

Case Summaries

November 23, 2023 - March 19, 2024

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Case Summaries

Welcome to RECA's Case Summaries.

Inside you will find the summaries for all disciplinary and regulatory decisions occurring at the Real Estate Council of Alberta (RECA) since the previous newsletter, including any suspensions and approved lifetime withdrawals from the industry.

The Case Summaries are drafted with a focus on learning opportunities, including issues that may be relevant but not directly related to the case at hand.

RECA is authorized to carry out conduct proceedings under [Part 3](#) of the *Real Estate Act*.

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.

A close-up photograph of a person's hand typing on a laptop keyboard. The image is partially obscured by a semi-transparent blue rectangular overlay on the left side. The background is a blurred office setting with a desk and papers.

Hearing Panel Decision

Casurt Roy Morgan,

Mortgage associate registered with Axiom Mortgage Solutions Inc.
o/a Axiom Mortgage Solutions

Issue

The Notice of Hearing submitted by the Registrar outlined a total of five breaches of the *Real Estate Act* and the corresponding Rules:

- s.42(b) of the Rules which requires licensees to not participate in fraudulent or unlawful activity in the provision with any real estate dealings
- s.69(e) of the Rules which requires licensees to ensure there us an adequate level of supervision for their employees, and others who perform duties on their behalf

Facts:

- in 2016, Morgan was a licensed mortgage associate registered with Invis Inc. o/a Invis
- in February 2016, Morgan assisted buyers to obtain a mortgage for the purchase of a property in Saskatchewan
- after the sale, one of the buyers contacted Invis to inform them the other buyer had died and to inquire about the life insurance on the mortgage
- the buyer was informed that they had declined insurance
- the buyer requested all paperwork in relation to their mortgage.
- the buyer reviewed the paperwork and advised Invis that neither they nor the deceased buyer had signed the Mortgage Disclosure, the Initial Disclosure, the Insurance Form, and the Client Consent
- the signatures, initials and dates on these documents were forged
- in April and May 2016, Morgan assisted another buyer to obtain a mortgage
- two gift letters were prepared which indicated that both donors had no interest in the sale of the property, and that the funds were a gift that did not need to be repaid
- the signatures on the gift letters were forged
- the Hearing Panel found the forgeries in both cases could not have been executed by an unsupervised assistant

Outcome

On August 11, 2023, the Hearing Panel found that based on the facts Morgan engaged in four breaches of s.42(b) of the Rules.

- the Panel found that Morgan did not breach s.69(e) of the Rules
- the Hearing Panel ordered written submissions on sanction and costs

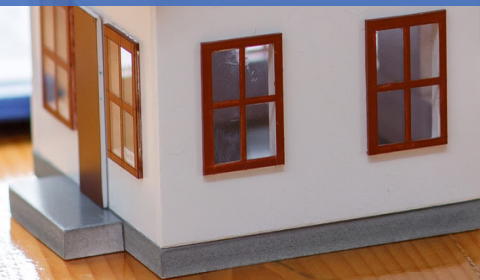
On November 20, 2023, the Hearing Panel ordered:

- the cancellation of Morgan's mortgage associate licence, effective immediately
- Morgan be prohibited from applying for a new licence for three years, beginning August 11, 2023
- Morgan must successfully complete all education requirements before being able to apply for a new licence
- Morgan to pay total fines of \$30,000
- Morgan to pay costs of \$15,620

Appeal

On December 13, 2023, Morgan filed a Notice of Intent to Appeal the Hearing Panel decision.

Appeal Panel Decision



Gagandeep Singh ("Appellant"), Currently not registered

Issues:

The Appellant argued that:

- The Hearing Panel and Investigation were biased;
- The Hearing Panel ought not to have accepted and relied on opinion evidence from a witness called by the Registrar;
- The sanctions imposed by the Hearing Panel were disproportionate to the breaches.

