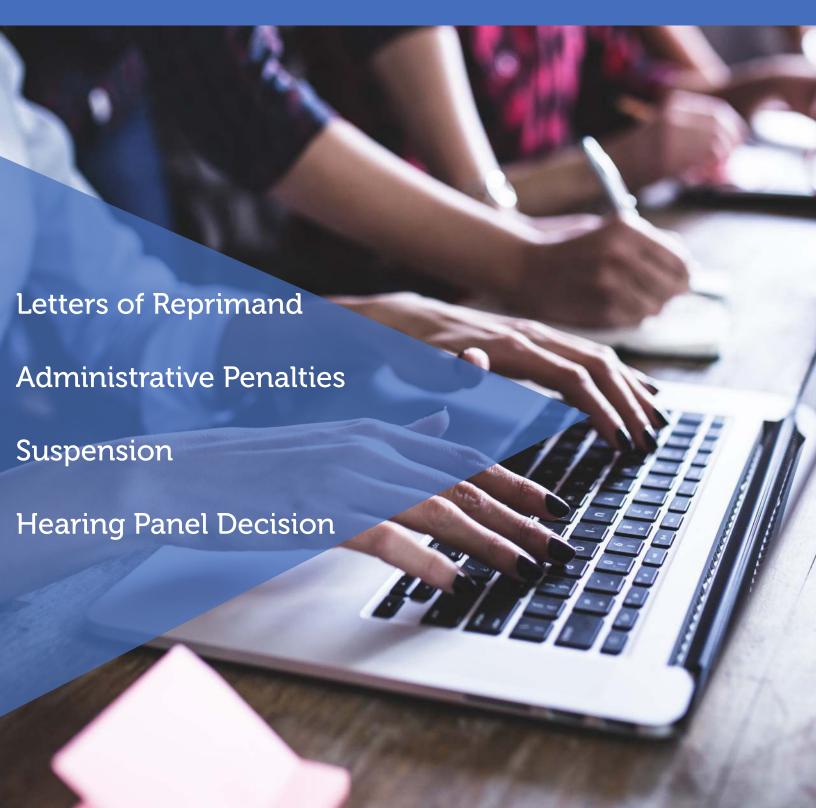
Case Summaries



Case Summaries

Welcome to the Case Summaries monthly magazine.

Inside you will find the summaries for all disciplinary decisions occuring at the Real Estate Council of Alberta (RECA) since the previous newsletter, including any suspensions and approved lifetime withdrawals from the industry.

RECA is authorized to carry out conduct proceedings under Part 3 of the Real Estate Act.

Questions about disciplinary information RECA publishes and why? Review RECA's Publication Guidelines online.

For more information about the cases summarized in this publication, please click on the underlined blue heading at the start of each summary.

Letters of Reprimand

Click on names to view the full decision

Roger Ledene,

Real estate associate registered with 1601407 Alberta Ltd. O/A Re/Max Complete Realty

- a brokerage must immediately notify the executive director in writing a change in the directors, officers, or shareholders of a corporation if the brokerage is a corporation [s. 32(g) of the *Real Estate Act* Rules]
- Mr. Ledene was the broker of Re/Max Complete Realty at the time
- on August 8, 2018, Re/Max Complete Realty had a change to its corporate shareholders
- RECA was notified on December 31, 2018

Section 32 of the *Real Estate Act* Rules requires brokerages to immediately notify the executive director, in writing, when certain events occur. RECA defines immediately as "without delay," and in the absence of extraordinary circumstances, written notification to the executive director should occur not more than five days after the event in question. In this case, the brokerage waited several months to notify RECA.

Letters of Reprimand

Click on names to view the full decision

Timothy Blais,

Real estate associate registered with R & D Realty Inc. O/A Maxwell Canyon Creek

• failure to immediately notify, in writing, the executive director [s.40 of the *Real Estate Act* Rules]

Grant Kosowan,

Real Estate Broker registered with Orange Group Commercial Real Estate Inc.

