



IN THE MATTER OF: THE REAL ESTATE BROKERS ACT

- AND -

AND IN THE MATTER OF: ADELGUNDE ("Adele") DYCK

**STATEMENT OF ALLEGATIONS OF STAFF OF
THE MANITOBA SECURITIES COMMISSION**

**STAFF OF THE MANITOBA SECURITIES COMMISSION ALLEGE, AMONG
OTHER THINGS, THAT:**

A. REGISTRATION

1. At all material times, Adelgunde Dyck, also known as Adele Dyck ("Dyck") was registered as a salesman under *The Real Estate Brokers Act* (the "Act"). Dyck has been continuously registered as a salesman under the Act since October 16, 1996, except for the periods detailed below. Commencing October 16, 1996 to December 3, 1997 Dyck was employed by Choice Realty Ltd. On December 4, 1997 she was employed by REMAX Village Realty until May 24, 1998. On June 2, 1998 she was employed by Star-7 Realty Inc. and has been employed continuously since then by Star-7 Realty Inc. to the present time, save and except for the period of October 16, 1998 to October 25, 1998 when her license had expired.
2. At all material times, Dyck was an officer and director of Star-7 Realty Inc.

B. DETAILS

"W.T."

1. W.T. was a German citizen and planned to immigrate to Canada.
2. W.T. engaged the services of Dyck to provide advice with respect to matters involving the proposed immigration of W.T. and his family to Canada from Germany. In addition, W.T. engaged the services of Dyck to purchase real estate.
3. Prior to coming to Canada, W.T. agreed to purchase property through Dyck in the Winkler area commonly known as SW 15-3-4W, for the sum of \$224,000.00. The property included a residential home and was approximately 15 acres ("Property A").
4. Dyck represented to W.T. that Property A could be subdivided and there were no negotiations with respect to the purchase price of \$224,000.00.
5. On or about February 6, 1999, W.T., through Dyck, submitted an offer to purchase to H.D. and E.D. to purchase Property A and the offer to purchase was accepted by H.D. and E.D. on

February 8, 1999. Dyck was listed as the listing and selling salesperson on the said offer to purchase.

6. W.T., prior to moving to Canada, entered into an agreement to purchase property from Dyck and P.D. ("Property B").

7. The offer to purchase Property B was prepared by Dyck on plain paper rather than on the prescribed offer to purchase forms which are required under the Act and Regulations thereto.

8. Dyck also explained to W.T. that Property B could be used for a bed and breakfast and she would refer people to W.T. and his wife, who would operate a bed and breakfast out of Property B.

9. The purchase price of Property B was \$140,000.00 with a possession date of April 10, 1999. W.T. was to transfer the sum of \$75,000.00 to P.D. and Dyck and once the remaining amount owing was paid, transfer of title would take place. W.T. transferred the sum of \$75,000.00 to a bank account of P.D. and Dyck.

10. On or about June 1, 1999, W.T. and L.T. took possession of Property A. Subsequent to taking possession of Property A, W.T. received a property tax assessment notice which valued Property A at \$128,100.00. W.T. also obtained an assessment from an appraiser who appraised the property at \$156,500.00.

11. W.T., after taking possession of Property A also found out the property could not be subdivided as represented by Dyck.

12. With respect to Property B, after W.T. arrived in Canada, Dyck advised him that someone else opened up a bed and breakfast in the area and it would be best to rent out the property, notwithstanding this was not W.T.'s intention. W.T., upon being told this wanted return of the \$75,000.00 and Dyck refused to return the money. Subsequently, the sale of Property B did not occur and W.T. received the sum of \$75,000.00 that he had paid towards the purchase.

"B.D."

13. B.D., a German resident, visited Winkler, Manitoba in or about August, 1997 to explore the possibility of immigrating to Canada. When visiting Canada, he met Dyck. B.D. engaged the services of Dyck to provide advice with respect to matters involving the proposed immigration of B.D. and his family to Canada from Germany. In addition, B.D. engaged the services of Dyck to purchase real estate. Dyck represented to B.D. the immigration process would go smoother if B.D. purchased a home.

