

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

**AND IN THE MATTER OF JANET MORGAN, Designated Representative of 555728
Alberta Ltd. o/a Home Start**

INTRODUCTION

1. The Executive Director of the Real Estate Council of Alberta conducted investigations into whether Janet Morgan breached the Real Estate Act (the "Act") or the Rules prescribed pursuant to the Act.
2. The Executive Director and Janet Morgan have agreed to resolve the allegations against her on the terms and conditions set out below.

AGREED STATEMENT OF FACTS

3. Janet Morgan has been the designated representative of the licensed agent 555728 Alberta Ltd. o/a Home Start ("Home Start") since April 1, 1993. From 1985 to 1990, she had been authorized to trade in real estate both as a designated representative and as a salesperson. From 1990 to April 1, 1993, Janet Morgan was not authorized to trade in real estate.

Application for Authorization

4. On or about September 25, 1997 the Real Estate Council of Alberta Licensing Unit received a licensing application from Janet Morgan in her capacity as designated representative for Home Life. Pertinent information was not included on the form and the application was subsequently rejected.
5. On December 12, 1997 Janet Morgan provided the additional information and resubmitted her application with her commissioned Affidavit.
6. Upon review of Janet Morgan's application, it was found that she incorrectly answered two questions:
 - i) To question 3 of the application, Janet Morgan answered "No". This question provides: – *Have you or has any business you owned or participated in as a director or officer been refused a registration, denied authorization in any capacity, or had any registration, license or authorization suspended or revoked by any real estate or mortgage broker licensing body?* The answer to this question ought to have been "Yes" since Home Start and Janet Morgan's license had been suspended by the Superintendent of Real Estate

from October 23, 1995 to November 5, 1995 for failure to keep proper books and accounts, failure to deposit trust money within 2 banking days and influencing trades in real estate through deception or dishonesty; and

- ii) To question 4 of the application, Janet Morgan answered "No". This question provides: - *Have you been disciplined by any local real estate board, real estate or mortgage broker association, or any professional or occupational society?* The answer to this question ought to have been "Yes" since Home Start and Janet Morgan had been fined \$3,200 by the Calgary Real Estate Board on or about November 19, 1994. As well, on or about October 23, 1995, her Board membership was terminated pending reinstatement of her license by the provincial licensing authorities.

- 7. Although Janet Morgan stated this information had been disclosed in her 1996 application, she in fact had failed to disclose this information in her licensing application for the year 1996 as well.

Conclusion

- 8. By reason of the matters described in the within paragraphs 4 through 8, Janet Morgan provided false and incorrect information in answer to questions in the application for authorization as a real estate broker which is conduct deserving of sanction. As well, the swearing of an affidavit to the truthfulness of the information supplied in the application for authorization as a real estate broker, when the information supplied is not true and correct, is a misrepresentation to the Real Estate Council of Alberta and is conduct deserving of sanction.

D.'s to V.'s Transaction

- 9. Janet Morgan was the real estate broker in a transaction where she represented both the potential Purchasers, the V.'s ; the first Vendors, the D.'s ; and the second Vendor, S.A. , who was employed by Home Start as a salesperson and who was related to the D.'s .
- 10. On or about February 3, 1997, the V.'s , a couple from British Columbia who were living in Calgary executed an offer to purchase a property in Calgary from the titled owners, the D.'s . A salesperson registered with Home Start, S.A. , had an indirect interest in this property. None of the necessary registered salesperson disclosures were made in the transaction. This offer was not accepted by the D.'s .
- 11. On or about February 18, 1997, the V.'s offered to lease with an option to purchase through mortgage assumption, the same property from the D.'s , with S.A. continuing to have an indirect interest in the property. None of the necessary registered salesperson disclosures were made in the transaction. Although the Vendors/Lessors were aware of this offer to

lease, it was never formally presented to the Vendors/Lessors and was not accepted by them.

