

**IN THE MATTER OF THE REAL ESTATE ACT, R.S.A. 2000 c. R-5**

**AND IN THE MATTER OF Colliers Macaulay Nicolls Inc. o/a Colliers International**

**INTRODUCTION**

1. The Executive Director of the Real Estate Council of Alberta conducted an investigation into whether the conduct of Colliers Macaulay Nicolls Inc. o/a Colliers International (“Colliers”), is deserving of sanction and whether he breached the requirements of the *Real Estate Act*, RSA 2000, c. R-5 (the “**Act**”) or the Rules prescribed pursuant thereto (the “**Rules**”) or the Code of Conduct prescribed pursuant thereto (the “**Code of Conduct**”) in force October 1, 1999, through October 1, 2006.
2. The Executive Director and Colliers hereby agree to resolve all matters on the terms and conditions set out herein.

**AGREED STATEMENT OF FACTS**

3. On February 1, 2001, L.H. was hired by Colliers as a Property Manager.
4. Prior to being employed by Colliers, L.H. was employed with Prosperity Management managing a portfolio of property owned by Metropole Management Corp. Colliers obtained this portfolio and was asked by Metropole to hire L.H. to continue managing the portfolio.
5. L.H. carried out the tasks of a Property Manager while employed with Colliers. The following leases and renewals were negotiated by L.H. during her employment at Colliers:

**5720 Silver Springs Boulevard NW, Calgary, AB (Silver Springs Shopping Centre)**

- Final Goal Athletics (Lease)
- Mitillini’s Pizza (Lease)
- Mac’s Convenience Store (Renewal)
- Urban Fringe Salon (Lease)
- Sports Motion Management (Lease)
- Northside Friends Church (Lease)
- Petro Canada Inc. (Renewal)
- Wassim Haymour (Agreement for Surrender)

**1400-12 Avenue SW, Calgary, AB**

- 527017 Alberta Ltd. – Panda Flowers (Lease)
- Eugene Dalla Lana Professional Corporation (Lease)

**11624 Elbow Drive SW Calgary, AB (Canyon Meadows Shopping Centre)**

- Subway Restaurant (Lease)
- Jatos Holdings Limited (Renewal)
- 626201 Alberta Ltd. – Pita Stop (Lease)
- 483944 Alberta Ltd. (Lease)
- Mr. Jodie Tieu (Lease)
- Chantz Hair Group (Lease)
- Teilhard Technologies (Medioptic) (Lease)
- Alegria Spanish Preschool (Lease)
- Cosmos Ceramic Dental Lab (Renewal)
- Last Chance Trading Company (Lease)
- Albert Ng (Lease)
- Deep Blue Technology International Company Ltd. (Lease)
- Dynamic Dance Studio (Lease)

**524-11 Avenue SW, Calgary, AB**

- Yoga Passage (Lease)

**601-17 Avenue SW, Calgary, AB (Centre 601)**

- Perfect Delivery (Lease)
- National Money Mart (Lease)
- Blue Light Special (Lease)

These are the properties L.H. was managing as part of the Metropole Portfolio:

- REMS 2416 – 524 and 530-11<sup>th</sup> Avenue SW, Calgary (No Building Name)
- REMS 2418 – 601-17<sup>th</sup> Avenue SW, Calgary (Centre 601, formerly known as Uptown 17<sup>th</sup>)
- REMS 2420 – 11624 Elbow Drive SW, Calgary (Canyon Meadows Shopping Centre)
- REMS 2422 – 1400-12<sup>th</sup> Avenue SW, Calgary (No Building Name)
- REMS 2424 – 5720 Silver Springs Boulevard NW, Calgary (Silver Springs Shopping Centre)

6. L.H. has never been licensed as an industry member with the Real Estate Council of Alberta.

7. No employee of Colliers confirmed with the Real Estate Council of Alberta directly that L.H. was not licensed until June 20, 2006.
8. L.H. was removed from any property management activities on June 20, 2005.
9. Notwithstanding this action an "Arrears Report as of June 30, 2006" was sent to a landlord by L.S. on July 7, 2006.
10. L.H.'s employment with Colliers was terminated on July 25, 2006.

