

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

**AND IN THE MATTER OF MUVUNYI (GUIDO) KAMANZI, then associate
registered With Solomon Davies and Associate Realtors INC o/a Realty
Executives Supreme**

INTRODUCTION

1. The Executive Director of the Real Estate Council of Alberta conducted an investigation into whether the conduct of Muvunyi (Guido) Kamanzi, at all relevant times associate registered with Solomon Davies and Associate Realtors INC o/a Realty Executives Supreme (“**Realty Executives Supreme**”) 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 Muvunyi (Guido) Kamanzi agree to resolve all matters against Muvunyi (Guido) Kamanzi on the terms and conditions set out herein.

AGREED STATEMENT OF FACTS

3. Muvunyi (Guido) Kamanzi (“**Kamanzi**”) was, at all relevant times, registered with Realty Executives Supreme, as an associate. Kamanzi is currently registered with Sterling Realty LTD o/a Sterling Real Estate. Kamanzi has been registered as an associate with the Real Estate Council of Alberta since March 12, 2007.
4. Kamanzi has no prior discipline history with RECA.
5. On June 23, 2008, B.G. and S.N. entered into a Purchase Contract prepared by Kamanzi for a property located at 14924 Miller BV, Edmonton, Alberta (the “**Miller Property**”). The contract had a financing condition date of June 30, 2008.
6. B.G. and S.N. attempted to get financing for the Miller Property through CIBC but they were not approved.

7. On June 26, 2008, Kamanzi sent a fax to J.S. at TD Bank in an attempt to help B.G. and S.N. get approved for financing with respect to the Miller Property.
8. B.G. and S.N. were unable to get approved for financing for the purchase of the Miller Property and so the sale did not proceed.
9. On July 7, 2008, B.G. and S.N. entered into an Exclusive Buyer Brokerage Agreement with Realty Executives Supreme.
10. Shortly after the sale fell through for the Miller Property, B.G. and S.N. informed Kamanzi that they had found someone who could get them approved for a mortgage. Her name was F.H. of "Monolog Consulting Group". They had got her name from a friend named J.V., who got her name from another real estate associate named D.G.
11. Kamanzi then referred 2 of his other clients named A. and K. to F.H. as they were also having difficulty getting approved for mortgages.
12. On July 9, 2008, B.G. and S.N. signed a Buyer Contract Termination for the Miller Property purchase contract.
13. On July 12, 2008, B.G. and S.N. made an offer to purchase 5237 154A Ave, Edmonton, Alberta (the "**Subject Property**") for a purchase price of \$380,000.00, with an initial deposit of \$1,000.00 and an additional deposit of \$5,000.00.
14. Kamanzi faxed the offer to purchase for the Subject Property to F.H. on July 12, 2008. The fax cover sheet stated, "This is the offer from B.G. and S.N. It is not accepted yet but I will update you".
15. On July 19, 2008, B.G. and S.N. met with F.H. and signed a Mortgage Commitment from Atlantic (HS) Financial Corporation. The Mortgage Commitment incorrectly showed the address for the Miller Property rather than the Subject Property and listed the down payment as \$56,250.00.
16. F.H. advised B.G. that she required a deposit to secure the mortgage funds. On July 21, 2008, B.G. provided F.H. with a certified cheque payable to Monolog Consulting Group for \$3,350.00.
17. B.G. spoke to Kamanzi about the money that F.H. had requested. Kamanzi asked his broker, Solomon Davies ("**Davies**") and was advised by him that some private lenders who deal with individuals with bad credit do charge fees and that there was nothing they could do to stop that. Kamanzi then assured B.G. that some lenders charge fees. He did not take any steps to confirm that F.H. actually was a private lender and

- therefore entitled to charge a fee, nor did he advise B.G. of any risks of paying her the requested money.
18. Davies called F.H. and she told him that she was a “mortgage specialist”. Davies advised Kamanzi that F.H. was not a mortgage broker. He did not give any further instructions or advice.
 19. The sale of the Subject Property was finalized on August 16, 2008 for a purchase price of \$390,000.00 with an initial deposit of \$1,000.00 and an additional deposit of \$5,000.00. The financing and property inspection condition date was August 22, 2008, and the closing date was September 30, 2008.
 20. On August 16, 2008, Kamanzi faxed the completed Purchase Contract for the Subject Property to F.H.
 21. B.G. paid the initial deposit of \$1,000.00 by cheque dated August 18, 2008.
 22. B.G. paid the additional deposit of \$5,000.00 by a Servus Credit Union bank draft on August 22, 2008.
 23. On the condition day, Kamanzi was advised by B.G. that his financing was approved. Kamanzi then called F.H. and she verbally confirmed that the “financing was good” and that it was “ok to remove the conditions”. Kamanzi did not obtain a copy of the mortgage commitment or request any paperwork from F.H. to confirm the financing was in order.
 24. On August 22, 2008, Kamanzi completed a Notice of Waiver of Condition and had B.G. and S.N. sign it.
 25. Upon receiving the Notice of Waiver from B.G. and S.N., the sellers (“**the M.’s**”) put an offer and a deposit on another property.
 26. Approximately 2 weeks prior to the closing date, Kamanzi was contacted by the seller’s agent and advised that lawyer had not yet received any paperwork from the mortgage broker.
 27. On or around September 15, 2008, Kamanzi started calling F.H. and was unable to get ahold of her.
 28. On September 18, 2008, Kamanzi went to F.H.’s house and was advised by her brother A.H. that F.H. was in the hospital having surgery.