Facts:

- In a Phase 1 decision, dated November 4, 2022, a Hearing Panel found that the Appellant engaged in conduct deserving of sanction for four breaches of s.42(b), and three breaches of s.43(1) of the Rules.
- In February 2023, following submissions by both parties, a Phase 2 decision on Sanction and Costs ordered that:
 - the Registrar shall cancel the Licensee's real estate and mortgage associate licenses
 - the Licensee shall be prohibited from applying for new licenses for ten (10) years from December 1, 2020
 - the Licensee shall be prohibited from applying for new licenses until the Licensee has met the educational requirements, and the examination requirement(s) as at the date the Licensee applies for new licenses
 - the Licensee shall pay a fine \$80,000
 - the Licensee shall pay costs in the amount of \$23,465
- On March 14, 2023, the Appellant provided the Registrar with their Notice of Intent to Appeal the Phase 1 and Phase 2 decisions.
- The Appellant provided written submissions to the Appeal Panel on August 9, 26 and September 5, 2023.
- The Appeal Hearing commenced on August 28, 2023, and was adjourned to September 18, 2023, to allow the Appellant additional time to prepare.
- The Appellant argued that the Hearing Panel was biased. Notably, the Appellant argued that the Phase 1 Hearing and the procedure of having the Registrar's argument presented first without his ability to respond created a bias.
 - The Registrar submitted that the Hearing process is set out within Part 8, s.81 of the REA Bylaws and the Hearing and Appeal Practice Guidelines. There was no evidence that the Hearing Panel deviated from the order set under the Guidelines.

- The Registrar submitted that the Appellant was able to challenge the evidence through cross-examination of witnesses, objections to admission of evidence, and through presentation of his case in response.
- The Appellant argued that the Hearing Panel incorrectly qualified the Registrar's witness on handwriting as an expert.
 - The Registrar submitted that the Hearing Panel heard from expert witnesses called by the Registrar and the Appellant, considered the content of the expert evidence, and provided reasons for choosing to rely on the evidence of the Registrar's expert witness.
- The Appellant argued that the Hearing Panel ordered a sanction that was not in line with previous decisions.
 - The Registrar submitted that the decisions provided for reference by the Appellant did not apply to the Appellant's circumstances nor represent the breaches as found in this matter.
 - The Registrar reiterated that the sanction and costs awarded by the Hearing Panel were based on the Jaswal factors and were deemed appropriate due to the severity of the conduct.

Outcome:

Based on the Facts the Appeal Panel dismissed the Appeal on October 31, 2023.

The Appeal Panel directed the parties to provide written submissions on costs.

The Registrar submitted that costs should be ordered against the Appellant. The Appellant did not provide any submissions on costs.

The Appeal Panel considered the submissions of the Registrar, and determined on January 8, 2024, that no costs would be awarded.

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 Rules s.91(4)

A brokerage's accounting shall be filed with the Council no later than three months after the end of that brokerage's fiscal year.

William Stewart Carstairs,

Real estate broker registered with Best Step Real Estate Services Ltd.

- Carstairs' brokerage fiscal year end was March 31, 2023
- RECA sent numerous reminder emails to the brokerage email address and Carstairs' personal email address reminding them that the required brokerage accounting forms must be filed by June 30, 2023.
- each email reminder gave clear instructions on what forms were required, a link to RECA's website that explained how to access the forms, and a warning that failure to complete the required forms by June 30, 2023, could result in an administrative penalty
- Carstairs filed their brokerage accounting forms on October 1, 2023
- \$1,500

Learning Opportunity

Brokerages provide accounting reports to RECA to ensure trust funds are being properly administered to protect the public and the integrity of the industry. A brokerage must file its accounting with RECA no later than three months after the end of the brokerage's fiscal year. In this case, the broker failed to file the forms by their fiscal year end deadlines despite RECA sending them numerous reminders.

Real Estate Fiscal Year End

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

A real estate licensee must not accept a commission, referral fee or other remuneration except through the brokerage to which they are registered.

