

Case Summaries Oct 3 - Nov 7, 2011

Administrative Penalties

Kimberley Leone, broker and Harvey Real Estate Company Ltd.

- Trading in real estate without authorization [s.17 of the *Real Estate Act*]
- Ms. Leone was at all relevant times the registered broker of Harvey Real Estate Company Ltd. (Harvey). Harvey is a licensed brokerage in Ontario. Between September 30, 2010 and March 15, 2011, Ms. Leone and Harvey entered into service agreements with residents of Alberta for the purpose of marketing their Alberta properties using the Multiple Listing System administered by the REALTORS® Association of Hamilton-Burlington. These listings were included and advertised on the Harvey website. During the relevant time neither Ms. Leone nor Harvey were authorized to trade in real estate in Alberta. On January 13, 2011, Ms. Leone was sent correspondence from RECA advising the activities required authorization. Between January 13, 2011 and March 15, 2011, Ms. Leone and Harvey continued to market properties in Alberta. On or about March 15, 2011, the unauthorized activity ceased.
- \$7,500

Kaleigh Young, real estate associate, Coldwell Banker Fort McMurray

- Failure to provide competent service [s.41(b) of the *Real Estate Act Rules*]
- Ms. Young represented a client who required underground parking and it became a deciding factor in the purchase of the subject property. Ms. Young relied upon the listing real estate brokerage's description of the property as including heated underground parking and failed to verify the listing information or view the location of the actual parking space. After the purchase of the property it was discovered the parking space was outdoors and not underground as the client had required.
- \$1,500

Coldwell Banker – Ontrack Realty (Coldwell)

(Under Appeal)

- Employment of a person to trade in real estate who did not meet the requirements of the Act, Regulation, Rules and By-Laws [s.50(b) of the *Real Estate Act* Rules]
- On September 30, 2009 an associate registered to Coldwell provided to Coldwell funds for the purpose of renewing her registration for the 2009/2010 licensing period. At the time, the associate had not provided Coldwell with her completed registration application for the 2009/2010 licensing period. On October 1, 2009, the associate's registration was not renewed. From October 1, 2009 to September 27, 2010, the associate traded in real estate and held herself out as an authorized real estate associate registered with Coldwell. On September 28, 2010, Coldwell became aware that the associate was not authorized to trade in real estate and RECA was notified.
- \$4,000

Shelaine Mari Oliver, real estate associate currently registered with Maxwell Real Estate Solutions Ltd. and registered with Coldwell Banker-Ontrack Realty at all relevant times

- Trading in real estate without authorization [s.17 of the *Real Estate Act*]
- On or around September 2009 Ms. Oliver was authorized to trade in real estate and registered to Coldwell Banker-Ontrack Realty. Ms. Oliver provided funds to Coldwell for the purpose of renewing her registration but did not complete an application as she was under the impression the brokerage would take care of her renewal. On October 1, 2009, Ms. Oliver was not authorized to trade in real estate. During the period of October 1, 2009 to September 27, 2010, Ms. Oliver traded in real estate. On September 28, 2010, when Ms. Oliver was informed by her broker that she was not authorized to trade in real estate, she ceased all activity.
- \$4,000

Mark Overdulse, appraiser

- Acting as a real estate appraiser without authorization [s.17 of the *Real Estate Act*]
- Between October 1, 2010 and October 13, 2010, Mr. Overdulse carried on activities of a real estate appraiser while not authorized to do so. After remembering his authorization had not been renewed and after completing the application process, Mr. Overdulse's authorization was renewed by RECA on October 22, 2010.
- \$2,000

Hearing Panel Decision

Soon Thieu

Real estate associate registered with Unison Realty Group Ltd. at all material times and presently registered with Discover Real Estate

Allegations:

- Made representations that were reckless or misleading or intentional and that misled or deceived any person or were likely to do so [s.42(a) of the *Real Estate Act Rules*]
- Failed to provide competent service [s.41(b) of the *Real Estate Act Rules*]

