

Schedule "A"



THE MANITOBA
SECURITIES
COMMISSION

Settlement Agreement

4305788 Manitoba Ltd.
operating as Royal LePage Prime Real Estate

and

The Staff of The Manitoba Securities Commission

The Manitoba Securities Commission
500 – 400 St. Mary Avenue
Winnipeg, Manitoba
R3C 4K5

Ex. # 2 Date: May 3/17
Exam of Hurst

Leanne Kuchinka Court Reporter

SETTLEMENT AGREEMENT

A. Introduction

- A1. By way of a Notice of Hearing to be issued ("NOH"), The Manitoba Securities Commission ("Commission") will give notice of its intention to hold a hearing to consider whether pursuant to The Real Estate Brokers Act ("REBA") it is in the public interest for the Commission to make an order approving the settlement agreement contained herein entered into between staff of the Commission ("Staff") and 4305788 Manitoba Ltd. operating as Royal LePage Prime Real Estate ("Settlement Agreement").
- A2. Discussions have been held between 4305788 Manitoba Ltd. operating as Royal LePage Prime Real Estate ("PRIME"), hereinafter referred to as the respondent, and Staff in an effort to settle all issues in connection with an enforcement matter in respect of conduct or alleged conduct of the respondent in relation to the facts set out in Part B. of this Settlement Agreement ("Enforcement Matter"). A settlement of the Enforcement Matter has been reached based on the terms and conditions set forth in this Settlement Agreement.
- A3. Pursuant to the settlement, Staff agree to recommend to the Commission that the Enforcement Matter against the respondent be resolved and disposed of in accordance with the terms and conditions of this Settlement Agreement as set forth below. The respondent consents to the settlement and to the making of the consent order referred to in Part D. below, on the terms and conditions set forth in this Settlement Agreement.

B. Statement of Facts

Unregistered activity (2016) –

- B1. Robert Bradley Hirst ("HIRST") was first registered as a salesman under REBA on July 1, 2014.
- B2. At all material times, PRIME was HIRST's employing broker.
- B3. As a condition of his registration, HIRST was required to complete Course I – Principles of Appraisal ("appraisal course") by June 30, 2016.
- B4. HIRST failed to complete the appraisal course by the deadline.
- B5. On July 1, 2016, HIRST's registration was suspended.
- B6. HIRST and PRIME were notified that:
- (a) HIRST's registration as a salesman was suspended effective July

- 1, 2016;
- (b) HIRST was not to engage in any real estate transactions as a salesman until properly having completed the appraisal course;
 - (c) upon successful completion of the appraisal course, to reinstate his registration, a written request from his broker PRIME and a fee was required;
 - (d) HIRST's registration would expire June 30, 2017, if HIRST and PRIME failed to take any action to reinstate HIRST's registration.
- B7. On July 18, 2016, Commission staff received from PRIME information that HIRST wrote and passed the examination necessary for completion of the appraisal course and a request to reinstate his registration with PRIME.
- B8. On July 18, 2016, HIRST's registration under REBA was reinstated.
- B9. During the period from and inclusive of July 1, 2016 to July 17, 2016 ("period of suspension"), HIRST, in the employ of PRIME, continued to act as a real estate salesman, resulting in gross commissions and/or fees for HIRST in excess of \$25,250.00 and commissions and/or fees for PRIME on five properties, four of which were double ended deals.
- B10. In relation to the above noted five properties, HIRST's unregistered activity included but may not have been limited to receiving and presenting offers, writing an offer, receiving accepted offers, showings of properties, and obtaining signatures.
- B11. As to one of the five properties, HIRST during the period of suspension signed a listing agreement, which was put on MLS under the name of another agent.
- B12. As to another of the five properties, HIRST entered into an agreement with yet another agent for that agent to work with a client of HIRST's and to then give to HIRST 50% of the other agent's commission after HIRST's license was reinstated.
- B13. Also during the period of suspension, HIRST, in the employ of PRIME, continued to act as a real estate salesman on a sixth property, including showing the property, writing the offer, and delivering the offer to the listing agent, the end result of which did not result in a concluded deal.

Prior history –

- B14. Prior to 2016, HIRST previously had his registration as a salesperson under REBA suspended on July 1, 2015 for a period of twelve days ("2015 suspension").

