

February 23, 2016

**IN THE MATTER OF: THE REAL ESTATE BROKERS ACT AND THE
MORTGAGE BROKERS ACT**

-and-

**DAVID JOSEPH DOUGLAS AND GERALDINE ANNE
DOUGLAS and 4111699 MANITOBA LTD. o/a
HOMELIFE VILLAGE REALTY**

**REASONS FOR DECISION
OF
THE MANITOBA SECURITIES COMMISSION**

Panel:

Panel Chair:	Mr. D.G. Murray
Member:	Mr. D.H. Smith
Member:	Ms. S.C. Rolland

Appearances:

S. Gingera)	Counsel for Commission Staff
)	On behalf of Douglas

Introduction

The evidence led in this matter deals with the conduct of David Joseph Douglas ("Douglas") and Geraldine Douglas in their personal capacities and also as representatives of several corporations involving a number of real estate transactions. Staff have alleged improper conduct against the Respondents, who throughout the various parts of the period of time in which the conduct was alleged to have taken place were registrants with The Manitoba Securities Commission under The Real Estate Brokers Act (REBA) and Mortgage Brokers Act (MBA).

The Exhibit 6 sets out the registration history of the Respondents as follows:

Douglas

Under REBA:

Authorized Official – May 18/00 – March 19/14 of Homelife Village Realty (4111699 Manitoba Ltd.)

Under MBA:

Authorized Official – July 04/11 – November 4/11 of Abacus Mortgage Group (5127662 Manitoba Ltd.)

Geraldine Douglas

Under REBA:

Authorized Official – December 18/00 – March 19/14 of Homelife Village Realty (4111699 Manitoba Ltd.)

Under MBA:

Authorized Official – November 04/11 – May 31/13 of Abacus Mortgage Group (5127662 Manitoba Ltd.)

Homelife Village Realty (4111699 Manitoba Ltd.) -- May 18/00 – March 19/14 – Real Estate Broker

Abacus Mortgage Group – July 04/11 – May 31/13 – Restricted Mortgage Broker

Effective May 19, 2013 the registration of Homelife Village Realty was made conditional upon regular receipts of accounting reports.

Effective May 31, 2013 the registration of Homelife Village Realty was made subject to a condition requiring Geraldine Douglas to be the sole signing authority on the Homelife trust account and restricting receipt of trust monies by Douglas.

The registration of Douglas, Geraldine Douglas, and Homelife Village Realty under the Real Estate Brokers Act were suspended effective March 19, 2014. None of these Respondents have been registered since March 19, 2014.

Abacus Mortgage Group ceased to be registered as a restricted mortgage broker as of May 31/13.

Douglas was also the sole officer and director of two companies during the time period considered by the Allegations as follows:

4456786 Manitoba Ltd. (Exhibits 7 and 8)
5995583 Manitoba Ltd. (Exhibits 9 and 10)

These numbered companies were part of the transactions noted in the evidence, appearing in the capacity of property owner or purported owner and as operating two renovation companies under the names Naked Design Homes and OHF Construction.

The documents filed indicate that in the period of time under consideration Douglas was the sole director and shareholder of these companies and the controlling mind. In all of the transactions in this matter Douglas was the sole representative of these companies.

This matter came on for hearing May 19, 20, 21, 29 and July 30, 2015. There had been numerous appearances prior to the commencement of the hearing in which Douglas and Homelife were represented by counsel. When dates for a hearing were set, counsel for Douglas advised that his client would not be attending at the hearing. Neither Douglas, nor his counsel attended. Geraldine Douglas was not represented by counsel throughout these proceedings and did not attend at the hearing. The panel was satisfied that Douglas was aware of the hearing dates and that all reasonable efforts had been made to ensure that Geraldine Douglas was similarly aware.

Staff counsel, Mr. Gingera, put in his evidence by calling 13 witnesses and tendering 68 documents. The allegations included the following:

C. ALLEGATIONS

1. Staff of the Commission alleges that David Douglas:
 - (a) Acted as a mortgage broker under the MBA while he was not registered to do so;
 - (b) Withheld and refused to produce records and bank accounts as requested by Staff contrary to section 37 of the MBA and as a result, pursuant to section 42(7) of REBA committed a fraud under REBA;
 - (c) Committed a fraudulent act under the MBA and /or REBA by intentionally omitting to disclose to RBC the existence of the trust agreement between E.N. and 5995583 Manitoba Ltd.;
 - (d) Committed a fraudulent act under the MBA and/or REBA by intentionally omitting to disclose to RBC of T.H.'s interest in Ash Street;

- (e) Committed a fraudulent act under the MBA and/or REBA by intentionally misrepresenting to RBC that E.N. was purchasing Ash Street as a primary residence when he knew this was not true;
- (f) Committed a fraudulent act under the MBA and/or REBA by intentionally misrepresenting to Sun Mortgage Corporation E.N.'s income in the mortgage application to Sun Mortgage Corporation;
- (g) Committed a fraudulent act under the MBA and /or REBA by intentionally omitting to disclose a material fact to Sun Mortgage Corporation namely E.N.'s liability to RBC on her mortgage application;
- (h) Committed a fraudulent act under the MBA and/or REBA by intentionally misrepresenting to Sun Mortgage Corporation that E.N. was purchasing the Eugenie Property as a primary residence when this was not true;
- (i) Committed a fraudulent act under the MBA and/or REBA by providing Sun Mortgage Corporation a credit bureau check that did not disclose E.N.'s liability to RBC;
- (j) Committed a fraudulent act under REBA by representing to S.Y.C. that he owned the Ellesmere Property when that was not true;
- (k) Committed a fraudulent act under REBA by representing to E.S. that he owned the Ellesmere Property when that was not true;
- (l) Committed a fraudulent act under REBA by entering into an Offer to Purchase for 5995583 Manitoba Ltd. to sell the Ellesmere Property to S.Y.C. when he knew 5995583 Manitoba Ltd. did not own the Ellesmere Property;
- (m) Engaged in a fraudulent act under REBA by engaging in a course of conduct with T.H. and A.Z. to obtain money by wrongful or dishonest dealing;
- (n) Engaged in a fraudulent act under REBA against E.N. by engaging in a course of conduct or business to obtain money by wrongful or dishonest dealing;
- (o) Committed a fraudulent act under REBA as against E.S. and S.Y.C. by engaging in a course of conduct or business to obtain money by wrongful or dishonest dealing;
- (p) That the conduct of David Douglas, as set forth in these allegations is contrary to the public interest.

and that due to these allegations, it is in the public interest that the registration of David Douglas under REBA be cancelled and that under the MBA he be ordered to

pay a fine and that the exemptions in subsection 3(1) of the MBA not apply to David Douglas.

2. As against Geraldine Douglas;
 - (a) That she, as authorized official of Abacus and Homelife Village Realty, failed to supervise or adequately supervise transactions and business being conducted at Abacus and Homelife Village Realty;
 - (b) Refused and/or failed to produce books and bank records as requested by Staff contrary to s. 37 of the MBA and as a result pursuant to s.42(7) of REBA committed a fraud under REBA;
 - (c) The conduct of Geraldine Douglas, as set forth in these allegations, is contrary to the public interest;

and that due to these allegations, it is in the public interest her registration under the REBA be cancelled and that under the MBA she be required to pay a fine and that the exemptions in subsection 3(1) of the MBA not apply to Geraldine Douglas.

