



THE REAL ESTATE SERVICES ACT     )  
Section 59(1)                             )  
   )

Order No. 2848  
December 28, 2023

**RAHIM OMAR MIRZA**

**WHEREAS:**

- (A) On August 30, 2023, The Manitoba Securities Commission (the “Commission”) issued an Amended Notice of Hearing (the “Amended Notice of Hearing”) giving notice of its intention to hold a hearing to consider, *inter alia*, whether or not it was in the public interest to order, pursuant to section 59(1) of *The Real Estate Services Act* (“RESA”) that the registration of Rahim Omar Mirza (“MIRZA”) as a real estate salesperson be suspended or cancelled.
- (B) On December 22, 2023, Staff of the Commission and MIRZA entered into a Settlement Agreement (the “Settlement Agreement”), which is subject to the approval of the Commission. A copy of the Settlement Agreement is attached as Schedule A.
- (C) MIRZA has consented to the issuance of this Order and has waived his right to a full hearing.
- (D) On December 28, 2023, the Commission held a hearing (the “Settlement Hearing”) to consider whether or not to approve the Settlement Agreement.
- (E) The Commission approved the Settlement Agreement at the Settlement Hearing, and is of the opinion that MIRZA has committed professional misconduct and conduct unbecoming a registrant.

**IT IS ORDERED THAT:**

- (1) The Settlement Agreement is approved.
- (2) Pursuant to section 59(1) of RESA:
  - (a) MIRZA’s registration as a real estate salesperson is suspended for 30 days. The suspension will begin on January 1, 2024, with the final day of suspension being January 31, 2024.

- (b) MIRZA will pay costs to the Commission in the amount of six thousand (\$6,000.00) dollars, on or before December 31, 2023. Payment of this amount is a condition of registration.
- (c) Conditions of registration, as determined by the Registrar, shall be imposed for one year beginning the day after the suspension of registration is concluded.
- (d) A course of education acceptable to the Registrar to be completed within one year after the day the suspension of registration begins.

**BY ORDER OF THE COMMISSION**



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**Director**

Schedule "A"

**SETTLEMENT AGREEMENT**

BETWEEN:

**RAHIM OMAR MIRZA**

- and -

**STAFF OF THE MANITOBA SECURITIES COMMISSION**

The Manitoba Securities Commission  
500 – 400 St. Mary Avenue  
Winnipeg, MB R3C 4K5

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

- and -

**THE REAL ESTATE SERVICES ACT**

- and -

**RAHIM OMAR MIRZA**

**SETTLEMENT AGREEMENT**

Staff of The Manitoba Securities Commission ("Staff") and RAHIM OMAR MIRZA ("MIRZA") have reached the following agreement (the "Agreement"):

**SECTION 1: INTRODUCTION**

- 1.1 On August 30, 2023, The Manitoba Securities Commission (the "Commission") issued an Amended Notice of Hearing (the "Amended Notice of Hearing") of Staff for a hearing under section 11(1) of *The Real Estate Brokers Act* ("REBA") or section 59(1) of *The Real Estate Services Act* ("RESA") (collectively referred to as the "Legislation") to consider, *inter alia*:
  - (a) Whether or not it is in the public interest to order, pursuant to the above noted sections of the Legislation, that the registration of MIRZA as a salesperson under the Legislation be suspended or cancelled;
  - (b) Whether or not MIRZA be required to pay the costs of and incidental to the hearing; and
  - (c) Such further and other orders as the Commission may deem appropriate.
- 1.2 Discussions have been held between MIRZA and Staff to settle the matters outlined in the Amended Notice of Hearing and Amended Statement of Allegations (collectively the "Proceedings"). A settlement has been reached based on the terms and conditions set forth in this Agreement.
- 1.3 Pursuant to the Agreement, Staff agrees to recommend to the Commission that the Proceedings initiated against MIRZA be resolved and disposed of under the terms and conditions of this Agreement. MIRZA consents to the Agreement and to the Consent Order referred to in Section 5, below.

## SECTION 2: STATEMENT OF FACTS

MIRZA acknowledges the following facts as correct:

