

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

AND IN THE MATTER OF

CHRISTINA HAGERTY

**then real estate associate registered
with Twin Oakes Real Estate 1993 o/a RE/MAX Re/Max House of Real Estate
and now real estate associate registered with
BGB Realty Inc. o/a Re/Max Realty Professionals**

INTRODUCTION

1. The Executive Director of the Real Estate Council of Alberta conducted an investigation into whether the conduct of Christina Hagerty, at all relevant times a real estate associate registered with **Twin Oakes Real Estate 1993 o/a Re/Max House of Real Estate**, is deserving of sanction and/or whether she breached the requirements of the *Real Estate Act* (the "**Act**") or the Rules prescribed pursuant thereto (the "**Rules**").
2. The Executive Director and Christina Hagerty agree to resolve all matters against Christina Hagerty on the terms and conditions set out herein.

AGREED STATEMENT OF FACTS

3. Christina Hagerty (Hagerty), associate, was, at all relevant times, registered with Twin Oakes Real Estate 1993 Inc. o/a Re/Max House of Real Estate. Hagerty is currently registered with BGB Realty Inc. o/a Re/max Realty Professionals.
4. There is no discipline history.
5. In approximately the first week of May, 2005 Hagerty met with N.K. to view a property located at 3610 – 4 Street S.W. Calgary, Alberta, N.K. was interested in listing the property.
6. Land Title records indicate that the property was owned by N.K. and D.G..
7. N.K. and D.G. were going through a separation and divorce in 2005; N.K. moved out of the house in approximately Feb 2005. D.G. remained in the house until mid-May 2005.
8. Hagerty states she suggested making the house more marketable by having touch up painting done, removal of garbage, repair of holes in the wall. She

further states that during listing discussions N.K. asked if Hagerty could arrange a painter since her finances were tied up in the house.

9. Hagerty agreed to hire and pay for a painter. She states N.K. offered to pay her when her house sold. Hagerty states she did not obtain this agreement in writing.
10. On May 20, 2005, Hagerty was invoiced by a painter, M.L., for the painting completed at 3610 – 4 St S.W. Calgary in the amount of \$964.18. A notation was made on the invoice showing payment of the invoice by cheque on May 24, 2005.
11. On May 26, 2005, N.K. and her ex-husband, D.G., signed a listing contract #013970 with Hagerty to sell 3610 – 4 St S.W. Calgary, listing the asking price of \$579,900 with immediate/negotiable possession. The expiry date for the listing was August 30, 2005.
12. The listing contract under 11.1 lists that the brokerage will provide as follows:
 - a) Will make reasonable efforts to find a buyer for the Property.
 - b) Will market the Property through the Multiple Listing Services (MLS) operated by the Board.
13. The listing contract under section 10.1 lists that the seller will pay commission during the term of the contract if the following occurs:
 - a) The Property is sold, exchanged or otherwise disposed of by you or anyone else.
 - b) A person contacts you directly or through a brokerage or inspect the Property and the Property is then sold, exchanged or otherwise disposed of by you or anyone else to that person within 90 days after the Expiry Date.
 - c) You have signed a Purchase Contract with a buyer who is willing and able to complete the sale buy you refuse to complete the sale; or
 - d) A buyer is found who is willing and able to complete the sale upon the terms outlined in this Contract buy you refuse to sign the Purchase Contract.
14. The listing contract does not provide a clause for additional fees charged to the seller should the listing contract be terminated; or the ability to charge for painting or advertising fees due to termination or over and above the commissions.
15. Two offers to purchase were provided to N.K. and D.G. during the listing period; one was not accepted and the other was accepted but the deal collapsed. The caveat was placed on the property reflecting the first offer, which was not accepted.

FIRST OFFER TO PURCHASE

16. On May 30, 2005, L.R., Associate, Re/Max Realty Professionals, on behalf of the buyer, T.R., disclosed relative to L.R., prepared an offer to purchase, 3610 – 4 St S.W. Calgary, for \$580,000 with a possession date of September 1, 2005.
17. N.K. states she wanted an earlier possession date so she did not accept the offer to purchase. D.G. passed away in October 2007 and is unavailable for comment.
18. L.R. states an earlier possession date was not acceptable to her clients and that is why the offer was not accepted; she did not expect commissions on this offer nor did she have any discussions with Hagerty on obtaining commissions on this unaccepted offer.