14. Shortly after returning to Germany from Canada, B.D. received a fax from Dyck promoting the sale of property owned by W.F. and M.F. ("Property C") and advised him that he had one week to make a decision on purchasing his property as another German family was waiting to purchase this property.

15. Dyck advised B.D. that Property C had an assessed value of \$245,000.00. Given it was difficult for B.D. to check out the value of property from Germany, he trusted Dyck and decided to submit an offer to purchase Property C.

16. Property C was originally purchased by A.W. pursuant to an Offer to Purchase dated June 17, 1998. The purchase price was \$271,000.00 with a possession date of November 1, 1998. The purchase price also included a 2 acre lot. Dyck was listed as the listing salesman and selling salesman on the said Offer to Purchase.

17. By way of agreement dated October 20, 1998 between D.W. and A.W. and B.D and M.D., his wife, it was agreed that title to the property owned by W.F. and M.F. would bear the name of B.D. and M.D. No formal Offer to Purchase was prepared on behalf of B.D. and M.D. with respect to their purchasing Property C.

18. Subsequent to arriving in Canada, B.D. sold the attached two acre lot for \$26,000.00, making the net purchase for the remaining property \$245,000.00.

19. Subsequent to arriving in Canada, B.D. discovered the tax assessment value of Property C was \$107,800.00 (exclusive of the attached 2 acre lot). He subsequently had the property appraised at \$166,500.00.

"H.T."

20. At all material times H.T. and E.T. listed their property described as Valley View South, S.T.R. 15-2-4 ("Property D") with Star-7 Realty Inc.

21. On or about July 15, 1998 an offer to purchase Property D was made by Economy Consolidated or nominee, for the sum of \$140,000.00 (the "Offer").

22. Dyck was listed as the listing salesman and selling salesman under the Offer, which was accepted by H.T. and E.T. on or about July 15, 1998.

23. Pursuant to the terms of the said Offer, a commission of \$10,000.00, inclusive of GST, was to be paid to the listing broker.

24. Star-7 Realty Inc. took title to the Property D as nominee and subsequently sold Property D in or about May, 1999 to H.K. and M.K. for \$130,000.00.

25. H.T. was made aware the purchaser of Property D was Star-7 Realty Inc. as nominee.

26. H.T. was informed by his lawyer that he was not obligated to pay a commission as Star-7 Realty Inc. was the purchaser of Property D. H.T.'s lawyer paid H.T. the full amount of the selling price.

27. Approximately one month after the transaction had closed, H.T. was approached by Dyck who requested the \$10,000.00 commission. Dyck did not tell H.T. that because Star-7 Realty Inc. was purchasing Property D that he did not have to pay a commission.

28. H.T. paid the \$10,000.00 commission to Dyck.

"J.M. and M.M."

29. On or about August 3, 1998, J.M. and M.M. listed their property described as Roll #12200, Ward 2, Section B, Plan 21444 in the Village of Rosengart, Manitoba ("Property E"), at a price of \$82,900.00 with Star-7 Realty Inc. pursuant to a listing agreement that was to expire on July 31, 1999 (the "Listing Agreement"). On or about August 18, 1998, an offer to purchase Property E was made by purchasers from Germany for the sum of \$82,900.00 with possession date being May 30, 1999 (the "Offer"). The Offer was not subject to financing.

30. W.D., a salesman registered with Star-7 Realty Inc. was listed as the listing salesman and Dyck was listed as the selling salesman under the Offer.

31. On the assurance by Dyck that the transaction would be proceeding without a problem, J.M. and M.M. purchased a lot to commence construction of another residence.

32. The purchasers, who were immigrating from Germany, did not arrive in Canada by the May 30, 1999 closing date and did not provide all the closing monies for the transaction by that date.

33. J.M. and M.M., based on representations by Dyck that they need not be concerned about the delay and that the transaction would close, agreed to extend the possession date to July 15, 1999, failing which J.M. and M.M. would be entitled to retain the sum of \$5,900.00 representing the deposit held in Star-7 Realty's trust account. J.M. and M.M. agreed to this extension on or about May 31, 1999.

