

Case Summaries

May 3 - June 13, 2022

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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.



Appeal Panel Decision

Gordon Wesley Pethick - Appeal Panel Decision

Issue:

Following a Hearing Panel Decision in 2021, Pethick filed a Notice of Appeal on grounds that:

- a Hearing Panel in 2020, erred by giving no weight to the 25-day suspension served by Pethick in 2016 as part of the breaches substantiated in this case when issuing further sanctions in the form of Administrative Penalties
- the 2020 Hearing Panel did not err in assessing costs at \$6,607.50

Facts:

- on September 20, 2016, a Hearing Panel found Pethick breached *Real Estate Act* Rules s.41(b) and 41(d)
- in its November 21, 2016 Decision on Sanction, the Hearing Panel ordered, among other sanctions, that Pethick's real estate license would be suspended for one month for breach of s. 41(d) of the Rules
- on June 1, 2018, an Appeal Panel quashed these Decisions and ordered a *de novo* Hearing Panel on the matter
- in October 2020, the new Hearing Panel found Pethick had breached s.41(b), but not s.41(d) of the Rules
- in the February 25, 2021 Hearing Panel Decision, the 2020 Hearing Panel stated, it "acknowledges that the Industry Member has experienced consequences arising from the unsuccessful allegations in this matter and that is a mitigating factor. At the same time, the suspension related to allegations which were not proven, and this sanction relates to different allegations."
- In the February 25, 2021 Decision, the 2020 Hearing Panel ordered Pethick:
 - pay fines in the amount of \$6,000 for three breaches of s.41(b) of the Rules
 - pay costs in the amount of \$6,607.50 associated with the investigation and hearing
 - successfully complete unit five of the Fundamentals of Real Estate Course on consumer relationships within six months of the Hearing Panel's decision
- the 2020 Hearing Panel's reasons do not disclose a chain of analysis illustrating that they considered the 25-day suspension, under the reasonableness standard
- the 2020 Hearing Panel followed a rational chain of analysis in determining the amount of costs it imposed

Outcome:

On April 27, 2022 the Appeal Panel ordered:

- Fines related to the original Administrative Penalties to be withdrawn
- costs in the amount of \$6,607.50 paid to RECA
- Pethick successfully complete unit five of the Fundamentals of Real Estate Course on consumer relationships within six months of this Decision

A close-up photograph of a person's hand typing on a silver laptop keyboard. The hand is wearing a blue long-sleeved shirt and a blue wristband. A semi-transparent blue rectangular box is overlaid on the image, containing the text 'Administrative Penalties' in white. In the foreground, a pair of black-rimmed glasses and a smartphone are visible on a wooden desk. A small potted plant is in the background.

Administrative Penalties

Real Estate Act s.41(d)

Licensees must fulfill their fiduciary obligations to their clients.

Stephanie Yuen-shan Fan,

Real estate associate registered with Grand Realty & Management Ltd. o/a Grand Realty

- on February 6, 2021, Fan drafted an offer to purchase a property for their buyer clients
- the offer to purchase included an inspection condition and a term stipulating a hold back if damages were found
- following the initial inspection, Fan's client requested a secondary inspection of further items of the property, such as the roof
- Fan advised their clients they rely on the term in the purchase contract that allowed for a holdback if damages were found in a subsequent inspection
- Fan's client waived their inspection
- Fan failed to explain the risks of waiving the inspection condition before the follow-up inspections were complete
- Fan failed to explain the potential challenges of dealing with any damages found through a hold back
- the second inspection revealed significant issues with the property
- the term included in the offer to purchase lacked clarity, causing Fan's clients to make concessions they likely wouldn't have had to make had the term been drafted properly to protect their interests
- \$1,500

Learning Opportunity

Licensees must fulfill their fiduciary obligations to their clients. In this case, the licensee failed to fulfill their fiduciary obligation to properly advise their clients and protect their interests, forcing their clients to make concessions in order to close on the property.

Competent Service

Real Estate Act Rules s.54(1)(d)

A real estate licensee must not directly or indirectly advertise, communicate, or offer an incentive except for that which is provided by their brokerage.