3. As against Homelife Village Realty;
 - (a) Due to the matters set forth in these allegations, it is in the public interest that the registration of Homelife Village Realty under the REBA be cancelled or suspended.

The initials of individuals set out in the Allegations correspond to the names of witnesses who dealt with Douglas and will be evident in these Reasons.

Background

The time span under consideration in these matters is 2012 and 2013. During this time Douglas was registered under The Real Estate Brokers Act but had no registration under The Mortgage Brokers Act.

There are primarily three properties in the City of Winnipeg that were the subject of several transactions in this matter, namely: 86 Ellesmere Avenue, 183 Ash Street and 146 Eugenie Street. In these transactions Douglas acted in various capacities including buyer, seller (or purported seller), real estate broker/salesperson, mortgage broker (unregistered) and the sole representative of the two renovation companies noted above. As of 2012, Douglas had also been promoting a business of advising others how to earn profits by acquiring and “flipping” homes. Each of the transactions referred to herein involve the aspect of buying, renovating and reselling properties.

The individuals with whom Douglas dealt, either directly or through one of his companies, were witnesses at the hearing and were all involved in one way or another with Douglas in dealing with the three properties.

86 Ellesmere Avenue

This property was owned by a Mr. Dan Dupre since 2003 and it was used by him as a rental property. He testified that he knew Douglas through past dealings. He advised that Douglas, through a company he controlled, 5995583 Manitoba Ltd. submitted an Offer to Purchase (OTP) 86 Ellesmere Avenue (Exhibit 17). The OTP was signed July 12, 2012 and had a possession date of July 27, 2012. The Offer was accepted by Mr. Dupre. There was no down payment required in the Offer. The Offer was drawn by Douglas and he and Homelife were noted as both the listing and selling broker and salesperson.

Based on the terms of the accepted Offer Dupre testified that he gave his tenants notice to vacate the property as of July 27, 2012 and that the property was indeed vacant by that time.

Apparently Douglas did not close at that time nor did he or the numbered company ever finalize the transaction. Dupre testified that Douglas was having difficulty with the financing but that he still wished to purchase the property and Dupre, having dealt with Douglas on several occasions in the past, agreed to hold the property for him. Dupre noted that he continued to get excuses over the months from Douglas why he could not close.

Finally, as of March 21, 2013, Mr. Dupres' wife gave written notice to Douglas that the Dupres' were seeking a late closing penalty on account of continuing mortgage payments on the property, lost rental and utility payments (Exhibit 19). Dupre testified that Douglas declined to complete the transaction on those terms and thereafter the property was sold to a third party.

Yi Shan Chen

In the meantime, between July, 2012 and March, 2013, the evidence shows that Douglas and 5995583 Manitoba Ltd. were dealing with the property as if it had been acquired. Mr. Shi Yang Chen testified that he dealt with Douglas on the property with the intention of purchasing and renovating the home on the property for resale. Mr. Chen had some limited experience in buying and reselling homes. He had discovered Douglas through a magazine article which suggested people could make a living working with Douglas buying and reselling properties. The article or advertisement suggested people could "quit their day job". Chen called Douglas and Douglas said he had properties available for Chen to purchase, renovate and resell.

Chen put in an OTP on 86 Ellesmere made out to 5995583 Manitoba Ltd. as owner. Douglas and Homelife were noted as both the selling and listing broker and salesperson. The OTP was dated July 17, five days after Douglas and 5995583 Manitoba Ltd. had put in an Offer to acquire the property. Obviously, neither Douglas nor the company, owned the property at this time. The OTP (Exhibit 22) calls for a payment of \$104,000.00 to be financed entirely by a new mortgage in that amount.

The Chen OTP was filled out by Shelley Lambert. Lambert testified she was a registrant under The Real Estate Brokers Act and worked for Homelife and Douglas. She was registered as a licensed Real Estate Assistant. She worked solely for Douglas as a salaried employee. She wrote the OTP and the Schedules on Douglas'

instructions (with the exception of Schedule D which was written by Douglas). She was aware that Douglas was the director of 5995583 Manitoba Ltd. noted as seller. She witnessed Mr. Chen's signature.

The Offer called for a demolition of the home on the property and a rebuild to be completed by Naked Design Homes and OHF Construction, both operating entities of 4456786 Manitoba Ltd., a company of which Douglas was the sole officer and director.

Chen identified Exhibit 23 as a renovation contract between himself and Naked Design Homes for 86 Ellesmere. He signed and dated it as of July 18, 2012. The contract called for a \$93,000.00 price for the construction with half or \$46,500.00 to be paid as a deposit and the balance to be paid in four equal installments of \$11,625.00 between September 1 and December 1, 2012.

If the renovation contract was signed on the part of Naked Design Homes or 4456786 Manitoba Ltd., a signed copy was never provided to Chen. He testified that he wasn't particularly concerned as he was simply relying on the knowledge and professionalism of Douglas in order for this transaction to proceed. Chen did provide the deposit for construction of \$46,500.00 as noted by his cancelled cheque in that amount dated July 7, 2012. The cheque was written on the Royal Bank of Canada and deposited the same date at a branch of The Toronto Dominion Bank (Exhibit 24).

Under the contract the work was to start August 1, 2012. Unknown to Mr. Chen, Douglas and his company could not start the work as 5995583 Manitoba Ltd. did not own the property and Naked Design Homes could not build on the property. The work did not start August 1, 2012 and in fact it never started. Mr. Chen called Douglas several times over the ensuing weeks and was told that there were problems with permits and work could not proceed. It's not hard to accept that there was a problem with the permit since neither Douglas nor his company owned the property.

There are a series of text messages between Chen and Douglas (Exhibit 26) that show that by September 27th Mr. Chen wanted his money back. The texts show that Douglas was evasive although he initially promised to return the funds. He never did. Eventually Mr. Chen issued a Statement of Claim (Exhibit 28) against Douglas and his two numbered companies as of August 6, 2013. Mr. Chen testified that he obtained judgment for a return of the funds in the amount of \$46,500.00 but has never seen any payment.

Chen also identified Exhibit 29 being a Kijiji ad that had come to his attention dated November 18, 2012. It indicates that David Douglas was trying to sell 86 Ellesmere at that time, despite the fact that he did not own it, had purported to sell it to Chen, and had taken money from Chen to build a new house on the property.

Ellard Clifford Schappert

Mr. Schappert testified concerning his dealings with Douglas. He is a CPA and is also registered with the Commission to sell mutual funds. He testified that Douglas became his accounting client in the late 1990s or early 2000s. What started as a business relationship according to Schappert ended up as a friendship. He testified

that he was involved in a couple of real estate transactions with Douglas and trusted him.

In February, 2012 Schappert tried to buy a Douglas owned property on Warsaw Avenue in Winnipeg but the deal fell through. He testified that after the Warsaw property transaction failed to close he discussed with Douglas acquiring a vacant lot on Roseberry in the City of Winnipeg. Mr. Schappert advised that he was looking to buy old houses or vacant lands and renovate or build and flip for a profit. Schappert identified Exhibit 31 being an OTP for acquisition by him of the Roseberry property. Again, Homelife and Douglas were noted as both the listing and selling broker and salesperson.

The owner on the OTP was noted as 5498318 Manitoba Ltd. Schappert believed that was a company operated by Mr. Carey Hildebrand who was a business partner of Douglas. In this transaction he dealt only with Douglas. The OTP shows a purchase price of \$85,000.00 with a \$1,000.00 deposit. He identified Exhibit 32 which is a copy of a cheque dated March 1, 2012 in the amount of \$1,000.00 made out to Homelife Realty (Exhibit 32).

