

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

**AND IN THE MATTER OF LYNN CLEGG, BROKER,  
REGISTERED WITH MORTGAGES ETC CORPORATION**

**INTRODUCTION**

1. The Executive Director of the Real Estate Council of Alberta conducted an investigation into whether the conduct of Lynn Clegg (hereinafter "Ms. Clegg"), Broker, registered with Mortgages Etc Corporation, 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. Clegg agree to resolve all matters against Ms. Clegg on the terms and conditions set out herein.

**AGREED STATEMENT OF FACTS**

3. Ms. Clegg was initially licenced as a mortgage broker in January 1999, and has been a broker for Mortgages Etc Corporation since February 1999. Ms. Clegg has previous employment experience as a mortgage representative for a bank.
4. On January 17, 2001, M.H. listed her property at 616-15 Avenue N.E. with Ms. Clegg, then with Century 21, for the amount of \$169,900.
  - (a) At the time of listing, M.H. held a mortgage with MCAP in the amount of approximately \$124,000 for this property.
  - (b) A second mortgage was obtained in March in the approximate amount of \$9,000.
5. On January 20, 2001, M.H. entered into a contract with Carolina Homes to purchase 15894 Everstone Road S.W. ("Everstone") for \$149,760, subject to mortgage approval from MCAP Mortgage Corp. ("MCAP") within 15 days, and sale of her property on or before March 8, 2001. M.H. paid an initial deposit of \$1,000.
  - (a) Ms. Clegg received a referral fee of \$3,500 from Carolina Homes for this transaction when M.H.'s purchase became unconditional.
  - (b) According to a Carolina Homes representative, once a real estate agent introduces a buyer, Carolina deals directly with the buyer. He stated that Ms. Clegg was involved with the financing, but the house dealings were with

M.H. The documents support that M.H. dealt directly with Carolina Homes.

6. M.H. and Ms. Clegg entered into a business arrangement, whereby it was agreed that M.H. would work on Ms. Clegg's website and do other administrative tasks in return for a reduction of Ms. Clegg's real estate fees. M.H. also lent Ms. Clegg \$500 to advertise M.H. house. These transactions were not clearly documented. The parties' commission arrangement was also not clearly documented.
7. In February, 2001, M.H. was unsuccessful in two attempts to obtain mortgage financing:
  - (a) On February 12<sup>th</sup>, she received preliminary approval for a mortgage from MCAP, subject to terms. MCAP subsequently declined her application.
  - (b) On February 21<sup>st</sup>, she received preliminary approval for a mortgage from Firstline Mortgages, subject to terms. Firstline subsequently declined her application.
8. On February 28, 2001, M.H. removed conditions on her purchase of Everstone.
9. On March 12, 2001, Ms. Clegg referred M.H. to Private Lender Inc. for a second mortgage on 616-15 Avenue N.E. to enable M.H. to make a further deposit on Everstone. Private Lender Inc. provided M.H. with a second mortgage in the amount of \$9,000, which M.H. used to make a further deposit of \$6,500 to Carolina Homes on April 19, 2001.
10. On March 25, 2001, Ms. Clegg transferred to Royal LePage. The previous listing of 616-15 Avenue N.E. with Century 21 was terminated and the property was relisted with Royal LePage for \$168,880. The property was later reduced in price as follows:
  - (a) On April 20<sup>th</sup> to \$159,900.
  - (b) On May 8<sup>th</sup> to \$157,500 [the related amendment to the MLS printout was not signed until May 10<sup>th</sup>, and the evidence shows that the change was made by Ms. Clegg prior to written authorization].
  - (c) On May 21<sup>st</sup> to \$153,500.
  - (d) On May 31<sup>st</sup> to \$145,000.
11. On May 25, 2001, M.H. signed a revised First Line Mortgage application, with a revised Schedule of Terms. Firstline later declined this application.
12. On June 3, 2001, M.H. executed Purchase Contract 09367 for the sale of 616-15 Avenue N.E.. The sale price was \$140,000. The completion date was set at June 15<sup>th</sup>.

The financing condition of June 8<sup>th</sup> was waived shortly thereafter. Ms. Clegg acted for both parties, without first obtaining written approval of dual agency representation from the buyer.

