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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.

Letters of Reprimand

[Douglas William Hobson](#),

Real estate broker registered with Corporate Realty Group Inc.

- 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]
- January 11, 2017 was the effective date of a change to the corporate structure of Mr. Hobson's brokerage
- RECA was notified of this change on August 13, 2020

Learning Opportunity

Brokerages must immediately notify the Registrar—prior to Dec 1, 2020, the Executive Director—in writing, when certain events occur (change of brokerage address, change of directors, stakeholders, shareholders, etc.). RECA defines immediately as “without delay,” and in the absence of extraordinary circumstances, written notification to the Registrar should occur not more than five (5) days after the event in question. In this case, the brokerage waited several months before notifying RECA.

[Responsibilities and Prohibitions – Real Estate Brokerage](#)

Letters of Reprimand

[Laura Margaret Labonte-McKay](#)

Real estate associate registered at the time of conduct with Noralta Real Estate Inc. o/a Royal LePage Noralta Real Estate. Currently registered to Daring Adventure Inc. o/a Royal LePage Prestige Realty

- an industry member must not disclose information regarding a client, property or transaction to another person unless, authorized by the client, or required by law [s.44(1) of the *Real Estate Act Rules*]
- from 2017 to December 2019, Ms. Labonte-McKay's brokerage represented a client
- in December 2019, Ms. Labonte-McKay transferred to a different brokerage and no longer represented the client
- in March 2020, Ms. Labonte-McKay met with the former client's lender and discussed aspects of the property with the lender
- Ms. Labonte-McKay disclosed information about the property without the permission of the former client

Learning Opportunity

Licensees must ensure their client's personal information remains confidential and only uses their information for its intended purpose. Confidential information is any information concerning the client, including the client's financial or personal situation, the client's real estate, and the transaction involving the client. The duty to keep client information confidential, survives a completed transaction or the conclusion of providing services. In this case, the licensee disclosed confidential information about a client's property.

[Protection of Client Information](#)

Letters of Reprimand

[Benita Elaine Pashko](#),

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

- an industry member must immediately notify, in writing, the executive director [s.40 of the *Real Estate Act Rules*]

Learning Opportunity

Licensees must immediately notify the Registrar—prior to Dec 1, 2020, the Executive Director—in writing, when certain events occur (name change, discipline, criminal proceedings, etc.). In this case, the licensee had a situation requiring notification occur months before they notified RECA. Immediately is defined as “without delay,” and in the absence of extraordinary circumstances, written notification to the Registrar should occur not more than five (5) days after the event in question.

[Notice to Executive Director – Real Estate and Mortgage Broker Professionals](#)

Administrative Penalties

Gary Reginald Bavis

Real estate associate registered with Canmore Alpine Realty 2013 Ltd. o/a Re/Max Alpine Realty

- industry members must provide competent service [s.41(b) of the *Real Estate Act* Rules]
- on August 31, 2020, Mr. Bavis took his buyer clients to view a property
- the seller's agent made associates aware of the COVID- 19 precautions in the property by placing a sign on a hallway table that made it clear face masks were required
- Mr. Bavis and the buyers entered the property not wearing masks
- this was a failure to follow the seller's requirements when viewing the property
- \$1,500

Casey Heiyqz Patel

Real estate associate registered at time of conduct as Peters Martin Pedazo, with 4th Street Holdings Ltd. o/a Re/Max Real Estate (Central)

- industry members must provide competent service [s.41(b) of the *Real Estate Act* Rules]
- on April 18, 2020, Mr. Patel scheduled a viewing of a property for his buyer clients
- the property owner posted a list of instructions related to the COVID-19 pandemic on or near the front door of the property
- the instructions stated that no more than two adults, and no children, were allowed in the property
- on April 18, 2020, Mr. Patel allowed several people, including a child, to enter the property contrary to the property owner's posted instructions
- Mr. Patel stated that he did not see the posted instructions until after he exited the property
- this was a failure to exercise reasonable care and skill when entering a property to do a showing
- \$1,500

Administrative Penalties

Learning Opportunity

Licensees must exercise reasonable care and skill when a property is under their care and control. Licensees must ensure they obey the instructions of the seller when showing a property. It is of utmost importance to ensure licensees are not putting their clients' health at risk or risk the health of any parties involved in the transaction. In these cases, the licensees failed to follow instructions left out by the sellers to follow while in their property.