Shelly Lambert testified that she also drew up this OTP on Douglas' instructions. She testified that once she provided the deposit cheque of \$1,000.00 and the OTP to Douglas her connection with this transaction was complete.

Schappert testified that Douglas offered to lend him the sum of \$84,000.00 to complete the payment for the property after the \$1,000.00 deposit. He signed a Loan Agreement (Exhibit 33) dated March 25, 2012 between himself as borrower and 5498318 Manitoba Ltd. as lender. However, the Loan Agreement was not signed by the lender.

Schedule A to the OTP indicates that the Offer is conditional upon the buyer agreeing to enter into a renovation contract with OHF Construction to build a home known as "The Willow". Schappert testified that he signed a renovation or construction contract with OHF but has been unable to locate his copy. The OTP was not signed on behalf of the vendor.

Mr. Schappert advised that according to the construction agreement he was to pay a deposit to OHF Construction of \$49,000.00. He identified Exhibit 35 which is his cheque in the amount of \$49,000.00 made out to OHF Construction dated March 5, 2012 and which was deposited at TD Canada Trust the same date. Schappert also identified Exhibit 34 which he had received and was advised were plans for "The Willow". This was noted as a Naked Design Homes project.

Schappert testified that he mortgaged his home to obtain the \$49,000.00 down-payment for the construction contract.

Construction never started. He asked Mr. Douglas why the construction did not start and he received a number of reasons which did not satisfy him. In early June, 2012 he received a call from Douglas who advised that the parties should abandon the Roseberry transaction as it was no longer financially viable and pursue another transaction instead. Neither the deposit nor the down payment were ever returned after the Roseberry project was abandoned. Schappert testified that he discussed

the Ellesmere property with Douglas. He was interested in rebuilding on Ellesmere and selling the property. Schappert advised Douglas that he should keep the funds provided for Roseberry and apply them to that or another project. Schappert did not sign an OTP on Ellesmere. Schappert testified that despite the fact that Douglas was holding his funds he did not receive any information on the Ellesmere property for some time and this concerned him.

Then, Schappert testified, he received a Loan Agreement from Douglas concerning Ellesmere (Exhibit 36) dated September 25, 2012. It was between Schappert and 5995583 Manitoba Ltd. Schappert did not sign this agreement because he had not completed an OTP for Ellesmere. Nonetheless Exhibit 36 clearly states that 5995583 Manitoba Ltd. is the registered owner of 86 Ellesmere and pre-supposes the existence of an OTP.

At this time 5995583 Manitoba Ltd. had not completed a transaction to acquire 86 Ellesmere and there was already an accepted Offer to Purchase on the property and funds had been paid to Douglas for construction work by Mr. Chen. Schappert identified Exhibit 37 being a Renovation Contract which he also received from Douglas for work to be done on 86 Ellesmere. There are no real specifics in the renovation contract as to price and again Schappert did not sign as he had not yet entered into a transaction to acquire 86 Ellesmere. He also received an exterior color chart from OHF for the property. While the renovation contract was undated the color chart, like the loan agreement was dated as of September 25, 2012.

Sometime in September or October, Schappert asked Douglas for his money back. Schappert identified a series of emails going back and forth between the two (Exhibit 39) where it is clear that Schappert was unsuccessfully demanding the return of his funds from Douglas for several months. In one of these emails (0016) Douglas suggests that the \$49,000.00 deposit was in fact a deposit on the acquisition and construction for Ellesmere. Schappert testified that he took the position throughout that there was never a verbal or written commitment to acquire 86 Ellesmere and build on it.

Throughout the interchange of emails Douglas continued to indicate that he planned to refund the money even though he suggested he used the funds to make a deposit on a custom home to be built on 86 Ellesmere for Schappert. The last email contact in Exhibit 39 took place February 6, 2013 where an email from Douglas to Schappert indicates he would commence making payments on the refund of \$1,250.00 per month starting March 15, 2013. Schappert advises that no payments were ever received. While it appears that the \$1,000.00 cheque for the deposit on the acquisition of the Roseberry property was never cashed, Mr. Schappert has not received the return of the \$49,000.00 construction down payment or any part of it.

183 Ash Street

This property was acquired by Douglas' numbered company 5995583 Manitoba Ltd. in 2011. Between that time and February 10, 2012, three mortgages were placed on the property totalling \$293,000.00. Each of the mortgage loans was covenanted by Douglas.

Todd Herman and his common-law partner, Angela Zubrin, wanted to get into the acquisition, repair and “flipping” of property to earn income. They own together a residence at 28 Antonina Drive in St. Andrews just north of Winnipeg. Herman is 48 years of age and has worked for the City of Winnipeg for 25 years as a Superintendent in the road repairs department. He has a grade 12 education. Zubrin is a graphic designer working at Northwest Company for the last 16 years. She testified that they were referred to Douglas by a friend as they wanted to get into the business of flipping property. She testified that they met Douglas in April, 2012. Although they were interested in buying and selling properties for a profit they had not attempted to do so in the past. They decided they would like to work with Douglas as a means of getting into this business. Herman and Zubrin had no experience in buying and selling real estate for profit. Both testified that they relied upon Douglas to lay out the appropriate steps for them to take.

Herman testified that Douglas mentioned to him 183 Ash as a likely project for the couple and he was interested. Douglas proposed that Herman and Zubrin acquire the property and invest \$150,000.00 in a renovation to be done by one of his companies and then resell at a profit. The company that Douglas referred to was Naked Home Designs. Mr. Herman testified that Douglas indicated the renovation would take approximately six months.

Herman submitted an OTP for 183 Ash dated February 1, 2012 (Exhibit 49.4 Ash). The Offer was not accepted and a second Offer, on the same terms, was resubmitted on February 12, 2012 (Exhibit 49.6 Ash). The second Offer was accepted by the seller under the signature of Douglas.

Douglas did not insert his name as selling or listing representative on this Offer. The selling and listing broker was Coldwell Banker and the salesperson was noted as Mark Riddell. Mr. Riddell testified that he had been employed in the real estate industry until late 2014. He now operates a landscaping business. For a period of approximately one and a half years Riddell worked for Homelife Realty and Douglas. He left Homelife on good terms with Douglas and in fact Douglas had given him the listing for 183 Ash. Riddell noted that Douglas advised him it was a requirement that any purchaser enter into a renovation contract with one of Douglas’ companies. Riddell testified that there had been some four or five open houses for the property but there was no real interest and it was his belief that that the required renovation contract was the problem.

He testified that he was eventually contacted by Douglas and advised that there was a buyer. He met Douglas and Herman in Douglas’ office and he wrote the Offer in the presence of both of them. He indicated that the Offer was dictated by Douglas and he wrote the terms down “verbatim”. He further testified that after the OTP was signed and accepted he had no further involvement with 183 Ash. There was a \$1,000.00 deposit cheque provided but he does not recall what happened to it. He testified that he never received a commission and did not pursue the matter.

The OTP was for \$335,000.00 with a \$1,000.00 deposit, a further \$34,000.00 upon possession and the proceeds of a new mortgage to be arranged for \$300,000.00. Herman also testified that payment of the \$34,000.00 was not provided by him as Douglas advised him it was not going to be necessary to provide the purchase price of the home at the outset. Herman’s understanding was the price would be paid out

of the subsequent sale proceeds once the construction work had been completed and the property value increased. In fact Douglas provided Herman with a Loan Agreement (Exhibit 49.8 Ash) in the amount of \$301,000.00 for a period of six months bearing interest only at 5%.

