

January 24, 2001

**IN THE MATTER OF: THE REAL ESTATE BROKERS ACT**

**- and -**

**IN THE MATTER OF: WALTER THEODOR BARTEL**

**REASONS FOR DECISION  
OF  
THE MANITOBA SECURITIES COMMISSION**

**Acting Chairman:**

Mr. E. O. E. Bergman

**Board Members:**

Mr. R. G. McEwen  
Mr. W. J. A. Bulman

**Appearances:**

Ms N. Martin	)	Counsel for the Commission
Mr. W. T. Bartel	)	Appeared on his own behalf

**BACKGROUND**

A Notice of Hearing and Statement of Allegations were issued by staff of the Manitoba Securities Commission (the "Commission") dated May 24, 2000.

Mr. Walter Bartel ("Bartel") was first registered as a real estate salesman in Manitoba on February 3, 1993 and has continued to be registered under The Real Estate Brokers Act (the "Act") since that time.

The Statement of Allegations arise from an investigation conducted by Commission staff following the receipt of complaints relating to the conduct of Bartel in regards to two separate matters, both involving transactions in real estate:

- (1) the Asham property on Hazelridge Road (the "Asham Property"); and
- (2) the Heywood property in S. Norfolk (the "Heywood Property").

The jurisdiction of the panel to consider this matter is contained in section 11 of the Act which permits the panel to consider whether it is in the public interest to suspend or cancel the registration of a person registered under the Act.

Bartel was advised on more than one occasion that he may be represented by counsel of his choice. This information was given to Bartel in the Notice of Hearing, correspondence provided to him setting the hearing date and by the panel at the start of the hearing. Bartel advised the panel at the commencement of the hearing that he would be representing himself as he could not afford counsel. Bartel also made application to Court of Queen's Bench to be provided by "state funded" competent legal counsel to represent and defend him at the hearing. The application was dismissed by a justice of the Court of Queens Bench.

The panel gave Mr. Bartel complete freedom to present his case as he saw fit. The hearing commenced on September 14, 2000 and ended on December 4, 2000 for a total of six days with the transcript comprising 1,277 pages. The evidence and testimony covered many issues, some of which were irrelevant to the allegations against Bartel.

The decision the panel has made is based on the matters which are directly related to allegations and evidence presented at the hearing. The panel has applied the legal criteria contained in section 11 of the Act, which is whether the panel finds it is in the public interest to suspend or cancel the registration of Mr. Bartel under the Act.

## **ALLEGATIONS**

The Notice of Hearing and Statement of Allegations alleged the following:

1. Staff of the Commission allege that Bartel:

- (a) acted contrary to the Heywoods' instructions, by continuing to advertise the Heywoods' farm for sale;
- (b) failed to enter into a Withdrawal Agreement in respect of the Heywoods' Listing Agreement;
- (c) in any or all of the circumstances particularized above, acted contrary to protecting and promoting the best interests of the Heywoods;
- (d) filed a caveat against the Hazelridge Property prior to, or without, any right to do so;
- (e) filed a caveat against the Hazelridge Property in a manner contrary to the internal policy of his employing broker;

and that due to these allegations, it is in the public interest that the registration of Bartel as a salesman under the Act be suspended or cancelled.

2. Such further and other matters as counsel may advise and this Commission permits.

## **EVIDENCE & FINDINGS OF PANEL**

Based upon the testimony heard and documents received by the panel during the hearing, the panel makes the following findings:

### **1. The Asham Property:**

Mr. Bartel, on behalf of his broker Re/Max Real Estate Inc. ("Re/Max") entered into a listing agreement which permitted Re/Max (and Bartel as an agent of Re/Max) to market and obtain offers to purchase the Asham Property. The listing agreement was dated September 12, 1998 and listed the Asham Property for sale for \$169,900.

The listing agreement was signed by Robert and Ginger Asham although the Asham Property actually had four owners recorded on the certificate of title in the Winnipeg Land Titles Office -- Robert and Ginger Asham and Leonard and Blanche Asham (collectively, the "Owners").

