

IN THE MATTER OF THE *Real Estate Act*, R.S.A. 2000 c. R-5

AND IN THE MATTER OF Laurent Cote, real estate associate registered with Elite Ownership Group Ltd. o/a Re/Max Elite (“Re/Max Elite”).

INTRODUCTION

1. The Executive Director of the Real Estate Council of Alberta conducted an investigation into whether the conduct of Laurent Cote, real estate associate registered with Elite Ownership Group Ltd. o/a Re/Max Elite (“**Re/Max Elite**”), is deserving of sanction and/or whether he breached the requirements of the *Real Estate Act* (the “**Act**”) or the Rules prescribed pursuant thereto (the “**Rules**”).
2. The Executive Director and Laurent Cote agree to resolve all matters against Laurent Cote on the terms and conditions set out herein.

AGREED STATEMENT OF FACTS

3. Laurent Cote (“**Mr. Cote**”) was, at all relevant times, registered with Re/Max Elite. He is currently registered with Re/Max Elite.
4. Mr. Cote has been in the industry continuously since 1977, a period of approximately 33 years and has is no prior disciplinary history
5. The complainant, D.R. (“**D.R.**”), has known personally and worked with Mr. Cote for 15-20 years. D.R. purchased and sold several properties over the years with Cote as his trusted real estate agent.
6. D.R. is known to the brokerage and a “savvy client” due to several real estate transactions he has completed with the help of Mr. Cote.
7. On or about April 21, 2004, DR., purchased an acreage property located at 19741 17 St NE. (the “**subject property**”)
8. In November 2006, investors, M.G. and M.B. purchased a property next door to the subject property with the assistance of Mr. Cote, and wished to acquire other properties in the area.
9. As a result of his buyer’s enquiry and his past relationship, Mr. Cote approached D.R. to determine if he was interested in selling his property.

10. D.R. demonstrated his interest in selling and was aware of the sale and price of his neighbor's property. D.R. was also aware that the property next door had significant improvements.
11. There is no information respecting what, if any instructions were sought or provided to Mr. Cote from his buyer clients respecting the scope and nature of his discussion with potential sellers in the area. Some discussion with respect to value occurred between D.R. and Mr. Cote.
12. On or around November 25, 2006, D.R. listed his property for \$775,000.
13. Mr. Cote and D.R. completed a standard MLS listing contract, however it is evident in the circumstances that the intention was not to use the MLS system as potential buyers already existed.
14. As such the MLS listing contract was modified by a handwritten notation, initialed by D.R., adding the word "Exclusive" to the title. Other references to the MLS system however, such as those at part 11 were not removed.
15. Section 11.1 of the listing contract outlines the duties of the brokerage, and includes an obligation of the brokerage to "... market the property through the Multiple Listing service (MLS) operated by the Board."
16. The general practice of the brokerage, Re/Max Elite is to utilize a "Brokerage Agreement" or modify an MLS listing agreement as done by Mr. Cote, but remove section 11.1.
17. On or about November 25, 2006, an "Agency Explanation & Acknowledgment" form was signed by M.G. and M.B. ("**the buyers**").
18. On or about November 25, 2006, an "Informed Dual Agency" consent form was signed by the buyers.
19. On or about November 25, 2006, at 8:30 PM, purchase contract number 222184 was created by Mr. Cote on behalf of the buyers for a purchase price \$675,000. The offer was conditional on financing.
20. Mr. Cote and D.R. discussed the particulars of the offer and a potential counter offer.
21. D.R. contemplated a counter offer at \$750,000.00 but rejected it as Cote indicated that he did not think the purchasers would accept. As a result a price of \$725,000.00 was chosen.
22. On November 26, 2006, at approximately 5:10 p.m. Mr. Cote was instructed to attend at D.R. friend's house to execute the counter-offer as discussed. Mr. Cote attended and found D.R. drinking with his friends.

