

March 18, 2002

IN THE MATTER OF: THE REAL ESTATE BROKERS ACT

- and -

IN THE MATTER OF: JOSE ANTONIO PEREIRA

**REASONS FOR DECISION
OF
THE MANITOBA SECURITIES COMMISSION**

Panel

Chair	Mr. D. G. Murray
Board Members:	Mr. R. G. McEwen Mr. K. S. Kristjanson

Appearances:

Ms K. G. R. Laycock) Counsel for the Commission
Mr. K. M. Saxberg) Counsel for the Appellant

Background

This matter came on for hearing on November 13th through 16th, 2001 and was adjourned for further Hearing and argument to January 9th and 10th, 2002. The Hearing arose out of the suspension of Mr. Jose Antonio Pereira ("Pereira"), a real estate salesman, on June 22nd, 2001. Prior to the Hearing of the allegations against Pereira there had been appearances before a panel of the Commission on July 6th, July 11th, August 20th, August 22nd and September 19th, 2001. Pereira has been suspended and unable to operate as a real estate salesman since the initial suspension date of June 22nd, 2001.

At the time of his suspension Pereira was with Re/Max Realty Inc. working as a salesman out of offices at 1016 McPhillips Street, in the City of Winnipeg. The panel was advised that Pereira, who had been registered as a real estate salesman since 1991, was one of the more successful agents in Winnipeg at the time of his suspension. He received a Gold award from the Winnipeg Real Estate Board in 2000.

Pereira's suspension arose out of his involvement in six real estate transactions occurring between August, 2000 and May, 2001. In each of the transactions Pereira, or his office, represented a proposed purchaser of residential property. These individuals are identified by

initials in the Statement of Allegations and are so referred to in these Reasons for Decision. Each of the six proposed purchasers were first time buyers who were hoping to take advantage of a "cash back" program. This program is offered by a number of financial institutions as a benefit to homebuyers who qualify. In each case the proposed purchaser made contact with Pereira through an ad he had placed in one of two local publications. The ad was headlined "Rent to Own" and each of the proposed purchasers contacted Pereira in this regard. In these instances Pereira would advise the proposed purchaser that he or she did not have to rent to own and could qualify for a mortgage and at the same time take advantage of the "cash back" program.

The panel heard evidence about the cash back program in operation at branches of the Toronto-Dominion Bank and Bank of Nova Scotia, however, it is in widespread operation at banks, credit unions and trust companies. Evidence presented indicated that homebuyers can get a "cash back" payment of a certain percentage of the purchase price from the financial institution, provided they take out a mortgage with a minimum specified term of years. The cash back can be used to cover closing, or other, costs, but not the down payment or any part thereof. The payment is made to the purchaser as of the interest adjustment date, usually about a month after possession.

Evidence received by the panel suggested that mortgage financing is a competitive business. The cash back program arose out of this competitive environment. While benefiting the purchaser with the payment of a sum of money when he or she is settling into a new home, there is a benefit to the financial institution in having purchasers take out long-term mortgages.

Mortgages in a transaction involving less than 25% down payment require CMHC insurance coverage. CMHC puts some conditions on its program, which include that any purchaser must have a down payment of at least 5% of the purchase price. The funds for the down payment, according to CMHC guidelines, must come from the borrower's own resources. They cannot be borrowed. This was explained to the panel in testimony as a policy decision that, among other things, requires a commitment to the property by prospective purchasers in applying their own funds. If, in a transaction, the purchaser/mortgagor uses borrowed funds for a down payment, CMHC guidelines have been breached. Presumably, this could affect CMHC coverage of the mortgage in question, which would be detrimental to the financial institution.

CMHC does allow a prospective purchaser, without the 5% down, to qualify for a CMHC covered mortgage, provided the down payment is received as a gift from an immediate relative and can be shown to be in the borrower's possession no later than 15 days prior to closing date. The gift must be declared in writing to be non-repayable. The document evidencing such a transaction is referred to as a "gift letter". There was no evidence presented which suggested there is a CMHC prescribed form for a gift letter and it appears each financial institution, or branch thereof, determines what form is acceptable for its purposes.

