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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](#).

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

Four real estate associates and one real estate appraiser

- 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. 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. In these cases, the industry members waited significant periods of time before notifying RECA.

Real estate associate

- 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*]
- the industry member left a voicemail and sent multiple emails to a third-party. The messages contained inappropriate and unprofessional content. At least one email contained the industry member’s business signature and brokerage information.

RECA can review an industry professional’s private conduct when that conduct is linked to their licence with RECA, and that conduct undermines public confidence in the industry, harms the integrity of the industry, or brings the industry into disrepute. Industry professionals must demonstrate professionalism, which includes treating third parties with civility, respect, and professional courtesy at all times.

Letters of Reprimand

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 so [s.42(a) of the *Real Estate Act* Rules]
- industry member created a radio ad that made a misleading comparison

RECA's advertising guidelines require that material representations be proven with accurate documentation, and that verifiable statements provide enough information so that a member of the public cannot attribute more than one meaning to the message. In this case, the industry member's advertisement failed to specify a time frame for the claim it made, failed to define the market included, and used numbers that were not supported.

Real estate associate

- acting as real estate associate without authorization [s.17(a) of the *Real Estate Act*]
- the industry member failed to renew their registration with RECA. The industry member continued to trade in real estate while unauthorized between October 1, 2017 and October 6, 2017

All industry professionals are required to renew their licence on or before September 30 each year. RECA advises industry professionals to confirm their licensing status through the myRECA system or RECA's public licence search before beginning work on October 1. In this case, the real estate associate continued to trade in real estate while unauthorized. It is an industry member's responsibility to ensure they are licensed.

Administrative Penalties

[Maria Lourdes Manuel.](#)

Mortgage broker registered to Abound Mortgages Inc.

- Ms. Manuel failed to ensure the business of the brokerage was carried out competently and in accordance with the Act, the Bylaws and these Rules, contrary to section 67(e) of the *Real Estate Act Rules*
- Ms. Manuel allowed the brokerage's errors and omissions insurance to expire on July 1, 2017, and did not reinstate it until July 17, 2017
- during this period without errors and omissions insurance, the mortgage brokerage handled four mortgage files
- \$1,500

Mortgage brokers must ensure the business of the brokerage is carried out competently and in accordance with the *Real Estate Act*, the Bylaws and Rules. Mortgage brokerages are required to carry errors and omissions insurance. In this case, the brokerage's errors and omissions insurance expired. It's the broker's duty to ensure the brokerage has the required errors and omissions insurance at all times.

[David Stephen Kennedy.](#)

Real estate broker registered to Manor Management Ltd.

- failed to ensure the business of the brokerage was carried out competently and in accordance with the Act, Regulations, Rules and Bylaws contrary to section 51(1)(d) of the *Real Estate Act Rules*
- \$1,500

Mr. Kennedy's brokerage failed to file its annual accounting on time in 2014 and 2016. In 2017, Mr. Kennedy changed accounting companies to one that was easier for him to access, but did not give the accountant enough time to complete the required accounting report. As a result, the brokerage's accounting reports were not filed on time. Brokers are expected to amend and adapt brokerage policies and procedures as required, and to take necessary corrective measures to ensure the business of the brokerage complies with the legislation.

Administrative Penalties

David Stephen Kennedy

Real estate broker registered to Manor Management Ltd.

- failed to file brokerage accounting within three months of the fiscal year end [s. 91(4) of the *Real Estate Act Rules*]
- the brokerage year end accounting was due on September 30, 2017 and not filed until November 8, 2017
- \$1,500

Sharyn Rachelle Stenvall

Real estate broker registered to Pinnacle Real Estate

- failed to file brokerage accounting within three months of the fiscal year end [s. 91(4) of the *Real Estate Act Rules*]
- the brokerage year end accounting was due on August 31, 2017 and not filed until September 12, 2017
- \$1,500

Theresa Bernadette Deveaux

Real estate broker registered to Re/Max Mountain Realty

- failed to file brokerage accounting within three months of the fiscal year end [s. 91(4) of the *Real Estate Act Rules*]
- the brokerage year end accounting was due on October 31, 2017 and not filed until November 9, 2017
- \$1,500

A brokerage must file its accounting with Council no later than 3 months after the end of the brokerage's fiscal year. In these cases, the brokers did not file their forms before their deadlines despite RECA sending numerous email reminders of the deadline.

Administrative Penalties

[Norman Allen Freele](#)

Unregistered

- traded in real estate as a real estate broker without authorization [s.17(a) of the *Real Estate Act*]
- \$2,000

All industry professionals are required to renew their licence on or before September 30 each year. RECA advises industry professionals to confirm their licensing status using the myRECA system or RECA's public licence search before beginning work on October 1. In this case, Mr. Freele did not renew his licence, and he continued to trade in real estate while unauthorized for nine months.

