

Case Summaries May 1 - 16, 2011

Administrative Penalties

Yves Philidor, real estate associate, Realty Executives Apex

- Failure to notify immediately, in writing, the Executive Director when the industry member is the subject of bankruptcy proceedings [s.40(1)(e) of the *Real Estate Act Rules*]
- Mr. Philidor became the subject of bankruptcy proceedings on December 14, 2009 and failed to notify the executive director until September 22, 2010.
- \$1,000

Deborah Hansen, real estate associate, Prudential Sim Realty

- Failure to notify immediately, in writing, the Executive Director when the industry member has any judgment(s) rendered against the industry member in relation to the provision of services or sale of goods to consumers [s.40(1)(c) of the *Real Estate Act Rules*]
- A judgment was rendered against Ms Hansen in relation to the provision or sale of goods and services on June 24, 2010 and Ms Hansen did not notify the executive director until September 22, 2010.
- \$1,000

Brent Sheppard, real estate associate, Maxwell Southstar Realty

- Failure to notify immediately, in writing, the Executive Director when proceedings pursuant to the Criminal Code are commenced against the industry member [s.40(1)(g) of the *Real Estate Act Rules*]
- Criminal charges were commenced against Mr. Sheppard on March 21, 2010 and he failed to notify the executive director until September 21, 2010.

Nota bene: After the charge was laid, but prior to Mr. Sheppard reporting it to the Executive Director pursuant to section 40(1)(g) of the *Real Estate Act Rules*, the charge was withdrawn by the Crown and no further action will be taken by the Court.

- \$1,000

Terry Shawn, formerly broker with Foxbridge Development Ltd (Foxbridge) and currently broker with Compass Brokerages Inc.

- Industry members must not make representations or carry on conduct that is reckless or intentional and that misleads or deceives any person or is likely to do so [s.42(a) of the *Real Estate Act Rules*]
- Foxbridge ceased operations on March 3, 2009

- Mr. Shawn faxed a closing audit to RECA in accordance with s.37(1)(b) of the Rules on September 30, 2009.
- The notarized portion of the closing audit was copied from an accounting report Mr. Shawn provided to RECA on February 17, 2009.
- Mr. Shawn provided the original closing audit to RECA when requested.
- The sworn declaration of the original closing audit was distinctly different from the one faxed to RECA.
- Mrs. Shawn's explanation was that it was simply a mistake made by the notary public.
- \$3,500

Consent Agreements

William Begley, real estate broker, registered with Inland Property Management Ltd.

Issues:

- Failure to ensure the business of the brokerage was carried out competently and in accordance with the *Act*, Regulations, Rules and Bylaws [s.51(1)(d) of the *Real Estate Act* Rules]

Facts:

- Inland Property Management Ltd., while in a condominium management agreement with a condominium corporation, paid invoices twice in a month therefore creating a credit on the condominium corporation's account. This was done on more than one occasion.
- As well, Inland received pre-authorized chequing (PAC) deposits for condominium fees for the corporation and was responsible for transferring these deposits into the corporation's bank account.
- In March 2007, Inland receive PAC deposits for the corporation however they were not deposited until late April 2007.

Results:

By way of a Consent Agreement that was ratified by a Hearing Panel, William Begley was ordered to pay a fine of \$1,000.

Waleed Karout, real estate broker, registered with Royal LePage Arteam Realty

Issues:

- Failure to act only for one party in a transaction, unless there is full disclosure to all parties and the dual agency is agreed to in writing [s.3(b) of the Code of Conduct (as it was in force from October 1, 1999 to September 30, 2006)]
- Failure to provide all documentation or trade records required under the *Real Estate Act* Rules to the broker [s.23(e) of the *Real Estate Act* Rules (as they were in force from October 1, 1999 to September 30, 2006)]
- Trading in real estate on behalf of himself without first disclosing to the seller any interest that he may have in the transaction, either directly or indirectly [s.28(a)(i) of the *Real Estate Act* Rules (as they were then)]
- Participation in the creation of a document that he knew or ought to have known was false or misleading [s.4(d) of the Code of Conduct (as it was then)]

Facts:

- Mr. Karout acted on behalf of his brother in his search for an investment property to purchase.
- Mr. Karout submitted an offer to purchase on a property and disclosed to the seller his relationship with the buyer.
- Mr. Karout failed to obtain the buyer's written informed consent to represent him as a dual agent in this transaction.
- As a result of numerous back and forth negotiations between Mr. Karout and the seller's representative, there was repeated crossing out of figures and dates on the Offer to Purchase document.
- A new Offer to Purchase was written. The original Offer to Purchase was not retained by Mr. Karout and was not submitted to his broker or his brokerage.
- Mr. Karout became a co-applicant for the mortgage financing with his brother and was required to go on title along with his brother.
- The seller was never advised that Mr. Karout was a co-applicant for the mortgage financing and that title to the condominium property would be going into Mr. Karout's name as well.
- Mr. Karout and his brother later listed the condominium property for sale and, in the required Goods and Services Tax Certificate, represented and warranted that the property was entirely an owner-occupied residence.
- The property was not entirely owner occupied by the Karouts and was vacant when the property was listed and sold.

Results:

By way of a Consent Agreement that was ratified by a Hearing Panel, Waleed Karout was ordered to pay fines totaling \$8,000; costs of \$1,250 and he is also required to complete an educational requirement as a condition of his authorization to trade in real estate.

