

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

AND IN THE MATTER OF John McNeill, a Real Estate Associate with
Royal LePage Foothills

INTRODUCTION

1. The Executive Director of the Real Estate Council of Alberta (hereinafter "RECA") conducted an investigation into whether the conduct of John McNeill (hereinafter "Mr. McNeill"), Associate Real Estate Agent with Royal LePage Foothills (hereinafter "Royal LePage"), and previously an Associate Real Estate Agent with Re/Max Realty Professionals (hereinafter "Re/Max"), is deserving of sanction and/or whether he breached the requirements of the *Real Estate Act* (hereinafter "the Act") or the former Rules prescribed pursuant thereto (hereinafter "the former Rules") or the former *Code of Conduct* prescribed pursuant thereto (hereinafter "the former *Code of Conduct*").
2. The Executive Director and Mr. McNeill agree to resolve all matters against Mr. McNeill on the terms and conditions set out herein.

AGREED STATEMENT OF FACTS

1. At the time of the transaction, Mr. McNeill was a registered real estate agent with Re/Max. Mr. McNeill is currently registered as a real estate agent with Royal LePage.
2. On May 16, 2006, J.T. and B.T. (hereinafter the "T's") entered into a Residential Real Estate Listing Contract with Mr. McNeill and his business associate, B.M. for a home located at 429 Crescent Boulevard S.W., in Calgary, Alberta (hereinafter the "Home"). The list price of the Home was \$899,000.00, with a possession date of August 3, 2006.
3. In August 2006, S.M contacted B.M. and Mr. McNeill to list her property located at 3609 - 6 Street S.W., in Calgary, Alberta.
4. While discussing the listing of S.M.'s home, B.M. mentioned the Ts' listing to S.M. In August 2006, S.M. went to view the Home on two occasions. During the initial viewing, while viewing the condition of the roof, which needed attention or replacement, Mr. McNeill expressed surprise at the condition of the roof and advised S.M. that he had represented the T's in their purchase of the Home 3.5 years prior and his recollection of the previous inspection report was that the Home had been in good condition and had checked out well.
5. Mr. McNeill told S.M. he would see if the previous home inspection report was available. Mr. McNeill asked the T's about the inspection report when he presented them with S.M.'s initial offer to purchase. According to Mr. McNeill, the T's advised him that they had packed the inspection report along with their other belongings and that it was now in Kelowna, British Columbia. Mr. McNeill did not follow up with Home-Alyze, the prior

home inspector, in order to attempt to secure a copy of the inspection report for S.M. S.M. was never provided with a copy of the inspection report, despite her request that it be provided to her.

6. After viewing the Home, S.M. inquired about viewing another house located on Stanley Drive S.W. in Calgary, Alberta. According to her, she was advised by B.M. and Mr. McNeill that the “house was beat”, and was probably not what she wanted.
7. S.M. made an offer to purchase the Home on August 16, 2006. It was a term of the offer to purchase that S.M. would lease the house from September 1, 2006 to November 1, 2006, for \$3,500.00 per month. The lease term was subsequently amended to a lease period of September 1, 2006 to December 1, 2006.
8. In September and October 2006, S.M. began to notice a strong smell in the Home, and later found a rodent carcass behind the kitchen cupboards. According to S.M., she began to develop severe allergic reactions and asthma attacks and by late October 2006, she and her children left the Home.
9. On October 27, 2006, S.M. retained a home inspector, Chinook Home Inspection Service Inc. The home inspection revealed, among other things, a significant and long-standing rodent infestation, a roof in need of replacement, and carbon monoxide leakage from the furnace to the rooms downstairs.
10. When S.M. told B.M. and Mr. McNeill about the rodent problems, they advised the T’s, who agreed to hire an exterminator at their expense. They also advised S.M. to close the purchase on December 1, 2006. S.M. refused to do so.
11. When S.M. did not complete the purchase of the Home, it was re-listed on December 2, 2006 for \$799,900.00, and sold on March 29, 2007 for \$770,000.00. The new purchasers took possession of the Home on May 31, 2007.
12. Mr. McNeill admitted to the RECA investigator during his interview on February 3, 2009, that in hindsight, he and B.M. should have insisted that S.M. obtain an independent home inspection.

CONCLUSION

By reason of the matters described herein, Mr. McNeill’s conduct is deserving of sanction in that he committed the following breaches:

- (a) breach of former *Code of Conduct* (1999) sections 2(b) and 2(e), failing to act in his client’s best interests by (i) making a statement concerning the condition of the Home based on a previous inspection report which he did not verify to be true and which he ought to have known may be relied upon, (ii) failing to make sufficient efforts to secure a copy of the prior home inspection report despite representing that he would do so and despite his client’s request, and (iii) failing to advise his client to obtain an independent home inspection once he learned he was unable to provide his client with a copy of the prior home inspection report.

SETTLEMENT TERMS

1. In settlement of these issues, Mr. McNeill will immediately pay to RECA a fine in the amount of \$1,800.00, together with costs in the amount of \$200.00.
2. Mr. McNeill agrees that as a condition of his authorization to trade in real estate, he will, within six (6) months of ratification of this Agreement by the Hearing Panel, successfully complete the Alberta Real Estate Association course "Professional Responsibilities" or a similar course at the sole discretion of the Executive Director.
3. Mr. McNeill acknowledges that he has obtained the advice of legal counsel and acknowledges that he is agreeing to the terms of settlement of his own free will.
4. Mr. McNeill is aware that a copy of the Consent Agreement will be placed on his file and may be reviewed and considered in any future disciplinary proceedings.
5. Mr. McNeill is aware that RECA may publish the contents of this Consent Agreement.
6. Mr. McNeill hereby waives any rights he may have under the Act or otherwise to a review, hearing, appeal or other judicial proceeding involving the matter referred to herein.
7. 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 Act or before the courts in this regard.

IN WITNESS WHEREOF the undersigned agree and accept the terms and conditions of this settlement this 23rd day of November, 2010.

Signed and delivered)
 in the presence of:)
)
)
 T.Z.)
 Witness to the signature)
 of Mr. McNeill)

JOHN MCNEILL

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

V.H.
Witness to the signature
of Bob Myroniuk

Per: *Bob Myroniuk*
Executive Director

Recommendation Approved X

Recommendation Denied

DATED at the City of Calgary, in the Province of Alberta this 20th day of
January, 2011.

REAL ESTATE COUNCIL OF ALBERTA

Per: *Cheryl King*
Hearing Panel Chairperson

AFFIDAVIT OF EXECUTION

CANADA)	I, T.Z. of
)	
PROVINCE OF ALBERTA)	the City of Calgary, in the Province of Alberta
)	
TO WIT:)	MAKE OATH AND SAY:

1. THAT I was personally present and did see John McNeill, named in the within 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 Calgary, 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 Calgary, in the Province of)	
Alberta this 23 day of)	
November, A.D. 2010)	
)	<i>T.H.</i>
)	
)	
)	
<i>M.S.</i>)	
A COMMISSIONER FOR OATHS)	
in and for the Province of Alberta)	