- 2.1 At all material times, MIRZA was a resident of the City of Winnipeg, in the Province of Manitoba.
- 2.2 From October 6, 2015, to June 2, 2020, MIRZA was a registered real estate salesperson under REBA with Royal LePage Dynamic Real Estate (4395612 Manitoba Ltd. o/a) ("Royal LePage") as his broker.
- 2.3 MIRZA has been a registered real estate salesperson under RESA since January 1, 2022.
- 2.4 At all material times, Royal LePage was registered as a broker under the Legislation, and a member of The Manitoba Real Estate Association Inc., participating in the Real Estate Reimbursement Fund.
- 2.5 MP owned a condominium located at Unit 1 - 759 McMillan Avenue in Winnipeg, Manitoba (the "Condo"), being the lower unit of a two-unit condominium in what was formerly a single-family house.
- 2.6 On June 4, 2018, MP signed a listing agreement with MIRZA to sell the Condo. The listing agreement was in effect from July 3, 2018 to November 4, 2018.
- 2.7 On July 7, 2018, an offer to purchase the Condo was submitted by salesperson, LT, on behalf of her clients, DM and CM. The offer to purchase was subject to, *inter alia*, a home inspection.
- 2.8 On July 8, 2018, MP signed a property disclosure statement (the "PDS") stating that she was not aware of any cracking, shifting or movement of the structure of any building or improvements on the property, including the foundation walls and basement floor, that is not readily visible. MP provided the PDS to MIRZA, who then provided it to LT.
- 2.9 On July 16, 2018, LT approached MIRZA and asked for an extension of time for DM and CM to retain a foundation contractor to inspect the Condo. MIRZA consulted with MP, and then agreed to the extension.
- 2.10 The foundation contractor subsequently assessed the Condo and commissioned a report. The report disclosed problems with the front foundation wall.
- 2.11 Upon receiving the foundation contractor's report, DM and CM did not proceed with the sale due to the Condo's foundation issues.
- 2.12 MIRZA was aware that the foundation contractor was attending to the Condo to complete an inspection. MIRZA maintains that he was not provided with a copy of the foundation contractor's report.

- 2.13 MIRZA re-listed the Condo for sale.
- 2.14 On October 12, 2018, MIRZA entered into a limited joint representation agreement with AK and MP.
- 2.15 In entering said dual agency relationship, MIRZA owed a duty to both the buyer (AK) and the seller (MP). He was required to deal with both parties impartially and fairly, and had a duty to disclose all known material latent defects about the property.
- 2.16 Also on October 12, 2018, the following events occurred:
- (a) MIRZA showed the Condo to AK and MS.
  - (b) MIRZA did not disclose the Condo's foundation issues to AK.
  - (c) MS, who had previously completed renovations for AK at other properties, was in attendance to complete an inspection of the Condo.
  - (d) AK and MS then inspected the Condo outside of the presence of MIRZA.
  - (e) AK then made an offer to purchase (the "OTP") the Condo.
  - (f) The OTP was not subject to a home inspection, in part based upon the inspection by MS.
  - (g) AK's offer to purchase was accepted by MP.
- 2.17 On October 22, 2018, MIRZA texted AK "...just wanted to reiterate the fact that the condo building was 100% re-done in 2003 and the roof in 2015".
- 2.18 On October 25, 2018, MIRZA texted AK "we've had two other accepted offers since we listed it and those simply fell through because the buyers credit wasn't good enough to get a mortgage."
- 2.19 AK took possession of the Condo on November 14, 2018.
- 2.20 AK subsequently became aware of the Condo's foundation issues.
- 2.21 On March 3, 2019, AK met with the owner of the other unit of the Condo, JF. JF provided AK with the home inspection report commissioned by DM and CM, which he had received directly from LT.
- 2.22 JF also provided AK copies of two emails exchanged between him and MP, one dated June 12, 2018, and a reply to the June 12, 2018 email dated July 13, 2018. MIRZA was copied on the July 13, 2018 reply email, which was correspondence between JF and MIRZA's client, MP.

- 2.23 In the June 12, 2018 email, JF stated "are we going to get that structural engineer to come in to look at the foundation?...I assume we do have some big structural issues so I was thinking that should be something we do regardless of who you may sell to."
- 2.24 On July 13, 2018, MP replied, "Here I introduce Rahim MIRZA, agent for the sale...I don't believe the structural issues will be so dire that I would be sued. Having said that, the agent would like to meet you as, potential new occupants wanted to inquire about use of the basement..." The subject line of the email was "Buddha and other things".
- 2.25 On December 18, 2019, MSC Staff emailed correspondence to MIRZA requesting the following information with respect to the sale of the Condo to AK:
- (a) Details relating to any structural or foundation issues with the Condo; and
  - (b) Copies of any disclosure made by MP with respect to the sale.
- 2.26 In his response to Staff dated January 2, 2020, MIRZA stated that he was unaware of any preexisting structural or foundation issues from the seller, his client, MP, and that he had made no disclosures in that regard to AK.
- 2.27 On March 4, 2021, MIRZA was interviewed at the Manitoba Securities Commission by two investigators, JR and AT. At that time, MIRZA again stated that he was unaware of any preexisting structural or foundation issues from the previous homeowner.

