

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

AND IN THE MATTER OF Prem Dave, then real estate agent registered with Northside Holdings Inc. o/a Re/Max Real Estate North and now associate broker registered with 4th Street Holdings Ltd. o/a Re/Max Real Estate (Central)

INTRODUCTION

1. The Executive Director of the Real Estate Council of Alberta conducted an investigation into whether the conduct of Prem Dave, then real estate agent registered with Northside Holdings Inc. o/a Re/Max Real Estate North ("**Re/Max North**") and now associate broker registered with 4th Street Holdings Ltd. o/a Re/Max Real Estate (Central) ("**Re/Max Central**"), is deserving of sanction and/or whether he 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 Prem Dave agree to resolve all matters against Prem Dave on the terms and conditions set out herein.

AGREED STATEMENT OF FACTS

3. Prem Dave ("**Dave**") was, at all relevant times, registered with Re/Max North as a real estate agent. Dave is currently registered with Re/Max Central as an associate broker.

3737 Douglas Ridge Way

4. In or about August, 2002, Mr. and Mrs. R. listed their property, located at 3737 Douglas Ridge Way, Calgary, Alberta (the "**Douglasdale Property**"), for sale with Re/Max North. Dave was the listing agent. The Douglasdale Property was originally listed for \$239,900.
5. After approximately three weeks, the list price of the Douglasdale Property was reduced to \$234,900.
6. On or about December 29, 2002, a purchase contract was signed in relation to the Douglasdale Property, with Mrs. R. as seller, and Mr. and Mrs. F. as buyers. The purchase contract indicated a sale price of \$234,900, with \$211,410 to come by way of new financing.

7. On or about January 15, 2003, Mrs. R. signed an Irrevocable Assignment of Sale Proceeds in favour Dream Big Inc., a corporation owned by Dave's son, S.D. [redacted], who was also a licensed real estate agent. This money was to eventually be used towards the purchase of a different property.
8. On or about January 31, 2003, closing statements were prepared by a solicitor relating to the sale of the Douglasdale Property. The statement indicates that \$22,496.82 was received directly by Mr. and Mrs. R. from the purchaser of the Douglasdale Property. In addition, a separate statement prepared by the solicitor evidences that \$12,488.12 was paid out of trust directly to Dream Big. Inc.
9. Pursuant to an arrangement known to Dave, the Douglasdale Property was ultimately sold for the amount of the mortgage only. No deposit monies or cash to close were ever paid in this transaction. Dave also knew that the purchasers, Mr. and Mrs. F., would not be living in this property. According to Dave, he participated in this arrangement to assist his clients who were in financial need at the time.
10. On or about March 18, 2003, title of the Douglasdale Property was transferred from Mr. and Mrs. F. to CanLanka Ventures Ltd. Dave had previously referred CanLanka Ventures Ltd. to Mr. and Mrs. F.'s agent, and Dave received a further \$1000 for this referral.

197 West Lakeview Place, Chestermere

11. Prior to the sale of the Douglasdale Property, Mr. and Mrs. R. had moved into a property that was being purchased by Mr. S., a friend S.D. [redacted]. This property was located at 197 West Lakeview Place, Chestermere, Alberta ("**197 West Lakeview**").
12. Mr. S. signed a purchase contract for 197 West Lakeview on or about November 26, 2002. Pursuant to this purchase, Dave assisted Mr. S. in obtaining a high ratio, CMHC insured mortgage for this property. Title was transferred into Mr. S.'s name on or about December 23, 2002, and the high ratio mortgage was registered on title at that time.
13. It is a condition of obtaining a CMHC insured mortgage that the mortgaged property be occupied by the owner. Mr. S. never intended to occupy, and in fact, never occupied, 197 West Lakeview.
14. Dave admits that the circumstances surrounding this purchase seemed to be similar to those of the sale of the Douglasdale Property, with no down payment being exchanged between buyer and seller. Dave knew that, ultimately, this property was being controlled by his son, S.D. [redacted], and that Mr. S. had no real involvement with it.

