

REAL ESTATE COUNCIL OF ALBERTA

NOTICE OF ADMINISTRATIVE PENALTY

**To: Donna Cheryl Oberik, Real Estate Associate
Formerly registered with Cowboy Trail Realty Ltd., now unregistered
Box 209, Water Valley, Alberta
T0M 2E0**

In accordance with section 83 and the Bylaws of the *Real Estate Act* RSA 2000 c R-5, (Act), the Executive Director of the Real Estate Council of Alberta (RECA) is of the opinion that Donna Cheryl Oberik has contravened Section 4(d) of the *Code of Conduct*, (as it then was, in force from October 1, 1999 to September 30, 2006) and hereby assesses an Administrative Penalty in the amount of **\$3,000.00**. The evidence giving rise to the Executive Director's decision is as follows:

During the fall of 2005, you decided to sell a parcel of land that was part of a larger property you owned, to Mrs. J.C. You did not enter into a listing agreement with a real estate brokerage concerning the sale of the parcel as your intention was to sell it privately.

On or about October 5, 2005 you drafted a contract concerning the sale of the parcel to Ms. C. for the sum of \$131,000.00 (the "First Contract"). You wrote at the top of the contract "For Sale by Owner". You also wrote "Buyer is not a client. Lawyer to look after buyer. This is a for sale by owner. Seller is licenced. No commission" at section 11.5 of the contract form.

Ms. C. signed the First Contract on October 5, 2005 and subsequently learned she would have a greater likelihood of being approved for financing if she were purchasing a property with a house already on it.

On hearing this, you drafted a second contract (the "Second Contract") for the same parcel. In it you described the parcel as including "a car, port, refrigerator, stove, dishwasher, hot water tank and furnace" to indicate the transaction included a home. You also increased the total purchase price in the Second Contract to \$225,000.00 to account for the value of the house you represented was on the land. You had no intention of selling Ms. C. a parcel of land that included a home as you were aware that she had already purchased a modular home that was ready to go on the land once her purchase of the land was finalized.

You again wrote on the top of the Second Contract "For Sale by Owner" and "Buyer is not a client. Lawyer to look after buyer. Buyer aware seller is a licenced Agent. No commission in effect" at section 11.5 of the Second Contract.

Ms. C. signed the Second Contract on November 5, 2005.

On January 6, 2006 you drafted an Amendment to the Second Contract increasing the purchase price from \$225,000.00 to \$238,000.00. Ms. C. signed the Amendment on that same date.

Subsequently, you and Ms. C. relied upon legal counsel to draft a further Amendment which you considered inappropriate and refused to sign.

The relationship between you and Ms. C. broke down and in February of 2006 you retained your own legal counsel.

Upon retaining your own legal counsel, you were advised that the Second Contract as detailed above was fraudulent. After becoming aware of this, a final Amendment (the "Final Amendment") was drafted by counsel and signed by you and Ms. C. on February 24, 2006. The Final Amendment amended the First Contract and confirmed the purchase price for the parcel was \$131,000.00. The Final Amendment additionally stated it and the First Contract "replace and supersede any and all other agreements made between the parties".

The Executive Director is of the opinion that the above noted conduct is in violation of section 4(d) of the *Code of Conduct* which sets out that:

- 4 Industry members must not make representations or carry on conduct that is reckless or intentional and that misleads or deceives any person or is likely to do so. This includes the following:
 - (d) An industry member shall not participate in the creation of any contract, document or form of communication that the member knows or ought to know is false or misleading.

In accordance with section 83 of the Act and Part 4 of the Bylaws, the Executive Director hereby assesses an Administrative Penalty in the amount of **\$3,000.00** against you.

The circumstances of this matter indicate the following aggravating and mitigating factors were considered:

Aggravating Factors

- The creation of a purchase contract that does not accurately portray what is being purchased is an extremely serious matter.

- You have a previous disciplinary history with RECA. On July 9, 2004, you were issued an Advisory Note reminding you that an industry member must not knowingly or recklessly make any representations in the course of advertising or marketing properties or mortgages that are untrue in any material respect.

Mitigating Factors

- You took action to invalidate the Second Contract after learning it was fraudulent.
- There is no evidence that these documents were submitted to the lenders

Payment of this Administrative Penalty shall be accepted by the Executive Director as complete satisfaction of the amount of the penalty and no further proceedings under Part 6 of the *Act* will be taken against you in respect of the contravention. A person who pays an Administrative Penalty may not be charged under the *Act* with an offence in respect of those contraventions.

This sum of **\$3,000.00** is payable to RECA within thirty (30) days of the date of issuance of this Notice of Administrative Penalty. If you fail to pay the amount set out in this notice, the Executive Director may commence legal action against you to recover the amount owing in respect of the Administrative Penalty as a debt due to RECA.

If you dispute this Notice of Administrative Penalty in accordance with section 83.1 of the *Act*, you may appeal it to a Hearing Panel. You will be given a full opportunity consistent with procedural fairness and natural justice to present evidence before the Hearing Panel and make representations in relation to the contravention.

If you have any questions about this Notice of Administrative Penalty, please contact Jason Lothian, Legal Counsel, at RECA.

DATED this 27th day of November, 2013.

REAL ESTATE COUNCIL OF ALBERTA

Per: *Charles Stevenson*, for

Bob Myroniuk
Executive Director