

Case Summaries

September 20 - October 21, 2021

- » Suspension
- » Administrative Penalties
- » Letters of Reprimand

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 close-up photograph of a hand holding a pen, positioned over a laptop keyboard. The image is partially obscured by a large blue rectangular overlay on the left side. The word "Suspension" is written in white, bold, sans-serif font across the blue area.

Suspension

Justin James Fraser - Real Estate Licence Suspension

On October 5, 2021, the Chair of the Residential Real Estate Broker Industry Council of the Real Estate Council of Alberta (RECA) suspended the real estate licence of Justin James Fraser.

Fraser is not licensed to trade in real estate.

The Chair determined it is in the public interest to temporarily suspend Fraser.

Allegations against Fraser include:

- abuse involving a client
- failing to notify RECA of proceedings pursuant to the Criminal Code
- failing to cooperate with an investigator

Fraser was most recently registered as a real estate associate with Century 21 Leading.



Administrative Penalties

The below situation deals with two individual licensees and resulted in multiple administrative penalties for multiple breaches of different sections of the *Real Estate Act Rules*

[Brent Randy Anderson](#),

Real estate associate broker registered with Challenge Realty Ltd. o/a Maxwell Challenge Realty

[Gary Raymond Zimmel](#),

Real estate broker registered with Challenge Realty Ltd. o/a Maxwell Challenge Realty

Summary

- in March 2021, Zimmel was aware that Anderson, an associate broker registered with their brokerage, was looking for a property to purchase for their mother
- on March 11, 2021, Anderson was invited to view a property by the sellers for the purpose of evaluating the property, entering into a client relationship with the sellers, and to list the property for sale
- Anderson attended the property on March 11, 2021 with the mindset that they may purchase the property for their relative
- Anderson did not clearly disclose this fact to the sellers
- Anderson solicited confidential information from the sellers about the property, their financial position and their real estate needs
- the sellers communicated to Anderson that the lowest price they would take for the property would be \$365,000
- the listing price was \$369,900
- on March 16, 2021, Anderson's brokerage entered into an Exclusive Buyer Representation Agreement with Anderson and Anderson's cousin as buyers
- Anderson also signed an Agreement to represent both Seller and Buyer with Anderson and their cousin both listed as buyers. The sellers had not seen or signed this agreement yet.
- on March 16, 2021, Anderson prepared and signed a Residential Purchase Contract for the property listing themselves and their cousin as the buyers, with an offer of \$365,000
- on March 18, 2021, Anderson met with the sellers of the property and formally entered into an Exclusive Representation Agreement with them
- after the sellers entered in an Exclusive Representation Agreement, Anderson presented them with the Residential Purchase Contract that was prepared on March 16, 2021
- Anderson simultaneously presented the sellers with the Agreement to represent Both Seller and Buyer, which was prepared on March 16, 2021
- Anderson did not present to the sellers a conflict of interest Disclosure Statement until April 5, 2021, after the closing date for the sale
- this Disclosure Statement advised the sellers that Anderson was in a conflict of interest as both their representative and the buyer, and it advised them Anderson had used their confidential information as a buyer
- Anderson used the confidential information that they obtained from the sellers to prepare a

Learning Opportunity can be found on page 8.

Residential Purchase Contract listing themselves as the buyer for the exact price the sellers indicated would be the lowest amount they would accept for the property

- the sellers did not provide Anderson this information for the purpose of Anderson purchasing the property
- the sellers provided it to Anderson for the purpose of sharing details with a licensee they wished to retain to sell their property
- Anderson did not disclose that they had used the seller's confidential information until after they had purchased the property
- Anderson used the information provided for personal gain
- Anderson failed to immediately provide the sellers with all the required disclosures for a personal trade in real estate
- by failing to provide the required disclosure, the sellers were not able to make an informed decision in regards to their representation and their decision to proceed with the sale
- during this transaction Anderson failed to ensure their role in the transaction was made clear
- Anderson attended the property knowing that they had an interest in purchasing it, and solicited confidential information from the buyers
- Anderson did not make their role in the transaction clear to their clients
- Anderson did not follow Zimmel's brokerage policies in regard to a personal trade in real estate
- Zimmel was not made aware of the details of this transaction until they were reviewing the documents that Anderson sent to the brokerage
- upon review of the documentation Zimmel did not identify any problems with the transaction
- Zimmel failed to adequately supervise Anderson in this transaction and failed to ensure that the business of their brokerage was carried out competently and in compliance with the relevant law

