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Case Summaries

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Case Summaries

Welcome to the Case Summaries monthly magazine - available on the first Monday of every month.

Inside you will find the summaries for all disciplinary decisions occurring 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*.

To review RECA's Publication Guidelines, click [here](#).

Letters of Reprimand

Real estate associate

- failed to provide competent service [s.41(b) of the *Real Estate Act Rules*]
- the associate represented both the buyer and the seller in a transaction but did not complete a signed service agreement with the buyers prior to completing the offer to purchase. The associate also did not properly document her role when entering into transaction brokerage.

Real estate associate

- 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*]
- the associate's advertisement for her services on Kijiji contained an address, a picture, and distinguishing characteristics of a property. The picture was a property listed with the brokerage, but the characteristics did not match the property. The address was the brokerage address and was not the listed property, and was missing some information. A consumer looking for the property did not end up at the brokerage as the advertisement intended, but instead ended up in a field.

Real estate associate

- failed to provide competent service [s.41(b) of the *Real Estate Act Rules*]
- the associate drafted an offer to purchase and listed inclusions and exclusions in section 1.4 of the contract. The items were not clear and the sellers removed items they believed they were entitled to remove, while the buyers believed those items should have remained in the property.

Letters of Reprimand

Five real estate associates

- failed to provide competent service [s.41(b) of the *Real Estate Act Rules*]
- the industry members misrepresented property sizes

Four real estate associates and one real estate broker

- 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 [s.42(a) of the *Real Estate Act Rules*]
- industry members misrepresented condominium sizes

Administrative Penalties

Robert Smithson,

Robert Smithson, real estate associate broker registered with Re/Max Real Estate (Edmonton) o/a Re/Max Real Estate

- failed to provide competent service [s.41(b) of the *Real Estate Act Rules*]
- Mr. Smithson did not take steps to ensure a condominium was measured using the Residential Measurement Standard (RMS). As a result he misrepresented the above grade size.
- \$1,500

Mohan Maharaj,

Real estate broker registered with Aspire Group Realty Inc.

- a real estate broker must ensure there is an adequate level of supervision for associate brokers or associates, as the case may be, within the brokerage and employees who perform duties on behalf of the brokerage [s.51(1)(e) of the *Real Estate Act Rules*]
- several employees of the brokerage who were not authorized to trade in real estate signed residency tenancy agreements on behalf of the brokerage. The activity of negotiating an agreement requires an authorization.
- \$3,000

Gurinder Singh Grewal,

Real estate associate registered with Realty Executive Polaris

- failed to provide competent service [s.41(b) of the *Real Estate Act Rules*]
- in September 2016, Mr. Grewal did not take steps to ensure a condominium was measured using the Residential Measurement Standard (RMS). As a result he misrepresented the above grade size.
- \$1,500

Administrative Penalties

Bernard Norton,

Mortgage broker formerly registered with Mortgage Choices Inc. and currently unregistered

- a brokerage must not charge, collect or attempt to collect a fee from a person for assisting the person in obtaining a mortgage from a lender until the lender has provided a written confirmation to fund the mortgage, accepted by the borrower [s.71(1)(a) of the *Real Estate Act Rules*]
- \$1,500
- 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*]
- \$2,500
- Mr. Norton entered into a service agreement with clients to assist them in the refinancing of their mortgage. Two months later, the clients emailed Mr. Norton to inform him they no longer wished to proceed with their refinance. In a telephone call, Mr. Norton told the client the amount he wanted as his commission. The client refused to pay. Mr. Norton sent an email informing the client he still felt he was owed a fee. The clients still refused to pay. Mr. Norton continued to send emails to the client berating them for not paying him and threatening them about 'consequences' to their actions. The clients filed an application for a restraining order against Mr. Norton.