SECOND OFFER TO PURCHASE

19. On July 7, 2005, an offer to purchase was prepared by B.C. registered with Re/Max First on behalf of the buyers, W.M. and R.A. for \$565,000 with a possession date of August 17, 2005 and a condition date of July 13, 2005, for a home inspection. D.G. and N.K. accepted the offer the same date; however, the conditions were not waived by the buyers due to issues that came to light from the home inspection. The buyers did offer to continue with the purchase if the seller accepted a \$25,000 reduction. D.G. and N.K. did not agree and the deal collapsed.
20. On July 18, 2005, Hagerty and N.K. had discussions regarding terminating the listing contract.
21. Hagerty states that she did not intend to charge N.K. for the painting but when N.K. terminated the listing contract she knew she would not receive a commission. She wanted to get her expenses paid as N.K. had promised.
22. Hagerty states that she felt justified in doing so because both D.G. and N.K. offered to pay her for the painting and advertising. She does not have any confirmation or agreement in writing to charge for the painting.
23. Hagerty states that her lawyer at the time, R.T., advised her to file a caveat on the property to get her painting and advertising costs. She never wanted to get commissions.
24. N.K. states that they (N.K. and D.G.) were never provided the painting invoice from the painter nor were they told of the cost of the painting until Hagerty provided her invoice to them for painting on July 18, 2005. They had offered to pay for costs but asked for verification but never did receive the advertising or painting invoices related to their charges.

25. On July 18, 2005 Hagerty prepared and faxed an invoice to D.G. and N.K. for her costs related to the listing and marketing 3610- 4 St S.W. Calgary. The invoice reflects the following:

- a) Listing Contract #013970
Listing Service Included:
- | | |
|-------------------------|-----------|
| (1) Advertising: | \$1068.48 |
| (2) Board Fees: | 42.45 |
| (3) Painter Contractor: | \$964.18 |
| (4) Feature Sheets: | 52.97 |
| (5) For Sale sign | 29.96 |
| (6) Photography | 75.00 |
| (7) Total | \$2233.04 |

26. Hagerty stated in the fax that once the invoice was paid she would forward the Mutual General Release.

27. N.K. states that after discussion with D.G., they decided not to terminate the listing contract. They wanted to wait for the listing contract to expire and then they would list with another Industry member and brokerage. They decided to have Hagerty continue to market until the listing expired, since commission entitlement would still apply to the new brokerage listing if they choose to list with another brokerage immediately. They did not pay the invoice nor sign a termination of listing contract or Mutual General Release.

28. On July 21, 2005, Hagerty faxed her brokerage a Real Estate Listing Contract Termination Agreement.

29. M.Z. was, at the relevant time, broker for Re/Max House of Real Estate.

30. K.M., Associate, was, at all relevant times, registered with Twin Oakes Real Estate 1993 Inc o/a Re/Max House of Real Estate. K.M. is currently registered with Re/Max House of Real Estate.

31. K.M. was, during M.Z.'s holidays in the summer of 2005, covering off for M.Z. as Manager.

32. K.M. signed a listing contract termination related to listing contract #013970 on behalf of the brokerage; she did not ask for or obtain the sellers signature or agreement to terminate the listing contract. She states Hagerty advised her that the clients were difficult and she wanted to terminate the listing contract.

33. Pursuant to the termination the brokerage's position was that the commission entitlement would continue as per section 10.1 of the Real Estate Listing Contract.

34. On July 21, 2005, Hagerty terminated the MLS listing.

35. N.K. states they understood that Hagerty would continue to market their property until August 30, 2005 when they refused to sign the termination of listing agreement. She expected the listing to remain on MLS until August 30, 2005.
36. On July 25, 2005, Hagerty prepared a new listing contract #004191 to sell 3610 – 4 Street S.W. for an asking price of \$569,900, with immediate/negotiable possession.
37. Hagerty states that D.G. wanted her to continue as his associate so she asked D.G. to get a power of attorney to sign on N.K.'s behalf. N.K. was on title to the property so Hagerty believed that D.G., a lawyer, could obtain power of attorney from N.K. in order to deal with and sell the property. Hagerty hoped by dealing with just D.G. the sale could be expedited.
38. D.G. was not able to obtain an agreement from N.K. so the listing contract was not signed.
39. On July 22, 2005, Hagerty spoke to her lawyer, R.T. about N.K. and D.G. and the matter of the outstanding payment for her advertising and the painting invoice.
40. Hagerty states that she told R.T. she wanted her expenses for advertising and painting; she did not want commissions. She states that R.T. advised her to place a caveat on the property for commissions, since the clients were lawyers, and then it would be easier to negotiate for expenses.
41. She directed R.T. to place the caveat on the property for commissions.
42. She did not get the authorization or discuss the caveat with the broker; she assumed R.T. would do that. However, she did discuss the issues regarding this client along the way with the broker.
43. On August 2, 2005 a caveat was registered with land titles to 3610-4 Street S.W. Calgary. The caveator was Twin Oakes Real Estate (1993) Inc. The caveat was placed by R.T., for commissions in the amount of \$21,370. The commission was pursuant to the listing contract dated May 26, 2005.
44. R.T., real estate lawyer for Christina Hagerty, states in a letter to RECA, that while he has no specific recollection or documentation stating that the brokerage had agreed to the caveat, it is his usual practice to contact the brokerage and get permission before placing the caveat. He also states that he would not have had specific information regarding the legal name etc. of the brokerage, unless he had spoken to and received permission and information from the brokerage.
45. K.M. states that she did not know about the caveat until after it was placed. She asked Hagerty to remove the caveat. She did not believe the caveat was