The Owners were not satisfied with the services being provided by Bartel and decided they wanted to transfer the listing to another agent that worked for a different real estate broker. Mr. Bortoluzzi, lawyer for the Owners, took the position that the Owners could enter into a new listing agreement with a different broker as he was of the view that the listing agreement entered into with Re/Max was not valid as it did not contain signatures for all of the Owners.

Discussions were held to transfer the listing of the Asham Property, but there was no agreement and the listing agreement with Re/Max remained.

Bartel, upon learning that the Owners wanted to use another real estate agent to market the Asham Property, was concerned about protecting his commission. Bartel met with his broker Derek Thorvaldson to discuss the situation. Bartel asked Thorvaldson "What about using a caveat?". Thorvaldson said, "I don't think you can get a caveat filled, but you are welcome to see what could happen in that respect."

The listing agreement gives the broker the right to file a caveat against a property in limited circumstances. The wording in the listing agreement is as follows:

"I hereby charge all of my interest in the land, buildings and goods attached to the land and buildings (the "land") for the benefit of you, as my agent to secure payment to you of all money which may be owed by me to you under this contract. You, the listing agent, are a chargee according to The Real Property Act of Manitoba. I hereby authorize you to register and maintain a caveat against the land to give notice of this charge upon finalization of an accepted offer."

Thorvaldson said he was aware that the listing agreement called for the fact that a sale had to have actually taken place as stated above.

Bartel himself prepared, signed and attended to the filing of a caveat against the Asham Property on February 12, 1999. The caveat referred to rights arising from the listing agreement. The caveat was also signed by Bartel as the caveator and not by Re/Max. Bartel was not a party to the listing agreement.

The Asham Property was sold on March 11, 1999 for \$114,000.00 with the agreement of sale being signed on March 28, 1999 by Mr. Bortoluzzi on behalf of, and with the consent of the Owners. The caveat was discovered at or near that time.

Mr. Thorvaldson stated that Re/Max had never adopted a formal policy position with respect to the filing of caveats. He dealt with them from time to time on sort of an ad hoc basis when they came up.

During the hearing, Bartel gave testimony and made arguments to try to convince the panel that he had the legal right to file the caveat against the Asham Property. The panel was not persuaded by these arguments which were based on an improper reading of the listing agreement and are better characterized as an attempt by Bartel to rationalize what he had done as opposed to providing a legal argument to show he had a right to file the caveat.

The panel finds that Bartel had no legal right to file the caveat. Bartel acted in a manner contrary to the public interest and in a manner that did not meet the standards required for a registrant under the Act. The basis for this finding is as follows:

Bartel did not have the right to register a caveat in his own name. The listing agreement was between Re/Max and the owners, not Bartel;

There was no legal right to file the caveat as it was filed prior to an accepted final offer;

The employing broker did not give instructions to file a caveat but rather "to see what he (Bartel) could do". Although the direction given by Thorvaldson to Bartel could have been more direct, the fact they were not does not and could not change the terms of the listing agreement and give Bartel the right to register a caveat.

It should also be noted that Bartel did not consult with a lawyer to determine whether there was a basis for the filing of a caveat. In effect, Bartel took the law in his own hands and assumed the role of judge and jury in an attempt to protect what he felt was his entitlement to a commission.

## 2. The Heywood Property:

Bartel, through his broker Re/Max, entered into a listing agreement for the sale of a 160 acre dairy farm (the "Heywood Property") on April 18, 1998. Although the Heywoods had been able to rent, but not own an adjacent piece of property owned by Mr. Dubois (the "Dubois Property") they had reached the decision that they needed to own a larger piece of property for their dairy operation.

The Heywoods, using the services of Bartel, signed a conditional offer to purchase a larger farm from Mr. Allec (the "Allec Property"). The offer to purchase was conditional on the sale of the Heywood Property.

