

THE REAL ESTATE COUNCIL OF ALBERTA

Case: 007174, 007763, 007856, 008901, 009223, 009474,
009790, 008338, 007966 and 008661

Process: A Hearing under Part 3 of the *Real Estate Act*

Licensee: David Stephen Kennedy

Class of License: Real Estate Broker

Registration: Currently unlicensed, formerly licenced with Manor
Management Ltd.

Document: NOTICE OF HEARING

TO: David Kennedy

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

Hearing Information

Date: Thursday, July 21, 2022

Time: 9:30 a.m.

Location: Virtual Hearing via Microsoft TEAMS Platform

Hearing Panel:	[J.A]	Chair, Panel Member (Public Member)
	[A.A]	Panel member (Licensee Member)
	[J.F]	Panel member (Licensee Member)

Alternates:		
	[K.O]	Chair, Panel member (Public Member)
	[L.M]	Panel member (Licensee Member)
	[W.R]	Panel member (Licensee Member)

Counsel for the Panel: N/A

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

1. Between approximately 2014 and 2019:
 - You engaged in conduct that undermined public confidence in the industry, harmed the integrity of the industry, or brought the industry into disrepute, contrary to s. 42(g) of the *Real Estate Act* Rules:
 - You failed to disclose to your clients, at the earliest possible opportunity, any conflict of interest you may have in the course of providing services to, or in your dealings with a client, contrary to section 41(f) of the *Real Estate Act* Rules.
 - You failed to provide competent service contrary to section 41(b) of the *Real Estate Act* Rules.
 - You failed to fulfill your fiduciary obligations contrary to section 41(d) of the *Real Estate Act* Rules.

File #007174 (PINE WEST)

2. Pine West Management Inc. ("Pine West") entered into a management agreement with Manor for [ADDRESS] (the "Pine West Property") commencing on December 15, 2005 (the "Pine West Agreement"). The Pine West Agreement could be cancelled with thirty days written notice.
3. [N.C] was one of the directors of Pine West and noted on the Pine West Agreement as the contact person at all materials times.
4. Under the Pine West Agreement approval from [N.C] was required for non-recurring items exceeding \$1000.00. [N.C] was not aware of this term. You never contacted her to request authorization for any expenses although many exceeded \$1000.

5. Under the Pine West Agreement a management fee of \$625.00 was paid per month to Manor and leasing was the responsibility of a "separate agency". However, at the request of Pine West, Manor did all the leasing over the material period.
6. Alberta Property Maintenance ("APM") entered into an offer to lease with Pine West through Manor Management for [ADDRESS], commencing on December 01, 2014.
7. You were a Director of APM and held 49% of the voting shares at the material time. The registered office for APM was 100, 5229 50th Ave. Red Deer; this was the same address as Manor.
8. APM's offer to lease for \$1300.00 was payable on the first day of each month, commencing on December 01, 2014. The lessee, APM was responsible for the utilities. There was no security deposit paid.
9. Of all the leasees at the Pine West Property over the material period it was only APM that didn't provide a security deposit.
10. You signed the offer to lease as the leasee, you also signed for Manor.
11. Under the offer to lease, Manor was to deliver APM with a lease upon acceptance. A formal lease was never prepared.
12. [N.C] was aware you had an affiliation with APM. However, she did not receive anything in writing noting this. You presented the offer to lease after another tenant left suddenly.
13. You did not prepare a formal lease agreement for APM.

14. Soon after the lease commenced [N.C] began receiving invoices from Direct Energy LP for unpaid utilities on unit 6B of the Pine West Property.
15. [N.C] provided copies of these invoices to you on multiple occasions. You assured her they would be paid.
16. Upon termination of the lease [ADDRESS] was in Arrears with Direct Energy LP for \$4,022.75, Direct Energy LP sent the invoices to collections thereby affecting Pine West's credit rating.
17. The Manor rental history for [ADDRESS], show APM was in arears on multiple occasions from December 01, 2014, through to March of 2017. The arrears were as high as \$11,914.48 as at July 2015 and upon termination of the lease in March 2017 it was \$10,435.97.
18. [N.C] initiated a civil action in the Court of Queen's Bench to recover monies owed.
19. A settlement agreement and release were entered into where APM paid Pine West \$8500.00 on May 09, 2018.
20. You and Manor contracted APM, your own company, to complete the snow removal for the Pine West Property. This was done without getting quotes from other companies to determine the best price.

