

THE REAL ESTATE COUNCIL OF ALBERTA

**IN THE MATTER OF Subsection 39(1)(b) and 41 of the Real Estate Act, S.A.
1995, c. R-4.5**

**AND IN THE MATTER OF a Hearing regarding the conduct of CLAUDE H. GOULD,
Designated Representative of CENTURY 21 GOULD REALTY LTD.**

Hearing Panel Members: **Barry Gogal, Chairman**
Ron Sullivan
Sheldon Johnston

Counsel: L.G. – Representative for Claude Gould
Jean Pearce - Legal Counsel for the Executive Director of
the Real Estate Council of Alberta

Witnesses: C.F. C.A.
P.C. K.A.
D.M. D.S.

Hearing Date: Thursday, July 15, 1999
Edmonton, Alberta

DECISION

UPON reviewing the materials entered at the Hearing as evidence; AND UPON hearing the evidence and testimony by the witnesses; AND UPON hearing the submissions provided by both the legal counsel for the Executive Director and the representative for Claude Gould; AND FROM the charges brought against Claude Gould as outlined in the Notice of Hearing dated June 15, 1999;

THE HEARING PANEL HEREBY FINDS AS FOLLOWS:

In January, 1999 Claude Gould, designated representative of Century 21 Gould Realty Ltd., represented D.A. in the sale of his property. On January 15, 1999

Claude Gould was advised that two Offers to Purchase were available to be presented to his client, D.A. . The "first offer" was provided by C.F. , a salesperson registered with Northern Realty, on behalf of his client. The "second offer" was provided by P.C. , a salesperson registered with Century 21 Gould Realty Ltd. on behalf of his client. Claude Gould presented both Offers to Purchase to his client, D.A. on January 16, 1999. D.A. was interested in the second offer and subsequently counter offered on it. Counter offers were made and D.A. subsequently accepted the second offer on January 19, 1999.

Although P.C. was made aware of the "first offer" on or about January 15, 1999, Claude Gould failed to advise or make C.F. aware of the "second offer". Claude Gould also did not advise or make C.F. aware of the counter offers on the "second offer". C.F. therefore was unable to advise his clients of the fact of the "second offer", opportunities that counter offering may have presented for them and the implications for them of being in a multiple offer situation.

Only when C.F. telephoned Claude Gould to determine the status of his client's offer on January 19, 1999 was he advised by Claude Gould that D.A. had accepted P.C.'s client's offer, the "second offer".

Conduct Deserving of Sanction

By not advising C.F. of the multiple offers, Claude Gould breached his fiduciary duty, to act in his client's best interests, to his client, D.A. . It was in D.A.'s interests that C.F. be advised of the multiple offers in order that C.F.'s clients could assess their offer position fully – this being to the benefit of D.A. . Claude Gould failed to do this. This conduct is in contravention of Article 1(j) of the Real Estate Council of Alberta Code of Conduct. This is conduct deserving of sanction.

Further in failing to advise C.F. of the multiple offers, Claude Gould failed to act fairly, honestly and with integrity in his dealings with non-clients. Although C.F.'s father stated that D.A. would not have accepted an offer from C.F.'s clients, there continued to be an obligation on Claude Gould to advise C.F. of the multiple offers. This conduct is in contravention of Article 6(b) of the Real Estate Council of Alberta Code of Conduct. This is conduct deserving of sanction.

Sanction

Given the findings of fact and the submissions on sanction presented before the Hearing Panel , we order the following:

1. That Claude Gould is fined \$2,000 which is immediately payable to the Real Estate Council of Alberta;

2. Claude Gould must successfully complete the "Real Estate Law" course within six (6) months from the date of receipt of this decision. The credits hours obtained by successfully completing this course may not be applied towards the mandatory continuing education requirements by the Real Estate Council of Alberta.
3. Claude Gould must pay the Hearing costs relating to this matter in the total amount of \$3,987.97. A breakdown of the said costs is attached hereto as Schedule "A".

DATED this 30 day of **JULY, 1999**.

"Barry Gogal"

Barry Gogal
Hearing Panel Chairman

"Ron Sullivan"

Ron Sullivan
Hearing Panel Member

"Sheldon Johnston"

Sheldon Johnston
Hearing Panel Member

Schedule "A"

Pursuant to s. 30 of the Bylaws made pursuant to the Real Estate Act, the costs are determined in accordance with the following:

30(1)(b)

(ii) General Hearing Costs including but not limited to travel expenses, disbursements, process service charges, conduct money	\$1,295.47
(iv) Hearing administration costs including but not limited to hearing secretary salary, honoraria of hearing panel members	\$ 992.50
(v) Legal fees	\$1,500.00
(vi) Other miscellaneous costs re: Notice of Hearing	<u>\$ 200.00</u>

TOTAL

\$3,987.97