A financial institution will make use of a gift letter as the basis for approving a mortgage application. For this reason and for the purposes of compliance with CMHC requirements, it is essential that a gift letter represent a bona fide gift. There was a gift letter prepared and presented to a financial institution in each of these six transactions. Each of them was false. There were no intended gifts, as suggested, from immediate relatives in any of the transactions. This is clear from the evidence presented.

Allegations

Staff counsel allege that all six gift letters were false and five were outright forgeries. The sixth letter, although signed by the proposed purchaser and her sister, was a fabrication in which no gift was intended. Staff counsel also alleges that Pereira created or was involved in the creation of each of these false gift letters. It is further alleged they were each sent to a financial institution by Pereira, or on his behalf, in support of mortgage applications.

In addition it was alleged that Pereira arranged for undisclosed loans from a third party to two of the proposed purchasers, Ms. L and Ms. N, for the purpose of providing them with down payments they did not otherwise have. These funds were used as evidence that these purchasers had the funds available for a down payment out of their own resources. Staff counsel alleges that Pereira was well aware that the individuals did not have their own 5% down payment as required by CMHC.

Staff allege that these acts, intended to mislead the financial institutions involved, and for that matter, Pereira's own clients, are "fraudulent acts" as defined in The Real Estate Brokers Act (the "Act"). The sections in the definition relied on by staff counsel are as follows:

"(a) any intentional misrepresentation by word, conduct or manner of a material fact, present or past, and an intentional omission to disclose such material fact, and

(i) generally, any artifice, agreement, device, scheme, course of conduct or business, to obtain money, profit, or property, by any of the means hereinbefore set forth or otherwise contrary to law, or by wrongful or dishonest dealing;"

Staff counsel states that the forging and preparation of false gift letters in support of mortgage applications and obtaining undisclosed loans for purchasers allowing them to bypass CMHC requirements, represents the type of dealing or course of conduct which fits into the definition of a fraudulent act. Evidence showed that each of the six transactions resulted in the purchase of property and generated a real estate commission, part of which was payable to Pereira.

Mr. Saxberg, counsel for Pereira, argued that proof of fraud requires evidence beyond the normal civil standard of balance of probabilities. In the present instance, however, the Act clearly sets out certain acts which are deemed to be fraudulent acts. On this basis the panel is satisfied that, if on the balance of probabilities, the conduct alleged by staff is made out, the commission of "fraudulent acts" is also proven.

Evidence and Findings

(a) Undisclosed Loans

Pereira arranged for advances from a third party, a Mr. DaSilva, an acquaintance of his, for Ms. L and Ms. N. There is no doubt of these occurrences. Pereira in fact acknowledges this to be the case. The advances were to be used to provide supposed proof to the financial institutions involved that these purchasers had the 5% down payment required from their own resources. These advances were in fact used for this purpose and were so used, clearly, to Pereira's knowledge.

CMHC policy requires that the 5% down payment not be borrowed funds. Pereira testified that he didn't look on these advances as "loans". He considered them "sales of future rights". Because these individuals were buying houses under the "cash back" program, he reasoned that these ladies were entitled to receive money back from the financial institutions involved. These funds, he testified, were considered by him as future rights and he arranged for the sale of these future rights to the said Mr. DaSilva.

Pereira in fact prepared documents for signature by his clients which were headed "Selling of my cash back agreement" (Exhibit 52). According to these documents, the purchaser would receive the sum which was in fact required for the 5% down payment. Each purchaser agreed to provide a post-dated cheque or cheques for this amount plus 10%. The 10% was characterized as a fee. The agreement included the following statement: "Not to be intended for the purposes of down payment".

