

IN THE MATTER OF THE REAL ESTATE ACT S.A. 1996 c. R – 4.5

AND IN THE MATTER OF MARIO DEVCIC, salesperson then registered as a real estate salesperson with 569426 Alberta Inc. o/a Re/Max Classic

INTRODUCTION

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

AGREED STATEMENT OF FACTS

3. Mario Devcic has been registered as a real estate salesperson with R & D Realty Inc. o/a Sutton Group Canyon Creek since October 21, 1997.
4. From October 28, 1993 to October 17, 1997, Mario Devcic was registered as a real estate salesperson with 569429 Alberta Inc. o/a Re/Max Classic Realty (hereinafter "Re/Max Classic Realty").
5. While he was registered as a real estate salesperson with Re/Max Classic Realty, Mario Devcic represented both the Vendor and the Purchasers in a real estate transaction.
6. The Purchasers wished to rent a property for a period of time and then assume the Vendors' mortgage. Mario Devcic found such a property for the Purchasers. The Vendor was in Morinville, Alberta.
7. The Purchasers executed a Purchase Agreement on November 21, 1996. The contract provided the following in the "additional deposit" line: "\$6,000 - upon leasing" and below these words were "on or before May 31, 1997" and in the "other value" line: "\$2,000 – option fee non-refundable in trust". The contract further provided at paragraph 6.5 that the Purchasers were to rent the property for six months at \$707 per month and at the end of the six month period, the Purchasers were to assume the existing mortgage with a \$8,000 down payment. It also provided that six post dated cheques were to be provided to the Vendor by November 28, 1996.

3. The terms of the contract were not clear and were ambiguous, particularly as it related to payment of the down payment, installments, if any, and timing. The \$2,000 was never paid into trust, although the Vendor believed it had been on the basis of the wording of the contract.
9. Although the Vendor verbally agreed to the contract as it was verbally relayed to her by Mario Devcic, she did not accept it in writing until 11 days later, on December 1, 1996.
10. Mario Devcic permitted the Purchasers to move into the property as tenants on November 28, 1996 prior to the Vendor having received, reviewed and agreed in writing to the Purchase Contract containing the terms of lease and prior to the Vendor having received the post dated cheques.
11. Mario Devcic signed the Purchase Contract as a witness to the Purchasers' signature before the Purchaser signed the offer. He then forwarded a copy of the Purchase Contract to the Vendor requesting that she sign the agreement. Prior to the Vendor signing the Purchase Contract, it contained a signature in the "Witness to Vendor" line. The Purchase Contract was not properly witnessed.
12. Mario Devcic requested that the Vendor initial amendments and changes to the Purchase Agreement but failed to ensure that the Purchaser(s) also initialed the changes.
13. Mario Devcic further failed to expressly provide for the transaction closing date in the Purchase Contract. This caused further confusion.
14. The Vendor became upset over the transaction when she learned that the Purchasers gained possession to the property prior to her written agreement. When she learned that no monies were in trust, she demanded return of the property. The Purchasers agreed and vacated the property.
15. By reason of the matters herein, Mario Devcic failed to act in the best interests of his clients by not ensuring that the Purchase Agreement was clearly drafted, accurately understood, properly executed by both the Vendor and the Purchasers and legally witnessed. He further failed in his duties to his clients by permitting terms of an agreement to become effective prior to written execution and/or consent by the Vendor. Mario Devcic caused confusion in the transaction. This is conduct deserving of sanction.

SETTLEMENT TERMS

16. In settlement of these issues, Mario Devcic agrees to pay a fine in the amount of \$700 payable immediately to the Real Estate Council of Alberta.

17. Mario Devcic agrees to successfully complete the following courses by March 31, 1999:
 - a) Real Estate Agency Law; and
 - b) Working with the Buyer.
18. Costs of this matter are in the amount of \$500 and are payable immediately to the Real Estate Council of Alberta.
19. Mario Devcic 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.
20. Mario Devcic 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.
21. Mario Devcic is aware the contents of this Agreement may be published by the Real Estate Council of Alberta.
22. Mario Devcic hereby waive 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.
23. 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 15 day of **OCTOBER, 1998**.

Signed and delivered
in the presence of

"C.E."
Witness to the signature
of Mario Devcic

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"Mario Devcic"
MARIO DEVCIC

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

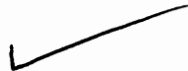
"J.P."

 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 22 day of
Oct, 1998.

Real Estate Council of Alberta

Per: "Barry Gogal"

 Hearing Panel Chairperson

AFFIDAVIT OF EXECUTION

CANADA	)	I, <u>C.E.</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 **MARIO DEVCIC** 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 15 day of
October, 1998.

"T.B."
A Commissioner for Oaths in and
for the Province of Alberta

"C.E."
(signature of witness)