

February 12, 2019

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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

Click on names to view the full decision

[Anand Mishra](#)

Real estate associate registered with AM PM Properties Inc.

- 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*]
- from January, 2018, to September, 2018, Mr. Mishra was a property manager for a complex
- during September 2018, unprofessional emails were exchanged between Mr. Mishra and a tenant regarding a move out inspection and rent owing
- on September 2, 2018, Mr. Mishra sent an email to the tenant that included unprofessional language

Industry professionals must maintain their composure when faced with conflict and difficult situations. Industry professionals must treat all consumers with civility, respect, and professional courtesy at all times.

[David Lem](#)

Real estate broker registered with 1853147 Alberta Ltd. o/a Engel & Volkers Calgary

- a real estate broker must be actively engaged in the management of the real estate brokerage with which the broker is registered [s.51(1)(a) of the *Real Estate Act Rules*]
- on October 1, 2018, an associate with Mr. Lem's brokerage terminated their registration with the brokerage
- Mr. Lem communicated the need to remove and cancel all of the associate's advertisements which included the brokerage name
- the associate continued to advertise as an associate with Mr. Lem's brokerage up until February 2, 2019

Real estate brokers must provide proper supervision to the brokerage's licensees and employees. In this case, Mr. Lem should have ensured that all advertisements with the former associate were pulled. By not ensuring the advertisements were pulled, it could mislead the public into believing the associate is still registered with Mr. Lem's brokerage.

Letters of Reprimand

[Fahranaz Khoja](#)

Real estate associate registered with Century 21 Bamber Realty Ltd.

- industry members must provide competent service [s.41(b) of the *Real Estate Act Rules*]
- Ms. Khoja was representing the sellers who intended to transfer their property to a home construction company
- Ms. Khoja communicated with the construction company instead of the sellers throughout the transaction, providing them the consumer relationships guide and listing agreement
- the company returned the documents, signed by the sellers
- Ms. Khoja provided an offer to purchase to the company
- the company returned the offer to purchase with the seller's signatures
- at time of closing, the transfer of ownership hadn't taken place, leading to complications in the transaction, which ultimately collapsed
- the potential buyers deposit was returned

Industry professionals must take reasonable steps to verify and understand a property's state of ownership. They must also take reasonable steps to provide information and documentation about a transaction to their client. In circumstances where the ownership is in question, industry professionals should consult their broker or seek legal advice.

[Samantha Prosser](#)

Real estate associate registered with 1020890 Alberta Ltd.

o/a Royal LePage Lifestyles Realty

- industry members must provide competent service [s.41(b) of the *Real Estate Act Rules*]
- failed to measure a property in accordance with the Residential Measurement Standard (RMS) resulting in an over-statement of 47 square feet

The RMS guidelines were created to offer a consistent means of representing a property's above grade space, thereby allowing interested parties to accurately evaluate the merits of a property. Therefore, when representing the size of a residential property, competent real estate industry professionals must measure the property using RMS or engage a third party to measure the property using RMS.

Administrative Penalties

Akbar Nimji,

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

- 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. Nimji represented a seller client in the sale of a property
- Mr. Nimji informed a potential buyer that he has multiple offers to purchase, at the time there was only one signed offer to purchase
- The potential buyer was informed of the multiple offer situation, and later found that was not the case and was reluctant to continue negotiating because of the misrepresentation
- \$1,500

Misrepresenting the existence of a multiple offer situation has significant impact on potential buyers and sellers. It may induce a buyer to make a larger offer than they originally planned or the buyer may not make an offer at all. In this case, Mr. Nimji should have never stated he had multiple offers to a potential buyer when that was not the case.

Allan Okabe,

Real estate broker registered with MDC Property Services Ltd.

- a brokerage must immediately notify the executive director in writing of 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. Okabe was the broker of MDC Property Services Ltd.
- on August 31, 2018, MDC Property Services Ltd. had a change to their corporate board of directors
- RECA was notified on November 7, 2018
- 1,500

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 (5) days after the event in question. In this case, the brokerage waited several months to notify RECA.