If it were true that the advance was not intended for use as the down payment, it would not offend CMHC policy. If in fact the purchaser had her own funds for down payment and the advance was for other costs, there would be no concern. In fact Ms. Catherine Augustine, a mortgage specialist for the Bank of Nova Scotia, testified that financial institutions sometimes set up lines of credit for the use of purchasers for closing costs. She also testified, as did Mr. Darryl Dunn of the Bank of Nova Scotia and Ms. Karen Olek of the TD Bank, that credit is never supplied for purposes of a down payment. Credit supplied for a down payment would be in breach of the CMHC guidelines.

Mr. DaSilva testified he was recruited by Pereira for these transactions. Not surprisingly, he felt that a 10% return on his money over a period of approximately one month, was an attractive arrangement. The advances were to be in the general range of \$2,700.00. He had no intention of ever meeting or having contact with the proposed purchasers and he never did. He testified that he didn't care who got the money. He gave blank cheques to Pereira. Pereira was supposed to complete them and, in fact, he did. Pereira made one cheque out to Ms. L and one to Ms. N's lawyer, to whom he had referred Ms. N. DaSilva testified that he did not expect to receive payment from whomever the advances were made out to, but from Pereira.

The panel does not accept the characterization of these transactions as purchases of future rights by DaSilva. The panel is of the opinion that an entitlement to the cash back must be contingent upon the mortgagor complying with program requirements, which was not the case. Also, DaSilva made funds available for distribution according to the discretion of Pereira. DaSilva expected to be repaid by Pereira with a 10% return. The panel finds that these were loan transactions carried out through Pereira with DaSilva's funds. The intended benefit to DaSilva was a 10% return. The benefit to Pereira was completed real estate transactions and the resulting commissions.

In fact, the document devised by Pereira, although purporting to represent a "sale", gives away the true nature of the transaction, by stating that the funds were not to be used for a down payment. Funds obtained by the sale of an asset can be used as a down payment without offending CMHC policy. They are funds from the purchasers own resources. Pereira knew this.

The panel is of the opinion that Pereira placed this stipulation in the document because he knew that the advances he was setting up for his clients were, indeed, loans.

The funds from these loans were used as evidence, for both the TD Bank and Bank of Nova Scotia, that the purchasers had sufficient non-borrowed funds of their own for the down payment in their respective transactions. The panel finds that Pereira's actions represent dealings intended to misrepresent the facts to the financial institutions involved and are by definition "fraudulent acts".

(b) Gift Letters

Six gift letters were prepared. Each of them were forwarded initially to the branch of the TD Bank located in the Wal-Mart store on Regent Avenue, in the City of Winnipeg. They were forwarded in connection with mortgage applications by the six proposed purchasers.

Pereira acknowledged in testimony that he forged two of these gift letters, one for Ms. H and one for Ms. P. The gift letter for Ms. P's transaction was a "cut and paste" effort. Her actual signature was taken from one source and placed on the gift letter. The signatures on the gift letter in Ms. H's transaction were handwritten by Pereira. In these two instances, as in all of these transactions save that of Ms. L, Pereira's clients were not aware that the false documents had been created.

Pereira testified that he can't recall if he signed the gift letter used in Mr. C's transaction. He testified that he did not sign the forged gift letter in Ms. B's transaction. She testified that the signature looks like hers but that she did not recall signing a gift letter and did not know why one would be created as no gift had been arranged in her transaction. As in the transactions for Ms. H and Ms. P, Pereira was noted on the Offer as the agent for Ms. B and Mr. C. The false gift letters in the latter two transactions were forwarded to the TD Bank by Pereira or one of his associates. As with the gift letters for Ms. H and Ms. P they were sent from Pereira's fax machine. The panel is of the opinion that Pereira created these two gift letters as well and forwarded them, or had them forwarded, to the TD Bank as support for a mortgage application.

Pereira testified that he was not the agent for Ms. L or Ms. N. He stated that the agents on those two transactions were a Mr. Lopes and a Mr. Kohut. He denies preparation of those gift letters.

