



THE MANITOBA  
SECURITIES  
COMMISSION

January 19, 2021

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

- and -

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

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

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Panel:

Panel Chair:	Mr. J.T. McJannet, Q.C.
Member:	Ms. A.E. Martens
Member:	Mr. C.D. Burns

Appearances:

Mr. S. Gingera	)	Counsel for Commission Staff
Mr. J.A. Pereira	)	On his own behalf

## INTRODUCTION

This matter was originally scheduled to commence on September 16, 2020 at which time Mr. Gingera appeared on behalf of the Manitoba Securities Commission (MSC) and Mr. Pereira appeared in person. Mr. Pereira stated he would not be retaining counsel but would be personally present throughout the proceedings.

These proceedings were then adjourned to December 16, 2020 in anticipation that the parties may be able to reach and file an agreed Statement of Facts in which case the parties agreed and this Panel acknowledged that the parties, on December 16, 2020, would present argument on the issues raised in the Notice of Hearing.

The Notice of Hearing in this matter dated July 8, 2020 stated that the Manitoba Securities Commission (MSC) would hold a public hearing to consider:

1. whether or not it is in the public interest to order, pursuant to subsection 11(1) of The Real Estate Brokers Act ("REBA"), that the registration of Jose Antonio Pereira ("Pereira") under REBA be suspended or cancelled;
2. whether the Manitoba Real Estate Association Inc. ("MREA") should be ordered to pay to K.A. and F.T. any amount out of the Real Estate Reimbursement Fund ("Fund") under clause 39.1(2)(a) of REBA pertaining to the actions of Pereira in connection with a trade or transaction in real estate;
3. whether or not it is in the public interest that Pereira be required to pay costs of and incidental to the hearing;
4. such further and other orders as the Commission may deem appropriate.

by reason of allegations set out in the Statement of Allegations dated July 8, 2020.

## MR. PEREIRA'S ACTIVITIES

This hearing concerns Mr. Pereira's activities that occurred in March/April of 2018. Mr. Pereira was seeking tenants for a client's commercial building and he placed a for rent sign on the client's building. A listing agreement was never signed. Two potential tenants contacted Mr. Pereira about the building, signed an offer to lease document, and each paid a \$1,500. deposit, which was to be refundable. At a later point the potential tenants discovered the building was no longer for rent with Mr. Pereira as agent, and they requested their money back. At this point Mr. Pereira indicated that he was returning to Portugal, that their deposit would not be returned and that he had compromising videos on both of the potential tenants to prevent them from pursuing the return of their deposits.

## DOCUMENTS FILED

At commencement Mr. Gingera filed a number of exhibits, namely;

- i) Notice of Hearing
- ii) Statement of Allegations

- iii) Two certified statements of the Registrar under the Real Estate Brokers Act (REBA)
- iv) Agreed Statement of Facts
- v) Bill of costs

### ADMISSIONS

In the Agreed Statement of Facts Mr. Pereira admits that he:

- a) In contravention of s. 20 of REBA, failed to obtain a Listing Agreement prior to advertising the commercial property for prospective tenants;
- b) Committed a 'fraudulent act' within the meaning of REBA by failing, within a reasonable time to pay over to K.A. and F.T. the deposit money given to him;
- c) Failed to turn over the deposit monies received from K.A. and F.T. to his broker contrary to s. 25 of REBA;
- d) Committed a fraudulent act under REBA by engaging in a course of conduct to obtain money from K.A. and F.T. by wrongful or dishonest dealing by having K.A. and F.T. deposit money, which was provided to him for a trade or transaction in real estate, into his own personal account which he subsequently used for personal expenses;
- e) Engaged in conduct, as set out above, that was contrary to the public interest.

Mr. Gingera filed Reasons for Decision re: Pereira, conducted by previous MSC panels in 2001, 2002, and 2018, and two decisions of MSC panels identified as hearings for Daryl Newis and Jack Wladyka.

Mr. Pereira filed a letter addressed to Mr. Gingera dated December 11, 2020 in which he stated 'he had to leave the industry' and was 'ready for a new career and life' and 'I do not plan on returning to real estate'.

### MR. PEREIRA'S PAST TRANSGRESSIONS:

This panel takes particular note of the following;

- a) In 2001, the MSC sanctioned Mr. Pereira and suspended his registration under REBA for 15 months. Mr. Pereira was both terminated by his employer and suspended because he and an associate had prepared/used fraudulent gift letters to obtain or attempt to obtain mortgages for his clients. Mr. Pereira's counsel argued that his ability to earn a living should be considered; MSC staff argued that public protection was more important. The issue of the creation of false documents and forgery presented a serious potential danger to the public and was a key point in the considerations. Ultimately, Mr. Pereira's licence was suspended under REBA for a total of 15 months.
- b) The 2018 Hearing revealed that in January of 2014, Mr. Pereira had been working with a client (Ms. E) on a deal that was terminated. A deposit refund

cheque for the client was issued for \$20,000. The cheque was subsequently picked up by Mr. Pereira, who deposited the cheque into his own bank account. After the fact, in late January or early February, Mr. Pereira convinced Ms. E to lend him the \$20,000. Ms. E ultimately did not receive full repayment and complained to the Manitoba Real Estate Association.

