

September 5, 2018

October 9, 2018

# Case Summaries

Letters of Reprimand

Administrative Penalties

Hearing Panel Decision



# 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

### Joe John Pap,

Real estate associate registered with Seabolt Holdings Ltd. o/a Sutton Group Canwest

- industry members must ensure the role of the industry member is clearly understood by their clients and third parties [s.41(e) of the *Real Estate Act Rules*]
- Mr. Pap entered into a Exclusive Seller Representation Agreement with the seller of a property
- Mr. Pap had a previous relationship with a potential buyer and recommended the property to the buyer
- the buyer made an offer on the property and Mr. Pap terminated the relationship with the buyer to resolve the conflict of interest
- Mr. Pap had the buyer sign a Buyer Customer Status Acknowledgement, making it so Mr. Pap was no longer representing the buyer
- the offer to purchase stated that Mr. Pap was representing both the buyer and the seller. The buyer was under the impression that Mr. Pap was representing them as well

Industry professionals must ensure their actions and paperwork are consistent with their role in a transaction. Stating in the offer to purchase that Mr. Pap was representing both the seller and buyer conflicted with previous agreements and created confusion for both parties in the transaction.

## Letters of Reprimand

### Ayaz Bhanji

Real estate broker registered with Excellence Real Estate Edmonton Ltd.  
o/a Re/Max Excellence

- an industry member who is required by the *Real Estate Act* rules to keep and operate a trust account shall deposit money received in trust in respect of a dealing or trade in the business of the industry member within the time prescribed by the regulations, or within any period agreed to in writing by the parties to the dealing or trade, in an interest bearing account [s.25(1)(b) *Real Estate Act*]
- the *Real Estate Act Ministerial Regulation* states that for the purposes of s.25(1) of the *Real Estate Act*, money received in trust must be deposited within 3 business days of receipt, or in the case of money received for an offer to purchase, within 3 business days of the acceptance of the offer to purchase [s.22 *Real Estate Act Ministerial Regulation*]
- a residential purchase contract was accepted by a seller represented by Mr. Bhanji's brokerage. That purchase contract appointed Mr. Bhanji's brokerage as the trustee for the deposit money.
- Mr. Bhanji's brokerage received the deposit cheque from the buyer, however the cheque was not deposited into the brokerage trust account.
- the buyer chose not to waive the conditions of the purchase contract
- the buyer's associate called Mr. Bhanji's brokerage to arrange a return of the deposit.
- the buyer's associate was informed that there was no paperwork on the transaction and no record of the deposit
- the brokerage discovered that their staff had not handled the deposit cheque properly and it was discovered in the associate's mailbox
- the original deposit was then returned to the buyer

Brokers are responsible for the operation of the brokerage and supervision of all of the staff/employees in the brokerage. Brokerages must ensure they meet their legislative obligations around trust funds. Consumers must have trust in brokerages to handle deposit monies properly and deposit them in a trust account in a timely fashion.

## Letters of Reprimand

### [John Mathew Bauman](#)

Real estate associate registered with Tempo Real Estate Ltd.  
o/a Royal LePage Benchmark

- failed to provide competent service [s.41(b) of the *Real Estate Act Rules*]
- Mr. Bauman failed to represent the property according to RMS guidelines
- Mr. Bauman included the exterior wall thickness in the property size

### [Amanda Marie Blake](#)

Real estate associate registered with Lime Green Realty Inc.

- failed to provide competent service [s.41(b) of the *Real Estate Act Rules*]
- Ms. Blake failed to represent the property according to RMS guidelines
- Ms. Blake miscalculated the above grade size by including an area of the house that should have been subtracted from the RMS size

The Residential Measurement Standard (RMS) requires real estate professionals to personally measure, or engage a qualified person to measure, all properties they are listing for sale. In these cases, the industry professionals failed to represent the proper size of the property in their listing according to RMS guidelines. Industry professionals must ensure they represent the proper RMS size in their listings.



# Administrative Penalties

## James Alexander Caldwell,

Real estate broker registered with Hines Canada Property Services ULC

- failed to file brokerage accounting within three months of the fiscal year end [s. 91(4) of the *Real Estate Act Rules*]
- the brokerage fiscal year end was December 31, 2017
- RECA sent Mr. Caldwell numerous email reminders to file the appropriate forms by April 2, 2018
- Mr. Caldwell filed the fiscal year end on August 28, 2018
- \$1,500

## Brian Kenneth Sugden,

Real estate broker registered with Marcus & Millichap Real Estate Investments Services Canada Inc.

