

THE REAL ESTATE COUNCIL OF ALBERTA

Case: 004972 and 008729
Process: A Hearing under Part 3 of the *Real Estate Act*
Licensee: Melenda Arlene Simmons
Class of License: Real Estate Associate
Registration: Currently registered with Elite Ownership Group Ltd. o/a Re/Max Elite

Document: NOTICE OF HEARING

TO: Melenda Arelene Simmons

Your Section 46 Admissions of Conduct have been approved by the Board for both these matters. Counsel for the Registrar has advised that you have also signed a Joint Submissions of Sanction. Now, a Hearing must be held to present the Section 46 Admissions of Conduct and Joint Submissions on Sanction to the Hearing Panel. Read this entire document to see what you must do.

Hearing Information

Date: December 3, 2021
Time: 9:30 a.m.
Venue: Virtual Hearing
Hearing Panel: [G.F] – Chair, Panel Member
[M.C] – Panel Member (Licensee)
[S.D] – Panel Member (Licensee)
(Alternates: [K.O], [M.K], [J.M])

Counsel for the Panel: Anthony Dekens – Bishop & McKenzie LLP

It is alleged that your conduct is deserving of sanction for breaching sections of the Act or Rules. Here are the details:

File 008729

- 1) You failed to provide competent service to your client, contrary to s. 41(b) of the *Real Estate Act Rules*:
 - a. You failed to perform any due diligence on the suitability of the Property for [CLIENT 1] purpose and on the permit approval process before advising [CLIENT 1] on the merits of the property;
 - b. You advised [CLIENT 1] that she could sublease at a higher rent, when that was unlikely to succeed because the subleasees could see the head lease rent amount;
 - c. You did not advise [CLIENT 1] to have a formal property inspection of the Property performed; and
 - d. You did not recommend [CLIENT 1] wait to waive the tenant condition given that she had not yet received the finalized Development Permit, nor had she received Building Permit approval.
- 2) You failed to advise the buyer to obtain expert advice on matters of importance to the buyer, contrary to s. 58(k) of the *Real Estate Act Rules*:
 - a. You were an expert in the permit process or subletting and could not fully advise [CLIENT 1] on these subjects, which were important matters in the transaction; and
 - b. You did not advise [CLIENT 1] to obtain legal advice about the permit process and her plan to sublet to a franchisee before signing the lease and before waiving the tenant condition;
- 3) You did not disclose in writing to [CLIENT 1] the nature of your services, any conflicts of interest, nor any other facts that could influence her decision upon receiving confidential information from her on the types of properties she was looking for, contrary to s. 55(1) of the *Real Estate Act Rules*.

File 004972

- 4) You made representations that were reckless or intentional in your communications with [CLIENT 2A] that misled [CLIENT 2A] or was likely to mislead [CLIENT 2] contrary to s. 42(a) of the *Real Estate Act Rules*:
 - a. You told [CLIENT 2A] that the Property had "multiple offers", was not yet listed on MLS, and they would need to act quickly or possibly lose the home. This was not true.
 - b. You made representations about the reason for changing the purchaser on the purchase agreement as being for tax reasons. The real reason was that [CLIENT 2A] could not obtain a mortgage.
- 5) You failed to act competently in representing [CLIENT 2A] [CLIENT 2B], contrary to s. 41(b) of the *Real Estate Act Rules*:
 - a. When you agreed in January 2014 to act as agent on behalf of your brokerage for [CLIENT 2A AND CLIENT 2B], you did not ask for instructions on who the buyer would be (whether it would be [CLIENT 2A], [CLIENT 2B] or both) or determine ability to obtain a mortgage of both or either.
 - b. You failed to tell [CLIENT 2A] and [CLIENT 2B] about the mortgage application refusals.
 - c. You advised [CLIENT 2A] and [CLIENT 2B] about capital gains tax issues when she was not qualified to do so.
- 6) You failed to fulfil your fiduciary obligations to [CLIENT 2A] and [CLIENT 2B], contrary to s. 41(d) of the *Real Estate Act Rules*:
 - a. You instructed Selinger to apply the \$10,000 deposit [CLIENT 2A] paid to [CLIENT 2B]'s purchase of the property on March 14, 2014 without instructions from [CLIENT 2A].
- 7) You failed to disclose to [CLIENT 2A] that you were in a conflict of interest contrary to s.41(f) of the *Real Estate Act Rules*:
 - a. You were agent for both [CLIENT 2A] and [CLIENT 2B] as buyer clients.
 - b. You failed to tell [CLIENT 2A] that you were in a conflict of interest acting for both [CLIENT 2A] and [CLIENT 2B] when you proposed to make [CLIENT 2B] the only buyer but use the \$10,000 owned by [CLIENT 2A] as equity in the purchase. Your conflict was that it was in [CLIENT 2A]'s best interest not to pay the money to [CLIENT 2B] and it was in [CLIENT 2B]'s best interest to obtain title and the \$10,000 exclusively in his name.

