

IN THE MATTER OF: THE REAL ESTATE BROKERS ACT

-and-

IN THE MATTER OF: JOSE ANTONIO PEREIRA and
MARIO MANUEL LOPES

AMENDED AMENDED
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, Jose Antonio Pereira ("Pereira") was registered as a salesman under The Real Estate Brokers Act (the "Act") with Re/Max Real Estate Inc. ("Re/Max").
2. At all material times, Mario Manuel Lopes ("Lopes") was registered as a salesman under the Act with Re/Max.

B. DETAILS

Ms. L (Seven Oaks Home):

3. In or about early 2000, Ms. L was interested in renting a home and noticed an advertisement in the Renter's Guide by Pereira.
4. Ms. L contacted Pereira.
5. Ms. L was advised by Pereira that she could own a home.
6. Ms. L told Pereira she did not have money for a downpayment. She only had \$500.00. Pereira told Ms. L she did not need any more money.
7. An offer was made on a property located on Sinclair, in Winnipeg, Manitoba (the "Sinclair Property").
8. Regarding the Sinclair Property, Pereira presented a gift letter to Ms. L and to her sister and advised them to sign (the "First Gift Letter").

9. According to the First Gift Letter, the sister was giving money to Ms. L in conjunction with the purchase of the Sinclair Property. The sister informed Pereira that she did not have money to give. Pereira explained that no money would actually be exchanged.

10. Ms. L and her sister followed the advice of Pereira and signed the First Gift Letter.

11. The purchase of the Sinclair Property was not completed.

12. Some time after the matter of the Sinclair Property, Ms. L found another house which she was interested in purchasing, located on Seven Oaks, in Winnipeg, Manitoba (the "Seven Oaks Home").

13. Ms. L was shown the Seven Oaks Home by Richard Kohut ("Kohut") an associate of Pereira's.

14. On February 28, 2001, an Offer to Purchase the Seven Oaks Home was made by Ms. L and accepted by the vendors (the "Seven Oaks Offer").

15. Once again, Ms. L had \$500 for the purchase of the Seven Oaks Home.

16. Ms. L and her sister were again required to sign a gift letter (the "Second Gift Letter"). Ms. L understood that the First Gift Letter had been misplaced.

17. The Second Gift Letter depicts a gift in the amount of \$3,000.00 and states:

This is an outright gift with no repayment expected or ~~i~~No gift money was in fact to be exchanged.

19. As to the purchase of the Seven Oaks Home,

implied, either in the form of cash or by future services by him/her.

18. Pereira explained to her how he would provide the balance necessary to close and that she would repay this from the cash-back she would receive from the mortgage.

20. Ms. L received a cashier's cheque from Pereira in the amount of \$2,956.21, which she gave to her lawyer to be used for the cash to close the purchase of the Seven Oaks Home. The source of the funds was DS, a friend of Pereira's.

21. In return, Ms. L gave Pereira four post-dated cheques, as follows: 3 cheques each in the amount of \$252.00 dated March 31/01, April 15/01 and April 30/01 and one cheque in the amount of \$2,400.00 dated April 24/01.

22. Ms. L was instructed by Pereira to sign a mortgage with the TD Bank for a 10-year term, which would result in a higher cash-back than the 5-year term she was contemplating, and that the cash-back would be used to cover the cheque for \$2,400.00.

23. As a result of discovering that the transaction was improper, Ms. L stopped payment on her second cheque, dated April 15/01. The third cheque, dated April 30/01, was returned by Pereira. The fourth cheque, in the amount of \$2,400.00, was not returned and Ms. L placed a stop payment on it.

24. The amount of the cheque dated April 15/01 had been altered by Pereira such that the original amount of \$252.00 was changed to \$250.00.

25. Ms. L was a first time home buyer.

26. The Seven Oaks Offer did not disclose particulars as to Pereira's involvement in obtaining a loan for Ms. L the proceeds of which were to be used for cash to close.

Ms. N (Newton Home):

27. Ms. N noticed an advertisement in the Renter's Guide by Pereira entitled Out of Rent to Own, as a result of which she obtained an application.

28. Ms. N completed the application following which she received a letter from Pereira.

29. Ms. N contacted Pereira and arranged for an appointment. Instead of meeting with Pereira, she met with Lopes.

30. Ms. N received confirmation from the TD Bank that she was pre-approved for a mortgage, following which she was shown properties by Lopes.

