

REAL ESTATE COUNCIL OF ALBERTA

HEARING REGARDING WE / SELL REAL ESTATE INC. O/A SUTTON GROUP NORTH
REAL ESTATE AND DONALD DICKSON, DESIGNATED REPRESENTATIVE.

HEARING HELD AT THE OFFICE OF THE REAL ESTATE COUNCIL OF ALBERTA
(RECA) #340, 2424 - 4th Street S.W., Calgary, Alberta, 9:00 A.M. on November
26th, 1998.

HEARING PANEL MEMBERS:

John C. Fraser, Chairman
Lynne Scrima
Glen Chapman

REPRESENTING THE EXECUTIVE DIRECTOR:

Ms. Jean Pearce, Legal Counsel

REPRESENTING THE RESPONDENT:

Mr. Don Dickson, Repondent
L.H. , Legal Counsel

WITNESSES: Presented by Ms. Pearce

Mr. Don Dickson
Ms. Patti White,
Licensing Administrator, RECA

THERE WAS NO AGREED STATEMENT OF FACTS.

BACKGROUND:

The complaint centres around a salesperson, F.H. (F.H.) who
was employed by Sutton Group North East Real Estate (Sutton Group), however,
was not registered during the period of approximately July 30, 1996 to August 22,
1997. Mr. Donald Dickson (Mr. Dickson) was the Designated Representative for
the firm during this period of time.

ISSUES:

There is a single charge that Mr. Dickson failed to maintain adequate supervisory
control over F.H. pursuant to Rules 8(7), 3(3) and / or 23(2) of The Real
Estate Act, by not ensuring that F.H. was properly registered, thereby
exposing the public to risk. He had neither coverage under The Assurance Fund
(misrepresentation or fraud) nor AREIX (errors and ommissions).

FACTS:

There was no dispute between the parties as to the fact F.H. was not registered during the time in question. F.H. has been disciplined by RECA, and in the Agreed Statement of Facts regarding his matter, it was noted that he was involved in 41 transactions while employed by Sutton Group.

Ms. Pearce argued that the Real Estate Act clearly places the responsibility to ensure registration on the Designated Representative, not the salesperson or RECA. In presenting her evidence, Ms. Pearce suggested there were several opportunities for Sutton group to discover the error.

L.H. argued that this was a deliberate action by F.H. to avoid paying a fee. The practice of Sutton Group at the time was to allow the Salespeople to submit their own registrations directly to RECA. He also suggested that changes to the annual renewal / registration procedures created the situation where a name could be overlooked if the invoice amount was correct. Mr. Dickson terminated F.H. when he learned of the problem and instituted new procedures with his administrative staff to avoid any similar problem in the future. L.H. characterized the situation as a clerical error by staff which failed to uncover F.H.'s deliberate act to deceive.

DECISION:

The charge is as follows:

That in breach of Rules 8(7), 3(3) and / or 23(2) made pursuant to the Real Estate Act from in or around July 30, 1996 to in or around August 22, 1997, the Respondent failed to maintain adequate supervisory control in that the Respondent failed to register or verify the registration status with the Real Estate Council of Alberta of F.H., a person purporting to be duly authorized to trade in real estate as a real estate salesperson when he was not so authorized and who without the benefit of authorization to trade in real estate was employed to trade in real estate as a real estate salesperson on behalf of Sutton Group North East Real Estate. This is conduct deserving of sanction.

The Panel agreed that Mr. Dickson and Sutton Group did not deliberately withhold F.H.'s registration. Additionally, there was no apparent motive or benefit for them to do so.

However, the responsibility for ensuring that all salespeople are duly registered is clearly placed on the Designated Representative, and the Act makes no provision for delegating that responsibility to either staff or the salespeople themselves. If a firm or Designated Representative decided to do so, adequate checks and balances must be put in place to avoid error. Mr. Dickson implemented changes to their system, albeit after the fact.

THE PANEL FINDS THAT THE RESPONDENT HAS BREACHED THE REAL ESTATE
ACT BY FAILING TO ENSURE THAT F.H. WAS REGISTERED AS A
SALESPERSON.

PENALTY:

On finding the Respondent guilty of the charge, the Hearing Panel orders the
Respondent to pay a fine in the amount of \$1000.00 plus costs in the amount of
\$1,872.13, representing one half of the costs of the hearing.

Dated this 22nd day of December, 1998.

"John Fraser"

~~John Fraser~~, Panel Chairman

Lynne Scrima, Panel Member

Glen Chapman, Panel Member

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PENALTY:

**On finding the Respondent guilty of the charge, the Hearing Panel orders the
Respondent to pay a fine in the amount of \$1000.00 plus costs in the amount of
\$1,972.13, representing one half of the costs of the hearing.**

Dated this 22nd day of December, 1998.

"John Fraser"

John Fraser, Panel Chairman

"Lynne Scrima"

Lynne Scrima, Panel Member

Glen Chapman, Panel Member

DICKSON HEARING
Thursday, November 26, 1998
Calgary, Alberta

Costs

Honorarium (@ \$250.00 per day)	
• John Fraser, Chairman	\$ 750.00
• Glen Chapman	
• Lynne Scrima	
Hearing Panel Member Expenses	
• John Fraser (to be determined: breakfast, lunch, parking, etc.)	\$
• Glen Chapman	\$ 142.08
• Lynne Scrima	\$ 158.46
Legal Counsel (Real Estate Council of Alberta)	
P. Jean Pearce (17.90 hours @ \$100.00 per hour)	\$1,790.00
Attendance (5 hours @ \$100.00 per hour)	\$ 500.00
Notice of Hearing	\$ 200.00
Hearing Secretary	
• Recording Preparation	
1 hour @ \$15.00	\$ 15.00
• Attendance Time	
5 hours @ \$15.00	\$ 75.00
Disbursements	
• Exhibit of evidence preparation (6 sets)	\$ 60.00
• Telephone Conference Call re: Adjournment	\$ 25.20
Add G.S.T. (@ 7%)	\$ 1.76
Process Server	\$ 26.75
TOTAL	\$3,744.25