The Loan Agreement also called for the property to stay in the name of the vendor (5995583 Manitoba Ltd.), until payment was completed and also gave the vendor authority to take out a mortgage against the property prior to that time. Herman advised that he was assured by Douglas that no principal or interest payments would be required in the interim and that the matter would be resolved once the renovations were completed and the property resold. It is not clear as to whether the Loan Agreement was ever signed. Herman had in his records only an unsigned copy.

Schedule A to the OTP included a clause indicating that the sale was conditional upon the purchasers entering into a renovation contract with Naked Home Designs. No such document was tendered in evidence. However, both Herman and Zubrin testified that the transaction called for \$150,000.00 of renovation funds to be paid by them to Naked Home Designs. Not having heard any evidence from Douglas, the panel accepts this.

Herman testified that of the \$150,000.00, \$95,000.00 was obtained by refinancing the property owned by himself and Zubrin in St. Andrews, the maximum their bank would extend based on the value of their property. The total refinanced mortgage was in the amount of \$363,961.50. He testified that the \$95,000.00 was forwarded to Douglas and this is corroborated by documents tendered in evidence. Exhibit 55 is an irrevocable authorization and direction signed by Herman and Zubrin and identified by both of them with respect to a mortgage on 28 Antonina Drive. This document directs lawyer David Bradley of Wilder, Wilder & Langtry to pay the sum of \$95,000.00 to OHF Construction. Although the OTP required a renovation contract with Naked Home Designs Ltd., that entity and OHF Construction seem to be used interchangeably in these transactions.

Exhibit 56 is a written confirmation from Mr. Bradley to Herman and Zubrin indicating that \$95,000.00 from the new first mortgage on the property was paid to Douglas' office. The authorization is dated February 28, 2012 and the report confirming payment is dated May 17, 2012. The exact date of the payment is not clear.

Herman recalled that his lawyer was concerned about whether or not Herman and Zubrin could trust Douglas but Herman recalls that he was of the opinion that Douglas was trustworthy. The deal for renovations called for \$150,000.00. There was a shortfall after the \$95,000.00 from refinancing. Herman testified that Douglas then recommended they make up as much of the shortfall as possible by accessing their Registered Retirement Savings Plans. Upon Douglas' advice Herman and Zubrin went to The Toronto-Dominion Bank at Portage & Main to transfer the assets from their respective Investors Group RRSPs to accounts at the TD Bank.

When TD Bank decided against completing this transaction Douglas then advised them to set up self-directed RRSPs at Olympia Trust, which they did. The total amount transferred to Olympia Trust was \$48,000.00, \$26,000.00 and \$22,000.00 by Herman and Zubrin respectively. The funds were transferred sometime in January, 2013. They both indicated that their intention at that point was to have the funds

transferred to Douglas and/or one of his companies to put toward renovations on 183 Ash.

Herman and Zubrin testified that they began to be concerned about progress at 183 Ash. Renovation work appeared to have started but was done sporadically with little progress and significant periods of inactivity. Through a series of e-mails, they repeatedly asked Douglas about the status of the project. They were assured by Douglas that matters were proceeding, despite problems with product delays, and they continued to trust him. Both Herman and Zubrin testified that they relied completely on Douglas to put together the transaction to utilize their RRSP funds against the cost of renovations. He also arranged for the documents to be drawn up by a lawyer (David Kovnats).

Herman and Zubrin didn't understand the allowed uses of RRSPs or tax implications of withdrawing funds to pay for the renovations. Both testified that they signed documents presented by Douglas without discussing or reading them. Zubrin testified that she feels "stupid" because he had her sign documents, some blank, in stacks. They didn't know what instructions were actually being given to Olympia Trust. They testified that they never met with anyone from Olympia Trust. The fact is, the instructions given to Olympia Trust were not to utilize the RRSP funds in the sum of \$48,000.00 to be applied to construction costs at 183 Ash. The instructions were to place a third mortgage on a property in Winnipeg at 146 Eugenie Street, then owned by one Edna Neufeld. The two mortgages ahead of their third mortgage totaled approximately \$250,000.00.

Exhibit 61, signed by Zubrin, is a Mortgage Investment Direction. She identified her signature but does not recall signing the document and did not know whose handwriting, setting out the details, appears on the document. It is certainly not hers. The handwriting directs the funds from her RRSP to be used as part of a third mortgage in the sum of \$48,000.00 to be placed against 146 Eugenie. The RRSP account number referred to is 101805, which is her account. Edna Neufeld is noted as the borrower. David Kovnats is indicated as the lawyer to whom the funds were to be paid.

Exhibit 49, Tab 23 (Eugenie) is a Solicitor's Certificate of Disclosure. It is signed by Herman and Zubrin and by or on behalf of David Kovnats. It is dated January 26, 2013 by the signatures of Herman and Zubrin. The signature by or on behalf of David Kovnats is undated. This document confirms that David Kovnats would prepare a third mortgage in favour of Olympia Trust as trustee for the RRSP Account Nos. 101805 and 104190 against 146 Eugenie. Edna Neufeld is noted as the mortgagor. The document also indicates that David Kovnats did not represent Herman and Zubrin and did not provide any legal advice to them in the transaction.

By letter of March 1, 2013, Olympia Trust sent to Mr. Kovnats a cheque in the sum of \$48,110.48 (Exhibit 24 Eugenie) from the combined RRSP accounts of Herman and Zubrin on condition that a mortgage be placed on 146 Eugenie Street. Again, Edna Neufeld is noted as the mortgagor. The funds were to be placed in David Kovnat's trust account. There is no evidence as to how the funds were directed. A third mortgage was placed on the property.

Both Herman and Zubrin testified that they relied completely on Douglas in these matters and inadvisably they signed documents they didn't read or were blank. They did not meet with or give direct instructions to anyone from Olympia Trust. They testified they did not intend to provide funds for a third mortgage and Angela Zubrin advised she was unaware of what a third mortgage was. They testified they did not know anything about 146 Eugenie Street, did not know Edna Neufeld and had no intention of lending her money. They had been led to believe by Douglas that the funds were to be used for the renovation work on 183 Ash.

Herman and Zubrin presented as honest and forthright witnesses. While they completed high school and have long term steady employment they candidly admitted that they had little financial acumen and were "rookies" in the area of buying and selling real estate for profit. They needed advice and relied on Douglas' expertise and apparent trustworthiness to guide them. The panel accepts that they were directed by Douglas and signed documents presented by him without paying proper attention. They did not intend to or understand that they were directing their RRSP funds to a risky third mortgage on a property with which they were unfamiliar and to the benefit for a person they did not know. They believed the RRSP funds were being used for renovation costs at 183 Ash.

Unbeknownst to Herman and Zubrin, the property at 183 Ash that they had arranged to purchase and against which they had placed a sizeable payment for renovation work was no longer legally owned by 5995583 Manitoba Ltd. It had been transferred to the same Edna Neufeld and she had taken out a large mortgage in the amount of \$449,017.50 (Exhibit 18 Ash) against the property.

Edna Neufeld

Edna Neufeld (Neufeld) worked for Homelife. She advised MSC investigator Len Terlinski that she worked for Douglas as an office manager. She was not a registrant under the Real Estate Brokers Act.

The evidence of Neufeld is problematic. She chose not to attend the hearing and was living out of province at the time. The only evidence available from Neufeld is that from taped transcripts of interviews with MSC investigative staff. These transcripts were referred to by Len Terlinski in his evidence.