Property owners must have confidence their instructions will be followed. This is especially important during the COVID-19 pandemic which presents additional risk when individuals enter a property.

Licensees are encouraged to use the COVID-19 property access checklists and agree to the conditions for access, in writing.

[Seller's Condition to Access Premises Checklist](#)

[Buyer's Condition to View the Premises Checklist](#)

[COVID-19 and Real Estate](#)

[COVID-19 Information for Real Estate Consumers](#)

Licensee Responsibilities During the COVID-19 Pandemic

The seller's representative bears primary responsibility to ensure buyer representatives are aware of the seller's instructions regarding viewings during the COVID-19 pandemic. Be sure to convey those instructions, in writing, and it is best practice to receive signed confirmation those instructions are understood prior to scheduling the viewing.

Administrative Penalties

Robert Cundal

Real estate associate broker registered with Fortified Realty Ltd. o/a Coldwell Banker Excellence Realty. At the time of the events, real estate broker registered with 1707634 Alberta Ltd. o/a 2% Realty Edge GP.

- an industry member who is required by the rules to keep and operate a trust account shall deposit money received in trust in respect of a dealing or trade in the business of the industry member within the time prescribed by the regulations, or within any period agreed to in writing by the parties to the dealing or trade, in an interest-bearing account that is kept in the name of the industry member and designated as a trust account [s.25(1)(b)(ii) of the *Real Estate Act*]
- in October 2020, Mr. Cundal represented both the buyer and seller in a real estate transaction
- the Purchase Contract for the transaction stated, "The seller and buyer appoint 2% Realty Edge GP as trustee for the deposit money"
- the Purchase Contract also stated, "The trustee will deposit all deposits into a trust account within three business days of receipt"
- Mr. Cundal received a deposit in the amount of \$1,000 from the buyer, and deposited it into the brokerage's general account
- the \$1,000 was not deposited into the brokerage's trust account
- the purchase of this property collapsed
- during this time the brokerage was sold, Mr. Cundal ceased being the broker and a new broker was registered
- on November 18, 2020, the buyer contacted the brokerage requesting the deposit be refunded
- the brokerage had no record of the deposit being deposited into the brokerage trust account
- the brokerage discovered the error, and the buyer's deposit was returned
- \$1,500

Learning Opportunity

The broker's role in handling trust funds is that of a trustee. As a trustee, the broker must hold the trust monies for the parties in the transaction and shall deposit money received in trust in an interest-bearing account that is kept in the name of the licensee and designated as a trust account. In this case, the broker deposited the money into the brokerage's general account and failed to deposit the money into the brokerage's trust account. During the time of this transaction the brokerage was sold, which led to confusion when the client's requested the return of their deposit as the brokerage had no record of the money being deposited into the brokerage's trust account.

Trust Money Disputes and Disbursements

Administrative Penalties

[Kenneth Robert Morrison](#),

Real estate associate registered with Excellence Real Estate Edmonton Ltd. o/a Re/Max Excellence

- 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. Morrison was representing the sellers of a property
- Mr. Morrison sent several text messages containing inappropriate comments about the buyers to the buyers' associate
- when Mr. Morrison was questioned by an investigator, he continued to make inappropriate comments about the buyers
- \$3,000

Learning Opportunity

RECA's Good Character Policy defines professionalism as a standard expected of licensees. This means treating RECA, clients, licensees, and third parties with civility, respect, and professional courtesy. In this case, the licensee failed to remain professional when speaking with another licensee and an investigator regarding another licensee's clients.

[Good Character Policy – Licensing](#)

[Good Character Policy – Conduct Review](#)

Administrative Penalties

[Kenneth Robert Morrison](#),

Real estate associate registered with Excellence Real Estate Edmonton Ltd. o/a Re/Max Excellence