Breaches

Anderson

- [Real Estate Act Rules s.42\(c\)](#) - A real estate licensee must not use confidential information obtained from any person for personal gain, or for any other purpose than for that which it was obtained.
 - \$2,000
- [Real Estate Act Rules s.62\(2\)](#) - Any persons employed or associated with a brokerage wishing to acquire an interest in a property listed for sale with the brokerage must immediately disclose to the seller a conflict of interest, the nature of their relationship to the brokerage, and any confidential information of the seller that the buyer may have already received.
 - \$3,000
- [Real Estate Act Rules s.41\(e\)](#) - A real estate licensee must ensure that their role is clearly understood by their clients, and third parties.
 - \$1,500

Learning Opportunity can be found on page 8.

Zimmel

Real Estate Act Rules s.51(1)(d) - A real estate broker must ensure that the business of the brokerage is carried out competently, and in accordance with the Act.

Learning Opportunity

Real Estate Act Rules s.42(c)

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 used confidential information that was provided to them by the sellers in order to purchase the property for themselves.

Protection of Client Information

Real Estate Act Rules s.62(2)

Licensees wishing to acquire a property listed for sale with their brokerage must immediately disclose to the seller a conflict of interest, the nature of their relationship to the brokerage, and any confidential information of the seller that the buyer may have already received. In this case, the licensee used confidential information that was provided to them by the sellers for the sole reason to be used to sell their property. The licensee used this personal information to purchase the property for themselves. The licensee never informed the sellers that they were the buyer client until after the closing date of the sale.

Conflict of Interest – Representing both Seller and Buyer

Real Estate Act Rules s.41(e)

When a licensee represents both a seller and a potential buyer, there is a conflict of interest. The licensee must disclose to their clients the conflict of interest and take steps to resolve that conflict. The disclosure must be full; which means it needs to state all relevant facts, the nature of the conflict of interest, and include the advantages and disadvantages of the various ways to resolve the conflict.

Licensees must disclose any conflict as soon as it arises. After the licensee has made full and timely disclosure to each client, they must seek their clients' direction regarding the preferred means to resolve the conflict of interest. In this case, the associate did not disclose to their clients that they were the buyer in the transaction. They did not provide the sellers the disclosure statement until after the sale had closed. The statement advised the sellers that the associate was in a conflict of interest as both their representative and the buyer, and it advised them the associate had used their confidential information as a buyer.

Conflict of Interest - Representing both Seller and Buyer

Learning Opportunity

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

Brokers are responsible for ensuring their brokerage provides any requested information by a client in a timely manner. They are responsible for ensuring the business of the brokerage is carried out competently. In this case, the broker was made aware of a transaction being carried out by one of their associates that included the associate using confidential information provided by the buyer clients in order to purchase the property for themselves. The broker failed to adequately supervise the associate in this transaction and failed to ensure that the business of their brokerage was carried out competently and in compliance with the relevant law.

Brokers – Active in Brokerage Management

Real Estate Act Rules s.40

Licensees must immediately notify, in writing, the Registrar.

[Hazel Brar](#),

Real estate associate registered with Vision Realty Inc. o/a Century 21 Bravo Realty

- Brar failed to immediately notify, in writing, the registrar
- \$2,000

[Christopher Andrew Muchena](#),

Real estate associate registered at the time with Colliers Macaulay Nicolls Inc. o/a Colliers International. Muchena is not currently licensed or registered to a brokerage

- Muchena failed to immediately notify, in writing, the registrar
- \$1,000

[Christopher Andrew Muchena](#),

Real estate associate registered at the time with Colliers Macaulay Nicolls Inc. o/a Colliers International. Muchena is not currently licensed or registered to a brokerage

- Muchena failed to immediately notify, in writing, the registrar
- \$5,000

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 these cases, the licensees had a situation requiring notification occur 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.

