

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

AND IN THE MATTER OF Vatan Ghumman, real estate associate registered with Re/Max Real Estate Edmonton o/a Re/Max Real Estate (“Re/Max”).

INTRODUCTION

1. The Executive Director of the Real Estate Council of Alberta conducted an investigation into whether the conduct of Vatan Ghumman (“**Ghumman**”), real estate associate registered with Re/Max Real Estate Edmonton o/a Re/Max Real Estate (“**Re/Max**”), 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**”) or the Code of Conduct prescribed pursuant thereto (the “**Code of Conduct**”).
2. The Executive Director and Vatan Ghumman agree to resolve all matters against Vatan Ghumman on the terms and conditions set out herein.

AGREED STATEMENT OF FACTS

3. Vatanpreet Ghumman (**Ghumman**) was, at all relevant times, registered with Re/Max Real Estate Edmonton, o/a Re/Max Real Estate. Ghumman is currently registered with Re/Max Real Estate as an associate.
4. There is no discipline history.
5. On or about **April 8, 2005** Ghumman prepared a 48 hour exclusive listing contract entered into between Re/Max Edmonton and 416354 Alberta Ltd. (through its principle H.R. (**H.R.**)). The listing was for the sale of a mixed commercial and residential building located at Edmonton, Alberta (**subject property**).
6. H.R. is a licensed industry member.
7. On or about **April 8, 2005**, Guhmann prepared a Commercial Real Estate Purchase Contract #36967 regarding the subject property, on behalf of A.G. (**A.G.**) and or nominee and provided the offer to H.R..
8. The contract included 2 buyer conditions, namely a due diligence condition to be completed on or before 9:00pm May 23rd, 2005, and a financing condition to be completed on or before 9:00pm May 23rd, 2005.

9. A.G. requested the inclusion of “and or nominee” in the contract terms to permit the buyer to assign his interest or bring in partners at a later time.
10. No deposit was provided with the initial offer.
11. On or about **April 12th, 2005** the seller, 416354 Alberta Ltd provided a counter-offer to A.G..
12. On or about **April 14th, 2005** the buyer, A.G., signed an informed dual agency consent form.
13. On or about **April 23rd, 2005** the seller, through H.R. signed the informed dual agency consent form.
14. Final signing occurred on or about **April 25th 2005**, and A.G. was the last party to sign the agreement.
15. It appears that at some time prior to final signing by A.G., it was evident to him that he would not be able to close on the sale. A.G. informed Ghumman that he was not going to waive conditions and close on the building.
16. With the consent of A.G., Ghumman approached C.S. (“**C.S.**”), regarding becoming a nominee. C.S. was a current or former client of Ghumman, whom he believed to be a relative of A.G. and whom he knew to be interested in a commercial purchase.
17. C.S. indicated his intention to complete the April 25th purchase as a nominee of A.G.. C.S. claimed to act on behalf of an as yet unincorporated body with at least 2 additional partners.
18. C.S. participated in the negotiation of the April 25th 2005 purchase contract, which included modifying the deposit amounts.
19. Notwithstanding C.S.’s intention to complete the contract, and A.G.’s intention not to participate in the final sale, the seller was not amended and no new contract was executed.
20. Ghumman indicated that any concerns that he had regarding proceeding with C.S., or his as yet unincorporated company as nominee were assuaged by his belief that there was a familial relationship between A.G. and C.S.. There is no familial relationship; however A.G. and C.S. appear to address each other as uncle and nephew respectively.
21. The purpose stated by all parties for not negotiating a new offer, with C.S. listed as seller, was a common fear among all parties that the seller would demand a higher price, or more favorable terms. C.S., A.G. and Ghumman all believed that the inclusion of a Nominee as buyer permitted their continuation of the original contract, notwithstanding A.G.’s current intentions.

