

IN THE MATTER OF the *Real Estate Act*, R.S.A. 2000 c. R-5

**AND IN THE MATTER OF Garey Kirkland, real estate broker, registered to
Simco Management (Calgary) Inc. at all material times**

INTRODUCTION

1. The Executive Director of the Real Estate Council of Alberta (hereinafter "RECA") conducted an investigation into whether or not the conduct of Garey Kirkland (hereinafter "Mr. Kirkland"), real estate broker, registered with Simco Management (Calgary) Inc. at all material times, is deserving of sanction and/or whether or not he breached the requirements of the *Real Estate Act* (hereinafter "Act") or the Rules prescribed pursuant thereto (hereinafter the "Rules").
2. The Executive Director and Mr. Kirkland agree to resolve all matters against Mr. Kirkland on the terms and conditions set out herein.

AGREED STATEMENT OF FACTS

3. Mr. Kirkland has no prior disciplinary history.
4. Mr. Kirkland is a property manager and has been licensed since May 13, 1986.
5. Simco Management (Calgary) Inc. (hereinafter "Simco Management") is a property management company and is licensed as a real estate brokerage with RECA.
6. Mr. Kirkland is the Broker of Simco Management.
7. D.G. commenced her employment as a Property Manager with Simco Management on or about June 17, 2005.
8. Prior to commencing her employment with Simco Management, D.G. was licensed with RECA and authorized to trade in real estate.
9. The *Real Estate Act* requires industry members to be authorized to trade in real estate before performing activities that amount to trading in real estate.

10. The *Real Estate Act Rules*, which are made pursuant to the *Real Estate Act*, require industry members to have a license to trade in real estate and to also be registered to a real estate brokerage in order to be authorized to trade in real estate.
11. Upon D.G.'s commencement of employment, Simco Management failed to immediately register her authorization with RECA.
12. Simco Management realized that D.G.'s registration with the brokerage was not in place with RECA and sent her application for registration to RECA which was processed on or about September 13, 2005. At this same time, Simco Management also sent in an application for D.G.'s registration so that she could be registered for the 2005/2006 licensing year effective September 30, 2005.
13. Simco Management did not check with RECA to ensure that as of October 1, 2005, D.G.'s registration was in place. All licensees are advised that they must check this before trading in real estate.
14. D.G. was licensed with RECA while registered with Simco Management from September 13, 2005 to September 30, 2005 and from October 24, 2005 to February 3, 2006. From June 17, 2005 to September 12, 2005 and from October 1, 2005 to October 23, 2005, D.G. was not authorized to trade in real estate due to her registration not being in place. During these dates, she was employed with Simco Management.
15. During the period of time where D.G. was employed with Simco Management but not authorized to trade in real estate, she performed the following duties that required her to have an authorization to trade in real estate:
 - Sending letters to tenants of properties that were managed by Simco Management identifying herself as a Property Manager/Agent. These letters to tenants included her advising tenants to keep their yards clean, her advising tenants of their requirement to pay their rent on time, her advising a tenant that he had permission to have a free standing satellite on the property, her notifying tenants that Simco Management would be entering premises in order to inspect if repairs were necessary, her advising tenants that the owners were terminating the tenants' lease.
 - Conducting Move In and Move Out reports verifying the state of the property upon a tenant taking possession of a property and the condition of the property upon the tenant moving out of the property

- Sending letters to owners of properties that Simco Management was hoping to manage enclosing draft copies of Management and Lease Agreements for the owners' review. In these letters, D.G. identified herself as a Property Manager/Agent.
16. D.G. was interviewed during the RECA investigation and advised that she was never aware that for periods of her employment with Simco Management she was not authorized to trade in real estate.
 17. B.G. was an employee of Simco Management. She was licensed with RECA and registered to trade in real estate with Simco Management from August 31, 2006 to August 15, 2007.
 18. From May 1, 2006 to August 30, 2006, .G. was employed with Simco Management but not authorized to trade in real estate. At no time during this period did she hold a license to trade in real estate. During this period, she performed the following duties:
 - She signed Offer to Leases on behalf of the management of Simco Management
 - She conducted Move In inspections when a tenant moved into a property and signed off on the Move In report conducted by Simco Management
 - She conducted Move out inspections when a tenant moved out of a property and signed off on the Move out Report
 - She corresponded with an owner of the property that was managed by Simco Management which included her seeking directions from the owner as to how he wanted a property rented out and requesting of the owner to cancel advertising ads for the property
 19. On or about May 30, 2006, B.G. showed a property owned by a client of Simco Management to potential tenants.
 20. The duties performed by B.G. described herein in paragraph 18 and 19 required B.G. to have an authorization to trade in real estate.