[Notifying the Registrar— Real Estate and Mortgage Broker Professionals](#)

Real Estate Act Rules s.41(b)

A real estate licensee must provide competent service.

Paramjit Singh Brar

Real estate associate registered with Mountain View Real Estate Inc. o/a Re/Max Real Estate (Mountain View)

- in November 2019, Brar entered into a Commercial Seller Brokerage Agreement with a client to represent them in the sale of two commercial franchise businesses
- in February 2020, Brar represented clients that were interested in purchasing the two businesses
- Brar had the buyers and seller enter into an agreement to represent both buyer and seller
- in February 2020, Brar prepared a Commercial Purchase Contract for the two businesses and their clients signed this agreement
- the contract included transferring the lease of the business premises and a condition that the landlord was required to approve the new tenant
- after this agreement was signed it was discovered that the seller was not listed on the lease
- the franchiser is the lease holder of all their related spaces in Canada
- Brar failed to review the title and lease of the business premises before listing the businesses for sale and preparing a purchase contract that included lease transfer terms that the seller had no lawful control over
- Brar also used a Commercial Property Contract for a business asset sale that included declarations by the seller that were not true
- \$2,000

Learning Opportunity

Licensees must ensure they are doing their due diligence when representing a property. In this case, the licensee was representing the sale of a commercial franchise business and discovered after the sale of the business that the seller was not listed on the lease of the business premises. The licensee failed to review the title and lease of the business premises before listing the businesses for sale.

Competent Service

Real Estate Act Rules s.17(d)

Advertise himself or herself as, or in any way holding himself or herself out as, a mortgage broker, real estate broker or property manager unless that person holds the appropriate licence for that purpose issued by the Industry Council relating to that industry.

Sameer Kalia,

Trading in real estate while licence was suspended

- on May 7, 2021, Kalia's license was suspended by order of the Chair of the Commercial Real Estate Broker & Commercial Property Manager Industry Council
- from May–August 2021, Kalia contacted a broker, requesting information on a multi-million dollar property on behalf of their buyer clients
- Kalia held themselves out as a broker and owner of a real estate company that they were not licensed to work with
- Kalia continued to request information regarding the property on behalf of their buyer clients despite the broker telling them they had learned of their suspension
- \$25,000

Learning Opportunity

Unlicensed persons who provide services that require a licence put consumers at serious risk. Unlicensed persons do not have the required education or errors and omissions insurance, and consumers working with unlicensed persons do not receive protection under the Real Estate Assurance Fund. In this case, Kalia was not licensed and continued to trade in real estate transactions.

[Trading in Real Estate as a Real Estate Broker](#)

Real Estate Act Rules s.41(k)

A real estate licensee must comply with the Education Code of Conduct for Learners.

Yuan Liu,

Real estate associate registered with Kirin Realty & Management Inc.

- Liu was licensed to practice residential real estate as a real estate associate
- Liu studied the Practice of Property Management course and took the exam for that course
- on May 22, 2021, Liu wrote an online exam for the Practice of Property Management and received a failing grade
- on May 25, 2021, Liu rewrote the online exam for the Practice of Property Management and received a passing grade
- prior to writing the exam, Liu acknowledged they had read and understood the Exam Guidelines
- the Exam Guidelines stated:
 - no electronic device in exam room
 - all programs running on the computer must be closed
 - any external resources are not permitted
- Liu took the exam on a computer and had another laptop beside them while writing the exam
- Liu searched the online textbook on their laptop to help answer the exam questions
- \$1,500

Learning Opportunity

Learners must ensure they demonstrate the principles, as stated in the Education Code of Conduct, when participating in RECA education programs. Learners are expected at all times to conduct themselves with honesty, integrity and respectfulness. In this case, the licensee used their laptop to help answer exam questions, which violates the principles of the Education Code of Conduct.