- a real estate broker, associate broker or associate must not directly or indirectly, provide an inducement unless the inducement is provided by and on behalf of the brokerage with which the real estate broker, associate broker or associate is registered, details of the inducement are provided in writing and the broker has provided written approval [s.54(2) of the *Real Estate Act* Rules]
- in June 2020, Mr. Morrison represented the seller of a property
- an amendment to the purchase contract was signed by the parties that required the seller to replace and install smoke and CO² detectors on the property
- Mr. Morrison informed his clients that he would pay for the detectors, and would pay and arrange for the installation in order to satisfy these terms
- Mr. Morrison stated that the reason he offered this inducement was “for the sake of keeping the deal together”
- Mr. Morrison paid for the installation and purchase of smoke and CO² detectors, but failed to install one smoke and CO² detector as described in the terms
- this put Mr. Morrison’s clients at risk of civil action by the buyer
- this inducement was not offered on behalf of Mr. Morrison’s brokerage and was offered without the authorization of his broker
- \$1,500

Learning Opportunity

An inducement is anything offered by a brokerage to a specific person to induce that person to enter into a specific transaction. An inducement must be a brokerage inducement. A brokerage must directly pay any costs that relate to the inducement. An associate broker or associate must not directly pay for the inducement. In this case, the licensee offered an inducement to their clients and paid for that inducement to ensure the sale did not fall through. The licensee also failed to ensure they properly fulfilled the terms putting their clients at risk of legal action.

[Inducements](#)

Administrative Penalties

Darryl Edward Terrio

Real estate broker registered with Bryken Investments Ltd. o/a Re/Max Complete Realty

- a real estate broker must cooperate with investigations, and promptly respond to questions [s.38(4)(a) of the *Real Estate Act*]
- in April 2020, a RECA investigator notified Mr. Terrio that his conduct was under review and asked Mr. Terrio questions relevant to the investigation
- in May 2020, Mr. Terrio responded to those questions and provided requested documentation
- during questioning in February 2021, it was discovered that Mr. Terrio had altered an email presented in May 2020 by replacing one of the attachments
- Mr. Terrio also altered a document within the brokerages file, replacing an unsigned document with a copy that was signed, after becoming aware of RECA's investigation
- Information provided by Mr. Terrio was not fully accurate, therefore, he failed to cooperate with the investigator
- \$4,000

Learning Opportunity

Licensees are required to cooperate with an investigation. Cooperation means providing truthful and complete responses in a prompt and constructive manner. In this case, the licensee provided false answers and inaccurate documentation during the course of the investigation. This was a failure to cooperate with the investigator.

[Guide to Investigations for Licensees](#)

Administrative Penalties

Darryl Edward Terrio

Real estate broker registered at the time of conduct with 1647525 Alberta Ltd. o/a Re/Max Complete Commercial. Currently registered with Bryken Investments Ltd. o/a Re/Max Complete Realty.

- industry member must not make representations or carry on conduct that is reckless or intentional and that misleads or deceives any person [s.42(a) of the *Real Estate Act* Rules]
- in September 2019, Mr. Terrio's office staff prepared an advertisement listing a property for sale
- Mr. Terrio's brokerage advertised this property for sale on Loopnet.com
- the advertisement specifically listed Mr. Terrio as the point of contact for inquiries about the property
- the advertising was misleading because Mr. Terrio did not have permission from the owner of the property before he directed his office staff to prepare the advertising and marketing materials for the property
- the owners of this property discovered the listing and had their legal counsel write to Mr. Terrio requesting all advertising be removed
- \$1,500

Learning Opportunity

Licensees cannot make misleading claims, including misrepresenting their relationship with a client. In this case, the licensee advertised a property though they were not authorized by the owner to do so. It was also inappropriate of the licensee to direct their staff to prepare advertising and marketing materials prior to confirming they had permission from the owner of the property to list it.

Advertising – False and Misleading

Administrative Penalties

Casey Heiyqz Patel,

Real estate associate registered at time of conduct as Peters Martin Pedazo, with 4th Street Holdings Ltd. o/a Re/Max Real Estate (Central)

- real estate licensee must only trade in real estate in the name that appears on that individual's licence [s.53(a) of the *Real Estate Act Rules*]
- in April 2020, Mr. Patel utilized both Purplebricks and ShowingTime applications to schedule showings for a property
- Mr. Patel used the name Peters Pedazo when scheduling a showing with Purplebricks, and the name Casey Pedazo when scheduling a showing with ShowingTime
- using different names made it appear as if two different real estate licensees were going to show the property
- at the time, Peters Pedazo was the name appearing on Mr. Patel's licence
- Mr. Patel was not licensed to trade in the name Casey Pedazo
- \$1,500

Learning Opportunity

Licensees must only deal, trade, and advertise in their licensed name that appears on their licence. In this case, the licensee used their licensed name as well as a name that did not appear on their license when advertising a property on separate software sites. Using two names can create confusion and uncertainty for property owners as to who is accessing their property.