Evidence in that matter revealed that Mr. Pereira had been in discussions with Ms. E and her husband to lend him the money and had made an agreement with the husband allegedly prior to depositing the cheque. However, Mr. Pereira had committed fraud by forging Ms. E's signature to endorse the cheque. MSC Staff argued that the MREA repay Ms. E, and that Mr. Pereira's license be suspended or cancelled.

Panel found that Mr. Pereira committed fraudulent acts within the meaning of the REBA as defined in section 1, clauses a, c, and l, but did not direct MREA to pay out \$20,000 to Ms. E as this had technically now become a loan. Panel also subsequently recommended that Mr. Pereira be barred from being a broker for three years (from Sept. 25<sup>th</sup> 2018) but that he be allowed to remain licensed as a realtor and be able to renew his license, on the condition that within six months he retake the real estate course as well as an Ethics course and be under close supervision for 12 months. It was during this period that he engaged in the behavior he is now being sanctioned for.

## ARGUMENT

Mr. Gingera referred to the MSC panel decisions in the Daryl Newis case and in the Wladyka case, based on the similarities between these cases and the behavior of Mr. Pereira. In both cases, fraud was perpetrated. In both cases deterrence and protecting investors from future harm are key principles behind the sanctions imposed on the registered individuals.

### a) Daryl Newis, Realtor:

Mr. Newis was sanctioned as a result of three transactions he was involved in. In each of the transactions, Mr. Newis failed to get a signed listing agreement, and failed to disclose that the homes belonged to his wife. As well for one of the properties, Mr. Newis misrepresented the condition of the roof, furnace, and hot water tank, and, was acting as both listing and selling agent. Additionally, after the sales had been completed, for two of the homes he had purchasers sign an agreement stating that they had been aware that the properties were owned by Mr. Newis' wife after the fact. In one instance he altered a document after it had been signed. Once an investigation in the matter was commenced by the MSC, Mr. Newis provided three signed listing agreements that had been created after the sale of the properties, and Mr. Newis had forged his wife's signature on each document. Under oath during the investigation Mr. Newis made a false statement in claiming his wife had signed the documents. In all, Mr. Newis committed five fraudulent acts and engaged in conduct contrary to public interest.

In this case, staff had originally sought a permanent cancellation of Mr. Newis' registration as a salesman due to the serious nature of forgery and the need to

send a signal to the industry to deter other salespeople from engaging in similar behavior. As well, Mr. Newis was assessed costs of \$18,142.92.

Counsel for Newis responded with many key points including the support of Mr. Newis' employer, his remorse, and past similar cases that involved forgery, where fines and suspensions were levied rather than cancelling registration. The panel ultimately ordered that Mr. Newis' registration under REBA be suspended for 12 months, ordered that he pay costs of \$14,542.92, and retake the Manitoba Real Estate Salesperson course before re-registering.

b) Jack Wladyka, financial advisor:

Jack Wladyka was sanctioned as a result of depositing client moneys into his personal account and creating false statements on corporate letterhead. In 2005, Jack Wladyka was a Branch Manager and advisor with Dundee Private Investors Inc., having been in the industry since 1992. While at Dundee, Mr. Wladyka had set up accounts under the name of Dundee Wealth Management, or combined names of Dundee Wealth Management and Jack Wladyka at TD Canada Trust and Steinbach Credit Union (SCU). Mr. Wladyka also had personal accounts and loans at these institutions. In the fall of 2005, SCU advised Mr. Wladyka that more collateral was required for his loans. At the same time, Mr. Wladyka was to repay a loan to clients (the Wingates) for \$500,000; the same clients had also understood they had 'bought' a GIC for \$225,000; however, the proceeds of this cheque were deposited to Mr. Wladyka's personal account.

During this period, Mr. Wladyka met Rose Rudko, an 83 year old widow with no children. She 'bought' a GIC from Mr. Wladyka for over \$3.3 Million. The money was forwarded by cheques made out to Dundee Wealth and deposited by Mr. Wladyka to his personal TD account. Mr. Wladyka then used some of these funds to repay his clients \$500,000, which they gave back to him for the purchase of another GIC. Funds were subsequently moved between the two financial institutions, with Mr. Wladyka's credit being extended even further by the SCU.

In 2006 Rose Rudko gave Mr. Wladyka more money, and was receiving statements on Dundee Private Investors letterhead showing her balance. By 2007 Mrs. Rudko became concerned over not having received T5 statements and alerted the SCU. By March the MSC was investigating; through this process the fraud against the Wingates was also uncovered.

Sanctions included denial of access to exemptions under the Securities Act, being prohibited from acting as an officer or director of an issuer, paying an administrative penalty of \$100,000, and costs of \$7,500. At this point Mr. Wladyka was no longer registered to operate in the securities industry.

This panel is cognizant of the fact that the proceedings in the Wladyka case arise under the provision of the Manitoba Securities Act and that the proceedings before us arise under the Real Estate Brokers Act (REBA).

