

THE REAL ESTATE COUNCIL OF ALBERTA

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IN THE MATTER of Subsections 39(1)(b) and 41
of the *Real Estate Act*, S.A. 1995, c. R-4.5

AND IN THE MATTER of a Hearing regarding Valerie Steinbach, Salesperson (Agent)
then registered with Endeavour Real Estate Ltd. o/a Realty World - Endeavour

Hearing Panel members: Ted Zaharko, Chair
Cheryl King
Kenneth Green

Representation: Valerie Steinbach on her own behalf
Susan Olsen on behalf of the Executive Director
of the Real Estate Council of Alberta

Witnesses: no witnesses present

Hearing date: February 12, 2002
Calgary, Alberta

ORDER

Having taken into consideration the Agreed Statement of Facts attached to this Order as Schedule "A" and the conclusions therein with respect to breach of Section 1(a) (currently section 2(a) of the Code of Conduct) and Rule 24(a), IT IS HEREBY ORDERED:

1. THAT Valerie Steinbach is required to pay a fine of \$1,000.00 to the Real Estate Council of Alberta.
2. THAT as a condition of Valerie Steinbach's authorization to trade in real estate she will, prior to re-entering the industry, successfully complete the following educational courses offered by the Alberta Real Estate Association, namely

Agency Relationships; and
Mortgage Financing

in addition to any education or licensing requirements in effect at the time of any future licensing application by Valerie Steinbach.

Dated this 12th day of February, 2002.

"Ted Zaharko"

Ted Zaharko, Hearing Panel Chair

"Cheryl King"

Cheryl King, Hearing Panel Member

"Kenneth Green"

Kenneth Green, Hearing Panel Member

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c. R- 4.5**

**AND IN THE MATTER OF a Hearing Regarding Valerie Steinbach,
Salesperson (Agent) then registered with Endeavour Real Estate Ltd.
o/a Realty World - Endeavour**

AGREED STATEMENT OF FACTS

1. Pursuant to a complaint from the seller, the Executive Director of the Real Estate Council of Alberta conducted an investigation into whether the conduct of Valerie Steinbach salesperson (agent) then registered with Endeavour Real Estate Ltd. o/a Realty World Endeavour (hereafter "Realty World Endeavour"), is deserving of sanction and/or whether she 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. Valerie Steinbach (hereafter "Steinbach") first became registered on October 25, 1996. On June 30, 1999, Steinbach's registration with Realty World – Endeavour terminated and Steinbach became registered with 377245 Alberta Ltd. o/a Re/Max Real Estate Central Alberta (hereafter "Re/Max Real Estate Central"). On March 1, 2001, Steinbach ceased to be an industry member. Steinbach is not currently an industry member and has stated she does not intend to become an industry member again.
3. On March 15, 1999, the sellers entered into a Listing Contract with Steinbach and Realty World – Endeavour. The asking price for the property was \$189,900. The contract identifies that a buyer may assume the mortgage but not must assume the mortgage.
4. The sellers had a mortgage on the property of approximately \$157,740.26 as of March 17, 1999.
5. Steinbach had been working with the purchasers for approximately one year looking for a property with an assumable mortgage.
6. On March 22, 1999, the sellers accepted an offer to purchase in the amount of \$185,000 from the purchasers. The contract provisions included an initial deposit of \$1000, an additional deposit of \$1000 to be paid on April 9, 1999, and \$25,260 balance owing (subject to adjustments). The Completion Date for the contract was July 30, 1999. Steinbach was both the seller's sales representative and the buyer's sales representative identified on the contract.

7. Steinbach was aware the purchasers had experienced financial difficulties a few years prior. Steinbach understood the financial problems had all been cleared up and the purchasers were doing well.
8. On April 9, 1999 Steinbach was advised the purchasers were not able to pay the additional \$1000 deposit and on April 9, 1999 an addendum to the real estate purchase contract was negotiated by Steinbach extending the date for the additional deposit to April 22, 1999.
9. Steinbach was concerned about purchaser's inability to pay the additional deposit but the purchasers assured her everything was fine and Steinbach believed them.
10. After the purchasers were late with the additional deposit the sellers questioned Steinbach, she assured them there was nothing to worry about.
11. On July 29, 1999, at approximately 8pm in the evening, one of the purchasers contacted Steinbach. The purchaser then advised Steinbach he did not have all of the funds needed to complete the purchase. Steinbach then met with the sellers until approximately 11:30pm, verbally negotiating for the sellers to provide \$6700 in seller financing to the purchasers payable on or before August 31, 1999. Steinbach was not registered with Realty World – Endeavour at the time of these negotiations.
12. The broker for Realty World – Endeavour was not informed Steinbach was or had engaged in negotiations on the brokerage's listing after she ceased being registered to the brokerage.
13. The purchasers had declared bankruptcy in 1997.
14. On July 29, 1999 when the sellers asked why the purchasers did not approach a bank for the additional money they needed, Steinbach disclosed the purchasers' previous bankruptcy.
15. On December 1, 1999, the Bank of Montreal issued a Statement of Claim against the sellers and purchasers as the purchasers had defaulted on the mortgage. The amount owing on the mortgage as of November 24, 1999 was \$158,967.45.
16. Although the brokerage, Realty World Endeavour, did receive its portion of the commissions from this transaction, Ms. Steinbach did not receive any commissions from this transaction.
17. By reason of the matters described herein, Steinbach's conduct is deserving of sanction in that she:

- (a) breached her fiduciary duty to act in the best interests of her client (the sellers) thereby breaching section 1(a) (currently section 2(a) of the Code of Conduct) by:
 - i. Failing to verify the purchasers' representations concerning their financial condition before negotiating the purchase contract when she was aware that the purchasers had experienced financial difficulties in the past.
 - ii. Failing to verify the purchasers' representations when the purchasers' could not pay the additional deposit on April 9, 1999.
 - iii. Failing to ensure the purchasers' ability to pay the \$25,260 before the amount became payable.
 - iv. Failing to recommend or include provisions in the purchase contract at the time it was written to protect the sellers in the event that the purchasers could not meet the financial terms of the contract when she knew of the purchasers previous financial difficulties.
 - v. Negotiating an amendment extending the time the purchasers had to pay the additional deposit without recommending or including provisions to protect the sellers in the event that the purchasers could not pay the additional deposit.
 - vi. Failing to disclose that the purchaser had declared bankruptcy until the night before the completion date (July 29, 1999).
 - (b) Traded in real estate on a Realty World – Endeavour listing by verbally negotiating seller financing and an amendment to the purchase contract after she was no longer registered to the brokerage in breach of Rule 24(a) and without the knowledge or consent of the broker.
18. Valerie Steinbach acknowledges that she has been given an opportunity to seek the advice of legal counsel and acknowledges that she is agreeing to the terms of the Agreed Statement of Facts of her own free will.

AFFIDAVIT OF EXECUTION

CANADA) I, D.C. _____ of
)
) (name of witness),
 PROVINCE OF ALBERTA) the City of Sylvan in the Province of Alberta
)
)
 TO WIT:) MAKE OATH AND SAY:

1. THAT I was personally present and did see Valerie Steinbach 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 Sylvan LAKE, in the Province of Alberta, and that I am the subscribing witness thereto.
3. THAT I know the said party and she is in my belief of the full age of eighteen years.

SWORN BEFORE ME at the City
 Of Sylvan, in the Province of
 Alberta this 11 day of
February, 2003

"D.C."

(signature of witness)

"S.C."

A Commissioner for Oaths in and
 for the Province of Alberta