



THE MANITOBA
SECURITIES
COMMISSION

THE REAL ESTATE BROKERS ACT)	Order No. 2733
)	
Section 11(1); 34(1))	October 23, 2017

LORIN McLACHLAN

WHEREAS:

(A) On January 12, 2017, The Manitoba Securities Commission (the "Commission") issued a Notice of Hearing (the "Notice") giving notice of its intention to hold a hearing (the "Hearing") to consider, among other things, whether it was in the public interest to suspend or cancel the registration of Lorin McLachlan ("McLachlan") as a salesperson under *The Real Estate Brokers Act* (the "Act");

(B) McLachlan and Staff of the Commission ("Staff") entered into a Settlement Agreement (the "Settlement Agreement"), a copy of which is attached as Schedule "A" dated October 23, 2017, in which Staff and McLachlan agreed to a proposed settlement in the proceedings initiated by the Notice, subject to the approval of the Commission;

(C) McLachlan has consented to the issuance of this Order and has waived her right to a full hearing;

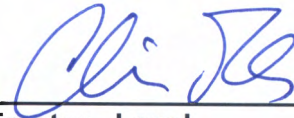
(D) The Commission has reviewed the Settlement Agreement and is of the opinion that it is in the public interest to make this Order.

IT IS ORDERED:

1. **THAT** the Settlement Agreement be and the same is hereby approved.
2. **THAT** McLachlan will make a voluntary payment to the Treasury of the Province of Manitoba in the amount of eighteen thousand seven hundred fifty (\$18,750.00) Dollars.
3. **THAT** McLachlan will pay to the Commission costs in the amount of five thousand (\$5,000.00) Dollars.
4. **THAT** McLachlan will pay the two above-noted amounts by way of payments consisting of a payment of \$1,319.44 forthwith upon Commission approval of the

Settlement Agreement with the remaining amounts payable at the rate of \$1,319.44 per month payable on the 25th day of each month, commencing in the month following the approval of this settlement by the Commission, until both amounts are fully paid. The monthly payments shall be applied proportionately between the voluntary payment and costs referred to in paragraphs 2 and 3 of this order.

BY ORDER OF THE COMMISSION

A handwritten signature in blue ink, appearing to be 'Ali J. B.', is written above a horizontal line.

Director - Legal



THE MANITOBA
SECURITIES
COMMISSION

Schedule "A"

SETTLEMENT AGREEMENT

BETWEEN:

LORIN McLACHLAN

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
R.S.M. 1987, c. R20**

and

In the Matter of Lorin McLachlan

Settlement Agreement

1. Staff of The Manitoba Securities Commission and Lorin McLachlan ("McLachlan") have reached the following agreement:

Introduction

- 2.1 On January 12, 2017, The Manitoba Securities Commission (the "Commission") issued a notice of hearing (the "Notice of Hearing") of staff for a hearing (the "Hearing") under subsection 11(1) of *The Real Estate Brokers Act* (the "Act") to consider, *inter alia*:
 - a) whether it is in the public interest to order pursuant to subsection 11(1) of the Act that the registration of McLachlan as a salesperson under the Act be suspended or cancelled;
 - b) whether it is in the public interest that McLachlan be ordered to pay the costs of the investigation and hearing;
 - c) such further and other matters as counsel may advise and the Commission may permit.
- 2.2 Discussions have been held between McLachlan and Staff of The Manitoba Securities Commission ("Staff") to settle the matters covered in the Notice of Hearing and Statement of Allegations (the "Proceedings"). A settlement (the "Settlement") has been reached based on the terms and conditions set forth herein.
- 2.3 Pursuant to the Settlement, Staff agrees to recommend to the Commission that the Proceedings initiated against McLachlan be resolved and disposed of under the terms and conditions of this Agreement. McLachlan consents to the Settlement and to the consent order referred to in section 6 below.

Agreed Statement of Facts

The Walker Property

- 3.1 McLachlan was the listing agent for a property located at 687 Walker Street (the "Walker Property"). On the MLS website, the Walker property was described as being 700 sq. ft., and was listed for \$129,900.
- 3.2 On or about June 26th 2013, P.G. and A.G. made an offer to purchase the Walker Property for \$137,000. The offer was accepted by the vendor.
- 3.3 P.G. and A.G. purchased the home believing it to be 700 sq. ft. in size.
- 3.4 In September of 2014, events led P.G. and A.G. to the realization that their home, the Walker Property, was in fact only 580 sq. ft. The 580 sq. ft. was referred to in a City of Winnipeg tax assessment. The difference in the square footage in the listing and the assessment was due to a 120 sq. ft. sunroom.
- 3.5 P.G. contacted McLachlan and complained about the discrepancy in the square footage of the Walker Property. McLachlan reattended the property and remeasured it including the sunroom which she believed to be heated, found it to be 700 sq. ft. and so advised P.G.. McLachlan advised she could contact the City but if the City determined the home was 700 sq. ft. her taxes might go up.
- 3.6 In calculating the square footage of the Walker Property, McLachlan included a front sunroom. McLachlan stated to Staff on or about May 20, 2015 that the front sunroom was heated with a baseboard heater. She also subsequently told Staff on June 4, 2015 the sunroom was heated with a permanent baseboard heater and used as a four season sunroom.
- 3.7 On or about July 21, 2015 Staff attended the Walker Property. Staff observed the sunroom, which was included in the calculation of the square footage of the Walker Property, was not heated, nor had electrical outlets.
- 3.8 McLachlan advises she had been in the house before in or about 1992 and remembered the sunroom was heated. The home was owned at the time by her Aunt and Uncle and she advises she spent a lot of time with them in the sunroom where they went to smoke.
- 3.9 At the time she listed the Walker Property she reviewed a prior listing from 1996 for the Walker Property from another agent who also listed the Walker Property as 700 square feet. She relied on her memory that the sunroom was heated and other agent's listing in arriving at a 700 sq. ft. size for the listing. McLachlan was aware of the City of Winnipeg tax assessment which showed the sq. footage of the Walker Property as 580 sq. ft. Notwithstanding this, McLachlan listed the Walker Property at 700 sq. ft. as she believed City of Winnipeg tax assessments were frequently inaccurate due to additions and renovations for which no building permit was obtained.
- 3.10 McLachlan thought that provided the sunroom was an interior room, was heated and was a four season sunroom, it could be included in the square footage calculation.