The transcripts are of two interviews. They are verbatim transcriptions, but Neufeld was not under oath during these interviews. The transcripts have been tendered in evidence as Exhibits 52 and 53.

The panel allowed the transcripts to be entered even though they were not taken under oath. Considerations in allowing them to be entered included the fact that they were created as part of the official duties of Mr. Terlinski and that they are the only source of information on the role played by Neufeld other than documents in possession of staff counsel. None of the other witnesses in this matter were aware of Neufeld's role and neither Douglas nor Geraldine Douglas testified. In addition, it is standard practice with Commission panels to accept evidence and later determine how much, if any, weight will be attributed to it.

Mr. Terlinski has been an investigator with the MSC for 8 years. Prior to that he conducted commercial fraud investigations for many years with the Winnipeg Police Service. He prepared Exhibit 49 which is a bound book of the documents developed in connection with the transactions for 183 Ash and 146 Eugenie. Exhibit 49 is made up of 26 tabs under 183 Ash Street and 27 tabs under 146 Eugenie Street. This Exhibit has already been referred to in these Reasons.

In presenting the transcripts of interviews with Neufeld, Mr. Terlinski referred the panel specifically to certain parts. The gist of Neufeld's answers to the questions asked was that during the time in question, 2012 and 2013, she was employed by Homelife and Douglas. She stated she was involved with real estate transactions concerning both 183 Ash and 146 Eugenie as a "favour" to Douglas. He asked her to take title to the properties as a bare trustee and to apply for mortgage financing on each property.

Neufeld told Mr. Terlinski that Douglas offered to give her \$250.00 for each mortgage for which she applied. She indicated that all the documents she signed were given to her by Douglas and were prepared by him. She never provided information for or prepared any of the documents she signed. She signed documents without reading them simply because Douglas asked her to do so. She advised that she had no intention to actually own either property or to reside in them or to take responsibility for the costs associated with them. She advised her role did not extend beyond allowing her name to be used and signing documents provided. It appears that the only other individual she met with was lawyer David Kovnats whom Douglas arranged to prepare mortgage documents and complete property transfers and registrations. Mr. Terlinski referred to Neufeld as a "straw man" in these transactions.

There is corroboration in Neufeld's position that she was acting as trustee for 183 Ash found in the evidence. Exhibit 49.11 (183 Ash) is a trust agreement given by Neufeld to 5995583 Manitoba Ltd., Douglas' company. The trust agreement indicates that she will be holding the property as a bare trustee for 5995583 Manitoba Ltd. and that she will transfer it to that company upon request.

Neufeld signed an OTP for 183 Ash (Exhibit 49.10 Ash) and for 146 Eugenie (Exhibit 49.6 Eugenie). Neufeld applied to the Royal Bank for mortgage financing for 183 Ash. Supporting documents included a letter of employment from Homelife Realty stating Neufeld's income to be \$87,000.00. It is dated October 10, 2012 (Exhibit 49.14 Ash). The mortgage itself was in the amount of \$449,017.50 (Exhibit 49.12 Ash). Documents tendered in evidence show that the funds were forwarded and that the three mortgages previously registered against the property were discharged as a result. Douglas had been a guarantor on all three of these mortgages.

Similar steps were taken with respect to 146 Eugenie. Neufeld signed a mortgage application (Exhibit 49.7 Eugenie) to Sun Mortgage. The Application document included a statement of her income at Homelife as being \$120,000.00. The mortgage provided was in the sum of \$225,000.00.

The application to Sun Mortgage is different than the application to the Royal Bank in that on the former Douglas is noted as the representative of the mortgage broker Abacus. He was not registered in any capacity under The Mortgage Brokers Act at the time. In addition the level of income for Neufeld stated on the Sun application

shows income from Homelife of \$120,000.00. The evidence of income provided to RBC one month earlier for that mortgage application states that her income (again from Homelife) was \$87,000.00. In her unsworn discussion with Mr. Terlinski, Neufeld was quite specific that she did not earn \$120,000.00 from Homelife and did not realize that this was being represented. She said all the information came solely from Douglas.

“EN: Yeah, And again, the mortgage was done without me talking to anyone from SUN MORTGAGE. They did this application from David. I don’t know if, you know, it would be strictly David filling this out using ABACUS MORTGAGE GROUP’s –

LT: But did you give him the numbers?

EN: No. No, I didn’t because he made them up. I never made \$120,000.00 a year, and all of these are just what he guessed at. But you know, David pretty much knew what my financial situation was like, because as a broker, even my rental houses and stuff, I had to tell him, you know, what I owned. But it’s all – it’s really really wrong, and also done without any signature from me.”

With both properties Neufeld indicated her involvement ended with providing her name and signing documents presented to her. In connection with 146 Eugenie she did not know Herman and Zubrin (nor they her) and did not know she had apparently applied to Olympia Trust as mortgagor for a mortgage utilizing their RRSP funds. There is additional corroboration of the statements of Neufeld that she was acting solely as bare trustee for Douglas in connection with the 146 Eugenie property as she disclosed that to lawyer David Kovnats. In a reporting letter to Neufeld dated July 5, 2013 (Exhibit 49.22 Eugenie) he indicates:

“You mentioned today when I saw you that you actually had some Agreement with Mr. Douglas, which you had not informed me of, whereby you were acting as a Trustee”.

Thomas Kaatz

Thomas Kaatz is a mortgage specialist who was working with the Royal Bank. He was on the file for the mortgage application for 183 Ash. He testified that Douglas referred this matter, not as a mortgage broker, but as a real estate agent. He accepted the documents provided without any requirement for additional evidence concerning income. He did not know that Neufeld was holding the title in trust for Douglas’ company. In a thread of internal RBC emails placed in evidence (Exhibit 49.26 Ash) he states that had he been aware of the existence of the trust agreement signed by Neufeld he would not have proceeded with the mortgage application. He confirmed the same in testimony at the hearing. It goes without saying that he also did not know the interest of Herman and Zubrin in the property. He accepted the materials put forward by Douglas as reliable.

Andreas VanDerzalm

Andreas VanDerzalm (VanDerzalm) is a Chartered Accountant and the principal broker at Sun Mortgage since December, 2008. Sun Mortgage is a private lender. Mortgage brokers refer business to them and they also syndicate loans. VanDerzalm knew Douglas from the past as a mortgage broker and he was noted as such on the mortgage application documents provided to Sun. He did not know that Douglas was not registered at the time. Abacus was paid a fee of \$2,250.00 for this transaction to which neither it nor Douglas were entitled. He also accepted the information provided by Douglas and didn't require additional evidence of Neufeld's income, which was incorrectly stated at \$120,000.00. He relied on his past association with Douglas in approving the loan on the basis of the materials supplied.

In addition, included in the package of materials provided to Sun is a Credit Bureau statement of Neufeld's credit status including her outstanding liabilities (Exhibit 49.8 Eugenie). This document was received as of November 22, 2012 and appeared to represent Neufeld's credit status as of September 30, 2012. It was outdated as it did not include the RBC mortgage against 183 Ash in the amount of \$449,017.50 as a liability of Neufeld. That mortgage was registered two weeks earlier on November 8, 2012. Douglas was well aware of the existence of the mortgage, having been involved in the application for it but chose to omit this information.

VanDerzalm testified that had he been aware of the ownership status of 146 Eugenie and of the earnings misinformation and the existence of a large mortgage debt, it would have negatively affected the mortgage application.