• failure to immediately notify, in writing, the executive director [s.40 of the *Real Estate Act* Rules]

Kevin Chau,

Real Estate Associate registered with Mountain View Real Estate Inc. O/A Re/Max Real Estate (Mountain View)

• failure to immediately notify, in writing, the executive director [s.40 of the *Real Estate Act* Rules]

Industry members must immediately notify, in writing, the executive director when certain events occur. In these cases, the industry professionals had a situation requiring notification occur months before they notified the executive director. Immediately is defined as "without delay," and in the absence of extraordinary circumstances, written notification to the executive director should occur not more than five days after the event in question.

Isabelle Christiansen,

Former real estate associate with Century 21 Westcountry Realty Ltd., currently registered with 377245 Alberta Ltd. O/A Re/Max Real Estate Central Alberta

- a real estate associate broker and associate must keep the broker informed of the activities they are performing on behalf of the brokerage [s. 53(d) of the Real Estate Act Rules]
- from November 30, 2018 to December 6, 2018, Ms. Christiansen contacted clients of Century 21 Westcountry Realty Ltd. to notify them she was leaving the brokerage
- during this timeframe, Ms. Christiansen presented clients with termination letters for signatures on behalf of the brokerage
- on December 7, 2018 Ms. Christiansen notified the broker of Century 21
 Westcountry Realty Ltd. that she was leaving the brokerage, handing over
 the documents signed by brokerage clients
- on December 7, 2018 Ms. Christiansen's registration was transferred from Century 21 Westcountry Realty Ltd. to Re/Max Real Estate Central Alberta
- on December 7, 2018 Century 21 Westcountry Realty Ltd., per the clients' wishes, terminated all Exclusive Seller Representation Agreements
- evidence suggests that Ms. Christiansen intentionally withheld notification of her intent to terminate her registration from her broker
- real estate professionals trade in real estate and service clients on behalf of their brokerage
- \$1,500

Leigh Duckett,

Former real estate associate with Main Street Ventures Inc. O/A Re/Max Main Street Realty, currently registered with Canadian Independent Realty Ltd O/A CIR Realty

- a real estate associate broker and associate must keep the broker informed of the activities being performed by the associate broker or associate on behalf of the brokerage [s. 53(d) of the *Real Estate Act* Rules]
- from October 23, 2018 to October 28, 2018, Mr. Duckett contacted clients of Re/Max Main Street Realty to notify them he was leaving the brokerage
- during this timeframe Mr. Duckett presented clients with termination letters and Exclusive Seller Representation Agreement Terminations for signatures on behalf of the brokerage
- on October 29, 2018, Mr. Duckett notified his broker that he was leaving the brokerage, handing over the terminations signed by the clients at this time
- on October 29, 2018, Mr. Duckett's registration was transferred from Re/Max Main Street Realty to CIR Realty
- evidence suggests that Mr. Duckett intentionally withheld notification of his intent to terminate his registration from his broker
- on October 29, 2018, Re/Max Main Street Realty, per the clients' wishes, terminated all Exclusive Seller Representation Agreements
- \$1,500

Kimberly McDonald,

Former real estate associate with Century 21 Westcountry Realty Ltd., currently registered with 377245 Alberta Ltd. O/A Re/Max Real Estate Central Alberta