- failed to file brokerage accounting within three months of the fiscal year end [s. 91(4) of the *Real Estate Act Rules*]
- the brokerage fiscal year end was March 31, 2018
- RECA Sent Mr. Sugden numerous email reminders to file the appropriate forms by July 3, 2018
- Mr. Sugden filed the fiscal year end on August 8, 2018
- \$1,500

## Brock Adam Tokar,

Real estate broker registered with 2 Percent Realty Max Inc. o/a 2% Realty Edge at the time of conduct

- failed to file brokerage accounting within three months of the fiscal year end [s. 91(4) of the *Real Estate Act Rules*]
- the brokerage fiscal year end was March 31, 2018
- RECA Sent Mr. Tokar numerous email reminders to file the appropriate forms by June 30, 2018
- Mr. Tokar filed the fiscal year end on August 30, 2018
- \$1,500

A brokerage must file its accounting with Council no later than three months after the end of the brokerage's fiscal year. The brokers in these cases filed the forms after the deadline despite RECA sending numerous email reminders.

## Administrative Penalties

### Danh Ngoc Tran,

Real estate associate registered with RE/MAX Real Estate (Edmonton) Ltd.  
o/a RE/MAX Real Estate

- 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]
- Mr. Tran measured the property using the RMS guidelines, however the property measured smaller than when it was originally purchased
- Mr. Tran followed his clients instructions and listed the property as the originally purchased size and not the newly measured RMS size
- \$1,500

Though real estate professionals have a fiduciary duty to obey their client's instructions, they cannot obey instructions to be misleading or dishonest. In this case, Mr. Tran should have informed his client that he cannot obey that instruction and that he has a duty to ensure information he presents in a listing is accurate and that the listed size adhered to RMS standards.

### Darwin Bradley Morton,

Unauthorized

- acted as a real estate appraiser without authorization [s.17(c) of the *Real Estate Act*]
- Mr. Morton failed to renew his real estate appraiser licence by September 30, 2017
- between October 1, 2017 and June 25, 2018, Mr. Morton continued to act as a real estate appraiser and completed full or partial appraisals
- \$2,500

All industry professionals are required to renew their licence on or before September 30 each year. RECA advises industry professionals to confirm their renewal before working on October 1. In this case, Mr. Morton did not renew his licence, and became unauthorized effective October 1. Mr. Morton continued to provide appraisal services while unauthorized.

## Jinxia Li

Real estate associate registered with Excellence Real Estate Edmonton Ltd.  
o/a Re/Max Excellence

- real estate associate brokers and associates must provide to the broker in a timely manner all original documentation and copies of original documents provided to the parties or maintained by other brokerages [s.53(c)(i)(ii) of the *Real Estate Act Rules*]
- Ms. Li's seller accepted a purchase contract
- Ms. Li's brokerage received the deposit cheque for the transaction
- the buyer decided not to waive conditions
- the buyer's associate contacted Ms. Li's brokerage about returning the deposit cheque, the brokerage had no documentation surrounding this transaction
- Ms. Li was required to provide her brokerage with the transaction documents prior to this date
- \$1,500

Industry professionals must provide all transaction documentation to their brokerage for trades and potential trades in a timely manner. Brokerage policies, procedures, and expectations define what the appropriate period of time is to submit transaction documentation to the brokerage. Ms. Li failed to provide the proper documentation to her brokerage in the period set by her brokerage.



## Administrative Penalties

### Brock Adam Tokar,

Real estate broker registered with 2 Percent Realty Max Inc.  
o/a 2% Realty Edge at time of conduct

- failed to ensure the business of the brokerage was carried out competently and in accordance with the Act, Regulations, Rules and Bylaws [s.51(d) of the *Real Estate Act* Rules]
- failed to provide brokerage accounting report within three months of fiscal year end
- Mr. Tokar's brokerage has had issues in the past with filing their accounting report,
- Mr. Tokar failed to develop or amend policies and procedures to ensure future accounting reports were completed on time
- Mr. Tokar failed to ensure the accountant preparing the report had enough time to complete the report
- Mr. Tokar failed to file his brokerage accounting report on time in 2018
- \$1,500

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 is compliant with the legislation. In this case, Mr. Tokar failed to ensure that his brokerage's policies and procedures were amended to guarantee that his brokerage would be able to file their accounting files on time with RECA.