22. On or about **April 27th, 2005** a deposit cheque detailed in contract #36967 was written in the amount of \$10,000 to Re/Max Real Estate. The signature on the cheque is C.S.. A notation on the cheque indicates it was for the down payment on the subject property.
23. On **May 23rd, 2005** an amendment to the April 25th, 2005 purchase contract #36967 was signed. The details of the amendment are as follows:
- a) The buyers due diligence condition, 8.2 is stated to have been met and the buyer waives the condition;
 - b) The buyers financing condition, 8.1 was extended from May 23rd, 2005 to May 30th, 2005 at 9:00 pm;
 - c) Closing, 4.1 is extended from June 15th, 2005 to June 30th, 2005.
24. The May 23rd, 2005 amendment is signed by A.G. as the buyer and makes no reference to C.S. or other stated nominees'.
25. A.G. indicated that he signed the May 23rd, 2005 amendment because he was instructed to do so by both C.S. and Ghumman. A.G. was concerned that the seller would want more money if a new offer was presented in the name of C.S., or his as yet, unincorporated company. A.G. understood there to be a back up offer on the building and that the position of his nominee would be prejudiced if steps were not taken on May 23rd.
26. Ghumman states that he was following the instruction of C.S., who directed him to use A.G. to sign documents. C.S. denies this assertion.
27. C.S. appears to have been aware of the amendment signed May 23rd with respect to the extension of the financing and closing date, but claims to be unaware of the waiver of the due diligence clause.
28. C.S. was aware however that the integrity of the building would be a condition of any financing, and that he would have to satisfy himself that the building would meet a minimal standard for that purpose.
29. It appears that the company which C.S. intended to become the nominee under Commercial Real Estate Purchase Contract #36967 was not yet in existence on May 23rd, 2005 and could therefore not be designated as nominee at that time.
30. On or about **May 25th, 2005** C.S. completed the registration and incorporation of **1172260 Alberta Ltd** ("1172260"), which would become the nominee to the contract.
31. Ghumman admitted some discomfort regarding the removal of financing conditions. He was aware that no environmental-engineering reports had been provided, nor had information regarding conditions of financing. He was aware and seems to have made C.S. aware that the seller would provide no extension to the contract.

32. Ghumman did not express his concerns clearly to C.S., nor direct him to outside experts to assist C.S. in assessing his risks.
33. Prior to May 30th 2005, C.S., 1172260, or its principles were provided with pre-approval for financing of the purchase from Alberta Treasury Branch subject to a property inspection and environmental assessment.
34. On or about **May 30th, 2005** a notice the April 25th, 2005 real estate purchase contract #36967 was signed by the buyer. The details of the notice are as follows:
- a) The Nominee for the buyer was confirmed in writing to be **1172260**;
 - b) The buyers financing condition, 8(1) was unilaterally waived/release as having been met;
35. The May 30th notice was signed by A.G., and the 3 principles of 1172260 on May 30th, 2005 at 7:00 pm.
36. Ghumman did not get a representative of 1172260 to sign a dual agency consent form because he felt that the status of nominee to the original purchase, and his explanation of the relationship to A.G., the primary purchaser was sufficient.
37. On or about **May 30th, 2005**, Addendum A to the April 25th, 2005 real estate purchase contract #36967 is signed. The details are as follows:
- a) A seller agrees to allow the buyers appraisers access to appraise and inspect the building prior to possession;
 - b) The seller's undertakes to provide copies of receipts for work done on boilers and repairs to the roof;
 - c) Additional deposits were to be delivered to the vendors solicitor account on or about June 1st, 2005.
38. All 3 shareholders for 1172260 executed the document on behalf of the buyers.
39. C.S. attended with Ghumman, an environmental assessor, and a commercial property inspector on or about May 30th 2005 for the purpose of performing an assessment of the property.
40. C.S. states that before the inspections could occur the seller insisted that the additional deposit of \$70,000 be provided. C.S. provided a post dated cheque, drawn from his personal account, payable June 1st 2005 in the parking lot outside the building to gain access for the inspection.
41. While no formal report was prepared until June 15th 2005, after waiver of the financing condition, C.S. was advised immediately by an accredited property inspector upon review of the building on **May 30th**, that the building had significant deficiencies, which would prevent a favorable report, would impede financing, and that the building may not even be habitable.