15. On or about December 15, 2002, Mr. and Mrs. R. moved into 197 West Lakeview. At this time, Dave had them sign a "Tenancy at Will" Agreement. The Tenancy at Will Agreement stated that Mr. and Mrs. R. would take possession of 197 West Lakeview prior to the payment of purchase monies by them to Mr. S. in respect of 197 West Lakeview, pursuant to an Offer to Purchase and Interim Agreement made between Mr. and Mrs. R. and Mr. S.
16. Mr. and Mrs. R. and Mr. S. had never signed an offer to purchase with respect to 197 West Lakeview. At the time Mr. and Mrs. R. moved into 197 West Lakeview, it was not yet owned by Mr. S.
17. It was the understanding of both Dave and Mr. and Mrs. R. that 197 West Lakeview Place would some day be transferred into Mr. and Mrs. R.'s name. However, no contract was ever created to reflect this agreement.
18. During the approximately 6 months that Mr. and Mrs. R. lived at 197 West Lakeview, they only made two rental payments to Dave.
19. Dave deposited his own money into Mr. S.'s bank account to pay the mortgage on 197 West Lakeview.
20. Dave did not provide any documentation to his brokerage relating to his property management activities of 197 West Lakeview.
21. On or about June 16, 2003, title of 197 West Lakeview was transferred from Mr. S. to a purchaser of the property. Prior to the transfer, Mr. S. had signed an Irrevocable Assignment of Sale Proceeds in favour of Dave. Dave personally received approximately \$16,000 from the sale of 197 West Lakeview.

201 West Lakeview Place, Chestermere

22. On or about January 9, 2003, a purchase contract was signed respecting 201 West Lakeview Place, Chestermere, Alberta ("**201 West Lakeview**"). Dream Big Inc. was listed as buyer, and the builder of the property was the seller. The purchase price was \$259,900.
23. On or about April 29, 2003, the property was transferred to Mr. S., with an indicated consideration of \$305,000. A high ratio mortgage was registered on title.
24. Dave assisted Mr. S. in obtaining the high ratio mortgage for this property, even though he knew that Mr. S. had no intention of occupying it. Dave referred Mr. S. to a different mortgage agent for this property than he did for 197 West Lakeview. Dave knew that, ultimately, this property was being controlled by his son, [REDACTED] S.D., and that Mr. S. had no real involvement with it.

25. In or about May, 2003, Mr. and Mrs. R. moved from 197 West Lakeview to 201 West Lakeview. At the time they moved in, Dave did not have them execute any sort of tenancy agreement or any other rental documents.
26. From May, 2003 until October, 2003, Dave made the mortgage payments on 201 West Lakeview, notwithstanding that he was not the registered owner of this property.
27. On or about October 16, 2003, the title of 201 West Lakeview was transferred from Mr. S. to PSVD Ventures Inc., a corporation owned by Dave, for nominal consideration. PSVD assumed Mr. S.'s high ratio mortgage. No money changed hands between parties with respect to this transaction.
28. During the approximately 18 months that Mr. and Mrs. R. lived in 201 West Lakeview, they paid no rent to Dave or anyone else.
29. On or about November 17, 2004, Dave served a Termination of Tenancy Notice on Mr. and Mrs. R. The Notice stated that Mr. and Mrs. R. had not paid any rent in 14 months.