File #007763 (LAM)

21. [K.L] inherited [ADDRESS] and [ADDRESS] (the "[L.P]") from her father, [J.L] in 2014, when he passed away.

22. [J.L] purchased the [L.P] with his company [M LTD]. When [J.L] passed away [K.L] became a director of that company.

23. A management agreement (the "Agreement") was entered into between [M LTD] and Manor for the [L.P] commencing on June 01, 1994 and ending on May 31, 1995.

24. The Agreement showed:

- approval was required for non-recurring items exceeding \$1000.00;
- the Management fee was 3% of the monthly gross receipts;
- leasing was the responsibility of a separate agency.

25. The Agreement was not reviewed with [K.L] when she became a director, and she was not sure what leasing being the responsibility of a "separate agency" meant in the agreement. You were the one leasing the [L.P] at that time.

26. There were no provisions allowing the Agreement to carry on past May 31, 1995.

27. There were no further management agreements past 1995 although Manor continued to manage the [L.P] until [K.L] terminated Manor in writing on October 25, 2017.

28. Manor Management Ltd. contracted SHEA Floors for flooring in the Lam Property. You are a director of 922508 Alberta Ltd. which had a 50% interest in SHEA Floors. [K.L] was not aware that you had an interest in SHEA Floors, nor was it disclosed to her in writing. SHEA floors billed [K.L] over \$5,000.

29. At all material times Manor did not provide [K.L] with quotes for any non-recurring work or services over \$1,000 as required in the management agreement.

30. [K.L] normally received approximately \$16,000.00 in rental income per month for the [L.P].
31. [K.L] terminated Manor as of November 01, 2017, after no remittance of rental income since January 2017. A portion of this rent owing was eventually paid to [K.L].
32. After the termination Manor continued to improperly collect rent, despite repeated efforts and requests by [K.L] to have the rent forward to her.
33. [K.L] states that Manor Management cashed the rent cheques for November and December 2017. This money was never properly remitted to [K.L].
34. [ACPM] ("ACPM") commenced managing the [L.P] November 01, 2017
35. [K.L], along with [ACPM], inspected the [L.P] in and around November 2017 and met with the remaining tenants.
36. The [L.P] was in the following state:
- the roof had been leaking;
 - bathrooms flooded;
 - squatters living in the building; and
 - there was a fire hazard in the basement.
37. You had assured [K.L] the leaks in the roof were going to be repaired in an email sent to her September 16, 2016. This was never done.
38. [K.L] attended at Manor along with Avenue in November 2017. At that time You failed to provide all leases and accounting documentation for the [L.P].

39. In or around late 2017 [K.L.] received correspondence from Wagner, Falconer & Judd, Ltd. attorneys for Honeywell International Inc. Honeywell retained their services to assist in collecting an outstanding debt owed for \$30,147.62. Manor had been delinquent in payments to third party contractors, including Honeywell. [K.L.] paid to settle the claim in excess of \$16,000.00.

File #007856 (W.E)

40. [ADDRESS] is a mobile home park known as [W.E] which consists of 49 lots ("W.E"). [W.R.T] ("W.R.T") purchased Westview, taking possession on July 20, 2017.

41. [W.R.T] entered into a management agreement with Manor for [W.E] commencing on July 20, 2017, and thereafter for yearly periods.

42. The agreement required approval for non-recurring expenses exceeding \$500.00.

43. [W.R.T] terminated the agreement on January 31, 2018.

44. [W.R.T] sent multiple emails between August 2017 and December 2017 to you inquiring as to whether you had all copies of leases at [W.E]. There was no response to their emails.

45. In and around October 2017 Manor sent eviction notes to multiple tenants at Westview without first communicating with the Traceys. The County grandfathered the mobile home site and the Traceys could not replace any tenants once they were removed. You were aware of this.

46. You and Manor contracted APM, your own company, to complete certain work for [W.E]. This was done without obtaining quotes from other companies. Further, [W.R.T] were not aware of your connection to APM.

