

THE REAL ESTATE COUNCIL OF ALBERTA

IN THE MATTER OF s. 39(1)(b) and s. 41 of the
Real Estate Act, R.S.A. 2000, c. R-5

AND IN THE MATTER OF a Hearing concerning the conduct of Elspeth Kirk,
Broker, registered with Arrakis Associates Inc. o/a Homelife Cityscape Real Estate
and Mark Pullin, Agent, registered with Arrakis Associates Inc. o/a Homelife
Cityscape Real Estate ("Homelife") at all times material to this matter.

HEARING DATE:	September 27, 2004 Telephone Conference
HEARING PANEL MEMBERS:	Patrick Rudiger, Chair Richard Campos Darrell Cook
APPEARING:	Monica Burman for the Executive Director Mark Pullin and Elspeth Kirk acting on their own behalf
ATTENDING:	Leanne M. Boon as Hearing Secretary

DECISION

WHEREAS the Executive Director of the Real Estate Council of Alberta has, pursuant to the Act, conducted an investigation in respect to the Industry Members and appointed a Hearing Panel as a result of such investigation;

AND WHEREAS an Notice of Hearing has been issued by the Executive Director setting forth certain matters by which it is claimed the Industry Members have carried on activities contrary to the provisions of the Real Estate Act;

AND WHEREAS the Industry Members signed off on the Notice of Hearing. By so doing, agreeing to their breaches of the Act.

FINDINGS

PRELIMINARY

1. The Hearing Panel is duly constituted and a quorum was present at all material times during the Hearing and has jurisdiction in this matter.
2. The Notice of Hearing was accepted by the Industry Members as having been duly served.
3. Elspeth Kirk and Mark Pullin were at all material times Industry Members and subject to the provisions of the Act and the Code of Conduct.
4. The Investigator in this matter was duly appointed.
5. The Industry Members have been afforded the opportunity to seek legal counsel and have elected to not be represented at the Hearing.

CONCLUSION

The Admission of Conduct Deserving of Sanction and Conclusions of Breach have been entered into by the Industry Members without receiving independent legal advice. However, they satisfied the Hearing Panel that they have not acted under duress, understood the nature and implications of the matter in question and therefore the Hearing Panel finds the said Industry Members, Elspeth Kirk and Mark Pullin, have conducted themselves in such a manner to be deserving of sanction in respect to the charges set out in the Notice of Hearing.

That the Admission of Conduct Deserving of Sanction be annexed hereto as Appendix "A".

The Representative for the Executive Director made representations to the Hearing Panel in respect of sanctions.

The Representative for the Executive Director made representations and provided information on two (2) cases in support of the submissions for penalty and costs. In the Representative's submission the Representative acknowledged that there were differences in the cases. The breaches related to similar sections of the Code of Conduct.

The Industry Members made representations in respect to the matter, agreeing the Listing Agreement did not **truly** represent the facts. However, they emphasized that no harm was done or intended to the public, and the motivation for their actions were to obtain award points.

SANCTIONS

The Hearing Panel notes from the Admission of Conduct Deserving of Sanction and comments in the Hearing that Mark Pullin admitted to his breach, and Elspeth Kirk's lack of taking action as Broker when becoming aware of the matter. Both Industry Members are found to be in breach of the Code of Conduct and The Real Estate Act.

As a result of their actions in this matter, the Panel orders as follows:

1. That the Industry Member, Mark Pullin, will successfully complete the New Home Sales of Real Estate Industry Members Course offered by AREA; or a similar course at the sole discretion of the Executive Director with six (6) months. The credits obtained in the course will not be applied to the Mandatory Education Course credits required by RECA.
2. That the Industry Member, Elspeth Kirk, will successfully complete the New Home Sales of Real Estate Industry Members Course offered by AREA; or a similar course at the sole discretion of the Executive Director with six (6) months. The credits obtained in the course will not be applied to the Mandatory Education Course credits required by RECA.