- a real estate associate broker and associate must keep the broker informed of the activities they are performing on behalf of the brokerage [s. 53(d) of the *Real Estate Act* Rules]
- from December 1, 2018 to December 6, 2018, Ms. McDonald contacted clients of Century 21 Westcountry Realty Ltd. to notify them she was leaving the brokerage
- during this timeframe, Ms. McDonald provided clients with termination letters and Exclusive Seller Representation Agreement Terminations for signatures on behalf of the brokerage
- on December 7, 2018 Ms. McDonald notified the broker of Century 21 Westcountry Realty Ltd. that she was leaving the brokerage, handing over the documents signed by brokerage clients
- on December 7, 2018 Ms. McDonald's registration was transferred from Century 21 Westcountry Realty Ltd. to Re/Max Real Estate Central Alberta
- on December 7, 2018 Century 21 Westcountry Realty Ltd., per the clients' wishes, terminated all Exclusive Seller Representation Agreements
- evidence suggests that Ms. McDonald intentionally withheld notification of her intent to terminate her registration from her broker
- real estate professionals trade in real estate and service clients on behalf of their brokerage
- \$1,500

Tammy Pastachak,

Former real estate associate with Main Street Ventures Inc O/A Re/Max Main Street Realty, currently registered with Canadian Independent Realty Ltd O/A CIR Realty

- a real estate associate broker and associate must keep the broker informed of the activities being performed by the associate broker or associate on behalf of the brokerage [s. 53(d) of the Real Estate Act Rules]
- from October 23, 2018 to October 28, 2018, Ms. Pastachak contacted clients of Re/Max Main Street Realty to notify them she was leaving the brokerage
- during this timeframe Ms. Pastachak presented clients with termination letters and Exclusive Seller Representation Agreement Terminations for signatures on behalf of the brokerage
- on October 29, 2018, Ms. Pastachak notified his broker that she was leaving the brokerage, handing over the terminations signed by the clients at this time
- on October 29, 2018, Ms. Pastachak's registration was transferred from Re/Max Main Street Realty to CIR Realty
- on October 29, 2018, Re/Max Main Street Realty, per the clients' wishes, terminated all Exclusive Seller Representation Agreements
- \$1,500

Jesse Vanslyke,

Former real estate associate with Main Street Ventures Inc. O/A Re/Max Main Street Realty, currently registered with Canadian Independent Realty Ltd O/A CIR Realty

- a real estate associate broker and associate must keep the broker informed of the activities being performed by the associate broker or associate on behalf of the brokerage [s. 53(d) of the Real Estate Act Rules]
- from October 23, 2018 to October 28, 2018, Mr. Vanslyke contacted clients of Re/Max Main Street Realty to notify them he was leaving the brokerage
- during this timeframe Mr. Vanslyke presented clients with termination letters and Exclusive Seller Representation Agreement Terminations for signatures on behalf of the brokerage
- on October 29, 2018, Mr. Vanslyke notified his broker that he was leaving the brokerage, handing over the terminations signed by the clients at this time
- on October 29, 2018, Mr. Vanslyke's registration was transferred from Re/Max Main Street Realty to CIR Realty
- on October 29, 2018, Re/Max Main Street Realty, per the clients' wishes, terminated all Exclusive Seller Representation Agreements
- \$1,500

Industry professionals must receive permission from their original brokerage before approaching clients about transferring to a new brokerage. In these cases, the industry professionals approached their clients before advising their brokerage they were terminating their relationship with the brokerage.

Leigh Duckett,

Former real estate associate with Main Street Ventures Inc. O/A Re/Max Main Street Realty, currently registered with Canadian Independent Realty Ltd O/A CIR Realty

- a real estate associate broker and associate must 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]
- from October 23, 2018 to October 28, 2018, Mr. Duckett contacted clients of Re/Max Main Street Realty to notify them he was leaving the brokerage
- during this timeframe Mr. Duckett presented clients with termination letters and Exclusive Seller Representation Agreement Terminations for signatures on behalf of the brokerage
- during these same sessions, Mr. Duckett presented clients with Exclusive Seller Representation Agreements with no brokerage name indicated on them, with the intention of later enter the agreements with CIR Realty
- on October 29, 2018, Mr. Duckett was registered with CIR Realty
- \$1,500

Tammy Pastachak,

Former real estate association with Main Street Ventures Inc O/A Re/Max Main Street Realty currently registered with Canadian Independent Realty Ltd O/A CIR Realty