34. Dyck repeatedly assured J.M. and M.M. the transaction would close and the funds required to close the transaction were available, including that the purchasers were approved for a mortgage to finance this purchase.

35. The purchasers, notwithstanding representations made by Dyck, advised J.M. and M.M. that they had to borrow the majority of the money to close the transaction from family, friends and the bank.

36. Prior to the July 15, 1999 possession date, the purchasers immigrated to Canada and arrived to meet J.M. and M.M. to look at the Property E.

37. The purchasers subsequently decided not to proceed with the transaction and decided to forego their deposit, citing as a reason the property was over-valued. The transaction did not proceed.

38. J.M. and M.M. were unable to sell Property E until May 23, 2001 for consideration of \$60,000.

"J.S."

39. In or about March, 1999, J.S., a German resident, came to Canada in preparation for immigrating to Canada.

40. On or about March 27, 1999, J.S. viewed the property known as 5 Balsam Bay, Winkler, Manitoba, which was owned by R.F. and T.F. ("Property F"). On or about March 28, 1999, J.S. attended the R.F. and T.F. home and made an offer to purchase Property F for the sum of \$165,000.00 with possession being in May, 1999.

41. The transaction was completed and title to Property F was placed in the names of J.S. and E.S.

42. The offer to purchase in relation to Property F noted that there was no real estate commission payable.

43. Subsequent to the foregoing purchase, J.S. was approached by W.D. of Star-7 Realty Inc., advising J.S. he owed a commission of \$8,827.50 inclusive of GST.

44. In view of the fact that J.S. was aware that Dyck was involved in the immigration program and that he had relatives hoping to immigrate, J.S. paid the commission. Dyck was aware or should have been aware prior to Star-7 Realty Inc. accepting these monies that there was no buyer-agency agreement in place between Star-7 Realty Inc. and J.S. Further, Dyck and W.D. did not show Property F to J.S. nor prepare the offer to purchase for this property.

C. ALLEGATIONS

1. Staff of the Commission allege that:

(a) In connection with the W.T. matter, Dyck:

- i) misrepresented to W.T. that subdivision of Property A was possible;
- ii) conducted herself in a manner in an attempt to deceive W.T. as to the value of Property A, or alternatively to cause W.T. to pay a greater price for Property A than it was worth;
- iii) did not act in the best interests of W.T. with respect to the purchase of Property A;

- iv) did not with respect to Property B, prepare an offer to purchase on the prescribed forms, as required under the Act and Regulations thereto;
- v) did not pay over to her employer all money she received in connection with the sale of Property B as required under the Act;
- vi) did not deposit monies received in connection with the sale of Property B in a trust account as required under the Regulations to the Act.

(b) In connection with the B.D. matter, Dyck:

- i) misrepresented to B.D. the value of Property C;
- ii) did not act in the best interests of B.D. with respect to the purchase of Property C;
- iii) did not prepare a new offer to purchase on behalf of B.D. with respect to the purchase of Property C.

(c) With respect to the H.T. matter, Dyck:

- i) collected a commission from H.T. on property purchased by Star-7 Realty Inc. when the said property was listed with Star-7 Realty Inc. for sale contrary to the provisions of the Act;

(d) With respect to the J.M. and M.M. matter, Dyck:

- i) sold the property at higher than market value price which caused the purchasers not to proceed with the subject transaction;
- ii) continually assured J.M. and M.M. that the subject transaction would be completed thereby causing the J.M. and M.M. to act to their detriment and as a result did not act in the best interests of J.M. and M.M.

(e) With respect to the J.S. matter, Dyck:

- i) permitted, instructed or acquiesced in Star-7 Realty Inc., collecting a commission from J.S. when there was no buyer agency agreement in place and notwithstanding she did not show the subject property to J.S. nor prepare the offer to purchase relating to this property.

2. Due to the foregoing allegations, it is in the public interest that the registration of Dyck as a salesman under the Act be suspended or cancelled.

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

DATED at Winnipeg, in Manitoba, this 29th day of November, 2002.

Director, Legal and Enforcement