3. The Monetary Fine of \$3,500 jointly, was rejected by the Hearing Panel due to the cooperation and remorse expressed by the Industry Members, and also the fact that the Public was not harmed by their actions.

4. The recommended Assessment of Costs was upheld by the Hearing Panel in the amount of \$1,000 to be paid jointly by Mark Pullin and Elspeth Kirk.

DATED this 14 day of October, 2004.

"Patrick Rudiger"

Patrick Rudiger, Chair

"Richard Campos"

Richard Campos

"Darrell Cook"

Darrell Cook

Appendix "A"

IN THE MATTER OF THE *REAL ESTATE ACT*, s.46, R.S.A. 2000, c. R-5

AND IN THE MATTER OF Elspeth Kirk, Broker,
Broker, registered at all material times hereto with Arrakis Associate Inc. o/a
Homelife Cityscape Real Estate, Brokerage and Mark Pullin, Agent, registered at
all material times hereto with Arrakis Associate Inc. o/a Homelife Cityscape Real
Estate.

ADMISSION OF CONDUCT DESERVING OF SANCTION

1. Elspeth Kirk and Mark Pullin acknowledge that they have been given an opportunity to seek the advice of legal counsel and acknowledge that they agree to sign the Admission of Conduct Deserving of Sanction document of their own free will.
2. Elspeth Kirk and Mark Pullin admit to the allegations of fact and breach(s) of provisions of the *Real Estate Act*, Rules and Code of Conduct as contained in the Notice of Hearing attached as Schedule "A" hereto and admit that their conduct in this regard is conduct deserving of sanction.

DATED this 22nd day of September 2004.

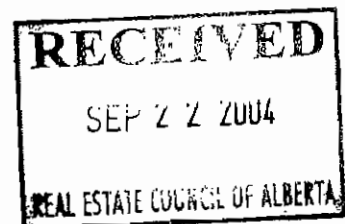
Signed and delivered
in the presence of

"S.N."
Witness to the signature
of Elspeth Kirk

"Elspeth Kirk"
Elspeth Kirk

"S.N."
Witness to the signature
of Mark Pullin

"Mark Pullin"
Mark Pullin



AFFIDAVIT OF EXECUTION

CANADA

I, S.N. _____ Of
(name of witness),

PROVINCE OF ALBERTA

the Calgary, in the Province of Alberta

TO WIT:

MAKE OATH AND SAY:

1. THAT I was personally present and did see Elspeth Kirk 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.

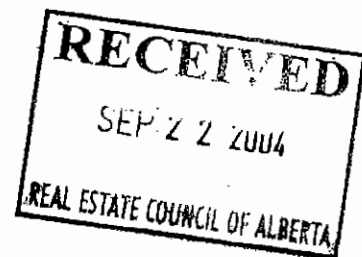
SWORN BEFORE ME at the City
of Calgary, in the Province of
Alberta this 22nd day of
SEPTEMBER 2004.

"W.K." _____

A Commissioner for Oaths in
and for the Province of Alberta

"S.N." _____

(signature of witness)



AFFIDAVIT OF EXECUTION

CANADA

I, S.N. Of
(name of witness),

PROVINCE OF ALBERTA

the Calgary, in the Province of Alberta

TO WIT:

MAKE OATH AND SAY:

1. THAT I was personally present and did see Mark Pullin 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.

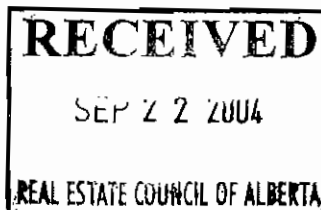
SWORN BEFORE ME at the City
of Calgary, in the Province of
Alberta this 22ND day of
SEPTEMBER 2004.

"W.K."

A Commissioner for Oaths in
and for the Province of Alberta

"S.N."