Hearing Panel Decision

Appeal of Administrative Penalty

Andre Michaud, appraiser

Issues:

- On June 11, 2010, Andre Michaud was issued an Administrative Penalty in the amount of \$4,000 for breach of s.17(c) of the *Real Estate Act*, acting as a real estate appraiser without holding the proper authorization. Mr. Michaud appealed the Administrative Penalty on the basis he did not breach s.17(c) of the Act.

Facts:

- Mr. Michaud was a real estate appraiser, licensed in the province of Alberta from November 4, 2005 to September 30, 2006. He was further authorized on November 23, 2006 to September 30, 2007.
- Mr. Michaud was not authorized to act as a real estate appraiser or perform appraisals in Alberta between October 1, 2007 and January 8, 2009.
- On December 31, 2008, Mr. Michaud provided to RECA a sworn letter indicating all of the appraisals performed by him between the period of October 1, 2007 and December 22, 2008. The list of appraisals performed totaled 50 commercial and 17 residential valuations.
- At the hearing, Mr. Michaud stated that all of the 50 commercial and 17 residential valuations he admitted to have conducted during time period in question occurred in the province of British Columbia.
- Mr. Michaud intended to seek licensing in Alberta and took some steps to obtain it, however his lack of success in obtaining licensing went unnoticed as a result of his failure to confirm his licensing status.
- Mr. Michaud admitted he maintained the business AM Valuation Ltd in the province of Alberta between October 1, 2007 and January 8, 2009 utilizing

letterhead for “AM Valuations,” which disclosed a Grande Prairie address and Alberta telephone numbers. His applications for licensing during the relevant time frame also disclosed an Alberta address and telephone number.

Results:

By order of a Hearing Panel of the Real Estate Council of Alberta, the Administrative Penalty was varied to a fine of \$3,000. In addition, the Hearing Panel ordered Mr. Michaud to pay costs of \$3,296.20.

Suspensions

Fauzia Hassan – Mortgage Associate Licence Suspended

On May 6, 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 Fauzia Hassan, mortgage associate most recently registered with Mortgagebrokers.com. The licence suspension resulted from Fauzia Hassan’s failure to comply with a condition attached to her licence.

As a result of this suspension, Fauzia Hassan may not deal in mortgages in Alberta at this time.

Westergaard Investments Corporation – Mortgage Brokerage Licence Suspended

On May 5, 2011, pursuant to s.35(2)(b) of the Real Estate Act Rules, the executive director of the Real Estate Council of Alberta suspended the brokerage licence of Westergaard Investments Corporation because no broker was operating the brokerage.

On May, 4, 2011 the Real Estate Council of Alberta approved the application of Keith Westergaard to withdraw from the industry pursuant to s.54 of the Real Estate Act. Mr. Westergaard was the registered broker for Westergaard Investments Corporation.

Lifetime Withdrawals

James Edward Radchenko – Lifetime Withdrawal From Industry

On May 4, 2011, James Edward Radchenko, real estate associate currently unregistered but most recently registered with Excellence Real Estate Edmonton Ltd. o/a Re/Max Excellence, applied to the Real Estate Council of Alberta (RECA) to withdraw from industry membership, in accordance with section 54 of the Real Estate Act (REA).

At the time of his application, Mr. Radchenko was the subject of conduct proceedings to determine whether he had participated in unauthorized activity and trading outside of the brokerage with which he was registered. Mr. Radchenko was suspended on March 22, 2011 pursuant to s.38 (4.2) of the Real Estate Act for failing to cooperate with RECA investigations.

At the time of the withdrawal application approval, there had been no disciplinary hearing, admissions or findings of fact. By virtue of operation of the Real Estate Act, Part Three, conduct proceedings are discontinued. Mr. Radchenko's application to withdraw was approved by RECA and results in a voluntary lifetime prohibition from industry membership.

Keith Bryan Westergaard – Lifetime Withdrawal From Industry

On May 4, 2011, Keith Bryan Westergaard, mortgage broker registered with Westergaard Investments Corporation, applied to the Real Estate Council of Alberta (RECA) to withdraw from industry membership, in accordance with section 54 of the Real Estate Act (REA).

At the time of his application, Mr. Westergaard was the subject of conduct proceedings to determine whether he had:

Failed to notify RECA of various court orders, judgments or disciplinary action in accordance with s.15 and s.40 of the Real Estate Act Rules.

Made misleading representations on licensing applications contrary to s.4(d) of the Code of Conduct (as it was then).

At the time of the withdrawal application approval, there had been no disciplinary hearing, admissions or findings of fact. By virtue of operation of the Real Estate Act,

Part Three, conduct proceedings are discontinued. Mr. Westergaard's application to withdraw was approved by RECA and results in a voluntary lifetime prohibition from industry membership.

Council Members 2010-2011

BILL BUTERMAN

Appointed from non-AREA industry members

KEVIN CLARK

Appointed from residential real estate industry members

CINDY DUBRAY

Appointed from the property management sector

GORDON GRAYDON

Appointed from the public

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Appointed from the Edmonton Real Estate Board

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Appointed from boards outside of Calgary and Edmonton

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Appointed from boards outside of Calgary and Edmonton

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Appointed from the mortgage brokerage sector

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Appointed from the real estate appraisal sector

Contact RECA

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