Jagseer "Deep" Singh Nirwan,

Real estate associate registered at the time of conduct with Polaris Realty (1995) Ltd. o/a Maxwell Polaris. Currently registered to EXP Realty of Canada Inc. o/a EXP Realty

- in September 2022, Nirwan was working with buyers who were interested in purchasing a property
- Nirwan brought the buyers to see property of a builder
- at the time, the property was listed with another associate registered with Nirwan's brokerage
- Nirwan submitted an offer on behalf of the buyers, which was accepted by the builder
- Nirwan submitted relationship and transaction documents to their brokerage
- in December 2022, a commission cheque for the sale was issued directly to Nirwan from the builder
- Nirwan accepted the cheque which was a trade in real estate outside their registered brokerage
- in February 2023, Nirwan's brokerage asked them to confirm whether they were taking commissions for this property
- Nirwan told the brokerage they were not taking any commissions
- in March 2023, the builder asked Nirwan to return a portion of the commissions as the listing agent wasn't commentated
- Nirwan returned a portion of the commissions to the builder which was then paid to the listing agent's brokerage
- \$3,000

Learning Opportunity

Licensees must ensure that the commissions they receive from a transaction is from the brokerage they are registered with and not any other outside party. In this case, the licensee received a commission from a builder. When asked by their brokerage about the commission the licensee stated they did not receive a commission, which was untrue.

Commissions – Payment from Trust

Referrals – Licence Requirements

Real Estate Act Rules s.41(d)

A real estate licensee must fulfill their fiduciary obligations to their clients.

Rebecca Rae Mayhew,

Real estate associate registered with Canadian Independent Realty Ltd. o/a CIR Realty.

- in March 2022, Mayhew represented a buyer client for the purchase of the property
- Mayhew was aware the property included a titled parking stall
- the buyer intended to make an offer that included the titled parking stall
- Mayhew drafted an offer to purchase and failed to include the titled parking stall
- the buyer found out they did not receive a titled parking stall in the sale
- \$1,500

Mary Virginia Walker,

Real estate associate registered at the time of conduct with Tempo Real Estate Ltd. o/a Royal Lepage Benchmark. Currently registered with 2042599 Alberta Ltd. o/a Royal Lepage Mission Real Estate.

- in June 2022, Walker represented a buyer in a property purchase
- the listing for the property advertised it as having a titled parking stall and noted that it was a smaller stall suitable for a motorcycle
- upon viewing the property, Walker did not view the space that was represented as a parking stall to understand whether the stall met their client's needs
- Walker drafted an offer to purchase that included a titled parking stall
- the parking stall was not a titled parking stall, but rather classified as titled storage space
- Walker failed to adequately review the title and the condo plan prior to drafting the offer
- the purchase contract was accepted and closed
- the buyer found out they did not receive a titled parking stall in the sale
- \$1,500

Learning Opportunity

Licensees must always fulfil their fiduciary obligations to their clients. In these cases, the licensees failed to look out for the best interests of their clients by not ensuring their needs were met and the offers to purchase included the parking stalls that the clients believed they were receiving with their purchase.

Competent Service

Real Estate Act Rules s.58(i)

A real estate licensee who is in a sole agency relationship with a buyer must take reasonable steps to discover relevant facts pertaining to any property for which the buyer is considering making an offer.

Han Thuan Huynh,

Real estate associate registered at the time of conduct with EXP Realty of Canada Inc. o/a EXP Realty. Currently registered with Canadian Independent Realty Ltd. o/a CIR Realty.

- on September 3, 2022, Huynh represented buyers in a property purchase
- Huynh told the buyers there were two underground parking spots that came with the property
- the listing advertised the property as having two titled parking stalls and explained that one parking stall was underground and the other parking stall was above ground
- Huynh failed to adequately review the listing or confirm the location of the parking stalls prior to drafting the offer to purchase
- the purchase contract was accepted and closed
- the buyer found out they did not receive two underground parking stalls in the sale
- \$1,500

Learning Opportunity

Licensees must take reasonable steps to discover relevant facts pertaining to any property for which the buyer is considering making an offer. In this case, the licensee failed to ensure that the buyer knew the exact placement of the parking stalls before drafting the offer to purchase. The buyer found out after that they only received one parking stall underground and the other was above ground.

