

July 14, 2020

August 10, 2020

Case Summaries

Letter of Reprimand

Administrative Penalties

Lifetime Withdrawals

Hearing Panel Decisions

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*.

Questions about disciplinary information RECA publishes and why? Review [RECA's Publication Guidelines](#) online.

For more information about the cases summarized in this publication, please click on the underlined blue heading at the start of each summary.

Letter of Reprimand

[Kent Cary Bamber](#)

Real estate associate registered with Twin Oakes Real Estate 1993 Inc. o/a Re/Max House of Real Estate

- a real estate associate broker and associate must trade in real estate only in the name that appears on that individual's license and in the name of the brokerage with which that individual is registered [s.53(a) of the *Real Estate Act* Rules]
- on May 19, 2020, Mr. Bamber advertised real estate services using his personal branding of "Bamber Real Estate" using his Instagram account Babmerrealestate
- Mr. Bamber's brokerage was not indicated on the advertisements

Learning Opportunity

Industry professionals must clearly indicate their brokerage name in all advertising. A brokerage name is "clearly indicated" when a reasonable consumer, under normal circumstances, can clearly distinguish the name of a brokerage in an advertisement. In this case, the industry professional failed to include the brokerage name in their advertisements. A reasonable consumer should be able to identify the brokerage based on the advertisement alone.

[Advertising Guidelines](#)

Administrative Penalties

[Ryan Young Cameron](#)

Mortgage associate registered at the time with Sumex Inc. o/a Sumex Capital. Currently registered with True North Mortgage Inc. o/a True North Mortgage and real estate associate broker registered with Spark Real Estate Alberta Ltd. o/a Spark 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*]
- in March 2020, Mr. Cameron, published a Facebook post advertising, “We will beat any quoted rate. Rates in the 1% range are coming fast. Best mortgage rates guaranteed. Free service.”
- Mr. Cameron’s brokerage does not guarantee the best mortgage rates, and claiming they do is prohibited by Mr. Cameron’s brokerage’s policy
- Mr. Cameron’s post also included a misleading claim that “100% your home sold; 100% sold fast and for top money”
- Mr. Cameron’s registered brokerage name was not included in the post
- \$1,500

Learning Opportunity

Industry professionals must avoid making misrepresentations or claims that they are unable to objectively verify, as they may be false and capable of misleading a reasonable consumer. In this case, the industry professional’s advertisement stated, “best mortgage rates guaranteed,” while not knowing the options available to other mortgage brokers and lenders. The similar concept applies to “100% sold fast and for top money.” A reasonable consumer would be misled by these statements to believe the industry professional’s brokerage will guarantee the best mortgage rates and the fast sale of properties for top dollar.

Industry professionals must clearly indicate their brokerage name in all advertising, including on social media posts. A brokerage name is “clearly indicated” when a reasonable consumer, under normal circumstances, can clearly distinguish the name of a brokerage in an advertisement. A reasonable consumer should be able to identify the brokerage based on the advertisement alone. In this case, the industry professional did not display their brokerage name in their Facebook post.

Brokerages often have policies in place to guide industry professionals and keep them within the scope of the Rules. All industry professionals should become familiar with their brokerage policies and abide by them.

[Advertising Guidelines](#)

Administrative Penalties

[Joel Maitland Semmens](#)

Real estate associate registered with 4th Street Holdings Ltd. o/a Re/Max Real Estate (Central)

- 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 September 25, 2014, a Feature Sheet was created for a property, which named Mr. Semmens as the listing associate and another professional as a second listing associate
- the above-grade size for the property was represented as 2,816 sq. ft.
- in 2013, the property was listed with an above-grade size of 2,109 sq. ft.
- Mr. Semmens stated that he believed that all property levels, including below-grade space, were to be included in the measurement of the property
- the property was later professionally measured and the actual above-grade size was determined to be 2,041.16 sq. ft.
- \$1,500

[Michael Vincent Wood](#)

Real estate associate registered at the time with 4th Street Holdings Ltd. o/a Re/Max Real Estate. Currently registered with Re/Max Real Estate Calgary South Ltd. o/a Re/Max First.

- 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 September 25, 2014, Mr. Wood was listed on a Feature Sheet as the second listing associate for a property
- the above-grade size of the property was represented as 2,816 sq. ft.
- in 2013, this property was listed with an above-grade size of 2,109 sq. ft.
- Mr. Wood stated that he believed that all property levels, including below-grade space, were to be included in the measurement of the property
- the property was later professionally measured and the actual above-grade size was determined to be 2,041.16 sq. ft.
- \$1,500

Learning Opportunity

Industry professionals cannot make misleading claims, including misrepresenting the size of a property in advertisements. These cases occurred prior to the implementation of the Residential Measurement Standard, but the standard at the time also indicated that below grade living space was not included when measuring a property. By including below grade living space, these industry professionals misled consumers about the size of the property.

