

THE REAL ESTATE COUNCIL OF ALBERTA

Case Number: 009934
Name on Licence: Ben Christian Eby
Licence Type & Class: Real Estate Associate
Brokerage Name on Licence: Mountain View Real Estate Inc. o/a Re/Max Real Estate (Mountain View)
Process: Section 39 & 83 of the *Real Estate Act*
Document: ADMINISTRATIVE PENALTY
Penalty: \$1500 (see Schedule 2 of the Bylaws)

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: Ben Christian Eby

The Registrar of the Real Estate Council of Alberta (RECA) has determined there is sufficient evidence you have contravened **section 57(j) of the *Real Estate Act* Rules** and this is conduct deserving of sanction.

Rule at time of conduct

Rule 57 – *The basic obligations of an industry member who is in a sole agency relationship with a seller are:*

(j) *to provide, in a timely manner, all offers and counter-offers to and from the seller even when the property is already the subject of an agreement or purchase and sale*

Particulars of the contravention(s):

1. In or around November 2019 you failed to provide a counter-offer in a timely manner to your seller client, contrary to section 57(j) of the *Real Estate Act* Rules
 - a) On or around August 17, 2019, you entered into an Exclusive Seller Representation Agreement with [M.J] and [H.J] in the sale of their property.
 - b) You were negotiating, on behalf of the Sellers, with interested buyers in the sale of the property.
 - c) On or around November 9, 2019, you received a counter-offer for \$950,000. You sent this counter-offer to [H.J]'s lawyer. You did not send the counter-offer to [M.J] or his lawyer. This was a failure to provide [M.J] with a counter-offer in a timely manner.
 - d) On November 9, 2019, you emailed [M.J] disclosing that you had sent the counter-offer to [H.J]'s lawyer and assumed the counter-offer would be forwarded to [M.J]'s lawyer. You did not attach the counter-offer to this email.
 - e) [M.J] received a copy of the counter-offer from his lawyer.

The Registrar considered the following aggravating and mitigating factors:

Aggravating Factors

- When emailing the counter-offer, you sent it to a lawyer acting on behalf of [H.J] but did not include [M.J] or his lawyer on that email.

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: [S.H], Sr. 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 November 15, 2021.

"Signature"

Charles Stevenson, Registrar
Real Estate Council of Alberta

cc: [L.M], Real Estate Broker
Re/Max Real Estate (Mountain View)