warranted. She discussed the caveat with M.Z. and she got the impression Hagerty had not discussed the caveat with M.Z. until after it was filed.

46. K.M. further states that R.T. was not the brokerage lawyer.
47. K.M. states that she received an email from N.K. in August 2005, complaining to her that a caveat had been placed on the property, which prevented the listing of the property with another brokerage.
48. M.Z., broker, is no longer registered and to date has refused to speak to RECA regarding this investigation.
49. N.K. states that she and D.G. wanted to list with another associate in September 2005 and found the caveat on the land title. She did not want to list the property with the caveat so felt forced to negotiate a settlement. The house had been vacant since May and they felt extreme pressure to sell.
50. They had discussed paying Hagerty's expenses in July 2005 when they had discussed termination of the listing contract; however, they decided not to agree to the termination. In addition, Hagerty could not substantiate the advertising and painting charges.
51. On September 1, 2005 N.K. sent correspondence and a cheque to R.T. in the amount of \$1500 to settle the issue with Hagerty and have the caveat removed.
52. On September 22, 2005 Hagerty/M.Z. and N.K./D.G. signed a settlement in which N.K. and D.G. agreed to pay Hagerty and Twin Oakes \$2,233.04
53. On October 20, 2005 the MLS listing shows the house sold for \$581,000.

CONCLUSION

54. By reason of the matters described herein, it is agreed that Christina Hagerty's conduct is deserving of sanction in that she :

- a) Did not fully inform clients what the fees for providing services would be and did not get an agreement to provide the services, in writing, contrary to s. 5(a) of the Code of Conduct (as it was then) made pursuant to the Real Estate Act : R.S.A. 2000, c. R-5
 - i) She charged N.K. and D.G. for painting and advertising services without previously informing them of the cost or estimated costs and without getting, in writing, their consent to perform such services.

SETTLEMENT TERMS

55. In settlement of the foregoing contravention, it is agreed that the fines for the breach are assessed as follows:

a)	s. 5(a) of the Code of Conduct	\$2,500
	Subtotal	\$2,500

56. It is further agreed that Christina Hagerty will pay costs in the amount of \$500.00.

57. In summary, Christina Hagerty will pay immediately to the Real Estate Council of Alberta a fine in the amount of \$2,500.00, together with costs in the amount of \$500.00, for a total of \$3000.00.

58. Christina Hagerty agrees that as a condition of her authorization to trade in real estate she will, within 6 months of the ratification of this Consent Agreement by the Hearing Panel, successfully complete the contract law section of the current REAP program course offered by the Alberta Real Estate Association, Calgary Real Estate Board or Mount Royal University, or a similar course or courses at the sole discretion of the Executive Director.

59. Christina Hagerty acknowledges that she has been given an opportunity to seek the advice of legal counsel and acknowledges that she is agreeing to the terms of settlement of her own free will.

- 60. Christina Hagerty is aware that a copy of this Consent Agreement will be placed on her file and may be reviewed and considered in any future disciplinary proceedings.
- 61. Christina Hagerty is aware the Real Estate Council of Alberta may publish the contents of this Consent Agreement.
- 62. Christina Hagerty hereby waives any rights she may have under the Act or otherwise to a review, hearing, appeal or other judicial proceeding involving the matter referred to herein.
- 63. 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 14th day of January 2010.

Signed and delivered)	
in the presence of)	
)	
)	
<i>M.K.</i>)	
Witness)	<i>Christina Hagerty</i>
)	

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

AFFIDAVIT OF EXECUTION

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

THAT I was personally present and did see Christina Hagerty 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.

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

THAT I know the said party and she 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 21st day of)
January 2010.)
)
) M.K.
) (signature of witness)
)
)
P.M.)
A Commissioner for Oaths in and)
for the Province of Alberta)