

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

AND IN THE MATTER OF Kevin Russell, then real estate associate registered with Rosemary D. Clamaron o/a Centaur Real Estate and now real estate associate registered with Panda Realty Inc. o/a Coldwell Banker/Panda Realty

INTRODUCTION

1. The Executive Director of the Real Estate Council of Alberta conducted an investigation into whether the conduct of Kevin Russell, at all relevant times a real estate associate registered with Rosemary D. Clamaron o/a Centaur Real Estate ("**Centaur Real Estate**") 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**").
2. The Executive Director and Kevin Russell agree to resolve all matters against Kevin Russell on the terms and conditions set out herein.

AGREED STATEMENT OF FACTS

3. Kevin Russell ("**Mr. Russell**") was, at all relevant times, registered with Centaur Real Estate, as a real estate associate. Kevin Russell is currently registered as a real estate associate with Panda Realty Inc. o/a Coldwell Banker/Panda Realty. Kevin Russell first became authorized as a real estate associate with the Real Estate Council of Alberta on April 30, 1995.
4. Kevin Russell has no prior discipline history with the Real Estate Council of Alberta.
5. As a result of a complaint received from K.A., the sole director and shareholder of 1312071 Alberta Ltd., the Real Estate Council of Alberta commenced an investigation into Mr. Russell's conduct.
6. On or about April 10, 2007, 1312071 Alberta Ltd. and/or Nominee made an offer to purchase the property located at 10310 122 Street, Edmonton (the "**subject property**") from the seller, E.A.G. Ltd. Mr. Russell knew the original owner of the subject property, E.G., who had indicated to him several years earlier that the suites in the subject property were between

- 700-900 square feet. Mr. Russell relied on this information and did not make any effort to confirm the sizes of the suites at any time prior to May 2007. Mr. Russell with Centaur Real Estate was listed as the buyer's representative.
7. On or about April 16, 2007, Abmax Investments Ltd. / Nominee ("**Abmax**") made a conditional offer to purchase the subject property from 1312071 Alberta Ltd. The seller's representative was listed as Mr. Russell with Centaur Real Estate and A.P. was listed as the buyer's representative with Century 21 Platinum Realty.
 8. On or about April 24, 2007, a purchase price was agreed upon in the amount of \$4,450,000 with an initial deposit of \$50,000 and a second deposit of \$50,000 due upon removal of all conditions. A cheque in the amount of \$50,000 was made out by Abmax to Century 21 Platinum Realty for the subject property and was deposited in Century 21 Platinum Realty's trust account.
 9. Sometime prior to Abmax making an offer to purchase the subject property, Mr. Russell discussed the subject property with A.P. During that discussion, Mr. Russell told A.P. that the suites were between 700-900 square feet in size, all one bedrooms with fireplaces. This representation with respect to the size of the suites was relied upon by Abmax in making an offer.
 10. In or around early May 2007, A.P. and Mr. Russell attended the property and measured several suites. In measuring the suites, they discovered that the suites ranged from 615 – 650 square feet.
 11. As a result of the smaller size of the suites, Abmax and 1312071 Alberta Ltd. renegotiated the purchase price of the subject property. On or about May 24, 2007, a "Notice RE: 'Satisfaction or Waiver of Condition Precedent' and Addendum Form" was completed between 1312071 Alberta Ltd. and Abmax. It provided for a reduction of the purchase price to \$4,200,000 and included a condition that the financial institution needed 2 business days to rework the financing. This was agreed to and signed by K.A. on behalf of 1312071 Alberta Ltd. and Abmax. Abmax waived the buyer's conditions on May 29, 2007. The second deposit cheque in the amount of \$50,000 was due upon removal of all conditions. No cheque was received with the Waiver.
 12. On or about May 29, 2007, Mr. Russell called A.P. from A.P.'s home. A.P. was reluctant to waive conditions because she had not seen a copy of the second deposit cheque from Abmax. In order to reassure A.P., Mr. Russell advised her that he had seen the second deposit cheque from Abmax

earlier that morning. A.P. then signed the Waiver on behalf of 1312071 Alberta Ltd.

13. Mr. Russell admits that at that time, he had not seen a second deposit cheque.
14. On or about June 14, 2007, a cheque was made out by Abmax to Century 21 Platinum Realty in the amount of \$50,000. In the memo line, it stated "Replacement for lost deposit cheque 10310 - 122 St". Shortly after this cheque was received by Century 21 Platinum Realty, a stop payment was placed on the cheque. No replacement cheque for the remaining \$50,000 deposit was ever received from Abmax. The purchase between 1312071 Alberta Ltd. and Abmax never completed.

CONCLUSION

15. By reason of the matters described herein, Mr. Russell's conduct is deserving of sanction in that he:
 - (a) Failed to act honestly, contrary to section 41(a) of the Rules
(See facts as set out in paragraphs 12 and 13)
 - (b) Failed to provide competent service, contrary to section 41(b) of Rules
(See facts as set out in paragraphs 7 and 10)

SETTLEMENT TERMS

16. It is agreed that the following mitigating factors are relevant to the assessment of fines in this case:
 - a. Mr. Russell was cooperative and forthcoming throughout the investigation into this matter
 - b. Mr. Russell has agreed to forego the time and expense of a hearing, saving witnesses the inconvenience and stress of attending at a hearing of the matter, by entering into the within Consent Agreement;
 - c. Mr. Russell has been registered real estate associate for over 25 years without prior disciplinary action;
17. It is further agreed that the following aggravating factors are relevant to the assessment of fines in this case:

a. The duty of honesty is integral to the integrity of the real estate industry

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

(a)	Rule 41(a)	\$2,000
(b)	Rule 41(b)	\$1,500
Total		\$3,500

19. Mr. Russell also agrees to pay costs in the amount of **500.00**.

20. Mr. Russell 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, Unit 9 of the Mortgage Associates Program, **Ethics, Professional Conduct and Risk Reduction**, which is offered by the Real Estate Council of Alberta or a similar course at the sole discretion of the Executive Director. He will notify the Real Estate Council of Alberta upon completion of the educational requirement.

21. Mr. Russell 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.

22. Mr. Russell 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.

23. Mr. Russell is aware that the Real Estate Council of Alberta may publish the contents of this Consent Agreement.

24. Mr. Russell 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.

25. 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 25th day of July, 2011.

Signed and delivered)
in the presence of)
)
)
L.K.)
Witness to the signature) ***Kevin Russell***
of Kevin Russell)

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 Edmonton, in the Province of Alberta this 4th day of August, 2011.

REAL ESTATE COUNCIL OF ALBERTA

Per: *Cheryl King*
Hearing Panel Chairperson

Cc: Victoria Woodworth-Lynas, Case Presenter

Cc: Sherry Belcourt-Darby, Broker (current)
Coldwell Banker/Panda Realty

AFFIDAVIT OF EXECUTION

CANADA) I, L.K. of
)
PROVINCE OF ALBERTA) the City of Edmonton, in the Province of
Alberta)
)
TO WIT:) MAKE OATH AND SAY:

1. THAT I was personally present and did see Kevin Russell, named in the annexed instrument, who is personally known to me to be the person named therein, duly sign and execute the same for the purpose named therein.
2. THAT the same was executed at the City of Edmonton, in the Province of Alberta, and that I am the subscribing witness thereto.
3. THAT I know the said party and he is in my belief of the full age of eighteen years.

SWORN BEFORE ME at the City)
of Edmonton, in the Province of)
Alberta this 25 day of)
July, 2011.)
)
) *L.K.*
) (signature of witness)
)
)
)
C.S.)
A Commissioner for Oaths in and)
for the Province of Alberta)