

Case Summaries

June 16 - July 21, 2021

- » Administrative Penalties
- » Hearing Panel Decision
- » Lifetime Withdrawal

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.

A blurred background image showing a person's hands typing on a laptop keyboard. The scene is set on a wooden desk with a pair of glasses and a tablet nearby. A blue semi-transparent rectangle is overlaid on the image, containing the text.

Administrative Penalties

Real Estate Act Rules s.41(b)

Real estate licensees must provide competent service.

Rafik Hamdi Berjak,

Real estate associate registered with Sterling Realty (Alberta) Ltd. o/a Sterling Real Estate

- Berjak was representing buyers interested in viewing a property
- Berjak's brokerage adopted a brokerage policy that individuals present for showings must wear a mask
- on March 29, 2021, Berjak had permission to bring their buyer clients to view a property
- the seller's security camera footage shows Berjak and their buyer clients not wearing masks when entering the property or during the showing
- \$1,500

Mila Ventura Cabrera,

Real estate associate registered with Canadian Independent Realty Ltd. o/a CIR Realty

- on April 25, 2021, Cabrera had permission to show their buyer clients a property
- the property had posted requirements on the listing that stated: "Agent plus a maximum of 2 people from the same household, no children"
- Cabrera's brokerage expectations were that two people plus the agent were the maximum allowed at one time for a showing
- Cabrera plus three adults and two children entered the property for the showing
- \$1,500

Tanya Esther Eklund,

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

- Eklund was representing buyers interested in viewing a property
- the property had showing instructions which included: wearing a mask at all times, only two adults from the same household plus the associate allowed, and a maximum of 30 minutes allotted time in the property
- on April 12, 2021, Eklund had permission to bring their buyer clients to view the property for a second showing
- during the showing there were three people plus Eklund in the property
- Eklund and the buyers also exceeded the allotted time by 17 minutes
- \$1,500

Learning Opportunity can be found on page 5.

Real Estate Act Rules s.41(b)

Real estate licensees must provide competent service.

[Diana Nguy,](#)

Real estate associate registered with Triple Gold Ltd. O/A Initia Real Estate

- on April 8, 2021, Nguy made a request to show their buyer clients a property
- the request was declined
- on April 8, 2021, Nguy went to the property, without permission, to conduct the showing
- in addition to conducting the showing without permission, Nguy also entered the property with six additional people, contrary to the posted viewing guidelines for the property of 'Maximum 2 buyers plus agent'
- Nguy's brokerage expectations were that two people plus the agent was the maximum allowed at one time for a showing
- Nguy and six people entered the property for the showing
- \$3,000

[Milena Vasileva Toncheva,](#)

Real estate associate registered with Century 21 Maximum Realty Corp. o/a Century 21 Maximum

- Toncheva was representing buyers interested in viewing a property
- Toncheva's brokerage adopted a policy of wearing masks and allowing a maximum of two adults and the associate to enter a property for showings
- on April 11, 2021, Toncheva had permission to bring their buyer clients to view the property
- seven people entered the property and failed to wear masks
- \$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 Rules s.41(b)

Real estate licensees must provide competent service.

Dana Bruce Kinsman,

Real estate associate registered at the time of conduct with Twin Oakes Real Estate 1993 Inc. o/a Re/Max House of Real Estate. Currently registered to eXp Realty of Canada o/a eXp realty.

- on October 15, 2020, Kinsman had permission to access a property for a home inspection with their buyer clients and the home inspector
- Kinsman attended the property with the home inspector, the buyers, and two additional people
- Kinsman did not have permission from the sellers to bring two additional people
- Kinsman broke their brokerage's COVID-19 protocols by allowing two additional people to attend the inspection
- after providing access to the property for the inspection, Kinsman departed, leaving the home inspector and four people alone in the property
- Kinsman did not have permission from the sellers to leave these individuals unattended in the property
- \$3,000

Learning Opportunity

Licensees must remain on the property during inspections unless otherwise agreed to, in writing, by the seller. Licensees must also 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 without the seller's written permission. The licensee also failed to follow the seller's Covid-19 protocols when viewing the property, by allowing more individuals in the property than what was agreed to. Consumers expect licensees who are granted access to their property to remain in the care and control of their 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](#)

Real Estate Act Rules s.67(1)(e)

Mortgage brokers must ensure the business of the brokerage is carried out competently.

