



December 22, 2023

IN THE MATTER OF: THE REAL ESTATE BROKERS ACT

AND IN THE MATTER OF: THE REAL ESTATE SERVICES ACT

- and -

**IN THE MATTER OF: IN TOWNE PROPERTIES LTD. operating as THE REAL
ESTATE LOUNGE and RAVINDER GILL**

REASONS FOR DECISION

THE MANITOBA SECURITIES COMMISSION

Panel:

Panel Chair:	Mr. D.M.R. Cheop, K.C.
Members:	Ms. D.J. Metcalfe
	Mr. C.D. Burns

Appearances:

Mr. K. Sharma)	Counsel for Commission Staff
)	no appearance on behalf of IN TOWNE
)	PROPERTIES LTD. operating as THE
)	REAL ESTATE LOUNGE and RAVINDER
)	GILL

Introduction

This is a proceeding against In Towne Properties Ltd. (In Towne), operating as The Real Estate Lounge, and Ravinder Gill (Gill) pursuant to a Notice of Hearing and Statement of Allegations, both dated August 9, 2023, issued by staff (Staff) of The Manitoba Securities Commission (Commission). The Notice of Hearing requests this panel of the Commission to consider:

1. Whether or not In Towne operating as The Real Estate Lounge and/or Gill misappropriated, misapplied and/or failed to properly account for or pay to the person entitled trust monies in violation of the Trust Account Regulation and subsection 26(1) of *The Real Estate Brokers Act* (REBA) and/or section 38 of *The Real Estate Services Act* (RESA)
2. Whether or not In Towne, The Real Estate Lounge, and/or Gill committed a fraudulent act as defined under REBA and and/or RESA in relation to the handling of trust money
3. Whether or not The Manitoba Real Estate Association Inc. (MREA) should be ordered to pay to a person or persons an amount out of the Real Estate Reimbursement Fund (Fund) under subsection 65(2) of RESA pertaining to the actions of In Towne, The Real Estate Lounge, and/or Gill in connection with a trade or transaction in real estate
4. Whether pursuant to subsection 34(1) of REBA and/or subsection 59(1) of RESA it is in the public interest to order that In Towne, The Real Estate Lounge, and/or Gill pay the costs of the investigation and hearing
5. Such further and other matters and the making of such further and other orders as the Commission may deem appropriate.

In Towne and Gill were both served with the Notice of Hearing and Statement of Allegations by way of substitutional service pursuant to an Order issued by the Commission but neither appeared at the hearing (Hearing) conducted in this matter.

Background

In Towne was registered under REBA as a broker on March 18, 2008 and Gill was its designated authorized official. On June 10, 2012, In Towne registered "The Real Estate Lounge" as its trade name. At all material times until December 16, 2013, In Towne was a member of the MREA and participated in its Fund. On January 20, 2014 the registrations of both Gill and In Towne under REBA were suspended by order of the Commission and then expired on March 19, 2014. Neither Gill nor In Towne were subsequently registered under REBA or under RESA, which replaced REBA on January 1, 2022.

Under subsection 26(1) of REBA, In Towne operating as The Real Estate Lounge was required to maintain a trust account to be operated in accordance with the Act and the Regulations to the Act, including:

- depositing in the account any trust money received in connection with a trade or transaction
- keeping trust money separate and apart from other money
- disbursing trust money only in accordance with the terms upon which it is received

Mr. Allan Pamplona, Deputy Registrar for the Commission, testified that he had conducted an investigation of In Towne and Gill as a result of complaints received by Commission Staff and provided the following evidence:

The Waverly Property

N.L. and S.C. were the owners of 424 Waverly Street in Winnipeg, Manitoba (Waverly Property). NL and S.C. listed the Waverly Property for sale with In Towne operating as The Real Estate Lounge. N.L. and S.C. agreed to sell the Waverly Property with a possession date of October 1, 2013. In Towne was both the listing and selling broker under the Offer to Purchase relating to the sale. The buyer of the Waverly Property made a deposit of \$5,000.00 under the Offer to Purchase, which was to be held by In Towne until the sale of the Waverly Property was completed.

Under the Offer to Purchase, the seller of the Waverly Property was to pay a commission of \$2,500.00 plus G.S.T. to In Towne, as both listing and selling broker. This commission was to be paid from the deposit being held in trust by In Towne.

The sale of the Waverly Property was completed in October 2013. The lawyers for N.L. and S.C. attempted to contact In Towne to obtain \$2,375.00, the portion of the deposit remaining after payment of the commission to In Towne. In Towne did not pay these funds to N.L. and S.C.