Herman and Zubrin

In March, 2013 Herman and Zubrin believed they were entitled to be the owners of 183 Ash and had contracted to have the home renovated for resale purposes. They had deposited \$95,000.00 toward what they believed was a \$150,000.00 renovation cost by remortgaging their own house to the maximum amount available. They further believed that they had placed an additional sum of \$48,000.00 from their RRSPs with Douglas for the same purpose. However, the renovation work had been started but had not progressed and the funds from their RRSPs had in fact been allocated as a third mortgage against the property at 146 Eugenie, beneficially owned by a company with which they had no connection and legally owned by a woman they did not know.

Unfortunately that was not all of their problems. In addition, Herman and Zubrin were being forced to make additional payments to Douglas. For months there had been no discussion of the Loan Agreement (Exhibit 49.8 Ash). Herman and Zubrin were operating under the assumption that it would be dealt with once the renovations were completed and the property ready for resale. Then prior to March, 2013, Douglas demanded payments begin under the Loan Agreement in the monthly sum of \$3,035.00 commencing March 1, 2013. With difficulty they started making these payments and did so for the three months of March, April and May of 2013. Herman testified that his lawyer advised him to stop making the payments.

It does not appear that the Royal Bank mortgage was being adequately serviced and in July, 2013 mortgage foreclosure proceedings were commenced (Exhibit 49.25

Ash). Eventually the property was sold and any claim of Herman and Zubrin to an entitlement in ownership of 183 Ash was ended. The funds they had advanced were lost.

Foreclosure proceedings were also commenced on 146 Eugenie in October, 2013 (Exhibit 49.26 Eugenie). The proceedings were not commenced by Sun Mortgage but by the second mortgagee, being 6408819 Manitoba Inc. At any rate, the third mortgage in favour of Herman and Zubrin fell off and their \$48,000.00 was lost.

Allan Pamplona

Allan Pamplona is employed at the MSC as a Compliance Auditor in the Real Estate Division. He has been a staff member for about three years. He knows both Douglas and Geraldine Douglas.

Mr. Pamplona testified that in June of 2013 he was assigned by his manager, Mr. Terry Kirkham, to conduct compliance audits of both Abacus and Homelife. The compliance audit is a review as to whether a broker is complying with the requirements of the legislation, in this case either The Mortgage Brokers Act or the Real Estate Brokers Act.

Mr. Pamplona testified he attempted to conduct an audit of Abacus several times in June and July of 2013 but without success. He indicated that he was prevented from carrying out these duties by the actions of Douglas and Geraldine Douglas.

In providing testimony Mr. Pamplona referred to notes he had made as part of the conduct of his official duties. They were made contemporaneously with the activities noted.

Mr. Pamplona provided a copy of an email (Exhibit 46) that he sent to the attention of Douglas indicating he would be attending at the office of Abacus and asked him to prepare the following files and/or records:

1. List of all mortgage transactions;
2. Individual ledgers/mortgage folders;
3. Monthly bank statements and list of cheques issues;
4. Commission Payout Records and other supporting mortgage files/documents.

Mr. Pamplona attended at the offices of Abacus at 661 Hoddinott Road in the Bird's Hill area, on June 18, 2013. Both Douglas and Geraldine Douglas were present. Geraldine Douglas advised him that she was not available to participate in the audit. Douglas confirmed that all contact should be with him as the sole shareholder of the company. He also indicated that he was not able to assist Mr. Pamplona that particular day and said that both he and Geraldine would be available on June 20, 2013.

Mr. Pamplona again attended at the offices of Abacus on June 20, 2013 at 9:00 a.m. Both Douglas and Geraldine were there. Douglas showed him an empty office and indicated that Abacus was closed for business and that the records were in storage. He did not say where. Douglas asked him to return at 1:00 p.m. Mr. Pamplona

advised that he would interview Geraldine Douglas as the authorized official at that time.

On his return Mr. Pamplona asked questions of Geraldine Douglas during the interview but noted that Douglas intervened and provided all of the answers.

Douglas advised that he would give access to the bank records but they were not at that premises. He advised that they were at a self-storage unit on Kenaston Blvd. Douglas said he would retrieve them and have them back at the Abacus premises as of June 24, 2013.

Mr. Pamplona returned June 24, 2013 but the records were not made available. Douglas indicated he didn't have time to obtain them as he had originally indicated. Mr. Pamplona arranged to come back on the 26th of June and did so. Again, the records were not available and again Douglas indicated he didn't have time to get to the storage unit to retrieve them. Mr. Pamplona offered to go with Douglas to the storage unit but Douglas declined.

Mr. Pamplona made arrangements to return July 3, 2013 at which time two boxes of files were presented to him by Douglas. These boxes contained clients' mortgage folders. No bank information or other information that had been requested was provided.

Mr. Pamplona at that time asked to be provided with what is known as a Fillogix or Applications Report for the period June, 2011 through May, 2013 which Douglas printed out and provided to him. This document was entered as Exhibit 47 and is a four page report.

Mr. Pamplona explained that a Fillogix Report is a software report which is obtained from a system used by mortgage brokers. Most financial institutions use this program. He indicated that all mortgage dealings of a brokerage are included in an Applications Report. The Report indicated some 17 instances in 2012 and 2013, after Douglas' registration under the MBA had been suspended where Douglas was continuing to act as a mortgage broker's agent in breach of The Mortgage Brokers Act.

While still at the Abacus premises on July 3, 2013 Mr. Pamplona asked Douglas for bank statements from the brokerage. Douglas indicated he did not have them and had been advised by his lawyer not to provide them. He then left the office. Mr. Pamplona advised that he never received the bank records and was unable to finalize the audit.

Findings

The findings concerning Chen and Schappert

In the transactions concerning 86 Ellesmere Douglas played several parts. He was the representative of 5995583 Manitoba Ltd. which was a potential buyer for 86 Ellesmere. That company also purported to be a vendor of the property, although it never owned it. Douglas acted as the listing and selling agent and represented Homelife as the listing and selling broker, he also was the sole representative of

4456786 Manitoba Ltd. which operated Naked Home Design and OHF Construction which purported to be companies doing renovations/ construction work on the property.

Douglas put his own name down on the OTP as Chen's representative under The Real Estate Brokers Act. As a broker/sales representative Douglas owed significant duties to his client. These include acting in the client's interests as opposed to his own and disclosing to the client any facts concerning the transaction that would be of material interest to the client. Mr. Douglas never disclosed to Mr. Chen that the purported vendor of the property did not actually own it. All of the actions, either through Homelife or 5995583 Manitoba Ltd. or the two renovation/construction companies were the actions of Douglas. He cannot absolve himself of the duties he owes to his client as a broker/sales representative by acting against his clients interests in another capacity. Douglas knew the property was not owned, and never would be owned, by 5995583 Manitoba Ltd. He knew that Naked Design Homes could not build on the property without the registered owner's permission and yet he took a significant amount of money as a deposit pursuant to a non-attainable and fictitious construction schedule. The funds were never returned to Chen and as they went to a company in which Douglas was the sole officer and director, the panel accepts that this was at the very least an indirect benefit to Douglas. Douglas breached his duties to Chen and acted against his client's interests to further his own. His conduct also amounts to fraud under the definition in The Real Estate Brokers Act. The definition of fraud under the Act includes:

“ ...any intentional misrepresentation by word, conduct or manner of a material fact, present or past, and an intentional omission to disclose such a material fact”.