Harmandeep Singh Arora,

Mortgage broker registered at the time with 1318749 Alberta Ltd. o/a Dominion Lending Centres House, now called 1318749 Alberta Ltd. o/a Harmandeep Arora Group Mortgage Alliance.

- from July 1, 2019 to June 22, 2020, Arora's mortgage brokerage failed to have insurance in place
- Arora was the broker at the time
- during the period of July 1, 2019 to June 22, 2020, Arora's brokerage handled commercial mortgage files
- \$1,500

Rajesh Goyal,

Mortgage broker registered with Global Mortgage Experts Inc.

- from July 1, 2018 to September 27, 2018, Goyal's mortgage brokerage failed to have insurance in place
- Goyal was the broker at the time
- during the period of July 1, 2018 to September 27, 2018, Goyal's brokerage handled commercial mortgage files
- \$1,500

Hector Joseph MacMullin,

Mortgage broker registered with Yorkfield Financial Corporation

- from July 1, 2018 to July 19, 2020, MacMullin's mortgage brokerage failed to have insurance in place
- MacMullin was the broker at the time
- on June 19, 2020, MacMullin's mortgage brokerage ceased operations
- the brokerage was reinstated on July 20, 2020, with proof of insurance
- during the period of July 1, 2018 to June 19, 2020, MacMullin's brokerage handled commercial mortgage files
- \$1,500

Learning Opportunity can be found on page 8.

Real Estate Act Rules s.67(1)(e)

Mortgage brokers must ensure the business of the brokerage is carried out competently.

Brent Lyle Stewart,

Mortgage broker registered at the time of conduct with Real Capital Corp. Currently not registered.

- from Oct 1, 2018 to June 19, 2020, Stewart's mortgage brokerage failed to have insurance in place
- Stewart was the broker at the time
- On June 19, 2020, Stewart's mortgage brokerage ceased operations
- \$1,500

Learning Opportunity

All mortgage brokerages are required to carry errors and omissions insurance. A mortgage broker must also ensure the business of the brokerage is carried out in accordance with the legislation. In these cases, the brokerages did not have errors and omissions insurance for several months, yet handled multiple mortgage files. The brokerages put their clients at risk as they were not protected by insurance.

Errors and Omissions Guidelines

Real Estate Act s.17(a)

No person shall trade in real estate unless that person has proper authorization.

[David Michael Storoschuk](#),

Real estate associate registered with Northern Lights Realty Ltd. o/a Royal LePage
Northern Lights Realty

- in January 2020, Storoschuk contacted a buyer client to arrange to show them a commercial property
- Storoschuk drove the buyer and their assistant to a commercial property
- Storoschuk contacted an agent via telephone in the property parking lot, which they believed would be listing the property
- Storoschuk was advised that the property was not listed at this time, however the agent was already dealing with a potential buyer
- Storoschuk entered the property and spoke with the secretary, advising the secretary that they were in contact with the agent and were advised the property might be for sale
- Storoschuk arranged to have the secretary show the property to the buyers
- from January 2020, through February 2020, Storoschuk was in contact with the buyer to discuss and provide commercial listings for them
- during this time Storoschuk was not licensed to practice commercial real estate
- \$2,500

Learning Opportunity

Licenses must only provide services they are licensed to provide. Consumers should have confidence that licensees who engage in real estate activities have received the proper training and are competent to practice in that industry. In these cases, the licensees were not licensed to practice in commercial or property management.

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

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

A close-up photograph of a person's hand writing in a notebook. The person is using a green pencil. The background is blurred, showing other people in a classroom or meeting setting. A blue semi-transparent box is overlaid on the image, containing the text.

Hearing Panel Decision

John William Wade - Hearing Panel Decision

Real estate associate registered at the time of conduct with 4th Street Holdings Ltd. o/a Re/Max Real Estate (Central). Currently registered with Irealty Calgary Inc. o/a Re/Max IRealty Innovations.

