

IN THE MATTER OF The Real Estate Act, S.A. 2000, c. R- 4.5

AND IN THE MATTER OF Stan Kushner, Agent then registered with S.J. Williams & Associates Realty Ltd. o/a Heritage Realty Better Homes and Gardens and then an Agent registered with Discover Real Estate Ltd. and now an Agent registered with Dog Leg Right Realty Inc. o/a Maxwell Norwest Real Estate

INTRODUCTION

1. The Executive Director of the Real Estate Council of Alberta conducted an investigation into whether the conduct of Stan Kushner, agent registered with Dog Leg Right Realty Inc o/a Maxwell Norwest Real Estate (hereafter "Maxwell Norwest 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 Stan Kushner agree to resolve all matters against Stan Kushner on the terms and conditions set out herein.

AGREED STATEMENT OF FACTS

3. Stan Kushner (hereafter "Kushner") first became authorized to trade as a salesperson (hereafter "agent") in 1986. He was registered as an agent with two (2) brokerages from 1986 to 1988. He then became authorized to trade as an agent in 1996. He was registered as an agent with two (2) brokerages from 1996 to 1997. He then became authorized to trade as an agent in 2000. He has been registered to three (3) brokerages since 2000 and has been registered as an agent to Maxwell Norwest Real Estate since 2000.
4. On or about August 07, 2000 the vendors' listed their residential property in Okotoks for sale with S.J. Williams & Associate Realty Ltd. o/a Heritage Realty Better Homes and Garden (hereafter "Heritage Realty Better Homes and Garden") with Kushner as the listing agent. The Residential Real Estate Listing Contract 37461 (hereafter "listing contract 37461") was a co-listing with another brokerage. The co-listing brokerage did not sign the listing contract 37461. The commission split between the co-listing brokerages was not outlined on the listing contract 37461.
5. On or about August 18, 2000 Kushner, on behalf of Heritage Better Homes and Garden prepared an Unconditional Termination Agreement for the listing contract

37461 of August 07, 2000. The vendors signed the Unconditional Termination Agreement. Kushner delivered a copy of the Unconditional Termination Agreement to the office of Heritage Realty Better Homes and Garden with a note requesting the broker to, "please fax Kushner or the Calgary Real Estate Board (hereafter "CREB") once signed". The vendors and CREB received a copy of the Unconditional Termination Agreement that Kushner signed as the Agent (Broker)/Manager of Listing Branch. Kushner did not have authorization to sign as the Agent (Broker)/Manager of the Listing Branch. The Unconditional Termination Agreement was not signed by the co-listing brokerage.

6. On or about August 19, 2000 the vendors listed the same residential property in Okotoks for sale with Discover Real Estate Ltd. with Kushner as the listing agent. The Residential Listing Contract 29413 (hereafter listing contract 29413) was a co-listing with another Brokerage. The co-listing brokerage did not sign the listing contract 29413. The commission split between the co-listing brokerages was not outlined on the listing contract 29413.
7. Section 2.2 of the August 19, 2000 Residential Real Estate Listing Contract read:

2.2 Is the Property currently listed for sale with another real estate brokerage?
8. Kushner prepared the August 19, 2000 listing contract 29413 and answered "No" to section 2.2 although the true answer to the question was "Yes". He knew or ought to have known the August 07, 2000 listing contract 37491 between the vendors and Heritage Realty Better Homes and Garden and the co-listing brokerage was still a valid contract.
9. On August 19, 2000 Kushner was not licensed with Discover Real Estate Ltd. but was still registered with Heritage Better Homes and Garden when he signed the listing contract 29413 as an agent authorized to sign on behalf of the brokerage, Discover Real Estate Ltd.
10. On or about August 23, 2002 Kushner's registration with Heritage Better Homes and Gardens was cancelled and was re-instated with Discover Real Estate Ltd. on the same day.
11. On or about September 02, 2000 Kushner, on behalf of Discover Real Estate Ltd., prepared a Real Estate Listing Contract Termination Agreement for the listing contract 29413 dated August 19, 2000. The document was changed to read:

I/We hereby covenant and agree with the Brokerage that this termination is unconditional.

The vendors signed the Real Estate Listing Contract Termination Agreement.

12. On September 02, 2000 Kushner was not licensed with Discover Real Estate Ltd. but was registered with Maxwell Real Estate when he signed the Real Estate Listing Contract Termination Agreement as an agent authorized to sign on behalf of the brokerage, Discover Real Estate Ltd.
13. Kushner signed as an agent authorized to sign on behalf of the brokerage, Discover Real Estate Ltd, on the September 02, 2000 Real Estate Listing Contract Termination Agreement. However, Kushner's registration was cancelled with Discover Real Estate Ltd. on August 30, 2000 and re-instated with Maxwell Norwest Real Estate on the same day
14. The vendors listed the property for sale a third time with another brokerage. The property did not sell.
15. The complainant in this matter was the broker for one of the listing brokerages.

CONCLUSION

16. By reason of the matters described herein, Stan Kushner's conduct is deserving of sanction in that he:
 - (a) In having the vendors sign a listing agreement with Discover Real Estate Ltd., he failed to act in the sellers' best interest and exposed them to undue liability when he knew or ought to have known that the vendors had signed another listing agreement with Heritage Better Homes and Gardens in breach of s.2 (a) of the Code of Conduct.
 - (b) Participated in the creation of a document knowing it to be false or misleading through completing a Residential Real Estate Listing dated August 19, 2000 section 2.2 as "No" when he knew or ought to have known the true answer was "Yes" in breach of s.4 (d) of the Code of Conduct.
 - (c) In having the vendors sign a Residential Real Estate Listing with Discover Real Estate Ltd., when he knew or ought to have known that the seller had signed a listing agreement with Heritage Better Homes and Gardens, thereby interfering with a person who is a party to a contractual arrangement with another in breach of s.7 (h) of the Code of Conduct.
 - (d) In having completed a Residential Real Estate Listing dated August 19, 2000 in the name of the brokerage Discover Real Estate Ltd, and the agent authorized to sign on behalf of the brokerage as Stan Kushner. Kushner knew or ought to have known he was registered with Heritage Better Homes and Garden on August 19, 2000. Kushner traded in the name of a brokerage other than the name of the brokerage with which he was registered in breach of s.23 (b) of the Rules.

- (e) In having completed a Real Estate Listing Contract Termination Agreement dated September 02, 2000 in the name of the brokerage Discover Real Estate Ltd, and the agent authorized to sign on behalf of the brokerage as Stan Kushner. Kushner knew or ought to have known he was registered with Maxwell Norwest Real Estate on September 02, 2000. Kushner traded in the name of a brokerage other than the name of the brokerage with which he was registered in breach of s.23 (b) of the Rules.

SETTLEMENT TERMS

17. In settlement of these issues, Stan Kushner will pay immediately to the Real Estate Council of Alberta a fine in the amount of \$3000.00, together with costs in the amount of \$500.00.
"B.M." "S.K."
18. Stan Kushner 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.
19. Stan Kushner 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.
20. Stan Kushner 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.
21. Stan Kushner is aware the Real Estate Council of Alberta may publish the contents of this Consent Agreement.
22. Stan Kushner 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.
17. 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 7 day of OCTOBER, 2002.

Signed and delivered
in the presence of

"K.G."

Witness to the signature
Of Stan Kushner

"Stan Kushner"

Stan Kushner

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>K.G.</u> 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 **Stan Kushner** 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 7 day of
OCTOBER, 2002.

"K.G."

(signature of witness)

"J.P."

Commissioner for Oaths in and
 for the Province of Alberta