“..generally, any artifice, agreement, device, scheme, course of conduct or business, to obtain money, profit, or property, by any of the means hereinbefore set forth or otherwise contrary to law, or by wrongful or dishonest dealing.”

Douglas was also the real estate agent/broker for Schappert with respect to the Roseberry property. He accepted a down payment and a deposit for construction work on that property and agreed to carry it over to be used on another property. It appears from the documents received in evidence that Douglas proposed to apply the funds to the acquisition and construction on 86 Ellesmere on behalf of Schappert even though he had already purported to sell the property to Chen and had taken money from him for renovations on the same property. He suggested in a series of emails (Exhibit 39) that he did indeed apply the \$49,000.00 to acquire custom materials for a home to be built on that property on behalf of Schappert.

Douglas received the down payment and the deposit on behalf of Schappert and was noted as the broker/agent. This confirms his duties to Schappert under The Real Estate Brokers Act. Again, he cannot absolve himself of these duties by purporting to act in a capacity other than real estate representative or broker. Douglas purported to apply his client's money to a property that neither he nor the stated vendor owned, on which he would be unable to build and which he had already purported to sell to Chen. The funds from Schappert were received by a company of which Douglas was

the sole officer and shareholder and the panel accepts that this represents at least an indirect benefit to Douglas at the expense of his client. Douglas also misrepresented facts in this transaction and as with Chen committed fraud under The Real Estate Brokers Act in connection with Schappert.

Even if it could be argued that Douglas' conduct did not amount to fraud, his actions are clearly, in the opinion of the panel, contrary to the public interest. He orchestrated every part in several transactions concerning one single property. He acted as real estate broker/salesperson, represented the purported vendor, took significant funds (\$46,500.00 and \$49,000.00) from clients to whom he owed duties under the Real Estate Brokers Act, and did not return a dime. These funds were purportedly paid to a renovation business or businesses operated by a company of which Douglas was the sole officer and director. The panel accepts that not only were his actions improper but that he benefited financially from them.

Documentary evidence (Exhibit 29) also suggests that, having taken money from Chen and Schappert as part of the acquisition of the same property, Douglas was still advertising the property for sale on Kijiji. It is quite conceivable that had this endeavor borne fruit there could have been a third offer to purchase and a third payment for renovations outstanding at the same time.

This type of conduct by an individual in connection with real estate transactions runs contrary to the public interest and reveals a clear lack of fitness for registration under REBA.

The findings concerning Herman and Zubrin

The issue of conduct and public interest is also starkly clear in the course of Douglas' dealings with Herman and Zubrin.

Douglas appears to have been more careful in his actions surrounding 183 Ash as he did not note himself as the listing or selling agent/broker. This role was filled by Coldwell Banker and Mr. Riddell. Nonetheless the evidence suggests that Douglas orchestrated every facet of these transactions.

Douglas made the connection with Herman and Zubrin who were inexperienced in real estate matters and relied on him to guide them through the process. That Herman and Zubrin relied on Douglas to the extent they did, in signing documents he presented without properly reviewing them, or even in blank, was not wise, but the panel accepts that it did happen. They presented as honest and forthright witnesses and the panel accepts their evidence as truthful throughout.

While not acting as a real estate agent, Douglas did dictate the terms of the OTP which included a required arrangement with one of his renovation businesses. In order to attempt to meet a \$150,000.00 construction budget, Herman and Zubrin mortgaged their home to the maximum amount possible. The \$95,000.00 realized left them short of the \$150,000.00 amount by over \$50,000.00. Douglas urged them to obtain the additional funds by accessing their RRSPs. He even directed them to Olympia Trust for this purpose.

This of course, was bad advice, as cashing out RRSPs for this use would have

resulted in serious tax consequences for Herman and Zubrin. As it turns out, this was not the actual use of the funds. Instead the couple signed directions, prepared and presented for signature by Douglas, to divert their funds to a third mortgage on an altogether different property.

As indicated, the panel accepts the evidence of Herman and Zubrin that the papers for the transaction were signed without reading and perhaps in blank. They never met with or instructed anyone from Olympia Trust. They dealt with and trusted Douglas and their money was used for a risky third mortgage on a property they didn't know and which was owned legally by a person they didn't know who held it as a trustee. Herman and Zubrin did not intend for their money to be used in this manner. They wanted to renovate and sell 183 Ash, not become mortgagees of a wholly different property. They feel that they were tricked and the panel agrees. They were manipulated and tricked by Douglas.

There is no evidence of how the \$48,000.00 from the RRSPs was used after it was received in trust by David Kovnats. The mortgage securing it was removed from title a short while later through foreclosure proceedings. The couple's \$48,000.00 was lost. In addition, title to 183 Ash was never transferred to Herman and Zubrin and their \$95,000.00 down payment for renovation costs was lost. As well Douglas had demanded money under the Loan Agreement and received an additional \$9,100.00 from Herman and Zubrin even though by then it had to have been clear to Douglas that the transaction would not be completed and he was not in a position to transfer the title to which the Loan Agreement applied.

Herman and Zubrin put their trust in Douglas and allowed him to manipulate them in a number of ways. The panel finds that although he was not dealing with them in his capacity of registrant under the Real Estate Brokers Act he did not deal honestly with them. He took advantage of them. They lost over \$150,000.00 in these transactions, have a large mortgage obligation outstanding and lost their retirement savings. They are close to financial ruin.

This type of dishonest conduct, particularly in connection with real estate transactions, is clearly contrary to the public interest and confirms the panel's position that Douglas is unfit for registration in any capacity under REBA.

Mortgage Brokers Act

Douglas was not registered under the Mortgage Brokers Act in any capacity at any time in 2012. Nonetheless the evidence shows he acted as though he were registered and even charged a \$2,250.00 commission to Sun Mortgage for his services supposedly rendered. There was no evidence provided as to the commission he may have improperly received while continuing to act as a mortgage broker/salesperson in 17 transactions after ceasing to be registered.

The Sun Mortgage was prepared by Douglas or on his instructions. This was the evidence of Neufeld as set out in Exhibit 53. She indicated specifically that it was Douglas who inserted the incorrect sum of \$120,000.00 as her income, inflating it significantly. She also stated that she took title to both 146 Eugenie and 183 Ash at the request of Douglas and as a trustee. In the case of the Ash property this is corroborated by the Trust Agreement which is Exhibit 49.11 (Ash). The Sun Mortgage

was approved without Mr. VanDerzalm being aware that the income was inflated, that Neufeld was a bare trustee and that she had the liability of a large mortgage taken out in her name on a different property only weeks prior.

The evidence of Neufeld is unsworn. Normally this evidence, even though it is verbatim and was taken as part of Mr. Terlinski's official duties, would be afforded little or no weight. In this case, however, it is the only evidence available to allow the panel to determine the events leading up to these mortgages. Mr. Gingera, staff counsel, asked the panel to give weight to this unsworn testimony in only two particulars, being:

- a) That Neufeld held both properties in trust at Douglas' request; and
- b) Douglas prepared the information in both mortgage applications and in particular overstated income of \$120,000.00 on the Sun application.

The panel is willing to accept this and accord weight to Neufeld's unsworn evidence in these two areas for which there is otherwise little or no evidence save the existence of the Trust Agreement and the earlier Royal Bank mortgage application which displays income of only \$87,000.00 for Neufeld.