31. Lopes informed Ms. N to the effect that with the program they had in place she would only need a \$500 down payment.

32. On or about March 29, 2001, an offer to purchase a home located on Newton Avenue, in Winnipeg, Manitoba (the "Newton Home") was prepared by Lopes showing Pereira as selling salesman (the "Newton Home Offer").

33. It was explained to Ms. N that she only needed \$500 to buy a home because she would receive money from a lender and she would pay the lender back from the cash-back on her mortgage. Pereira confirmed this to be correct.

34. On or about May 15, 2001, Lopes showed Ms. N a cheque in the amount of \$3,105.00 and prepared an agreement whereby she would repay the lender from her cash-back.

35. Ms. N signed the repayment agreement.

36. The source of the \$3,105.00 was DS, a friend of Pereira's.

37. The \$3,105.00 was later used to demonstrate to a bank the existence of the cash to close.

38. Ms. N was later contacted by the TD Bank for proof of \$4,000.00 as noted on a gift letter (the "Ms. N Gift Letter").

39. Prior to being contacted by the TD Bank, Ms. N. was not aware of, nor had she signed, the Ms. N Gift Letter.

40. The Ms. N Gift Letter which purports to have been signed by Ms. N shows an alleged gift in the amount of \$4,218.50 and states:

This is an outright gift with no repayment expected or implied, either in the form of cash or by future services by him/her.

41. There was in fact no such gift.

42. The TD Bank would not look after the mortgage for Ms. N.

43. Ms. N was reassured by Lopes not to worry and that they would look after everything.

44. The Newton Home Offer did not disclose particulars as to the involvement of Pereira or Lopes in obtaining a loan for Ms. N the proceeds of which were to be used for cash to close.

Ms. P (Hindley Home):

45. Ms. P contacted Pereira as a result of a newspaper advertisement.

46. Following the instructions of a telephone message, Ms. P went to Re/Max and filled out a credit application (the "Ms. P Application").

47. Ms. P signed the Ms. P Application and left it at the Re/Max office.

48. Ms. P thought the Ms. P Application was to rent a home.

49. The amount of cash identified on Ms. P's credit application was "NO".

50. Ms. P was told she qualified for a mortgage and could own a home, following which she was shown properties by Pereira.

51. An offer to purchase a home located on Hindley Avenue, in Winnipeg, Manitoba (the "Hindley Home") was prepared by Pereira (the "Hindley Home Offer"). Pereira asked Ms. P if she could get a \$1,000.00 for a deposit, which she did by drawing down on a line of credit. At the time of preparation of the Hindley Home Offer, Pereira further informed Ms. P that she did not need any more money and that she would be receiving some money back from a cash-back.

52. Ms. P was advised by Pereira that her mortgage would be with TD Bank.

53. Before the mortgage was processed, Ms. P was contacted by a new manager at the TD Bank.

54. A document dated on or about April 23rd/01 purporting to evidence a gift of \$4,000.00 from a sister of Ms. P's to Ms. P had been presented to the TD Bank (the "Ms. P Gift Letter").

55. The Ms. P Gift Letter stated:

This is an outright gift with no repayment expected or implied, either in the form of cash or by future services by him/her.

56. The Ms. P Gift Letter purported to have been signed by Ms. P.

57. Ms. P did not sign the Ms. P Gift Letter, had no knowledge of the Ms. P Gift Letter prior to being contacted by the TD Bank, and did not in fact have the sister as described in the Ms. P Gift Letter.

58. There was in fact no such gift money.

59. Thereafter, Ms. P was contacted by Pereira who informed her that her mortgage application was now at a different bank.

60. Pereira had obtained from Ms. P to provide to a bank a copy of an Automated Teller Machine balance inquiry as proof of the down payment. The funds depicted on the inquiry were in fact not to be used in the purchase of the Hindley Home.

61. The new bank did not approve the mortgage for Ms. P and the purchase of the Hindley Home was not completed.

62. The \$1,000 which Ms. P provided to Pereira as described above has not been returned to Ms. P.

Ms. H (Sydney Home):

63. Ms. H contacted Pereira as a result of an Advertisement entitled "Rent to Own".

64. Ms. H went to the Re/Max office and completed a credit application.

65. Ms. H was shown a home located on Sydney Avenue, in Winnipeg, Manitoba (the "Sydney Home") by Pereira.

66. On February 5, 2001, Ms. H signed an Offer to Purchase the Sydney Home with Pereira as her salesman (the "Sydney Offer").