The gift letter in Ms. N's transaction fits the mold of the other four referred to above, in that it was a handwritten forgery. The gift letter in Ms. L's transaction was signed by Ms. L as donee and by her sister as alleged donor. The testimony of Ms. L and her sister was that it was signed at the urging of Pereira and one of his associates. Both Ms. L and her sister testified they were quite aware that no gift was going to be made in this transaction and that Mr. Pereira was equally aware of this.

The other two agents, Lopes and Kohut, were employed in the same Re/Max offices as Pereira. They both had recently been assistants of Pereira, before becoming agents in their own right. The evidence also clearly indicated that Pereira had earlier had Ms. L and her sister sign a similar false gift letter for a proposed real estate transaction that did not in fact conclude. Pereira's association with these two files is also very clear in the loans which he arranged for the down

payments. Also, as in the other instances, these gift letters were forwarded to the TD Bank from Pereira's fax machine. Neither Lopes or Kohut were called to testify to explain their part, if any, in developing the gift letters in the transactions of Ms. L and Ms. N. The panel finds, on the balance of probabilities that, as with the other four gift letters, Pereira prepared them and or had them prepared and forwarded them or had them forwarded to the TD Bank.

It was advanced by counsel for Pereira, that while false gift letters may have been created by his client, they should not be considered fraudulent, because they were not intended to and nor did they mislead the branch of the TD Bank where they were initially sent. He stated that the branch manager, a Mr. A. Sapong, the person with whom Pereira chiefly dealt, routinely requested gift letters but did not rely on them as a basis for advancing mortgage funds, and probably wasn't overly concerned as to whether they were legitimate. The allegation was that he, like many other branch managers, was concerned primarily in getting mortgages on the books of his branch as opposed to strict compliance with CMHC requirements.

At the outset of the hearing and again in argument, Mr. Saxberg stated that the competitive nature of the mortgage business resulted in financial institution branches and individual mortgage lenders, anxious to put mortgage loans through, overlooking strict adherence to the requirements of CMHC. In fact, he suggested that many mortgage lenders turn a blind eye to whether a prospective borrower really qualifies for a mortgage at all. This, it was suggested, is especially so in the case of a mortgage application supported by a gift letter. The rules concerning gift letters, according to Mr. Saxberg, are as honored in the breach as in the observance. He suggested that activities of the type engaged in by Pereira are relatively common and in the case of Sapong, accepted by the lender either knowingly, or at the very least, without concern. In this case, it was suggested Pereira could not commit a fraudulent act against a financial institution that was a willing participant in the process.

These statements were not followed up with comprehensive evidence, adduced by Mr. Saxberg, as to the nature of the mortgage lending industry and the attitudes of lenders in general towards mortgage applications supported by gift letters. In fact, the only witness called to testify on behalf of Pereira was Pereira himself. The balance of the witnesses, (13 in all), were called by staff counsel.

The panel, in fact, found it somewhat surprising as to which potential witnesses were not called over the five days of testimony in this proceeding. For example, Mr. Lopes and Mr. Kohut worked closely with Pereira in most of the transactions in question. Lopes was himself the subject of allegations that he, among other things, forged a gift letter to support a mortgage application. He was dealt with separately and entered into a Settlement Agreement with staff counsel to conclude his matter. Neither Lopes or Kohut were called to testify.

Similarly, Sapong, the manager of the Wal-Mart branch of the TD Bank on Regent Avenue during the time that Pereira was bringing the bulk of his "gift letter" clients there for mortgage financing purposes, did not testify. Evidence suggests that Sapong accepted supporting documents that his successor deemed inadequate and well short of the bank's stated requirements. There was also some evidence, discussed in more detail below, that suggested Sapong sometimes requested gift letters be supplied for a mortgage financing file even when the

purchaser had adequate funds of his or her own for the down payment and no gift was contemplated.

These three individuals were intimately associated with Pereira in purchase and mortgage transactions employing gift letters. Presumably they could have shed some background light, at least, on the activities and practices of Pereira with this particular bank branch. Both counsel suggested that the failure to call these witnesses, or any of them, cast an unfavorable light on the other's case. While the panel found it puzzling, we did not ascribe any negative inferences from the failure of these individuals to give evidence.