[Information Bulletin: Advertising – False and Misleading](#)

Administrative Penalties

[Osayomwanbor Evany Ogbemor](#)

Real estate broker registered with 1641445 Alberta Ltd. o/a Continental Realty & Management

- industry members must provide competent service [s.41(b) of the *Real Estate Act* Rules]
- on October 16, 2019, Mr. Ogbemor entered into a service agreement to sell a property
- Mr. Ogbemor assumed the property had only one owner and believed he had obtained permission from the seller to sell the property
- Mr. Ogbemor failed to pull the title on the property to verify ownership
- the property had two owners and Mr. Ogbemor did not have permission from the second owner to sell the property
- on October 24, 2019, Mr. Ogbemor was contacted by the second owner of the property about the property being listed without their consent
- Mr. Ogbemor then pulled title and confirmed it listed two property owners
- Mr. Ogbemor removed the listing
- \$1,500

Learning Opportunity

Industry professionals must provide competent service. In this case, the industry professional failed to provide competent service by listing a property for sale without receiving permission from all property owners. Industry professionals must pull title to verify the property ownership before listing the property. Pulling title also provides information necessary to properly advise clients in relation to disposition of mortgages, liens, setbacks, and more.

[Information Bulletin: Competent Service](#)

Administrative Penalties

[Daniel Scott Rowland](#)

Real estate associate registered with Inside Realty Ltd. o/a Realty One Group Insider. Currently a real estate broker registered with the same brokerage.

- 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 the written and informed consent of the party [s.54(3) of the *Real Estate Act Rules*]
- on January 13, 2019, Mr. Rowland entered into an Exclusive Seller Representation Agreement with a seller
- on February 4, 2019, Mr. Rowland entered into an Exclusive Buyer Representation Agreement with a buyer interested in same property
- on February 4, 2019, Mr. Rowland drafted an offer to purchase for the property on behalf of the buyer client, which was a conflict of interest
- Mr. Rowland did not receive written informed acknowledgement from the buyer of the conflict of interest
- Mr. Rowland presented the offer to purchase to his seller client, which was a conflict of interest
- Mr. Rowland did not receive written informed acknowledgement from the seller of the conflict of interest
- the seller client accepted the offer to purchase on February 8, 2019
- on February 13, 2019, Mr. Rowland entered into an Agreement to Represent Both the Seller and Buyer with both the seller and buyer clients
- \$1,500

Learning Opportunity

When an industry professional represents both a seller and a potential buyer, there is a conflict of interest. The industry professional must disclose to their clients the conflict of interest, taking steps to resolve that conflict. The disclosure must be full; which means it needs to state all relevant facts, the nature of the conflict of interest, and include the advantages and disadvantages of the various ways to resolve the conflict.

Industry professionals must disclose any conflict as soon as it arises. After the professional has made full and timely disclosure to each client, they must seek their clients' direction regarding the preferred means to resolve the conflict of interest. In this case, the associate failed to get both parties to sign an agreement that they would be representing both parties in the transaction. The clients must agree that the conflict has been resolved to their satisfaction before proceeding.

[Information Bulletin: Conflict of Interest - Representing both Seller and Buyer](#)

Administrative Penalties

[Brent Lyle Stewart](#)

Unlicensed. Mortgage broker registered at the time with Real Capital Corp.

- a brokerage's accounting records must be filed within three months of its fiscal year end [s.91(4) of the *Real Estate Act* Rules]
- Real Capital Corp.'s brokerage fiscal year end was August 31, 2019
- RECA sent numerous email reminders to Mr. Stewart, reminding him to file the appropriate forms by December 2, 2019
- Mr. Stewart failed to file the fiscal year end forms by December 2, 2019
- RECA received the required forms on July 22, 2020
- \$1,500

Learning Opportunity

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 failed to file the forms by the deadline despite RECA sending numerous reminders.

[Mortgage Brokerage Fiscal Year End](#)

Lifetime Withdrawals

[Wonjun Choi: Lifetime Withdrawal from Industry](#)

On July 23, 2020, Wonjun Choi, previously a real estate associate in Edmonton, applied to permanently withdraw from industry membership.

At the time of his application, Mr. Choi was the subject of an investigation under the *Real Estate Act*. The issues under investigation were whether Mr. Choi:

- misappropriated a deposit and
- participated in fraudulent or unlawful activities

At the time of Mr Choi's application, the investigation was complete, but the matter had not been heard by a RECA Hearing Panel and no finding of conduct deserving of sanction has been made.

Under the *Real Estate Act*, Mr. Choi's withdrawal application has been approved, resulting in conduct proceedings discontinuance and voluntary lifetime prohibition from industry membership.

Lifetime Withdrawals

[Adnan Ishaq: Lifetime Withdrawal from Industry](#)

On July 23, 2020, Adnan Ishaq, previously a real estate associate in Calgary, applied to permanently withdraw from industry membership.

At the time of his application, Mr. Ishaq was the subject of an investigation under the *Real Estate Act*. The issues under investigation were whether Mr. Ishaq:

- provided competent service, and
- participated in fraudulent or unlawful activities

At the time of Mr Ishaq's application, the investigation was complete, but the matter had not been heard by a RECA Hearing Panel and no finding of conduct deserving of sanction has been made.

Under the *Real Estate Act*, Mr. Ishaq's withdrawal application has been approved, resulting in conduct proceedings discontinuance and voluntary lifetime prohibition from industry membership.