The Strathboine Property

E.H. owned the property located at 17 Strathboine Crescent in Headingly, Manitoba (Strathboine Property) and listed it for sale with In Towne operating as The Real Estate Lounge. E.H. agreed to sell the Strathboine Property with a possession date of December 1, 2013 and In Towne was the selling broker under the Offer to Purchase.

Under the Offer to Purchase the buyer paid a deposit of \$15,000.00, which was to be held by In Towne until the completion of the sale of the Strathboine Property. In turn, a commission of \$11,500.00 plus G.S.T. was payable by the seller to In Towne, as listing broker, after closing, which was to be paid from the deposit being held in trust by In Towne.

The sale of the Strathboine Property was completed in December 2013. Subsequently on December 20, 2013, the lawyer acting for E.H sent a letter to In Towne requesting payment of \$2,925.00, being the amount of the deposit remaining after payment of the commission to the listing broker. In Towne never paid these funds to E.H.'s lawyer.

S.G. was the selling broker on the sale of the Strathboine Property. S.G. was entitled to be paid a commission of \$6,825.00 from the commission received by In Towne. In Towne did not pay any of this amount to S.G. despite requests to do so.

D.L. was the listing salesperson for In Towne on the sale of the Strathboine Property and, as such, was entitled to a commission of \$2,176.66 to be paid from the money held in trust by In Towne. In Towne did not pay any of this amount to D.L. despite requests to do so.

The Trust Account

Mr. Pamplona further testified at the Hearing that he reviewed the trust accounts maintained by In Towne as part of his investigation. He determined that at December 30, 2014 In Towne's trust account, which had been frozen by an order of the Commission issued on January 20, 2015, contained only \$7,060.27, representing a shortfall of \$7,241.39 (he noted that one potential claimant had not provided any evidence of the amount owing to him). He also testified that based on his investigation, the only claims against the money in the trust account were those relating to the sale of the Strathboine and Waverly Properties. Further, he advised that all of the money in the In Towne trust account had been paid to the Commission on March 23, 2015 and was being held pending disposition of this matter.

Analysis

This panel of the Commission finds that evidence adduced by Staff of the Commission establishes that In Towne and Gill, as a registered broker and authorized official respectively under REBA, misappropriated, misapplied or have failed to properly account for trust money received in connection with the sale of the Strathboine and Waverly Properties in contravention of subsection 26(1) of REBA (which obligation has been carried forward into section 38 of RESA). By doing so, In Towne and Gill have committed fraudulent acts as contemplated by both REBA and RESA in relation to the handling of trust funds.

The reimbursement Fund was originally established by the MREA under REBA and was carried forward into RESA under subsection 65(1) of the latter. RESA states, insofar as relevant, that

“When, in connection with a trade in real estate, a brokerage registered in a brokerage registration category on the basis of membership in the Manitoba Real Estate Association Inc., a director, partner, officer or employee of the person or a registrant engaged by the person

(a) is found, after an investigation under Part 4, to have committed a fraudulent act;

...the commission may, subject to the regulations, order the association to pay out of the fund any amount to a person or the commission that the order may require and the regulations may permit.”

The language in REBA was substantially the same.

The misconduct by In Towne and Gill clearly relates to a "trade in real estate", which is defined in section 1 of RESA to mean:

“a transaction or potential transaction for the purchase or sale of real estate, for the leasing of real estate or for any other form of acquisition or disposition of real estate.”

Disposition

This panel of the Commission orders that:

1. Pursuant to subsection 65(2) of RESA, the MREA pay \$7,241.39 from the Fund to the Commission, representing the shortfall in In Towne's trust account in connection with the Strathboine and Waverly Property transactions.
2. The Registrar under RESA is to consolidate the payment of \$7,241.39 with the \$7,067.27 previously received by it from In Towne's trust account and pay the amounts owing to:
 - (i) E.H., S.G. and D.L. in connection with the Strathboine Property transaction
 - (ii) N.L. and S.C. in connection with the Waverly transaction
3. Pursuant to subsection 59(1) of RESA, In Towne and Gill are to pay the costs of the investigation and Hearing in the amount of \$15,900.00.

"D.M.R. Cheop, K.C."

D.M.R. Cheop, Chair

"D.J. Metcalfe"

D.J. Metcalfe, Vice-Chair

"C.D. Burns"

C.D. Burns, Member