- B15. The 2015 suspension resulted from HIRST's failure to complete a required course by the required date.
- B16. During the 2015 suspension, HIRST while in the employ of PRIME had engaged in unregistered activity in real estate transactions.
- B17. In respect of the unregistered activity in 2015, a warning letter had been issued to HIRST and copied to PRIME reminding each that no person shall act as a salesman unless registered, noting that it is illegal for a salesman to collect or to attempt to collect commissions while unregistered, and warning HIRST that failure to comply with the requirements of REBA in the future may result in a recommendation for disciplinary action.
- B18. In addition to the warning letter, HIRST had also been reminded in writing of the necessity to complete the appraisal course by June 30, 2016 and cautioned that no extension to complete the course would be granted.
- B19. In spite of the warnings in 2015, in 2016, HIRST failed to complete the appraisal course in time and the above described unregistered activity and receipt of commissions by HIRST and PRIME in 2016 occurred.

C. Acknowledgements

- C1. PRIME acknowledges and agrees that:
- (a) by operation of subsection 11(4) of REBA, during the period of suspension of HIRST's registration, HIRST was not registered under REBA;
 - (b) PRIME acted contrary to subsection 24(1) of REBA by continuing to permit HIRST to engage in real estate trades or transactions in its employ as a salesman without registration and by paying to him commissions related to unregistered activity;
 - (c) PRIME acted contrary to subsection 11(4) of REBA by receiving commissions and/or fees while HIRST's registration was suspended.
- C2. Staff acknowledges that PRIME has been co-operative in the completion of this matter.

D. Terms of Settlement

- D1. In order to effect a resolution of the issues raised by the Enforcement Matter, Staff and the respondent have entered into this Settlement

Agreement. Upon this basis, Staff seek an order ("Consent Order") from the Commission pursuant to subsection 11(1) of REBA that it is in the public interest that:

- (a) the Settlement Agreement be approved;
- (b) PRIME make a payment to the Treasury of the Province of Manitoba in the amount of \$1,500.00 to be paid within seven days of the date of this order.

E. Procedure for Approval of Settlement

- E1. The approval of this Settlement Agreement and the making of the Consent Order set out in this Settlement Agreement shall be sought at a public hearing pursuant to the NOH to be issued.
- E2. Staff and the respondent agree that if this Settlement Agreement is approved by the Commission, it will constitute the entirety of the evidence to be submitted to the Commission in connection with the Enforcement Matter and the respondent hereby waives its rights to a full hearing and appeal of this matter.
- E3. If, for any reason whatsoever, this Settlement Agreement is not approved by the Commission or the Consent Order referred to in Part D. above is not made by the Commission, Staff will be entitled to proceed with whatever steps it is entitled by law to take, including but not restricted to the commencement of a hearing before the Commission, unaffected by this Settlement Agreement or the settlement discussions. In the event that such steps are taken, the respondent shall have all the usual rights of an individual subject to such proceedings. If this Settlement Agreement is not approved or the Consent Order set out in Part D. above is not made by the Commission, the terms of this Settlement Agreement shall remain confidential and will not be raised in this or any other proceeding and any admissions contained in this Settlement Agreement shall be considered as without prejudice communications and in furtherance of settlement discussions, which will not be binding upon the parties and which will be inadmissible in any proceeding whatsoever.
- E4. Staff and the respondent agree that if this Settlement Agreement is approved by the Commission and the Consent Order made upon the terms set out in this Settlement Agreement, this Settlement Agreement will be a public document.
- E5. The respondent agrees that it will not raise in any proceeding this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as a basis for an attack on the Commission's

jurisdiction, alleged bias, alleged unfairness or any other challenge that may be available.

E6. If this Settlement Agreement is approved by the Commission and the Consent Order is made upon the terms set out in this Settlement Agreement, neither Staff nor the respondent will make any statement inconsistent with this Settlement Agreement.

DATED at Winnipeg, Manitoba, this 1st day of May, 2017.

4305788 Manitoba Ltd.

[Signature]
Witness
[Signature]
Witness

per: [Signature]
(authorized signatory)
Michael Freese
name of signatory (please print)
Authorized Official.
position of signatory

DATED at Winnipeg, Manitoba, this 1st day of May, 2017.

Staff of the Manitoba Securities
Commission
per: [Signature]
Director