47. At all material times Manor did not provide [W.R.T] with quotes for work over \$500 as required in the management agreement.

File #008901 (MHC)

48. [M.H.C] ([M.H.C]) entered into a management agreement with Manor for [ADDRESS] (the "Property"). The agreement commenced on November 01, 2010 and was set on a year over year basis.

49. [M.H.C] received a telephone call from the City [REDACTED] in January 2018. There was a water problem at the Property and Manor had not responded the City's calls. [M.H.C] asked Manor to deal with the issue. This was not done as soon as possible.

50. In April 2018 [M.H.C] received an invoice from the City [REDACTED] for the Property, in the amount of \$3,810.58. The invoice related to extensive water flooding in the basement.

51. This damage may have been somewhat mitigated had it been dealt with by the you in a more timely manner.

52. [M.H.C] terminated the lease with Manor in August 2018.

File #009223

53. [C.P LTD] entered into a condominium management agreement with Manor commencing on October 01, 2007, for a period of one year and thereafter for yearly periods (the " Agreement").

54. The municipal address for the condominium was [ADDRESS] (the "Condominium"). All 12 units and the common property were included in the Agreement.

55. Under the Agreement Manor had certain duties including:

- collecting and receiving, in trust, on behalf of the [C.P LTD] n all monthly assessments, levies, contributions and any monies owed;
- depositing all monies paid to the [C.P LTD] by the owners for the Corporation's Capital Reserve fund, in a separate trust account registered in the name of the corporation; and
- reporting all accidents or claims for damage relating to the ownership, operation and maintenance of the common property to the insurers.

56. You signed the Agreement.

57. The Condominium submitted their formal cancellation of the Agreement to Manor on March 29, 2019. Thirty days' notice was given to terminate the contract effective April 30, 2019.

58. Manor advised the Corporation of a legal claim and provided documentation regarding a slip and fall that occurred in or around March 2014. Manor failed to advise the insurance company of the accident, as required in the Agreement, until 2016.

File #009474

59. [AB LTD] owned by [J.M.K.A] entered into a management agreement with Manor commencing November 01, 2013, for a property at [ADDRESS] (the "Property").

60. On May 22, 2019, a termination agreement was signed between [AB LTD] and Manor. Manor agreed to cease managing the Property immediately and relinquish all keys and modes of access.

61. The termination agreement had a number of stipulations including the following:

- Manor shall provide the new property manager all documentation in a timely manner;
- Manor shall complete a financial statement for the operation of the Property for the month of May 2019 and deliver it to the new property manager by June 20, 2019; and
- Manor shall deliver to all funds, including security deposits held in trust for the Property to the new property manager.

62. The new management company did not receive the balance of funds, security deposits and the required financial statement from Manor in a timely manner.

File #009790 (WEST TWO)

63. At the material time [S.D] was the director of [W.T.E LTD] (“[W.T.E LTD]”) along with her son and daughter.

64. [W.T.E LTD] owns [ADDRESS], along with two mobile home parks in [ADDRESS] (the “Properties”).

65. Manor has been managing the Properties since approximately 1990.

66. Only one management agreement was signed between Manor and [W.T.E LTD] and that would have been when Manor was first hired.

67. Between 2017 and 2019 you and Manor did not provide timely responses to requests by [S.D] in relation to the Properties.

68. The contract with Manor was terminated on September 15, 2019.

69. Manor was unable to provide approximately 10 leases to the new property manager. These leases were either misplaced or not prepared.

File #008338 (TRUST ACCOUNT)

70. Complaints on file #007966 and #008661 led to concerns regarding Manor's trust accounting practices. These files were the basis of a practice review which led to **File 008338**.

71. On May 14 to 17 of 2018, Trust Assurance and Practice Review audited trust accounts belonging to Manor (the "TAPR Audit").

72. The TAPR Audit revealed that in May 2018 the fund shortage in Manor's rental trust account was \$118,926.99. This amount included 50,100.94 in improper personal loans, \$35,000.00 to cover brokerage operating costs and \$33,826.05 worth of funds borrowed by APM. As stated above you had an ownership stake in APM.

73. The trust shortfall was funded by you on or around June of 2018. No clients suffered a loss as a result of the shortage.

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, Alberta, on June 27, 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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