

REAL ESTATE COUNCIL OF ALBERTA
NOTICE OF ADMINISTRATIVE PENALTY

To: Michael McNeil, Broker
c/o Esquire Realty Inc. o/a Esquire Management Group
#200, 12406 - 112 Avenue
Edmonton AB T5M 2S9

In accordance with s. 39 and s. 83 of the Real Estate Act R.S.A. 2000 c. R-5 (the "**Act**") and the Bylaws of the Real Estate Act, the Executive Director of the Real Estate Council of Alberta has determined that there is sufficient evidence of conduct deserving of sanction in regard to you, Michael McNeil, at all relevant times, broker, registered with Esquire Realty Inc. o/a Esquire Management Group, to assess an Administrative Penalty. The evidence giving rise to the Executive Director's decision is as follows:

On or about April 3, 2007 Michael McNeil met with E.W. and H.S. to discuss the marketing of their property. Previous to this E.W. and Michael McNeil had met and discussed the listing and commissions. Mr. McNeil states that they had agreed to a 5% commission. After the three parties met to discuss the listing contract Mr. McNeil states that they agreed to a 4% commission. Because there was some discussion on various aspects of the contract, Mr. McNeil states that he left the original contract with the sellers and took a copy with him. The copy had the sellers' signatures, but it was not witnessed because of the uncertainty on some issues. The sellers' initials were on the section that indicates that they had received a copy of the contract.

On April 5, 2007, Mr. McNeil states that he changed the 5% commission to 4% and left the contract at the sellers' apartment. No one was home. Mr. McNeil listed the property on MLS on April 10, 2007 and the property was sold on April 16, 2007. Changes to the contract were not initialed.

The Sellers indicate that they understood that the commissions would be 3%. They indicate that they did not receive a copy of the contract until after the sale. They requested the original contract, during sale negotiations, but did not receive one. There were several emails and faxes exchanged in attempting to resolve the commission dispute. The matter is still in the civil courts.

The Executive Director believes this conduct is in contravention of Section 43(2) of the Rules made pursuant to the Real Estate Act and is conduct deserving of sanction.

Section 43(2) of the Rules states:

s. 43 (2) Every written service agreement shall:

- a) be signed by the relevant parties;*
- b) clearly show all terms and conditions of the agreement and shall include:*
 - (i) the names of the parties to the agreement;*
 - (ii) if applicable, the address or legal description of the property affected by the agreement;*
 - (iii) if applicable, the date on which the agreement will become effective;*
 - (iv) the duration of the agreement;*
 - (v) the services to be provided by the brokerage or real estate appraiser;*
 - (vi) the responsibilities of each party to the agreement;*
 - (vii) the use and distribution of personal or confidential information;*
 - (viii) the amount or method of calculating the remuneration or alternate compensation to be paid and the circumstances on which it will be payable;*
 - (ix) provisions for the termination of the agreement; and*
- c) provide that any amendment or addition to the terms of the agreement shall be in writing and signed by the relevant parties.*

In accordance with s. 39 and s. 83 of the Real Estate Act and Part 4 of the Bylaws of the Real Estate Act, an Administrative Penalty in the amount of **\$1000.00** has been assessed against Michael McNeil, broker, for this contravention.

Payment of this Administrative Penalty shall be accepted by the Executive Director as complete satisfaction of the amount of the penalty and no further proceedings under Part 6 of the Real Estate Act will be taken against you in respect of the contravention. A person who pays an Administrative Penalty may not be charged under the Act with an offence in respect of those contraventions.

This sum is payable to the Real Estate Council of Alberta at the above noted address within thirty (30) days of the date of issuance of this Notice of Administrative Penalty. If you fail to pay the amount set out in this notice, the Executive Director may commence legal action against you to recover the amount owing in respect of the Administrative Penalty as a debt due to the Real Estate Council of Alberta.

If you dispute this Notice of Administrative Penalty, in accordance with s. 33 of the bylaws, you may appeal it to a Hearing Panel. You will be given a full opportunity consistent with procedural fairness and natural justice to present evidence before the Hearing Panel and make representations in relation to the contravention.

If you have any questions in regard to this Notice of Administrative Penalty, please contact Aruna Marathe, Conduct Enforcement Counsel at the Real Estate Council of Alberta.

DATED this 22nd day of February, 2010.

REAL ESTATE COUNCIL OF ALBERTA

Per:

Bob Myroniuk
Executive Director