Facts:

- Mr. Thieu acted for a client in connection with two transactions involving the same house.
- Mr. Thieu's client bought a house and then listed it with the intention of doing renovations and selling for a profit.
- The purchase contract was dated September 21, 2006. This offer was accepted the same day. Transfer of title was completed on September 27, 2006 and possession was obtained October 1, 2006.
- Mr. Thieu prepared an MLS listing sheet on October 3, 2006 stating that there were total renovations from top to bottom.
- Renovations were not commenced by October 2, 2006 but were undertaken and completed by December 12, 2006 when Mr. Thieu's client accepted an offer on the house.

- The December purchase was to be paid by an initial deposit no later than December 14, 2006 and in trust to the seller personally.
- The deposit was not available at this time because the buyer was attempting to obtain a deposit by refinancing her primary residence. As Mr. Thieu's client and the buyer were friends, this delay was acceptable to Mr. Thieu's client.
- The deposit was paid to Mr. Thieu's client on January 9, 2007.

Results:

A Hearing Panel of the Real Estate Council of Alberta found that Mr. Thieu did not breach s.42(a) of the Rules when he listed the renovations as complete on the MLS listing sheet on the basis that a person would not be misled or deceived to their detriment by the MLS sheet. The Hearing Panel found that Mr. Thieu did breach s.42(a) of the Rules by failing to protect the interests of his client and his conduct was deserving of sanction. Deposit money is a form of assurance from the seller that the transaction will proceed and represents potential compensation if it does not complete. Contract terms should reflect what the parties actually intend and where the parties have agreed to depart from what is already contracted an industry member has an obligation to their client to properly document those changes.

The Hearing Panel ordered Mr. Thieu to pay a fine of \$1,500.00; costs of \$4,442.12 and complete an educational requirement.

Lifetime Withdrawals

Tracy Buckler

On October 19, 2011, Tracy Buckler, who was registered as an associate with TMG The Mortgage Group Alberta Ltd. o/a TMG in Calgary, applied to the Real Estate Council of Alberta (RECA) to withdraw from industry membership in accordance with s.54 of the *Real Estate Act*.

At the time of her application, Ms. Buckler was the subject of conduct proceedings to determine whether she:

- altered documents to facilitate the granting of a mortgage through deceit;
- submitted documents to facilitate the granting of a mortgage through deceit;
- failed to advise the broker of the activities she was performing on behalf of the brokerage;

- failed to provide in a timely manner all original documentation and copies of the original documents to parties;
- intentionally deleted or destroyed brokerage mortgage deal records; and
- failed to notify the broker of concerns from lending institutions.

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. Ms. Buckler's application to withdraw was approved by RECA and results in a voluntary lifetime prohibition from industry membership.

Sukhjinder Dhaliwal

On October 19, 2011, Sukhjinder Dhaliwal, who was most recently registered as an associate with the Mortgage Alliance Company of Canada in Calgary, applied to the Real Estate Council of Alberta (RECA) to withdraw from industry membership in accordance with s.54 of the *Real Estate Act*.

At the time of her application, Ms. Dhaliwal was the subject of conduct proceedings to determine whether or not she was involved in mortgage transactions where her actions contradicted a signed declaration of due diligence against mortgage fraud.

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. Ms. Dhaliwal's application to withdraw was approved by RECA and results in a voluntary lifetime prohibition from industry membership.

Robert Hughes

On October 19, 2011, Robert Hughes, who was most recently registered as a real estate associate with Discover Real Estate Ltd. in Calgary, applied to the Real Estate Council of Alberta (RECA) to withdraw from industry membership in accordance with s.54 of the *Real Estate Act*.

At the time of his application, Mr. Hughes was the subject of conduct proceedings to determine whether or not he had:

- misappropriated monies in relation to a real estate investment;
- failed to provide information and documents during the investigation.