- a real estate associate broker and associate must 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]
- from October 23, 2018 to October 28, 2018, Ms. Pastachack contacted clients of Re/Max Main Street Realty to notify them she was leaving the brokerage
- during this timeframe Ms. Pastachak presented clients with termination letters and Exclusive Seller Representation Agreement Terminations for signatures on behalf of the brokerage
- during these same sessions, Ms. Pastachak presented clients with Exclusive Seller Representation Agreements with no brokerage name indicated on them, with the intention of later enter the agreements with CIR Realty
- on October 29, 2018, Ms. Pastachak was registered with CIR Realty
- \$1,500

Jesse Vanslyke,

Former real estate associate with Main Street Ventures Inc. O/A Re/Max Main Street Realty, currently registered with Canadian Independent Realty Ltd O/A CIR Realty

- a real estate associate broker and associate must 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]
- from October 23, 2018 to October 28, 2018, Mr. Vanslyke contacted clients of Re/Max Main Street Realty to notify them he was leaving the brokerage
- during this timeframe Mr. Vanslyke presented clients with termination letters and Exclusive Seller Representation Agreement Terminations for signatures on behalf of the brokerage
- during these same sessions, Mr. Vanslyke presented clients with Exclusive Seller Representation Agreements with no brokerage name indicated on them, with the intention of later enter the agreements with CIR Realty
- on October 29, 2018, Mr. Vanslyke was registered with CIR Realty
- \$1,500

Industry professionals must only trade in the name of the brokerage to which they are registered with, must have the permission of their current brokerage before approaching clients about transferring, and must ensure the client understands who they are entering a contract with at the time of signing by having the parties clearly written on the contract.

Hung Luu,

Real estate broker registered with 2008599 Alberta Corp. O/A Synterra Realty

- a brokerage must file its accounting with the Council no later than 3 months after the end of their fiscal year [s. 91(4) of the *Real Estate Act* Rules]
- the fiscal year for Synterra Realty ends on November 30
- Mr. Luu requested an extension on March 1, 2019, after the due date of February 28, 2019, despite receiving several reminder emails to both the brokerage and personal email addresses
- Mr. Luu had committed the same offense after the 2017 fiscal year and failed to take corrective action for the 2018 fiscal year
- \$1,500

Brokerages must file their accounting with the Council no later than 3 months after the end of the brokerages fiscal year and shall cover the fiscal year or, where the brokerage did not carry on business for the entire fiscal year, that part of the fiscal year for which the brokerage carried on business.

Hung Luu,

Real estate broker registered with 2008599 Alberta Corp. O/A Synterra Realty

- a real estate broker must ensure the business of the brokerage is carried out competently and in accordance with the Act, Regulations, Rules and Bylaws [s.51(1)(d) of the *Real Estate Act* Rules]
- Mr. Luu failed to take corrective measures to ensure that a past offense was not repeated
- \$1,500

Brokers must amend and adapt brokerage policies and procedures as required and take necessary corrective measures to ensure the business of the brokerage is compliant with the legislation.

Holly Frances Smith,

Former real estate broker with FirstService Residential Alberta Ltd., currently a real estate associate broker registered with Real Estate Professionals Inc.

- an industry member must not delegate, assign, request, direct, or in any way allow an unlicensed or unregistered assistant to perform tasks that must only be performed by an industry member [s. 46(2) of the *Real Estate Act* Rules]
- on February 14, 2018, Ms. Smith, in her capacity as broker, enabled an unauthorized company to perform activities requiring authorization under the *Real Estate Act*, such as showing properties to prospective tenants
- \$3,000

Brokers must ensure that all services requiring a licence are provided by competent licensed industry professionals acting on behalf of the brokerage. Unauthorized companies present a significant risk to the public.

Holly Frances Smith,

Former real estate broker with FirstService Residential Alberta Ltd., currently a real estate associate broker registered with Real Estate Professionals Inc.