Administrative Penalties

Samantha Prosser.

Real estate associate registered with 1020890 Alberta Ltd.
o/a Royal LePage Lifestyles Realty

- 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. Prosser failed to measure a property according to Residential Measurement Standard (RMS) resulting in an over-statement of 47 square feet
- Ms. Prosser placed an advertisement on MLS with the inaccurate above ground square footage for the property
- Ms. Prosser discovered the error in measurement but failed to correct it on the advertisement
- Ms. Prosser received an offer to purchase the property, and failed to disclose the error
- Ms. Prosser included a term in the purchase contract to have the buyers verify the RMS measurements
- Ms. Prosser failed to inform the buyers of the misrepresentation until after receipt of the Notice of Waiver of Conditions
- \$3,000

Industry professionals are expected to ensure all representations are true and accurate. If an error should occur, industry professionals are expected to immediately correct the error and inform all parties affected. In this case, Ms. Prosser should have immediately corrected the error in the advertisement before any offer was made.

Andre D'Abadie.

Real estate broker registered with 1269713 Alberta Ltd.
o/a Century 21 Elevate 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 fiscal year end was July 31, 2018
- RECA sent numerous email reminders to file the appropriate forms by October 30, 2018
- Mr. D'Abadie filed the fiscal year end on November 9, 2018
- 1,500

A brokerage must file its accounting with RECA 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.

Suspension

Judy Nelson - Real Estate Licence Suspended

On February 28, 2019, the Executive Director of the Real Estate Council of Alberta (RECA) suspended Judy Nelson, an unregistered real estate associate broker in the Calgary area.

Ms. Nelson has failed to comply with an order of a Hearing Panel. The suspension will continue until she complies with the Hearing Panel's decision.

Ms. Nelson was most recently a real estate associate broker for Twin Oakes Real Estate 1993 Inc. o/a Re/Max House of Real Estate in Calgary.

Hearing Panel Decision

Wayne Land,

Real estate broker registered with Oakwood Property Management Ltd.

Issues:

- Mr. Land made an admission of conduct deserving of sanction, and RECA and Mr. Land made a Joint Submission on
- the only issue to be determined by the Hearing Panel is whether to accept the sanction in the Joint Submission, or whether to substitute a different sanction based on the facts of this case
- the admission of conduct deserving of sanction indicates Mr. Land, on two occasions, did not 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*]

Facts:

- In June of 2016, Oakwood Property Management Ltd., which is a corporation owned by Mr. Land, entered into written property management agreements for the management of several properties
- In July of 2016, Oakwood was provided with security deposits for several properties by the outgoing property manager
- In August 2016, Oakwood used rent monies to create security deposits for some of the properties for which no security deposit was held. All securities deposits were held in security deposit trust accounts
- In November 2016, both property management agreements were terminated effective December 15, 2016. At this time, Oakwood still held security funds for some of the properties
- These security deposit trust funds were not transferred to the new property manager. Instead they were transferred out of the security deposit trust accounts and used to pay for expenses incurred by Oakwood in respect of these properties
- On January 15, 2019, Oakwood repaid the missing funds

Outcome:

The Hearing Panel accepted the Joint Submission on Sanction. The Panel ordered the following:

1. fines for breaching section 25(1)(d) of the *Real Estate Act* totalling \$10,000
2. a three month suspension of Mr. Land's authorization to trade in real estate
3. Mr. Land is required to successfully complete the following education courses:
 - a) *Real Estate Act*, Rules and Regulations course (Unit 2 of the Fundamentals of Real Estate)
 - b) Ethics, Professionalism and Risk Reduction (Unit 12 of the Fundamentals of Real Estate)
4. costs of \$500

2018-2019 Council Members

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Appointed from the boards outside of Calgary and Edmonton

AMINA DEIAB

Appointed from the public

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Appointed from the industrial, commercial and investment real estate sector

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Appointed from non-AREA industry members

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Appointed from the REALTORS® Association of Edmonton

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The Regulator is published by the Real Estate Council of Alberta.

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