

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

**AND IN THE MATTER OF Jerry Raczkowski, Agent then registered with Lampas Holdings Ltd o/a Re/Max River City and now an Agent registered with Re/Max Real Estate Edmonton Ltd. o/a Re/Max Real Estate**

**INTRODUCTION**

1. The Executive Director of the Real Estate Council of Alberta conducted an investigation into whether the conduct of Jerry Raczkowski, Agent registered with Re/Max Real Estate Edmonton o/a Re/Max Real Estate (hereafter "Re/Max Real Estate), is deserving of sanction and/or whether he breached the requirements of the Real Estate Act (hereafter "the Act") or the Rules prescribed pursuant thereto (hereafter "the Rules") or the Code of Conduct prescribed pursuant thereto (hereafter "the Code of Conduct").
2. The Executive Director and Jerry Raczkowski agree to resolve all matters against Jerry Raczkowski on the terms and conditions set out herein.

**AGREED STATEMENT OF FACTS**

3. Jerry Raczkowski (hereafter "Raczkowski") first became authorized to trade as a salesperson (agent) in 1996. He has been registered to four (4) brokerages since 1996 and has been registered to Re/Max Real Estate since 1998.
4. There is no history of discipline on file for Raczkowski.
5. On or about January 26, 1998 the vendors' listed their condominium property in Edmonton for sale with Lampas Holdings Ltd o/a Re/Max River City (hereafter "Re/max River City") with Raczkowski being the listing salesperson (agent).
6. The vendors wanted a "quick sale". When the property did not sell, the vendors proposed that Raczkowski purchase the property.
7. The vendors agreed to allow Raczkowski to assume the mortgage on the property for \$38,579.00. The vendor's sister-in-law had an agreement charging land for \$6000.00 secured by way of a caveat. The vendor's sister-in-law (hereafter "caveat holder") would agree to the sale of the property if the caveat remained in place with the understanding that Raczkowski would pay the caveat holder back within one (1) year or earlier if property was resold.

8. On or about March 07, 1998 Raczkowski, acting as a dual agent, drew up an offer to purchase and a mortgage schedule, which the vendors signed and initialed. The completion day was April 01, 1998. The mortgage schedule Raczkowski prepared with the offer to purchase indicated the caveat as sellers financing, was open and assumable.
9. On or about March 19, 1998 the caveat holder, drew up a document with regards to the caveat on the property. This document stated the caveat holder agrees to the sale of the property to Raczkowski with the caveat in place as is, but the instrument or certificate of title must express the claim of six thousand dollars (\$6000.00). The agreement went on to state the caveat holder is to be paid out of proceeds if Raczkowski within the year resells the property, at which point the caveat holder would remove the lien on the property. The caveat holder and the vendor signed the document; Raczkowski, in his capacity of a purchaser, did not sign the document.
10. It was agreed by the vendors and Raczkowski that one lawyer would handle the transaction for both parties to save costs. The Real Estate Purchase Contract dated March 07, 1998 and the Mortgage Schedule were forwarded to the lawyer. The lawyer was also provided with the document prepared by the caveat holder dated March 19, 1998 setting out the agreement between the caveat holder, the vendors and Raczkowski regarding the caveat. The lawyer did not obtain Raczkowski's signature on the March 19, 1998 document; the vendors did not know the agreement was not in place.
11. Raczkowski earned \$140.19 gross commissions on this transaction.
12. On or about January 29, 1999 Raczkowski sold the property with a completion date of the same day. The purchaser assumed the first mortgage and the caveat on the property.
13. In 1999 the vendors learned that the property had been re-sold. The vendors, on behalf of the caveat holder, contacted Raczkowski for the \$6000.00 payment for the caveat. Raczkowski advised the vendors that the new owner had assumed the first mortgage and the caveat.
14. The vendors and the caveat holder were unsuccessful in collecting the \$6000.00 payment from the new owner.
15. The lawyer of the original transaction compensated the vendors, who were the complainants in this matter. The vendors did not take any action against Raczkowski or the new owner.

## **CONCLUSION**

16. By reason of the matters described herein, Jerry Raczkowski conduct is deserving of sanction in that he:
  - (a) Demonstrated a lack of professional care and attention in preparing a contract by failing to adequately protect his clients in the contract by ensuring that the purchase contract reflected the vendor's intentions regarding repayment of the caveat, which was to be paid out within one (1) year, or when the property was resold.
  - (b) Demonstrated a lack of professional care and attention in preparing a contract by failing to ensure that the purchase contract included a buyer's condition in particular, that if the property were re-sold within one (1) year the caveat holder would be paid out, at which point the lien would be removed from title.
  - (c) Breached his fiduciary duty to his clients and failed to act in their best interest by failing to advise the vendor to obtain independent legal advice when he knew or ought to have known he was in a position of conflict.

## **SETTLEMENT TERMS**

17. In settlement of these issues, Jerry Raczkowski agrees to a written Letter of Reprimand.
18. Costs of the investigation and terms of the settlement are waived.
19. Jerry Raczkowski agrees that as a condition of his authorization to trade in real estate, he will prior to February 28, 2002 successfully complete the Ethical Practice in Real Estate course offered by the Alberta Real Estate Association or an alternate ethics or 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 the Real Estate Council of Alberta.
20. Jerry Raczkowski 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.
21. Jerry Raczkowski 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.

22. Jerry Raczkowski 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.
23. 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 13 day of September, 2002.

Signed and delivered )  
in the presence of )

"A.D." )  
\_\_\_\_\_)  
Witness to the signature )  
of Jerry Raczkowski )

"Jerry Raczkowski"  
\_\_\_\_\_)  
Jerry Raczkowski )

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**


"C.O."

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 17 day  
of OCTOBER, 2002.

**Real Estate Council of Alberta**

Per: "John Fraser"

Hearing Panel Chairperson

## AFFIDAVIT OF EXECUTION

CANADA	)	I, <u>A.D.</u> of
	)	(name of witness),
PROVINCE OF ALBERTA	)	the City of Edmonton in the Province of Alberta
	)	
TO WIT:	)	MAKE OATH AND SAY:

1. THAT I was personally present and did see **Jerry Raczkowski** 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 Edmonton, 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 Edmonton, in the Province of )  
 Alberta this 13 day of )  
September, 2002. )

"A.D."

(signature of witness)

"B.B."

A Commissioner for Oaths in and  
 for the Province of Alberta