

Case Summaries

July 22 - August 23, 2021

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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 has reformatted case summaries to be more succinct and reduce duplication when cases deal with the same issues. This includes a new approach to the licensee's name. RECA has also increased focus on the learning opportunities, including issues that may be relevant but not directly related to a case.

RECA is authorized to carry out conduct proceedings under [Part 3](#) of the *Real Estate Act*.

Some of 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

Real Estate Act Rules s.41(b)

Real estate licensees must provide competent service.

Real Estate Associate

- on November 9, 2020, the associate attended a property with their buyer clients with the intention to show it
- the tenant was home when the associate entered the property and was not aware of any showings for that day
- the associate had confirmation to show the property, but it was for November 10, 2020
- the associate admitted they entered the property on the wrong day

Learning Opportunity

Licensees must ensure they exercise reasonable care and skill at all times when showing properties. Consumers must trust that licensees have taken the proper steps to gain access and permission to view properties. In this case, the licensee entered the property on the wrong date.

Access to Property

Competent Service



Administrative Penalties

Real Estate Act Rules s.51(1)(d)

A real estate broker must ensure the business of the brokerage is carried out competently and in accordance with the *Real Estate Act* and Rules.

George Mina Sami Fahmy,

Real estate broker registered with licence Mozaic Realty Group Inc. O/A Mozaic Realty Group

- in February 2020, Fahmy failed to file their brokerage accounting reports for two of the brokerage's property management trust accounts
- Fahmy learned that two associates of the brokerage had opened separate trust accounts, through which these associates deposited and disbursed trust funds associated with multiple properties
- as the broker, Fahmy's oversight process did not identify that the activities in the trust accounts known to the brokerage were consistent with number of properties being managed by the brokerage
- \$1,500

Learning Opportunity

Brokers must have oversight of the operations of the brokerage to ensure compliance with the *Real Estate Act* and Rules. In this case, the broker failed to properly oversee and manage the brokerage's trust accounts as he was unaware of trust accounts and was unable to oversee their operation.

Brokers – Active in Brokerage Management

Real Estate Act Rules s.86(1)

A brokerage must prepare monthly bank reconciliations for all accounts in which money is held in trust.

[George Mina Sami Fahmy](#),

Real estate broker registered with licence Mozaic Realty Group Inc. O/A Mozaic Realty Group

- a February 2020 audit of Fahmy's brokerage's financial records found that no trust ledgers, bank reconciliations, nor trust liability reconciliations had been completed for two of the brokerage's property management accounts
- Fahmy indicated two associates of the brokerage had opened separate trust accounts, through which these associates deposited and disbursed trust funds associated with multiple properties
- Fahmy failed to conduct trust reconciliations on two trust accounts with trust funds arising out of properties that were managed by the brokerage and was, as a result, unable to account for all the monies being held in trust by the brokerage
- \$1,000

Learning Opportunity

Brokerages must complete bank and trust ledger reconciliations on a monthly basis. Brokers must use this process to ensure the brokerage is meeting its trust obligations and identify potential trust shortages or other irregularities that require further investigation and correction.

[Trust Money Disputes and Disbursements](#)

Real Estate Act Rules s.41(b)

Real estate licensees must provide competent service.

Eduardo Alfredo D'Ambrosio,

Real estate associate registered with Elite Ownership Group Ltd. O/A Re/Max Elite

- in August 2020, D'Ambrosio was contacted by the significant other of a seller who was interested in listing their property
- in August 26, 2020, D'Ambrosio entered into a client relationship with the seller, signing a seller representation agreement electronically
- D'Ambrosio never met the seller in person or spoke with them directly
- there were no extenuating circumstances to why D'Ambrosio did not meet or speak with their client, and their client was aware of the decisions being made
- all dealings for the transaction were discussed between D'Ambrosio and the seller's partner
- D'Ambrosio had contact directly with the seller only when the transaction was firm, but the seller had second thoughts about selling
- \$1,500

Learning Opportunity

Licensees have an obligation to communicate directly with their clients in order to fulfill their agency obligations and to provide competent service. Without direct communication with the client licensees are unable to understand their clients' objectives or provide options together with their advantages and disadvantages. Licensees are also unable to receive the client's direction.

There are circumstances where direct contact with a client is not possible such as in a power of attorney situation. However, that was not the case here.

Competent Service

Real Estate Act Rules s.41(b)

Real estate licensees must provide competent service.

