

THE REAL ESTATE COUNCIL OF ALBERTA

Case: 007998
Process: A Hearing under Part 3 of the *Real Estate Act*
Licensee: Caren Sylvia Kelley
Class of License: Real Estate Associate
Registration: Currently registered with Twin Oakes Real Estate
1993 Inc. o/a Re/Max House of Real Estate
Document: NOTICE OF HEARING

TO: Caren Sylvia Kelley

A hearing is set to review allegations about your conduct. Read this entire document to see what you must do.

Hearing Information

Date: April 28 & 29, 2022
Time: 9:30 a.m.
Location: Virtual Hearing via Microsoft TEAMS Platform

Hearing Panel: [A.B]
[A.S]
[M.W]
(Alternates: [G.F], [G.P] and [J.L])
Counsel to the Panel Ricki Johnston, WLG (Canada)

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

- 1) From January to February 2017, you participated in fraudulent activities in connection with the provision of services, contrary to s. 42(b) of the *Real Estate Act Rules*:
 - a) [F.H] (“[F.H]”) and [A.D] (“[A.D]”) were married and jointly owned [ADDRESS] (the “Property”). They were separated and both signed a separation agreement whereby [F.H] would get sole title to the Property.
 - b) [F.H] was facing financial duress and foreclosure and wanted to sell the Property quickly. A friend referred her to a third party, [I.S] (“[I.S]”) to help her sell the Property.
 - c) [I.S] told [F.H] that he had a potential buyer for the Property. [I.S] told [F.H] the Property would need to be listed on MLS for the buyer to secure mortgage financing. [I.S] said to [F.H] that he knew a real estate agent that could list the Property.
 - d) [I.S] was a previous client of yours. You represented [I.S] and his wife when they bought a home in July 2011.
 - e) In and around January 2017, [I.S] contacted you about listing the Property. [I.S] told you about [F.H]’s financial situation and provided you with a Separation Agreement.
 - f) On or around January 22, 2017, you agreed to act as agent for [F.H] and [A.D].
 - g) [I.S] committed fraud by lying to [F.H] inducing her to believe the house sold for \$455,000 when it actually sold for \$529,000 and he kept the difference.
 - h) You allowed [I.S] to use you to list the property on MLS.
 - i) You acted in complete disregard for your professional responsibilities, turning a blind eye to [I.S]’s suspicious activity which enabled him to commit fraud.
 - j) In the alternative, you conspired with [I.S] to commit the fraud on [F.H] and [A.D].

- 2) From January to February 2017, you failed to fulfil your fiduciary obligation to your client, contrary to s. 41(d) of the *Real Estate Act Rules*:
- a) [F.H] and [A.D] were your clients and you owed them the fiduciary duty to act in their best interest.
 - b) You failed to protect them.
 - c) You failed to meet with them to obtain information from them about their needs and circumstances so you could advise them and protect them.
 - d) You failed to explain your role and the services you would provide to them.
 - e) You failed to perform any services you agreed to perform on behalf of your brokerage in the Listing Agreement.
 - f) You failed to let potential buyers view the property, declining to set up viewings because tenants in the Property required one-day notice. In the alternative, you did this deliberately to enable [I.S] to commit fraud against your clients.
 - g) You entered old unverified information into the MLS listing on behalf of your clients.
 - h) You let your clients be advised and directed in the sale of their Property by an unauthorized party, [I.S], who was not their agent and owed them no fiduciary duties leaving them vulnerable to fraud and liability.
 - i) You allowed [I.S] to negotiate with your clients' without being present or representing them in this negotiation. You allowed [I.S] to lie to your clients and induce them to enter into a sale contrary to their best interests.
 - j) You were further an agent of the brokerage you were with and owed them a fiduciary duty to protect their best interest.
 - k) You failed to inform your broker of any of the activities you were performing on behalf of the brokerage.

- l) You let the brokerage become vulnerable to liability as a result of letting an unauthorized party carry out your responsibilities.

- 3) In or around January 2017, you did not disclose to your client, at the earliest practical opportunity, how you would be paid for her services, contrary to s. 41(c) of the *Real Estate Act Rules*;

- 4) In or around January 2017, you did not deliver to your client a true copy of a service agreement and any amendment or addition immediately upon its signature, contrary to s. 43(3) of the *Real Estate Act Rules*:
 - a) You obtained a Listing Agreement between [F.H] and [A.D] and your brokerage.
 - b) You failed to provide either [F.H] or [A.D] with a copy of the Listing Agreement.
 - c) You refused to provide a true copy of the Listing Agreement to your client, [F.H], when she requested it.
 - d) You only provided a copy of the Listing Agreement to your client, [F.H] during the investigation into your conduct, approximately 15 months after the purchase transaction closed.

- 5) From January to February 2017, you did not use your best efforts to market your client's property or promote the interests of your seller client, contrary to s. 57(a) of the *Real Estate Act Rules*:
 - a) You failed to provide a comparative market analysis or comparable listings of the Property to your clients to ensure that the listing price was reasonable or in their best interests.
 - b) You used the listing price from the previous MLS listing, without taking steps to ensure that the price was reasonable in the current market at the time and would ensure that your clients' property would sell.

- c) You failed to put up any signage or hold any open house to market the Property.
 - d) You failed to respond to an inquiry from any potential buyers because the tenants living in the property required 24-hour notice before it could be viewed.
- 6) In or around January 2017, you failed to practice in strict accordance to laws governing trading in real estate in Alberta, contrary to s. 41(g) of the *Real Estate Act Rules*:
- a) You are a member of the Calgary Real Estate Board ("CREB") and required to adhere to the Rules for CREB members.
 - b) You contravened CREB Rule 2.04(e) by using information and photos from an old listing for the Property without the consent of the previous listing brokerage.
- 7) From January to February 2017, you allowed an unlicensed individual to perform tasks that must only be performed by a licensee, contrary to s. 46(2) of the *Real Estate Act Rules*:
- a) You allowed, [I.S], to perform all of your required tasks associated with the representation of your clients [F.H] and [A.D] including:
 - i. Receiving confidential information
 - ii. Advising your clients in the sale of the Property
 - iii. Marketing the Property
 - iv. Negotiating the sale of the Property; and
 - v. Executing forms and contracts associated with your agency and the sale of the Property.

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 Guidelines and*
- *Information for Unrepresented Industry Members*

They are under the *Publications and Resources* tab under the heading *Guides to Disciplinary Proceedings*.

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 authorization
- 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 Executive Director** (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 Executive Director and the Hearings Administrator as soon as possible if you need a new date.

Dated at Calgary, Alberta, on March 3, 2022.
(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	Lawyer 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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