Competent Service

Real Estate Act Rules s.41(d)

A real estate licensee must fulfill their fiduciary obligations to their clients.

Christine Le,

Real estate broker registered with Real Broker AB Ltd. o/a Real Broker

- in May 2022, Le represented a seller for the sale of a property
- there was a hot tub on the property
- the seller intended to take the hot tub with them and did not want it included as part of the sale
- on June 2, 2022, an offer was accepted by the seller
- Le had discussions with the buyer's agent about the buyers not including the hot tub
- the purchase contract did not document how the hot tub was being handled
- the seller was unable to get the hot tub out of the property prior to possession
- the seller attempted to get the hot tub after possession
- the buyer would not allow the seller to pick up the hot tub
- this issue led to a legal dispute between the seller and buyer
- \$1,500

Learning opportunity
is on page 14

Pedro Villamar,

Real estate associate registered with Twin Oaks Real Estate 1993 Inc. o/a Re/Max House of Real Estate

- in May 2022, Villamar represented a buyer in a property purchase
- there was a hot tub on the property
- Villamar told the seller's agent that the hot tub would not be included in the buyer's offer
- on June 2, 2022, an offer was accepted by the sellers
- the purchase contract did not document how the hot tub was being handled
- the seller believed there was agreement that the hot tub was not part of the sale
- Villamar explained that because the hot tub was not excluded under the purchase contract that the buyer would be keeping it
- on possession day, the seller's agent asked Villamar if the seller could pick the hot tub up after possession date
- Villamar communicated that it should not be a problem
- the buyer believed that the hot tub was included in the sale
- the seller attempted to get the hot tub after possession
- the buyer would not allow the seller to pick up the hot tub and was surprised when the seller showed up
- this issue led to a legal dispute between the seller and buyer
- \$1,500

Learning Opportunity

Licensees must always fulfil their fiduciary obligations to their clients. In these cases, the licensee failed to adequately protect their client's intentions by not ensuring that the purchase contracts documented how the hot tub was being handled in the sales. This led to confusion and legal disputes between the sellers and buyers.

Competent Service

Real Estate Act s.17(c) & 17(d)

No person shall act as a property manager, or advertise himself or herself as, or in any way hold himself or herself out as, a mortgage broker, real estate broker or property manager.

Travis Peter John More,
Not Licensed

- on September 30, 2023, More did not renew their license to act as a Condominium Management Broker
- More also did not renew the More Property Management Inc. brokerage licence
- during October and November 2023, More advertised condominium management services on their website that required a licence, including collecting and holding funds and arranging and supervising repairs and maintenance on behalf of a condominium corporation
- More acknowledged to RECA that they are not licensed and stated they were acting as a condominium property management broker
- More stated they would not cease providing services that require a licence
- \$10,000

Learning Opportunity

Unlicensed persons who provide services that require a licence put consumers at serious risk. Unlicensed persons do not have the required education or errors and omissions insurance. In this case, More provided multiple services they were not authorized to provide and failed to cease providing these services when approached by RECA.

Professional Ethics of
Condominium Managers

Real Estate Act s.17(b)

No person shall deal as a mortgage broker unless that person holds the appropriate licence.