- a brokerage must provide a statement of receipts and disbursements within a reasonable period following a request from the client or as otherwise agreed to by the brokerage and the client [s 100(2) of the Real Estate Act Rules]
- in or around July 2018 through November 2018, Ms. Smith's brokerage failed to provide documents related to account statements and disbursements within a reasonable period following the request from the client
- Ms. Smith was the broker of FirstService Residential Alberta Ltd. when the Property Management Agreements (the "Agreements") between the brokerage and brokerage client, EM, were terminated
- section 16.6 of the Property Management Agreements stipulate that
 FirstService Residential Alberta Ltd. was to "forthwith upon the effective
 date of the termination" of the Agreements provide all accounting, monies,
 contracts, tenant information, and other documentation to EM
- FirstService Residential Alberta Ltd. failed to provide the documents and monies in their entirety until November 2018, despite the requirements outlined in the Agreements and requests by EM's counsel
- \$1,500

Real estate brokers must ensure the brokerage is compliant with the legislation, including ensuring information about clients' properties is provided within a reasonable time frame following the client's request.

Sherri Naslund Dawson,

Former real estate associate with EXP Realty of Canada Inc. O/A EXP Realty

- failure to immediately notify, in writing, the executive director [s.40 of the *Real Estate Act* Rules]
- \$1,000

Industry members must immediately notify, in writing, the executive director when certain events occur. In this case, the industry professional had a situation requiring notification occur months before they notified the executive director.

William (Bill) Thorburn,

Former real estate broker with Buchanan Management & Realty Inc., currently unlicensed

- no person shall trade in real estate as a real estate broker mortgage broker, real estate broker or real estate appraiser unless that person holds the appropriate authorization for that purpose issued by the Council [s. 17(a) of the Real Estate Act Rules]
- on September 30, 2017, Mr. Thorburn and his real estate brokerage ceased to be authorized
- from at least November 2017 through April 2019, Mr. Thorburn's brokerage held funds in trust on behalf of the Condo Corporation, an activity which requires a licence
- around April 8, 2019, Mr. Thorburn transferred funds held in trust back to the Condo Corporation
- \$10,000

Unlicensed persons who provide services that require a licence put consumers at serious risk. Unlicensed persons do not have the required education or errors and omissions insurance, and consumers working with unlicensed persons do not receive protection under the Real Estate Assurance Fund.

Suspension

<u>Richard Horb – Real Estate Licence Suspended</u>

On June 3, 2019, the Real Estate Council of Alberta (RECA) suspended Richard Horb, an unregistered real estate associate in the Edmonton area.

Mr. Horb has failed to comply with an order of a Hearing Panel. The suspension will continue until he complies with the <u>Hearing Panel's decision</u>.

Mr. Horb was most recently a real estate associate for Re/Max Real Estate (Edmonton) Ltd o/a Re/Max Real Estate.

Michael McNeil,

Real estate broker with Esquire Realty Inc. O/A Esquire Management Group (EMG)

Summary of Issues:

- Real Estate Act Rule 42(a) & 42(g)
- Real Estate Act Rule 41(b) & 42(g)
- Real Estate Act Rule 43(3) & 42(a)
- Real Estate Act Section 25(1)(d)
- Real Estate Act Rule 41(c)
- Real Estate Act Rule 41(d)

Summary of Facts:

- the conduct in question occurred from 2007 to 2012
- Mr. McNeil was registered as a real estate broker at all relevant times with EMG
- Mr. McNeil and the Executive Director submitted an Admission of Conduct Deserving of Sanction, including an Agreed Breaches and Agreed Facts document and a Joint Submission on Sanction

Real Estate Act Rules 42(a) & 42(g)

Issues:

- industry members must not make intentional reckless representations or mislead/deceive any person or engage in conduct that harms the industry or undermines the public confidence [s.42(a) of the *Real Estate Act* Rules]
- industry members must not engage in conduct that undermines public confidence in the industry, harms the integrity of the industry, or brings the industry into disrepute [s.42(g) of the Real Estate Act Rules]
- Rule 42(a) Mr. McNeil represented that EMG obtained a tenant for his
 client when the tenancy was actually cancelled due to an NSF cheque and
 then advised his client that a lien was placed on his client's property, which
 was untrue; therefore misleading or deceiving his client
- Rule 42(g) Mr. McNeil made threats of a lawsuit and lien pushing his
 client to pay a fee for finding a tenant which was not owing under the
 agreement, the client was vulnerable because he was out of the country
 and had no control over his property

Outcome:

The Hearing Panel agreed that the conduct deserved sanctions including:

- Rule 42(a) Letter of Reprimand
- Rule 42(g) Fine \$1,500

Real Estate Act Rules 41(b) & 42(g)

Issues:

- industry members must provide competent service [s.41 (b) of the *Real Estate Act* Rules]
- industry members must not engage in conduct that undermines public confidence in the industry, harms the integrity of the industry, or brings the industry into disrepute [s.42(g) of the *Real Estate Act* Rules]
- Rule 41(b) Mr. McNeil failed to provide competent service to his clients and the board of directors by entering into an agreement to manage a property and not providing time or resources for its proper functioning
 - 1. Separate account for reserve fund was not set up
 - 2. No plan in place to collect arrears, allowing them to accumulate without proper statements provided to the board
 - 3. No plan for repairs
 - 4. No plan for replenishment of reserve fund
 - 5. No proper communication or reports to the board informing them of actions being taken by EMG, leading to a breakdown of trust between both parties
- Rule 42(g) Mr. McNeil made aggressive arguments and threats to the board in an attempt to carry on with EMG's agreement of being the property management, which resulted in expenses, conflict and an ill will from the board towards Mr. McNeil and EMG

Outcome:

The Hearing Panel agreed that the conduct deserved sanctions including:

- Rule 41(b) Letter of Reprimand
- Rule 42(g) Fine \$1,500

Real Estate Act Rules 43(3) & 42(a)

Issues:

- an industry member must deliver to the client a true copy of a service agreement and any amendment or addition, immediately upon its signature [s.43(3) of the Real Estate Act Rules]
- 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]
- LM signed a service agreement with EMG for two years for property management with the option to use the Brokerage to list her condo if she decided to sell it during the agreement term. In February 2009, LM decided to sell and list her property. Mr. McNeil did not post the listing onto MLS until June 2009. In July 2009, LM property had not sold and she wanted to terminate the listing with EMG. The Termination of Listing Agreement was prepared with a marked option that LM pay commission to EMG if the property sold after termination. LM rejected this option and repeatedly asked for a copy of the paperwork in order to re-list with another brokerage. Mr. McNeil did not provide the paper work until after a complaint was filed with RECA
- Rule 43(3) Mr. McNeil did not send a true copy of a termination form sent to him by LM immediately on his signing, and Mr. McNeil did not send it upon LM's request and only sent it after a complaint to RECA was filed
- Rule 42(a) Mr. McNeil represented to a RECA investigator that LM agreed to pay commission after termination, this was never agreed upon

Outcome:

The Hearing Panel agreed that the conduct deserved sanctions including:

- Rule 43(3) Letter of Reprimand
- Rule 42(a) Fine \$1,500

Real Estate Act Section. 25(1)(d) & Rule 41(c)

Issues:

- an industry member who is required by the rules to keep and operate a trust account must disburse money received or held in trust in respect of a dealing or trade in the business of the industry member only in accordance with the rules and with the terms of the trust governing the use of that money [s.25(1)(d) of the *Real Estate Act*]
- industry members must disclose to their clients how they will be paid for services provided [s.41(c) of the *Real Estate Act* Rules]
- RG signed a 1-year service agreement with EMG in August 2007 for property management. In August 2009, RG advised Mr. McNeil the owners were terminating the agreement for high vacancy rates and for failing to arrange and pay for repairs/maintenance. Upon receiving this notification, Mr. McNeil stopped payment on a rent cheque collected from the property tenants. Mr. McNeil failed to notify RG of the stopped cheque payment. Mr. McNeil then used these funds to pay for August expenses. In September, EMG transferred all security deposits held in trust to the owners but held back funds in a revenue account. EMG recorded \$0 for September expenses. EMG then charged the owners at the end of September with \$1,860 for management fees for that month, as well as \$3,300 for October and November. Mr. McNeil also charged fees not disclosed in the service agreement nor disclosed to the client prior to being charged
- Sec. 25(1)(d) Mr. McNeil charged his client from trust money held by EMG for management fees in advance, which was not a term in the service agreement. Mr. McNeil also charged the client from trust money held for fees not outlined in the service agreement
- Rule 41(c) Mr. McNeil failed to disclose how EMG will be paid for services provided to his clients at the earliest opportunity

Outcome:

The Hearing Panel agreed that the conduct deserved sanctions including:

- Sec. 25(1)(d) Fine \$1,000
- Rule 41(c) Letter of Reprimand

Real Estate Act Rule 41(d)

Issues:

- industry members must fulfill their fiduciary obligations to their clients [s.41(d) of the *Real Estate Act* Rules]
- RD signed a service agreement with EMG in December 2009 to manage a condominium. This agreement did not include leasing or tenant/owner duties. Mr. McNeil assigned FK, an EMG employee, as the property manager for the condo. FK was not authorized by RECA. In June 2012, after financial issues and foreclosure, the Court ordered an Administrator be appointed for the condo. It ordered that no financial decisions be made without the prior approval of the Court. Aware of this court order, Mr. McNeil directed FK to sign a landscaping contract on behalf of the condo board
- Rule 41(d) Mr. McNeil breached his fiduciary duties owed to the client by directing FK to sign a contract on behalf of the condo board without Court approval

Outcome:

The Hearing Panel agreed that the conduct deserved sanctions including:

• Rule 41(d) – Letter of Reprimand

Final Summary:

The Panel accepted the agreed sanctions and ordered fines and letters of reprimand for the contested breaches:

- total fines for the breaches as outlined above \$5,500
- costs of \$1,000

2018-2019 Council Members

BOBBI DAWSON

Appointed from the boards outside of Calgary and Edmonton

AMINA DEIAB

Appointed from the public

RAMEY DEMIAN

Appointed from the industrial, commercial and investment real estate sector

JT DHOOT

Appointed from non-AREA industry members

BILL KIRK

Appointed from the Calgary Real Estate Board

BRIAN KLINGSPON, PAST CHAIR

Appointed from the REALTORS® Association of Edmonton

TIAGO LAGE

Appointed from the public

PHIL MCDOWELL

Appointed from the mortgage brokerage sector

STAN MILLS, CHAIR-ELECT

Appointed from the boards outside of Calgary and Edmonton

ROBYN MOSER

Appointed from residential real estate industry members

ROBERT TELFORD, CHAIR

Appointed from the real estate appraisal sector

CHRISTINE ZWOZDESKY

Appointed from the property management sector

RECA Management

BOB MYRONIUK

Executive Director

JEAN FLANAGAN

Director of Strategic Initiatives & External Relations

WARREN MARTINSON

Director of Corporate Services

JOSEPH FERNANDEZ

Director of Education Programs

CHARLES STEVENSON

Registrar

STACY PAQUIN

General Counsel & Corporate Secretary

CONTACT RECA

The Case Summaries is published by the Real Estate Council of Alberta.

Please forward any questions regarding the content of the Case Summaries, or any questions regarding licensing or mandatory education, to info@reca.ca



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