

October 10, 2018
November 13, 2018

Case Summaries

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Case Summaries

Welcome to the Case Summaries monthly magazine.

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

Donald Stewart Leard,

Real estate associate registered with Greater Calgary Real Estate Services Inc. o/a Greater Calgary Real Estate

- failed to provide competent service [s.41(b) of the *Real Estate Act* Rules]
- Mr. Leard measured a property according to Residential Measurement Standard (RMS) guidelines, but failed to accurately record the RMS measurements
- Mr. Leard failed to represent the property according to the RMS Guidelines

Ashley Lorraine Moore,

Real estate associate registered with 1284780 Alberta Ltd. o/a Century 21 1st Choice Realty

- failed to provide competent service [s.41(b) of the *Real Estate Act* Rules]
- Ms. Moore measured a property according to RMS guidelines, but failed to accurately record the RMS measurements
- Ms. Moore failed to represent the property according to the RMS Guidelines

Industry professionals must provide competent service. In these cases, the industry professionals failed to accurately record the property measurements. The RMS guidelines require all residential real estate professionals to personally measure, or engage a qualified person to measure, all properties they are listing for sale.

Donald Stewart Leard,

Real estate associate registered with Greater Calgary Real Estate Services Inc. o/a Greater Calgary 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. Leard listed a property and added that it had been professionally measured according to RMS guidelines by Red Dot Services
- Mr. Leard included the listing comment on the wrong listing
- the listing was measured by Mr. Leard himself and not by Red Dot Services
- Red Dot Services had measured another property for Mr. Leard

Real estate professionals have a responsibility to ensure the information in their listings is accurate. In this case, the industry professional should have reviewed his listings for accuracy before listing.

Letters of Reprimand

Shawn Patrick Riley

Real estate associate registered with Twin Oaks Real Estate 1993 Inc. o/a RE/MAX House of Real Estate

- failed to obtain signatures from all relevant parties when entering into a service agreement [s. 43(2)(a) of the *Real Estate Act Rules*]
- in July 2018, Mr. Riley attempted to enter into a service agreement with two sellers at a property
- the service agreement was signed by one of the sellers and was listed on the local listing service
- the other seller was informed by a neighbour of the listing and contacted the brokerage
- the listing was removed from the local listing service
- on August 31, 2018 both of the sellers signed the written service agreement and the house was re-listed

Real estate professionals working with clients in residential real estate are required to have written service agreements with those clients. The written service agreement must have all relevant signatures on the agreement before listing. In this case, the industry professional should have never listed the home until both parties had signed the written service agreement.

Nicholas Anthony Lima

Real estate associate registered with South Star Realty Inc. o/a Maxwell South Star Realty

- 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*]
- Mr. Lima sent an email to his clients discussing concerns over a buyer viewing the property
- the email contained unprofessional phrases and tone

Industry professionals must demonstrate good character at all times when dealing with a client. One aspect of good character is professionalism. In this case, the industry professional should have ensured his emails to his clients were professional. Industry professionals must always maintain their composure and communicate in a professional manner.

Administrative Penalties

[Ben Edward Maize](#)

Real estate associate registered with 901047 Alberta Ltd. o/a Century 21 Nordic 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 he 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.

[Michael Robert Holmes](#)

Real estate broker registered with Larlyn Property Management Limited

- 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 due on July 3, 2018
- RECA sent numerous email reminders to file the appropriate forms by July 3, 2018
- Mr. Holmes requested an extension to RECA on July 5, 2018
- RECA declined the request on July 5, 2018
- Mr. Holmes filed the fiscal year end on August 14, 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. In this case, the broker filed the forms after the deadline despite RECA sending numerous email reminders.

Administrative Penalties

Robin Lloyd Smashnuk,

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

- 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*]
- on April 24, 2018, Mr. Smashnuk completed the Individual Identification Information Record as part of the requirements of Canada's Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations
- section A.1 of the Record requires that the client's identity be ascertained by comparing them to the photo on their driver's licence
- Mr. Smashnuk's client was not present when this document was completed
- Mr. Smashnuk first met his client on May 7, 2018 but dated the record as meeting him on April 24, 2018
- \$1,500

Brokers and brokerages rely on their representatives to carry on the business of the brokerage in a timely and competent manner and in accordance with other legislation that affects trading in real estate. In this case, the industry professional misrepresented his activities to appear to be in compliance when, in fact, he did not compare his clients identity in accordance of Canada's Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations. Mr. Smashnuk also misrepresented the date that he met his client in person. Industry professionals must never mislead or misrepresent any information.