67. The Sydney Offer provided for terms of payment which included a deposit of \$500, mortgage for \$38,950, funds on or before possession date of \$1,050, and a further \$500 on approval of financing.

68. Ms. H did not give Pereira the \$500 deposit at the time of the Sydney Offer, but however gave Pereira a cheque for \$1,000 a few days after.

69. Ms. H had funds to close the purchase.

70. An undated document purporting to evidence a gift of \$3,000.00 from a brother of Ms. H's, named James, to Ms. H had been forwarded to the TD Bank (the "Ms. H Gift Letter") in or about February of 2001.

71. The Ms. H Gift Letter stated:

This is an outright gift with no repayment expected or implied, either in the form of cash or by future services by him/her.

72. The Ms. H Gift Letter purported to bear the signature of Ms. H.

73. At all material times hereto, Ms. H had no knowledge of the Ms. H Gift Letter.

74. Ms. H did not sign the Ms. H Gift Letter.

75. Ms. H does not have a brother named James.

76. No such gift monies were in fact received or being received by Ms. H in connection with the purchase of the Sydney Home.

Mr. C (Andrews Home):

77. In response to an advertisement in the Winnipeg Free Press for renting to own, Mr. C went to the Re/Max office and completed a credit application.

78. Mr. C received a letter advising that he qualified for a mortgage.

79. Mr. C met with Pereira and received a package of information on houses.

80. Mr. C was first shown a home located on Andrews, in Winnipeg, Manitoba (the "Andrews Home"), by a person named Richard and then by Pereira.

81. On or about November 4, 2000, Pereira prepared an Offer to Purchase the Andrews Home signed by Mr. C (the "Andrews Offer").

82. Pereira was informed that Mr. C could probably come up with the funds needed on or before possession date, being approximately \$2,000.

83. The mortgage for the purchase of the Andrews Home was to be with the TD Bank.

84. A document purporting to evidence a gift of \$3,500.00 from Mr. C's father, purportedly named Alfred, to Mr. C had been forwarded to the TD Bank (the "Mr. C Gift Letter") in or about November 2000.

85. The Mr. C Gift Letter stated:

This is an outright gift with no repayment expected or implied, either in the form of cash or by future services by him/her.

86. The Mr. C Gift Letter purported to bear the signature of Mr. C.

87. At all material times hereto, Mr. C had no knowledge of the Mr. C Gift Letter.

88. Mr. C did not sign the Mr. C Gift Letter. The signature on the Mr. C Gift Letter is not that of Mr. C.

89. Mr. C's father's name is not Alfred.

90. No such gift monies were in fact received or being received by Mr. C in connection with the purchase of the Andrews Home.

Ms. B (Inkster Home):

91. Ms. B noticed an advertisement in the Renter's Guide for "Rent to Own".

92. Ms. B called as directed in the advertisement following which she met with Pereira at the Re/Max office.

93. Ms. B had intended to rent to own.

94. Ms. B filled out a credit application at the Re/Max office, which Pereira faxed to the TD Bank while Ms. B was present.

95. Ms. B was later advised by Pereira that she was pre-approved for a \$55,000 mortgage and that she should pick up a package of information on homes.

95. Ms. B was introduced to Richard Kohut who showed her some homes, including a home located on Inkster, in Winnipeg, Manitoba (the "Inkster Home").

97. On or about August 9, 2000, Pereira wrote up an offer to purchase the Inkster Home (the "Inkster Offer") with Ms. B, with a possession date of October 1, 2000.

98. At the time of the Inkster Offer, Pereira asked Ms. B if she had at least \$500. At the time of the Inkster Offer, Pereira further advised Ms. B that he could arrange a loan and that she would repay the loan from the cash back from the mortgage.

99. Pereira did not identify the source of the loan, stating words to the effect that he would take care of it.

100. Ms. B arranged to pay approximately \$1,114 of her own funds to her lawyer on or about September 28, 2000, and further arranged an additional payment of approximately \$1,463 from her cash back on or about October 24, 2000.

