

THE REAL ESTATE COUNCIL OF ALBERTA

IN THE MATTER OF Subsection 39(1)(b) and 41 of the Real Estate Act, R.S.A.  
2000 c R- 5

AND IN THE MATTER OF a Hearing Regarding the Conduct of Jim Stewart, Broker  
Registered with 894614 Alberta Ltd. o/a Mirclin Mortgage and formerly registered  
as an agent with Bainbridge Mortgage Corporation o/a The Mortgage Centre

NOTICE OF HEARING

To: Jim Stewart  
12253 Lake Erie Road S.E.  
Calgary, Alberta  
T2J 2Z3

**TAKE NOTICE** that, at a hearing, which has been scheduled before a Hearing Panel at 9:30 a.m. on January 15 and 16, 2003 at the offices of the Real Estate Council of Alberta located at Suite 340 2424 4 Street SW Calgary, Alberta T2S 2T4, you will be required to answer the following allegations:

1. That from late 1999 until mid 2000, Jim Stewart, while acting as an agent with Bainbridge Mortgage Corporation o/a The Mortgage Centre ("Bainbridge Mortgage") brokered approximately 286 mortgages for 286 condominium units located in the city of Edmonton, in the province of Alberta. The condominium units (the "Units") were located in two buildings known as Village on the Park ("V on P") and Greenwood Acres (GWA).
2. The mortgages were brokered concurrently with the purchase of the 286 Units in the V on P and GWA. The purchasers/mortgagors were a group of Investors (the "Investors") compiled by Jim Stewart. Jim Stewart drafted mortgage applications and he indicated on the applications Investors were placing 30-35% down on the Units from their own resources. Jim Stewart included the following comments on mortgage applications.
  - (a) Investor PS and LS: "Client is purchasing revenue property with 35% down from his own resources"; (wording on 13 separate mortgage applications) and,
  - (b) Investor DH and PL: "Clients are purchasing property with 35% from their own resources" (wording on 21 separate mortgage applications) and,
  - (c) Investor EC: " He is purchasing this revenue property and will be putting 35% down", (wording on 2 separate mortgage applications) and,

- (d) Investor ML: "Client is purchasing revenue property with 35% down from his own resources"; (wording on 17 separate mortgage applications) and,
- (e) Investor RF: "Purchase of revenue property with 35% down from own resources" (wording on 8 separate mortgage applications) and,
- (f) Investor SO: "Client purchasing revenue property in Edmonton with 30% down from her own resources" (wording on 3 separate mortgage applications) and,
- (g) Investor AP: "Purchasing of revenue property with 35% down from own resources" (wording on 6 separate mortgage applications) and,
- (h) Investor CM: "She will be putting down 35% from her investment account" and for the same Investor "She will have 35% down from her own investment account", (wording on 8 separate mortgage applications) and,
- (i) Investor VK: "Client purchasing revenue property using 35% down from his own resources" or, "Purchasing this revenue property using 35% down from his own resources", (wording on 2 separate mortgage applications), and
- (j) Investor BB: "Client purchasing this revenue property. 35% down from own resources" (wording on 3 mortgage applications)

3. Each Investor listed in paragraph 2 (a) to (j) purchased/mortgaged a multiple of Units. For example, Investor PS purchased/mortgaged 17 Units. Investor PS would have had to place approximately \$603,000.00 on the 17 Units he purchased to equal 35% down. Investor PS did not put any money down toward the Units. Investors DH and PL purchased/mortgaged 21 Units. Investors DH and PL did not put any money down toward the Units.
4. Mortgages from a variety of financial institutions were advanced on the above mortgage applications. Notwithstanding that the mortgage applications indicated, as set out in paragraph 2 subparagraphs (a) to (j) above, that 30%–35% would be from the Investor's own resources, the Investors did not put any money down toward the Units purchased in either of the V on P or GWA.
5. Instead of putting money down from their own resources, the Investors signed a promissory note (participation promissory note, hereinafter known as a "PPN"). Jim Stewart by his own admission stated the PPN was in lieu of the 30%-35% initial deposit and balance of the down payment. The PPN was not disclosed to the financial institutions on the mortgage applications.
6. Concurrently with the buying of the Units and placing the mortgages the Investors could sign a Buy-Back Option Agreement. The Buy-Back Option

provided for the Investors to sell the Units back to the original seller of the Units. If the Investors took this option they would be paid \$3,000.00 per Unit.

