



THE MANITOBA
SECURITIES
COMMISSION

IN THE MATTER OF: THE REAL ESTATE BROKERS ACT

- and -

**IN THE MATTER OF: JOSE ANTONIO PEREIRA also known as
JOE PEREIRA**

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. Jose Antonio Pereira also known as Joe Pereira ("PEREIRA") was first registered as a salesperson under *The Real Estate Brokers Act* ("Act") on April 5, 1991 and has been so registered almost continuously to present, with various brokers, except for very short periods of time and for one 15 month period of time from June 22, 2001 to September 22, 2002 during which time his registration was suspended as a result of employment termination and pursuant to Order Nos. 2452, 2453, and 3907 of The Manitoba Securities Commission ("Commission").
2. In addition to the above, PEREIRA was also registered under the Act as authorized official for a property management company from August 4, 2009 to August 3, 2010.
3. At all material times, PEREIRA was registered as a salesperson with 3529763 Manitoba Ltd. operating as Coldwell Banker Preferred Real Estate ("COLDWELL BANKER") as his employing broker.
4. At all material times, COLDWELL BANKER was registered as a broker under the Act.
5. At all material times, COLDWELL BANKER was a member of The Manitoba Real Estate Association Inc. ("MREA") and therefore participated in the Real Estate Reimbursement Fund ("Fund").

6. PEREIRA is currently registered as a salesperson under the Act with 3825460 Manitoba Ltd. operating as Re/Max Associates ("RE/MAX ASSOCIATES") as his employing broker.
7. Unless renewed, PEREIRA'S registration will expire at midnight on September 25, 2018.

B. DETAILS

The house deal –

1. In January of 2014, Ms. E hired PEREIRA to act as her agent in purchasing a home.
2. On January 4, 2014, Ms. E signed an offer to purchase a house in Winnipeg, Manitoba. The vendors made a counteroffer on January 6, 2014 which was accepted by the buyer, Ms. E, on January 6, 2014 ("offer").
3. With respect to the offer, PEREIRA was the buyer's agent with his then employing broker, COLDWELL BANKER, as selling broker.
4. The terms of the offer provided for a deposit of \$20,000.00 to be paid by the buyer ("deposit") and for any mortgage that was to be arranged to be done by 5:00 p.m. on January 16, 2014 ("financing condition").
5. In conjunction with the offer, a deposit cheque, drawn on the account of Ms. E, was signed by her on January 4, 2014 ("deposit cheque").
6. The deposit cheque was payable to the listing broker. Once received by the listing broker, the deposit cheque was deposited into its account in trust.
7. Subsequently, the listing agent was informed by PEREIRA that the financing condition would not be met.
8. On or about January 16, 2014, the listing agent and the vendors signed a Deposit Release form, as received from PEREIRA.
9. The listing broker issued a deposit refund cheque payable to Ms. E in the amount of \$20,000.00 dated January 21, 2014 ("refund cheque").
10. Prior to the refund cheque issuing, PEREIRA had contacted the listing agent as to when would the refund cheque be ready.

11. On January 21, 2014, PEREIRA picked up the refund cheque from the office of the listing broker.
12. On January 21, 2014, PEREIRA endorsed the back of the refund cheque and deposited it into a personal account of his.
13. At the time, Ms. E was neither aware that PEREIRA would be endorsing the back of a cheque made payable to her and depositing it into his own account, nor had she given him permission to do so.
14. Ms. E herself was not in Manitoba on January 21, 2014.
15. Following her return to Winnipeg, Manitoba, Ms. E was informed by PEREIRA that the house had been sold to another buyer.

Use of funds –

16. On January 21, 2014, the day PEREIRA had deposited Ms. E's refund cheque into his personal account, prior to the deposit, there was a two-digit balance in the account.
17. After the \$20,000.00 deposit, the full amount of the funds was expended over the next few days, predominantly for online bill payments of approximately \$4,550.00, a bank draft in the amount of \$10,000.00 payable to PEREIRA himself, and a returned item in the amount of \$5,500.00.
18. By January 28, 2014, the account had a negative balance.

The loan –

19. After the refund cheque was deposited into PEREIRA's account on January 21, 2014, in or about late January or February of 2014, at the request of PEREIRA, Ms. E agreed to lend PEREIRA the \$20,000.00 which had been her deposit refund monies.
20. The terms of the \$20,000.00 loan as proposed by PEREIRA, and agreed to by Ms. E, provided for full repayment by September of 2014, including interest of \$5,000.00, for a total of \$25,000.00, said repayment to proceed by installments commencing February 21, 2014 ("loan").
21. As at September of 2014, Ms. E had received only a portion of what were to have been the payments towards the loan. PEREIRA offered an additional \$2,000.00 for an extension in time to pay.

22. After September of 2014, although Ms. E did receive some repayment towards the loan, the \$20,000.00 deposit refund taken and used by PEREIRA was never fully returned to Ms. E by virtue of the loan or otherwise.

Miscellaneous -

23. PEREIRA commenced bankruptcy proceedings on November 3, 2015.

C. ALLEGATIONS

1. Staff of the Commission allege upon the investigation by Commission staff that PEREIRA in connection with a trade or transaction in real estate has been found to have committed "fraudulent acts" within the meaning of the Act as defined in section 1 in that:
 - (a) he failed, within a reasonable time, to account properly for and/or pay over to Ms. E her deposit refund cheque and/or the monies represented thereby in the amount of \$20,000.00 in contravention of clause (c) of the definition;
 - (b) he intentionally misrepresented a material fact by his conduct in taking money which was his client's and treating it as his own by endorsing a cheque made payable to his client and depositing it into his own personal account in contravention of clause (a) of the definition;
 - (c) by means of an artifice or scheme, he obtained money through wrongful or dishonest dealing by obtaining and depositing to his own personal account a deposit refund cheque intended for Ms. E, and payable to her, by endorsing the cheque with his own name and depositing the cheque into his own personal account, following which said monies were expended by him for his own personal use in contravention of clause (i) of the definition, and/or;
 - (d) by means of an agreement to borrow money from his client Ms. E, said money having been generated by a deposit refund cheque received by PEREIRA but intended for Ms. E, thereby obtaining money by wrongful or dishonest dealing in contravention of clause (i) of the definition;

or any of the foregoing, and that due to these allegations, staff of the Commission request that the Commission order the MREA to pay out of

the Fund the amount of \$20,000.00 to the benefit of Ms. E pursuant to subsection 39.1(2) of the Act and, furthermore, it is in the public interest that the registration of the respondent under the Act be suspended or cancelled.

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

DATED at Winnipeg, Manitoba this 23 day of April, 2018.



Director

TO: JOSE ANTONIO PEREIRA
also known as JOE PEREIRA

AND TO: The Reimbursement Fund
c/o The Manitoba Real Estate Association Inc.