[Education Code of Conduct for Learners](#)

Real Estate Act Rules s.38(4)(a)

A person conducting an investigation may by notice, in writing, demand any person to produce documents or answer questions relevant to an investigation. A person who is required to produce documents or answer questions relevant to an investigation must cooperate with investigators.

[Christopher Andrew Muchena](#),

Real estate associate registered at the time of conduct with Colliers Macaulay Nicolls Inc. o/a Colliers International. Muchena is not currently licensed.

- in July 2021 Muchena was sent questions by an RECA investigator appointed by the Registrar to conduct an investigation into Muchena's conduct
- Muchena was to provide answers to these questions by July 23, 2021
- as of September 21, 2021, Muchena had not provided answers to these questions.
- as of September 21, 2021, Muchena had failed to return the phone calls of the investigator and had ceased communication with the investigator regarding this matter
- \$5,000

[Gurveer Randev](#),

Not licensed

- on August 11, 2021, RECA emailed a Demand For Information Letter to Randev and the accounting department at Luxuria Homes requesting documents and information regarding a transaction relating to a property that was under investigation
- Randev failed to respond by the due date of September 3, 2021
- on September 7, 2021 a second Demand For Information Letter was emailed to Randev and the accounting department at Luxuria Homes requesting documents and information regarding another transaction
- Randev contacted the RECA investigator by telephone and explained they were a small company and they were not sure if they had the documents
- Randev stated they would contact their lawyer to see what documents they could obtain
- Randev failed to provide the documents and information by the due date of September 10, 2021
- on September 21, 2021, Randev was emailed by the RECA investigator requesting a time when the documents and information would be provided
- Randev failed to respond with an answer or with the documents and information requested by the due date of September 30, 2021
- \$5,000

Learning Opportunity can be found on page 15.

Olufemi Ojo,
Not licensed

- on July 8, 2021, Ojo was sent a letter advising them of RECA's investigation and for them to contact the investigator to arrange a date to be interviewed
- Ojo failed to contact the investigator
- on August 4, 2021, Ojo was advised by telephone that they would be provided with dates to present themselves to be interviewed by RECA investigators
- Ojo provided their email address to receive the communication with dates
- on August 4, 2021, Ojo was presented with dates, via email, to present themselves to be interviewed by RECA investigators
- Ojo failed to respond with a date to attend
- on August 9, 2021, Ojo was again emailed dates to present themselves for an interview
- Ojo failed to respond to the email
- on August 11, 2021, Ojo was sent a Demand Letter via email and the postal service requesting they present themselves for an interview on the provided dates
- Ojo failed to respond to either communication
- on August 23, 2021, the investigator attempted to telephone Ojo and the call was disconnected before being answered
- on August 24, 2021, Ojo was emailed new dates to present themselves for an interview
- Ojo failed to respond
- to date, no response or communication has been received from Ojo to confirm their attendance
- \$1,500

Learning Opportunity

All persons are required to cooperate with an investigation. Cooperation means providing truthful and complete responses in a timely and constructive manner. In these cases, the individuals failed to cooperate with an investigator and answer questions regarding an open investigation. The individuals were provided with multiple requests to meet and continually failed to respond to each request. This was a failure to cooperate with the investigator.

[Guide to Investigations for Licensees](#)

Real Estate Act Rules s.41(b)

A real estate licensee must provide competent service.

[Eric Lloyd Palin](#),

Real estate associate registered with Twin Oakes Real Estate 1993 Inc. o/a Re/Max House of Real Estate

- Palin was representing buyers interested in viewing a property
- the protocols for showing the property were that only two adults plus the associate were allowed to enter the property for showings and masks were mandatory
- on August 14, 2021, Palin had permission to bring their potential buyers to view the property
- while in the property nobody wore masks for the duration of the showing
- \$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.

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.53(c)(i)

A real estate licensee must provide in a timely manner all original documents, and copies of all documents provided to their clients to their broker.

