

## THE REAL ESTATE COUNCIL OF ALBERTA

### IN THE MATTER OF THE Real Estate Act, S.A. 1996, c. R- 4.6

### AND IN THE MATTER OF Century 21 Double D Realty (1996) Ltd., brokerage and David Schorr, broker

#### INTRODUCTION

1. The Executive Director of the Real Estate Council of Alberta (RECA) conducted an investigation into whether the conduct of Century 21 Double D Realty (1996) Ltd., brokerage and David Schorr, broker is deserving of sanction and/or whether they otherwise breached the requirements of the Real Estate Act (hereafter "the Act") or the Rules (hereafter "the Rules") or Code of Conduct (hereafter "the Code of Conduct") prescribed pursuant thereto.
2. The Executive Director and Century 21 Double D Realty (1996) Ltd., brokerage and David Schorr, broker have agreed to resolve the matters against them on the terms and conditions set out herein.

#### AGREED STATEMENT OF FACTS AND CONCLUSIONS OF BREACH

3. Century 21 Double D Realty (1996) Ltd., brokerage and David Schorr, broker hereby agree as follows:

- a. That in a real estate purchase contract, undated, which was entered into between the seller, Provincial Mortgage Company Ltd., President R.S. (son of the broker David Schorr and 100% shareholder of Century 21 Double D Realty (1996) Ltd.) and the buyer, Pillow Talk Homes Accessories Inc., President believed to be M.C. (name uncertain as set out in the real estate purchase contract), Century 21 Double D Realty (1996) Ltd. acted as dual agent. David Schorr represented the seller and J.Q. , an agent registered with Century 21 Double D Realty (1996) Ltd. represented the buyer.

This contract stipulated that \$60,000 had been deposited by the buyers into trust at Century 21 Double D Realty (1996) Ltd. as the deposit on the transaction. This sum had not been provided to the brokerage and had not been deposited into trust since the transaction did not proceed.

This was in contravention of the terms of the real estate purchase contract, the law as it relates to trustees and was in contravention of s. 2(a), 4(d) and 7(a) of the Code of Conduct made pursuant to the Real Estate Act and is conduct deserving of sanction.

b. That on or about March 28, 2001, RECA compliance audit advised the brokerage and broker that an auditor would be attending to conduct an audit on March 30, 2001. Upon RECA's auditor's attendance on the brokerage on March 30, 2001, RECA reviewed the books and records and determined that on or about February 5, 2001 an unauthorized trust wire transfer of \$47,280.00 was made by R.S. from Century 21 Double D (1996) Realty Ltd. account number 101 059 4 Royal Bank trust account for rental properties to Century 21 Double D (1996) Realty Ltd. account number 101 178 2 general real estate trust/pooled trust account.

Further on Feb. 5, 2001, a cheque was written by B.H. for \$47,280.00 on the general real estate trust/pooled trust account to R.L., Barrister and Solicitor. These funds had not been deposited into trust by R.S. for the transaction. The \$47,280.00 were funds that rightfully belonged to other clients of Century 21 Double D Realty (1996) Ltd. The \$47,280.00 was provided to R.L. as partial payment of the real estate purchase price. The \$47,280.00 was refunded to trust on March 30, 2001.

The broker had a responsibility to be aware of and control the proper and rightful transfer of funds from the brokerage trust accounts to other accounts or third parties. The brokerage and broker did not inform RECA of this trust shortfall and did not immediately fund it.

This was in breach of section 25(1)(d) of the Real Estate Act and Rules 20(d), 21, 40 and 41 made pursuant to the Real Estate Act and is conduct deserving of sanction.

c. That after March, 2001, RECA compliance audit reviewed the accounts and records of the brokerage and determined that on December 29, 2000 the unauthorized amount of \$2,159.85 was transferred from the Medicine Hat property management rental trust account to the Brooks commission clearing account. This sum was paid by the brokerage to staff for commissions/wages. This \$2,159.85 were funds that rightfully belonged to other clients of Century 21 Double D Realty (1996) Ltd. On January 16, 2001 the funds were returned to the Medicine Hat property management rental trust account by R.S. That on December 29, 2000, \$3,927.50 was improperly transferred from the property management trust account number 101072-7. It was transferred into the Medicine Hat clearing commission general account 101180-8 and was paid out in commission/wages. The broker had not informed RECA of these trust short falls and did not immediately fund them.