7. Concurrently with the buying of the Units, placing of the mortgages and the signing of the Buy-Back Option Agreement, the Investors signed a Declaration of Trustee Agreement. The effect of Declaration of Trustee Agreement made the Investors bare trustees of the Units. Currently, Units are still in the names of the Investors set out in paragraph 2 (a) to (j); however, the Investors hold the Units in trust for another party.
8. This is conduct deserving of sanction, in that Jim Stewart:
  - (a) Participated in the creation of false and misleading documents by indicating on the above mortgage applications, as set out in paragraph 2 (a) to (j), that the Investors were putting 30%-35% down, or some combination of similar wording, when he knew that the Investors, set out in paragraph 2 (a) to (j), were not putting any money down and were using PPN in lieu of any down payment, in breach of 4 (d) of the Code of Conduct ("Code") made pursuant to the Real Estate Act ("Act") ; and
  - (b) Failed to act fairly and honestly and with integrity when dealing with the financial institutions, by indicating on the above mortgage applications, set out in paragraph 2 (a) to (j), that the Investors were purchasing revenue properties with 30%-35% down from their own resources (or similar wording), when he knew that the Investors were not placing 30%-35% down from their own resources, but in fact were signing PPNs, in lieu of putting any money down, in breach of section 7 (b) of the Code made pursuant to the Act.
9. Jim Stewart received payment from the financial institutions for the placing and advancing of the mortgages. Further, Jim Stewart, received an approximate additional amount of \$699,000.00 from a third party for finding the Investors and placing mortgages on V on P and GWA. This approximate amount of \$699,000.00 was not processed through Bainbridge Mortgage Corporation and is a breach of 24 (1) (c) of the Rules made pursuant to the Act, in that Jim Stewart accepted a commission or other remuneration, directly or indirectly for dealings in mortgages from another person other than his brokerage. Further, the acceptance of the secret commission was in breach of 2 (h) of the Code in that Jim Stewart did not obtain the written approval from his clients when he accepted the approximate amount of \$699,000.00 from a third party.
10. Jim Stewart breached sections 38 (4) of the Act and section 7 (d) of the Code made pursuant to the Act, by failing to cooperate with an Investigator of the

Real Estate Council of Alberta by providing false and misleading information. Particulars of which are set out below:

- (a) Jim Stewart advised the Investigator in January 2001, that he was unaware the Investors did not put the \$2,000.00 initial deposit on the Units. However, in June 2002 Jim Stewart advised the Investigator that he was aware, prior to the January 2001 interview, the Investors were not putting the \$2,000.00 initial deposit on the Units, and,
- (b) Jim Stewart advised the Investigator in January 2001, that he received the names of the Investors from a third party. However, in June 2002, Jim Stewart advised the Investigator of the Real Estate Council of Alberta that he had provided the names of the Investors to the third party, and,
- (c) Jim Stewart advised the Investigator in January 2001, that he was unaware the Investors did not put any money down on the Units. However, in June 2002, Jim Stewart acknowledged to the Investigator he was aware the Investors were not required to place any money down on the Units and that the Investors were signing PPNs for the full down payment, and,
- (d) Jim Stewart advised the Investigator in January 2001, that he was unaware the Investors could sell the Units and receive \$3,000.00 buy back option. However, in June 2002, Jim Stewart advised the Investigator he was aware the buy back option was available to the Investors, and,
- (e) Jim Stewart advised the Investigator that his participation in the purchase and mortgage of the Units, was that of a "fax-machine operator"; however, throughout the interviews with the Investigator, Jim Stewart admitted that he, supplied the names of the Investors, that he drafted sections of the offers to purchase, that he completed the mortgage applications, that he explained to the Investors that the down payment would be made by way of a PPN, thereby acting far past the capacity of a "fax machine operator" as was alleged by Jim Stewart.

And this provision of false and misleading information to an Investigator or the Real Estate Council of Alberta is conduct deserving of sanction.

11. Jim Stewart breached sections 2 (a) of the *Code* by failing to act in his client's best interest by:

- (a) advising his Investor clients that the placing of mortgages on the Units was a "risk-less" transaction; however, in June 2002, Jim Stewart acknowledged the placement of the mortgages on the Units was not risk-less, and,

- (b) providing incorrect information to his Investor clients, by advising the Investors that their respective Unit purchases in V on P were complete and the Units had been transferred out of the Investor's names; when the Units had not been transferred out of the Investor's names.

**AND FURTHER TAKE NOTICE** that the Hearing Panel may make one or more of the orders outlined in section 43 of the Real Estate Act, including but not limited to an order for cancellation or suspension of any authorization issued to the industry member by the Council, a fine and costs.

**AND FURTHER TAKE NOTICE** that the following Hearing Panel members will hear the charges against you:

1. David Hicks
2. Darrol Cook
3. Andrew Huntley
4. Ted Zaharko(alternate)

If you have any objections to the composition of the Hearing Panel, you must notify the Real Estate Council of Alberta of your objections, together with the reasons for your objections within 14 days. If you fail to object to the composition of the panel within 14 days, the proposed panel will hear the charges against you.

**AND FURTHER TAKE NOTICE** that oral submissions shall be heard by the Hearing Panel. If you fail to attend the hearing, the Hearing Panel will hear the case and make a decision in your absence.

**DATED** at the City of Calgary, in the Province of Alberta, this 16<sup>th</sup> day of December 2002.

**Real Estate Council of Alberta**



Bob Myroniuk  
Executive Director