

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

**AND IN THE MATTER OF Marion Hedrick, real estate agent registered
with Calgary Independent Realty Ltd. o/a C.I.R.**

INTRODUCTION

1. The Executive Director of the Real Estate Council of Alberta conducted an investigation into whether the conduct of Marion Hedrick, real estate agent registered with Calgary Independent Realty o/a C.I.R. ("**C.I.R.**"), is deserving of sanction and/or whether she breached the requirements of the *Real Estate Act* (the "**Act**") or the Rules prescribed pursuant thereto (the "**Rules**") or the Code of Conduct prescribed pursuant thereto (the "**Code of Conduct**").
2. The Executive Director and Marion Hedrick agree to resolve all matters against Marion Hedrick on the terms and conditions set out herein.

AGREED STATEMENT OF FACTS

3. Marion Hedrick ("**Hedrick**") was, at all material times, registered with C.I.R. as a real estate agent.
4. On or about September 7, 2003, Mr. C. W. and Mrs. M. W. (collectively, "**Mr. and Mrs. W.**") entered into a listing contract with C.I.R., with Hedrick listed as their agent, for the sale of their condominium located at 2844 Dovely Park S.E., Calgary, Alberta (the "**Property**"). The expiry date of this contract was December 7, 2003. Ultimately, the Property was not sold by that date.
5. On or about December 9, 2003, Mr. and Mrs. W. entered into an exclusive listing contract with C.I.R. respecting the Property (the "**Exclusive Listing Contract**"). The Exclusive Listing Contract was to expire on December 30, 2003, and stated that the listing price was to be \$103,000, with commissions payable of \$7,000 plus G.S.T.
6. On or about December 9, 2003 (the same date the Exclusive Listing Contract was signed), Hedrick entered into a purchase contract with Mr. and Mrs. W. to purchase the Property for her personal residence (the "**Hedrick Purchase Contract**"). The Hedrick Purchase Contract included a purchase price of \$103,000, and was conditional only on Hedrick obtaining financing in the amount of \$97,850 on or before December 16, 2003. The closing date of the Hedrick Purchase Contract was listed as December 20, 2003.

7. Pursuant to the Hedrick Purchase Contract, Hedrick paid a \$1,000 deposit at the time of signing, with an additional \$1,000 to be paid upon removal of the financing condition. The remaining monies represented the balance owing to make up the \$103,000 purchase price.
8. Hedrick told Mr. and Mrs. W. that she was planning on borrowing the down payment monies required under the Hedrick Purchase Contract from a friend, and would then pay the friend back from her commissions earned on this transaction.
9. Between Thursday, December 11, 2003, and Friday, December 12, 2003, Hedrick telephoned Mr. and Mrs. W. and informed them that her down payment appeared to be in place, although this would not be finalized until on or about Sunday, December 14, 2003. Because of this, Hedrick informed Mr. and Mrs. W. that they should begin looking for a new place to rent.
10. Relying on the information provided to them by Hedrick, Mr. and Mrs. W. proceeded to locate a rental property. On or about Saturday, December 13, 2003, they paid non-refundable first month's rent and damage deposit on a new rental property.
11. On or about Friday, December 12, 2003, Hedrick discussed her potential purchase of the Property with her friend, Mrs. G. T. ("**Mrs. T.**"), and asked Mrs. T. at that time for a loan of several thousand dollars for the down payment. Mrs. T. indicated that she might be interested in helping Hedrick, but on Sunday, December 14, 2003, she informed Hedrick that she would not help with the loan.
12. On or about Monday, December 15, 2003, Hedrick went to the Property and informed Mr. and Mrs. W. that she did not get the down payment after all, and the deal would therefore not be proceeding. At this time, Hedrick presented Mr. and Mrs. W. with a mutual general release (the "**Mutual General Release**") and advised them to sign it. Hedrick did not explain to Mr. and Mrs. W. the nature of this document, nor did she advise them that they had a right to independent advice prior to signing it. It was only after Hedrick left with the signed Mutual General Release that Mr. and Mrs. W. realized its effect.
13. On or about Monday, December 15, 2003, Mr. and Mrs. W. entered into a purchase contract respecting the Property with Mrs. T. Mrs. T. did not use Hedrick as her agent, but instead employed a different agent, who was also her friend. Although C.I.R. and Mr. and Mrs. W. had signed the Exclusive Listing Contract respecting the Property, no actions were subsequently made to recover any possible commissions owing to C.I.R.
14. Hedrick never made any formal applications with a mortgage broker or lending institution for financing relating to the Property, as she did not have sufficient monies for the down payment. Hedrick had planned to meet with a mortgage broker on Monday, December 15, 2003 (one day prior to the financing condition date), after Mrs. T. had confirmed that she would lend Hedrick the down payment monies.

