

IN THE MATTER OF: THE REAL ESTATE BROKERS ACT

-and-

IN THE MATTER OF: HAROLD ALBERT SHRUPKA

AMENDED

STATEMENT OF ALLEGATIONS OF STAFF
OF THE MANITOBA SECURITIES COMMISSION

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

REGISTRATION

1. Harold Albert Shrupka ("Shrupka") was initially registered under The Real Estate Brokers Act ("REBA") as a real estate salesman from February 26, 1990 and the registration has been continuous to the present day.
2. From February 26, 1990 until March 27, 1991 Shrupka was employed as a salesman with St. Andrews Realty and from March 27, 1991 to the present day Shrupka has been employed with Re/Max Real Estate Inc.

DETAILS

3. On May 26, 1998, Reg and Elsie Ripley (the "Purchasers") entered into an offer to purchase (the "Offer to Purchase") to have a home built by 3396208 Manitoba Ltd., a company operated by Mike Jurcevic (the "Vendor/Builder"). The Purchaser's Offer to Purchase a home to be built at 30 River Springs Drive in the Rural Municipality of West St. Paul, Manitoba was prepared by William (Bill) Loewen ("Loewen"), a real estate salesman employed by Re/Max Real Estate Inc.
4. The Offer to Purchase form used in the transaction is the prescribed form under REBA for completed single family residences. This form states on its face that it is not intended for use in other purchases; in particular it is not suitable for the purchase of a house under construction or a business. When the Purchasers entered into the Offer to Purchase contract, the construction of their new home was not started.
5. The Vendor/Builder countered the Offer to Purchase on May 27, 1998 and when it was presented to the Purchasers by Loewen the Vendor/Builder's name was changed by Loewen to 3586252 Manitoba Ltd. The explanation provided to the Purchasers by Loewen for this name change was that this was the name the Vendor/Builder wanted to use.
6. On June 4, 1998 an amendment to the contract was prepared by Loewen, on the advice of Shrupka, changing the name of the Vendor/Builder to 3779123 Manitoba Ltd.

7. According to Shrupka, 3586252 Manitoba Ltd. was the company name that the builder gave to him to enter on the Offer to Purchase. Shrupka was under the impression that this number was used by the builder when he was building a home on a vacant lot. Shrupka was unaware of the agreement dated June 4, 1998, changing 3586252 Manitoba Ltd. to 3779123 Manitoba Ltd.

8. During the negotiations of the Offer to Purchase, the Purchasers were told by Loewen that the home was covered under the National Home Warranty Program ("NHWP"). The Purchasers were told by both Shrupka and Loewen that in the event that the Vendor/Builder did not live up to his commitments to complete the unfinished work on the home that The New Home Warranty Program was their protection and this program would complete the unfinished work.

9. Lawyer Arthur Wortzman drafted a trust letter dated September 14, 1998 ("Trust Letter") which was addressed to Redekopp & Associates, Barristers and Solicitors to the attention of Dean Richert. Dean Richert was counsel for the Vendor/Builder. The Trust Letter set out the trust conditions for the Ripley's purchase of 30 River Springs Drive, West St. Paul, Manitoba.

10. Trust condition number 2 in the Trust Letter states "That you will hold the sum of \$25,000.00 in your trust account until such time as the dwelling at 30 River Springs Drive is satisfactorily completed, barring seasonal work."

11. Trust condition number 7 in the Trust Letter states "That the Builder hold back monies in compliance with The Builders' Lien Act."

12. Trust condition number 8 in the Trust Letter states "That you shall instruct the builder to complete all items that are to be shown on the Pre-Occupancy Inspection List completed by the Purchaser and the Builder, and to hold back any monies for uncompleted work, until said work has been completed in compliance with the agreement between the Purchaser and the Builder."

13. On the date of possession, September 14, 1998, the Purchasers were approached by Loewen who told them that they could not move in to their new home until the \$25,000.00 holdback (the "Holdback") was paid to the Vendor/Builder.

14. Shrupka arrived at the Purchasers new home and told the Purchasers that the Vendor/Builder wanted the full balance of the Holdback.

15. Shrupka referred to the NHWP brochure and represented to the Purchasers that they were protected by the NHWP and the Purchasers would have to rely upon the Vendor/Builder and the NHWP.

16. At this time the Purchasers contacted their lawyer, Arthur Wortzman, for advice. During the Purchasers conversation with Arthur Wortzman, Shrupka requested to talk to Arthur Wortzman and tried to convince Arthur Wortzman to release the Holdback, making representations to Arthur Wortzman that the Purchasers were protected under the NHWP.

17. The Purchasers, after speaking to their lawyer, Arthur Wortzman, agreed to release the Holdback trust conditions. The Purchaser's felt pressured as the movers were at the new home waiting to unload their belongings.

18. Also on September 14, 1998, the date of possession, Shrupka walked through the home with the Purchasers and prepared a list of deficiencies and Shrupka prepared a Certificate of Possession for the NHWP that outlined additional deficiencies. Shrupka had the Vendor/Builder sign the Certificate of Possession prior to completing the walk through. The Vendor/Builder was not present during the walk through.

19. The Purchasers have experienced difficulty in getting the Vendor/Builder to complete the deficiency list and the Purchasers have had to complete some of the work on their new home themselves. There is approximately \$14,000.00 in outstanding work yet to be completed by the Vendor/Builder.

20. When the Purchasers attempted to make a claim through the NHWP, the NHWP informed the Purchasers that their claim was not covered. The explanation given to the Purchasers by the NHWP was that the Purchasers claim was not covered because the company they bought the property through, 3779123 Manitoba Ltd., was not registered with the NHWP.

21. The NHWP confirmed that they received the Certificate of Possession on October 23, 1998. Once the NHWP noted the numbered company on the form, which was not registered with the program, they were not able to provide coverage to the Purchasers.

ALLEGATIONS

1. Staff of the Commission allege that Shrupka is not fit for registration under the Act due to the following allegations:

(a) Shrupka acted in a manner not in accordance with industry standards and contrary to the interests of the Purchasers by representing to them and their lawyer, Arthur Wortzman, that the Purchasers were protected under the New Home Warranty Program, (NHWP), without verifying the accuracy of this representation;

(b) Shrupka acted in a manner not in accordance with industry standards and contrary to the interests of the Purchasers by permitting the counter-offer with a new party as vendor;

(c) Shrupka acted in a manner not in accordance with industry standards and contrary to the interests of the Purchasers by representing to them and their lawyer, Arthur Wortzman, that the Purchasers had to release the \$25,000.00 Holdback to cover the work not yet done on their home and that, instead, they could rely on the NHWP and the Vendor/Builders solid reputation;

(d) Shrupka acted in a manner not in accordance with industry standards and contrary to the interests of the Purchasers by using an Offer to Purchase form that was not appropriate for the type of home being sold;

(e) Shrupka permitting the Vendor/Builder to sign the NHWP Certificate of Possession in blank, prior to completion of the document;

(f) Shrupka committed a "fraudulent act" within the meaning of the Act in connection with a trade or transaction in real estate by an intentional misrepresentation by word, conduct or manner of a material fact, present or past, and an intentional omission to disclose such a material fact by representing to the Purchasers and to Wortzman that the NHWP protected the Purchasers for work not completed by the Vendor/Builder when the NHWP provided no such coverage; and

(g) Such further and other matters as counsel may advise and the Commission may permit.

DATED at Winnipeg, Manitoba this 9th day of January, 2004.

Director, Legal and Enforcement

TO: HAROLD ALBERT SHRUPKA