As such the panel finds that Douglas falsely indicated to Sun that he was a registrant under the Act and improperly accepted a commission when unentitled. He also knowingly presented false information to Sun in overstating Neufeld's income and he also intentionally withheld material information that Neufeld held the property as a trustee and that she was also liable for a \$449,000.00 mortgage not included on the Credit Report submitted by him.

Even though Douglas was not registered and even though the Royal Bank did not consider him to be a mortgage broker with respect to the mortgage application to that bank he is still caught by the Mortgage Brokers Act. Section 2(1) states:

“no person shall act as a mortgage broker, authorized official or mortgage salesperson, for or in expectation of remuneration, unless the person

- (a) is registered as a mortgage broker, authorized official or mortgage salesperson.

The definition of mortgage broker also includes a person:

“registered or required to be registered under the Act”

“who provides information about a prospective borrower to a person who lends, or may lend, money on the security of a mortgage”

As such, the fact that Douglas was purporting to act as a mortgage broker/salesperson in the Sun application and he was providing information about a prospective borrower to a lender on the Royal Bank application means he was acting as a mortgage broker and required registration. The fact that he was unregistered constitutes a breach of the Act.

In addition, Douglas' conduct amounts to fraud under the Act. The definition section

states that “fraud”, “fraudulent” and “fraudulent act” includes in connection with a transaction in real estate:

- (a) any misrepresentation by word, conduct or manner of material fact, present or past
- (b) an omission to disclose a material fact, present or past
- i) generally, any artifice, agreement, device, scheme, course of conduct or business, to obtain money, profit or property, by any of the means hereinbefore set forth or otherwise contrary to law, or by wrongful or dishonest dealing

There is no doubt Douglas’ actions in connection with the mortgage applications constitutes fraud under the MBA.

Douglas also breached the MBA in the course of his dealings with Mr. Pamplona. Section 31(1) allows any person named by the Commission to examine the books and records of a mortgage broker at any reasonable time. Mr. Pamplona represented the Commission in attempting to audit Abacus. Section 31(2) states:

“Any person who withholds, conceals, falsifies, defaces or refuses to produce any book, record, bank account or thing mentioned in subsection (1) is guilty of an offence”

Douglas advised Mr. Pamplona that he would be the sole contact on behalf of Abacus for the audit. He then proceeded to obstruct Mr. Pamplona’s attempts to conduct the audit and ultimately refused to provide the requested bank records. The conduct of Douglas in this area puts him in breach of the Act.

The following is a provision of REBA (Section 42(7))

“A registrant who violates any provision of The Mortgage Brokers Act or the regulations made thereunder shall be deemed to have violated the provisions of this Act and to have committed a fraud under this Act.”

Obviously Douglas is guilty of fraud under REBA by simple application of this section. Nonetheless the panel has already found him to have committed fraud under REBA by virtue of his conduct.

Penalty

Douglas’ conduct was egregious. He clearly was guilty of fraudulent conduct under both REBA and the MBA. This is serious in itself, but factors exacerbating these wrongs are evident in the deceitful and manipulative course of conduct he engaged in and the devastating financial results it brought upon innocent people who relied upon him for guidance and fair dealing.

He purported to sell and build on one property for two different buyers (Chen and Schappert) at the same and took money from each of them which was never accounted for.

Perhaps most shameful was his mistreatment of Herman and Zubrin who were neophytes in his world and who were manipulated into mortgaging their home to the hilt and losing their life savings as a result of their dealings with him.

Staff counsel, in argument, reminded the panel that registration is the cornerstone of our system and that those claiming the privilege of being registered must act in utmost good faith and with honesty, failing which the real estate industry will be brought into disrepute. He also stated that penalties are not intended to be punitive but forward looking and intended to be the signal to others that egregious conduct cannot be tolerated. The panel accepts this.

The determination of the panel with respect to REBA is that Douglas' registration, currently suspended, will be permanently cancelled. He will be permanently barred from registration in any capacity.

A similar order is made under the MBA, being a permanent cancellation of Douglas' registration. Similarly, he is barred from registration in the future in any capacity. In addition the panel orders a permanent denial of access to the exemptions under the MBA for Douglas.

Staff counsel seeks a significant financial penalty under the MBA. He noted that the maximum penalty allowed is \$100,000.00. He also confirmed to the panel that there has not been a decision under the relatively recent Mortgage Brokers Act which sets out such a penalty or fine. He has no precedent on which to rely. He notes that the existence of fraud is a serious matter requiring consideration of a significant financial penalty. He also asked the panel to consider the overall dishonest and manipulative conduct of Douglas throughout his dealings with the various witnesses. With nothing to guide him in seeking a significant deterrent staff counsel recommended an administrative penalty of \$60,000.00.

The panel agrees that a serious financial penalty is in order to act as a deterrent and notes the existence of fraud and deceitful conduct. As such, and not having heard from Douglas on his own behalf, the panel accepts the request from staff counsel and orders a financial penalty payable by Douglas in the amount of \$60,000.00.

With respect to costs, staff counsel asked to present an Itemization of Costs prepared according to the Regulations, as opposed to dealing with the issue after a Decision was rendered. Counsel's position was that should a Decision contrary to Douglas's interest be rendered the panel could utilize the Itemization of Costs as part of its decision should it so choose to do. The panel has reviewed and accepted the Itemization of Costs. In light of the Decision made the panel orders the costs as set out against Douglas totaling \$21,809.00. The Itemization of Costs is attached as Schedule "A" to these Reasons.

Geraldine Douglas

The specific allegations against Geraldine Douglas, who is Douglas' mother, was that she failed to adequately supervise transactions and business conducted at Abacus and Homelife and that she failed to provide the books and bank records requested during the audit by the Commission. She was the authorized official of Homelife and Abacus during the period of time that Douglas was dealing with the three properties.

None of the witnesses save Mr. Terlinski gave any evidence of the activities of Geraldine Douglas. She was not implicated in any way in the dishonest conduct of Douglas either by evidence or in the Statement of Allegations. Mr. Terlinski's impressions of her as a result of interviews during the investigation was that she simply was not competent to direct the business of a real estate or mortgage brokerage. This was the only evidence given in connection with her actions as she did not attend the hearing nor did she appear to have any direct interaction with any of the other witnesses affected by the conduct of Douglas.

Mr. Pamplona testified that, although she was the Authorized Official at Abacus, it was Douglas who acted on that brokerage's behalf during the course of the attempted audit on the basis that he was the sole shareholder and director of the company that owned Abacus. The sense of the panel is that Geraldine Douglas was simply acting to help her son out according to his wishes without actually assuming an active role in the management as her title would suggest she should do.

The fact that she should not be in a responsible position in a brokerage is clear to the panel, but this is primarily a question of ability as opposed to proven misconduct. Staff counsel had originally sought a fine and a denial of exemptions against her under the MBA, but thought better of it as the case was completed and now seeks only the continuation of her suspension of registration under both Acts. The panel agrees that a more rigorous penalty is not in order for Geraldine Douglas and orders that her suspension under REBA and the MBA continue indefinitely.

"D.G. Murray"

D.G. Murray
Chair

"D.H. Smith"

D.H. Smith
Member

"S.C. Rolland"

S.C. Rolland
Member

PROCESS SERVER:

May, 2015 \$ 75.00
(Attempted Service upon Geraldine Anne Douglas)

= \$ 75.00

PREPARATION TIME:

For Investigation and Legal inclusive of appearances noted above,
preparation and time spent on investigation.

30 days @ \$400.00/day

= \$12,000.00

TOTAL: = \$21,809.00

REQUEST: = \$21,809.00