Sada Siwan Mudliar

Real estate associate registered with Lampas Holdings Ltd. O/A Re/Max River City

- Mudliar was representing buyers interested in viewing a property
- the protocol for showing the property was that only two adults plus the associate were allowed to enter a property for showings
- on May 9, 2021, Mudliar had permission to bring their buyer clients to view the property
- five adults and two small children entered the property
- \$1,500

Learning Opportunity

Licensees must exercise reasonable care and skill when a property is under their care and control. They must obey the instructions of the seller and their brokerage when showing a property. Licensees must always have permission of the seller to view a property. Property owners must have confidence their instructions will be followed, and brokerages expect licensees to follow their guidelines.

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](#)

Real Estate Act s.17(a)

No person shall trade in real estate as a real estate broker unless that person holds the appropriate authorization for that purpose issued by the Industry Council.

Prior to December 1, 2020:

Real Estate Act s.17(a)

No person shall trade in real estate as a real estate broker unless that person holds the appropriate authorization for that purpose issued by the Council.

Joseph Chukwunenye Nwofor,

Real estate associate registered with Real Estate Professionals Inc.

- in 2018, as part of his annual renewal Nwofor renewed his residential and rural authorization but did not renew his license to provide property manager services
- in February 2020, Nwofor represented himself as a “rental facilitator” who would find renters for properties, complete tenancy agreements on behalf of property owners/landlords, and collect rents and damage deposits
- in August 2019 a property owner engaged Nwofor to rent out their property for a monthly fee
- on August 7, 2019, renters signed a Fixed Term Tenancy Agreement for the property for the period August 28, 2019–August 31, 2020
- Nwofor signed the agreement on behalf of the owner
- Nwofor collected the monthly rent from the renters and forwarded the rent, minus their fee, to the owner
- in January 2020, Nwofor had been advised by a licensee that their activities required an authorization for property management
- in January 2020, Nwofor’s broker had instructed them to cease all property management activities as the brokerage did not provide property management services
- \$2,500

Learning Opportunity

Licensees must only provide services they are licensed to provide. In this case, the licensee was not licensed to practice in property management.

[Trading in Real Estate – Commercial Real Estate](#)

[Trading in Real Estate – Property Management](#)

A close-up photograph of a hand holding a pen, poised to write on a document. The background is blurred, showing other people in a meeting or hearing. A solid blue rectangular overlay is positioned over the middle of the image, containing the text 'Hearing Panel Decision' in white, bold, sans-serif font.

Hearing Panel Decision

Tiebo Cai - Hearing Panel Decision

Real Estate Associate registered with Masters Realty Ltd. O/A Century 21 Masters

Issues:

- appeal of an administrative penalty alleging a breach of s.42(a) the *Real Estate Act*

Rules

- Industry members must not make representations or carry on conduct that is reckless or misleads any person.

Facts:

- in August 2019, Cai advertised the property on behalf of their seller client, the MLS listing for the property stated that "condo fees includes: heat and water"
- Cai had obtained the information for the listing from the condo manager
- from August to October 7, 2019, Cai represented the seller in negotiations with a buyer represented by another licensee
- on October 6, 2019, Cai discovered from his client that condo fees did not include heat and water
- Cai then updated the MLS listing to reflect the information
- on October 7, 2019, Cai's client and the buyers agreed to a purchase contract on the property
- Cai did not confirm that the buyer or buyer's licensee was aware of the changes to the MLS listing
- on October 11, 2019, Cai forwarded condominium documents to the buyer's licensee, which were then sent to a condominium document review company. The documents included an MLS listing from September 30, 2019 showing that "condo fees includes: heat and water"
- on October 23, 2019, the condominium document review company produced a report which incorrectly indicated the condo fees included heat and water
- the buyer waived conditions on the sale, still under the assumption that the condo fees included heat and water
- the buyer proceeded to complete the sale and weeks later learned through the utility provider that the condo fee did not include heat and water

Outcome:

On July 12, 2021, the Hearing Panel found Cai did not breach s.42(a) of the Rules, and did not engage in conduct deserving of sanction.

Rationale:

The Hearing Panel found that Cai's actions were neither reckless nor done with intent. As a new licensee, Cai was unaware that the buyer was acting on the incorrect information and could not be expected to know, based on the balance of probabilities, that the information would be the buyer's reason to complete the sale.

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