

17-0000

IN THE MATTER OF THE *Real Estate Act*, S.A. 1995, c. R- 4.5

**AND IN THE MATTER OF MARY BROOKES, AGENT,
REGISTERED WITH CLASSIC REAL ESTATE LTD.**

INTRODUCTION

1. The Executive Director of the Real Estate Council of Alberta conducted an investigation into whether the conduct of Mary Brookes (hereinafter "Ms. Brookes"), Agent, registered with Classic Real Estate Ltd., is deserving of sanction and/or whether she breached the requirements of the *Real Estate Act* (hereinafter "the Act") or the Rules prescribed pursuant thereto (hereinafter "the Rules") or the Code of Conduct prescribed pursuant thereto (hereinafter "the Code of Conduct").
2. The Executive Director and Ms. Brookes agree to resolve all matters against Ms. Brookes on the terms and conditions set out herein.

AGREED STATEMENT OF FACTS

3. On September 15, 2000, M.D. and L.D. (hereinafter "the D.'s ") listed their mobile home with Ms. Brookes, an Agent with Classic Real Estate Ltd.
 - (a) Under clause 9.3 of the listing contract, the provision concerning mortgage assumption was ticked "no". The parties agree that there was not much discussion concerning this provision at the time the listing agreement was signed.
 - (b) The provision under clause 9.3 concerning whether the mortgage was CMHC-insured was also ticked "no", notwithstanding that this was not the case.
4. In January 2001, B.W. , an Agent with Classic Real Estate Ltd., submitted a purchase contract to P.O. , the broker of Classic Real Estate Ltd., acting on behalf of Ms. Brookes who was on holidays, to present to the D.'s .
 - (a) The contract listed B.W. and his wife, C.W. [("W.'s")] as purchasers. While B.W.'s position as a licensed agent was noted in the purchase contract, his position as an agent with the brokerage in question, Classic Real Estate Ltd., was not also disclosed in writing.

- (b) The contract provided for a purchase price of \$133,500, to be paid by assumption of the D.'s \$110,000 mortgage and \$23,500 in the form of a second mortgage supplied by an individual named R.B.
 - (c) The D.'s were informed about the secondary financing but not the identity of R.B.
 - (d) The D.'s initially accepted the offer, but later withdrew their acceptance upon learning from their lawyer the risks of allowing their CMHC mortgage to be assumed.
 - (e) An attempt to salvage the deal by having both the W.'s and Realty World Classic indemnify the D.'s in the case of any losses connected with the mortgage assumption fell through, as Realty World Classic was not prepared to enter into such an arrangement.
 - (f) The W.'s released the D.'s from the contract without penalty.
5. In February 2001, Ms. Brookes submitted a new offer to the D.'s with R.B. named as purchaser. B.W. was identified as R.B.'s agent.
- (a) The contract provided for a purchase price of \$133,500, with a \$2,000 initial deposit, \$113,475 in new financing, and \$18,025 owing.
 - Negotiations concerning the purchase price apparently commenced with an offer by R.B. of \$128,000. While the amount of the subsequent counteroffers are unclear, the amount of \$133,500 was eventually settled on.
 - (b) Upon noticing B.W.'s designation as purchaser's agent, the D.'s asked Ms. Brookes if R.B. had been given information about the first offer.
 - Ms. Brookes advised the D.'s that this was not the case. Ms. Brookes stated that she did not ask B.W. what, if anything, he told R.B. and that she assumed he would not say anything relating to the price because of the dual agency situation.
 - B.W. stated Ms. Brookes did ask him whether R.B. was aware of the original purchase price and that he had said "no." B.W. did not remember whether this conversation occurred before or after negotiations were completed.

- B.W. stated further that, "Some time after this, [Brookes inquiry] I realized I was in error and informed M.A.B. (the new owner of the brokerage) that R.B. had to have known what the price was because he was the potential holder of the second mortgage."
 - (c) Prior to the purchase, B.W. made arrangements with R.B. to rent the property until such time as he would assume the mortgage and take title, which arrangements were not disclosed to the D.'s. B.W.'s intended mortgage assumption and purchase did not materialize.
 - (d) The D.'s discovered upon closing that B.W. was moving into the property and believed they had been deceived as to the role of R.B. and the identity of the true purchaser.
6. In the February 2001 purchase contract between R.B. and the D.'s :
- (a) Clause 13.2, concerning the length of time the offer or counteroffer was open, was not completed.
 - (b) The D.'s signatures had not been witnessed.

CONCLUSION

7. By reason of the matters described herein, Ms. Brookes' conduct is deserving of sanction in that she breached Code of Conduct section 6(a), failure to render competent service by:
- (a) failing to appreciate a conflict of interest situation;
 - (b) neglecting to verify whether a potential conflict of interest situation existed when requested to do so by her clients;
 - (c) improperly completing, and failing to explain the consequences of, a listing contract; and,
 - (d) failing to ensure proper completion of a purchase contract.

SETTLEMENT TERMS

8. In settlement of these issues, Ms. Brookes will pay immediately to the Real Estate Council of Alberta a fine in the amount of \$2,000.00, together with costs in the amount of \$500.00.

9. Ms. Brookes agrees that as a condition of her authorization to trade in real estate, she will, within six (6) months of ratification of this 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 course will not be applied to the mandatory education course credits required by RECA.
10. Ms. Brookes acknowledges that she has been given an opportunity to seek the advice of legal counsel and acknowledges that she is agreeing to the terms of settlement of her own free will.
11. Ms. Brookes is aware that a copy of the Consent Agreement will be placed on her file and may be reviewed and considered in any future disciplinary proceedings.
12. Ms. Brookes is aware the Real Estate Council of Alberta may publish the contents of this Consent Agreement.
13. Ms. Brookes 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.
14. 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 5th day of August, 2003.

Signed and delivered
in the presence of

"N.P."

Witness to the signature
of Mary Brookes

"Mary Brookes"

MARY BROOKES

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

"S.C." _____

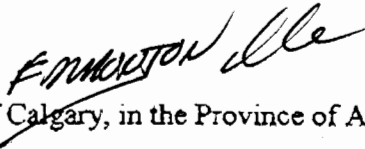
Witness to the signature
of Bob Myroniuk

Per: "Bob Myroniuk" _____

Bob Myroniuk
Executive Director

Recommendation Approved  _____

Recommendation Denied _____


DATED at the City of Calgary, in the Province of Alberta this 21 day of Jan., 2003.

REAL ESTATE COUNCIL OF ALBERTA

Per: "Lorne Clark" _____

Hearing Panel Chairperson

AFFIDAVIT OF EXECUTION

CANADA) I, N.P. _____ of
) (name of witness),
 PROVINCE OF ALBERTA) the City of Fort McMurray, in the Province of Alberta,
)
 TO WIT:) MAKE OATH AND SAY:

1. THAT I was personally present and did see Mary Brookes 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 in the City of Fort McMurray 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 in the City
 of McMurray in the Province of
 Alberta this 5 day of
Aug, 2003.

"N.P."

(Signature of Witness)

"D.B."

 A Commissioner for Oaths in and
 for the Province of Alberta