There was some evidence that did come out at the hearing concerning the practices of mortgage lenders dealing with loan applications supported by gift letters. Ms. Augustine testified that, from her experience, the mortgage loan business is highly competitive. Branches of financial institutions tend to seek to maximize the number of mortgage loans they have on the books. In this competitive environment, she has found that different individuals with authority to approve mortgages, apply different standards of compliance with the rules. There is no universal practice followed. Some managers or loans officers apply the intent of the CMHC rules more rigorously than others.

This was also clear in the testimony of two bank employees. Ms. A. Chow of the TD Bank and Mr. D. Dunn of the Bank of Nova Scotia. Ms. Chow became acting manager of the Wal-Mart branch of the TD Bank after Sapong had left. She reviewed the mortgage applications for Ms. P and Ms. N, which had already been approved, but not advanced. She rejected each of these applications once she realized that the gift letters were false. These two applications Pereira subsequently referred to the Bank of Nova Scotia.

Ms. Chow in her testimony indicated that she, as is required by the TD Bank guidelines, enquires closely into the legitimacy of gift letters. She ensures that the named donor is contacted directly to confirm the fact of the gift and that donors provide proof that they actually have money to give. This is done either by attaching account records to the gift letter or having a portion of the document acknowledged by the donor's own financial institution. The form of gift letter referred to by Ms. Chow is filed in these proceedings as Exhibit 8.

While Ms. Chow's practice is to verify the gift letter when it is received, this stands in contrast to the practice of others. Mr. Dunn at the Bank of Nova Scotia, Garden City Branch, also receives and processes mortgage loan applications supported by gift letters. He testified that he does not investigate to verify the legitimacy of gift letters. He accepts gift letters at their face value. He testified that "it would not be reasonable" to check behind the gift letter to confirm its veracity. As long as the down payment is shown to be in the purchaser's account before possession, he is satisfied. Whether or not it has occurred, clearly this practice would allow for an agent to prepare a false gift letter and obtain mortgage financing for a purchaser who has borrowed the down payment.

Certainly Sapong, who initially approved all of the mortgage applications in the six transactions in question, did not verify gift letters. He accepted a form of gift letter prepared by Pereira that did not contain a section for verification. Ms. Chow could find no evidence on the files in which

Sapong approved mortgages, of any attempt to confirm a gift letter was authentic. Karen Olek worked at the TD Bank under Sapong as an Assistant. She did not testify as to whether Sapong had any kind of arrangements with Pereira, or any other agent, to approve non-qualifying purchasers for CMHC mortgages, however, she did indicate that he told her that he wanted all of Pereira's applications to be processed quickly because he brought the bank a lot of business. No investigation into the bona fides of a gift letter was required. A simple gift letter was sufficient to allow for a mortgage to be approved.

Pereira testified that for Sapong, a gift letter was not really an important document. He simply liked to have one on a mortgage application file. This, Pereira testified, was the case even where the mortgage application did not require a gift letter because the purchaser had his or her own funds for a down payment. In the six transactions in question a gift letter was included. This is despite the fact that four of these individuals, Mr. C, Ms. H, Ms. B and Ms. P had funds available, from one source or another, to make the down payment. This is especially clear in the instances of Mr. C and Ms. H. Quite simply, they had enough money from their own resources to put 5% down on their homes. There was no need to present the bank with a gift letter. Yet gift letters were requested.

Exhibit 11 is a fax page from Pereira to Sapong on the Ms. P mortgage application. It states, "Client has money in account! Or call me for Gift Letter". Why Sapong would want a gift letter on a file when there was purported to be money in the account is a question only he could answer. It is possible that he viewed a gift letter simply as a convenient basis on which to issue a mortgage approval which would later require verification of available funds. This, of course, is mere speculation, as Sapong provided no evidence as to his thinking.

