

IN THE MATTER OF: THE REAL ESTATE BROKERS ACT

-and-

IN THE MATTER OF: DONNA FERN ANN SPACK

STATEMENT OF ALLEGATIONS OF STAFF  
OF THE MANITOBA SECURITIES COMMISSION

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

REGISTRATION

1. Donna Fern Ann Spack ("Spack") has been registered under The Real Estate Brokers Act (the "Act") since April 10, 1978;
2. Spack has been registered as an authorized official, under the Act on October 5, 1993 and her registration has been continuous to the present day;

DETAILS

1. On August 30, 1999 the property, owned by RMB, the vendor, legally described as Lot 6, Block 90, Plan 379 and commonly described as 222-4th Avenue N. E. in Dauphin, Manitoba (the "Property") was listed for sale on the Dauphin multiple listing service;
2. Spack, employed at Melnyk Spack Realty Ltd. in Dauphin, Manitoba, was acting as listing agent for the vendor, RMB, in the sale of the Property;
3. On September 2, 1999 Phyllis Marie Caruk ("Caruk"), a real estate salesperson registered under the Act and employed with Century 21 in Dauphin, Manitoba, contacted her clients, WH and LH, who are husband and wife, to advise them that the Property was for sale;
4. Caruk spoke to RMB on September 2, 1999 and told her that WH and LH were interested in the Property;
5. On September 2, 1999 WH viewed the Property on a drive by basis. RMB invited him inside her residence;
6. On September 3, 1999 Spack telephoned WH and LH. Spack spoke to LH and asked if they were interested in purchasing the Property. Spack told LH that they had no right to attend to the vendor's Property without a real estate agent present and an appointment for a viewing of the Property was to be made.
7. WH and LH viewed the Property on Sunday, September 5, 1999 at approximately 5:15 p.m.;

8. Caruk was not present at this viewing of the Property;
9. WH and LH met Caruk after the viewing on September 5, 1999 and Caruk wrote an offer to purchase the Property to RMB;
10. On Monday, September 6, 1999 at approximately 10:30 a.m. Spack presented the WH/LH offer to purchase on the Property to RMB;
11. Spack, on instructions from RMB, drafted a counter offer on September 6, 1999;
12. WH telephoned RMB, at 11:30 a.m. on September 6, 1999. WH told RMB he would not agree to her counter offer. RMB told WH she agreed to the WH/LH original, September 5, 1999 offer to purchase the Property;
13. RMB told Spack that WH and LH would not accept her counter offer and that RMB wanted to accept the original, September 5, 1999 offer;
14. Caruk contacted WH and LH to advise them their original, September 5, 1999 offer on the Property had been accepted by the vendor, RMB.
15. Shortly after leaving a voice mail on Caruk's telephone answering machine on September 6, 1999, Spack telephoned "I/h", another prospective purchaser, to go over to the Property to view it;
16. "I/h" went over to view the Property. Spack told "I/h" there was another offer on the Property but she did not provide "I/h" with any of the details of that offer;
17. "I/h" made an offer to purchase on the Property which was immediately accepted by RMB;
18. On September 6, 1999 RMB received a telephone call from Caruk, telling RMB that Caruk would be taking her to court;
19. On September 7, 1999 Caruk threatened "I/h" that Century 21 and Caruk would be taking him to court. Caruk attempted to have "I/h" abandon the contract by telling him the house had a bad roof and a sloping floor;
20. Spack returned the WH and LH offer together with the WH and LH deposit cheque to Caruk's Century 21 office by mail;
21. "I/h" obtained the keys to the Property and took possession of the Property on or about September 13, 1999. The possession date on the "I/h" offer to purchase was October 1, 1999;
22. Doug Deans of Johnston & Company, counsel for the vendor, RMB, is holding the "I/h" Purchase Agreement proceeds in trust until the matter is resolved in court;

23. On October 20, 1999 WH filed a Statement of Claim in The Court of Queen's Bench, Dauphin Centre against RMB;

24. On December 15, 1999 "I/h" filed a Statement of Claim in the Court of Queen's Bench, Dauphin Centre against RMB, WH, LH, Donna Spack and Melnyk Spack Realty Ltd;

#### ALLEGATIONS

1. Spack is not fit for registration under the Act due to the following allegations:

(a) Spack did not act in the best interests of her client and acted in a manner not in accordance with industry standards by contacting "I/h" and taking him to the Property when the initial, September 5, 1999 accepted offer was in place;

(b) Spack did not act in the best interests of her client and acted in a manner not in accordance with industry standards by permitting her client, RMB, to allow "I/h" to make an offer without disclosing the presence of the accepted offer;

(c) Spack acted in a manner not in accordance with industry standards by misleading LH about the need to have a real estate agent present to view the Property;

(d) such further and other matters as counsel may advise and the Commission may permit.

**DATED** at Winnipeg, Manitoba this 17th day of April, 2000.

Director, Legal and Enforcement

TO: DONNA FERN ANN SPACK