This was in breach of section 25(1)(d) of the Real Estate Act and Rules 20, 21, 40 and 41 made pursuant to the Real Estate Act and is conduct deserving of sanction.

d. That RECA compliance audit also determined that on or about February 15, 2001 the amounts of \$2,181.41 and \$2,848.03 were transferred from the Royal Bank trust for rental properties account number 101 059 4 to the Brooks commissions clearing account and Medicine Hat commission clearing account respectively. These sums were paid to staff for commissions/wages and were monies that rightfully belonged to other clients of Century 21 Double D Realty (1998) Ltd. Both the Brooks and Medicine Hat commission clearing accounts were overdrawn. The broker had not informed RECA of this trust short fall and did not immediately fund it.

This was in breach of section 25(1)(d) of the Real Estate Act and Rules 20(d), 21, 40 and 41 made pursuant to the Real Estate Act and is conduct deserving of sanction.

e. That RECA compliance audit determined that on or about March 1, 2001 the amounts of \$2,181.41 and \$4,752.64 were transferred out of the Royal Bank trust for rental properties account number 101 059 4 into the Brooks commissions clearing account and the Medicine Hat commissions clearing account respectively. These sums were paid to staff for commissions/wages/contract fees and were monies that rightfully belonged to other clients of Century 21 Double D Realty (1996) Ltd. The broker had not informed RECA of this trust short fall and did not immediately fund it.

This was in breach of section 25(1)(d) of the Real Estate Act and Rules 20(d), 21, 40 and 41 made pursuant to the Real Estate Act and is conduct deserving of sanction.

f. That in or around early October, 2001, RECA compliance audit determined that the cumulative trust shortage in the Royal Bank trust for rental properties account number 101 059 4 was \$7,844.99, plus interest in the amount of \$930.45. The broker had not informed RECA of this trust short fall. This amount of \$7,844.99 was funded on October 10, 2001.

RECA compliance audit indicated to the broker the legislative requirement for the broker to fully fund the trust shortage. The broker stated that since he did not create the trust shortage, he would not be replacing it and that he would contact his son, R.S. , who was responsible for the trust shortage. The trust shortage remainder, \$930.45, was funded on October 19, 2001 but the broker did not inform RECA of same.

This was in breach of Rules 21, 40 and 41 made pursuant to the Real Estate Act and is conduct deserving of sanction.

g. That on or about July, 2001 RECA compliance audit determined that the brokerage had an additional trust shortage of \$1,000 in the general trust/pooled trust account of the brokerage. The shortfall occurred in the fall of 2000 as a result of a failure to deposit a \$1,000 cheque on a real estate purchase transaction into trust. The broker had not informed RECA of the \$1,000.00 short fall. When RECA compliance audit returned to the brokerage in early October, 2001, it determined that the \$1,000 shortage had still not been funded. The \$1,000 was funded on or about October 10, 2001.

This was in breach of section 25(1)(d) of the Real Estate Act and Rules 20(d), 21, 40 and 41 made pursuant to the Real Estate Act and is conduct deserving of sanction.

h. That the broker David Schorr did not know how to complete trust reconciliations and relied entirely on untrained staff. He also failed to ensure that the trust account reconciliations were completed in accordance with the requirements of the Real Estate Act for a lengthy period of time.

Despite RECA's requests, RECA has not been provided with nor has it received proper reconciliations for the Brooks property management rental trust account number 1144480 and the security deposit trust account number 1144472 held at the Brooks Alberta Treasury Branch. That an October, 2001 reconciliation prepared by the brokerage shows the trust liability for account number 1144480 held at the Alberta Treasury Branch in the amount of \$16,030.77; however, the bank statement shows a balance of \$9,251.44. The brokerage is showing a current trust fund shortfall of \$6,779.33.

RECA compliance audit recently received a package of documents that are referred to as trust reconciliations. This trust account is a Royal Bank general/pooled trust account. RECA audit review indicates that these reconciliations do not balance, as there are manual adjustments with a reference of an unknown deposit of \$500.00.

This is in breach of Rule 38 made pursuant to the Real Estate Act and is conduct deserving of sanction.

i. That although the broker David Schorr did not know about the various trust shortages set out above, he failed in his duty to have proper controls in place and breached Rule 21 made pursuant to the Real Estate Act including but not limited to his failure to ensure that the required trust accounts and trust account records were maintained in accordance with the Act, By-laws, the Rules and the law as it relates to trustees and his failure to be actively engaged in the management of the real estate brokerage.