101. On or about November 2, 2000, Ms. B's lawyer received an amount of \$1,463.65 from the TD Bank re: mortgage cash back.

102. In or about August of 2000, a document purporting to evidence a gift of \$3,500.00 from WR to Ms. B had been forwarded to the TD Bank (the "Ms. B Gift Letter").

103. The Ms. B Gift Letter stated:

This is an outright gift with no repayment expected or implied, either in the form of cash or by future services by him/her.

104. The Ms. B Gift Letter purported to have been signed by Ms. B. Ms. B does not recall signing the Ms. B Gift Letter although the signature appears to be hers.

105. No such gift monies were in fact received or being received by Ms. B in connection with the purchase of the Inkster Home.

106. The Inkster Offer did not disclose particulars as to the involvement of Pereira in obtaining a loan for Ms. B the proceeds of which were to be used for cash to close.

Mr. and Mrs. M (Harbison Home):

107. Mr. and Mrs. M (the "M's") were interested in renting to own and responded to an advertisement in the Renter's Guide to call Joe at Re/Max .

108. The M's went to the Re/Max office and received a credit application, which they completed.

109. The M's were advised by Lopes that they were pre-approved for a mortgage.

110. The M's were provided with a list of homes, viewed some homes and became interested in a property located on Harbison, in Winnipeg, Manitoba (the "Harbison Home").

111. An offer to purchase the Harbison Home was prepared by Lopes and signed by the M's on May 1, 2001 (the "Harbison Offer").

112. The Harbison Offer provided for terms of payment which included funds on possession date in the amount of of \$4,140.

113. The M's were advised by Lopes that they would need to raise \$820 for legal fees and that Lopes would look after the rest.

114. The M's informed Lopes that they did not have any relatives who could provide assistance. Lopes advised that he would look after everything including a gift letter.

115. In due course, the M's were informed by the bank that it would not proceed with the mortgage.

116. On June 8, 2001, Lopes informed the M's that they would not be able to purchase the Harbison Home and that their file would be closed.

117. After having advised the M's that their file would be closed, on or about June 12, 2001, Lopes contacted the M's as to being able to purchase the property with only \$250 plus an additional \$1,300.

118. On or about June 14, 2001, Lopes discussed with the M's putting a blank envelope through the Automated Teller Machine ("ATM") to show they had \$5,000 in their bank account. Lopes further advised the M's on how this action was not fraud, if they did not take any money out of the account.

119. The M's understood that the cash-back from the bank would cover the down payment.

120. The M's were further instructed by Lopes to give him a copy of the statement from the ATM machine.

121. The M's relied upon Lopes and followed his instructions.

122. The M's later provided the \$250 to Lopes.

123. A document dated on or about May 5, 2001, purporting to evidence a gift of \$5,000.00 from Mr. M's father, purportedly being Terry Sr., to be used towards the downpayment on the Harbison Home had been forwarded to the potential mortgagee (the "M Gift Letter").

124. The M Gift Letter stated:

The money is a genuine gift from the donor and does not ever have to be repaid;

125. The M Gift Letter purported to bear the signature of Mr. M. The signature on the M Gift Letter is not the signature of Mr. M.

126. At all material times hereto, the M Gift Letter had not been seen by the M's.

127. Mr. M's father's name is not Terry.

C. ALLEGATIONS

1. Pereira committed "fraudulent acts" within the meaning of the Act in connection with a trade or transaction in real estate as follows:

(a) By engaging in an artifice, agreement, device, scheme, course of conduct or business, to obtain money, profit, or property, by a wrongful or dishonest dealing, by causing false gift letters to be submitted to a financial institution in order to obtain mortgage financing in connection with a trade or transaction in real estate in contravention of subparagraph (i) of the definition;

(a.1) By engaging in an artifice, agreement, device, scheme, course of conduct or business, to obtain money, profit, or property, by a wrongful or dishonest dealing, whereby the cash to close and/or downpayment was funded, or was to be funded, with borrowed monies and furthermore was funded in such a manner so as to require the utilization of cash-back monies yet to be received in connection with a trade or transaction in real estate in contravention of subparagraph (i) of the definition;

