

THE REAL ESTATE COUNCIL OF ALBERTA

Case Number: 013581
Name on Licence: Michael Robert Holmes
Licence Type & Class: Condominium Management Broker
Brokerage Name on Licence: Larlyn Property Management Limited
Process: Section 39 & 83 of the *Real Estate Act*

Document: ADMINISTRATIVE PENALTY
Penalty: \$15,000.00

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: Michael Robert Holmes

The Registrar of the Real Estate Council of Alberta (RECA) has determined there is sufficient evidence you have contravened **section 25(1)(d) of the *Real Estate Act*** and this is conduct deserving of sanction.

Section 25(1): A licensee who is required by the rules to keep and operate a trust account shall:

(d) disburse money received or held in trust in respect of a property management service, dealing or trade in the business of the licensee only in accordance with the rules and with the terms of the trust governing the use of that money.

Particulars of the contravention(s):

1. In and around July 2022, you failed to disburse money held in trust in accordance with the rules and terms of trust, contrary to section 25(1)(d) of the *Real Estate Act*:
 - a) You were providing condominium management services to a Condominium Corporation. You held funds in trust on behalf of the Condominium Corporation in an operating account and a reserve account.
 - b) The Management Agreement you entered with the Condominium Corporation had a specific prohibition that funds collected for reserve fund purposes could not be used to pay operational expenses. The *Condominium Property Act* also imposes restrictions on reserve funds and how those funds may be used.
 - c) Around May 2022, the Condominium Board gave notice of termination. You believed this meant the Condominium Corporation owed you management fees for the remaining term of the Management Agreement.
 - d) The Board disputed the amount they owed you. On June 30, 2022, a Board member sent you an email stating that you were not authorized to collect the remaining fees owed under the Management Agreement.
 - e) On July 28, 2022, you transferred \$14,408.63 from the Condominium Corporation's reserve fund account to their operating account. You then transferred that amount to your brokerage account for management fees owed to the brokerage.
 - f) The terms of trust governing the reserve fund did not allow reserve funds to be used for this purpose. This was a failure to disburse funds held in trust only in accordance with the terms of trust governing those funds. This was in contravention of section 25(1)(d) of the *Real Estate Act*.

The Registrar considered the following aggravating factors:

Aggravating Factors

- This was a misuse of reserve funds that was prohibited by the Management Agreement and the *Condominium Property Act*.
- The amount disbursed was substantial and was to the direct benefit of the brokerage. This was a serious abuse of the brokerage's role as trustee.
- You disregarded direct instructions from the Board not to take the brokerage fees you believed you were owed.
- You have failed to take responsibility for this misconduct.

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: [C.S], Investigator
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 January 31, 2023.

"Signature"

Warren Martinson, Registrar
Real Estate Council of Alberta