[Jaspreet Singh Aulakh](#)

Mortgage associate registered to Mortgage Alliance "Mortgages are Marvellous"

[Norman Allen Freele](#)

Unregistered

[Nathen Legat](#)

Real estate associate registered to Virtu Real Estate

[Ronald James Wetsch](#)

Real estate associate registered to Royal LePage Premier Real Estate

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

Industry members are required to immediately notify the executive director when certain events occur. In these cases, the individuals waited a significant period of time before notifying 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. Industry members can submit their notification at any time through the myRECA system.

Hearing Panel Decision

Garry Roland Holbrook,

Real estate associate at Leaseco Realty Inc.

Issues:

- industry members must not make representation or carry on conduct that is reckless or intentional and that misleads or deceives any person or is likely to do so
- industry members shall not provide any services to the client or potential client in a trade or anticipated trade in which the industry member has, or will have, a conflict of interest without receiving written and informed consent of the party
- before asking for or as soon as possible after receiving confidential information from any person or, in any event, before entering into a service agreement, an industry member must make a number of disclosures in writing to the person, including:
 - the nature of the services the industry member will provide
 - whether the industry member is acting in the trade or anticipated trade on behalf of any other person, in any capacity
 - any conflict of interest that may exist
 - any other facts that may be likely to influence the person's decision

Facts:

- Mr. Holbrook's broker listed a property through the brokerage in which he, as the broker, had a substantial interest
- Mr. Holbrook acted as agent for the brokerage for that listing
- Mr. H contacted Mr. Holbrook about buying the property. Mr. Holbrook did not inform Mr. H in writing that:
 - the broker was part owner of the property
 - the nature of the services Mr. Holbrook could provide to Mr. H
- Mr. Holbrook provided some services to Mr. H without first advising him of the conflict of interest that existed, and without receiving Mr. H's written and informed consent before providing those services
- Mr. Holbrook presented a post-dated purchase agreement to Mr. H

Hearing Panel Decision

- the post-dating on the agreement may have misled the then tenant in the property into believing the purchase agreement had been executed after the tenancy and the tenant's right of first refusal had expired. Mitigating factors on this specific point were that Mr. Holbrook did not prepare the agreement, and the tenant was not intending to stay.
- regarding Rule 42(a) – Mr. Holbrook presented a post-dated purchase agreement to Mr. H. The post-dating may have misled the then current tenant in the property into believing the purchase agreement had been executed after the tenancy and right of first refusal had expired. Mitigating factors were that Mr. Holbrook did not prepare the Agreement and the tenant was not intending to stay.

Outcome:

A Hearing Panel of the Real Estate Council of Alberta accepted an Admission of Conduct Deserving of Sanction from Garry Holbrook under s.46 of the *Real Estate Act*. The Hearing Panel found that Mr. Holbrook engaged in conduct deserving of sanction by breaching section 42(a), 54(3) and 55(1) of the *Real Estate Act Rules*.

The Hearing Panel ordered:

- a Letter of Reprimand to Mr. Holbrook for breach of section 42(a) of the Rules
- Mr. Holbrook to pay a \$3,000 fine for breach of section 54(3) of the Rules
- Mr. Holbrook to pay a \$3,000 fine for breach of section 55(1) of the Rules
- Mr. Holbrook to complete three educational requirements
- Mr. Holbrook to pay costs of \$1,000

Hearing Panel Decision

James Frederick Mitchell,

Real estate broker at Leaseco Realty Inc.

Issues:

- failure to ensure an adequate level of supervision for an associate [section 51(3)(b) of the *Real Estate Act Rules*]
- failure to disburse monies held by his brokerage in trust in accordance with the terms of trust [section 25(1)(d) of the *Real Estate Act*]
- failure to fulfill their fiduciary obligations to their clients [section 41(d) of the *Real Estate Act Rules*]

Facts:

- the conduct in question occurred from August 2007 to June 2008, and involved a commercial property
- Mr. Mitchell was registered as a real estate broker at all relevant times with Leaseco Realty
- Mr. Mitchell has no prior disciplinary history in his over 25 years of being a licensed industry member
- Mr. Mitchell was the sole shareholder of an Alberta corporation.
- that corporation and Mr. G are another corporation's sole shareholders
- Mr. Mitchell and Mr. G were the second corporation's sole directors
- Mr. Mitchell listed a property owned by the second corporation through the brokerage in which he, as the broker, had a substantial interest
- one of Mr. Mitchell's associates acted as agent for the brokerage for the listing
- Mr. H contacted the associate about buying the property. The associate did not inform Mr. H in writing that:
 - Mr. Mitchell was part owner of the property
 - the nature of the services the associate could provide to Mr. H
- the associate provided some services to Mr. H without first advising him of the conflict of interest that existed because of Mr. Mitchell, and without receiving Mr. H's written and informed consent before providing those services.

