

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

AND IN THE MATTER OF Beverly McCarthy, real estate associate registered at all material times with 1119498 Alberta Ltd. o/a Royal LePage Wildrose Real Estate and currently registered with Trails West Realty Inc. o/a Coldwell Banker Trails West Realty

INTRODUCTION

1. The Executive Director of the Real Estate Council of Alberta conducted an investigation into whether the conduct of Beverly McCarthy ("**Ms McCarthy**"), at all relevant times real estate associate registered with 1119498 Alberta Ltd. o/a Royal LePage Wildrose Real Estate ("**Wildrose Real Estate**") and currently registered with Trails West Realty Inc. o/a Coldwell Banker Trails West Realty is deserving of sanction and whether she 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 Ms McCarthy agree to resolve all matters against her on the terms and conditions set out herein.

AGREED STATEMENT OF FACTS

3. Ms McCarthy has no prior complaint history
4. At the time of the transaction, Ms McCarthy was registered as a real estate associate with Wildrose Real Estate. Ms McCarthy is currently registered as a real estate associate with Trails West Realty Inc. o/a Coldwell Banker Trails West Realty.
5. On or about September 6, 2000, an Access Easement Agreement (the "**Easement Agreement**") was entered into between P.L. (referred to as "Owner A" in the Easement Agreement), owner of Property A and T.C. (referred to as "Owner B" in the Easement Agreement), owner of Property B which is adjacent to Property A. The agreement specifically provided the owner of Property B the "*non-exclusive and free, right, privilege, easement and right of way or access, passage and re-passage over, along, across, through and upon the Parcel A Right of Way Area to use and enjoy the Parcel A Right of Way Area in common with Owner A and Owner B...for the purpose of ingress to and egress from Parcel A and Parcel B for the purpose of digging, putting down, taking up, laying,*

relaying, constructing, repairing, replacing, maintaining, inspecting, using and operating the Driveway.” This agreement also stated:

“This Agreement and all rights, privileges and other appurtenances herein shall extend and enure to the benefit of and be binding upon the parties hereto and their respective successors, assigns and successors-in title while it or they shall be and remain registered as Owners of Parcel A or Parcel B, as the case may be and thereafter no liability shall accrue to such Owners.”

6. On or about September 8, 2000, the easement was registered on the title for the property described as Plan 0012257, Block 1 in the municipality of Bighorn, (previously referred to as “Property B”, hereafter referred to as the “**Bighorn property**”).
7. On or about September 18, 2006, T.C. listed the Bighorn property for sale with Wildrose Real Estate. Ms McCarthy was listed as the authorized representative of the brokerage on the listing contract.
8. In or around October 2006, Mr. and Mrs. H. (the “**Buyers**”) contacted Ms McCarthy after viewing the Bighorn property on the MLS system. Ms McCarthy arranged for the Buyers to view the Bighorn property and attended the property with them.
9. According to the Buyers, during the viewing of the property, they discussed the shared driveway with Ms McCarthy and they were assured that they were entitled to their own driveway if they applied to the municipality. The Buyers indicated that this was an important factor in their decision to purchase the property.
10. On or about October 10, 2006, a copy of the Land Title Certificate was printed for the Bighorn property and was included in the brokerage file.
11. A copy of the Easement Agreement was also included in the brokerage file in relation to the Bighorn property.
12. On or about October 14, 2006, the Buyers signed an Informed Dual Agency Consent Form with Wildrose Real Estate representing both the buyers and the seller.
13. On or about October 14, 2006, the Buyers made an offer to purchase the Bighorn property. A Country Residential Acreage Purchase Contract was completed. T.C. accepted the offer on the same date. Ms McCarthy was listed as the seller’s and buyer’s representative with Wildrose Real Estate as the brokerage.
14. On or about February 14, 2007, the Buyers waived their final condition which was the sale of their property.

15. On or about March 23, 2007, the Buyers took possession of the Bighorn property.
16. The Buyers were not made aware of the Easement Agreement until the closing date when they were advised by their lawyer that there was an easement registered on the title for the property.
17. According to the Buyers, after taking possession of the Bighorn property, they contacted the municipality of Bighorn and were advised that they were not entitled to their own driveway due to moisture along the road allowance.

CONCLUSION

18. By reason of the matters described herein, Ms McCarthy's conduct is deserving of sanction in that she:
 - (a) failed to provide competent service contrary to section **41(b) of the Rules:**
 - Ms McCarthy failed to explain to the buyers that they would need to confirm with the municipality about whether they would be permitted to have a separate driveway to their property.
 - Ms McCarthy, after reviewing the title for the subject property, failed to advise the buyers of an easement that was registered on title and failed to disclose to them the details of the easement.

SETTLEMENT TERMS

19. It is agreed that the following mitigating factors are relevant to the assessment of fines in this case:
 - i. Beverly McCarthy cooperated fully with the investigation;
 - ii. Beverly McCarthy had not previous complaint or disciplinary history
20. It is further agreed that the following aggravating factors are relevant to the assessment of fines in this case:
 - i. The duty of disclosure of important and relevant information to all parties is integral to the integrity of the real estate industry

21. In settlement of the foregoing contravention, it is agreed that Ms McCarthy will pay immediately to the Real Estate Council of Alberta a fine in the amount of **\$3,000** for her contravention of Rule 41(b).
22. Ms McCarthy also agrees to pay costs in the amount of **\$500.00**.
23. Ms McCarthy agrees to complete, within 6 months of the ratification of this Consent Agreement, Unit 4 of the Mortgage Associates Program, **Real Property Law and Related Legislation**, which is offered by the Real Estate Council of Alberta or a similar course at the sole discretion of the Executive Director.
24. Ms McCarthy acknowledges that she has been given an opportunity to seek the advice of legal counsel and acknowledges that she is agreeing to the terms of settlement of her own free will.
25. Ms McCarthy is aware that a copy of this Consent Agreement will be placed on her file and may be reviewed and considered in any future disciplinary proceedings.
26. Ms McCarthy is aware that the Real Estate Council of Alberta may publish the contents of this Consent Agreement.
27. Ms McCarthy hereby waives any rights she 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.
28. 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 17th day of February, 2011.

Signed and delivered)
in the presence of)
)
)
M.G.)
Witness to the signature) ***Beverly McCarthy***
of Beverly McCarthy)

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

D.C. 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 24th day of March, 2011.

REAL ESTATE COUNCIL OF ALBERTA

Per: Gary Siegle
Hearing Panel Chairperson

- Cc: Victoria Woodworth-Lynas, Case Presenter
- Cc: Norma Alcock, Broker (prior)
Royal LePage Wildrose Real Estate
- Cc: Shelley Erickson, Broker (current)
Coldwell Banker Trails West Realty

