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**IN THE MATTER OF the Real Estate Act S.A. 1995, c.R-4.5**

**AND IN THE MATTER OF Vincent J. Laberge, Designated Representative of  
Ashwood Developments Ltd. o/a New Tech Realty (then o/a Homelife Hallmark  
Realty)**

**INTRODUCTION**

1. The Executive Director of the Real Estate Council of Alberta conducted an investigation into whether the conduct of Vincent Laberge (hereinafter "Mr. Laberge") is deserving of sanction.
2. The Executive Director and Mr. Laberge have agreed to resolve the allegations on the terms and conditions set out below.

**AGREED STATEMENT OF FACTS**

3. Mr. Laberge has been an industry member in different capacities including as a salesperson and designated representative during the period 1991 to present. On May 12, 1998 he was registered as the designated representative of Ashwood Developments Ltd. o/a Homelife Hallmark Realty. On August 25, 1998 the licensed corporation's trade name was changed from Homelife Hallmark Realty to New Tech Realty.

**Transaction #1**

4. In or around April or May, 1998 Mr. Laberge was contacted by G.S. , a salesperson registered with Builders Realty in Airdrie who had listed the property of M.V. and S.V. (hereinafter "the V.'s ") for sale. The V.'s were being transferred to Edmonton and were interested in purchasing a property there. The V.'s had located a vacant lot for potential purchase and together with G.S. , they contacted Mr. Laberge to assist in locating a builder and in purchasing the lot. Subsequent to this communication it was agreed that Hallmark Homes/A.D. would be contracted to build a new home on the vacant lot.
5. At this time, Mr. Laberge had a verbal working arrangement with Hallmark Homes/A.D. wherein Hallmark Homes/A.D. and Mr. Laberge agreed that Mr. Laberge would carry out unspecified duties for him. However, those duties were to include involvement in the general operations of the business as delegated and particularly in the sale of homes to the public.
6. On or about May 22, 1998, Mr. Laberge drafted a Real Estate Purchase Contract for the purchase of a vacant lot from J.H. and B.H. ["H.'s"]) to the V.'s . The contract shows Mr. Laberge/Homelife Hallmark Realty as the V.'s agent.

Mr. Laberge was paid a buyer's agent's commission (25%) on the V.'s vacant lot purchase. G.S. received 75% of the commission.

7. By way of a second contract dated May 23, 1998, Mr. Laberge drafted a contract between Hallmark Homes and the V.'s which incorporated the purchase of the same vacant lot and construction of a residential dwelling on the lot by Hallmark Homes. This contract was prepared at the request of the V.'s and G.S. as it had been requested by the bank. This contract provided that Hallmark Homes, a registered trade name but non-legal entity, was the titled owner of the vacant lot and Mr. Laberge signed this contract on behalf of Hallmark Homes.
8. At this time, Mr. Laberge did not advise the V.'s to review the contracts with their lawyer.
9. A.D. had requested that Hallmark Homes/A.D. monies be funneled through the Hallmark Homelife Realty general account. Mr. Laberge was aware that A.D. had judgments and garnishees registered against his own assets and bank accounts. By using Mr. Laberge's general account A.D. business could remain viable and this was further done for purposes of maintaining order for Hallmark Homes. Mr. Laberge agreed to accommodate this request.
10. The contract dated May 23, 1998 provided that the V.'s were to pay \$212,000 for the land and construction of a dwelling. \$5,000 was to be paid to Hallmark Homes on contract execution, \$35,000 on mortgage approval and the balance as per the construction schedule contained in the contract. The contract does not provide that Hallmark Homes/A.D. was responsible to pay out the purchase contract between the V.'s and the H.'s, though this was a verbal understanding between the V.'s and Hallmark Homes/A.D. and Vince Laberge.
11. In drafting this second contract dated May 23, 1998, Mr. Laberge did not provide payment protection, such as trust provisions for the V.'s funds. The V.'s believed their funds would be directed to the purchase of the vacant lot and construction of their new home.
12. On contract execution, \$1,000 was provided to Royal LePage in trust. Further on May 25, 1998, the V.'s provided a \$4,000 cheque to Mr. Laberge. The cheque was made payable to Homelife Hallmark Realty and was deposited into its general account as per A.D.'s instructions to Mr. Laberge. These funds were not specifically directed to the V.'s purchase and were used by Mr. Laberge for Hallmark Homes/A.D. debts, including the payment of sub-trades.

