

IN THE MATTER OF The *Real Estate Act*, R.S.A. 2000 c. R-5

**AND IN THE MATTER OF CAMERON A. JENKINS, then real estate broker
registered with Jasper Realty Services LTD o/a Jasper Real Estate**

INTRODUCTION

1. The Executive Director of the Real Estate Council of Alberta conducted an investigation into whether the conduct of Cameron A. Jenkins, at all relevant times real estate broker registered with Jasper Realty Services LTD o/a Jasper Real Estate, 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**").
2. The Executive Director and Cameron A. Jenkins agree to resolve all matters against him on the terms and conditions set out herein.

AGREED STATEMENT OF FACTS

3. Cameron A. Jenkins ("**Jenkins**") was, at all relevant times, registered with Jasper Realty Services LTD o/a Jasper Real Estate as a broker. Jenkins is currently a registered broker with Jasper Realty Services LTD o/a Coldwell Banker Jasper-Hinton Realty. Jenkins was registered as an associate from February 18, 2004 to July 14, 2006, at which time he registered as a broker.
4. Jenkins has no prior discipline history with RECA.
5. On May 10, 2007, P.U. real estate associate with Jasper Real Estate, entered into a listing contract with T.H. for the sale of his property at 307 Geikie Street, Jasper, Alberta (the "**property**"). The listing was for a price of \$499,000.00, the term beginning August 10, 2007 with no expiry date indicated, and provided for a commission of 3% of the selling price plus GST.
6. On July 10, 2007, a Real Estate Extension/Amendment Agreement was prepared by P.U. for the Property, lowering the asking price to \$479,000.00 and extending the contract until August 31, 2007.
7. After showing the property to a client, Jenkins became interested in purchasing the property. He had P.U. show him and his wife the Property

and on July 15, 2007, Jenkins made an offer to T.H. to purchase the Property.

8. P.U. prepared a Residential Real Estate Purchase Contract (the "**Purchase Contract**") and final acceptance was on July 21, 2007. The purchase price was \$472,000.00, being \$3000.00 initial deposit and \$469,000.00 new financing. The condition date for the new financing was August 8, 2007 and the closing date was August 31, 2007.
9. Section 3.5(d) of the Purchase Contract states that the deposit shall be held in trust and "shall be forfeited to the Seller if this offer is accepted and all conditions are satisfied or waived and the Buyer fails to perform on this Contract".
10. Prior to the final acceptance of the Purchase Contract, T.H. added in handwriting under s.8.2, which states "the seller's conditions are", the words "The buyer will be living in the premises and is not buying to rent out".
11. Under s.7.6 of the Purchase Contract, the following are listed under "additional terms of sale":

"THE SELLER ACKNOWLEDGES THAT THE BUYER IS AN ACTIVE MEMBER OF ORGANISED REAL ESTATE IN THE PROVINCE OF ALBERTA. FURTHERMORE THE SELLER ACKNOWLEDGES THAT IT IS THE LISTING ASSOCIATES' BROKER THAT IS THE PURCHASER"

"THE BUYER AGREES TO REDUCE COMMISSION PAYABLE BY THE SELLER BY \$3,000 LISTING AGREEMENT 435839MAY04"

"SALE IS SUBJECT TO APPROVAL FROM PARKS CANADA FOR TRANSFER OF TITLE"
12. While reviewing the Purchase Contract with T.H., P.A. incorrectly explained the situation to T.H. as one of Dual Agency. T.H. was not advised that a conflict of interest existed in Jenkins purchasing the Property. Specifically, T.H. was not advised that:
 - Jenkins was an agent of the same brokerage as P.U. and therefore it is presumed that he had access to, and knowledge of, any confidential information that P.U. had with respect to the transaction including T.H.'s motivation for selling, expectations on price and financial information.
13. Written acknowledgment and informed consent with respect to the conflict of interest was not obtained from T.H.

