

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

AND IN THE MATTER OF R.K. CONSULTING INC. o/a CENTURY 21 NORTHERN REALTY (formerly known as NRS NATIONAL REALTY 2000 (SLAVE LAKE)) and ROBERT KEN GIBLIN, Designated Representative

INTRODUCTION

1. The Executive Director of the Real Estate Council of Alberta conducted an investigation into whether R.K. Consulting Inc o/a Century 21 Northern Realty (formerly known as NRS National Realty 2000 (Slave Lake)) and Robert Ken Giblin's conduct is deserving of sanction and/or whether they otherwise breached the requirements of the Real Estate Act (hereinafter "the Act") or the Rules prescribed pursuant to the Act.
2. The Executive Director, R.K. Consulting Inc o/a Century 21 Northern Realty (hereinafter "Century 21 Northern Realty") and Robert Ken Giblin have agreed to resolve the allegations against Century 21 Northern Realty and Robert Ken Giblin on the terms and conditions set out below.

AGREED STATEMENT OF FACTS

3. Robert Ken Giblin has been the designated representative of R.K. Consulting Inc. o/a Century 21 Northern Realty since April 17, 1995. Prior to this, R.K. Consulting Inc. o/a Century 21 Northern Realty was to date known as NRS National Real Estate 2000 (Slave Lake) (hereinafter referred to as "Century 21 Northern") and Robert Ken Giblin was the designated representative of this agency from December 8, 1993 to January 27, 1994.
4. F.T. was a registered real estate salesperson with Century 21 Northern Realty from February 11, 1992 to June 6, 1996.

Failure to maintain Trust Accounts

5. On August 4, 1995, an agency trust cheque was issued for \$2050.00 to the agency's general account which created a shortfall of \$100.00 (R./K. sale). The error was not corrected until February 5, 1996 and the agency's trust account was short this \$100.00 for approximately 6 months.
6. Between July 21, 1994 and October 21, 1994, service charges had been incorrectly debited from the agency's trust account in the amount of \$29.40. The

error was not corrected until approximately 14 months later on September 25, 1995.

7. Between July 21, 1994 and October 21, 1994, monthly reconciliations of the agency's trust accounts were not completed.
8. On March 30, 1995, a Purchasers' deposit cheque in the amount of \$2000 was deposited into NRS' general account and not its trust account. This error did not affect the transaction.

Improper Trade Name

9. During the years 1994 to 1997, NRS National Realty 2000 traded with the improper agency name. The following variations of name RK Consulting Inc. o/a Century 21 Northern Realty were found on various documents:
 - (a) NRS National 2000;
 - (b) National 2000 Realty;
 - (c) NRS in trust;
 - (d) NRS National 2000 Realty Inc;
 - (e) NRS National 2000 Realty; and
 - (f) NRS Realty.

Carrying on Mortgage Broker Activity while unlicensed

10. Between February, 1995 and August, 1995 NRS National Realty 2000, in conjunction with Security Home Mortgage Corporation, carried on mortgage broker activity while being unlicensed to do so. Activities included completing mortgage loan application, arranging terms of mortgages, obtaining income verification, assisting in signing mortgage documents and obtaining a fee for same.
11. NRS National Realty 2000 failed to disclose to 19 Purchasers that it was receiving a fee from Security Home Mortgage Corporation for brokering the mortgages.

Knowledge of False Declaration

12. In or about March 1995, Purchasers K. and C. signed a Statutory Declaration which was false and inaccurate with respect to the down payment. Robert Ken Giblin was aware the statutory declaration was false yet he failed to convey same to the mortgagee.
13. In or about March 1995, Purchasers P. and H. completed a statutory declaration indicating that their down payment was from their own resources and not borrowed. However, NRS National Realty 200 made a loan to the

Purchasers for the down payment. The loan was to be repaid through F.T. commission. This was not disclosed to the mortgagee.

14. In or about July 1995, Purchasers T. and L. signed a Statutory Declaration stating that their down payment was from their own resources. R.K. Consulting Inc. had loaned these Purchasers their deposit and a promissory note was signed on July 8, 1995 in favor of R.K. Consulting Inc. in the amount of \$7,950.70. This was not disclosed to the mortgagee.

Filing an Improper and False Caveat

15. In or about November 1995, Robert Ken Giblin caused a caveat to be registered against a property involving Purchasers K. and C. in favor of NRS National Realty 2000 pursuant to a real estate listing contract. Robert Ken Giblin was aware that no listing contract existed and there was no legal authority to file the caveat.
16. In or around March 1995, a caveat was filed in favor of NRS National Realty 2000 for a transaction involving Purchasers P. and H. pursuant to a listing contract. However, said contract did not exist. The caveat was actually registered to protect F.T. interest in loaning the Purchasers P. and H. their down payment as is set out in paragraph 13 herein.

