

December 16, 2020

January 18, 2021

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*.

The events mentioned in the decisions included in this issue occurred prior to December 1, 2020. The sanctions as noted, reflect the *Real Estate Act* as it was then applied. Learning opportunities reflect advice for licensees under the *Real Estate Act*, including the amendments that came into force on December 1, 2020.

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.

Administrative Penalties

Errol James Scott

Real estate associate registered with Elite Ownership Group Ltd. o/a Re/Max Elite

- a real estate associate 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 related to a trade in real estate [s.53(c)(i) of the *Real Estate Act* Rules]
- in May 2020, Mr. Scott represented the seller in a real estate transaction for the purchase of a property
- the seller entered into a purchase contract for a property
- Mr. Scott's brokerage defined timely manner in their policies by stating all paperwork must be provided to the brokerage within two business days upon an accepted offer
- Mr. Scott failed to provide documentation related to this accepted offer to the brokerage within two business days
- \$1,500

Learning Opportunity

All licensees must comply with legislation, including all legislation that enables a broker to carry out the activities specific to the broker or the broker delegate, such as the administration of trust funds. This is the reason real estate licensees must respond promptly to their brokerage and deliver all documentation regarding trades and potential trades. In this case, the licensee failed to provide documentation related to the accepted offer to their brokerage within a timely manner, as defined as two business days by their brokerage. The licensee's failure to submit the required documentation within a timely manner resulted in the broker being unable to successfully perform the trust administration activities of a broker, in this case by creating confusion with the handling of the initial deposit for the purchase.

[Responsibilities – Real Estate Associate Brokers and Associates](#)

Administrative Penalties

[Marc Andre McMahon](#),

Real estate broker registered with The Foundry Real Estate Company Ltd.

- 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]
- The Foundry Real Estate Company Ltd.'s fiscal year end was on February 28, 2020
- RECA sent numerous email reminders to Mr. McMahon, to file the appropriate forms by June 1, 2020
- Mr. Mahon was granted an extension to June 30, 2020
- RECA received the appropriate forms on July 20, 2020
- \$1,500

Learning Opportunity

Brokerages provide accounting reports to RECA to ensure trust funds are being properly administered to protect the public and the integrity of the industry. 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 and giving an extension.

[Real Estate Fiscal Year End](#)

Hearing Panel Decision

Warren Constantine Phipps

Real estate broker registered at the time with Mountain Park Real Estate Ltd. His licence is currently suspended.

Issue:

[breach of s.38(4)(a) of the *Real Estate Act*]

- A person who is required under s.38(2) to answer the questions of a person conducting an investigation
(a) shall co-operate with the investigator and promptly respond to the questions

Facts:

- an investigation into Mr. Phipps' brokerage trust accounts showed transfers out for the purchase of two GICs in the amounts of \$25,000 and \$30,000
- between January 3 and March 3, 2020, RECA made 10 requests to Mr. Phipps for information to verify the legitimacy of the transactions
- Mr. Phipps stated that he had requested the GIC information from Manulife on January 21, 2020
- on February 7, 2020, Mr. Phipps requested the GIC information from Manulife
- on February 10, 2020, Mr. Phipps received an email with the GIC information from Manulife
- at the end of March 2020, five weeks from when he received the email and ten weeks from the date of RECA's original request for information, Mr. Phipps submitted to RECA the information for the \$25,000 GIC
- Mr. Phipps has not yet provided information for the \$30,000 GIC
- on February 25, 2020, Mr. Phipps was issued an Administrative Penalty for \$5,000, which he appealed

Outcome:

On October 30, 2020, the Hearing Panel found the following against the Industry Member:

- Mr. Phipps breached his obligations under s.38(4)(a) of the *Real Estate Act* by failing to cooperate or respond promptly in relation to the requests for the GIC information

On December 18, 2020 the Hearing Panel ordered the following sanctions against the Industry Member:

- Mr. Phipps is ordered to pay a fine in the amount of \$7,500 for one breach of s.38(4)(a)
- Mr. Phipps to ordered to pay costs in the amount of \$1,650

Please note, this Hearing Panel was to determine if Mr. Phipps breached his obligations to cooperate with the investigation, and has not determined if there was conduct deserving of sanction with regards to Mr. Phipps' trust accounts.

RECA Management

JOSEPH FERNANDEZ
Director of Education Programs

WARREN MARTINSON
Director of Corporate Services
(Acting Executive Director)

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