Mohammad Mussa Khan,

Real estate associate registered with Urban Real Estate Services Ltd.
o/a Urban-Realty.ca

- Khan agreed to pay out of their commission for new appliances for a property bought by potential buyer clients
- this agreement constituted an incentive
- this incentive was not authorized by Khan's brokerage
- on May 9, 2021, Khan entered into a written service agreement with the client
- in June of 2021, Khan sent a \$2,000 e-transfer from their account to the client after a property had been purchased
- \$1,500

Learning Opportunity

Only a brokerage can advertise incentives to the public. Licensees must not directly or indirectly, advertise, communicate, or offer to any person their own incentive with the sole purpose to attract business.

An incentive is anything a brokerage advertises, communicates, or offers to the public to attract business. Examples of incentives include travel miles, gifts, contests, gift certificates, games of chance or anything else of value. A brokerage incentive must be available to all clients or potential clients of a brokerage.

Incentives

Real Estate Act Rules s.46(2)

A real estate licensee must not delegate, assign, request, direct, or in any way allow an unlicensed or unregistered assistant to perform tasks that require a licence.

[Mohammad Mussa Khan](#),

Real estate associate registered with Urban Real Estate Services Ltd.
o/a Urban-Realty.ca

- in February 2021, Khan's father contacted a potential client and claimed that they and Khan could represent the client in a real estate transaction
- from February to March 2021, Khan's father collected confidential information from the client, provided advice on properties and transactions, arranged showings of listed properties, and obtained instructions from the clients about specific transactions
- Khan's father was not licensed during the time they performed these tasks
- these tasks required a licence and could only be performed by a licensee
- \$1,500

Learning Opportunity

A real estate licensee must not delegate, assign, request, direct, or in any way allow an unlicensed or unregistered assistant to perform tasks that require a license. In this case, the licensee allowed a relative to perform activities that required a licence by RECA. Licensees are responsible for allowing any individual performing tasks on their behalf to be properly licensed and if they are not, they should never assign tasks that require a licence.

[Assistants – Real Estate Brokerage](#)

Real Estate Act s.43(1)

A real estate licensee who establishes a client relationship related to trading in real estate must enter into a written service agreement with that prospective client.

Mohammad Mussa Khan,

Real estate associate registered with Urban Real Estate Services Ltd.
o/a Urban-Realty.ca

- in a February 2021 meeting, Khan agreed to represent a buyer client
- between February and March 2021, Khan collected confidential information about the client and their real estate needs and showed the client multiple properties
- May 9, 2021, Khan entered into a written service agreement with the client
- \$1,000

Learning Opportunity

A written service agreement outlines the roles and responsibilities of the parties, clarifies the expectations of each party, and helps to ensure the client understands their relationship with the licensee. Clarity of roles, responsibilities, and expectations is essential to consumer trust and confidence. The service agreement must be discussed and presented to a prospective client prior to acting on their behalf in a real estate transaction. In this case, the licensee failed to have the client sign a written service agreement until months after working with the client.

Written Service Agreements

Real Estate Act s.41(b)

Licensees must provide competent service.

Marilyn Ann Thiessen,

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

- Thiessen's clients were interested in purchasing a property
- the property advertisement included the statement, "some of the extras are a 6 person hot tub with a gazebo"
- Thiessen's clients believed this meant the hot tub and gazebo were included in the purchase price
- on October 3, 2021, Thiessen drafted a Residential Purchase Contract for their buyer clients for the property
- Thiessen discussed with their clients some of the chattels they wanted included in their offer
- Thiessen failed to seek the client's instructions on whether they wanted to include the hot tub or gazebo in the offer
- Thiessen's clients indicated they wanted the couch set included in the purchase
- Thiessen wrote the word "couch" as part of the unattached goods in the offer
- on the possession day, the hot tub, gazebo, and full couch set were not at the property as the buyer expected
- \$1,500

Learning Opportunity

A licensee must make sure that everything their client wants included in a purchase contract is included in the contract. A licensee must review the terms of any contract carefully with the client, including standard clauses, so there is no misunderstanding. In this case, the licensee failed to ensure that all of the client's intentions regarding unattached goods were clearly noted in the offer to purchase, leading to the clients not receiving everything they wanted included with their purchase of the property.

