

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

**AND IN THE MATTER OF SOLOMON DAVIES, then broker registered
with Solomon Davies and Associate Realtors INC o/a Realty Executives
Supreme**

INTRODUCTION

1. The Executive Director of the Real Estate Council of Alberta conducted an investigation into whether the conduct of Solomon Davies, at all relevant times broker registered with Solomon Davies and Associate Realtors INC o/a Realty Executives Supreme ("**Realty Executives Supreme**") is deserving of sanction and/or whether he breached the requirements of the *Real Estate Act*, RSA 2000, c. R-5 (the "**Act**") or the Rules prescribed pursuant thereto (the "**Rules**").
2. The Executive Director and Solomon Davies agree to resolve all matters against Solomon Davies on the terms and conditions set out herein.

AGREED STATEMENT OF FACTS

3. Solomon Davies ("**Davies**") was, at all relevant times, registered with Realty Executives Supreme as a broker. Davies is currently registered as an associate broker with Elite Ownership Group LTD. o/a Remax Elite. Davies has been registered with the Real Estate Council of Alberta since December 4, 2003.
4. Davies has prior discipline history with RECA. On June 7, 2011, an Administrative Penalty was issued to Davies for failing to maintain business and accounting records and books for a period of 3 years after they came into existence.
5. On June 23, 2008, B.G. and S.N. entered into a Purchase Contract prepared by M.K., an associate at Realty Executives Supreme, for a property located at 14924 Miller BV, Edmonton, Alberta (the "**Miller Property**"). The contract had a financing condition date of June 30, 2008.
6. Despite attempts to obtain a mortgage through CIBC and TD Bank, B.G. and S.N. were unable to get financing for the purchase of the M. Property and the Purchase Contract was terminated.

7. On July 7, 2008, B.G. and S.N. entered into an Exclusive Buyer Brokerage Agreement with Realty Executives Supreme.
8. Shortly after the sale fell through for the M. Property, B.G. and S.N. informed M.K. that they had found someone who could get them approved for a mortgage. Her name was F.H. of "M. Consulting Group". They had got her name from a friend named J.V.
9. On July 12, 2008, B.G. and S.N. made an offer to purchase 5237 154A Ave, Edmonton, Alberta (the "**Subject Property**") for a purchase price of \$380,000.00.
10. F.H. advised B.G. that she required a deposit to secure the mortgage funds. On July 21, 2008, B.G. provided F.H. with a certified cheque payable to M. Consulting Group for \$3,350.00.
11. M.K. spoke to Davies about the money that F.H. had requested from B.G. Davies advised him that some private lenders who deal with individuals with bad credit do charge fees. Davies did not advise M.K. of any risks or concerns with his client paying the requested mortgage deposit, nor did he instruct him to take any steps to ensure that F.H. was in fact a private lender and therefore entitled to charge a fee.
12. Davies called F.H. and she told him that she was a "mortgage specialist". Davies did not ask F.H. if she was a private lender. He informed M.K. that F.H. was not a mortgage broker but that she was trying to help his client get financing. He did not advise M.K. to review the mortgage commitment or request any documentation to confirm that the financing was in order before proceeding with the transaction given that some red flags were present.
13. The sale of the Subject Property was finalized on August 16, 2008 for a purchase price of \$390,000.00 with an initial deposit of \$1,000.00 and an additional deposit of \$5,000.00. The financing and property inspection condition date was August 22, 2008, and the closing date was September 30, 2008.
14. On August 16, 2008, M.K. faxed the completed Purchase Contract for the Subject Property to F.H.
15. B.G. paid the initial deposit of \$1,000.00 by cheque dated August 18, 2008.
16. B.G. paid the additional deposit of \$5,000.00 by a Servus Credit Union bank draft on August 22, 2008.

17. On the condition day, M.K. was advised by B.G. that his financing was approved. M.K. then called F.H. and she verbally confirmed that the "financing was good" and that it was "ok to remove the conditions". M.K. did not obtain a copy of the mortgage commitment or request any paperwork from F.H. to confirm the financing was in order. M.K. completed a Notice of Waiver of Condition and had B.G. and S.N. sign it.
18. Upon receiving the Notice of Waiver from B.G. and S.N., the M.'s put an offer and a deposit on a property.
19. Approximately 2 weeks prior to the closing date, M.K. was contacted by the seller's agent and advised that lawyer had not yet received any paperwork from the mortgage broker.
20. On or around September 15, 2008, M.K. started calling F.H. and was unable to get ahold of her or get any confirmation that she had processed the mortgage paperwork.
21. On September 18, 2008, M. K. went to F.H.'s house and was advised by her brother A. that F.H. was in the hospital having surgery.
22. On September 19, 2008, M.K. met with A. again was advised that F.H. had been arrested for impaired driving and was in custody.
23. At this time, M.K. saw the mortgage commitment that B.G. had signed with F.H. for the first time and realized that the property information and the down payment listed on the form were incorrect.
24. Despite subsequent attempts to get mortgage approval through different brokers, B.G. was not able to get approved for financing by the closing date of September 30, 2008, and the purchase of the Subject Property did not proceed.
25. B.G. never received the deposit that he provided to F.H. back. The \$6,000.00 deposit that B.G. paid was forfeited to the M's and the M's lost the \$25,000 deposit that they had put on the property they were going to purchase before the sale of the Subject Property fell through.