14. Neither P.U. nor Jenkins referred T.H. to obtain independent advice, whether industry member or legal counsel, concerning the sale of his property to Jenkins.
15. According to the Purchase Contract, the initial deposit was to be delivered in trust to Jasper Real Estate and deposited no later than July 23, 2007.
16. On July 18, 2007, Jenkins wrote a personal cheque payable to Jasper Real Estate in the amount of \$3000.00 for the deposit; however, it was never deposited into Jasper Real Estate's trust account.
17. On July 18, 2007, a Mortgage Approval was provided to A.D., mortgage broker for Jenkins, for a "basic no frills mortgage" in the amount of \$463,421.40. The conditions for approval under Schedule A of the mortgage included transfer of title from Parks Canada and confirmation of Cameron and D. Jenkins' financial information.
18. On July 20, 2007, Jenkins had the Property inspected and determined that there were several repairs and necessary maintenance required.
19. As a result of the information Jenkins received in the home inspection, on August 8, 2007, P.U. prepared an Amendment to The Residential Purchase Contract (the "**Purchase Contract Amendment**"). The Purchase Contract Amendment states "The seller agrees to reduce the Purchase Price to \$455,000" and "The seller agrees to extend financing suitable to buyer condition to 9pm Tuesday August 14, 2007".
20. Neither P.A. nor Jenkins referred T.H. to obtain independent advice, whether industry member or legal counsel, concerning the proposed Purchase Contract Amendment.
21. On August 9, 2007, T.H. signed the Purchase Contract Amendment and added in handwriting, "THERE ARE NO CONDITIONS TO THE SALE OF ABOVE PROPERTY. SALE IS AS THE PROPERTY AND HOME ARE NOW. CLOSING DATE AUGUST 31, 2007".
22. On August 14, 2007, Jenkins and his wife D. signed a Notice of Waiver/Satisfaction of conditions which states that the conditions in the Purchase Contract that are waived or satisfied are: "financing suitable to Buyers satisfaction" and "Property Inspection suitable to Buyers satisfaction".
23. On August 21, 2007, Jenkins' mortgage application was changed from a "no frills mortgage" to a "purchase plus improvements mortgage" with \$25,000 in improvements and was submitted for re-approval. In addition,

G.J. and E.J., Jenkins' parents, were added as co-applicants on the mortgage.

24. On August 23, 2007, a new mortgage approval was provided showing Jenkins' parents as co-applicants and with new Schedule A conditions including, "Satisfactory property valuation confirming value of \$480,000".
25. On or about August 24, 2007, after the execution of the Purchase Contract, Jenkins added in handwriting the names G.J. and E.J. to the Purchase Contract under the section "The Buyer". An Amendment to the Purchase Contract was not completed.
26. On August 28 or 29th, Jenkins was advised that CMHC was requiring an appraisal on the Property. P.U. contacted T.H. to request an extension of the closing date to September 7, 2007, to account for the new requirements from the Mortgagor.
27. On August 31, 2007, R.I., T.H.'s lawyer, sent a letter to J.M., Jenkins' lawyer, stating that T.H. would consent to extending the closing date on the condition that Jenkins, in his capacity as broker, would agree to waive the entire commission on the transaction.
28. On September 7, 2007, J.M. sent a letter to R.I. stating that Jenkins was "unable and unwilling to proceed with this transaction".
29. On October 1, 2007, R.I. sent a letter to Jenkins advising that T.H. was entitled to the deposit and to his legal costs with respect to the aborted sale. R.I. indicated that since the deposit was not in trust with the buyer's lawyer, it must be in Jasper Real Estate's trust account.
30. On November 2, 2007, R.I. sent a letter to Jenkins confirming that his lawyer was not in possession of the deposit and requesting that it be provided as well as T.H.'s legal costs.
31. On January 17, 2008, R.I. wrote to Jenkins advising that he has been instructed by T.H. to convey the following 3 options to conclude the matter:
 1. "Immediately pay to him the forfeited deposit amount (\$3000.00) plus our legal fees and disbursements (\$1,144.08); or,"
 2. "pay our legal fees and disbursements now and agree to list the property when T.H. is prepared to have it placed back on the market at a commission rate of two (2%) per cent; or,"
 3. "do nothing, in which case T.H. will pursue other remedies"

32. On February 20, 2008, Jenkins wrote a letter to R.I. confirming their conversation earlier in the week where he agreed to option #2 as provided in R.I.'s letter of January 17, 2008. Jenkins attached a cheque for \$1,144.08, being the amount of T.H.'s legal fees and disbursements.
33. The \$3000.00 forfeited deposit was never provided to T.H..