Hearing Panel Decision

Robert Cundal,

Real estate broker registered with 1707634 Alberta Ltd. o/a 2% Realty Edge GP

Issues:

- Industry members must fulfill their fiduciary obligations to their clients [s.41(d) 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*]

Facts:

- Mr. Cundal represented a buyer in a property purchase in July 2016
- a purchase contract was entered on July 15, 2016
- the purchase contract required an initial deposit of \$1,000 and an additional deposit of \$4,000
- as Mr. Cundal's client was frequently out of town, making it inconvenient to provide a physical bank draft, Mr. Cundal agreed to accept the client's deposits through an email transfer. At the Hearing, it was clarified that the client suggested using email transfer
- Mr. Cundal did not verify with his brokerage whether accepting deposits in this way was acceptable
- Mr. Cundal accepted the deposits into his own account, intending to issue a bank draft to the brokerage at a later time
- three deposit amounts were received by email: \$1,000 on July 15, 2016; \$3,000 on July 19, 2016 and \$1,000 on July 20, 2016
- between July 20 and July 29, 2016, some of these funds were used by Mr. Cundal for purposes other than what they were intended for
- on July 30, Mr. Cundal's broker emailed him asking where the deposit funds were
- Mr. Cundal misrepresented to his broker that he was waiting on an amendment and date change
- Mr. Cundal did not provide the deposit funds to the brokerage until three months later, when the brokerage received a release letter from the lawyer. At that point, the funds were immediately provided to the brokerage by Mr. Cundal

Hearing Panel Decision

Outcome:

On August 15, 2018, Mr. Robert Cundal submitted a statement of Admission of Conduct Deserving Sanction ("ACDS") in regards to certain events which took place beginning in July of 2016. The Panel ordered the following:

1. The Hearing Panel ordered Mr. Cundal to pay a fine of :
 - a) \$3,000 for the breach of Section 41(d) of the Rules (fiduciary duties)
 - b) \$1,500 for the breach of Section 42(a) of the Rules (misrepresentation)

2. The Hearing Panel ordered no costs in this matter

Hearing Panel Decision

Steve Sedgwick.

Real estate associate registered with Noralta Real Estate Inc. o/a Royal LePage
Noralta Real Estate

Issues:

- A person who is required to answer the questions of a person conducting an investigation shall co-operate with the investigator and promptly respond to the questions [s.38(4)(a) of the *Real Estate Act Rules*]
- Industry members must not participate in fraudulent or unlawful activities in connection with the provision of services or in any dealings [s.42(b) of the *Real Estate Act Rules*]

Facts:

- Mr. Sedgwick presented a forged Agreement to the RECA investigator claiming it was an original copy
- he made a misrepresentation to the RECA investigator that he had obtained a handwriting analysis report regarding the forged document but failed to provide the report when requested
- he provided a false written statement to RECA stating the Agreement was signed and that he had an original version and continued to be dishonest in his written response and other communications throughout the RECA investigation
- lied to his client when they asked if they had signed an Agreement
- fraudulently created an Agreement by copying and pasting the initials and signatures of his clients from a different document
- lied to his broker when he questioned him about the Agreement, which was to his benefit and to ensure that he would receive commission
- sent an email to the clients with the forged Agreement to convince his clients that they had entered into a contract, which was to his benefit and to ensure he would receive commission

Hearing Panel Decision

Outcome:

The Hearing Panel determined that Mr. Sedgwick engaged in conduct deserving of sanction. The Panel ordered the following:

1. The Hearing Panel ordered Mr. Sedgwick to pay a fine of:
 - a) \$10,000 for the breach of section 38(4)(a) of the Rules
 - b) \$15,000 for the breach of section 42(b) of the Rules
2. a three month suspension of Mr. Sedgwick's authorization to trade in real estate (starting November 6, 2018)
3. Mr. Sedgwick to complete the education upgrade course: Ethics, Professionalism and Risk Reduction
4. costs of \$1,590

Carol Ann Fletcher - Lifetime Withdrawal from Industry

On October 17, 2018, Carol Ann Fletcher, previously a real estate associate in central Alberta, applied to permanently withdraw from industry membership.

At the time of her application, Ms. Fletcher was the subject of conduct proceedings under the *Real Estate Act*. The issues under investigation were whether Ms. Fletcher:

- presented non-existent buyers to sellers
- fabricated offers
- did not handle deposits from alleged buyers through the brokerage
- was the only individual who had contact with the alleged buyers
- and proceeded to speak on behalf of these buyers to lawyers and sellers

At the time of Ms. Fletcher's withdrawal from industry, there had been no disciplinary hearing, admissions, or findings of fact.

The Real Estate Council of Alberta approved Ms. Fletcher's application to withdraw, and this results in a voluntary lifetime prohibition from industry membership; conduct proceedings are now discontinued.



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

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