Notwithstanding we accept the position put forward by Mr. Gingera in argument that it is the duty and responsibility of the MSC to consider, as paramount, the protection of the public interest whether arising under the Manitoba Securities Act or REBA. The standards applicable to those parties licensed to carry on their business in Manitoba are equally applicable whether licensed under the Securities Act or under REBA.

This panel also notes that:

I. The Panel in the Newis case, cites the Ontario Securities Commission (OSC) Obasi (2011) O.S.C.B. 3012 decision wherein:

- a) “The Deputy Director of the Ontario Securities Commission noted that the objective of the OSC in assessing sanctions is not just to punish past conduct. At para 18: “rather, the Commission must act in a protective and preventative manner to restrain future conduct that may be harmful....”
- b) The Deputy Director also noted the role of general deterrence in assessing sanctions by referring to Re Dornford (1989) 21 OSCB 7345:

“In our view, taking into account general deterrence .... would not be for the purpose of punishing Dornford ... but rather for ... the further protection of the marketplace not only from the actions of Mr. Dornford but also breaches of trust by others.”

II. Mr. Gingera cited Newis at page 6, wherein that Panel states:

“Sanctions should have the aim of protecting the public from future transgressions by the respondent(s) as well as deterring others from similar conduct.”

III. The Panel accepts that as in the Newis decision, an administrative penalty should deter others from engaging in similar improper conduct. The Cartaway Decision of The Supreme Court of Canada (2004) 1SCR672, notes:

“It may well be that the regulation of market behaviour only works effectively when securities commissions impose ex post sanctions that deter forward looking market participants from engaging in similar wrongdoing. That is a matter that falls squarely within the expertise of securities commissions, which have a special responsibility in protecting the public from being defrauded and preserving the confidence in our capital markets”. (para 62)

IV. We agree with Mr. Gingera that the points set out in paragraph 55 of the Wladyka decision are equally relevant in determining what sanctions may be applicable in the case before us. It is important to repeat part of paragraph 55 as follows:

- the seriousness of the allegations provided against the respondent
- the respondent’s past conduct, including prior sanctions
- mitigating factors
- the respondent’s experience in the capital markets
- the level of the respondent’s activity in the capital markets

- whether the respondent recognizes the seriousness of the improper activity
- the harm suffered by investors as a result of the respondent's activities
- the benefits received by the respondent as a result of the improper activity
- the risk to investors and the capital markets in the jurisdiction, were the respondent to continue to operate in the capital markets in the jurisdiction
- the damage caused to the integrity of the capital markets in the jurisdiction by the respondent's improper activities
- the need to deter not only those involved in the case being considered, but also any others who participate in the capital markets from engaging in similar or improper activity
- the need to alert others to the consequences of inappropriate activities to those who are permitted to participate in the capital markets, and
- previous decisions made in similar circumstances.

We have considered:

1. Mr. Pereira's "past conduct including prior sanctions" imposed by previous MSC panels as to his conduct; and
2. Mr. Pereira's complete failure, indeed his outright refusal, to recognize and abide by the rules and principles established by which parties operating under REBA are to conduct themselves; and
3. Mr. Pereira's intentional misrepresentation, forgery and fraud;

and concluded that it is clearly in the public interest that Mr. Pereira should not be permitted to hold any license under REBA.

### COSTS

Mr. Gingera explained the costs in detail and indicated that they were arrived at in a conservative manner. Mr. Pereira made no comment with respect to the costs.

### OBSERVATIONS

Mr. Gingera filed with this Panel three previous MSC decisions dealing with Mr. Pereira as a real estate salesperson licensed under REBA and one MSC decision on Mr. Newis, also a real estate salesperson licensed under REBA. Those decisions make no mention of either Pereira's broker or Newis' broker who would have been licensed under REBA as required in order for Pereira and Newis to be licensed under REBA. Clearly, in the three Pereira cases, in the Newis case, and in the case before us there were no allegations made against their brokers.

However, this Panel notes REBA establishes a clear employer/employee relationship that shall govern the salesperson/broker relationship that is established once parties are licensed under REBA.

In our opinion, it would be of some assistance to future MSC Panels if REBA's Registrar could simply confirm that, in any investigation under REBA, staff had examined the responsibility of a broker to hire and supervise his staff including any salespersons.

## DECISION

This panel finds Mr. Pereira has committed fraudulent acts as defined in REBA and has failed to meet concerns of this panel in protecting the public interest and orders:

- 1) Pursuant to subsection 39.1(2) of REBA that MREA pay the sum of \$1,500.00 to each of K.A. and F.T. from the Real Estate Reimbursement Fund;
- 2) Mr. Pereira pay costs in the sum of \$7,400.00 on or before February 15<sup>th</sup>, 2021;
- 3) Mr. Pereira be permanently barred from applying for registration in any capacity under the provisions of the Real Estate Brokers Act.

“J.T. McJannet, Q.C.”  
J.T. McJannet, Q.C.  
Panel Chair

“A.E. Martens”  
A.E. Martens  
Member

“C.D. Burns”  
C.D. Burns  
Member