13. During the period of these transactions, M.H. failed to make minimum payments on credit cards and earned R4 credit ratings. On June 13, 2001, Ms. Clegg requested that M.H. write a letter concerning her credit history, which M.H. did.
14. On June 18, 2001, Ms. Clegg obtained preliminary mortgage approval from Bridgewater Financial Services, with terms. The application indicated a downpayment/equity amount of \$22,807 (representing approximately 15%).
15. On June 20<sup>th</sup>, M.H. applied to Private Lender Inc. for a second mortgage of \$20,000 on Everstone. This funding was intended to constitute the downpayment for the Bridgewater mortgage.
16. On June 26, 2001, Bridgewater Financial Services issued a second version of its June 18<sup>th</sup> Mortgage Approval document with a revised Schedule A, indicating insurance status as "approved". Bridgewater later declined the mortgage application.
  - (a) Because unfunded applications are not kept for longer than 3 months, it is unclear whether Bridgewater declined financing because of M.H. R-4 ratings or because it had learned of the second mortgage. Bridgewater did state that it may grant first mortgage funds with a second mortgage in cases where the client has at least 25% down; however, it would typically encourage a client to go with a larger first, funded by Bridgewater, as opposed to a first and second.
  - (b) CMHC confirmed that insurance was approved for the Bridgewater financing. However, it was told that downpayment funds were from the sale of M.H.'s property, and stated it would not have approved insurance had it been aware of the secondary financing.
17. On July 1, 2001, M.H. wrote MCAP requesting portability of her current mortgage. M.H. also wrote to Carolina Homes that she had fired Clegg and would be obtaining financing from TD Canada Trust. M.H. wrote to TD Canada Trust concerning financing (she was not successful).
18. On July 3, 2001, M.H. wrote to Ms. Clegg terminating their relationship and advising that she was still attempting to obtain mortgage financing.

## CONCLUSION

1. By reason of the matters described herein, Ms. Clegg's conduct is deserving of sanction in that she:
  - (a) committed one count of breach of section 4(d) of the Code of Conduct by creating a document that she knew or ought to have known was false or misleading. Ms. Clegg facilitated misleading activity to obtain a mortgage by representing on Bridgewater Financial Services documents that the Private Lender Inc. second mortgage constituted valid downpayment.

## SETTLEMENT TERMS

2. In settlement of these issues, Ms. Clegg will pay immediately to the Real Estate Council of Alberta a fine in the amount of \$1,500.00, together with costs in the amount of \$500.00.
3. Ms. Clegg 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 Principles and Professional Standards" course offered by the Real Estate Institute of Canada, 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.
4. Ms. Clegg 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.
5. Ms. Clegg 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.
6. Ms. Clegg is aware the Real Estate Council of Alberta may publish the contents of this Consent Agreement.
7. Ms. Clegg 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.
8. 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.

Please note p. 4  
has been reprinted  
as there was an  
error on the  
original p. 4.

## CONCLUSION

19. By reason of the matters described herein, Ms. Clegg's conduct is deserving of sanction in that she:
- (a) committed one count of breach of section 4(c) of the Code of Conduct by creating a document that she knew or ought to have known was false or misleading. Ms. Clegg facilitated misleading activity to obtain a mortgage by representing on Bridgewater Financial Services documents that the Private Lender Inc. second mortgage constituted valid downpayment.

## SETTLEMENT TERMS

20. In settlement of these issues, Ms. Clegg will pay immediately to the Real Estate Council of Alberta a fine in the amount of \$1,500.00, together with costs in the amount of \$500.00.
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26. 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.

original

IN WITNESS WHEREOF the undersigned agree and accept the terms and conditions of this settlement this 3 day of Sept, 2003.

Signed and delivered  
in the presence of

"P.L."

Witness to the signature  
of Lynn Clegg

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)  
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"Lynn Clegg"  
LYNN CLEGG

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

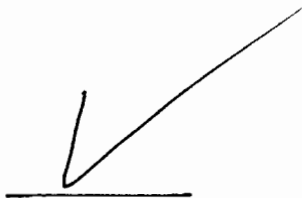
"A.K."

Witness to the signature  
of Bob Myroniuk

Per: "Bob Myroniuk"

Bob Myroniuk  
Executive Director

Recommendation Approved



Recommendation Denied

*EDMONTON*  
DATED at the City of ~~Calgary~~, in the Province of Alberta this 25 day of Sept, 2003.

REAL ESTATE COUNCIL OF ALBERTA

Per: "Lorne Clark"

Hearing Panel Chairperson

**AFFIDAVIT OF EXECUTION**

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

1. THAT I was personally present and did see Lynn Clegg 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 3 day of )  
September, 2003. )

"P.L."

(Signature of Witness)

"R.H." )  
 A Commissioner for Oaths in and )  
 for the Province of Alberta )