- 3.11 At the time McLachlan listed the Walker Property, she thought there was a heater in the sunroom but was not certain. She did not check to see if the sunroom had baseboard heating or electrical outlets as the room was messy and packed with stuff. Instead, she relied on her recollections and the prior listing from another agent who McLachlan advised Staff sold the property in 1996.
- 3.12 On January 24, 2017, McLachlan acknowledged to Staff she was wrong in believing the sunroom was heated with a permanent baseboard heater, had electricity or was a four season sunroom as she had not confirmed there was a baseboard heater in this room.

The Notre Dame Property

- 3.13 McLachlan was the Listing Agent of property located at 1371 Notre Dame Avenue. (the "Notre Dame Property")
- 3.14 On or about February 5, 2015, M.O. and E.O. made an offer to purchase the Notre Dame Property with a possession date of March 20, 2015. The seller accepted this offer.
- 3.15 At the time the seller accepted the offer to purchase from M.O. and E.O., title to the Notre Dame Property was not in the name of seller, Daylight Capital Corporation. M.O. and E.O. were not aware of this.
- 3.16 On or about March 19, 2015 the seller of the Notre Dame Property requested an extension of the possession date by 5 days. M.O. and E.O. agreed to this.
- 3.17 On or about March 24, 2015, the vendor requested a further extension of the possession date of one month in order to transfer title in its name. M.O. and E.O. did not agree to the requested extension. M.O. and E.O. were told by their lawyer the seller was not the registered owner of the Notre Dame Property.
- 3.18 Prior to March 24, 2015, M.O. and E.O. had given notice to their landlord they would be ending their tenancy. After being told they would not be able to take possession of the Notre Dame Property on March 25th, they asked their landlord if they could remain in their premises for a few more months.
- 3.19 M.O. and E.O. could not remain in the premises as the landlord entered into a new lease arrangement after M.O. and E.O. gave notice of their intention to leave.
- 3.20 M.O. and E.O. were required to find alternate living arrangements on short notice due to the foregoing.
- 3.21 McLachlan was unaware of the requests for an extension of the possession date for the Notre Dame Property and of M.O. and E.O. not agreeing to an extension as no one told her.
- 3.22 McLachlan admits she listed and sold the Notre Dame Property knowing the seller was not the registered owner and without conducting a title search. Daylight advised McLachlan it was a mortgagee in possession, was renovating the property and would be able to obtain title shortly. McLachlan saw renovations being carried out to the Notre Dame Property.

3.23 Title to the Notre Dame Property was not transferred to Daylight.

Acknowledgments

- 4.1 McLachlan acknowledges that:
- 4.2 She provided Staff with incorrect information concerning the Walker Property stating the sunroom in the Walker Property was heated with a permanent baseboard heater and was a four season sunroom when this was not true.
- 4.3 She failed to independently verify the proper square footage for the Walker property.
- 4.4 She listed the Notre Dame Property and allowed her client to accept an offer to purchase knowing the client did not own this property.

Undertaking

- 5.1 McLachlan undertakes and agrees to the following:
 - (a) McLachlan will make a voluntary payment to the Treasury of the Province of Manitoba in the amount of eighteen thousand seven hundred fifty (\$18,750.00) Dollars.
 - (b) McLachlan will pay to the Commission costs in the amount of five thousand (\$5,000.00) Dollars.
 - (c) McLachlan will pay the two above-noted amounts by way of payments consisting of a payment of \$1,319.44 forthwith upon Commission approval of the Settlement Agreement with the remaining amounts payable at the rate of \$1,319.44 per month payable on the 25th day of each month, commencing in the month following the approval of this settlement by the Commission, until both amounts are fully paid. The monthly payments shall be applied proportionately between the voluntary payment and costs referred to in paragraphs 5.1(a) and (b) herein.

Order

- 6.1 McLachlan consents to an order by the Commission (the "Order") that:
 - (a) the Agreement be approved.
 - (b) 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.

Waiver and Procedure for Approval of Settlement

- 7.1 Staff and McLachlan 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 McLachlan hereby waives her right to a full hearing and appeal of this matter.

- 7.2 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 McLachlan will not raise in the Proceedings or in any other proceeding the terms of the Agreement.
- 7.3 Staff and McLachlan 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.
- 7.4 McLachlan agrees that she 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.
- 7.5 McLachlan further agrees that if the Commission approves this Agreement and the Consent Order is made upon the terms set out in this Agreement, McLachlan will not make any statements inconsistent with the terms of this Agreement.

DATED at Winnipeg, Manitoba, this 23 day of October, 2017.

Steve Lewis
Witness

Lorin McLachlan
Lorin McLachlan

DATED at Winnipeg, Manitoba, this 23rd day of October, 2017.

Staff of The Manitoba Securities Commission

per: [Signature]
Director