12. On or about the date of execution, Janet Morgan verbally advised the V.'s that they should review the executed Offer to Lease with their lawyer. She advised once this was done, the Vendors/lessors would do likewise. If everything was satisfactory, the contract would then be executed by the Vendors/Lessors. Janet Morgan did not make the contract subject to the satisfactory review by a lawyer and the offer was not presented to the Vendors. The V.'s chose not to have the offer reviewed by a lawyer.
13. Even though the written offer was not accepted in writing, Janet Morgan verbally advised the V.'s that the possession date had been changed from March 1, 1997, as provided for in the unaccepted contract, to March 3, 1997. The V.'s believed they had a valid deal and that the transaction was proceeding.
14. The offer to lease with Option to Purchase had a clause providing that if it was not accepted by February 21, 1997, the offer was withdrawn and monies were to be returned to the V.'s. As the date approached and passed, Janet Morgan failed to bring this clause to the V.'s attention. The offer had not been presented by this date.
15. The V.'s were not aware that subsequent to their execution of the offer to lease from the D.'s, S.A. entered into formal negotiations to transfer the property to S.A. Janet Morgan anticipated that following this transfer, S.A. would enter into the lease and option to purchase agreement with the V.'s. However, such a contract between the V.'s and S.A. was never formalized in writing.
16. Janet Morgan did not explain the nature of the dual agency to the parties in this transaction and she did not provide written dual agency disclosure.
17. Janet Morgan left for vacation on or about February 26, 1997. She did not return until early March, 1997. During her absence, she did not arrange for another agent to oversee this transaction. However, S.A., a salesperson registered with Home Start Realty had Janet Morgan's pager number and a different real estate broker was to handle Janet Morgan's new home sales.
18. Even though there was no fully executed Lease with Option to Purchase, the V.'s attended at the property to take possession, as per the March 1, 1997 possession date contained in the offer to lease with option to purchase that only the V.'s had executed. Although S.A. was not legally obligated, she provided temporary possession to them. As there was no valid contract, on March 7, 1997, the V.'s agreed to vacate the property and received \$3,000 from Homestart Realty to compensate for their costs and expenses. In January, 1998, the property was sold by S.A. to another Purchaser.

Conclusion

19. By reason of the matters described in the within paragraphs 9 through 14, Janet Morgan breached her fiduciary duties to her clients, the V.'s , in that she did not act in their best interests and she did not provide full and timely information relating to the transaction to the parties.

SETTLEMENT TERMS

Application for Authorization

20. In settlement of the issues outlined in paragraphs 4 through 8 above, Home Start and Janet Morgan agree to immediately pay a fine in the amount of \$2,000 to the Real Estate Council of Alberta.

Davidson to Valenciano Transaction

21. In settlement of the issues outlined in paragraphs 9 through 15 above, Home Start and Janet Morgan agree to immediately pay a fine in the amount of \$2,500 to the Real Estate Council of Alberta.
22. Costs of these matters are in the amount of \$1,000 payable immediately to the Real Estate Council of Alberta.
23. Janet Morgan acknowledges that she has been given an opportunity to seek the advice of legal counsel and acknowledges that she is agreeing to the terms of settlement of her own free will.
24. Janet Morgan is aware that a copy of this document will be placed on her file and may be reviewed and considered in any future disciplinary proceedings.
25. Janet Morgan is aware the contents of this agreement may be published by the Real Estate Council of Alberta.
26. Janet Morgan hereby waives any rights she may have under the Act or otherwise to a review, hearing, appeal or other judicial proceeding involving the matter referred to herein.
27. 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 24th day of **SEPTEMBER, 1998.**

Signed and delivered
in the presence of

"E.A."

Witness to the signature
of Janet Morgan

"Janet Morgan"

JANET MORGAN

Designated Representative

555728 Alberta Ltd. o/a Home Start

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."

~~Date~~ Witness

Per: "Bob Myroniuk"

Bob Myroniuk
Executive Director

Recommendation Approved ☒
Recommendation Denied ☐

DATED at the City of Calgary, in the Province of Alberta this 28th day of October, 1998.

Real Estate Council of Alberta

Per: "John Fraser"

Hearing Panel Chairperson

AFFIDAVIT OF EXECUTION

CANADA) I, E.A.
) (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 **JANET MORGAN** 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 she 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 24 day of
 "E.A." ~~MAY~~, 1998.
 "T.B." September, "T.B."

 "T.B."

 A Commissioner for Oaths in and
 for the Province of Alberta

"E.A."

 (signature of witness)