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13. On June 5, 1998, a \$35,000 cheque was issued from the Scotia Bank to Homelife Hallmark Realty's general account pursuant to the contract. At this point Mr. Laberge had received \$39,000 from the V.'s .
  14. On June 5, 1998, Mr. Laberge wrote a \$6,500 cheque to Royal LePage for the outstanding balance on the deposit for the V.'s vacant lot purchase. He then paid out approximately \$30,000 toward other Hallmark Homes/A.D. bills.
  15. Mr. Laberge attempted to arrange interim financing for Hallmark Homes as construction on the V.'s home was likely not to progress as agreed. Mr. Laberge did not advise the V.'s of his concerns regarding Hallmark Homes' financial viability at this time.
  16. On July 9, 1998, the V.'s agreed to amend the possession date for the vacant lot from July 10, 1998 to July 31, 1998.
  17. On or about July 30, 1998, Mr. Laberge arranged for the V.'s to obtain an additional \$42,500 in interim financing. These funds were provided to the V.'s lawyer and were used to complete the purchase of the lot.
  18. In or around early August, 1998, Mr. Laberge terminated his verbal working arrangement with Hallmark Homes/A.D. . Mr. Laberge also terminated his involvement with the V.'s at approximately the same time.
  19. The V.'s suffered substantial losses as a result of entering into the second contract with Hallmark Homes/A.D. . A portion of these losses result from their initial payments to Homelife Hallmark Realty pursuant to their contract with Hallmark Homes/A.D. and which Mr. Laberge used to pay Hallmark Homes' general debts. The V.'s are considering pursuing a civil action against Hallmark Homes/A.D. .

## **Transaction #2**

20. In a real estate transaction in or around July, 1998, Mr. Laberge represented M.L. and S.L. in the sale of their property and purchase of a new home from Hallmark Homes/A.D. .
21. In the Real Estate Purchase Contract which Mr. Laberge drafted on behalf of M.L. and S.L. dated July 10, 1998, Mr. Laberge did not disclose the true owners of the property, the H.E.'s but indicated in the contract that the owner was Hallmark Homes. Further the contract was not signed by the owners but was instead signed by A.D. on behalf of Hallmark Homes.
22. Mr. Laberge advised M.L. and S.L. that the new home was covered by new home warranty but in fact it was not.



### Transaction #3

23. In or around October, 1997, Mr. Laberge provided listing information to the Edmonton Real Estate Board in regard to the J.'s property. He indicated to the Board that he had listed it for sale on behalf of Hallmark Homes/A.D. However, prior to this information being provided to the Board, this property had already been sold by Century 21 Metro Realty who acted in a dual agency capacity on behalf of both the J.'s and Hallmark Homes/A.D.

### **Conduct Deserving of Sanction**

24. The above described conduct is conduct deserving of sanction in that:

#### **A. Transaction #1**

1. Mr. Laberge breached his fiduciary duties to act in the best interests of the V.'s and failed to provide them with full disclosure of all relevant information relating to the transaction by

"B.M." "V.L."