(b) By an intentional misrepresentation by word, conduct or manner of a material fact, present or past, and an omission to disclose such a material fact, by causing documents to be submitted to a financial institution misrepresenting monies to have been received by gift when the true nature of the transaction was a loan and by misrepresenting the source of said monies in connection with a trade or transaction in real estate in contravention of subparagraph (a) of the definition;

(b.1) By an intentional misrepresentation by word, conduct or manner of a material fact, present or past, and an omission to disclose such a material fact, by causing documents to be submitted to a financial institution misrepresenting monies to have been received by gift when no such gift existed in connection with a trade or transaction in real estate in contravention of subparagraph (a) of the definition;

(c) By an intentional misrepresentation by word, conduct or manner of material facts, present or past, in the creation of the gift letters, or any of them, in connection with a trade or transaction in real estate in contravention of subparagraph (a) of the definition;

(d) By an intentional misrepresentation by word, conduct or manner of a material fact, present or past, and an omission to disclose such a material fact, by failing to clearly show a promise, undertaking or guarantee made or given by him that he would in any way obtain a loan for the offerer in contravention of subparagraph (a) of the definition;

(d.1) By an intentional misrepresentation by word, conduct or manner of a material fact, present or past, and an omission to disclose such a material fact, by failing to inform a financial institution that the source of the downpayment or cash to close was borrowed funds;

(e) By altering the amount of a cheque in respect of which Pereira was the payee, without the knowledge, consent or approval of the payor his client.

2. Pereira acted in contravention of subparagraph 22(1)(f)(iv) of the Act by failing to clearly show in an offer to purchase a promise, undertaking or guarantee made or given by him that he would in any way obtain a loan for the offerer.

3. As to any or all of the foregoing, Pereira acted contrary to the best interests of his clients.

4. Lopes committed "fraudulent acts" within the meaning of the Act in connection with a trade or transaction in real estate as follows:

(a) By engaging in an artifice, agreement, device, scheme, course of conduct or business, to obtain money, profit, or property, by a wrongful or dishonest dealing, by causing false gift letters to be submitted to a financial institution in order to obtain mortgage financing in connection with a trade or transaction in real estate in contravention of subparagraph (i) of the definition;

(a.1) By engaging in an artifice, agreement, device, scheme, course of conduct or business, to obtain money, profit, or property, by a wrongful or dishonest dealing, whereby the cash to close and/or down payment was funded, or was to be funded, with borrowed monies and furthermore was funded in such a manner so as to require the utilization of cash-back monies yet to be received in connection with a trade or transaction in real estate in contravention of subparagraph (i) of the definition;

(b) By an intentional misrepresentation by word, conduct or manner of a material fact, present or past, and an omission to disclose such a material fact, by causing documents to be submitted to a financial institution misrepresenting monies to have been received by gift when the true nature of the transaction was a loan and by misrepresenting the source of said monies in connection with a trade or transaction in real estate in contravention of subparagraph (a) of the definition;

(b.1) By an intentional misrepresentation by word, conduct or manner of a material fact, present or past, and an omission to disclose such a material fact, by causing documents to be submitted to a financial institution misrepresenting monies to have been received by gift when no such gift existed in connection with a trade or transaction in real estate in contravention of subparagraph (a) of the definition;

(c) By an intentional misrepresentation by word, conduct or manner of material facts, present or past, in the creation of the gift letters, or any of them, in connection with a trade or transaction in real estate in contravention of subparagraph (a) of the definition;

(d) By an intentional misrepresentation by word, conduct or manner of a material fact, present or past, and an omission to disclose such a material fact, by failing to clearly show a promise, undertaking or guarantee made or given by him that he would in any way obtain a loan for the offerer in contravention of subparagraph (a) of the definition;

(d.1) By an intentional misrepresentation by word, conduct or manner of a material fact, present or past, and an omission to disclose such a material fact, by failing to inform a financial institution that the source of the downpayment or cash to close was borrowed funds.

5. Lopes acted in contravention of subparagraph 22(1)(f)(iv) of the Act by failing to clearly show in an offer to purchase a promise, undertaking or guarantee made or given by him that he would in any way obtain a loan for the offerer.

6. As to any or all of the foregoing, Lopes acted contrary to the best interests of his client.

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

DATED the "14th" day of August, 2001.

Director, Legal and Enforcement

TO: JOSE ANTONIO PEREIRA

AND TO: MARIO MANUEL LOPES