

THE REAL ESTATE COUNCIL OF ALBERTA

IN THE MATTER OF Section 40 and 41 of the Real Estate Act, S.A. 1995,c.R-4.5

IN THE MATTER OF a Hearing Regarding the Conduct of Orlin McMillan then registered as the Designated Representative, now Broker, with 29576 Alberta Ltd. o/a Legacy Real Estate Services

Hearing Panel Members: **Graham Downey, Chair**
 Lorne Clark
 Cheryl King

Appearances: **Orlin McMillan - on his own behalf**

 Susan Olsen - on behalf of the Executive Director of the Real Estate Council of Alberta

Hearing Date: **Tuesday, April 2nd, 2002**

DECISION

UPON reviewing and considering the Agreed Statement of Facts and considering the materials submitted by the Executive Director; AND UPON hearing the submissions of the Respondent and the Executive Director;

THE HEARING PANEL HEREBY FINDS AS FOLLOWS:

AGREED STATEMENT OF FACTS:

1. Orlin McMillan ("McMillan") first became registered as an agent (salesperson) on May 26, 1997. McMillan is registered as the broker for 29578 Alberta Ltd. o/a Legacy Real Estate Services ("Legacy Real Estate Services") currently and at the time these matters occurred he was registered as the designated representative for Legacy Real Estate Services.
2. In January 1999, Legacy Real Estate Services had a brokerage agreement with Loreck Homes Ltd. (hereafter "Loreck Homes"). The agreement between Legacy Real Estate Services and Loreck Homes gave McMillan the authority on behalf of Loreck Homes to make and accept offers, and counter offers, sign and generally to do all things necessary and incidental to the purchase and sale of new homes in Airdrie. Loreck Homes is a builder doing business in Airdrie.
3. D.D. , a salesperson with 619644 Alberta Ltd. o/a Re/Max Rocky View Real estate representing his clients, drafted an offer for a Loreck Homes property. D.D.'s first offer was dated Thursday January 14, 1999. The particulars of the offer included a total price of \$142,500 (below full list price) for a 1,014 sq. ft. bi-level house to be built on Lot 22, an initial deposit of \$1,000 with an additional \$2,125 deposit to be payable on the removal of conditions. The conditions included mortgage approval on or before February 5, 1999, and a rebate for drywall and insulation. The offer did not include a deadline or expiry date.

4. D.D.'s offer was provided to another agent, B.R. for presentation to McMillan. B.R. was an agent registered to another brokerage (Builder's Realty (Calgary) Ltd. o/a Homelife Builder's Realty). B.R. was also a show home representative for Loreck Homes. B.R. presented the offer to McMillan on Friday, January 15, 1999. McMillan indicated that he would have to figure the credit on the insulation and drywall before responding to the offer, and said he should have an answer by the end of the day on Saturday, January 18. This information was passed on to D.D. in response to inquiries D.D. made on the Friday and Saturday.
5. At some point on Saturday, P.P., a salesperson registered with Legacy Real Estate Services, advised McMillan that she might be presenting an offer on Lot 22. This fact was communicated to B.R. on Saturday afternoon and B.R., in turn, communicated it to D.D. B.R. advised D.D. that another offer may be coming in and that he would keep him informed.
6. At approximately 5pm on Saturday, P.P. contacted McMillan and indicated that she had an offer on Lot 22 and would be meeting with McMillan to present it. P.P. was aware that there was another offer on Lot 22 but was not aware of its terms. On Saturday night at approximately 7:15pm, McMillan received P.P.'s offer from on Lot 22. The offer was a full price offer on a larger two-storey home. A 72-hour clause was to apply to the offer.
7. McMillan considered D.D.'s offer well below what would have been acceptable and believed P.P.'s offer the best position for Loreck Homes. So, McMillan accepted P.P.'s offer.
8. B.R. had been trying to contact McMillan by pager Saturday evening to get an update with respect to D.D.'s offer. McMillan was hosting a party at his home and had his pager turned off. At approximately 9:45pm, B.R. contacted McMillan at his home phone. In light of the on-going party, McMillan told B.R. that he was not in a position to speak with him at the time and indicated that he would call B.R. Sunday morning to discuss it. B.R. then relayed this information to D.D.
9. On Sunday, January 17, 1999, McMillan told B.R. that he was going to make a counter offer to D.D. McMillan then faxed the counter offer directly to D.D. l. The counter offer was for a different lot.
10. On Monday, January 18, 1999, D.D. presented another offer for Lot 22. McMillan declined the offer and advised that should D.D.'s clients provide an offer without conditions he would invoke the 72-hour clause on the P.P. offer.
11. D.D. approached his clients and they declined to put in an offer without conditions.
12. The offer from P.P. did not close and a two-storey 1,522 sq. ft. home was built on the property. This property was sold in November 1999 for \$167,296.

DISPOSITION:

After considering the exhibits, the Agreed Statement of Facts, and the submissions, the Hearing Panel has determined the following:

1. McMillan did fulfill his fiduciary duties to his client, Loreck Homes.
2. That in addition to notifying D.D. that another offer might be coming in as a courtesy it would have been preferable for McMillan to notify D.D. that another offer had come in.

Notwithstanding this, based on the evidence, D.D.'s clients still had an opportunity to present another unconditional offer as the accepted offer had 72-hour clause. D.D.'s clients declined to make such an offer.

3. With McMillan having full authority to accept offers on behalf of his client, Loreck Homes, McMillan made a decision to accept the P.P. offer, which he considered to be in the best interest of his client. No evidence was provided to the Hearing Panel that this was not the case.

The Hearing Panel's decision is that McMillan's conduct is NOT deserving of sanction.

Dated this 19th day of April, 2002

"Graham Downey"
Chair

"Lorne Clark"

"Cheryl King"