Hearing Panel Decisions

[Mehboob Ali Merchant: Appeal Dismissed. Real Estate Licence Cancelled](#)

On July 17, 2020, an Appeal Panel for the Real Estate Council of Alberta (RECA) Dismissed the Executive Director's appeal on the sanction imposed against Mehboob Ali Merchant. The Hearing Panel's decision stands.

On October 17, 2019, a Hearing Panel for RECA cancelled the real estate licence of Mehboob Ali Merchant, effective October 17, 2019. Mr. Merchant is not eligible to reapply for any new licence from RECA until October 18, 2020. Mr. Merchant must also pay \$21,000 in fines and \$1,500 in costs.

As a result of this cancellation, Mr. Merchant may not trade in real estate in Alberta. Before being eligible to apply for a licence Mr. Merchant must successfully satisfy all pre-licensing education requirements.

Mr. Merchant was registered with Century 21 Platinum Realty Inc. O/A Century 21 Platinum Realty.

Hearing Panel Decisions

Ajay Ester Kainth

Real estate associate previously registered with iRealty Calgary Inc. o/a Re/Max iRealty Innovations. Currently a real estate associate registered with 4 Million.ca Inc. o/a Estateview.

A s.46(1) Admission of Conduct Deserving of Sanction was negotiated with the Executive Director and signed by the Industry Member on June 15, 2020.

Breaches Industry Member admitted to in the s.46(1) admission:

[breaches of s. 41(d) of the *Real Estate Act* Rules]

- Industry members must:
(d) fulfill their fiduciary obligations to their clients

[breaches of s.53(a) of the *Real Estate Act* Rules]

- A real estate associate broker and associate must:
(a) trade in real estate only in the name that appears on that individual's licence and in the name of the brokerage with which that individual is registered

Facts:

- on November 2, 2016 a consumer (the "Client") signed an Exclusive Buyer Brokerage Agreement with Re/Max iRealty Innovations
- at all material times Mr. Kainth was this Client's agent
- Mr. Kainth's partner signed the Exclusive Buyer Brokerage Agreement but Mr. Kainth did not
- on November 4, 2016 a purchase and sale agreement for a property (the "Property") was entered into by the Client
- this included a financing condition
- on November 7, 2016, Mr. Kainth referred his Client to a mortgage specialist to obtain a mortgage for the Property
- on November 9, 2016, the Client provided the seller's real estate brokerage with a bank draft in the amount of \$5,000 for a deposit on the Property
- on November 15, 2016, the Client met with a bank about obtaining a line of credit to fund his down payment on the property
- on November 19, 2016, Mr. Kainth sent a text message to the Client stating that his line of credit application would be approved, even though Mr. Kainth did not possess any documentation or other evidence to confirm that the bank had approved the application for financing
- on or about November 19, 2016, the Client waived the financing condition in the purchase and sale agreement at Mr. Kainth's behest
- Mr. Kainth was aware that the Client had not yet been formally approved for a line of credit to fund the down payment, and did not have written approval for mortgage financing
- on November 23, 2016, Mr. Kainth changed brokerages from Re/Max iRealty Innovations to 4 Million.ca Inc. O/A Estateview

Hearing Panel Decision

- Mr. Kainth continued to work with the Client after changing brokerages
- Mr. Kainth did not inform the Client that he had changed brokerages and was no longer an agent with Re/Max iRealty Innovations
- on November 28, 2016, the client received a mortgage approval conditional on a number of factors
- on December 2, 2016, the Client informed Mr. Kainth that he had concerns regarding the purchase
- Mr. Kainth did not respond directly to Client's concerns, instead he responded that he was sure the Client would make \$10,000–\$20,000 in equity on the Property within a year of the purchase
- the conditions required for the mortgage on the Property were not fulfilled
- on December 8, 2016, the seller terminated the purchase and sale agreement, causing the Client to forfeit the \$5,000 deposit

Outcome:

The Hearing Panel ordered the following sanctions against the Industry Member:

1. Mr. Kainth is ordered to pay total fines of \$6,000, including \$4,500 for breaches of Rule 41(d) and \$1,500 for breach of Rule 53(a)
2. Mr. Kainth is ordered to pay costs in the amount of \$500
3. Mr. Kainth is ordered to successfully complete the Fundamentals of Real Estate Unit Three course within six months of the date of the Hearing Panel Decision

RECA Management

JOSEPH FERNANDEZ
Director of Education Programs
(Acting Executive Director)

WARREN MARTINSON
Director of Corporate Services

STACY PAQUIN
General Counsel & Corporate Secretary

CHARLES STEVENSON
Registrar

VACANT
Director of Strategic Initiatives & External
Relations

CONTACT RECA

The Case Summaries is published by the Real Estate Council of Alberta.

Please forward any questions regarding the content of the Case Summaries, or any questions regarding licensing or mandatory education, to info@reca.ca

202, 1506 11 Avenue SW,
Calgary, AB T3C 0M9
Phone (403) 228-2954
Toll-free 1-888-425-2754
Fax (403) 228-3065
www.reca.ca