23. D.R. asserts that, at the time of signing he was intoxicated, though this was refuted by Mr. Cote and other individuals in attendance.
24. On or about November 26, 2006, Mr. Cote had D.R. execute the "Informed Dual Agency Consent" form.
25. Mr. Cote and D.R. had historically completed several previous transactions involving dual agency.
26. On or about November 27, 2006, at 10:00 AM, the buyer's accepted the counter offer and final signing was completed by them.
27. On or about December 5, 2006, a promissory note in the amount of \$13,870.00 was written by and in favor of Mr. Cote, and specifically charging the subject property. Evidently these amounts were owed by D.R. to Mr. Cote as a result of pre-existing personal loans.
28. On or about December 6, 2006, a caveat supported by the promissory note, was registered against the subject property by Mr. Cote, in the amount of \$13,780.00.
29. On or about December 11, 2006, a notice to purchase contract 222184 was completed by Cote, and signed by the buyers waiving the financing condition.
30. On or about March 5, 2007, title was transferred to the buyer's.
31. On or about November 2007 the property was subsequently sold for amounts in excess of \$1,000,000.00.
32. On or about December 11, 2008, a historical opinion as to value was performed by G.D., of Downey and Associates. The Land value, absent improvements was assessed at approximately \$600,000.00. It was determined by RECA that the sale of the property was appropriate and consistent with the market value.

CONCLUSION

33. By reason of the matters described herein, Laurent Cote's conduct is deserving of sanction in that he:
 - a) Failed to fulfill his fiduciary obligations to his client's while in a dual agency contrary to section 41(d) of the Rules made pursuant to the *Real Estate Act* (as it then was), the particulars of which are that Cote:
 - Provided advice and counsel to his seller respecting the terms of a counter offer, including that the buyer may be prepared to accept a price higher than that disclosed in the offer to purchase.

- b) Failed to assure that all relevant documentation met the legislative requirements found under the Act, Regulations, Rules and Bylaws contrary to section 53(b) of the Rules made pursuant to the *Real Estate Act* (as it then was), the particulars of which are that Cote:
- The written service agreement, “Exclusive Listing Contract” misstated the services to be provided by the brokerage, indicating that the property would be marketed through the MLS system, which it was not the intention of the parties to do.
- c) Failed to disclose to his clients, at his earliest opportunity any conflict of interest he acquired during the course of providing services, contrary to section 41(f)) of the Rules made pursuant to the *Real Estate Act* (as it then was), the particulars of which are that Cote:
- Failed to advise all parties to the trade of the interest in the land acquired by Cote through the registration of a caveat on the title of the subject land prior to closing of the transaction; And failed to refer the seller to independent advice prior to acquiring the interest.

SETTLEMENT TERMS

34. It is agreed that the following mitigating factors are relevant to the assessment of fines in this case:
- a. Mr. Cote now admits the conduct alleged and acknowledges the contraventions and the potential for harm to the individuals involved and the integrity of the industry;
 - b. Mr. Cote was cooperative and forthcoming throughout the inquiry into this matter;
 - c. Mr. Cote has agreed to forego the time and expense of a hearing, saving witnesses the inconvenience and stress of attending at a hearing of the matter, by entering into the within Consent Agreement;
 - d. Mr. Cote has enjoyed a long period of service in the industry without prior disciplinary action;
 - e. The interest in land crystallized concurrently with, or after the sale became firm, and therefore there is no evidence of prejudice to either the buyer or seller;
 - f. The interest in land was granted as security for personal loans, and did not exist prior to negotiation of the transaction;

AFFIDAVIT OF EXECUTION

CANADA) I, B.N. of
))
PROVINCE OF ALBERTA) the City of Edmonton, in the Province of Alberta
))
TO WIT:) MAKE OATH AND SAY:

1. THAT I was personally present and did see Laurent Cote, named in the annexed instrument, who is personally known to me to be the person named therein, duly sign and execute the same for the purpose named therein.

2. THAT the same was executed at the City of Edmonton, in the Province of Alberta, and that I am the subscribing witness thereto.

3. THAT I know the said party and he is in my belief of the full age of eighteen years.

SWORN BEFORE ME at the City)
of Edmonton, in the Province of)
Alberta this 3 day of)
August, 2010.)
) *B.N.*
) (signature of witness)
)
)
M.W.)
A Commissioner for Oaths in and)
for the Province of Alberta)