CONCLUSION

26. By reason of the matters described herein, Solomon Davies' conduct is deserving of sanction in that he:

a) Failed to ensure there was an adequate level of supervision for associates within the brokerage, contrary to Rule 51(1)(e) of the Rules:

- M.K. came to Davies for advice regarding F.H and Davies failed to advise him properly based on the circumstances. Davies found out that F.H. was not a licensed mortgage broker and merely advised M.K. that some private lenders charge fees. He made an assumption that she was charging the fee because she was a private lender but did not take F.H. was in fact a private lender and not acting as an unlicensed mortgage broker (see paragraphs 11 and 12).
- Davies failed to supervise the transaction and ensure that M.K. fulfilled his fiduciary obligations given the circumstances. He knew that F.H. wasn't licensed as a mortgage broker and that B.G. and S.N. were denied for financing previously. He was not familiar with F.H. or her company. Despite this, he failed to ensure M.K. obtained any confirmation of a legitimate source of financing prior to advising his client to remove the financing condition (see paragraphs 12-17).

SETTLEMENT TERMS

27. It is agreed that the following mitigating factors are relevant to the assessment of fines in this case:

- i. Mr. Davies has agreed to forego the time and expense of a hearing, saving witnesses the inconvenience and stress of appearing, by entering into the within Consent Agreement

28. It is further agreed that the following aggravating factors are relevant to the assessment of fines in this case:

- i. Mr. Davies was in the role of broker and is therefore held to a higher standard. As a broker, he has a greater obligation to ensure competency and adherence to the Rules and the Act;
- ii. M.K. was a new associate with limited experience and sought specific advice from Mr. Davies with respect to F.H. but was not given adequate assistance or supervision.
- iii. Both B.G. and the M's suffered financial harm as a result of this incident.

29. In settlement of the foregoing contraventions, it is agreed that the fines are as follows:

(a) Rule 51(1)(e)	\$5,000.00
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Total	\$5,000.00
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30. Solomon Davies also agrees to pay costs in the amount of **\$500.00**.

31. Solomon Davies agrees that as a condition of his authorization to trade in real estate, he will successfully complete, within 6 months of the ratification of this Consent Agreement, the following courses or similar courses at the sole discretion of the Executive Director:

- (i) Risk Reduction & Mortgage Fraud Awareness (offered by the Alberta Real Estate Association)
- (ii) The Real Estate Law unit of the Real Estate Brokers Program (offered by the Real Estate Training Institute and the Calgary Real Estate Board)

He will notify the Real Estate Council of Alberta upon completion of the educational requirement.

32. Solomon Davies acknowledges that he has been given an opportunity to seek the advice of legal counsel and acknowledges that he is agreeing to the terms of settlement of his own free will.

33. Solomon Davies is aware that a copy of this Consent Agreement will be placed on his file and may be reviewed and considered in any future disciplinary proceedings.

34. Solomon Davies is aware that the Real Estate Council of Alberta may publish the contents of this Consent Agreement.

35. Solomon Davies hereby waives any rights he may have under the *Real Estate Act* or other legislation or otherwise to a review, hearing, appeal, or other judicial proceeding involving the matter referred to herein.

36. These settlement terms are intended to resolve all matters described herein and, subject to the approval of the Hearing Panel, the Executive

Director will take no further action under the *Real Estate Act* or before the courts in this regard.

IN WITNESS WHEREOF the undersigned agree and accept the terms and conditions of this settlement this 7 day of December, 2011.

Signed and delivered)
in the presence of)
)
)
C.P.)
Witness to the signature) **Solomon Davies**
of Solomon Davies)

The Executive Director recommends to the Hearing Panel the proposed terms of settlement based on the Agreed Statement of Facts.

REAL ESTATE COUNCIL OF ALBERTA

P.F. Per:
Witness to the signature of Bob Myroniuk *Bob Myroniuk*
Executive Director

Recommendation Approved X
Recommendation Denied

DATED at the City of Calgary in the Province of Alberta this 26th day of January, 2012.

REAL ESTATE COUNCIL OF ALBERTA

Per: *Marsha Graham*
Hearing Panel Chairperson

Cc: Shannon Patterson
Remax Elite

AFFIDAVIT OF EXECUTION

CANADA) I, C.P. 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 Solomon Davies, 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 7 day of)
December, 2011.)
) C.P.
) (signature of witness)
)
M.W.)
A Commissioner for Oaths in and)
for the Province of Alberta)