number of cases the properties were resold by the corporations owned by Pao's family who purchased the properties at a higher price than the price paid in the original purchase.

The Notice asked the Commission to consider:

1. whether or not it is in the public interest to order, pursuant to section 11(1) of The Real Estate Brokers Act ("Act"), that registration under the Act of SARAH PAO ("SARAH PAO") be suspended or cancelled;
2. whether or not to find SARAH PAO did not adequately discharge her responsibilities to the Commission, her customers or the public;
3. whether or not pursuant to section 34 of the Act to order that SARAH PAO pay the costs of the investigation and hearing;
4. such further and other matters and the making of such further and other orders as the Commission may deem appropriate.

At the outset of the hearing Pao brought a preliminary motion seeking:

- a declaration that the Commission lacks disciplinary jurisdiction over Pao because she no longer holds a registration under the Act,
- a declaration that, for the same reason, the Commission lacks jurisdiction to make findings of professional misconduct or impose penalties, assess costs or bar her from future registration under the Act based on that alleged misconduct,
- an order staying the proceeding or, alternatively, enjoining Staff or the Commission from proceeding further with it.

In the view of that panel, the Commission had jurisdiction to proceed with the hearing.

1. On November 2, 2020 a hearing panel of the Commission, comprised of different Commissioners than the above hearing panel, met to consider a settlement agreement between the Staff of the Commission and Sarah Pao and her Counsel.

The panel after hearing submissions adjourned the settlement hearing to deliberate.

2. After the deliberation the panel requested to hear further information on:
 - The proper test to apply in determining whether to accept a settlement agreement,
 - Whether the disposition is consistent with past Commission determinations;
 - Precedents relied upon in determining the proposed disposition.
3. A second hearing date was set for November 17, 2020 for staff and Sarah Pao and her counsel to make further submissions. The panel after hearing submissions adjourned the settlement hearing to deliberate. After the deliberations the panel accepted and approved the settlement agreement.

Reasons for the Approval of the Settlement:

1. The terms of the Settlement Agreement as negotiated by Staff Counsel and Counsel for Sarah Pao are set out in detail in this agreement and do not need to be repeated here, however they include:

Acknowledgments:

SARAH PAO acknowledges and agrees that she:

- (a) failed to complete and execute exclusive listing agreements for a number of properties contrary to section 20 of REBA;
- (b) failed to deliver a signed copy of written listing agreements to the person having entered into said agreements contrary to section 31 of REBA;
- (c) failed to have offers to purchase in writing, completed in no less than quadruplicate, and executed by the offeror in the presence of a witness, or at all, contrary to section 21(1) of REBA;
- (d) failed to have offers obtained on the printed form as prescribed by the regulations to REBA, contrary to section 21(3) of REBA;
- (e) failed to disclose her relationship to immediate family member(s) indirectly buying an interest in the properties as shareholder(s) of a purchasing numbered company; and
- (f) failed to meet the expectations of a registered salesperson.

Terms of the Settlement:

- (a) SARAH PAO be barred from being registered in any capacity under REBA or any such successor legislation for a period of ten (10) years from the date of this order; and
- (b) SARAH PAO pay a contribution of costs to the Commission in the total amount of \$20,000.00 to be paid as follows:
 - a. a lump sum of \$8,000.00 to be paid immediately upon issuance of this order approving this Settlement Agreement; and
 - b. the remaining balance of \$12,000.00 to be paid by way of twelve (12) equal instalments each in the amount of \$1,000.00 to be paid on the first of every month commencing January 2021.

1. The panel has reviewed the statement of allegations, the settlement agreement, as well as the written submissions of staff counsel and Ms. Pao's counsel in detail and have had the benefit of two settlement hearings to hear submissions and ask questions.
2. The settlement agreement was the product of a lengthy and thorough negotiation between staff counsel and Ms. Pao's Counsel, approval of which is recommended by both parties and has been approved by the Director. When considering a settlement agreement, the 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.
3. The panel must also consider if the approval of the settlement agreement would be in the public interest. The significant sanction in this agreement, of Ms. Pao being barred from registration in any capacity under the Real Estate Brokers Act for a period of ten years, as well as the assessment for costs of \$20,000.00, would have the necessary deterrent effect for the industry as well as to prevent future improper conduct.
4. Approval of the settlement agreement would resolve the matter quickly, efficiently and with certainty. The settlement avoids the time and costs associated with a lengthy contested hearing process. As well, the logistics currently, during a worldwide pandemic, of holding a lengthy hearing and the calling of witnesses virtually cannot be ignored.
5. The settlement agreement itself becomes public so can serve as a general deterrence for others in the industry for future improper conduct.
6. Ms. Pao has admitted to the facts in the settlement agreement and has made a number of significant acknowledgments as part of the settlement agreement, including that she failed to meet the expectations of a registered salesperson.
7. While the Pao matter is a rather unique situation, Staff Counsel presented a number of prior cases as examples to demonstrate the settlement agreement sanctions are appropriate and consistent with past Commission approvals.
8. 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.

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

"D.J. Metcalfe"

D.J. Metcalfe
Panel Chair

"A.E. Martens"

A.E. Martens
Member

"D.A. Huberdeau-Reid"

D.A. Huberdeau-Reid
Member