- a) ~~failing to draft~~ a potentially problematic and unenforceable contract;
  - b) signing the contract without written legal authority;
  - c) failing to protect the V.'s financial interests by failing to ensure that the monies paid by the V.'s were held in trust or that other adequate arrangements were made for the protection of their monies;
  - d) failing to advise the V.'s as soon as the information became available to him that the business of Hallmark Homes/A.D. was faltering and that V.'s pecuniary interests and their anticipated completion of the second contract could be affected; and
  - e) failing to advise the V.'s to consult a lawyer at the time of the transaction's structure.
2. Mr. Laberge was in a conflict of interest position as between his clients, the V.'s, and Hallmark Homes/A.D. and he failed to provide full advice to the V.'s as to the nature of this conflict and he failed to obtain their written consents to continue to act on their behalf in light of this conflict.
3. By June, 1998, the time the V.'s entered into the second contract with Hallmark Homes/A.D., Mr. Laberge was aware that Hallmark Homes/A.D. were having financial difficulties and in addition to the breaches of fiduciary duties to the V.'s, all of which are conduct deserving of sanction, Mr. Laberge's conduct is further deserving of sanction in that he funneled Hallmark Homes/A.D.'s receipt of monies through Homelife Hallmark Realty's general account while knowing that the effect of his actions would be to defeat Hallmark Homes and A.D.'s creditors. This conduct negatively affects the integrity of the industry and Mr. Laberge as an industry member.

## B. Transaction #2

1. While acting as a real estate broker for his clients, M.L. and S.L., Mr. Laberge failed to act in good faith and breached his fiduciary duties to his clients, in that he failed to act in their best interests and failed to disclose pertinent information to them including that the true property owner was the H.E.'s and that the property was covered by a new home warranty when in fact it was not.

## C. Transaction #3

1. Mr. Laberge failed to act with honesty and integrity as an industry member in providing incorrect information to the Edmonton Real Estate Board by listing a property, the J.'s property, which already had been sold by another agency.

## SETTLEMENT TERMS

25. In settlement of these issues, Mr. Laberge agrees to the following:

i) Immediate payment of a fine in the amount of \$ 7,750 and payment of costs in the amount of \$2,000 to RECA.

ii) Mr. Laberge agrees to successfully complete the next available Real Estate Institute of Canada's Ethics and Business Practice course offered in Alberta and the Real Estate Law course within six (6) months of ratification of this agreement.

26. Mr. Laberge acknowledges that he has been advised that the fine and costs become a debt due to RECA and may be recovered by RECA in an action in debt pursuant to Section 43(3) of the Real Estate Act.

27. Mr. Laberge acknowledges he is aware that the contents of this agreement may be published by RECA.

28. Mr. Laberge is aware the contents of this agreement will be placed on his file and may be reviewed and considered in any future disciplinary proceedings.

29. Mr. Laberge acknowledges that he has been given the opportunity to seek the advice of legal counsel and acknowledges that he is agreeing to this agreement voluntarily of his own free will.

30. Mr. Laberge hereby waives any rights that she may have under the Real Estate Act or otherwise to a hearing, review, judicial review or appeal of the matter referred to herein.

31. These settlement terms are intended to resolve the matters described herein and subject to the approval of the Hearing Panel as this agreement relates to the conduct of Mr. Laberge, the Executive Director will take no further steps under the Real Estate Act including the initiation of any proceedings before the Real Estate Council or the Courts.

IN WITNESS WHEREOF the undersigned agree and accept the terms and conditions of this settlement this 1st day of Oct, 1999.

Signed and Delivered  
in the presence of:

"W.L."  
\_\_\_\_\_  
Witness

"Vincent Laberge"  
\_\_\_\_\_  
Vincent Laberge

**Executive Director Recommendation**

"J.P."  
\_\_\_\_\_  
Witness

"Bob Myroniuk"  
\_\_\_\_\_  
Bob Myroniuk  
Executive Director

**Hearing Panel Decision**

Recommendation Approved "D.H."  
Recommendation Denied \_\_\_\_\_

Dated at Edmonton, Alberta  
this 5 day of October, 1999

"David Hicks"  
\_\_\_\_\_  
Hearing Panel Chairman  
Real Estate Council of Alberta

**AFFIDAVIT OF EXECUTION**

CANADA ) I, W.L.  
) (name of witness),  
PROVINCE OF ALBERTA ) of the City of ~~Calgary~~ in the Province of Alberta  
) EDMONTON  
TO WIT: ) MAKE OATH AND SAY:

1. THAT I was personally present and did see Vincent Laberge 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 Edmonton in the Province of Alberta this 15<sup>th</sup> day of October, 1998. *JH*

"W.L."  
(signature of witness)

"F.H."

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A Commissioner for Oaths in and  
for the Province of Alberta