Heather Dawn Ryan,

Real estate associate registered with Rose Country Realty Ltd. o/a Royal LePage
Rose Country Realty

- in March 2021, Ryan listed a property
- Ryan owned the property
- on March 30, 2021, a Residential Purchase Contract was presented to Ryan by the buyers
- Ryan accepted the offer
- Ryan's brokerage had a policy that all documents for a trade, whether personal or not, are to be submitted to the brokerage
- Ryan stated they were unaware that they were required to provide the brokerage with documentation for a personal trade
- the documentation has not been provided to the brokerage to date
- \$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 a personal trade.

Responsibilities – Real Estate
Associate Brokers and Associates



Letters of Reprimand

Real Estate Act Rules s.41(b)

Real estate licensees must provide competent service.

Real Estate Associate

- on April 7, 2021, the associate had permission to access a property for the purpose of conducting a home inspection
- the associate attended the property with the home inspector and buyers
- after providing access and remaining at the property, the associate left the property for 20 minutes, leaving the home inspector and buyer at the property alone
- the associate did not get permission from the sellers to leave anyone unattended in the property
- during the associate absence at the property, the buyer allowed six extra people to attend the property
- the seller did not give permission for this many people to attend the property

Learning Opportunity

Licensees must provide access for home inspections as stipulated in the contract, including who can access the property and perform the property inspection. Licensees must ensure that conditions outlined in the contract are followed.

Sellers expect licensees will access the property only for the reasons access is granted and that the property will remain in their care and control at all times. Leaving anyone in a property unattended requires permission from the seller or the seller's agent.

Licensees must communicate to their buyer clients that they cannot provide access to properties for a purpose different than is agreed to by the seller. Licensees have an obligation to advise their buying clients of the implications of not following contractual terms when attempting to satisfy conditions.

[Access to Property – Home Inspections](#)

[Competent Service](#)

Real Estate Act Rules s.41(b)

Real estate licensees must provide competent service.

Real Estate Associate

- the associate measured a property
- the associate advertised the property on the feature sheet as having an above grade size of 2,586 square feet.
- the measurement size was incorrect and included the basement area
- this was the result of an inputting error on the listing

Learning Opportunity

Licensees are expected to be competent in their services, including ensuring they measure properties using RMS or engage third parties to measure properties using RMS. The RMS guidelines offer a consistent way to represent the above ground size of a property for interested parties to accurately compare properties. In this case, the licensee failed to advertise the size of a property according to the RMS, potentially misleading buyers.

[Guide to Residential Measurement Standard in Alberta](#)

[Advertising - False and Misleading](#)

Real Estate Act Rules s.53(a)

A real estate licensee must only trade in real estate in their name, and the brokerage name to which they are registered.

Real Estate Associate

- the associate's website did not clearly identify the name of their brokerage
- the website included the associate's own branding at the top of the page
- a portion of the associate's brokerage name was found near the bottom of the website page
- the full brokerage name was not present
- the associate's other advertisements had their brokerage name clearly identified

Learning Opportunity

Licensees must clearly indicate their name and brokerage name in all advertising. A brokerage name is "clearly indicated" when a reasonable consumer, under normal circumstances, can clearly distinguish the name of a brokerage in an advertisement. A reasonable consumer should be able to identify the brokerage based on the advertisement alone.

It is important to note that email addresses or hashtags that contain the brokerage name do not meet the brokerage name requirements in advertisements.

Brokerages must have policies and procedures in place which outline the steps through which licensees can ensure their advertising complies with the advertising guidelines.

Advertising Guidelines

e

Real Estate Act Rules s.32(d)

A brokerage must notify the Registrar immediately, in writing, of a change in their registered address.

Mortgage Broker

- on January 4, 2021, the broker changed their registered address of their brokerage office
- the broker reported this change to RECA on August 17, 2021

Learning Opportunity

Brokerages must immediately notify the Registrar 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 broker failed to notify RECA of these changes. Brokerages can notify RECA of business address changes electronically.

Responsibilities and Prohibitions –
Mortgage Brokerage

RECA Management

RUSS MORROW
Chief Executive Officer

JOSEPH FERNANDEZ
Director of Education Programs

WARREN MARTINSON
Director of Corporate Services

STACY PAQUIN
General Counsel & Corporate Secretary

CHARLES STEVENSON
Registrar

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