CONCLUSION

30. By reason of the matters described herein, Prem Dave's conduct is deserving of sanction in that he:
 - (a) Participated in fraudulent or unlawful activities in connection with real estate or mortgage transactions, contrary to s. 7(c) of the Code of Conduct, by:
 - Participating in a scheme pursuant to which 3737 Douglas Ridge Way was sold for the amount of the mortgage only. Dave was aware that no down payment or cash to close would be exchanged between the parties.
 - Assisting Mr. S. in obtaining high-ratio financing for 197 West Lakeview, when Dave knew that Mr. S. would not be occupying the property. Dave knew that this property was ultimately controlled by his son, S.D. . Dave made the mortgage payments on this property by depositing money in Mr. S.'s bank account, and Dave personally received all proceeds from the sale of this property.
 - Assisting Mr. S. in obtaining high-ratio financing for 201 West Lakeview, when Dave knew that Mr. S. would not be occupying the property. Dave knew that this property was ultimately controlled by his son, S.D. . Dave made mortgage payments on this property,

and the property was eventually transferred to a corporation wholly owned by Dave for nominal consideration.

- (b) Participated in the creation of a contract, document or form of communication that he knew or ought to have known was false or misleading, contrary to s. 4(d) of the Code of Conduct, by:
- Requiring that Mr. and Mrs. R. sign a "Tenancy at Will Agreement" for 197 West Lakeview that indicated that Mr. and Mrs. R and Mr. S. had signed a purchase contract with respect to this property, when, in fact, they had not.
- (c) Participated in the creation of any contract or document that he knew or ought to have known is not legally binding, confusing or did not reflect any agreements already in place, contrary to s. 6(c) of the Code of Conduct, by:
- Requiring that Mr. and Mrs. R. sign a "Tenancy at Will Agreement" for 197 West Lakeview that did not accurately reflect the understanding of the parties that Mr. and Mrs. R. would be using the money paid as rent, along with the sale proceeds from the Douglasdale Property (which had previously been transferred from Mrs. R. to Dream Big Inc.) towards the purchase of this property.
- (d) Failed to provide all documentation or trade records required under the Rules to his broker, contrary to s. 23(e) of the Rules, by:
- Failing to provide his brokerage with the Tenancy at Will Agreement, or any other document, respecting his property management of 197 West Lakeview Place.
 - Failing to provide his brokerage with documents relating to his corporation's purchase of 201 West Lakeview Place.
- (e) Failed to keep his broker informed of the activities being performed by him on behalf of the brokerage, contrary to s. 23(f) of the Rules, by:
- Failing to inform his broker of his property management activities regarding 197 West Lakeview Place.
 - Failing to inform his broker of his property management activities regarding 201 West Lakeview Place.

SETTLEMENT TERMS

31. In settlement of these issues, Prem Dave will pay immediately to the Real Estate Council of Alberta a fine in the amount of \$5000, together with costs in the amount of \$1000.
32. Prem Dave agrees that his authorization to trade in real estate shall be suspended for a period of four (4) months, such suspension to begin upon ratification of this Consent Agreement. Prem Dave shall not be re-authorized to trade in real estate until he has paid all fines and costs as required by this Consent Agreement.
33. Prem Dave agrees that as a condition of his authorization to trade in real estate, he will, within six (6) months of the ratification of this Consent Agreement by the Hearing Panel, successfully complete both the Mortgage Fraud Awareness and Professional Responsibility courses offered by the Alberta Real Estate Association, or a similar course or courses 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.
34. Prem Dave 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.
35. Prem Dave 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.
36. Prem Dave is aware the Real Estate Council of Alberta may publish the contents of this Consent Agreement.
37. Prem Dave hereby waives any rights he may have under the Act or otherwise to a review, hearing, appeal or other judicial proceeding involving the matter referred to herein.
38. 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 August, 2006.

Signed and delivered
in the presence of

"C.S."

Witness to the signature
of Prem Dave

"Prem Dave"

PREM DAVE

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

"N.S."

Witness to the signature
of Bob Myroniuk

Per:

"K.B."

Bob Myroniuk
Executive Director

Recommendation Approved

Recommendation Denied

DATED at the City of Calgary, in the Province of Alberta this 14th day of Sept, 2006.

REAL ESTATE COUNCIL OF
ALBERTA

Per:

"Bev Andre"

Hearing Panel Chairperson

8