

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

AND IN THE MATTER OF Nicholas Anthony Lima, a real estate associate currently registered with Southstar Realty Inc. operating as Maxwell Southstar Realty

INTRODUCTION

1. The Executive Director of the Real Estate Council of Alberta conducted an investigation into whether the conduct of Nicholas Anthony Lima, a real estate associate currently registered with Southstar Realty Inc. operating as Maxwell Southstar Realty ("Maxwell"), 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 Nicholas Anthony Lima hereby agree to resolve all matters against him on the terms and conditions set out herein.

AGREED STATEMENT OF FACTS

3. Nicholas Anthony Lima ("**Mr. Lima**") has been an industry member since January 29, 1992 and was at all relevant times hereto registered with Maxwell.
4. Mr. Lima was disciplined previously:
 - In June 1998 Mr. Lima was fined \$500 and required to complete the "Real Estate Law" course for contravention of s.2(e) the Code of Conduct then in force;
 - On April 7, 2003, Mr. Lima was fined \$1500 by Administrative Penalty for contravention of Rule 28(b) then in force; and
 - On April 7, 2003 Mr. Lima was fined \$1500 by Administrative Penalty for contravention of section 5(a) of the Code of Conduct then in force.
5. In August of 2006, K.B. and C.B. ("the B.'s") contacted Mr. Lima about listing their property.
6. Mr. Lima prepared a Listing Contract at this time.

7. Rather than prepare a written comparative market analysis for the B.'s, Mr. Lima reviewed properties on the MLS website with the B.'s on their home computer.
8. Following this Mr. Lima prepared a Listing Contract with a price of \$699,900.
9. K.B. instructed Mr. Lima that he wanted a listing term of no more than 3 months.
10. The Listing Contract was also drafted with the following provision under the heading Term of the Contract:

You list the Property for sale with only the Brokerage(s) from Nov. 23, 2006 until 11:59 p.m. on _____ (the "Expiry Date").

11. The Listing Contract was signed on or about August 23, 2006. The Contract has lines for the entry of the date of signing which was completed with only the year as follows:

This Contract was signed on _____, 2006.

CONCLUSION

12. By reason of the matters described herein, it is agreed that Mr. Lima's conduct is deserving of sanction as follows:
 - (a) Drafted a written service agreement without a date on which the agreement became effective contrary to **Rule 43(2)(b)(iii)**:
 - The Listing Contract did not have a date on which it was signed and therefore effective.
 - (b) Drafted a written service agreement without a date on which the agreement with the duration of the agreement contrary to **Rule 43(2)(b)(iv)**:
 - The Listing Contract did not have a termination date clearly identified.

SETTLEMENT TERMS

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

(a)	Rule 43(2)(b)(iii)	\$1000
(b)	Rule 43(2)(b)(iv)	\$1000

Total Fines **\$2,000.00**

14. Costs of the investigation will be paid by Mr. Lima in the amount of **\$1000.00**.
15. Mr. Lima further agrees that he will within 6 months of ratification of this agreement complete the **Contract Law portion of section 3 of Phase 2 of the REAP**, or a similar course at the discretion of the Executive Director if that course is not available.
16. Mr. Lima 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.
17. Mr. Lima 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.
18. Mr. Lima is aware the Real Estate Council of Alberta may publish the contents of this Consent Agreement.
19. Mr. Lima 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.

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 7 day of May, 2010

Signed in the presence of)
)
F.F.)
 Witness)

Nicholas Anthony Lima