- 8) You did not enter into a written service agreement with [CLIENT 2A] and [CLIENT 2B], contrary to s. 43(1) of the *Real Estate Act Rules*.

Why You Should Attend the Hearing

The hearing is your opportunity to respond to the allegations and state your side of the case in front of the Panel.

Learn About the Hearing Process

Please read these guides on the RECA website:

- *Hearing and Appeal Practice and Procedures Guideline and*
- *Guide for How to Represent Yourself at a Real Estate Council of Alberta Hearing or Appeal Panel*

Both are found on the RECA Website: RECA>Complaints & Discipline>Hearing Information and Procedures

What You Should Bring to the Hearing

Bring any witnesses and evidence you want the Panel to consider, with you to the hearing.

What Will Happen If You Don't Attend

If you do not attend the Panel may proceed to make a decision without you.

What Will Happen At the Hearing

After hearing all evidence and argument the Panel will decide whether the Executive Director has proven any of the breaches. If no breach is proven you will face no sanction.

If the Panel finds a breach is proven the Panel may do one or more of the things listed in **section 43** of the *Real Estate Act*:

- Cancel or suspend your license
- Order you to pay a fine for each breach
- Order you to pay the cost of the investigation and the hearing
- Order you to complete an education course

Submitting Written Arguments After the Hearing

You can provide written arguments at the end of the hearing or after the end of the hearing

You must provide these to the **Hearings Administrator** and **Counsel for the Registrar** (contact information below) **no later than 15 days after the end of the Hearing.**

Contact the Hearing Administrator if you need more time.

You Can Get Legal Advice

You may get legal advice and may be represented by legal counsel at the hearing.

If you do not have a representative please read *Information for Unrepresented Industry Members*:

<http://www.reca.ca/industry/content/publications-resources/guides.htm>.

If You Object to a Panel Member

Please review who is on the Panel. If you object to any of the people being on the Panel, you must advise the Hearings Administrator **who you object to and why within 14 days** of receiving this Notice.

If you do not object to the Panel within 14 days, this Panel will conduct the hearing.

Postponing the Hearing

If you are not available on the date set for the hearing you can apply to the Panel for a new date. Contact the lawyer for the Registrar and the Hearings Administrator as soon as possible if you need a new date.

Dated at Calgary, Al

12 Nov. 2021

(date)

"Signature"

Charles Stevenson, Registrar

of the Real Estate Council of Alberta

Contact Information

Hearings Administrator: Email: hearingsadmin@reca.ca Fax: 403 228 3065 Direct: 403 685 7913 Toll Free: 1 888 425 2754 Address: Real Estate Council Suite 202, 1506 11 Avenue SW Calgary, Alberta T3C 0M9	Counsel for the Registrar: Email: conductadmin@reca.ca Fax: 403 228 3065 Direct: 403 685 7944 Toll Free: 1 888 425 2754 Address: Real Estate Council Suite 202, 1506 11 Avenue SW Calgary, Alberta T3C 0M9
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