15. Mr. and Mrs. W. were unaware as to the exact nature of Hedrick's financing, but they thought the down payment was somehow coming from the commissions that Hedrick would earn on this transaction.
16. At no time did Hedrick suggest to Mr. and Mrs. W. that they obtain independent advice from a lawyer or any third party in respect of any aspect of this transaction.
17. At no time did Hedrick inform Mr. and Mrs. W. that she had made no formal mortgage application relating to the purchase of the Property.
18. At no time did Hedrick disclose to Mr. and Mrs. W. that this transaction was solely dependent on the personal loan from Mrs. T.

CONCLUSION

19. By reason of the matters described herein, Marion Hedrick's conduct is deserving of sanction in that she:
 - (a) Failed to fulfill her fiduciary duties to her clients by not acting in their best interests, contrary to s. 2(a) of the Code of Conduct, by:
 - Not fully explaining the true nature of her financing to Mr. and Mrs. W., who were ultimately unaware that the entire transaction hinged on Hedrick receiving a personal loan from a single individual for the down payment prior to even attempting to obtain financing for the Property.
 - Advising Mr. and Mrs. W. to sign the Mutual General Release when it may not have been in their best interest to do so. Mr. and Mrs. W. may have had recourse to the deposits held in trust and should have been advised of this.
 - Advising Mr. and Mrs. W. to begin looking for a place to rent prior to Hedrick obtaining financing relating to her purchase of the Property.
 - (b) Failed to fulfill her fiduciary duties to her clients by not disclosing all relevant information to her clients, contrary to s. 2(e) of the Code of Conduct, by:
 - Not fully explaining the true nature of her financing to Mr. and Mrs. W., who were ultimately unaware that the entire transaction hinged on Hedrick receiving a personal loan from a single individual for the down payment prior to even attempting to obtain financing for the Property.
 - (c) Failed to fulfill her fiduciary duties to her clients by not providing them with an opportunity to obtain independent advice, contrary to s. 2(m) of the Code of Conduct, by:

- Failing to disclose the conflict of interest that had arisen when Hedrick entered into a trade with her clients, and not giving them a reasonable opportunity to obtain independent advice respecting this trade.
 - Advising her clients to sign the Mutual General Release without advising them to obtain independent advice, legal or otherwise, as to the nature of the document and its effect on their rights.
- (d) Proceeded in a transaction knowing her role as an industry member was unclear to the parties affected, contrary to s. 3(a) of the Code of Conduct, by:
- Proceeding to act in the transaction with Mr. and Mrs. W. without disclosing the conflict of interest to her clients, thereby creating a situation where Hedrick's role as an industry member was unclear to her clients.

SETTLEMENT TERMS

21. In settlement of these issues, Marion Hedrick will pay immediately to the Real Estate Council of Alberta a fine in the amount of \$3000, together with costs in the amount of \$500.
22. Marion Hedrick agrees that as a condition of her authorization to trade in real estate, she will, within six (6) months of the ratification of this Consent Agreement by the Hearing Panel, successfully complete the Ethical Practice in Real Estate course offered by the Alberta Real Estate Association, or a similar course at the sole discretion of the Executive Director. The credits obtained in the courses will not be applied to the mandatory education course credits required by the Real Estate Council of Alberta.
23. Marion Hedrick acknowledges that she has been given an opportunity to seek the advice of legal counsel and acknowledges that he is agreeing to the terms of settlement of her own free will.
24. Marion Hedrick is aware that a copy of this Consent Agreement will be placed on her file and may be reviewed and considered in any future disciplinary proceedings.
25. Marion Hedrick is aware the Real Estate Council of Alberta may publish the contents of this Consent Agreement.
26. Marion Hedrick hereby waives any rights she may have under the Act or otherwise to a review, hearing, appeal or other judicial proceeding involving the matter referred to herein.

27. 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 Act or before the courts in this regard.

IN WITNESS WHEREOF the undersigned agree and accept the terms and conditions of this settlement this 17 day of November, 2006.

Signed and delivered)
in the presence of)

"S.W.")
Witness to the signature)
of Marion Hedrick)

"Marion Hedrick"
MARION HEDRICK

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**

"C.D."
Witness to the signature
of Bob Myroniuk

Per: "Bob Myroniuk"
Bob Myroniuk
Executive Director

Recommendation Approved ✓

Recommendation Denied _____

DATED at the City of Calgary, in the Province of Alberta this 17th day of December, 2006.

**REAL ESTATE COUNCIL OF
ALBERTA**

Per: "Eric Stewart"
Hearing Panel Chairperson

AFFIDAVIT OF EXECUTION

CANADA)	I, <u>S.W.</u> of
)	
PROVINCE OF ALBERTA)	the City of <u>Calgary</u> , in the Province of
)	Alberta
)	
TO WIT:)	MAKE OATH AND SAY:

1. THAT I was personally present and did see Marion Hedrick, 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 she 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 17 day of)
November, 2006.)

) "S.W."
) (signature of witness)
)
)

) "V.W."
)
) A Commissioner for Oaths in and
) for the Province of Alberta