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. Hughes' application to withdraw was approved by RECA and results in a voluntary lifetime prohibition from industry membership.

Walaa Rene Yacoub Loufti

On October 19, 2011, Walaa Rene Yacoub Loufti, who was most recently registered as a mortgage broker with West Equity Mortgage Inc. in Calgary, applied to the Real Estate Council of Alberta (RECA) to withdraw from industry membership in accordance with s.54 of the *Real Estate Act*.

At the time of his application, Mr. Loufti was the subject of conduct proceedings to determine whether he had misappropriated monies in relation to a mortgage deal.

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. Loufti's application to withdraw was approved by RECA and results in a voluntary lifetime prohibition from industry membership.

Donna Mah

On October 19, 2011, Donna Mah, who was most recently registered as an associate with Mortgage Advantage Inc. in Calgary, applied to the Real Estate Council of Alberta (RECA) to withdraw from industry membership in accordance with s.54 of the *Real Estate Act*.

At the time of her application, Ms Mah was the subject of conduct proceedings to determine whether or not she:

- masterminded or participated in a scheme to obtain mortgages through deceit;
- supplied documents as part of a mortgage application she knew to be false or misleading to facilitate the issuance of a mortgage through deceit;
- created false or misleading documents to facilitate the granting of a mortgage by deceit;
- participated in fraudulent or unlawful activities in connection with the provision of services or in any dealings;
- made representations or carried on conduct that was reckless or intentional and that mislead or deceived any person(s) or was likely to do so;

- failed to disclose in writing to her client how she was going to be paid for her services;
- failed to make sure that her role in the transaction was clear;
- failed to discuss the role that she would play in the transaction and to discuss and present the applicable agency form in the mortgage transaction;
- failed to provide competent service;
- failed to fulfill her fiduciary obligations to her client and/or the lender;
- failed to practice in strict accordance with the *Real Estate Act*, Regulations, Rules made pursuant to the Act, Bylaws and any other laws that govern trading in real estate, mortgage transactions or appraisals in Alberta;
- engaged in conduct that undermines public confidence in the industry, harms the integrity of the industry, or brings the industry into disrepute;
- failed to disclose in writing to the parties to the deal in mortgage what steps, if any, were taken to verify the information obtained or supplied by the brokerage to the parties, including information contained in the mortgage application and other representations made by the borrower or lender and the identity of the parties to the deal in mortgage.

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. Ms Mah's application to withdraw was approved by RECA and results in a voluntary lifetime prohibition from industry membership.

Kenneth Moore

On October 19, 2011, Kenneth Moore, who was most recently registered as a broker with Mortgage Advantage Inc. in Calgary, applied to the Real Estate Council of Alberta (RECA) to withdraw from industry membership in accordance with s.54 of the *Real Estate Act*.

At the time of his application, Mr. Moore was the subject of conduct proceedings to determine whether or not he:

- failed to practice in strict accordance with the *Real Estate Act*, Regulations, Rules, made pursuant to the Act, bylaws, and any other laws governing trading in real estate, dealing in mortgages, or acting as an appraiser in Alberta;
- engaged in conduct that undermines public confidence in the industry, harms the integrity of the industry or brings the industry into disrepute;

- failed to review all mortgage agreements in a timely manner;
- failed to ensure that all documents and records related to deals in mortgages required under the Act and the Rules were obtained and maintained by the brokerage;
- failed to adequately supervise the activities of a mortgage associate;
- failed to adequately review the brokerage file to ensure compliance with brokerage policies;
- failed to disclose in writing to the parties to the mortgage deal what steps, if any, were taken to verify the information obtained or supplied by the brokerage to the parties, including information contained in the mortgage application and other representations made by the borrower or lender and the identity of the parties to the deal in mortgages.

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. Moore's application to withdraw was approved by RECA and results in a voluntary lifetime prohibition from industry membership.

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