Competent Service

A person is writing on a clipboard with a blue pen. The clipboard is resting on a wooden desk. The background is blurred, showing what appears to be a computer monitor and some office equipment. A blue semi-transparent rectangle is overlaid on the image, containing the text "Letters of Reprimand".

Letters of Reprimand

Real Estate Act Rules s.41(h)

Licensees must cooperate fully with, and provide any information requested to, any representative of the Council carrying out their duties under the Act.

Real Estate Associate

- between August and November 2021, RECA Investigations made multiple requests to the associate for information
- the associate failed to respond
- on February 22, 2022, RECA Investigations issued the associate a demand letter for information with a response date of March 15, 2022
- on March 15, 2022, the associate provided a partial response
- from March 16, 2022 to March 22, 2022, RECA made multiple attempts to contact the associate to schedule an interview, in which multiple dates and times were provided as well as an option for the associate to provide alternative dates and times if none of the suggested appointment times worked for them
- on March 23, 2022, the associate responded that they were not available at the times requested
- RECA contacted the associate again with a request for dates they were available
- the associate responded and an interview date was scheduled
- on March 28, 2022, information requested was received

Learning Opportunity

Licensees in Alberta have the privilege of self-regulation. An important aspect of self-regulation is the cooperation of licensees with RECA. Licensees are required under the *Real Estate Act* to cooperate with an investigation. Cooperation means providing truthful and complete responses in a timely and constructive manner. In this case, the licensee failed to cooperate and respond to an investigator regarding an open investigation. Fully cooperating means providing the information requested with the required timelines.

[Guide to Investigations for Licensees](#)

Real Estate Act Rules s.41(d)

Licensees must fulfill their fiduciary obligations to their clients.

Real Estate Associate

- in June 2021, the associate's clients signed an Exclusive Seller Representation Agreement for the sale of their property
- the associate's clients advised them there was a caveat on their property
- the associate had a fiduciary obligation to review the property title carefully before listing the property, including all registered interests, discuss any potential concerns and whether their clients should seek legal advice
- the associate's brokerage policy required the associate to submit a current copy of title to the brokerage as soon as a listing was finalized
- on July 6, 2021, the associate's clients accepted the terms and conditions of the Residential Purchase Contract for the property
- on July 13, 2021, the associate's brokerage requested the associate upload the current title for the Property
- on July 20, 2021, the associate obtained the Land Title Certificate for the property, which identified an Encroachment Agreement with the City of Edmonton
- the associate provided a copy of the Title to their brokerage on July 27, 2021
- a few days before the property sale closed, the associate's clients stated their lawyer advised them they would require a land title survey and a review of the Encroachment Agreement that may cause delays to the closing
- the associate had not reviewed the Encroachment Agreement
- the transaction closed on time
- the associate acknowledged they did not follow brokerage policy and that they should have obtained Title earlier, reviewed the Encroachment Agreement, and noted it on the listing

Learning Opportunity

As part of a licensee's due diligence, a review of property title should always be completed. Failure to review title poses risks to the brokerage—if the names on title are not the same as the sellers—and to licensees' clients, as there is information on title that may affect the sale or purchase of the property. In this case, the licensee failed to obtain title on a property and review the Encroachment Agreement in a timely manner.

[Property Ownership and Title Search Due Diligence Checklist](#)

Real Estate Act Rules s53(c)

A real estate licensee must provide to their broker in a timely manner all original documentation and copies of original documents provided to parties in relation to a trade in real estate.

Real Estate Associate

- on February 3, 2022, the associate completed two Offers to Purchase for two properties on behalf of a seller client
- these offers were not accepted
- the associate's brokerage had a policy that associates must retain copies of any failed transactions and must be made readily available to the broker once requested
- the associate's broker requested copies of these offers
- the associate failed to provide these offers to the broker when they were requested

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 failed offers to purchase.

Responsibilities and Prohibition —
Real Estate Associate Brokers and
Associates



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The Case Summaries is published by the Real Estate Council of Alberta.

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