About the same time Bartel had also secured a listing agreement on behalf of his broker to market the Dubois Property for sale. The panel accepts the evidence of Mrs. Heywood (and rejects the contradictory evidence of Bartel) that the Heywoods were not told by Bartel that the Dubois Property was for sale.

By not informing the Heywoods of the availability of the Dubois Property (which was beside the Heywood Property and therefore would permit the Heywoods to expand their dairy farm without moving) Bartel potentially would receive three commissions:

- from the sale of the Heywood Property
- from the Heywood purchase of the Allec Property, and
- from the sale of the Dubois Property.

It was only through chance that the Heywoods learned that the Dubois Property was being offered for sale.

Bartel was involved in securing an offer to purchase the Dubois Property that had been received from a party in the United Kingdom. The offer was conditional on the purchasers being allowed to immigrate to Canada. This offer was subsequently aborted due to immigration problems.

The Heywoods found out that the Dubois Property was for sale when the potential purchasers from the United Kingdom, during a tour of the property, spoke to Mr. Heywood.

Once aware the Dubois Property was for sale, the Heywoods instructed Bartel to prepare an offer to purchase. The offer to purchase was accepted. Once the transaction closed the Heywoods would then own the additional land they needed for their dairy farm (being the Heywood Property and the Dubois Property).

The panel accepts the evidence of the Heywoods that Bartel was aware they no longer needed to sell the Heywood Property. There clearly was no reason for the Heywoods to sell the Heywood Property once the Dubois Property was purchased. This finding is supported by a letter written by Mrs. Heywood to Re/Max advising that they had informed Bartel on January 6th, 1999 and again on January 25th, 1999 that the Heywood Property was no longer for sale.

Bartel was not content with receiving a commission from the sale of the Dubois Property. Prior to the Heywoods taking ownership of the Dubois Property, and without the knowledge or consent of the Heywoods, Bartel prepared what was referred to at the hearing as a "feature sheet".

A feature sheet is a sales tool which provides a description of the property to be sold. Information about the size of the property, details of any buildings, information about taxes and

other characteristics that a potential purchaser may want to know can be included in a feature sheet.

The feature sheet prepared by Bartel combined the Heywood Property and the Dubois Property and described it as one property. Bartel, again without the knowledge or consent of the Heywoods, also set the offering price of the combined property at \$1,050,000. The feature sheet was then used by Bartel to advertise the combined properties for sale to the public.

Bartel did not have a written listing agreement from the Heywoods regarding the sale of the Dubois Property (or the combined property) but claims to have had a verbal agreement. Correspondence and verbal testimony from Mrs.

Heywood contradicts this and the panel rejects the evidence of Bartel on this point and finds there was no listing agreement (verbal or otherwise) for the sale of the Debois Property by the Heywoods.

The preparation of the feature sheet combining the Heywood Property and the Dubois Property was problematic for several reasons:

- Bartel had no instructions from the Heywoods to prepare the sheet
- the Heywoods had instructed Bartel and his broker that the Heywood Property was not available to sell
- the Heywoods did not yet own the Dubois Property
- Bartel had no authority to set a price for the combined property, and
- it misrepresented the status of the properties to the general public.

Mr. Thorvaldson of Re/Max did not support Bartel in preparing and circulating a feature sheet combining the two properties.

It is obvious to the panel that the conduct of Bartel relating to the three properties was motivated by his desire to secure three commissions. His actions were misleading and deceitful and he was clearly not acting on the instructions of (or in the interests of) the Heywoods. His failure to advise the Heywoods of the availability of the Dubois Property and his attempts to somehow force a sale of the combined properties showed a complete lack of understanding of his responsibilities to his clients and the standard of conduct required of a registrant under the Act.

