

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

**AND IN THE MATTER OF Teresa Westlund, real estate agent registered
with Zaytsoff Realty (Strathmore) Ltd. o/a Re/Max Realty Horizon**

INTRODUCTION

1. The Executive Director of the Real Estate Council of Alberta conducted an investigation into whether the conduct of Teresa Westlund, real estate agent registered with Zaytsoff Realty (Strathmore) Ltd. o/a Re/Max Realty Horizon ("**Re/Max**"), 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 Teresa Westlund agree to resolve all matters against Teresa Westlund on the terms and conditions set out herein.

AGREED STATEMENT OF FACTS

3. Teresa Westlund ("**Westlund**") was, at all material times, registered with Re/Max as a real estate agent.
4. In or about May, 2002, T.N. , an owner of Character Developments Inc. ("**Character**"), a builder in Strathmore, Alberta, approached Westlund regarding an opportunity to purchase an undeveloped lot in Strathmore. Character had recently won the right to build on several lots in a new subdivision in Strathmore from a developer, and T.N. inquired as to whether or not Westlund would be interesting in purchasing a premium lot that backed on to a canal area. T.N. was familiar with Westlund, as Westlund had previously represented Character in several transactions.
5. On or about May 23, 2002, Westlund's husband, K.W. , offered to purchase, and Character agreed to sell, a bare lot located in Strathmore and described in the purchase contract as "Phase 1E Hillview lot 3 located on canal – fully serviced lot" (the "**Property**") (the "**Purchase Contract**").
6. The Purchase Contract indicated a purchase price for the Property of \$72,500, consisting of a \$1000 deposit, \$52,500 new financing, and a balance owing of \$19,000. In addition, the Purchase Contract indicated a completion day of September 1, 2002 (the "**Closing Date**").

7. Westlund was listed as the representative for both the buyer and the seller in the Initial Purchase Contract.
8. According to an arrangement made between T.N. and his wife, C.N. (collectively, the " N.'s ") and the W.'s , no actual deposit monies ever changed hands between the parties pursuant to the Purchase Contract.
9. According to an arrangement made between the N.'s and the W.'s , the Closing Date was artificial. Neither the buyer nor the seller had any intention of the contractual obligations contained in the Initial Purchase Contract being fulfilled on or before the Closing Date. It was the intention of the parties that the Purchase Contract never be a binding agreement, and that they would one day enter into a separate purchase contract respecting the Property.
10. Even though the Initial Purchase Contract stated that \$52,500 was to come by way of new financing, the W.'s had not applied for this financing by the Closing Date. Notwithstanding this, K.W. delivered a notice to the N.'s on or about June 15, 2002 that indicated that the financing condition had been waived or satisfied, and that the transaction was now a "firm sale".
11. Although the Initial Purchase Contract indicated that Westlund was acting as agent for both the buyer and the seller of the Property, Westlund did not discuss her role as a dual agent with the N.'s . In addition, Westlund did not have the parties execute a written dual agency disclosure.
12. Pursuant to a legal arrangement, the parties ultimately agreed to release each other from their obligations under any contract between them.

CONCLUSION

13. By reason of the matters described herein, Teresa Westlund's conduct is deserving of sanction in that she:
 - (a) Participated in the creation of a contract, document or form of communication that she knew or ought to know was false or misleading, contrary to s. 4(d) of the Code of Conduct, by:
 - Creating a purchase contract that included a closing date of September 1, 2002, when she knew that the parties had no intention of fulfilling, or even attempting to fulfill, the obligations contained in the Initial Purchase Contract on or before this date.
 - Creating a purchase contract that included a financing condition, when she knew that the buyer had no intention of applying for financing for the Property by the condition date.

- Creating a purchase contract that included a \$1000 deposit when she knew that any deposit cheque was not meant to be cashed prior to the Closing Date.
- (b) Proceeded in a real estate transaction knowing that her role as an industry member was unclear to the parties effected, contrary to s. 3(a) of the Code of Conduct, by:
- Creating a purchase contract that indicated that she was the agent for the seller when she knew that the seller of the Property was confused as to the nature of her role as its representative. The N.'s believed that this contract was similar to all of Character's previous dealings with Westlund where she acted as their representative.
- (c) Acting for more than one party in a transaction without full disclosure to all parties, and without a dual agency agreement in writing, contrary to s. 3(b) of the Code of Conduct, by:
- Creating a purchase contract that indicated that she was the representative for both the buyer and the seller without having any parties execute a written dual agency agreement.

SETTLEMENT TERMS

14. In settlement of these issues, Teresa Westlund 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.
15. Teresa Westlund 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 Professional Responsibility 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.
16. Teresa Westlund 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.
17. Teresa Westlund 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.

18. Teresa Westlund is aware the Real Estate Council of Alberta may publish the contents of this Consent Agreement.
19. Teresa Westlund 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.
20. 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 2 day of OCT, 2006.

Signed and delivered
in the presence of

"A.M."

Witness to the signature
of Teresa Westlund

"Teresa Westlund"

TERESA WESTLUND

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**

"G.S."

Witness to the signature
of Bob Myroniuk
G.S.

Per. "Bob Myroniuk"

Bob Myroniuk
Executive Director

Recommendation Approved

✓

Recommendation Denied

DATED at the City of Calgary, In the Province of Alberta this 23rd day of NOVEMBER, 2006.

**REAL ESTATE COUNCIL OF
ALBERTA**

Per: "Bev Andre"

Hearing Panel Chairperson

AFFIDAVIT OF EXECUTION

CANADA) I, A.M. _____ of
)
PROVINCE OF ALBERTA) ^{Town} the City of STRATHMORE, in the Province of
) Alberta
)
TO WIT:) MAKE OATH AND SAY:

1. THAT I was personally present and did see Teresa Westlund, 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 ^{Town} City of STRATHMORE, 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 ^{Town} City
of STRATHMORE, in the Province of
Alberta this 02 day of
OCTOBER, 2006.

"A.M."
(signature of witness)

"L.D."

A Commissioner for Oaths in and
for the Province of Alberta