

## THE REAL ESTATE COUNCIL OF ALBERTA

Case Number: 010942  
Name on Licence: Robert Cundal  
Licence Type & Class: Real Estate Associate Broker  
Brokerage Name on Licence: Fortified Realty Ltd. O/A Coldwell Banker  
Excellence Realty  
Process: Section 39 & 83 of the *Real Estate Act*  
Document: ADMINISTRATIVE PENALTY  
Penalty: \$1,500

### Payment

This Penalty must be paid **within 30 days** of the date this Notice was issued.

**If you fail to pay the Penalty** the Registrar may commence collection under Part 6 of the *Real Estate Act* and may suspend your licence under section 38.1 of the Rules.

### If you pay the Penalty

- You will have satisfied the Administrative Penalty and no further proceedings under Part 6 will be taken against you.
- You cannot be charged under the *Real Estate Act* with an offence for the contravention(s) in this Administrative Penalty.

**TO: Robert Cundal**

The Registrar of the Real Estate Council of Alberta (RECA) has determined there is sufficient evidence you have contravened **section 25(1)(b)(ii) of the *Real Estate Act*** and this is conduct deserving of sanction.

### Rule at time of conduct

*25(1) An industry member who is required by the rules to keep and operate a trust account shall*

*(b) 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*

*(i) maintained in a bank, loan corporation, trust corporation, credit union or treasury branch, and*

*(ii) kept in the name of the industry member and designated as a trust account,*

### Particulars of the contravention(s):

1. In or around October 2020 you deposited trust funds from a real estate transaction into the brokerages general account and not a trust account:
  - a) You were the Broker of 2% Realty Edge GP (Brokerage) at the time of this transaction.
  - b) In October 2020 you represented the buyer and seller in the purchase of a property located at [ADDRESS], Alberta.
  - c) Sec. 4.2 of this Purchase Contract stated "The seller and buyer appoint 2% Realty Edge GP as trustee for the deposit money." Sec. 4.6 stated "The trustee will deposit all deposits into a trust account within three Business days or receipt."
  - d) You received a deposit in the amount of \$1,000 from the buyer and then deposited this into the Brokerage's general account. This \$1,000 was not deposited into the Brokerage's trust account.
  - e) The purchase of this property collapsed.
  - f) Subsequently, the Brokerage was sold. You ceased being the broker and a new broker was registered.
  - g) On November 18, 2020 the buyer contacted the Brokerage requesting the deposit be refunded. The Brokerage had no record of the deposit in the Brokerage trust account. This created confusion. Ultimately the error was discovered and the buyer's deposit was returned.

The Registrar considered the following aggravating and mitigating factors:

#### ***Aggravating Factors***

- You have been disciplined for similar conduct in the past.

#### ***Mitigating Factors***

- You have admitted to the conduct and have shown remorse.
- This was not intentional.
- The funds were returned to the buyer as soon as you became aware of the issue.

## Appeal

You have the right to appeal this Administrative Penalty to a Hearing Panel. See **section 83.1 of the *Real Estate Act*** for what you must do to appeal.

In an appeal you will be given a full opportunity consistent with procedural fairness and natural justice to present evidence before the Hearing Panel in relation to the contraventions alleged.

Your written notice of appeal must comply with section 83.1 and must be received by the Registrar **within 30 days** of you receiving this Administrative Penalty.

If you appeal, payment of the Penalty will not be required until an order to pay a penalty is issued by the Hearing Panel. If you have any questions regarding particulars or the appeal process, please contact:

Name: [B.T], Professional Conduct Review Officer  
Email: [EMAIL]  
Phone: 403.228.2954; Toll Free: 1.888.425.2754  
Fax: 403.228.3065  
Address: Real Estate Council of Alberta  
Suite 202, 1506 11 Avenue SW  
Calgary, Alberta, T3C 0M9

Issued at Calgary, Alberta, on March 5, 2021.

"Signature"

Charles Stevenson, Registrar  
Real Estate Council of Alberta