#### BARTEL'S CONDUCT DURING THE HEARING

Throughout the hearing, Bartel conducted himself in a manner that was uncooperative and belligerent. At various times he alleged that:

- the Securities Commission had no authority to hold a hearing;
- the allegations against him were improper and untrue;
- Commission investigator Bill Baluk was prejudiced;
- Bortoluzzi (Asham's lawyer) was a liar;
- he was being intimidated by the Commission;

- there was a "conspiracy" against him;
- the Commission kept the real estate industry in a state of fear and that indeed it was fear of the Commission that caused Re/Max to fire him;
- the evidence given by Thorvaldson (of Re/Max), Mrs. Heywood, Mr. Bortoluzzi, the Ashams, Bill Baluk and Jim Storsley was all wrong and intended to cast him in a bad light;
- he would rather go to jail than accept any suspension by the Commission;
- the facts have been twisted and contorted -- "...smoke and mirrors...";
- he was threatened with suspension (by staff); and
- he said the hearing should be classed as a public outrage.

Bartel's conduct at the hearing was unprofessional and disgraceful. His treatment of witnesses was disrespectful and at times hostile. He demonstrated a complete lack of understanding of what he had done and how his actions impacted on his clients and others. He failed to understand his responsibilities under the Act, the role of the Commission both as a licensing and disciplinary body, and the role of his broker in supervising his activities.

However, In considering whether the conduct of Bartel warrants a suspension or cancellation of his registration as a real estate agent the panel has only considered the evidence presented at the hearing as that evidence related to the matters described in the statement of allegations. The decision of the panel is based on an assessment of the seriousness of Bartel's misconduct relating to these matters and is not based on his conduct at the hearing of the matter.

## **DISPOSITION**

In determining a penalty the panel has considered the seriousness of Mr. Bartel's conduct. However, the panel has also considered the fact that Bartel has not previously been the subject of a hearing before the Commission. The panel has also considered the fact that Bartel lost his employment with Re/Max at least partially because of these matters and has suffered a penalty through the strain his loss of employment placed on him and his family.

However, in order to satisfy the public interest and the need to ensure Bartel understands the seriousness of his actions the panel has determined that a suspension of Bartel's registration under the Act is required.

Mr. Bartel's registration under the Act is to be suspended for a period of ninety (90) days. The suspension will commence one week from the date of this decision.

In addition, Mr. Bartel will be required to enroll in the following portions of the Manitoba Real Estate Association Salesman Courses:

1. Phase 2:

- Unit 5 - Agency Law and Practice
- Unit 6 - Contract Law
- Unit 7 - Professional Conduct

## 2. Phase 3:

- Unit 2 - Representing Seller
- Unit 3 - Representing Buyer

These courses must be successfully completed by December 31, 2001 or such other time as may be arranged with the Registrar. Failure to comply will result in a suspension of Mr. Bartel's registration under the Act.

### **Costs**

With respect to costs, although Mr. Bartel is not a lawyer and chose to represent himself, throughout the hearing he refused to follow directions of the panel not to ask irrelevant questions and enter evidence irrelevant to the hearing. As a result the costs of the hearing amounted to approximately \$24,000. It is the view of the panel that Bartel must accept responsibility for the these costs. However, the panel also takes into account Mr. Bartel's financial and family situation and therefore sets the amount of costs to be paid by Mr. Bartel at \$12,000.

Given the amount of costs the panel directs Bartel to submit a written proposal to the Registrar under the Act outlining a reasonable payment schedule for the payment of these costs. The proposal is to be submitted in writing within 14 days of the date of these reasons. If an agreement is reached details of the agreement are to be incorporated into the terms of the Commission order resulting from this decision.

If an agreement with respect to a reasonable time for payment of these costs cannot be reached, the panel orders these costs be paid in full within one year from the date of these reasons.

It is the hope of the panel that Mr. Bartel will review and reflect on these reasons for decision carefully, recognizing that by not canceling his registration that he has been given an opportunity to continue to work in the real estate industry if he can demonstrate that his conduct does not pose a risk to the public.

January 24, 2001

"E. O. E. Bergman"  
Acting Chairman

"R. G. McEwen"  
Member

"W. J. A. Bulman"  
Member