Jayden Issa,
Not Licensed

Administrative Penalty under Appeal

- between September 2021 and July 2022, Issa approached a private lender several times, on behalf of their clients asking them to finance a mortgage for their clients
- Issa provided the private lender with details of the loan, negotiated the terms of the loan, obtained the loan funds through their trust account, and received a fee for their services
- acting on behalf of the borrower and soliciting a person to lend money secured by a mortgage, negotiating a mortgage transaction, and administering a mortgage, requires a mortgage licence
- Issa told RECA in the investigation that they did not negotiate or deal with the private lender in setting up the loans
- Issa stated that they only brought the borrowers to the private lender to explore the possibility of a loan between them
- Issa stated the private lender and the various borrowers set up the deals and Issa provided paralegal services to the private lender
- Issa's statements were not supported by the evidence and demonstrated an intention to deceive
- \$25,000

Learning Opportunity

Unlicensed persons who provide services that require a licence put consumers at serious risk. Unlicensed persons do not have the required education or errors and omissions insurance. Consumers working with unlicensed persons do not receive protection under the Consumer Protection Fund. In this case, Issa provided multiple services to clients that required a licence to deal in mortgages.

Dealing in Mortgages as a Mortgage Broker

A person is writing on a clipboard with a blue pen. The clipboard is on a wooden desk. The background is blurred, showing a person in a blue shirt. 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(d)

A licensee must fulfill their fiduciary duty to their clients.

Mortgage Associate

- during May 2022, the associate assisted a client with obtaining financing for a property
- the client put down \$65,000 deposit and an additional \$10,000 was due upon waiving conditions
- there was a Term Sheet completed for the client from a lender
- this was not a loan commitment
- on June 14, 2022, the associate's client asked them about removing conditions of the purchase
- the associate told their client if they were satisfied with the terms and conditions of the Term Sheet, they could proceed with removing conditions
- the associate failed to caution their client of the risk that a firm commitment was not in place and further information may be required
- if the client waived their financing condition, there was a risk the client would not be able to close on time, or at all
- this was a failure to fulfill the fiduciary duty to their client

Learning Opportunity

Licensees must always fulfil their fiduciary obligations to their clients. In this case, the associate failed to caution their client that a firm commitment was not in place and further information may be required to secure a loan commitment. This put the client at risk that they may not fulfill their obligations by waiving conditions.

Mortgage Associate –
Responsibilities

Competent Service

Real Estate Act Rules s.41(b)

Licensees must provide competent service.

Real Estate Associate

- on January 13, 2023, the associate had permission to bring their buyers for a showing
- the scheduled time for the showing was 2:45 - 3:30 p.m.
- the associate accessed the property by themselves around 2:45 p.m. to turn on lights and prepare for the showing
- the associate left the property to show their buyers other properties
- the associate took the key from the lockbox
- the associate did not have permission to take the key
- another associate was scheduled to show the property at 3:30 p.m.
- there was no key available to access the property and that showing could not take place
- the associate eventually arrived at the property with the buyers at around 4:50 p.m., to view the property
- the associate did not have permission to access the property at this time
- the associate apologized for taking the key
- the property was vacant, and the associate believed there was some flexibility on when their clients could enter the property and that no further showings were occurring that day

Learning Opportunity

Licensees must provide competent service. In this case, the associate did not have permission to take the lockbox key and did not have permission to enter the property after their scheduled showing time. Licensees should never enter a property after their scheduled viewing time unless they have permission to do so.

Competent Service

Real Estate Act Rules s.41(b)

Licensees must provide competent service.

Real Estate Associate Broker

- during August 2021, the associate broker represented the sellers of a property
- when measuring and calculating the Residential Measurement Size (RMS) size of the property, the associate broker made an error in converting the above grade size
- this led to overstating the above grade size of the property
- the associate broker advertised the property as 335.5 m²
- the above grade size of the property was closer to 312.55 m²
- this was a difference of 23 m², or 247 ft²

Learning Opportunity

Licensees are expected to be competent in their services, including ensuring they measure properties using RMS or engage third parties to measure properties using RMS. The RMS guidelines offer a consistent way to represent the above ground size of a property for interested parties to accurately compare properties. In this case, the licensee failed to advertise the size of a property according to the RMS, potentially misleading buyers.

[Guide to Residential Measurement Standard in Alberta](#)

RECA Management

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

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