### **M. Complaint**

11. G 400 Holdings Ltd. o/a Only Women Fitness Centres ("OWF") was incorporated on November 7, 1996. The Directors are R.M. and S.M..
12. April 13, 2000, Sports Motion Management Ltd. o/a Fitness North West ("FNW"), Calgary, AB, was incorporated on April 12, 2000. R.M. and S.M. as also the Directors of FNW.
13. OWF entered into a lease with Yeoman Development Company Limited to lease #11, 5720 Silver Springs Boulevard NW, Calgary, AB, for a term of 10 years commencing October 15, 1997 to October 14, 2007. The rental rate was \$8.00 per square foot.
14. FNW entered into a lease with Yeoman Development Company Limited to lease, #12, 5720 Silver Springs Boulevard NW, Calgary, AB, for a term of 5 years and 10 months commencing December 15, 2001 and also expiring October 14, 2007. The rental rate was \$8.00 per square foot.
15. On October 15, 2005, Yeoman Development Company Limited transferred ownership to Fill Strong Limited. Colliers was acting as agent for the landlord in the role of property manager. L.H. was the Collier property manager responsible for these leases.
16. In November and December of 2004, R.M. communicated with L.H. concerning renegotiation of the leases for OWF and FNW which he was seeking.
17. Further to these communications on or about January 4, 2005, L.H. provided to R.M. an "Offer to Lease" she had prepared. The offer was for a 10 year term for both OWF and FNW to commence on May 1, 2005. The rental rate was \$7.50 and provided for 10 months of net free rent with the rent free months specified. It provided that the parties shall execute the Landlord's standard form lease but validity of the lease was not dependent on execution of that form lease. R.M. signed this and gave it to L.H..

18. Following this L.H. advised R.M. that the landlord had agreed to the Offer to Lease. L.H. did not however advise R.M. that this agreement was subject to resolving an issue of arrears on occupancy costs that existed or that the Landlord had not in fact signed the Offer to Lease.
19. R.M. formed the belief that a new lease agreement was forthcoming. When no agreement was provided he continued to ask L.H. about the new lease agreement.
20. Under cover letter dated February 16, 2005, to L.H., the bookkeeper for OWF and FNW, J.L., sent cheques in payment of rent "as per our new agreement". The letter also included an accounting of the rent owing from April 1, 2005 to September 1, 2006 taking into account the 10 months of net free rent provided in the Offer to Lease. J.L. asked L.H. to contact her there were any concerns.
21. L.H. instructed her administrator for the lease not to cash the cheques because they were made out in amounts under the new lease, but did not advise J.L. or R.M. or anyone at OWF and FNW of this.
22. J.L., noticed that Colliers had not cashed the cheques previously sent and in June 2005 she reissued further cheques and requested that these be cashed as they became due.
23. L.H. received these cheques and instructed that they not be cashed without advising either J.L. or R.M. that the new lease was not prepared and that the issue of arrears was still outstanding or that the amount of the cheques were wrong and that arrears of rent were increasing.
24. Further communication between L.H. and R.M. occurred in 2005 without reference to the status of the new lease. By letter dated April 20, 2006, however, L.H. advised R.M. of an arrears of rent calculated in accordance with the original lease and demanded payment in full.
25. J.L. again wrote to L.H. on April 23, 2006, as follows:

I have sent 2 emails about cheques that have not been cashed and I have had no response. I need a list of post-dated cheques you have on hand. [[R.M.] has read me the emails you have sent him and I will review the letters that you will send to him. I have paid your rent last year and the only months that were not paid were the free rents ...

I find it alarming that you do not do a regular reconciliation and notify me when we have problems. I would appreciate a call from you instead of you making accusations about my accounting ability. I have given you my cell @ on numerous occasions and I have also emailed you and given you my email

address. The last time I sent you cheques I did a full breakdown of the cheques I gave you showing the months we pay CAM costs and the months we pay free rent. I sent cheques to cover most of the year. In my letter I also wrote, "if you have any questions please contact me". As I have not been contacted I can only presume the arrangement was satisfactory.

