

IN THE MATTER OF the *Real Estate Act*, S.A. 2000, c. R- 5

AND IN THE MATTER OF Margaret Anderson, Broker Century 21
Lesand Advantage Realty Corp. and John Anderson, Broker delegate
and Century 21 Lesand Advantage Realty Corp.

INTRODUCTION

1. The Executive Director of the Real Estate Council of Alberta conducted an investigation into whether the conduct of Margaret Anderson, Broker, and John Anderson, Associate Broker, both registered with Lesand Advantage Realty Corp. ("Lesand") of Red Deer, Alberta, is deserving of sanction and/or whether they 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"), and if John Anderson demonstrated a reckless disregard for the Act, Rules or Bylaws.
2. The Executive Director, Margaret Anderson and John Anderson agree to resolve all matters against Margaret Anderson, John Anderson and Lesand on the terms and conditions set out herein.

AGREED STATEMENT OF FACTS

3. Margaret Anderson is the Broker of Lesand. The brokerage has two offices, one residential and one commercial. John Anderson, associate broker and delegate, oversees the commercial side and Margaret Anderson oversees the residential side. The delegation of broker responsibilities from Margaret Anderson to John Anderson is not in writing.
4. Margaret Anderson's daughter and John Anderson's stepdaughter (the "daughter") worked as the bookkeeper for the commercial side of the brokerage and was responsible for all account records including, but not limited to, general and trust monthly reconciliations, the writing of cheques, bank deposits, accounts payable and receivable, payroll and controlled all cancelled cheques. The daughter had worked at the brokerage for a period of approximately ten years.
5. During a routine audit, in June 2001, an auditor for the Real Estate Council of Alberta (RECA) discovered that the commercial division of the brokerage had a trust shortage in excess of \$50,000.00.
6. The shortage was created in a number of ways including, but not limited to, the following:
 - a) On occasion, when John Anderson left the brokerage he would signed blank trust cheques and leave the signed cheques with the daughter to complete the payee and amount.

- b) If John Anderson was to be away during the closing of a trade, the daughter would request he sign a few extra cheques in case there was problem with a cheque while he was away from the brokerage.
 - c) At least two trust deposits, totaling \$20,711.12, were deposited into the brokerage's general account.
 - d) Unsupported trust transfers into the brokerage's general account in the amount of \$19,000.00.
 - e) A review of the brokerage's general cheques indicates that a number of cheques were written to the daughter without John Anderson's signature. The cheque cleared the financial institution notwithstanding there was no signature on the cheque.
 - f) On one occasion, an agent from the brokerage had a commission cheque which was returned to the agent for insufficient funds. The cheque was replaced with a trust cheque.
7. Upon being informed of the shortage by the auditor of RECA, the shortage was immediately funded.
 8. In Lesand's annual accountant's report, the accountant indicated that there was a shortage in the trust account and the shortage was due to a timing difference. A timing difference was indicated for eleven months of 2000. The timing difference was explained to Mr. Anderson, by his daughter, as the time lapse between the trust cheques clearing the trust account and the trust deposits being posted.
 9. On the accountant's report, notwithstanding the accountant stated that they had discussed the contents of the report with the broker, this was not done and the broker and delegate were unaware of the shortage in the trust account.
 10. During the routine audit, the auditor found that the broker did not sign two trust reconciliations within thirty days of the date of the prior month's bank statement.

CONCLUSION

11. By reason of the matters described herein, Margaret Anderson's conduct is deserving of sanction in that she:
 - (a) Failed to disburse money received or held in trust in respect of a dealing or trade only in accordance with the Rules and with the terms of the trust governing the use of that money in breach of section 25(1)(d) of the Act.
 - (b) Failed to review two trust reconciliations and sign the same in breach of Rule 36(3) of the Rules.
 - (c) Failed to ensure there was adequate level of supervision for associate brokers, or agents, within the brokerage and employees who perform duties on behalf of the brokerage in breach of Rule 21(1)(f).
 - (d) Failed to ensure that the trust accounts and account records were maintained in accordance with the Act, Rules and Bylaws in breach of Rule 21(1)(g).

- (e) Failed to ensure that the delegate responsibilities were in writing in breach of Rule 22(1) of the Rules.
12. By reason of the matters described herein, Lesand's conduct is deserving of sanction in that:
 - (a) The brokerage did not maintain a trust account and in compliance with section 25 of the Act as it applies in respect of all dealings and trades entered into by the brokerage and its brokers, associate brokers or agents and in breach of Rule 20(d) of the Rules.
 - (b) The brokerage paid a commission to an agent of the brokerage directly out of the trust account in breach of Rule 46 (1) of the Rules.
 13. By reasons of the matters described herein, John Anderson's conduct is deserving of sanction in that:
 - (a) He disbursed money received or held in trust in respect of a dealing or trade that was not in accordance with the Rules and with the terms of the trust governing the use of that money in breach of 25(1)(d) of the Act.
 - (b) He demonstrated a reckless disregard for the legislation or incompetence in that he signed blank trust cheques on a number of occasions, thereby allowing a third party access to the trust account.
 - (c) He demonstrated a reckless disregard for the legislation or incompetence in that he did not understand that the trust reconciliations he signed were not correct and did not reconcile.

SETTLEMENT TERMS

14. In settlement of these issues, Margaret Anderson, broker, agrees to pay to the Real Estate Council of Alberta a fine in the amount of \$7,500.00.
15. In settlement of these matters, John Anderson, delegate, agrees to pay to the Real Estate Council of Alberta a fine in the amount of \$3,250.00.
16. In settlement of these matters, Margaret Anderson and John Anderson agree that they will successfully complete the course *Real Estate Brokerage* before November 30, 2002.
17. Margaret Anderson and John Anderson acknowledge that they have been given an opportunity to seek the advice of legal counsel and acknowledge that they are agreeing to the terms of settlement of their own free will.
18. Margaret Anderson and John Anderson are aware that a copy of the Consent Agreement will be placed on their file and may be reviewed and considered in any future disciplinary proceedings.
19. Margaret Anderson and John Anderson are aware the Real Estate Council of Alberta may publish the contents of this Consent Agreement.

20. Margaret Anderson and John Anderson hereby waive any rights they may have under the Act or otherwise to a review, hearing, appeal or other judicial proceeding involving the matter referred to herein.
21. 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 5 day of JUNE 2002.

Signed and delivered in the presence of)

L.A.)

Witness to the signature of Margaret Anderson)

"Margaret Anderson"

Margaret Anderson

) Century 21 Lesand Advantage Realty Corp.

) Per: "Margaret Anderson"

) Margaret Anderson

Signed and delivered in the presence of)

L.A.)

Witness to the signature of John Anderson)

"John Anderson"

John Anderson

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 7th day of June 2002.

Real Estate Council of Alberta

Per: "Graham Downey"

Hearing Panel Chair

AFFIDAVIT OF EXECUTION

C A N A D A

) I, L.A.

PROVINCE OF ALBERTA

)

) of the City of Red Deer, in the Province of Alberta,

)

T O W I T :

) MAKE OATH AND SAY THAT:

1. I was personally present and did see MARGARET ANDERSON and JOHN ANDERSON, named in the within (or annexed) instrument who are personally known to me to be the persons named therein, duly sign and execute the same for the purpose named therein.

2. The same was executed at the City of Red Deer, in the Province of Alberta, and that I am the subscribing witness thereto.

3. I know the said persons and each is in my belief of the full age of eighteen years.

SWORN before me at the City of
Red Deer, in the Province of
Alberta, this 5 day of
June, 2002.

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"L.A.""P.S."

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FOR THE PROVINCE OF ALBERTA