Advertising – Licensed Name

Administrative Penalties

Jena Georgia Wyllie

Real estate associate registered with Redline Real Estate Group Inc.

- industry members must provide competent service [s.41(b) of the *Real Estate Act Rules*]
- on November 17, 2020, Ms. Wyllie had permission to access the property for the purpose of conducting a home inspection
- after providing access to the property, Ms. Wyllie left the property leaving the home inspector at the property alone
- during the inspection, the buyers also attended the property
- at that point, the home inspector and the buyers were in the property without Ms. Wyllie present
- Ms. Wyllie did not get permission from the sellers to leave these individuals unattended in the property
- \$1,500

Learning Opportunity

Licensees must provide access for home inspections, remain on the property during the inspection, and properly secure the property once the inspection is complete. In this case, the licensee left the property leaving the home inspector and the buyer clients in the property unattended. Consumers expect licensees who are granted access to their property will remain in the care and control of that property at all times. Leaving anyone in a property unattended requires permission from the seller or the seller's agent.

[Access to Property – Home Inspections](#)

[Competent Service](#)

Hearing Panel Decision

Gordon Wesley Pethick,

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

Issues:

[breach of s.41(b) of the *Real Estate Act* Rules]

- Industry members must:
(b) provide competent service

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

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

Facts:

- Mr. Pethick has worked in the Industry since 1983 and has been registered with BGB Realty Inc. O/A Re/Max Realty Professionals since 1996
- Mr. Pethick and the seller have had a professional relationship for over 25 years
- on February 5, 2014, the seller signed a non-exclusive authorization allowing Mr. Pethick to market a commercial property
- Mr. Pethick made contact with a potential buyer through a referral
- Mr. Pethick understood the purchase of the property would be a cash payment from a family trust
- Mr. Pethick did not provide the Seller with a copy of RECA's Consumer Relationships Guide
- on October 16, 2014, Mr. Pethick entered into an agreement to represent both the buyer and seller
- a cash offer was presented to the seller at this time
- the parties agreed that cash offer from the Buyer was to be paid in two parts:
 - a deposit of \$100,000 due October 22, 2014, and
 - the remainder at closing November 26, 2014
- on October 22, 2014, Mr. Pethick received a deposit cheque from the buyer
- on October 23, 2014, Mr. Pethick attended a bank to certify the cheque; however, the bank was unable to certify the cheque citing insufficient funds
- Mr. Pethick called the buyer immediately and arranged to meet to discuss the cheque
- Mr. Pethick returned the cheque to the buyer, at their request
- Mr. Pethick failed to take a copy of the cheque for the brokerage file
- the buyer provided a second deposit cheque to Mr. Pethick, stating they would inform him when the funds were deposited, and the cheque could be cashed
- after this meeting, Mr. Pethick phoned the seller to inform them about the situation
- the seller testified that they were not informed
- while there was conflicting evidence, the Hearing Panel found that Mr. Pethick likely did communicate the details of the first failed deposit to the seller at this time
- Mr. Pethick did not keep contemporaneous notes about the failed first deposit cheque or subsequent phone call to the seller

Hearing Panel Decision

- Mr. Pethick assured the seller that he trusted the buyer and that he believed the deposit would be collected
- on October 29, 2014, Mr. Pethick hand wrote on the notice of waiver of conditions “this is now a firm sale” after the buyer waived the condition for due diligence
- on November 21, 2014, the buyer informed Mr. Pethick that the deposit money would be ready by November 24, 2014 after 1:00pm
- at 3:00pm November 24, 2014, Mr. Pethick attended the bank and was advised that the bank had no record of the account number, the buyer’s company, or the buyer
- Mr. Pethick unsuccessfully attempted to reach the buyer
- on November 25, 2014, the seller wrote to Mr. Pethick, expressing concern about the deal and deposit
- on November 26, 2014, Mr. Pethick replied in writing about the second deposit cheque and his inability to reach the buyer. This was the first time that Mr. Pethick advised the seller in writing of the problems with the second deposit cheque
- on November 27, 2014, the Seller replied to Mr. Pethick, voicing their dissatisfaction with Mr. Pethick’s service and communicating their feeling that Mr. Pethick had not protected their interests
- on November 28, 2014, Mr. Pethick replied, explaining the first cheque had not cleared. This is the first time that Mr. Pethick advised the seller in writing about the first failed deposit
- the seller demanded to be paid the \$100,000 deposit from the brokerage

