

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

AND IN THE MATTER OF Marcie West

INTRODUCTION

1. The Executive Director of the Real Estate Council of Alberta conducted an investigation during August, 1996 into whether Marcie West's conduct is deserving of sanction and/or whether she otherwise breached the requirements of the Act or the Rules prescribed pursuant to the Act.

2. The Executive Director and Marcie West have agreed to resolve the allegations against her on the terms and conditions set out below.

AGREED STATEMENT OF FACTS

3. Marcie West is a licensed real estate agent and salesperson pursuant to section 3 of the Rules. At the time of the alleged circumstances, Ms. West was a salesperson for ReMax "Specialties" Real Estate which is no longer operating.

4. On January 12, 1994, L.B. listed her property for sale with ReMax "Specialties" Real Estate for the period of January 12, 1994 to May 30, 1994 and Ms. West was her salesperson.

5. On May 30, 1994, L.B. entered into a purchase contract for the private sale of her property to D.R.. Although Ms. West's listing agreement was in full force and effect, she was not involved as a salesperson in this transaction.

6. On August 26, 1994, at L.B.'s request, Ms. West attended with L.B. at the property sold by L.B. to D.R. and met with D.R.. Ms. West indicated to D.R. that if the contract terms under the May 30, 1994 purchase agreement were not renegotiated D.R. would be evicted. She further advised D.R. that the purchase price for chattels at issue, being a washer and dryer, could not be included in the total purchase price as was agreed to in the purchase contract dated May 30, 1994. Ms. West proceeded to rewrite the May 30, 1994 purchase contract and the rewritten purchase contract was executed by D.R. and L.B. on August 26, 1994.

7. As a result of the purchase contract being rewritten on August 26, 1994, D.R. paid the same purchase price for the property as provided for in the May 30, 1994 purchase contract but she returned the chattels at issue, being a washer and dryer, previously purchased in the May 30, 1994 purchase agreement, to L.B..

8. Ms. West's representations and activity in rewriting the May 30, 1994 purchase contract on August 26, 1994 is conduct deserving of sanction under Part 3 of the Act because they resulted in D.R. being misled such that :

- a) D.R. believed that she would be evicted if she did not agree to the terms proposed;
- b) D.R. believed that the chattels at issue (washer and dryer) could not be purchased in the total purchase price; and
- c) D.R. believed Ms. West was involved in rewriting the purchase contract to obtain a commission that was owing to her from L.B. because at the time the private sale was entered into Ms. West's listing agreement had not expired. (There is no evidence that a commission was paid.)

SETTLEMENT TERMS

9. In settlement of these issues, Marcie West agrees to pay a \$500.00 fine to the Real Estate Council of Alberta and to attend the Reducing Risk continuing education course and the Contract Law segment of the Real Estate Law course in the Real Estate Broker's Licensing Program.

10. Costs of the investigation and terms of settlement are waived.

11. Ms. West acknowledges that she has been given an opportunity to seek the advice of legal counsel and acknowledge that she is agreeing to the terms of settlement of her own free will.

12. Ms. West hereby waives any rights she may have under the Act or otherwise to a hearing, review, judicial review or appeal of the matter referred to herein.

13. 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 steps including the initiation of any proceedings before the Real Estate Council of Alberta or the courts in this regard.

IN WITNESS WHEREOF the undersigned agree and accept the terms and conditions of this settlement this 17th day of October, 1996.

Signed and Delivered
in the presence of:

"J.P."

J.P.

"Marcie West"

Marcie West

The Executive Director recommends to the Hearing Panel the proposed terms of settlement based on the Agreed Statement of Facts.

October 21, 1996
Date

"Bob Myroniuk"

Bob Myroniuk
Executive Director

Recommendation Approved ✓

Recommendation Denied _____

Dated at Calgary, Alberta,
this 5 day of Dec., 1996

"Barry Gogal"

Barry Gogal
Hearing Panel Chairperson
Real Estate Council of Alberta

AFFIDAVIT OF EXECUTION

CANADA)
PROVINCE OF ALBERTA)
TO WIT:)

I, J.P. , of the City
of Calgary, in the Province of
Alberta, MAKE OATH AND SAY:

1. THAT I was personally present and did see Marcie West 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 Marcie West 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 17th day of)
October, 1996.)
)
"C.C.")

"J.P."

J.P.

A COMMISSIONER FOR OATHS
IN AND FOR THE PROVINCE
OF ALBERTA