42. In the opinion of the property inspector information and access for inspection was limited regarding significant portions of the subject property, but that those portions observed were deeply concerning.
43. Notwithstanding that he was aware of the condition of the building, and the likely effect on his ability to acquire financing, C.S. and the other principles of 1172260 waived the financing condition on the sale.
44. The seller executed both the May 30th amendment and the May 30th addendum on or about **June 1st 2005**.
45. On or about **June 1st 2005**, Ghumman indicated to C.S. that the seller wanted the additional deposit by way of certified cheque or money order.
46. On or about **June 2nd 2005**, Ghumman returned the \$70,000.00 additional deposit cheque to C.S..
47. On or about **June 3rd, 2005** C.S. provided a money draft in the amount of \$70,000 to replace the original June 1st cheque written by C.S..
48. On or about **June 15th, 2005** an inspection report by Inspect Express Home and Building Inspections Ltd parrots the initial statements made by the inspector on sight.
49. As a result of a very poor resulting inspection, C.S. stated he did not want to buy the building any longer and that suitable financing could not be found. He therefore requested the return of his deposit.

CONCLUSION

50. By reason of the matters described herein, Vatan Ghumman's conduct is deserving of sanction in that he:
 - a) Did not use best efforts to ensure that his client had independent advice when a prudent industry member would conclude a client may be in a vulnerable position contrary to section 2(k) of the Code of Conduct (as it then was), the particulars of which are that Ghumman:
 - Ghumman failed to direct or advise his buyer client to seek or obtain independent advice prior to waiving an unsatisfied financing condition that, in the circumstance, his client was unable to satisfy.
 - b) Did not use his best efforts to ensure that his role in the impugned transaction was clearly understood by all the parties to the transaction, contrary to section 3(b) of the Code of Conduct (as it then was), the particulars of which are that Ghumman:

- Failed to adequately assure that his role in the transaction was articulated to the corporate buyer assignee.

SETTLEMENT TERMS

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

- a. Mr. Ghumman admits the conduct alleged and acknowledges the seriousness of the contraventions and the harm caused to the individuals involved and the integrity of the industry;
- b. Mr. Ghumman 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; and
- c. Mr. Ghumman is not a mortgage professional and was subject to duties that were *de facto* limited through a dual agency agreement.

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

- a. The matter of the buyer’s lost deposit has been the subject of protracted litigation, at significant cost to all parties, that could have been avoided but for the breach of the Real Estate Act;
- b. The buyer suffered a significant financial loss attributable, in part to a lack of clarity in representative relationship.

53. In settlement of these issues, Vatan Ghumman agrees that the fines for each breach and contravention are assessed as follows:

- | | |
|----------------------------------|-------------------|
| a. s.2(k) of the Code of Conduct | \$1,500.00 |
| b. s.3(b) of the Code of Conduct | <u>\$1,500.00</u> |

Total Fines	\$3,000.00
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54. It is agreed that costs of the investigation will be paid by Mr. Ghumman in the amount of **\$1,000.00**.

55. Vatan Ghumman agrees that as a condition of his authorization to trade in real estate, he will, within six (6) months of the ratification of this Consent Agreement by the Hearing Panel, successfully complete the Representative Relationships course of the Real Estate Associate Program, Phase 2, Section 3 offered by the

Alberta Real Estate Association, or a similar course or courses at the sole discretion of the Executive Director.

56. Vatan Ghumman 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.
57. Vatan Ghumman 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.
58. Vatan Ghumman is aware the Real Estate Council of Alberta may publish the contents of this Consent Agreement.
59. Vatan Ghumman 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.
60. 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.

AFFIDAVIT OF EXECUTION

CANADA) I, R.M. 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 Vatan Ghumman, 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)
Edmonton this 17th day of)
May, 2010.)
)
) *R.M.*
) (signature of witness)
)
)
)
T.M.)
A Commissioner for Oaths in and)
for the Province of Alberta)