

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

**AND IN THE MATTER OF Norm Winters, Broker registered with Real Estate Advantage Ltd. o/a Re/Max Advantage**

**INTRODUCTION**

1. The Executive Director of the Real Estate Council of Alberta conducted an investigation into whether the conduct of Norm Winter, Broker registered with Real Estate Advantage Ltd. o/a Re/Max Advantage (hereafter "Re/Max Advantage"), 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 Norm Winters agree to resolve all matters against Norm Winters on the terms and conditions set out herein.

**AGREED STATEMENT OF FACTS**

3. Re/max Advantage is a duly licensed brokerage in Alberta. Norm Winters (hereafter "Winters") first became authorized to trade as a broker in 1978. He has been registered to three (3) brokerages since 1978 and has been registered as an agent, then broker to Re/max Advantage since 1997.
4. On or about March 13, 2000, the vendors listed a property in Sherwood Park with an agent registered with Re/max Advantage.
5. On or around April 02, 2000, the vendors accepted an unconditional offer. Re/max Advantage was in a dual agency.
6. The initial deposit was \$15,000.00 with a completion date of May 01, 2000. The \$15000.00 initial deposit from the purchaser was deposited into the Re/Max Advantage trust account on or about April 04, 2000. pursuant to the terms of trust as set out in the offer to purchase.
7. Re/max Advantage sent a letter dated April 04, 2000 to the vendors lawyer stating the commissions payable were as follows:

\$11,950.00	gross commissions
\$ 836.50	gross GST
\$15,000.00	less deposit held
\$ 2,213.50	excess to vendors lawyer

8. The amount of \$2,213.50 was forwarded to the vendor's solicitor on or about April 24, 2000.
9. The purchaser in April 2000 canceled the Real Estate Purchase Contract. On or about May 14, 2000 the Agent registered with Re/Max Advantage sold the property to a different buyer and completion took place.
10. In a letter dated May 05, 2000, the vendor's solicitor requested the remaining deposit amount of \$12,786.50 be forwarded to them, as they would be commencing legal action against the purchaser.
11. On or around May 23, 2000, \$5286.50 was forwarded from the trust account of Re/Max Advantage to the solicitor for the vendor.
12. By agreement between the vendor and the purchaser's lawyer a letter dated June 26, 2000 was sent to Re/Max Advantage requested that the remaining deposit monies totaling \$7500.00 be sent to the vendor's lawyer as per section 2.9 (b) of the Residential Real Estate Purchase Contract.
13. Section 2.9 of the Real Estate Purchase Contract reads:
  - 2.9 If there is a dispute between the Seller and the Buyer as to the entitlement of the Deposit(s) then:
    - (a) the Agent holding the Deposit shall review the circumstances, determine entitlement and pay the money to the party who is entitled to the Deposit.
    - (b) If no reasonable conclusion can be made in regard to (a) above, the Agent shall notify the parties to the Contract in writing and shall pay the money into the lawyer's trust account mutually agreed to by the parties;
    - (c) If the parties fail to name a lawyer within 10 days of receiving the notice in (b), the Agent is authorized to pay the money into court and the parties agree to reimburse the Agent for the costs of such court application.
    - (d) An Agent acting in good faith under this clause shall not be liable to either party for any damage associated with the handling of the Deposit by the Agent, except arising from negligence of the Agent.

14. In a letter dated July 25, 2000, to the purchaser's lawyer, Winters stated that pursuant to clause 2.9(b) of the purchase contract, he would be sending the trust monies to the vendor's lawyer. Unless Re/max advantage was advised otherwise, the balance of the trust deposit would be forwarded to the vendor's office in trust after 7 days of receipt of the notice (the letter dated July 25, 2000) had expired.
15. On or about September 05, 2000 the Real Estate Council of Alberta received a complaint letter jointly submitted by the vendor and the purchaser's lawyer dated August 31, 2000, which stated Re/Max Advantage was still holding the remaining trust monies even after written request to return the same to the vendor's lawyer.
16. The Real Estate Council of Alberta sent a letter dated October 27, 2000 to winters outlining the investigation process and the allegation of failure to release trust funds in accordance with the terms of trust.
17. On or about October 30, 2000 a cheque for \$7500.00 from Re/Max Advantage trust account was forwarded to the vendor's lawyer.

### **CONCLUSION**

18. By reason of the matters described herein, Norm Winters' conduct is deserving of sanction in that he:
  - (a) Failed to disburse trust funds in accordance with the terms of trust, thereby breaching Section 25(1)(d) of the Act; and
  - (b) Failed to ensure the business of the brokerage is carried out competently and in accordance with the Act, the Bylaws, and these Rules, thereby breaching Section 21(1)(e) of the Rules.

### **SETTLEMENT TERMS**

19. In settlement of these issues, Norm Winters will pay immediately to the Real Estate Council of Alberta a fine in the amount of \$1500.00, together with costs in the amount of \$500.00.
20. Norm Winters agrees that as a condition of his authorization to trade in real estate, he will prior to February 28, 2003 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.

21. Norm Winters 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.
22. Norm Winters 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.
23. Norm Winters is aware the Real Estate Council of Alberta may publish the contents of this Consent Agreement.
24. Norm Winters 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 3 day of September, 2002.

Signed and delivered  
in the presence of

"J.B."

Witness to the signature  
of Norm Winters

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"Norm Winters"

**Norm Winters**

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 23rd day  
of September, 2002.

**Real Estate Council of Alberta**

Per: "Graham Downey"

Hearing Panel Chairperson