CONCLUSION

34. By reason of the matters described herein, Cameron A. Jenkins' conduct is deserving of sanction in that he:
 - (a) Entered into a trade with a client and failed to disclose the existence of a conflict of interest, contrary to Rule 62(2)(a) of the Rules:
 - T.H. was not advised by P.U. or Jenkins that there was a conflict of interest in Jenkins being both purchaser and broker. The additional terms added to the Purchase Contract did not correctly or fully disclose the nature of the conflict of interest (see paragraphs 11 and 12).
 - (b) Provided services to a client in a trade in which he had a conflict of interest without receiving the written and informed consent of the client, contrary to Rule 54(3) of the Rules:
 - Jenkins failed to obtain or instruct P.A. to obtain T.H.'s informed consent to proceed with the purchase given the conflict of interest and failed to advise or instruct P.U. to advise T.H. to seek independent advice concerning the sale (see paragraphs 13 and 14).
 - (c) Failed to ensure the business of the brokerage was carried out competently and in accordance with the Act, Regulations, Rules, and Bylaws, contrary to Rule 51(1)(d) of the Rules:
 - Failed to ensure that the transaction was properly documented by neglecting to complete or instruct P.U. to complete an Amendment to the Purchase contract adding G.J. and E.J. as buyers (see paragraph 25).
 - Created an unenforceable amendment to the Purchase Contract by attempting to add G.J. and E.J. as purchasers by handwriting the words G.J. and E.J. on the Purchase

Contract after the contract was executed (see paragraph 25).

(d) Failed to ensure adequate level of supervision for associates of the brokerage, contrary to Rule 51(1)(e) of the Rules:

- Jenkins failed to ensure P.U. correctly explained the nature of the transaction to T.H. P.U. incorrectly explained the transaction to T.H. as a dual agency situation when in fact it was a conflict of interest that should have been explained (paragraph 12).

(e) Failed to ensure adequate level of supervision for associates of the brokerage, contrary to Rule 51(1)(e) of the Rules:

- Failed to ensure the adequacy of documents prepared by P.U. when he allowed her to create a contract term that he knew or should have known was confusing and/or unenforceable. The condition, "The buyer will be living in the premises and is not buying to rent out" should not properly have been added to the Purchase Contract (see paragraph 10).
- Failed to ensure the adequacy of documents prepared by P.U. when he allowed her to create a contract term that he knew or should have known was confusing and/or unenforceable. When signing the Purchase Contract Amendment, P.U. allowed T.H. to add the term, "THERE ARE NO CONDITIONS TO THE SALE OF ABOVE PROPERTY. SALE IS AS THE PROPERTY AND HOME ARE NOW. CLOSING DATE AUGUST 31, 2007". This was confusing as the condition date had not yet passed and the property inspection and financing conditions had not yet been waived (see paragraph 21).

(f) Failed to deposit money received in trust in respect of a dealing or trade within 2 banking days after receipt of the money, contrary to the terms of the Purchase Contract and s.25 (1)(b) of the *Act*:

- A deposit cheque was issued in trust to Jasper Real Estate on July 18, 2007. Jenkins never deposited the cheque into Jasper Real Estate's trust account (see paragraph 16).

(g) Failed to disburse money received or held in trust in respect of a dealing or trade in accordance with the rules and with the terms of

the trust governing the use of that money, contrary to the terms of Purchase Contract and s. 25(1)(d) of the *Act*.

- After notifying T.H. that he was unable and unwilling to proceed with the transaction, Jenkins did not release the forfeited deposit to T.H., which was to be held in trust by Jasper Real Estate (see paragraphs 28 to 33).

