

## THE REAL ESTATE COUNCIL OF ALBERTA

IN THE MATTER OF s. 39(1)(b) and s. 41 of the *Real Estate Act*, R.S.A. 2000, c. R-5

AND IN THE MATTER OF a Hearing concerning the conduct of **Jerry Reti**, Broker, registered at all material times hereto with Info-Tech Realty Inc., and currently registered with 748858 Alberta Ltd. o/a Royal LePage Info Market Group Lacombe

### DECISION OF A HEARING PANEL OF THE REAL ESTATE COUNCIL OF ALBERTA

#### I) INTRODUCTION

The Hearing Panel held a hearing into the conduct of Jerry Reti, Broker, registered at all material times hereto with Info-Tech Realty Inc., and currently registered with 748858 Alberta Ltd. o/a Royal LePage Info Market Group Lacombe. The Hearing Panel was composed of Jack Peat (Chair), Graham Downey and Barry Gogal.

The Hearing took place via teleconference on December 2, 2004. In attendance at the hearing were Ryana Mather, on behalf of the Executive Director of the Real Estate Council of Alberta, and Jerry Reti, on his own behalf.

#### II) ALLEGATIONS

Jerry Reti was called before the Hearing Panel to answer to the following allegations set out in the Notice of Hearing:

1. That on August 30, 2001, contrary to section 6(c) of the *Code of Conduct*, you failed to render a competent service by participating in the creation of a contract that you knew or ought to have known that did not reflect the agreement already in place when you entered into a listing contract with a client that did not reflect the oral agreement. This is conduct deserving of sanction, particulars of which are as follows:

- a) On August 30, 2001, S.W.                      and his spouse, S.H.W.                      (the " W.'s                      "), entered into a listing contract (the "Listing Contract") with Info-Tech Realty Inc. ("Info-Tech") for the sale of their farm, including five-quarter sections of Land and the homestead ("the Land").
- b) You were the listing broker with respect to the Listing Contract.
- c) The Listing Contract provided for a one-year term and the W.'s                      did not intend to commit to a one-year term. You and the W.'s                      orally agreed that the Listing Contract could be unconditionally terminated at the expiry of six months.
- d) You failed to state as a term of the Listing Contract that the W.'s                      would receive a 50% rebate of the cost of a certain GIS Mapping Package.

2. That in or about the fall of 2001, contrary to section 2(b) of the *Code of Conduct*, you breached your fiduciary duty to your client when you failed to act in accordance with your client's lawful instructions to amend the Listing Contract. This is conduct deserving of sanction, particulars of which are as follows:

- (a) In the fall of 2001, the W.'s instructed you to remove one-quarter section of land and reduce the listing price from \$429,000 to \$392,000 in the Listing Contract.
- (b) You did not create the Amendment to the Real Estate Listing Contract until February 20, 2002, several months after the W.'s request.

3. That on February 20, 2002, contrary to section 6(c) of the *Code of Conduct*, you failed to render a competent service by participating in the creation of a contract that you knew or ought to have known was not legally binding and was confusing when you failed to properly draft and amend the Rural Real Estate Purchase Contract (the "Purchase Contract"). This is conduct deserving of sanction, particulars of which are as follows:

- (a) On February 20, 2002, H.D. and H.L.D. (the "Buyers") made an offer to the W.'s for the purchase of three quarter sections of the Land. The W.'s accepted the offer on February 20, 2002 and the parties executed the Purchase Contract.
- (b) You acted as a dual agent for the W.'s and the Buyers with respect to the Purchase Contract.
- (c) The Buyers' condition in the Purchase Contract stated that the purchase was "subject to financing" with a condition date of March 15, 2002. In fact, the Buyers were not seeking additional financing; rather they needed to sell their own property.
- (d) The Buyers' condition date was March 15, 2002 on the Purchase Contract, but apparently was amended to March 28, 2002 at some point in time. You did not create an amending agreement and the date of the seller's condition did not coincide with the Buyers' condition date.

4. That on or about February 20, 2002, contrary to section 6(c) of the *Code of Conduct*, you failed to render a competent service by participating in the creation of a contract that you knew or ought to have known was not legally binding and was confusing when you failed to properly draft the Addendum to the Purchase Contract (the "Addendum"). This is conduct deserving of sanction, particulars of which are as follows:

- (a) On or about February 20, 2002, the Purchase Contract was amended to provide that upon closing two-quarter sections would be sold for \$240,000 and the third-quarter section was to be sold according to an Addendum.
- (b) The Addendum provided for a payment schedule for a two-year period for the purchase of the third-quarter section.
- (c) The terms of the Addendum were confusing and inadequate. The terms were as follows:

"Seller will enter into an agreement for sale on NW-6-53-8-W4 under the following terms:

Payment of:     \$4,375 Nov. 1/2002  
                      \$4,375 May 1/2003  
                      \$4,375 Nov. 1/2003  
                      \$52,500 April 1/2004

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\$70,000 Total Price

Seller will retain title in his name to full payment April 1/2004".

(d) The Addendum had the following inadequacies:

- (i) The initial payments were significantly smaller compared to the total value of the property;
- (ii) There was no default provision to determine which party keeps the payments already made upon default; and
- (iii) There was no provision dealing with interest on the outstanding balance.

