

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

**AND IN THE MATTER OF
PAUL TAT PUI CHENG,
then and currently a real estate associate registered
with Century 21 the Professionals Ltd.**

INTRODUCTION

1. The Executive Director of the Real Estate Council of Alberta conducted an investigation into whether the conduct of **PAUL CHENG**, at all relevant times real estate associate registered with Century 21 the Professionals Ltd. is deserving of sanction and/or whether he breached the requirements of the *Real Estate Act* (the "**Act**") or the Rules prescribed pursuant thereto (the "**Rules**") or the Code of Conduct prescribed pursuant thereto (the "**Code of Conduct**").
2. The Executive Director and Paul Cheng agree to resolve all matters against Paul Cheng on the terms and conditions set out herein.

AGREED STATEMENT OF FACTS

1. K.L. and F.L. [the "L.'s"] signed a Residential Real Estate Listing Contract with Paul Cheng and Century 21 The Professionals on September 22, 2004 to sell their property at 71 Edgebyrne Crescent, NW in Calgary, AB.
2. The list price for the property was \$278,000.00.
3. On the listing contract, under section 9 Important Information, section 9.4 asked the following question: "[a]re you aware of any defects in the property that are not visible and are either structural in nature or a possible health hazard?" Neither 'yes' or 'no' was check marked.
4. On October 23, 2004, a Residential Real Estate Purchase Contract was signed between the L.'s and A.B. and K.B. [the "B.'s"]. The B.'s were represented by M.M., also of Century 21 The Professionals.
5. There was a property inspection condition to be met by October 28, 2004 and under additional buyer's conditions, a 'disclosure statement' was included. The condition date for the disclosure statement was October 24, 2004.
6. On October 24, the L.'s provided the B.'s with an Urban Residential Property Disclosure Statement. Question 25 states, "[a]re you aware of any past or

- present flooding or drainage problems on the property?” The answer was ‘yes’ and the following notation was made, “small leakage fixed twenty years ago.”
7. K.L. and F.L. were the original purchasers for this property in 1984. Land titles indicate that they bought the property in December of 1984. A leak 20 years ago would have to have been in the first year they owned the property.
 8. According to M.M., the deal collapsed on this transaction due to numerous structural problems in the home, of which the leak in the basement was a concern to her clients. A copy of this inspection report was obtained from the brokerage.
 9. On November 25, 2004, a Residential Real Estate Purchase Contract was signed between the L.’s and C.L. and K.L. [the “L.O.’s”]. The L.O.’s were represented by C.L. who is a real estate associate, again with Century 21 The Professionals.
 1. There was a property inspection and financing condition to be met by December 2, 2004. This was later amended to December 3, 2004.
 2. No property inspection report was attached to the brokerage file, and C.L. indicates that it is likely that he did not give the report to the sellers or the brokerage.
 3. On December 9, 2004 C.L. and K.L. provided a written letter to the brokerage stating that the deal was collapsing due to structural problems.
 10. According to C.L. the structural problems in the home were of a nature that would be costly to fix to an acceptable level. He stated that they attempted to negotiate with the sellers to split the cost of repairs, and the L.’s were not willing to do so, thus the transaction collapsed. He also states that the report did not indicate water penetration issues that would have raised a concern for him.
 11. On January 10, 2005, a Residential Real Estate Purchase Contract was signed between the L.’s and S.Z.. S.Z. was also represented by Mr. Cheng.
 12. The Informed Dual Agency Consent form was signed by S.Z. on January 10, but does not contain the signature of K.L. and F.L..
 13. An agency disclosure form was also signed by S.Z. on the same day. This form indicates that Mr. Cheng may act for both the buyer and the seller.
 14. S.Z. does not dispute that Mr. Cheng fully disclosed his role as a dual agent in this transaction.
 15. The purchase price was \$260,000.00 and the possession date was February 1, 2005. The possession date was later amended to January 28, 2005.

16. There was a property inspection and financing condition to be met by January 20, 2005.
17. S.Z. was not given a copy of the original property disclosure form.
18. Mr. Cheng states that he showed the disclosure form to both S.Z. and his property inspector.
19. S.Z. states that he was not aware of the property disclosure report at the time of purchase.
20. S.Z. waived his conditions on January 12, 2005.
21. S.Z. states that water began to leak into the house in June 2005. He contacted Mr. Cheng on June 8, 2005 who met with him and provided the original disclosure report dated October 24, 2004.
22. S.Z. states that prior to the leakage in June it had been raining “for a month and a half – non stop.”

CONCLUSION

3. By reason of the matters described herein, Paul Cheng’s conduct is deserving of sanction, particulars of which are:
 - a. That around or between the dates of January 10, 2005 and January 12, 2005 he did not disclose all relevant facts about the property at 71 Edgebyrne Crescent NW, in Calgary, AB, in that he did not provide a copy of the property disclosure form to the buyer S.Z., contrary to s. 2(e) of the Code of Conduct (as it was then) pursuant to the *Real Estate Act* R.S.A. 2000, c. R-5.

SETTLEMENT TERMS

4. In settlement of these issues, Paul Cheng will pay immediately to the Real Estate Council of Alberta a fine in the amount of \$1,500, together with costs in the amount of \$250.00.

5. The appropriate education courses dealing with this issue are the Agency Fundamentals and the Understanding Designated Agency and Transaction Brokerage courses. Mr. Cheng successfully completed these courses in June 2008, after the conduct. There is no other appropriate course at this time.
6. Paul Cheng 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.
7. Paul Cheng 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.
8. Paul Cheng is aware the Real Estate Council of Alberta may publish the contents of this Consent Agreement.
9. Paul Cheng hereby waives any rights he may have under the Act or otherwise to a review, hearing, appeal or other judicial proceeding involving the matter referred to herein.
10. 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 agree and accept the terms and conditions of this settlement this 7 day of May, 2010.

Signed and delivered)	
in the presence of)	
)	
K.H.)	
Witness to the signature)	<i>Paul Tat Pui Cheng</i>
of Paul Tat Pui Cheng)	

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**

C.D. _____

Witness to the signature
of Bob Myroniuk

Per: *Kirk Bacon for*

Bob Myroniuk
Executive Director

Recommendation Approved _____ ✓

Recommendation Denied _____

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

**REAL ESTATE COUNCIL OF
ALBERTA**

Per: *Wayne McAlister*
Hearing Panel Chairperson