(signature of witness)



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NOTICE OF HEARING

TO: Elspeth Kirk, Broker
c/o Homelife Cityscape Real Estate
#3, 1010 1st Avenue NE
Calgary, Alberta T3A 4G4

AND TO: Mark Pullin, Agent
c/o Homelife Cityscape Real Estate
#3, 1010 1st Avenue NE
Calgary, Alberta T3A 4G4

TAKE NOTICE that you are both required to attend before a Hearing Panel at the Real Estate Council of Alberta, located at 340 2424 4th Street SW, Calgary, Alberta, for a one-day Hearing in relation to the allegations stated below commencing at 8:30 a.m. on Tuesday, September, 2004.

AND TAKE NOTICE that you will be required to answer the following allegations:

1. **THAT** in or around December, 2000, contrary to section 4(d) of the Code of Conduct you, Mark Pullin ("Pullin") participated in the creation of a contract that you knew or ought to have known was false or misleading when you drafted a Listing Agreement with K.W. and L.W. (the W.'s) and entered it on the Calgary Real Estate Board (CREB) MLS system, all of which was for the sole purpose of accumulating CREB medallion points and for no other reason.

This is conduct deserving of sanction, particulars of which include the following:

- (a) On or about December 28, 2000, after a Construction Agreement had been entered into between your clients the W.'s and Jaymack Custom Home Builders (the "Builder"), on your own initiative, you created a Listing Agreement between Homelife Cityscape Real Estate ("Homelife") and the W.'s . The Listing

Agreement showed there was a house for sale on lot #11 Hawkamore Trail RR2 for \$399,000 and you approached the W.'s to sign the Listing Agreement. The Listing Agreement was signed by them on the same day.

- (b) You drafted the Listing Agreement because you wanted points towards the CREB medallion program. This motivation was communicated to the W.'s .
 - (c) The W.'s signed the listing agreement, even though they had no intention of selling the property and only on your request to collect CREB medallion points.
 - (d) Your broker, Elspeth Kirk, was aware of the Listing Agreement and that it was drafted for you to collect CREB medallion points. He agreed to it.
 - (e) On or about December 29, 2000 the Listing was posted by you on the CREB MLS system. The listing was shown as sold the next day, December 30, 2000.
 - (f) There never was an intention to sell the property described in the Listing Agreement by the W.'s and in fact, there never was a sale of the property in question.
2. That in December 2002, contrary to Rule 21(2)(a) and Rule 21(2)(b), you, Elspeth Kirk ("Kirk") failed to take reasonable steps to deal with a real estate agent's misconduct when you became aware of his misconduct.

This is conduct deserving of sanction, particulars of which include the following:

- (a) In or around December 2003, you became aware that Mr. Pullin had participated in the creation of a contract that he knew or ought to have known was false or misleading when he drafted a Listing Agreement with the W.'s to collect CREB medallion points.

AND TAKE FURTHER NOTICE that the Hearing Panel may make one or more orders outlined in section 43 of the *Real Estate Act*, including, but not limited to: an Order canceling or suspending any authorization issued to you, as an Industry Member, by the Council; an Order requiring you to pay a fine; and, an Order that you pay the costs of the Hearing.

AND TAKE FURTHER NOTICE that the following Hearing Panel members will hear the allegations against you, and the evidence in support of same:

1. Patrick J. Rudiger;
2. Richard D. Campos;
3. Darrell W. Cook;
4. Kenneth H. Green (alternate).

If you have any objections to the composition of the Hearing Panel, you must notify the Real Estate Council of Alberta of your objections, together with the reasons for your objections, within 14 days of receipt of this Notice of Hearing. If you fail to object to the composition of the Hearing Panel within 14 days, the proposed Hearing Panel will hear the charges against you.

AND TAKE FURTHER NOTICE that oral and or written submissions will be made before the Hearing Panel. If you fail to attend at the Hearing, the Hearing Panel will hear the case in your absence and make a decision.

DATED at the City of Calgary, in the Province of Alberta, this _____ day of August, 2004.

REAL ESTATE COUNCIL OF ALBERTA

Per: _____
Bob Myroniuk
Executive Director