5. That on or about March 28, 2002, contrary to section 4(a) of the *Code of Conduct*, you recklessly misrepresented the listing price of the Land while advertising it. This is conduct deserving of sanction, particulars of which are as follows:

- (a) You advertised the Land to other local brokerages and incorrectly stated the listing price. The listing price you provided the brokerages was \$369,000 but the correct price authorized by your clients was \$392,000.

6. That in the period of August 2001 to April 2002, contrary to sections 2(a) and 2(b) of the *Code of Conduct*, you breached your fiduciary duty to your clients by not acting in their best interests when you misrepresented the benefits of the GIS Geographical Information Systems Mapping package ("GIS Mapping"), and you acted outside the scope of authority given to you by your client with respect to the purchase of the GIS Mapping package. This is conduct deserving of sanction, particulars of which are as follows:

- (a) On or about August 30, 2001, you informed the W.'s        that a certain GIS Mapping package was an integral part of the marketing process. Landcore International Ltd. ("Landcore") provided the GIS Mapping service which allegedly included detailed survey plans, aerial photos, soil classification and boundary information of a property.
- (b) You informed the W.'s        that the package would contain current and accurate information about their Land. The W.'s        agreed to purchase the GIS Mapping package on the basis of your representation.

- (c) There was no written contract between the W.'s and Landcore.
  - (d) The package the W.'s received contained outdated aerial photos and inaccurate information.
  - (e) Your role in relation to the transaction between Landcore and the W.'s is unclear. It is unclear if you were acting as an agent of Landcore for the purpose of obtaining clients.
7. That on or about January 2003, contrary to section 38(4) of the *Real Estate Act* and section 7(d) of the *Code of Conduct*, you made inaccurate and misleading statements to the Investigator. This is conduct deserving of sanction, particulars of which are as follows:
- (a) In a letter to the Real Estate Council of Alberta ("RECA") dated October 6, 2002, you stated that the W.'s "signed a contract with Landcore International to have their property mapped at a cost of \$350.00 per quarter". No such contract existed between the W.'s and Land Core International.
  - (b) You advised RECA Investigators in two instances that the Offer to Purchase collapsed on March 28, 2002. S.W. executed the Collapsed Sale Notification on March 15, 2002.
8. That on or about June 2003, contrary to Rule 1(b), you failed to immediately provide written notice to the Executive Director of your brokerage's change of address. This is conduct deserving of sanction, particulars of which are as follows:
- (a) In June 2003 Info-Tech's registered office relocated and you did not inform RECA.
  - (b) You did not inform RECA of the change of address until the Investigator made inquiries in January 2004.

### III) EVIDENCE

The Hearing Panel received an Admission of Conduct Deserving of Sanction pursuant to section 46 of the *Real Estate Act* from Ms. Mather and Mr. Reti. In the document, signed by Mr. Reti, he admitted to the allegations of fact and breaches of provisions of the *Real Estate Act*, Rules and Code of Conduct as contained in the Notice of Hearing and admitted that his conduct in this regard was conduct deserving of sanction.

### IV) SUBMISSIONS

Ms. Mather and Mr. Reti requested that the Hearing Panel accept the Admission of Conduct Deserving of Sanction.

Ms. Mather provided the Hearing Panel with five precedent cases for their consideration, as well as an Estimated Schedule of Costs, with a total of \$4,380. Ms. Mather asked the Hearing Panel to consider a fine of \$6,000, costs of \$2,000, and completion of the "Professional Responsibilities" course offered by the Alberta Real Estate Course and the "Legal Issues in Real Estate" course offered by the Real Estate Institute of Canada.

Ms. Mather stated that because Mr. Reti was not fraudulent in his dealings, unlike in some of the precedent cases, she was not asking the Hearing Panel to consider any sort of licence suspension or industry ban. Further to that, she submitted that because Mr. Reti had been co-operative throughout the hearing process and had signed the Admission of Conduct Deserving of Sanction, on behalf of the Executive Director, she was requesting that costs in this matter be reduced to \$2,000.

Mr. Reti submitted to the Hearing Panel that since the time of the transaction in question, his office has improved its paperwork. He also stated that he had not acted with any intended malice, but that instead, the problem had arisen out of miscommunication. For those reasons, Mr. Reti asked the Hearing Panel to order a lower monetary fine than the one requested by Ms. Mather.

#### V) FINDINGS

The Hearing Panel accepts the Admission of Conduct Deserving of Sanction and finds that Mr. Reti's conduct is conduct deserving of sanction as set out in the Notice of Hearing.

#### VI) ORDERS

As a result of our finding of conduct deserving of sanction, we hereby order, pursuant to section 43 of the *Real Estate Act*, that:

1. Mr. Reti pay a fine of \$6,000 within 60 days of receipt of this decision.
2. Mr. Reti pay costs totaling \$2,000 within 60 days of receipt of this decision.
3. Mr. Reti complete the "Professional Responsibilities" course offered by the Alberta Real Estate Association within six months of receipt of this decision and the "Legal Issues in Real Estate" course offered by the Real Estate Institute of Canada within six months of receipt of this decision. If these courses are not available in this time frame, an extension may be granted at the sole discretion of the Executive Director.

Dated this 20 day of December, 2004.

"Jack Peat"  
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Jack Peat, Chair

"Graham Downey"  
Graham Downey

"Barry Gogal"  
Barry Gogal