

## THE REAL ESTATE COUNCIL OF ALBERTA

**Case:** 000047, 000160, 000207, 000243, 003681  
**Process:** A Hearing under Part 3 of the *Real Estate Act*  
**Industry Member:** Michael McNeil  
**Class of License:** Real Estate Broker  
**Registration:** Esquire Realty Inc. o/a Esquire Management Group  
**Document:** NOTICE OF HEARING

**TO:** Michael McNeil

A hearing is set to review allegations about your conduct. Read this entire document to see what you must do.

### Hearing Information

**Date:** Wednesday, April 10, 2019  
**Time:** 1:30 p.m.  
**Location:** The Nakiska Room, 2<sup>nd</sup> Floor  
1506 11 Avenue SW, Calgary, Alberta  
**Hearing Panel:** Bobbi Dawson (Chair)  
Stan Kushner  
Arlene Blake  
**Alternates:** Ramey Demian (Chair), Sanjeet (Sunny) Parmar,  
Krista Bolton  
**Counsel to the Panel** TBA

**It is alleged that your conduct is deserving of sanction for breaching sections of the *Act* or *Rules*. Here are the details:**

### Case 000047

1. In or about July to September 2008 you made representations or carried on conduct that was reckless or intentional that could have misled or deceived any person or was likely to do so contrary to **Rule 42(a) of the *Real Estate Act Rules***:
  - a) You represented that EMG obtained a tenant when the tenancy was cancelled because of the NSF cheque.
  - b) You represented that EMG placed a lien on JP's condo which was not true.
2. In or about July to September 2008 you engaged in conduct that undermines public confidence in the industry, harms the integrity of the industry, or brings the industry into disrepute contrary to **Rule 42(g) of the *Real Estate Act Rules***:
  - a) You made threats of a lien and lawsuit to push JP to
    - i. Pay the \$200 charge which was not owing under the service agreement
    - ii. Accept that JP ended the contract in spite of you being the one who threatened termination first
    - iii. Apologize for JP's comments about you
  - b) You carried out neither threat but made representations to lead JP believe that he would or had done both.
  - c) JP who was vulnerable because he was out of the country and you had control over his property.
  - d) This is unprofessional behaviour that brings the industry into disrepute.

### Case 000160

3. In or about August to December 2007 you failed to provide competent service contrary to **Rule 41(b) of the *Real Estate Act Rules***:

- a) The [{"property"}] was in a difficult situation having been converted without any repairs and put in arrears by [{"company"}].
  - b) You accepted the management agreement but was unable to provide enough time or resources to put the property in order:
    - i. No separate account was set up for the reserve fund money
    - ii. Arrears were allowed to persist without proper statements to the board outlining the extent and action taken to collect arrears.
    - iii. No plan was developed for repairs and confirming the obligations of [{"company"}].
    - iv. No plan was developed to bring the reserve fund back to the indicated amount of \$250,000
    - v. Communication and reporting to the elected board was insufficient to ensure they were adequately informed of actions being taken by EMG and plans for dealing with the wide number of issues facing the board.
    - vi. Communication that did take place was ineffective and incomplete and resulted in a rapid breakdown of trust between the board and you.
    - vii. When the relationship made continuing service under the management agreement untenable you failed to have a plan for identifying a termination date and working toward complete removal of EMG from any ties to the property.
4. In or about August to December 2008 you engaged in conduct that undermines public confidence in the industry, harms the integrity of the industry, or brings the industry into disrepute contrary to **Rule 42(g) of the *Real Estate Act Rules***:

- a) When the relationship and trust between the board and you broke down in November of 2008 Mr. McNeil resorted to aggressive argument and threats to try to influence the board to carry on with the management agreement when the relationship had clearly broken down.
- b) This caused delay in the client being able to move forward with their management of the property, caused expense and conflict and ill will being formed in the board members toward you and his company.

#### **Case 000207**

- 5. In or about December 2008 to August 2010 you failed to provide a true copy of the termination of the service agreement to LM immediately upon its signature contrary to **Rule 43(3) of the *Real Estate Act Rules***:
  - a) You did not send a true copy of the termination form immediately on his signing the changed form sent to him by LM.
  - b) You did not send it when she requested it and only sent it after the complaint to RECA.
  