Mark Charles Holtom,

Mortgage associate registered with Mortgage Mentors Inc. o/a Dominion Lending Centres Mortgage Mentors

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

Hearing Panel Decision

Gordon Pethick,

Real estate associate registered with BGB Realty Inc. o/a Re/Max Realty Professionals

Issues:

- industry members must provide competent service [.41(b) of the *Real Estate Act Rules*]
- industry members must fulfill their fiduciary duty [s.41(d) of the *Real Estate Act Rules*]

Facts:

- Mr. Pethick acted as agent for both the buyer and seller in a commercial real estate purchase contract.
- Mr. Pethick failed to adequately explain to his clients that as a transaction facilitator he did not owe either party fiduciary duties
- the buyer gave Mr. Pethick a deposit cheque for \$100,000, but the account did not have sufficient funds so Mr. Pethick was unable to certify the cheque. He did not inform the seller the cheque had not cleared and was not in the Brokerage trust account.
- the buyer then gave Mr. Pethick a second undated cheque and asked Mr. Pethick to hold it until he informed him there were sufficient funds to certify it.
- when Mr. Pethick attempted to certify the second cheque, the bank informed him they had no account associated with the cheque or any bank record for the buyer or his corporation.
- after a discussion with his broker, Mr. Pethick explained, in writing, to the seller the events surrounding the second cheque
- the seller emailed Mr. Pethick asking why the first cheque had not been deposited and Mr. Pethick responded, in writing that the first cheque had not cleared

Hearing Panel Decision

Results:

A Hearing Panel of the Real Estate Council of Alberta found conduct deserving of sanction in that Mr. Pethick breached s.41(b) and s.41(d) of the *Real Estate Act Rules*. The Panel ordered Gordon Pethick to:

- serve a one-month suspension;
- pay fines totaling \$19,000;
- pay costs of \$5,000 and;
- complete an educational requirement

Hearing Panel Decision

Krishan Lal Mall,

Real estate associate registered with Twin Oakes Real Estate 1993 Inc. o/a Re/Max House of Real Estate at all relevant times and currently unregistered

Issues:

- an industry member 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.4(a) of the Code of Conduct, as it was then]
- industry members must fulfill their fiduciary duties to their clients including acting in their client's best interest [s.2(a) of the Code of Conduct, as it was then]
- industry members must use their best effort to ensure the role of the industry member in a real estate or mortgage transaction is clearly understood by the parties to the transaction. This includes only acting 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 then]

Facts:

- Mr. Mall marketed a property to numerous clients using false information about the property. For the most part the clients were unsophisticated, had never purchased properties for subdivision or development before and relied on Mr. Mall to give them advice. Mr. Mall stood to gain commission each time another buyer was brought in to purchase the property
- Mr. Mall did not include financing conditions on the purchase agreements. He did not include a term that a purchase would be conditional on the sellers closing their purchase of the property to acquire legal authority to dispose of the property. He included a term that the buyers' deposit was releasable to the sellers immediately before the buyers were expected to get legal ownership of the property.
- Mr. Mall advised buyers to enter into a mortgage when he knew they could not carry the mortgage and failed to tell the buyers about the risk

Hearing Panel Decision

- Mr. Mall represented both the buyers and sellers of numerous transactions where no dual agency agreements were signed
- Mr. Mall never disclosed any of the relationships he had with the various buyers and sellers. The first buyer was “an assistant in his office” and “nominee”. Mr. Mall intended the nominee to be his former spouse and/or her numbered company. This nominee was on the first purchase agreement as a buyer and on subsequent agreements as the seller.

Results:

A Hearing Panel of the Real Estate Council Alberta accepted an Admission of Conduct Deserving of Sanction from Krishan Mall under section 46 of the *Real Estate Act*. The Panel considered a Joint Submission on Sanction from the executive director and Mr. Mall, and ordered Mr. Mall to:

- serve a two-month suspension;
- pay fines totaling \$13,500;
- pay costs of \$2,000 and;
- complete an educational requirement

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Case Summaries are published by the Real Estate Council of Alberta.

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