29. On September 19, 2008, Kamanzi met with A.H. again was advised that F.H. had been arrested for impaired driving and was in custody. A.H. told Kamanzi that F.H.'s partner J. had all the mortgage files.
30. On September 23, 2008, Kamanzi met with F.H.'s partner J. and her husband A., who was a mortgage broker with Elite Mortgage. Kamanzi explained the situation to them and A. agreed to try and help get B.G. a mortgage. At this time, Kamanzi saw the mortgage commitment that B.G. had signed with F.H. for the first time and realized that the property information and the down payment listed on the form were incorrect.
31. On September 24, 2008, Kamanzi called F.P., the mortgage broker in Ontario that was listed on the mortgage commitment. He was referred to B.C., a partner of F.P. in Edmonton. B.G. met with B.C. in an attempt to get approved for a mortgage.
32. B.G. was not able to get financing by the closing date of September 30, 2008, and the purchase of the Subject Property did not proceed.
33. B.G. never received the deposit that he provided to F.H. back. The \$6,000.00 deposit that B.G. paid was forfeited to the M.'s and the M.'s lost the \$25,000 deposit that they had put on the property they were going to purchase before the sale of the Subject Property fell through.

CONCLUSION

34. By reason of the matters described herein, Muvunyi (Guido) Kamanzi's conduct is deserving of sanction in that he:
 - a) Referred clients to a person for the purposes of obtaining a mortgage without taking reasonable steps to ensure the person was in fact authorized to carry out the activities for which the referral was made, contrary to Rule 45(3) of the Rules:
 - Kamanzi referred 2 of his other clients named A. and K. to F.H. without taking any steps to confirm her legitimacy as a mortgage broker or private lender (see paragraph 11).
 - b) Failed to provide competent service contrary to Rule 41(b) of the Rules:
 - Kamanzi did not advise B.G. to seek legal advice with respect to the mortgage prior to signing the Notice of Waiver of Conditions (see paragraphs 16 to 18).

- Kamanzi was aware that F.H. was not licensed as a mortgage broker and failed to make appropriate inquiries into her legitimacy as a private lender before advising B.G. that it was acceptable to use her to obtain financing (see paragraphs 17 and 18).
- c) Failed to fulfill his fiduciary obligations to his clients contrary to Rule 41(d) of the Rules
- Kamanzi failed to act in the best interests of his clients by failing to obtain adequate confirmation that the financing was in order prior to advising B.G. and S.N. to waive their financing condition (see paragraph 23 and 24).

SETTLEMENT TERMS

35. It is agreed that the following mitigating factors are relevant to the assessment of fines in this case:
- i. There is no disciplinary history for Mr. Kamanzi;
 - ii. Mr. Kamanzi 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;
 - iii. Mr. Kamanzi was a new associate with only one year of experience in the industry at the time.
 - iv. Mr. Kamanzi sought instructions from his Broker with regard to F.H. and received improper advice.
36. It is further agreed that the following aggravating factors are relevant to the assessment of fines in this case:
- i. Mr. Kamanzi was aware that B.G. and S.N. were unable to get approved for a mortgage by TD Bank and CIBC approximately 2 weeks before they advised him that F.H. could get them approved. He was aware that F.H. was not a licensed mortgage broker and that she had requested a “mortgage deposit” fee, but he had no confirmation that she worked for a private lending institution. This should have alerted him to potential risks and caused him to make his clients aware of those risks. If Mr. Kamanzi had reviewed the mortgage commitment, he would have seen that F.H. had input a much higher down payment

amount than was actually provided and should have recognized this as a red flag for mortgage fraud.

- ii. Both B.G. and the M.'s suffered financial harm as a result of this incident.

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

a) Rule 45(3)	\$1,500.00
b) Rule 41(b)	\$2,000.00
c) Rule 41(d)	\$1,500.00

Total **\$5,000.00**

38. And further, taking into account both aggravating and mitigating factors, it is agreed that a deduction of 30% will be applied on the fine so that the total fine owing is **\$3,500.00**.

39. Muvunyi (Guido) Kamanzi also agrees to pay costs in the amount of **\$500.00**

40. Muvunyi (Guido) Kamanzi 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) Risk Reduction & Mortgage Fraud Awareness (offered by the Alberta Real Estate Association)
- (ii) Real Estate Update 2009/2010 (offered by the Real Estate Council of Alberta)

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

41. Muvunyi (Guido) Kamanzi 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.

42. Muvunyi (Guido) Kamanzi 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.

43. Muvunyi (Guido) Kamanzi is aware that the Real Estate Council of Alberta may publish the contents of this Consent Agreement.
44. Muvunyi (Guido) Kamanzi 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.
45. 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.