Payment of Improper Commission

17. In or about October, 1995, NRS National Realty 2000 paid a commission or bonus to J.G., a non-registered person in regard to a trade in real estate without disclosing same to its principal, being the Canadian Imperial Bank of Commerce.
18. In or about May 1995, NRS National Realty 2000 made a payment of commission to an unlicensed corporation, Deadhorse Enterprises Ltd. in regard to a trade in real estate.

Failure to maintain Supervisory Control

19. In or about November 1995, December 1995 and January 1996, Purchasers B.E. and S.E. gave F.T. the amount of \$400.00 each month, which monies were to be forwarded to the Vendor. F.T. did not forward these monies to the Vendor but kept them for his personal use. Robert Ken Giblin became aware of this matter but did not terminate F.T.'s employment.
20. From approximately March 1995 to May 1996, Purchasers K. and C. provided F.T. with monthly cash payments of \$627.00 which monies were to be provided to the mortgagee. F.T. did not forward these

payments as instructed and the mortgagee ultimately foreclosed on the property. Receipts had been provided to the Purchasers from F.T. personally and from NRS National Realty 2000's receipt book. F.T. was criminally convicted of fraud.

21. Purchasers P. and H. , in March 1995, provided F.T. with cash of \$627.00 per month which monies were to be provided to purchasers' mortgagee. Receipts were provided to the Purchasers from F.T.'s personal receipt book and from NRS National Realty 2000's receipt book.
22. In or about July 1995, Purchasers C.A. and C.R. gave cash to F.T. to pay for various services including moving, repair contractors and a CMHC fee payment. These monies were not received by a number of payees. F.T.'s acknowledged that monies are still owing to the plumber and the electrician. The Carters returned to Ontario so that criminal charges were not pursued by the RCMP.
23. Robert Ken Giblin was unaware that F.T. was collecting monies from the Purchasers and using the agency's receipt book.
24. By reason of the matters described herein, Robert Ken Giblin's conduct is deserving of sanction and was not in the public interest under Part 3 of the Real Estate Act in that:
 - a) his conduct in using improper trade names misled, caused confusion and misunderstanding in relation to trades in real estate;
 - b) he caused improper or false caveats to be registered;
 - c) he failed in his supervisory control of F.T. ;
 - d) he did not act in the best interests of his clients, principles and the public;
 - e) he did not ensure that F.T. was acting in the best interests of his clients in accordance with the standards of competence that are reasonably expected in the industry; and
 - f) he failed to maintain careful records and failed to ensure monies intended for trust were deposited in trust.

SETTLEMENT TERMS

25. Robert Ken Giblin and R.K. Consulting Inc. o/a Century 21 Northern Realty ("R.K. Consulting Inc.") agree that their conduct is deserving of sanction.
26. Robert Ken Giblin and R.K. Consulting Inc. agree to immediately pay a fine in the amount of \$10,000 to the Real Estate Council of Alberta.
27. Costs of this matter are in the amount of \$1,500 and are payable immediately to the Real Estate Council of Alberta.

28. Robert Ken Giblin will successfully complete the Agent's Licensing Program within two years of the date of ratification of this Consent Agreement.
29. Robert Ken Giblin and R.K. Consulting Inc. 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.
30. Robert Ken Giblin and R.K. Consulting Inc. are aware that a copy of the Consent Agreement will be placed on their respective files and may be reviewed and considered in any future disciplinary proceedings.
31. Robert Ken Giblin and R.K. Consulting Inc. are aware the contents of this Consent Agreement may be published by the Real Estate Council of Alberta.
32. Robert Ken Giblin and R.K. Consulting Inc. 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.
33. 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 JUNE, 1998.

Signed and delivered
in the presence of

"J.G."

Witness to the signature
of Robert Ken Giblin

"Robert Ken Giblin"

ROBERT KEN GIBLIN

"J.G."

Witness to the signature
of Robert Ken Giblin

"Robert Ken Giblin"

ROBERT KEN GIBLIN

Designated Representative

**R.K. CONSULTING INC. o/a CENTURY
NORTHERN REALTY**

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 29 day of
JUNE, 1998.

Real Estate Council of Alberta

Per: "John Fraser"

Hearing Panel Chairperson

AFFIDAVIT OF EXECUTION

CANADA) I, J.G. of the
) (name of witness),
 PROVINCE OF ALBERTA) Town of Slave Lake in the Province of Alberta
)
 TO WIT:) MAKE OATH AND SAY:

1. THAT I was personally present and did see **ROBERT KEN GIBLIN** 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 Town of Slave Lake 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 Town
 of Slave Lake in the Province of
 Alberta this 15 day of
JUNE, 1998.

"J.G."
 (signature of witness)

"K.H."
 A Commissioner for Oaths in and
 for the Province of Alberta