Issues:

breach of s.17(a) of the *Real Estate Act*

- No person shall
(b) trade in real estate as a real estate broker unless that person holds the appropriate licence for that purpose issued by the Real Estate Council of Alberta.

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

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

breach of s.41(e) of the *Real Estate Act Rules*

- Industry members must:
(e) ensure the role of the industry member is clearly understood by their clients and third parties

Facts:

- Wade was representing two buyer clients interested in a property with the option to have a functioning basement suite to either rent or live
- on April 1, 2014, Wade and the clients signed off on a purchase contract that contained an Addendum, drafted by Wade, that required the Sellers to make improvements to the basement of the property and anticipated a holdback for work not completed to the Buyers' satisfaction
- the Sellers received and accepted the offer with the Addendum
- on April 3, 2014, Wade and the Buyers attended the property with a property inspector who identified a concern with a retaining wall
- following the inspection, the Re/Max Real Estate (Central) broker became aware of the transaction
- the broker expressed concerned over the wording of the Addendum
- believing it was an attempt to participate in mortgage fraud, the broker terminated Wade's registration with the brokerage
- Wade didn't tell the Buyers that his registration and employment with the brokerage had been terminated, the purchase contract was nullified and that the brokerage terminated their representation relationship.

- no representative from Re/Max Real Estate (Central) contacted the Buyers following the termination
- between April 3 to 9, 2014, Wade was not authorized to trade in real estate
- between April 3 to 9, 2014, Wade spoke to Sellers' agent about the failed deal, and expressed his opinion that the contract was still legally binding
- the Sellers' agent informed the Sellers about the termination of the purchase contract and continued to market the property
- between April 3 to 7, 2014, the Buyers arranged for a structural engineer to attend the property to assess the issue with the retaining wall
- on or about April 7, 2014, the Buyers contacted Wade about the issues with the retaining wall
- Wade then advised the Buyers that he agreed with their decision to not continue with the deal
- Wade did not advise his Buyer clients that he was no longer employed with the brokerage, nor that there was no longer a representation relationship between them
- on April 10, 2014, Wade registered with 1601407 Alberta Ltd. o/a Re/Max Complete Realty and did not inform the Buyers of this fact, despite signing new relationship documents and a purchase contract with they buyers

Outcomes:

The Hearing Panel found that:

- Wade breached s.17(a) of the *Real Estate Act* by trading in real estate while unauthorized
- Wade breached obligations under s.41(e) of the *Real Estate Act* Rules by:
 - failing to disclose his unlicensed status when communicating with the Buyers after the brokerage terminated Wade's employment
 - failing to ensure the Buyers understood when Wade was registered with a different brokerage
- Wade breached obligations under s.41(d) of the *Real Estate Act* Rules by:
 - failing to advise the Buyers that Wade was no longer licensed to represent their interests
 - asking the Buyers to sign an Exclusive Buyers Representation Agreement with Re/Max Complete without advising them that it was with a different brokerage and they still had a similar agreement with an overlapping term with Re/Max Real Estate (Central)

On June 25, 2021, the Hearing Panel ordered Wade to pay:

- fines in the amount of \$5,000 for the breach of s.17(a) of the *Real Estate Act*
- fines in the amount of \$1,500 for the breach of s.41(d) of the *Real Estate Act* Rules
- fines in the amount of \$500 for the breach of s.41(e) of the *Real Estate Act* Rules
- Costs in the amount of \$2,500



Lifetime Withdrawal

Warren Phipps - Lifetime Withdrawal from Industry

On July 14, 2021, Warren Phipps, previously a real estate broker in Calgary, applied to permanently withdraw from industry membership.

At the time of his application, Phipps was the subject of an investigation under the *Real Estate Act*. The issues under investigation regarding Mr. Phipps were with respect to:

- real estate trust account shortages,
- trust rule violations,
- missing net-rent payments,
- misleading representations,
- failure to provide competent service,
- practicing without proper authorization

At the time of Phipps' application, 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*, Phipps' withdrawal application has been approved, resulting in conduct proceedings discontinuance and voluntary lifetime prohibition from industry membership.

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