Outcomes:

On December 14, 2020, the Hearing Panel found that:

- Mr. Pethick breached his obligations under s.41(b) of the *Real Estate Act Rules* by failing to:
 - provide the broker with the first deposit cheque
 - provide the seller client with a copy of the *RECA Consumer Relationships Guide*
 - ensure there were records of the first failed deposit cheque and the seller’s instructions following the cheque not clearing
- Mr. Pethick did not breach his obligations under s.41(d) of the *Real Estate Act Rules*

On March 3, 2021, the Hearing Panel ordered the following sanctions against the Industry Member:

- Mr. Pethick is ordered to pay fines in the amount of \$6,000 for three breaches of s.41(b):
 - \$2,000 for the first breach of s.41(b) of the *Real Estate Act Rules*
 - \$1,500 for the second breach of s.41(b) of the *Real Estate Act Rules*
 - \$2,500 for the third breach of s.41(b) of the *Real Estate Act Rules*
- Mr. Pethick is ordered to pay costs in the amount of \$6,607.50
- Mr. Pethick is ordered to successfully complete unit five of the Fundamentals of Real Estate Course on consumer relationships within six months

Appeal Panel Decision

Mehboob Ali Merchant,

Real estate associate registered at the time of initial conduct with Century 21 Platinum Realty. Not currently registered.

Issue:

Following an appeal by the Executive Director (ED) which was ultimately dismissed on October 17, 2020, Mr. Merchant made an application for costs incurred during the proceedings under s.50(5) of the *Real Estate Act*.

Facts:

The Appeal Panel (AP) considered cost bylaw factors as set forth in s.28(4) of the *Real Estate Act* Bylaws:

- both parties had used accepted processes
- the matter was a mixed success
- the issue of proper sanction weighed equally between the parties
- the issues were not overly complex
- it was necessary for Mr. Merchant to incur legal costs, however much of the expense was incurred in pursuit of meritless allegations by Mr. Merchant
- neither party reasonably anticipated the outcome such that Mr. Merchant is entitled to costs
- while Mr. Merchant had to incur legal costs, the result of the dismissed appeal did not affect Mr. Merchant's employment in the industry
- with respect to any other matter related to an order for reasonable and proper costs, the Appeal Panel considered the public interest mandate of the Executive Director
 - Mr. Merchant argued that the appeal was a marked departure of the reasonable standards expected of the prosecution in a RECA disciplinary matter, an abuse of the power, and an advancement of private interest
 - the ED argued that the purpose of the appeal was to determine a proper sanction. Proper sanctions are "important and vital" under RECA's mandate at s.5 of the *Real Estate Act*, therefore the ED acted reasonably in appealing the sanction imposed by the Hearing Panel
 - the AP held: "In our view, pursuing an appeal where there is legislated authority to do so in and of itself is not a marked departure. While ED may have been seeking the sanction of a lifetime ban through their appeal, that request was consistent throughout the proceedings, at the Hearing Panel level and the Appeal level, we do not see this as constituting a marked departure, there was no arbitrary conduct or the advancement of a private interest, we agree that sanctions are of interest to the regulator and industry alike."

Outcome:

On February 16, 2021, the Appeal Panel:

- found Mr. Merchant was not entitled to costs
- ordered that no costs will be payable by or to either party

Suspension

[David Lawrence Bauer - Real Estate Licence Suspension](#)

On March 8, 2021, the Residential Property Manager Industry Council of the Real Estate Council of Alberta (RECA) suspended the real estate licence of David Lawrence Bauer. Mr. Bauer is not licensed to trade in real estate.

RECA determined it is in the public interest to temporarily suspend Mr. Bauer.

Allegations against Mr. Bauer include:

- failing to cooperate with a person conducting an investigation

Mr. Bauer's licence will remain suspended until the Registrar is satisfied that he has cooperated with all requests relating to the investigation in question.

Mr. Bauer was most recently registered as a real estate broker with Maxwell Direct Realty. Maxwell Direct Realty remains open at this time.

RECA Management

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