## Administrative Penalties

### Deloris Marie Rahier,

Real estate associate registered with RE/MAX Real Estate (Edmonton) Ltd.  
o/a RE/MAX Real Estate at time of conduct

- 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*]
- Ms. Rahier advertised a property for sale stating that it included a two bedroom apartment
- Ms. Rahier was aware that the property was zoned as C1 – Downtown commercial
- the property was not zoned for residential use
- a buyer client made an offer on this property believing it was zoned for residential use
- Ms. Rahier represented both the buyer and seller in this transaction
- the buyer did not become aware of zoning issue until after the sale had closed
- \$1,500

Industry professionals must avoid misrepresentations or conduct that is reckless or intentional and that misleads or deceives any person. This includes advertising. As industry professionals, you are expected to take reasonable steps to verify any information you wish to include in any advertisement you create.

## Hearing Panel Decision

### Sundi Clark,

Real Estate Associate registered with Century 21 Foothills Real Estate Ltd.  
o/a Century 21 Foothills Real Estate at the time of the contravention

#### **Issues:**

- industry members must provide competent service [s.41(b) of the *Real Estate Act Rules*]
- a real estate broker, associate broker or associate, as the case may be, must not directly or indirectly, provide an inducement unless the inducement is provided by and on behalf of the brokerage with which the real estate broker, associate broker or associate is registered, details of the inducement are provided in writing and the broker has provided written approval. [s.54(2) of the *Real Estate Act Rules*]

#### **Facts:**

- on March 31, 2016 Ms. Clark's brokerage and a buyer entered into an Exclusive Buyer Brokerage Agreement
- Ms. Clark showed the buyer client a home in High River that the buyer had concerns about in regards to flooding
- Ms. Clark texted her client that the property had experienced no overland flooding, only four inches of sewer back-up, and had a refurbished furnace. Clark obtained this information verbally from the Seller's Representative who was also registered with Ms. Clark's brokerage.
- Ms. Clark's brokerage is a designated agency brokerage
- between the March 31, 2016 and April 22, 2016—the day her client waived conditions, Ms. Clark never received any supporting documentation from the Seller's Representative to confirm any of the information they provided verbally about the property's remediation
- Ms. Clark never advised her client of the lack of supporting documents
- the doctrine of caveat emptor applied the purchase of the property
- on April 4, 2016 Ms. Clark provided an inducement to her client by personally paying the initial deposit of \$1,000 on her behalf. This inducement was not provided on behalf of the brokerage. The Client did not repay Ms. Clark until June 19, 2016, after they took possession of the property.

## Hearing Panel Decision

- on April 20, 2016 a home inspection of the Property raised issues of: a mouse infestation, duct and furnace cleaning, the refurbished furnace, bathroom leaks, and a sewage back-up valve
- Ms. Clark never created an amendment to the purchase contract ensuring the issues raised during the home inspection were addressed by the sellers
- after attempting to request information from the Town of High River, the buyer was told that only the registered owner of the property can access this information. The buyer requested that Ms. Clark obtain this information on her behalf. Prior to conditions being waived, Ms. Clark never asked the seller's representative to obtain this information
- on April 22, 2016 the buyer waived the financing and property inspection conditions
- between April 3, 2016 and April 22, 2016 Clark failed to document in writing in the brokerage file any due diligence activities on behalf of her client
- upon taking possession of the property on May 30, 2016 the buyer was unable to live in the property due to the presence of mould and potential exposure to asbestos during remediation
- as at July 20, 2016 the complainant had incurred \$9,169.88 in expenses remediating the property

### **Outcome:**

The Panel determines that Ms. Clark engaged in conduct deserving of sanction.

The Panel has therefore found that Ms. Clark did contravene section 41(b) and 54(2) of the *Real Estate Act* Rules. Therefore:

- She shall pay a fine of \$2,500 for breach of Rule 41(b)
- She shall pay a fine of \$1,500 for breach of Rule 54(2)
- Completion of two educational courses within six months of the date of this Decision:
  - Practice of Residential Real Estate: Unit 4 – Residential Property Issues and Unit 7 – Representing the Buyer.
- Costs of \$500

## **2017-2018 Council Members**

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Appointed from the public

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### **PHIL MCDOWELL**

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

Please forward any questions regarding the content of Case Summaries, or any questions regarding licensing or mandatory education, to [info@reca.ca](mailto:info@reca.ca)



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