

**AND IN THE MATTER OF BRAD WHITE, 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 Brad White (hereinafter "Mr. White"), Agent, registered with Classic Real Estate Ltd., is deserving of sanction and/or whether he 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 Mr. White agree to resolve all matters against Mr. White 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 agent M.B. , of Classic Real Estate Ltd.
4. In January 2001, Mr. White submitted a purchase contract to P.O. , acting on behalf of M.B. who was on holidays, to present to the D.'s .
 - (a) The contract listed Mr. White and his wife, C.W. , as purchasers. While Mr. White'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 Whites 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 Whites released the D.'s from the contract without penalty.
5. In February 2001, M.B. submitted a new offer to the D.'s with R.B. named as purchaser. Mr. White 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 Mr. White's designation as purchaser's agent, the M.B. asked D.'s if R.B. had been given information about the first offer.
 - M.B. advised the D.'s that this was not the case. M.B. stated that she did not ask Mr. White 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.
 - Mr. White stated M.B. did ask him whether R.B. was aware of the original purchase price and that he had said "no." Mr. White did not remember whether this conversation occurred before or after negotiations were completed.
 - Mr. White stated further that, "Some time after this, [M.B.'s inquiry] I realized I was in error and informed M.A.B. (the new owner of the brokerage) that M.B. had to have known what the price was because he was the potential holder of the second mortgage."
 - (c) Prior to the purchase, Mr. White 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. Mr. White's intended mortgage assumption and purchase did not materialize.

- (d) The D.'s discovered upon closing that Mr. White 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.
- Mr. White related that, as a matter of practice, he does not complete this clause, and did not realize this was a problem.
- (b) Mr. White pre-signed as a witness for R.B.'s wife, who did not end up signing as co-purchaser.
- Mr. White stated that he thought it was fine to witness a signature without being present when the individual signed. Mr. White also stated that he often completes "witness faxes", where contracts are faxed off to be signed and he later witnesses the signature(s).
- (c) No dual agency disclosure form was signed by R.B.
- Mr. White stated that he believes he discussed the issue with R.B., but does not recall if he had R.B. sign a dual agency disclosure form.

CONCLUSION

7. By reason of the matters described herein, Mr. White's conduct is deserving of sanction in that he committed the following breaches:
- (a) two counts of breach of Code of Conduct section 2(e), by breaching his fiduciary duty to disclose a conflict of interest;
- (b) one breach of Code of Conduct section 7(g), by failing to provide written disclosure of his position as a registered agent with Classic Real Estate Ltd.;
- (c) one breach of Code of Conduct section 3(b), by failing to obtain written disclosure of dual agency;
- (d) one breach of Code of Conduct section 6(a), by failing to render competent service by improperly witnessing signatures.

SETTLEMENT TERMS

8. In settlement of these issues, Mr. White will pay immediately to the Real Estate Council of Alberta a fine in the amount of \$5,000.00, together with costs in the amount of \$500.00.
9. Mr. White agrees that as a condition of his authorization to trade in real estate, he 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. Mr. White 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.
11. Mr. White is aware that a copy of the Consent Agreement will be placed on his file and may be reviewed and considered in any future disciplinary proceedings.
12. Mr. White is aware the Real Estate Council of Alberta may publish the contents of this Consent Agreement.
13. Mr. White 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.
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 24th day of AUG, 2003.

Signed and delivered
in the presence of

"R.O."

Witness to the signature
of Brad White

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)
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"Brad White"

BRAD WHITE

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 _____

Edmonton "L.C."
 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, R.O. 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 Brad White 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 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 in the City
 of Fort McMurray, in the Province of
 Alberta this 27 day of
August, 2003.

"T.H."

 A Commissioner for Oaths in and
 for the Province of Alberta

"R.O."

 (Signature of Witness)