

December 12, 2005

IN THE MATTER OF: THE REAL ESTATE BROKERS ACT

- and -

IN THE MATTER OF: PAUL RAYMOND HRANKOWSKI

REASONS FOR DECISION
OF
THE MANITOBA SECURITIES COMMISSION

Panel:

Chair	Ms. L.M. McCarthy
Board Members:	Mr. W.J.A. Bulman Ms. K.E. Hughes

Appearances:

Ms. K.G.R. Laycock) Counsel for the Commission
Mr. Paul R. Hrankowski :) On his own behalf

Background

This matter was heard by a panel of the Manitoba Securities Commission on May 19, 2005 and June 3, 2005. The hearing arose from the suspension of Mr. Paul Raymond Hrankowski's registration as an authorized Official and Real Estate Broker under the Real Estate Brokers Act effective April 20, 2005.

Mr. Hrankowski's suspension arose from his conduct during and after the time period he had a property in Winnipeg listed for Ms. J (the "Property"). At all material time, Hrankowski was registered and an Authorized Official and Real Estate Broker.

Ms. J signed an agreement with Hrankowski to list the Property for a two month period from January 29, 2004 to March 31, 2004. On February 22, 2004, Ms. J sent a letter to Hrankowski to change the expiry date of the agreement to February 29, 2004.

On February 24, 2004, Hrankowski registered a caveat with Winnipeg Land Titles Office against the Property, even though no contract of sale had been executed. Paragraph 7E of the listing contract states:

"The Seller hereby pledges all of the Seller's interest in the Property to the Listing Brokerage as security for payment of all money which may be owed by the Seller

to the Listing Brokerage under this contract and hereby acknowledges that the Listing Brokerage is entitled to register and maintain a caveat at the Land Title Office to give notice of this charge *upon the Seller executing a legally enforceable contract of sale of the Property*" (emphasis added).

In May, 2004, a title search by Ms. J's lawyer alerted her to the caveat that had been filed by Hrankowski against the Property. Ms. J filed a complaint about the caveat on her property with the Manitoba Securities Commission (the "Commission") in early July of 2004.

Correspondence between the Commission and Mr. Hrankowski began in July of 2004, with mixed success. Initial contact by the Commission by letter was followed up with a number of unsuccessful attempts at telephone contact. A series of letters in July and August contributed little to clarifying or resolving the issue of the caveat on Ms. J's property.

Hrankowski was successfully served with a summons to attend at the Commission for an examination to provide information or evidence with respect to Ms. J's complaint. Accordingly, Mr. Hrankowski attended at the Commission on November 16, 2004. However, an error made at the time the summons was served, as well as Mr. Hrankowski's wish to be given the opportunity to be represented by legal counsel, meant that a rescheduling of the examination was required.

Attempts to contact Mr. Hrankowski to advise him of the rescheduled date of December 14, 2004 began with a letter sent on November 19, 2004. Follow up attempts were unsuccessful, and Mr. Hrankowski did not appear at the Commission at the scheduled time. The examination was again rescheduled for February 22, 2005; the required documents were sent by registered mail but not claimed by Mr. Hrankowski. He did not appear at the Commission on February 22.

Allegations

Staff Counsel allege that Hrankowski's conduct while registered under the Act was improper in that he:

1. maintained and failed to discharge the Caveat against the Property in spite of there being no legally enforceable contract of sale as required by the Listing agreement;
2. failed to furnish information and/or to appear for examination when summoned;
3. acted contrary to protecting and promoting the best interests of the client; and that Hrankowski failed to file an annual Trust Account Report or application for exemption with supporting affidavit as required by sections 14 and 17, respectively, of regulation 57/88R to the Act.

Evidence and Findings

Allegation 1: [Hrankowski] maintained and failed to discharge the Caveat against the Property in spite of there being no legally enforceable contract of sale as required by the Listing agreement.

Testimony by Ms. J and Mr. Hrankowski, as well as documentary evidence showed that Mr. Hrankowski registered a caveat against the Property. Ms. J still owned the Property at the time the hearing took place, so there was clearly no legally enforceable contract of sale when the caveat was registered.

In his direct testimony, Mr. Hrankowski spoke of an offer on the Property that was in Ms. J's possession during the listing period. No documentary evidence was submitted to support this testimony, and this issue was not addressed at all when Mr. Hrankowski cross examined Ms. J. The panel cannot, therefore, give much weight to his evidence that there was a written offer during the listing period.

The caveat was finally discharged by Ms. J herself in May, 2005. Mr. Hrankowski had taken no action to discharge the caveat in the 15 month period it was registered against the Property.

Allegation 2: [Hrankowski] failed to furnish information and/or to appear for examination when summoned.

The panel heard evidence about the many attempts made by Commission staff to contact Mr. Hrankowski regarding Ms. J's complaint over a period of approximately eight months.

Communication attempts included regular mail, registered mail, email, telephone, fax and personal service, most of which were unsuccessful.

A registrant has an obligation under Section 36 of the Real Estate Brokers Act ("REBA") to provide information to the Commission.

"The failure without reasonable excuse of any person to furnish information required by the registrar under Part I, or any required by the commission or any other person, appointed by the commission under this Act, or the failure without reasonable excuse of any person summoned for examination under this Act to appear, or his refusal to give evidence, or to answer any question...is an offence"

Mr. Hrankowski claimed that he did not receive the many attempts at communication made by Commission staff. The reasons he cited were based mainly on family health problems and financial difficulties.

The panel finds it difficult to believe that all communication from the Commission, including regular mail, registered mail, documents left in the mailbox, telephone messages, emails and faxes, went astray. In any event, the evidence showed that Mr. Hrankowski was aware that there was an investigation of a complaint regarding his conduct underway. Even if he did not receive any information from the Commission, it would have been in his best interest to take the initiative himself to contact Commission staff.

Allegation 3: Hrankowski failed to file an annual Trust Account Report or application for exemption with supporting affidavit as required by sections 14 and 17, respectively, of regulation 57/88R to the Act.

Mr. Hrankowski admitted that the Trust Account Report was not filed on time.

Decision

The evidence clearly showed that a caveat was registered and maintained, contrary to the listing agreement and subsequent notice to the real estate industry by the Real Estate Division of the MSC. Hrankowski did not seem to understand that it was his responsibility to remove the caveat.

Had Mr. Hrankowski responded to the first letter sent by the Commission in July of 2004, and dealt with the issue of the caveat at that time, the matter could have been resolved long before a hearing was required.

While the panel acknowledges the personal difficulties that Mr. Hrankowski alluded to during the hearing, those do not alter the requirement that he conduct himself in accordance with the provisions of the Act.

The Panel finds that the allegations have been proven. Therefore, Hrankowski registration as an Authorized Official and Real Estate Broker shall be suspended for a period of 12 months plus two weeks, including the time, commencing April 20, 2005 that he has already been suspended. (Note: suspension was lifted for the two week period prior to the start of the hearing.)

Prior to re-registration, Mr. Hrankowski will be required to complete the following courses:

- Phase 2: Real Estate as a Professional Career – Unit 7 – Professional Conduct;
- Phase 3: Unit 2 – Representing the Seller
- Mandatory Continuing Education – MCE 5 – Legal Update & Practice Guidelines.

In communicating this decision to Mr. Hrankowski and in his future efforts to regain his registration, Commission staff should not take extraordinary measures to contact him. As outlined above, the REBA requires a registrant to be available to the Commission.

December 12, 2005

"L.M. McCarthy"

L.M. McCarthy

Chair

"W.J.A. Bulman"

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Member

"K.E. Hughes"

K.E. Hughes

Member