

IN THE MATTER OF the Real Estate Act, S.A. 1996, c.R- 4.5

AND IN THE MATTER OF GORDON PETHICK, salesperson registered with BGB Realty Inc. o/a Re/Max Realty Professionals

INTRODUCTION

1. The Executive Director of the Real Estate Council of Alberta conducted an investigation into whether Gordon Pethick's conduct is deserving of sanction and/or whether he otherwise breached the requirements of the Real Estate Act (hereinafter "the Act") or the Rules prescribed pursuant to the Act.
2. The Executive Director and Gordon Pethick agree to resolve the allegations against Gordon Pethick on the terms and conditions set out below.

AGREED STATEMENT OF FACTS

3. Gordon Pethick has been in the industry as a real estate salesperson since February 7, 1983. He has been registered as a real estate salesperson with BGB Realty Inc. o/a Re/Max Realty Professionals since April 6, 1996 and is currently registered with the same agency.
4. In or around December, 1996, Gordon Pethick represented the K.'s in the sale of their Calgary home. He also represented the interests of his then wife, J.P., in her purchase of the K.'s Calgary property. Gordon Pethick was acting in a dual agent capacity. He also placed himself in a conflict of interest position relative to the parties in that he represented his wife, a person with whom he had a close personal relationship, while also representing the K.'s, who were at arms length to him.
5. Gordon Pethick also represented the K.'s in their purchase of a Strathmore residential property. The purchase of the Strathmore property was dependent on the sale of the K.'s Calgary Property.
6. On December 28, 1996, J.P. entered into a Real Estate Purchase contract with the K.'s. The contract was conditional on J.P. obtaining satisfactory financing by January 8, 1997. The possession date was February 1, 1997. A \$500 deposit cheque was provided by J.P. to Gordon Pethick and by way of a term of the contract was to be deposited into trust at Re/Max Realty Professionals.

7. The \$500 trust deposit was not deposited in trust at Re/Max Realty Professionals. Gordon Pethick failed to notify his agent of this transaction and further failed to provide the \$500 to the agent for deposit into the agent's trust account.
8. Before the financing condition was removed by J.P. on the K.'s Calgary property, Gordon Pethick advised the K.'s to remove the condition on the Strathmore property. Even though his wife's financing was not in place, Gordon Pethick advised the K.'s that his wife's financing would not be a problem.
9. The date for the removal of conditions on the K.'s property, January 8, 1997, passed without Gordon Pethick addressing the condition date or whether or not his wife's financing was in place with the K.'s. On January 8, 1997 J.P. did not have financing for the purchase of the K.'s property.
10. During the investigation into this matter, Gordon Pethick advised the Real Estate Council of Alberta investigator that he had not signed any documents regarding any mortgage application for this property. He indicated that he expected the mortgage company to arrange the financing and implied that he had not been involved in the financing process.
11. However, the investigation determined that Gordon Pethick had not been candid and honest with the investigator in that he had both signed documents relating to efforts to obtain financing and he had communicated by fax and otherwise on many occasions with the mortgage company in regard to financing.
12. In or around December, 1996, J.P. completed a mortgage application wherein she indicated that she was separated from her husband, Gordon Pethick, and that the property would be used as her primary residence. Gordon Pethick witnessed this application. Later a mortgage application was completed for Gordon Pethick which provided his marital status as separated and that he intended to use the property as his primary residence.
13. However, neither J.P. nor Gordon Pethick planned to use the property as their primary residence. The property was intended as an investment and would be a rental property. As well, at the time of the efforts to obtain mortgaging, J.P. and Gordon Pethick were married and living together.
14. On January 29, 1997, two days before his wife was to take possession of the K.'s property, Gordon Pethick was advised by the solicitor for the K.'s that there were no mortgage funds to close the transaction. Neither J.P. nor Gordon Pethick had qualified for financing. Both the sale of the K.'s Calgary property and the purchase of the Strathmore property were at risk.

15. However, Gordon Pethick settled with the K.'s by way of an approximate payment of \$10,000 to them. Their Calgary property sold and they completed the purchase of the Strathmore property.
16. By reason of the matters described herein Gordon Pethick's conduct is deserving of sanction under Part 3 of the Act in that Gordon Pethick:
 - (i) breached s. 25(1) (b) of the Act by not delivering the trust deposit to his agent as required by the Act and the Real Estate Purchase contract;
 - (ii) breached his fiduciary duties to his clients, the K.'s, by putting his own interests, either directly or indirectly, above those of the K.'s in advising them to remove the condition on the Strathmore property when financing on his wife's purchase of their property had not been resolved;
 - (iii) breached his fiduciary duties to his clients, the K.'s, by not disclosing to them on or before January 8, 1997 that the condition on his wife's purchase of their property had not been satisfied;
 - (iv) in breach of s. 38(4), failed to be fully candid and honest with the RECA investigator and failed to fully cooperate with the investigation; and
 - (v) counseled J.P. to provide false and inaccurate information in a mortgage application and failed to correct false and inaccurate information in regard to his personal efforts to obtain financing.

SETTLEMENT TERMS

17. In settlement of these issues, Gordon Pethick agrees to a suspension of his authorization to trade in real estate during the period commencing December 1, 1998 up to and including January 31, 1999. During this period he agrees not to trade in real estate, hold himself out as authorized to trade in real estate to either the public or the industry or in anyway advertise himself as being authorized to trade in real estate to the public or the industry.
18. Gordon Pethick agrees to pay a fine in the amount of \$2,000 to the Real Estate Council of Alberta.
19. Costs of this matter are in the amount of \$1,500 and are payable to the Real Estate Council of Alberta.
20. Gordon Pethick agrees to successfully complete the "Reducing Risk" and the "Real Estate Law" courses within 6 months of ratification of this Consent Agreement.
21. Gordon Pethick 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. Gordon Pethick 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. Gordon Pethick is aware the contents of this Consent Agreement may be published by the Real Estate Council of Alberta.
24. Gordon Pethick 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.
25. 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 16 day of November, 1998.

Signed and delivered
in the presence of

"M.W."

Witness to the signature
of Gordon Pethick

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"Gordon Pethick"

GORDON PETHICK

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.P."

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 26 day of
November, 1998.

Real Estate Council of Alberta

Per: John Fraser
Hearing Panel Chairperson

AFFIDAVIT OF EXECUTION

CANADA)	I, <u>M.W.</u>
)	(name of witness),
PROVINCE OF ALBERTA)	of the City of Calgary in the Province of Alberta
)	
TO WIT:)	MAKE OATH AND SAY:

1. THAT I was personally present and did see **GORDON PETHICK** 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 Calgary, in the Province of Alberta, and that I am the subscribing witness thereto.
3. THAT I know the said party and he is in my belief of the full age of eighteen years.

SWORN BEFORE ME at the City
of Calgary in the Province of
Alberta this 16 day of
NOVEMBER, 1998.

"M.W."

(signature of witness)

"R.B."

A Commissioner for Oaths in and
for the Province of Alberta