

Case Summaries March 21 - April 5, 2011

Letters of Reprimand

March 2011

- Failure to trade in real estate only in the name that appears on that individual's licence and in the name of the brokerage with which that individual is registered [s.53(a) of the *Real Estate Act* Rules]
- Participated in fraudulent or unlawful activities in connection with provision of services or in any dealings [s.42(b) of the *Real Estate Act* Rules]
- Failure to take reasonable steps to discover relevant facts pertaining to any property for which the buyer is considering making an offer [s.58(1) of the *Real Estate Act* Rules]
- Failure to advise the buyer to obtain expert advice on matters of importance to the buyer [s.58(k) of the *Real Estate Act* Rules]
- Failure to fulfill fiduciary duties [s.2(a) of the Code of Conduct (as it was then)]
- Failure to render competent service [s.6 of the Code of Conduct (as it was then)]

Administrative Penalties

Joshua Torrence, real estate associate, Century 21 Foothills Real Estate

- Failure to notify immediately, in writing, the executive director when the industry member is the subject of any bankruptcy proceedings [s.40(1)(e) of the *Real Estate Act* Rules]
- Mr. Torrence commenced bankruptcy proceedings on September 14, 2009 and did not inform RECA until September 20, 2010.
- \$1,000

Northern Property Management Ltd

- The brokerage failed to submit to the Real Estate Council of Alberta the required accounting documents not later than three months after the end of the brokerage's fiscal year. [s.91(4) of the *Real Estate Act* Rules]
- \$1,500

Lauretta Enders, real estate broker, Emerald Management & Realty Ltd.

- Failure to ensure the business of the brokerage is carried out competently and in accordance with the Act, Regulations, Rules and Bylaws [s.51(1) of the *Real Estate Act Rules*]
- Ms Enders, as broker of Emerald Management & Realty Ltd., was aware that Emerald Management did not disburse trust monies upon termination of a management agreement contract, contrary to the terms of the contract.
- Emerald Management's business practice was to hold the money for a period of 30 days commencing from the date of termination although the agreement contained no provision permitting Emerald Management to do so.
- \$1,500

Donna Marie Van Lier-Grieve, broker registered with Reflex Realty Inc. o/a National Home Registry at all material times and currently associate broker, Re/Max Real Estate

- Failure to cooperate fully with, and provide any information requested to, a representative of the Council carrying out their duties and responsibilities under the Act [s.41(h) of the *Real Estate Act rules*]
- Ms Van Lier-Grieve was the registered broker of National Home Registry during a period of time in or around October 1, 2005 to January 2007.
- RECA conducted an investigation of an associate registered with National Home Registry during that time and requested documentation from Ms Van Lier-Grieve regarding two transactions, one voided and one completed.
- Ms Van Lier-Grieve provided information on the voided transaction but failed to use reasonable efforts to obtain and provide the documentation requested by the RECA investigator on the completed transaction when the documentation was either in her possession or could have been reasonably obtained by her.
- \$1,500

Consent Agreements

Beverly McCarthy, real estate associate registered at all material times with Royal LePage Wildrose Real Estate and currently registered with Coldwell Banker Trails West Realty

Issues:

- Failure to provide competent service [s.41(b) of the *Real Estate Act Rules*]

Facts:

- Ms McCarthy, after reviewing the title for the subject property, failed to advise the buyers of an easement that was registered on title and failed to disclose to them the details of the easement.

- Ms McCarthy failed to explain to the buyers of a property that they would need to confirm with the municipality whether they would be permitted to have a separate driveway to their property.

Results:

By way of a Consent Agreement that was ratified by a Hearing Panel, Beverly McCarthy was ordered to pay fines totaling \$3,000, costs of \$500 and to complete an educational requirement as a condition of her authorization to trade in real estate.

Disciplinary Action

Shafik Sadrudin Shivji, currently unlicensed, formerly a real estate associate registered with Calgary Independent Realty Ltd. o/a C.I.R. and then with Signet Real Estate Ltd. o/a Signet Commercial, and formerly a mortgage broker with Gecko Mortgage Capital Corp.

Issues:

- Failure to cooperate with and provide any information requested to a person appointed under s.38(1) of the *Real Estate Act* to conduct an investigation [s.7(d) of the Code of Conduct (as it was then) and s.38(4) of the *Real Estate Act*]

Facts:

- An investigation file was opened on Mr. Shivji in or around September 2003.
- Mr. Shivji was notified by letter on or about October 22, 2003 that an investigation under Part 3 of the *Real Estate Act* was commenced and he was requested to provide information.
- Mr. Shivji responded by letter on or about December 14, 2004 in which he refused to provide certain documents questioning the relevance of the documents.
- RECA repeated the request for information on or about July 12, 2005. Mr. Shivji did not respond.
- On or about September 1, 2005, the Executive Director formally requested that Mr. Shivji co-operate and provide information. Mr. Shivji did not respond.
- On or about September 27, 2005, Mr. Shivji was notified that an investigation was being commenced into whether or not he failed to co-operate with the investigation and requested an explanation for this failure to co-operate. Mr. Shivji did not respond.

- Mr. Shivji did not provide any further documents or information until November 3, 2009 when he advised RECA that he was willing to co-operate with the investigation and provide the documents requested prior to the expiration of his real estate licence.
- Mr. Shivji then provided the documents requested that were in his possession but not all of the documents requested.

Results:

A Hearing Panel of the Real Estate Council of Alberta found that Shafik Sadrudin Shivji breached s. 38(4) of the *Real Estate Act* and this was conduct deserving of sanction. The Hearing Panel ordered Shafik Shivji to pay a fine of \$12,000; costs of \$9,592; successfully complete the REAP program (or meet the licensing requirements in place at the time of seeking re-entry) and pass the provincial qualifying exam before returning to the industry. The Hearing Panel also ordered that Shafik Shivji not be eligible to apply for authorization for a period of three years from March 28, 2011.

Suspensions

James Edward Radchenko - Real Estate Associate Authorization Suspended

On March 22, 2011, pursuant to section 38(4.2) of the Real Estate Act, the Executive Director of the Real Estate Council of Alberta suspended the authorization of James Edward Radchenko, who was not registered with an Alberta real estate brokerage at the time of the suspension.

Waltraut Agnes Kowaliuk - Real Estate Associate Broker Authorization Suspended

On April 1, 2011, pursuant to section 38(4.2) of the Real Estate Act, the Executive Director of the Real Estate Council of Alberta suspended the authorization of Waltraut Agnes Kowaliuk, who was not registered with an Alberta real estate brokerage at the time of the suspension.

As a result of these suspensions, James Edward Radchenko and Waltraut Agnes Kowaliuk may not trade in real estate in Alberta until their suspension has been lifted.

Trevor Birchall - Candidate Real Estate Appraiser Licence Suspended

On March 28, 2011, pursuant to section 38.1(1)(a) of the Real Estate Act Rules, the Executive Director of the Real Estate Council of Alberta suspended the licence of Trevor Birchall, candidate real estate appraiser. The licence suspension resulted from Trevor Birchall's failure to comply with a condition attached to his licence.

As a result of this suspension, Trevor Birchall may not provide real estate appraisal services in Alberta until his suspension has been lifted.

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Appointed from non-AREA industry members

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Appointed from residential real estate industry members

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Appointed from the property management sector

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Appointed from the mortgage brokerage sector

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Contact RECA

Case Summaries is published by the Real Estate Council of Alberta. Please forward your comments and suggestions to communications@reca.ca.

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