### **Mitigating Factors**

- 2.28 Subsequent to said interview, and having since been provided with documents that he no longer had possession of at the time of the January 2, 2020 letter or the March 4, 2021 interview, MIRZA submitted a further letter to the Manitoba Securities Commission on March 21, 2022, which outlined that during the time the events at issue, he was going through multiple significant stressors in his personal life, including the death of his second closest family member and assisting with managing his estate. Those stressors had a significant impact upon his time and stress levels during that time.
- 2.29 MIRZA has acknowledged that while dealing with these stressors, both his personal life and work life were impacted, and that as a result of everything he was dealing with, he had forgotten information about the Condo at the time AK was purchasing it.
- 2.30 In his letter to the Manitoba Securities Commission dated March 21, 2022, MIRZA apologized to the Manitoba Securities Commission, and through the Manitoba Securities Commission to AK, as follows:

"I sincerely apologize if I had fallen below the standard expected by the MSC of a limited joint representation".

- 2.31 On August 28, 2020, AK commenced a civil action against MIRZA and MP relating to the sale of the Condo in Court of King's Bench File No. CI 20-01-28223. Before the matter was adjudicated on its merits, a settlement was reached that included terms satisfactory to all parties, including AK. The terms of settlement are confidential.

### **SECTION 3: ACKNOWLEDGMENTS**

MIRZA acknowledges that:

- 3.1 His conduct in this transaction was contrary to the public interest.
- 3.2 He failed in his primary duty to protect and promote and act in the best interests of his client, AK; and
- 3.3 That his conduct under the joint representation agreement did not meet the standard of being fair, impartial and providing full disclosure to his client AK.

### **SECTION 4: UNDERTAKING**

MIRZA undertakes and agrees to the following:

- 4.1 A 30-day suspension of registration pursuant to the Legislation to begin on January 1, 2024, with the final day of the suspension to be January 31, 2024.
- 4.2 MIRZA will pay to the Commission costs in the amount of six thousand (\$6,000.00) dollars on or before December 31, 2023. Payment of this amount is a condition of registration.
- 4.3 Conditions of registration as determined by the Registrar will be imposed for one year beginning the day after the suspension of registration is concluded.
- 4.4 A course of education on ethics as acceptable to the Registrar to be completed within one year of the day on which the suspension of registration begins.

### **SECTION 5: ORDER**

MIRZA consents to an order by the Commission (the "Order") that:

- 5.1 The Agreement be approved; and

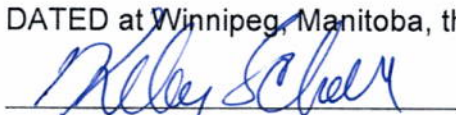


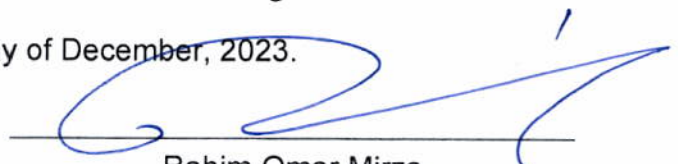
- 5.2 The approval of this Agreement and the making of the Consent Order as set out in this Settlement Agreement shall be sought at a public hearing, in camera.

## SECTION 6: WAIVER AND PROCEDURE FOR APPROVAL OF SETTLEMENT

- 6.1 Staff and MIRZA agree that, if the Commission approves this Agreement, it will constitute the entirety of the evidence to be submitted to the Commission in connection with the Proceedings, and that MIRZA hereby waives his right to a full hearing and appeal of this matter.
- 6.2 If for any reason whatsoever the Commission does not approve this Agreement or the Consent Order referred to above is not made by the Commission, Staff will be entitled to proceed with the Hearing commenced by the Notice of Hearing unaffected by this Agreement or the settlement discussions. If this Agreement is not approved or the Commission does not make the Consent Order set out above, either Staff or MIRZA will not raise in the Proceedings or in any other proceeding the terms of the Agreement.
- 6.3 Staff and MIRZA agree that if the Commission approves this Agreement and the Consent Order is made upon the terms set out in this Agreement, this Agreement will be a public document and the Commission will publish the Settlement Agreement on the Commission website.
- 6.4 MIRZA agrees that he will not raise in any proceedings this Agreement or the negotiation or process of approval of this Agreement as a basis for an attack on the Commission's jurisdiction, alleged bias, alleged unfairness, or any other challenges that may be available.
- 6.5 MIRZA further agrees that if the Commission approves this Agreement and the Consent Order is made upon the terms set out in this Agreement, MIRZA will not make any statements inconsistent with the terms of this Agreement.

DATED at Winnipeg, Manitoba, this 22<sup>nd</sup> day of December, 2023.

  
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Witness

  
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Rahim Omar Mirza

DATED at Winnipeg, Manitoba, this 22<sup>nd</sup> day of December, 2023.

Staff of The Manitoba Securities Commission  
Per:   
\_\_\_\_\_  
Director