- 6. In August 2010 you made representations that were reckless or intentional and that misleads or deceives any person or is likely to do so contrary to **Rule 42(a) of the *Real Estate Act Rules***:
  - a) You represented to the RECA investigator that LM agreed to pay commission after termination. She never agreed to pay commission.

#### **Case 000243**

- 7. In or about August to September 2009 you failed to disburse money received or held in trust in respect of a dealing or trade in real estate only in accordance with the terms of trust governing the use of that money contrary to **section 25(1)(d) of the *Real Estate Act***:

- a) You charged the client from trust money held by EMG 2 months, October and November, management fees in advance when the service agreement made those fees due on the first day of each month.
  - b) You charged the client from trust money held by EMG \$1900 for fees for on-site visit even though there were no terms for use of money held in trust in the service agreement.
8. In or about August to September 2009 you failed to disclose to your clients, at the earliest practical opportunity, how you will be paid for services contrary to **Rule 41(c) of the *Real Estate Act Rules***:
- a) You charged a fee for on-site visits which were not disclosed in the service agreement and were not brought to the client's attention in writing before they were charged.

#### **Case 003681**

9. In or about June 2012 you breached your fiduciary duties owed to your client, contrary to **Rule 41(d) of the *Real Estate Act Rules***:
- a) You directed Farida Khan to sign a contract on behalf of Platinum Off Whyte without prior approval of the Court.

#### **Why You Should Attend the Hearing**

The hearing is your opportunity to respond to the allegations and state your side of the case in front of the Panel.

#### **Learn About the Hearing Process**

Please read these guides on the RECA website

- *Hearing and Appeal Practice and Procedures Guidelines and*
- *Information for Unrepresented Industry Members*

They are under the *Publications and Resources* tab under the heading *Guides to Disciplinary Proceedings*.

### **What You Should Bring to the Hearing**

Bring any witnesses and evidence you want the Panel to consider, with you to the hearing.

### **What Will Happen If You Don't Attend**

If you do not attend the Panel may proceed to make a decision without you.

### **What Will Happen At the Hearing**

After hearing all evidence and argument the Panel will decide whether the Executive Director has proven any of the breaches. If no breach is proven you will face no sanction.

If the Panel finds a breach is proven the Panel may do one or more of the things listed in **section 43** of the *Real Estate Act*:

- Cancel or suspend your authorization
- Order you to pay a fine for each breach
- Order you to pay the cost of the investigation and the hearing
- Order you to complete an education course

### **Submitting Written Arguments After the Hearing**

You can provide written arguments at the end of the hearing or after the end of the hearing

You must provide these to the **Hearings Administrator** and **Counsel for the Executive Director** (contact information below) **no later than 15 days after the end of the Hearing**.

Contact the Hearing Administrator if you need more time.

### **You Can Get Legal Advice**

You may get legal advice and may be represented by legal counsel at the hearing.

If you do not have a representative please read *Information for Unrepresented Industry Members*:

<http://www.reca.ca/industry/content/publications-resources/guides.htm>.

### **If You Object to a Panel Member**

Please review who is on the Panel. If you object to any of the people being on the Panel, you must advise the Hearings Administrator **who you object to and why within 14 days** of receiving this Notice.

If you do not object to the Panel within 14 days, this Panel will conduct the hearing.

### **Postponing the Hearing**

If you are not available on the date set for the hearing you can apply to the Panel for a new date. Contact the lawyer for the Executive Director and the Hearings Administrator as soon as possible if you need a new date.

Dated at Calgary, Alberta, on February 8, 2019.

(date)

*Charles Stevenson, for*

Bob Myroniuk, Executive Director  
of the Real Estate Council of Alberta

## Contact Information

<p>Hearings Administrator: Email: <a href="mailto:hearingsadmin@reca.ca">hearingsadmin@reca.ca</a> Fax: 403 228 3065 Direct: 403 685 7913 Toll Free: 1 888 425 2754 Address: Real Estate Council Suite 202, 1506 11 Avenue SW Calgary, Alberta T3C 0M9</p>	<p>Lawyer for the Executive Director: Email: <a href="mailto:conductadmin@reca.ca">conductadmin@reca.ca</a> Fax: 403 228 3065 Direct: 403 685 7944 Toll Free: 1 888 425 2754 Address: Real Estate Council Suite 202, 1506 11 Avenue SW Calgary, Alberta T3C 0M9</p>
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