26. L.H. then met with J.L. and R.M. in early May, 2006. L.H. gave assurances to J.L. and R.M. that the statement of arrears was a mistake and again gave no clear statement that no new lease was in place. Colliers also continued to cash the rent cheques J.L. had submitted in accordance with the new lease terms. No further notice of arrears was sent to OWF and FNW.
27. On June 20, 2006, L.H. was directed to stop work on properties due to her not being licensed to do so and she was terminated on July 25, 2006.
28. Following L.H.'s termination, no communication was sent by Colliers to R.M. regarding the lease or the issue of arrears and the tenants cheque continued to be cashed.
29. In the fall of 2006, R.M. saw Colliers Manager, E.K., in the parking lot of the property OWF and FNW were located at. R.M. approached E.K. and was advised for the first time that OWF and FNW did not have a new lease.
30. By letter dated October 23, 2006, Colliers advised J.L. of cheques that were cashed and that L.H. had been terminated and that a new manager, S.F., was now handling management of this account.
31. By letter dated November 6, 2006, E.K. advised R.M. that arrears of rent totaled \$29,000.
32. A resolution of the issue of the new lease and the arrears could not be reached and in mid November, 2007 the landlord served written notice on the tenant to vacate the premises by December 31, 2007.
33. In a lawsuit commenced by the tenant against Colliers and the Landlord, the court found that Colliers conduct was sufficient to constituted part performance of the new lease such that a new lease was found by the court to exist.

## **CONCLUSION**

34. By reason of the matters described herein, it is agreed that Colliers conduct is deserving of sanction as follows:

(a) Employed a person to trade in real estate who did not meet the requirements of the Real Estate Act, the Rules made pursuant to the Real Estate Act, to wit, employed to perform property management while not licensed to trade in real estate as trade in real estate is defined in the Act contrary to **Rule 20(f)**:

- L.H. was employed to perform property management tasks by Colliers from February 1, 2001 through to July 25, 2006.
- As an employee, L.H. negotiated leases and lease renewals and managed the collection of rent on behalf of landlords and reported to landlords on collection of rent;
- L.H. was never licensed by the Real Estate Council of Alberta to trade in real estate.

(b) Failed to comply with the Code of Conduct then in force contrary to **Rule 20(a)** to wit, failed to act fairly, honestly and with integrity with a non client tenant contrary to **s.7(b) of the Code of Conduct**:

- In late 2004 or early 2005, employee for Colliers, L.H., knew or should have known that the tenant believed a new lease was in place;
- As an employee of Colliers, L.H. failed to respond to the tenant about the rent cheques they had submitted even when the tenant was clearly representing that the cheques were pursuant to the Offer to Lease;
- As an employee of Colliers, L.H. gave assurances to J.L. and R.M. that a report of arrears pursuant to the old leases 'was a mistake' thereby maintaining the tenant's belief that a new lease was in place;
- Colliers cashed rent cheques provided by the tenant which were represented by the tenant to be calculated pursuant to the Offer to Lease thereby maintaining the tenant's belief that a new lease was in place;
- After L.H. was terminated Colliers continued to cash the tenant's cheques and no employee of Colliers advised the tenant that their rent cheques were for an incorrect amount or that the tenant did not have a new lease until R.M. happened upon an employee of Colliers in the fall of 2006, approximately 1.5 years after the tenant started making rent payments at the new rental rate.

**SETTLEMENT TERMS**

- 35. In settlement of the foregoing contraventions, it is agreed that Colliers will pay a fine of **\$13,500** for contravention of Rule 20(f) and a fine of **\$6,000** for contravention of Rule 20(a).
- 36. Costs of the investigation will be paid by Colliers in the amount of **\$1000.00**.
- 37. Colliers acknowledges that it has been given an opportunity to seek the advice of legal counsel and acknowledges that it is agreeing to the terms of settlement of freely.
- 38. Colliers acknowledges that a copy of this Consent Agreement will be placed on its file and may be reviewed and considered in any future disciplinary proceedings.
- 39. Colliers is aware the Real Estate Council of Alberta may publish the contents of this Consent Agreement.
- 40. Colliers hereby waives any right it may have under the Act or otherwise to a review, hearing, appeal or other judicial proceeding involving the matter referred to herein.

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 agrees and accepts the terms and conditions of this settlement this 13<sup>th</sup> day of May 2010.

Signed in the presence of	)	Colliers International
	)	
<u>T.E.</u>	)	Per: <i>Ross Logan</i>
Witness	)	

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**

*V.H.*  
Witness to the signature  
of Bob Myroniuk

Per: Bob Myroniuk  
Executive Director

Recommendation Approved     X    

Recommendation Denied                     

DATED at the City of Calgary, in the Province of Alberta this 25 day of  
May, 2010.

**REAL ESTATE COUNCIL OF ALBERTA**

Per: Wayne McAlister  
Hearing Panel Chairperson

