

October 20, 2004

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**

Panel:

Acting Chair: Mr. R.G. McEwen
Board Members: Mr. W.J.A. Bulman

Appearances:

Mr. C. Besko) Counsel for the Commission
Mr. Walter T. Bartel) On his own behalf

The panel's Decision dated January 24, 2001, was appealed by Bartel to the Court of Queen's Bench and subsequently, by the Commission to the Court of Appeal.

A finding had been made against Bartel in two transactions referred to as the Asham property and the Heywood property matters. The Court of Appeal concurred with the findings of the motions judge in holding that the panel's findings concerning the Asham property could not stand, but upheld the panel's decision with respect to the Heywood property.

In light of the fact the penalty against Bartel was assessed on the basis of two findings the Court of Appeal referred the matter back to the panel for reconsideration as to penalty. A hearing was convened for this purpose on September 9th, 2004 at which Mr. Bartel appeared on his own behalf.

At the initial hearing of the allegations against Bartel he strenuously denied any improper conduct on his part, which was his entitlement. The panel felt nonetheless, that his refusal to accept any suggestion of wrongdoing was unreasonable given the evidence and that his attacks against the process and the Commission staff involved in that process were unwarranted. Despite this, the panel gave Bartel very wide latitude to present his position, partly because he was unrepresented and certainly the panel felt some compassion for his circumstances as related by him.

At the hearing of September 9th, 2004 the panel was both disappointed and concerned that despite the initial findings against him and the upholding of the findings in the Heywood property matter by the Court of Appeal, Bartel still refused to acknowledge any improper conduct and continued to assail the process and attack Commission staff. With respect to staff he stated, "You've got to ask yourself what drives these people? What drives these people to liable me, to slander me, to do whateverthey're just like a pack of dogs." (transcript of evidence page 518, lines 13-15) At the conclusion of the September 9th, 2004 hearing Bartel asked for permission to file further argument in written form. The panel allowed this provided it was forwarded within a week. A two page letter to the panel was delivered on September 16, 2004 which, as requested, was considered by the panel. In this letter Bartel continued in his aggressive mode going so far as to suggest that the panel members had acted in a "dishonest" and "fraudulent" manner.

Bartel's actions in this regard, while improper, are not the panel's concern in setting a penalty. The panel's concern is, that despite the clear findings against him, Bartel appears unable to comprehend or chooses to remain willfully blind as to his obligations to the public and just what constitutes improper conduct by a real estate salesperson. The Commission's main priority is public protection and the panel is concerned that Bartel's intransigence, if unchecked, will constitute a continued threat to the public with whom he may deal.

The panel feels that the penalty must both demonstrate to Bartel that he must be responsible for his actions and put his personal interests behind those of his clients, and clarify for him exactly what are his obligations to those clients. At the same time, due to the findings of the Court of Appeal, the panel feels constrained to reduce the initial penalty somewhat.

Accordingly it is ordered that:

1. Mr. Bartel's registration under the Act be suspended for a period of 60 days. The suspension will commence one week from the date of this Decision.
2. Mr. Bartel is to enroll in and successfully complete the following portions of the Manitoba Real Estate Association Salesman Courses:
 - a) Phase 2:
 - Unit 5 – Agency Law & Practice
 - Unit 6 – Contract Law
 - Unit 7 – Professional Conduct
 - b) Phase 3:
 - Unit 2 – Representing Seller
 - Unit 3 – Representing Buyer

These courses are to be completed by December 31, 2005.

Bartel's continued registration, following his suspension, will be conditional upon the completion of the required courses by the stipulated date, or any extension thereof agreed to by the Registrar.

3. Costs

The Commission's total costs, now in excess of \$25,000.00, must be considered.

In the opinion of the panel, an equitable allocation of these costs would require Mr. Bartel to pay costs of \$10,000.00.

October 20, 2004

R.G. McEwen
Acting Chair

W.J.A. Bulman
Member