Hearing Panel Decision

- the associate presented a post-dated purchase agreement to Mr. H.
- Mr. Mitchell did not ensure adequate supervision of this associate
- Mr. H signed the purchase agreement, paid a deposit, and authorized payment for an environmental report.
- Mr. Mitchell held the deposit in trust according to terms of the purchase agreement.
- the purchase did not close. Despite this, Mr. Mitchell purchased an additional phase 2 environmental report, and refused to release the deposit.
- Mr. Mitchell maintained that the purchase contract Mr. H signed allowed him to retain part of the deposit for his expenses

Outcome:

A Hearing Panel of the Real Estate Council of Alberta accepted an Admission of Conduct Deserving of Sanction from James Mitchell under s.46 of the *Real Estate Act*. The Hearing Panel found that Mr. Mitchell engaged in conduct deserving of sanction by breaching section 51(3) (b) and 41(d) of the *Real Estate Act Rules*, and section 25(1)(d) of the *Real Estate Act*.

The executive director and Mr. Mitchell agreed on sanction for breach of section 51(3)(b) of the Rules, but the parties each made submissions regarding the sanctions that ought to be imposed for the breaches of sections 25(1)(d) of the Act and 41(d) of the Rules. The panel heard submissions on that point, and found that Mr. Mitchell erred in interpreting the purchase agreement.

The Hearing Panel ordered Mr. Mitchell to:

- pay a fine of \$3,000 for the breach of section 51(3)(b) of the Rules;
- pay a fine of \$10,000 for the breaches of section 25(1)(d) of the Act and 41(d) of the Rules
- complete two educational requirements within nine months of the date of this decision
- pay costs of \$2,000

Hearing Panel Decision

Judy Nelson,

Real estate broker registered at Willow Creek Realty Ltd.

Issues:

- failure to 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 [section 25(1)(d) of the *Real Estate Act*]
- failure to provide the brokerage's final report to the executive director within 30 days of ceasing to carry on the business of a brokerage [section 37(1)(a) of the *Real Estate Act Rules*]
- failure to fulfill fiduciary obligations to their clients [section 41(d) of the *Real Estate Act Rules*]
- allowed a bank transfer out of an account in which money was held in trust therefore creating a negative balance in a client's or customer's ledger [section 87 of the *Real Estate Act Rules*]
- the brokerage did not fund a trust shortage as soon as the amount of the shortage was determined [section 88 of the *Real Estate Act Rules*]
- failure to report to the executive director at the brokerage's fiscal year end with regard to the operation of its accounts in which money is held in trust, [section 90 of the *Real Estate Act Rules*]

Facts:

- Ms. Nelson was registered as a real estate broker at all relevant times with Willow Creek Realty Ltd.
- Ms. Nelson was authorized as a real estate broker from:
 - October 20, 2008 until February 1, 2016
 - From January 18, 2005 until October 1, 2008
- Ms. Nelson was registered as a real estate associate broker from:
 - February 2, 2016 to the present
- Ms. Nelson has no prior disciplinary history
- the brokerage has no prior disciplinary history
- on August 7, 2014, the executive director conducted a practice review of the brokerage, which identified a trust fund shortfall of approximately \$21,000. The review further identified a failure to prepare and review bank reconciliations.

Hearing Panel Decision

- on nine separate occasions between March 7 and July 3, 2014, funds were improperly drawn on the trust account to the general operating account of the brokerage. These funds totaled approximately \$21,000 and were used to fund the operating expenditures of the brokerage. Ms. Nelson conducted all of the above transfers knowingly and purposefully.
- after the practice review in August 2014, Ms. Nelson promptly funded the entire shortfall
- the brokerage subsequently ceased to be an ongoing entity as at February 1, 2016
- the brokerage fiscal year end was November 30 and the brokerage was due to file its 2015 year end trust reporting to the executive director by March 2, 2016. The brokerage was granted a number of extensions with a final extension date of December 22, 2016. The brokerage failed to file its 2015 year end trust reporting.
- the brokerage was to file a final report on the status of monies held in trust. The brokerage was granted an extension until December 22, 2016. The brokerage failed to file this report.

Outcome:

A Hearing Panel of the Real Estate Council of Alberta accepted an Admission of Conduct Deserving of Sanction from Judy Nelson under s.46 of the *Real Estate Act*. The Hearing Panel found that Ms. Nelson engaged in conduct deserving of sanction by breaching section 25(1)(d) of the Act, and sections 37(1)(a), 41(d), 87, 88 and 90 of the *Real Estate Act Rules*.

The Hearing Panel ordered:

- Ms. Nelson to pay a fine of \$10,000 for breach of section 25(1)(d) of the Act and section 41(d) of the Rules
- Willow Creek to pay a fine of \$13,000, broken down as follows:
 - \$1,500 for breach of section 37(1)(a) of the Rules
 - \$5,000 for breach of section 87 of the Rules
 - \$5,000 for breach of section 88 of the Rules
 - \$1,500 for breach of section 90 of the Rules
- Ms. Nelson's authorization to trade in real estate be suspended for three (3) months beginning on December 15, 2017
- Ms. Nelson to complete an educational requirement
- Ms. Nelson to pay costs of \$500

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Appointed from the public

BONNY CLARKE, CHAIR-ELECT

Appointed from non-AREA industry members

BOBBI DAWSON

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

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