**SETTLEMENT TERMS**

4. In settlement of these issues, Century 21 Double D Realty (1996) Ltd., brokerage and David Schorr, broker agree as follows:

- i) David Schorr, broker, will immediately terminate his broker's license with RECA. It is agreed that, unless there is an event affecting licensing required to be disclosed on RECA's agent's license application, occurring between now and February 21, 2002, the Executive Director will immediately issue an agent's license to David Schorr as of February 21, 2001 (3 months from the date of the Chairman's original Interim license suspension Order); "K.L."
- ii) David Schorr agrees that he will not be licensed as a broker and will not apply for a broker's license from RECA before Nov. 21, 2004;
- iii) David Schorr agrees to successfully complete two educational courses, including the Broker's licensing course, prior to applying to become licensed as a broker, and a course related to ethics, no later than 2 months after becoming licensed as an agent;
- iv) David Schorr agrees to pay a fine in the amount of \$5,000 and to pay costs related to the investigation and hearing in the amount of \$3,000. David Schorr agrees to pay \$4,000 immediately to RECA and to provide payment of the additional \$4,000 by way of post dated cheques to RECA each in the amount of \$500 for the months of March, April, May, June, July, August, September and October, 2002; and
- v) The Executive Director agrees to license, D.S. (C.A.) of Meyers Norris Penny (chartered accountants) as the brokerage's temporary broker until no later than February 21, 2002 at which time, or earlier, a properly qualified broker must apply to become licensed as the brokerage's broker. "K.L."

5. Century 21 Double D Realty (1996) Ltd., brokerage and David Schorr, broker 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.

6. Century 21 Double D Realty (1996) Ltd., brokerage and David Schorr, broker 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.

7. Century 21 Double D Realty (1996) Ltd., brokerage and David Schorr, broker are aware the Real Estate Council of Alberta may publish the contents of this Consent Agreement in the Regulator.

8. Century 21 Double D Realty (1996) Ltd., brokerage and David Schorr, broker 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. This does not include issues relating to the stay Orders, including the pending appeal.

9. These settlement terms are intended to resolve all conduct matters described herein, subject to the approval of the Hearing Panel.

IN WITNESS WHEREOF the undersigned agree and accept the terms and conditions of this settlement this 28 day of January, 2002.

Signed and delivered  
in the presence of

)  
)

"C.Y."  
\_\_\_\_\_  
Witness to the signature  
of David Schorr

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)  
)

"David Schorr"  
\_\_\_\_\_  
David Schorr, broker

Signed and delivered  
in the presence of

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)  
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\_\_\_\_\_  
Witness to the signature  
of R.S.

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\_\_\_\_\_  
Century 21 Double D Realty (1996) Ltd.,  
Brokerage R.S.

7. Century 21 Double D Realty (1996) Ltd., brokerage and David Schorr, broker are aware the Real Estate Council of Alberta may publish the contents of this Consent Agreement in the Regulator.

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IN WITNESS WHEREOF the undersigned agree and accept the terms and conditions of this settlement this 28 day of January, 2002.

Signed and delivered  
in the presence of

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\_\_\_\_\_  
Witness to the signature  
of David Schorr

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\_\_\_\_\_  
David Schorr, broker

Signed and delivered  
in the presence of

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)  
)

"K.C."  
\_\_\_\_\_  
Witness to the signature  
of R.S.

)  
)  
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"R.S."  
\_\_\_\_\_  
Century 21 Double D Realty (1996) Ltd.,  
Brokerage R.S.

I, have reviewed the Consent Agreement signed by the Hearing Panel on February 12, 2002 and consent to the additions made to the Agreement.

Dated this 28<sup>th</sup> day of February, 2002.

"S.O."

\_\_\_\_\_  
Witness

"Bob Myroniuk"

\_\_\_\_\_  
Bob Myroniuk  
Executive Director





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**

"J.F." \_\_\_\_\_

Witness to the signature  
of Bob Myroniuk

Per: "Bob Myroniuk" \_\_\_\_\_

Bob Myroniuk  
Executive Director

**Hearing Panel**

Recommendation Approved \_\_\_\_\_  
Recommendation Denied \_\_\_\_\_

DATED at the City of CALGARY, in the Province of Alberta this 31 day  
of JANUARY, 2002.

**Real Estate Council of Alberta**

Per: "Kevan Ladner" \_\_\_\_\_

Hearing Panel Chairperson

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**AFFIDAVIT OF EXECUTION**

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

1. THAT I was personally present and did see David Schorr 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 Medicine Hat, 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 Medicine Hat in the Province of  
 Alberta this 28 day of  
January, 2002.

"C.Y."

(signature of witness)

"A.M."

A Commissioner for Oaths in and  
 for the Province of Alberta