

Case Summaries Nov 7 - 22, 2011

Administrative Penalties

Dundee Realty Management Corp.

- s.91(4) of the *Real Estate Act Rules*.
- 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.
- \$1,500

Revenue Realty

- s.91(4) of the *Real Estate Act Rules*
- 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.
- \$1,500

Sonyc Investments Ltd.

- s.92(1) of the *Real Estate Act Rules*
- 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.
- \$1,500

Darren Gibbons, appraiser

- Acting as a real estate appraiser without proper authorization [s.17 of the *Real Estate Act*]
- Mr. Gibbons did not complete the licence application process as required for the 2010/2011 licensing year and on September 30, 2010 his real estate appraiser authorization expired. Mr. Gibbons carried on the activities of a licensed real

estate appraiser without authorization until November 18, 2010 when he realized he was not authorized. Mr. Gibbons completed the authorization process and on December 9, 2010 became authorized.

- \$5,000

Frank Earl Rhode, appraiser

- Acting as a real estate appraiser without proper authorization [s.17 of the Real Estate Act]
- On September 30, 2009 Mr. Rhode did not renew his authorization. Mr. Rhode made several inquiries to RECA as to the requirements for authorization for an out of province reviewer. RECA responded and confirmed the need for a reviewing appraiser to be authorized. Mr. Rhode did not cease his review and sign off activities after receiving the information regarding authorization requirements. During the period of October 1, 2009 to August 31, 2010, Mr. Rhode reviewed and signed off on 257 appraisals completed for Alberta properties for which he received remuneration.
- \$12,000

Marjorie McKay, real estate broker, Re/Max Real Estate Advocates

- An industry member must immediately notify the Executive Director, in writing, when an industry member is disciplined by a real estate board, real estate association, mortgage broker association, appraiser association or another professional, occupational or regulatory body [s.40(1)(b) of the *Real Estate Act* Rules]
- Ms. McKay was disciplined by Calgary Real Estate Board on March 22, 2011 and did not notify the Executive Director until July 5, 2011.
- \$1,000

Doug McKay, real estate broker, Re/Max Real Estate Advocates

- An industry member must immediately notify the Executive Director, in writing, when an industry member is disciplined by a real estate board, real estate association, mortgage broker association, appraiser association or another professional, occupational or regulatory body [s.40(1)(b) of the *Real Estate Act* Rules]

- Mr. McKay was disciplined by Calgary Real Estate Board on March 22, 2011 and did not notify the Executive Director until July 5, 2011.
- \$1,000

Tabatha Dowhaniuk, real estate associate, Re/Max Advantage

- An industry member must immediately notify the Executive Director, in writing, when an industry member is the subject of any bankruptcy proceedings [s.40(1)(e) of the *Real Estate Act Rules*]
- Ms. Dowhaniuk became the subject of bankruptcy proceedings on June 3, 2011 and did not notify the Executive Director until July 13, 2011.
- \$1,000

Monte Jensen, real estate associate broker, Signature Service Real Estate

- An industry member must immediately notify the Executive Director, in writing, when any business the industry member owns or has participated in as a partner, director or officer in the past three years has any judgments(s) rendered against the business. [s.40(1)(d) of the *Real Estate Act Rules*]
- A business that Mr. Jensen participated in as an officer had a judgment rendered against it on July 6, 2010 and Mr. Jensen did not notify the Executive Director until October 1, 2010.
- \$1,000

Consent Agreements

Len Freisz, real estate associate, Re/Max Grande Prairie

Issues:

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

Facts:

- Mr. Freisz entered into a listing contract to list a property that was jointly owned by A. and B., who had separated. B. no longer lived in the property.
- A. told Mr. Freisz she had a legal agreement with her ex-partner to sell the property on her own. There was no legal written agreement.
- Mr. Freisz did not ask to see the agreement and did not confirm that such an agreement existed.
- All agreements and contracts contained the name of A. only.
- When B. found out the house was being sold, he contacted the buyer's agent, who was unaware B. was a joint owner of the property.
- The buyer voluntarily withdrew from the transaction suffering no financial penalty.
- Mr. Freisz also admitted he did not include an expiry date on the Residential Real Estate Purchase Contract.

Results:

By way of a Consent Agreement ratified by a Hearing Panel of the Real Estate Council of Alberta, Len Freisz was ordered to pay fines in the amount of \$4,500, costs of \$500 and complete educational requirements.

Cameron A. Jenkins, real estate broker, Jasper Realty Services o/a Jasper Real Estate

Issues:

- Failed to disclose the existence of a conflict of interest [s.62(2)(a) of the *Real Estate Act Rules*]
- Provided services to a client in a trade in which the industry member has a conflict of interest without receiving the written and informed consent of the client [s.54(3) of the *Real Estate Act Rules*]
- Failed to ensure the business of the brokerage was carried out competently and in accordance with the Act, Regulations, and Bylaws [s.51(1)(d) of the *Real Estate Act Rules*]
- Failed to ensure adequate level of supervision for associates of the brokerage [s.51(1)(e) of the *Real Estate Act Rules*]
- Failed to deposit money received in trust in respect of a dealing or trade within two banking days after the receipt of the money [s.25(1)(b) of the *Real Estate Act*]
- Failed to disburse money received or held in trust in respect of a dealing or trade in accordance with the rules and with the terms of the trust governing the money [s.25(1)(d) of the *Real Estate Act*]

Facts:

- Mr. Jenkins was at all relevant times the broker of Jasper Real Estate. One of the associates registered with Jasper Real Estate entered into a listing contract with a client for the sale of his home.
- Mr. Jenkins became interested in the property and made an offer to purchase.
- While reviewing Mr. Jenkins' offer to purchase with the selling client, the associate incorrectly explained the situation to the client as one of dual agency. The client was not advised that a conflict of interest existed in Mr. Jenkins purchasing the property.
- The offer was accepted and the closing date was set.
- Mr. Jenkins wrote a personal cheque payable to Jasper Real Estate for the deposit amount; however, he never deposited it into the brokerage's trust account.
- Mr. Jenkins signed a Waiver/Satisfaction of Conditions waiving the financing and inspection conditions.
- Approximately one week before the closing date, Mr. Jenkins' mortgage was changed to a 'purchase plus improvements' and Mr. Jenkins' parents were added as co-applicants on the mortgage.
- Mr. Jenkins added, in handwriting, the names of his parents under the section "The Buyer" after the execution of the Purchase Contract.
- Mr. Jenkins was advised by CMHC approximately 2 or 3 days before the closing date that they required an appraisal on the property.
- Mr. Jenkins requested an extension on the closing date but the selling client refused.
- Mr. Jenkins' lawyer sent a letter to the client advising that Mr. Jenkins was unable and unwilling to proceed with the transaction.
- The forfeited deposit money was never provided to the client.

Results:

By way of a Consent Agreement ratified by a Hearing Panel of the Real Estate Council of Alberta, Cameron Jenkins was ordered to pay fines in the amount of \$9,000, costs of \$500 and complete educational requirements.

Muvunyi (Guido) Kamanzi, real estate associate, registered with Solomon Davies and Associate Realtors INC o/a Realty Executives Supreme at all relevant times, and currently registered with Sterling Real Estate

Issues:

- Referred clients to a person for the purposes of obtaining a mortgage without taking reasonable steps to ensure the person was authorized to carry out the activities for which the referral was made [s.45(3) of the *Real Estate Act* Rules]
- Failed to provide competent service [s.41(b) of the *Real Estate Act* Rules]
- Failed to fulfill fiduciary duties to clients [s.41(d) of the *Real Estate Act* Rules]

Facts:

- Mr. Kamanzi prepared a Purchase Contract on behalf of his buyer clients.
- The clients were unable to obtain financing through the bank and the sale did not proceed.
- Shortly after the sale fell through, these clients informed Mr. Kamanzi that they had found someone (Ms. H) who could get them approved for a mortgage.
- The clients met with Ms. H, who requested a deposit to secure the mortgage funds, and Mr. Kamanzi's buyer clients gave her \$3,000.
- The clients asked Mr. Kamanzi about the money Ms. H requested and Mr. Kamanzi asked his broker. His broker informed him that some private lenders who deal with individuals who have bad credit charge fees and there was nothing they could do to stop it.
- Mr. Kamanzi assured his clients that some private lenders charge fees but did not take any steps to confirm that Ms. H was a private lender and therefore, entitled to charge a fee nor did he advise his buyer clients of any risks of paying her the requested money.
- The sale of the subject property was finalized with an initial deposit of \$1,000 and an additional deposit of \$5,000.
- On the condition day, Mr. Kamanzi was advised by his buyer clients that the financing was approved.
- Mr. Kamanzi called Ms. H and she verbally confirmed the financing was good and that it was okay to remove the conditions.
- Mr. Kamanzi did not obtain a copy of the mortgage commitment or request any paperwork from Ms. H to confirm the financing was in order.
- Mr. Kamanzi completed a Notice of Waiver of Condition and his clients signed it.
- Upon receiving the Notice of Waiver from the clients, the sellers put an offer and a deposit on another property.

- Approximately two weeks prior to the closing date for Mr. Kamanzi's buyer clients' purchase, the seller's agent had not received any paperwork from the mortgage broker.
- Mr. Kamanzi started calling Ms. H but was unable to contact her or locate her.
- The clients were unable to get financing by the closing date and the purchase did not proceed.
- The clients never received the deposit money back from Ms. H. The \$6,000 deposit from Mr. Kamanzi's buyer clients was forfeited to the sellers who, in turn, lost the \$25,000 deposit they had put on the property they were going to purchase before the sale of their house to Mr. Kamanzi's buyer clients fell through.
- Mr. Kamanzi also referred two other clients to Ms. H as they were also having difficulties getting approved for mortgages.

Results:

By way of a Consent Agreement ratified by a Hearing Panel of the Real Estate Council of Alberta, Muvunyi (Guido) Kamanzi was ordered to pay fines in the amount of \$3,500, costs of \$500 and complete educational requirements.

Hearing Panel Appeal Decision

Harpal Mangat, real estate associate registered with Ashmont Realty at all material times and currently registered with Century 21 Bravo

Facts:

As a result of a RECA investigation into Harpal Mangat's conduct as a real estate associate, Mr. Mangat had a disciplinary hearing before a RECA Hearing Panel. The allegations were as follows:

- Advertising or marketing a property without the seller's knowledge and consent [s.4(b) of the Code of Conduct (as it was then)]
- Being party to an agreement or conspiracy to conceal latent defects or pertinent facts in relation to any property or mortgage [s.4(c) of the Code of Conduct (as it was then)]
- Failing to cooperate with a RECA investigator in the course of a RECA investigation [s.38(4) of the *Real Estate Act*]

The Hearing Panel found that the conduct was deserving of sanction and ordered a fine of \$8,500, costs of \$15,585, a suspension of two months and educational requirements.

Mr. Mangat appealed the decision contending that the Hearing Panel's decision respecting the financial sanctions was unreasonable as was the decision on costs. Mr. Mangat applied for and was granted a stay of the Hearing Panel's orders pending an Appeal Panel Decision.

Results:

The Appeal Panel confirmed the Order of the Hearing Panel with the express exception of the two-month suspension that was previously imposed.

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