SETTLEMENT TERMS

35. It is agreed that the following mitigating factors are relevant to the assessment of fines in this case:

- (i) Mr. Jenkins cooperated fully with the investigation;
- (ii) There is no disciplinary history for Mr. Jenkins;
- (iii) The contraventions were not the result of intentional wrongdoing and Mr. Jenkins has admitted that he made errors with respect to the transaction; and
- (iv) Mr. Jenkins has agreed to forego the time and expense of a hearing, saving witnesses the inconvenience and stress of appearing, by entering into the within Consent Agreement.

36. It is further agreed that the following aggravating factors are relevant to the assessment of fines in this case:

- (i) The contraventions involved a breach of Mr. Jenkins fiduciary duties to his client. The fiduciary duties of an agent are integral to the integrity of the entire industry;
- (ii) Mr. Jenkins is in the role of broker and is therefore held to a higher standard. As a broker, he has a greater obligation to ensure competency and adherence to the Rules and the Act; and
- (iii) Mr. Jenkins was directly involved in the transaction and had ample opportunity to ensure that it was handled in accordance with the Rules and the Act.

37. In settlement of the foregoing contraventions, it is agreed that the fines are as follows:

(a) Rule 62(2)(a)	\$1,500
(b) Rule 54(3)	\$1,500
(c) Rule 51(1)(d)	\$1,000
(e) Rule 51(1)(e)	\$1,000
(f) Rule 51(1)(e)	\$1,000
(g) Section 25(1)(b) of the Act	\$1,500
(h) Section 25(1)(d) of the Act	\$1,500

Total **\$9,000**

38. Cameron A. Jenkins also agrees to pay costs in the amount of \$500.00.

39. Cameron A. Jenkins agrees that as a condition of his authorization to trade in real estate, he will successfully complete, within 6 months of the ratification of this Consent Agreement, the following courses or similar courses at the sole discretion of the Executive Director:

- (i) Understanding Designated Agency and Transaction Brokerages (offered by the Real Estate Council of Alberta);
- (ii) The Real Estate Law module of the Real Estate Broker Program (offered by the Edmonton Real Estate Training Institute and the Calgary Real Estate Board).

He will notify the Real Estate Council of Alberta upon completion of the educational requirement.

40. Cameron A. Jenkins acknowledges that he has been given an opportunity to seek the advice of legal counsel and acknowledges that he is agreeing to the terms of settlement of his own free will.

41. Cameron A. Jenkins is aware that a copy of this Consent Agreement will be placed on his file and may be reviewed and considered in any future disciplinary proceedings.

42. Cameron A. Jenkins is aware that the Real Estate Council of Alberta may publish the contents of this Consent Agreement.

43. Cameron A. Jenkins hereby waives any rights he may have under the *Real Estate Act* or other legislation or otherwise to a review, hearing, appeal, or other judicial proceeding involving the matter referred to herein.

44. 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 *Real Estate Act* or before the courts in this regard.

IN WITNESS WHEREOF the undersigned agree and accept the terms and conditions of this settlement this 26th day of October, 2011.

Signed and delivered)
in the presence of)
)
)
R.I.)
Witness to the signature) **Cameron A. Jenkins**
of Cameron A. Jenkins)

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. Per:
Witness to the signature of Bob Myroniuk *Bob Myroniuk*
Executive Director

Recommendation Approved X
Recommendation Denied

DATED at the City of Calgary, in the Province of Alberta this 8th day of
November, 2011.

REAL ESTATE COUNCIL OF ALBERTA

Per: *Marsha Graham*

AFFIDAVIT OF EXECUTION

CANADA)	I, <u>R.I.</u> of
)	
PROVINCE OF ALBERTA)	the Town of Jasper, in the Province of
)	Alberta
)	
)	
TO WIT:)	MAKE OATH AND SAY:

1. THAT I was personally present and did see Cameron A. Jenkins, 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 Town of Jasper, 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 Town)	
of Jasper, in the Province of)	
Alberta this 26 day of)	
October, 2011.)	
)	<i>R.I.</i>
)	(signature of witness)
)	
)	
<i>B.D.</i>)	
A Commissioner for Oaths in and)	
for the Province of Alberta)	