CONCLUSION

21. By reason of the matters described herein, Garey Kirkland's conduct is deserving of sanction in that he:

- a) Failed to properly and competently supervise the activities of Simco Management, the real estate brokerage to which he was the broker, contrary to section 21(1)(e) of the *Real Estate Act Rules* (as they then were, in effect from October 1, 1999 to September 30, 2006), by:
- Failing to ensure the registration of D.G. was in place with RECA from June 17, 2005 to September 12, 2005, June 17, 2005 being the date that D.G. commenced her employment, and thereby allowing D.G. to trade in real estate when she did not have an authorization to do so;
 - Failing to ensure the registration of D.G. was in place with RECA from October 1, 2005 to October 23, 2005, and thereby allowing D.G. to trade in real estate during this period when she did not have an authorization to do so; and
- b) Delegated, assigned, requested, directed or allowed B.G., an unlicensed or unregistered assistant to perform tasks that must only be performed by an industry member, contrary to section 6(e) of the *Code of Conduct* (as it then was, in effect from October 1, 1999 to September 30, 2006), by:
- Allowing B.G. to undertake activities that required her to have an authorization to trade in real estate when he was aware that she was not authorized to trade in real estate;

SETTLEMENT TERMS

23. It is agreed that the following mitigating factors are relevant to the assessment of fines in this case:

- (i) Garey Kirkland cooperated fully with the investigation;
- (ii) Garey Kirkland admitted to the conduct;
- (iii) There is no evidence of actual injury to the public;

24. It is further agreed that the following aggravating factors are relevant to the assessment of fines in this case:

- (i) Licensing is the means by which RECA obtains jurisdiction and without jurisdiction there can be no regulation of conduct;
- (ii) Having employees who were not authorized to trade in real estate but who were still performing functions that required them to have

an authorization to trade in real estate had the potential to leave clients of Simco Management exposed to liability;

- (iii) This conduct was unfair to clients of Simco Management who used the services of the brokerage with the belief that the brokerage and its employees were properly licensed with RECA.

25. In settlement of the foregoing contraventions, it is agreed that the fines for each breach and contravention are assessed as follows:

17(a) <i>Real Estate Act</i> in respect of D.G.	\$2500
6(e) <i>Code of Conduct</i> in respect of B.G.	\$1500

Total	\$4000
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26. Garey Kirkland also agrees to pay costs in the amount of **\$500.00**.

27. Garey Kirkland agrees to complete, within 6 months of the ratification of this Consent Agreement, the Real Estate Brokerage course which is part of the Real Estate Brokers Program offered by AREA or a similar course at the sole discretion of the Executive Director.

28. Garey Kirkland acknowledges that he has been given an opportunity to seek the advice of legal counsel and acknowledges that he is agreeing to the terms of settlement of his own free will.

29. Garey Kirkland is aware that a copy of this Consent Agreement will be placed on his file and may be reviewed and considered in any future disciplinary proceedings.

30. Garey Kirkland is aware that the Real Estate Council of Alberta may publish the contents of this Consent Agreement.

31. Garey Kirkland hereby waives any rights he may have under the *Real Estate Act* or other legislation or otherwise to a review, hearing, appeal, or other judicial proceeding involving the matter referred to herein.

32. These settlement terms are intended to resolve all matters described herein and, subject to the approval of the Hearing Panel, the Executive Director will take no further action under the *Real Estate Act* or before the courts in this regard.

IN WITNESS WHEREOF the undersigned agrees and accepts the terms and conditions of this settlement this 7 day of May, 2010.

Signed and delivered)
In the presence of)
)
)
)
T.B.)
Witness to the signature)
of Garey Kirkland)

GAREY KIRKLAND

The Executive Director recommends to the Hearing Panel the proposed terms of settlement based on the Agreed Statement of Facts.

REAL ESTATE COUNCIL OF ALBERTA

V.H.
Witness to the signature
Of Bob Myroniuk

Per: *Bob Myroniuk*
Executive Director

Recommendation Approved _____ X _____
Recommendation Denied _____

DATED at the City of Calgary, in the Province of Alberta this 25 day of May, 2010.

REAL ESTATE COUNCIL OF ALBERTA

Per: *Wayne McAlister*
Hearing Panel Chairperson

AFFIDAVIT OF EXECUTION

CANADA)	I, T.B. of
)	
PROVINCE OF ALBERTA)	the City of Calgary, in the Province of
)	Alberta
)	
TO WIT:)	MAKE OATH AND SAY:

1. THAT I was personally present and did see Garey Kirkland, named in the annexed instrument, who is personally known to me to be the person named therein, duly sign and execute the same for the purpose named therein.

2. THAT the same was executed at the City of Calgary, in the Province of Alberta, and that I am the subscribing witness thereto.

3. THAT I know the said party and he is in my belief of the full age of eighteen years.

SWORN BEFORE ME at the City)	
of Calgary, in the Province of)	
Alberta this 7 day of)	
May 7, 2010.)	
)	
)	<i>T.B.</i>
)	(signature of witness)
)	
)	
<i>A.D.</i>)	
A Commissioner for Oaths in and)	
for the Province of Alberta)	