Pereira testified that as gift letters were not documents which were going to be relied on for mortgage advances by Sapong and appeared to be required as mere formalities, he decided that they could be quickly prepared without the client's input and without causing any harm to the financial institution or his clients. He acknowledged in hindsight that this was a "stupid" thing to do but testified that at the time he didn't believe it would cause any problems.

The little bit of general evidence that the panel received on the use of gift letters in mortgage applications was not very instructive and certainly not an indictment of the system or anyone in particular. While it appears different mortgage officers have different views about gift letters there was no evidence presented of systemic abuse. In the specific case of Sapong, Pereira did not go so far as to testify that he knowingly solicited or accepted false gift letters. It does appear odd that Sapong would request gift letters on all mortgage files, however, with the evidence available, that is all that can be said.

Of course, even if he had been encouraged to prepare forged gift letters, as a matter of convenience or otherwise, that would not excuse Pereira for having done so. The Commission's concern is about the conduct of its registrants. Pereira's conduct falls far short of what is acceptable. The evidence is clear that he created and presented to financial institutions false documents in support of mortgage applications and that he took part in a course of dealing that was intended to mislead financial institutions as to the sources of borrowers' down payments. As a result of these actions he was able to acquire real estate commissions. These activities fit either

or both of the definitions of "fraudulent act" on which staff rely. In addition, these actions are clearly against the public interest. Commission staff counsel has proven her case.

Arguments as to penalty

Staff counsel seeks a permanent cancellation of Pereira's registration. In the alternative, due to the seriousness of the infractions, she seeks a "substantial" suspension of five years. Staff counsel points, as a contributing factor, to a written reprimand received by Pereira from the Registrar in connection with an incident in 1995 in which Pereira wrote his client's name on a listing extension agreement. As it was explained, Pereira had received his client's direction to extend the listing. Instead of taking the agreement to his client he testified that he simply added the "signature" as a convenience. Under the circumstances the Registrar limited his actions to a reprimand and reminded Pereira of the impropriety of ever presuming to sign another's name on a document. The panel has no doubt that Pereira wishes he had followed that advice as his more recent actions have, to-date, caused him to lose almost nine months of income as a real estate salesman.

The impropriety of Pereira's conduct has been serious. In addition to embarking upon a deliberate course of action that clearly breaches the Act he has shown a willingness to create false documents and even sign others names to them. It is important that the public have confidence in those, such as real estate agents and brokers, in whom they put their trust in major transactions. That confidence is naturally shaken by the type of conduct recently displayed by Pereira. In order to reassure the public, the consequences of improper conduct must be clear.

The request of staff counsel is not unreasonable. The panel would be justified in the cancellation of registration or a five year suspension, which would in effect, amount to removing Pereira from the industry. The question for the panel is whether, in the case of Pereira, the protection of the public interest requires that he be permanently prevented from being a real estate salesman.

Mr. Saxberg asked the panel to consider some extenuating circumstances when determining a penalty. He suggested that false gift letters prepared by his client did not result in any mortgage funds being advanced. This is technically true, as by CMHC policy a mortgage is not advanced on the basis of a gift letter alone, but on proof, prior to possession, that the funds are in the hands of the borrower. In four of the six transactions the purchaser had funds available, from one source or another, for the down payment. Perhaps, in the final analysis, those four mortgages were advanced on proof of funds available without regard to the existence of a gift letter, although there was no evidence on this point. Even if this is the case, it ignores the fact that the concern is the use of forged documents and not just the results of that use. It also ignores the fact that in two of the transactions Pereira was willing to complete the fraudulent act, after initially preparing the false gift letter, by arranging for a means of passing off borrowed funds as the purchaser's own resources.

Mr. Saxberg also asked the panel to recall that no one, either financial institutions, CMHC or clients, have been hurt as a result of these transactions. There have been no stated problems with the mortgages and certainly no foreclosure proceedings. This appears to be true for now, although that would appear to be due more to good fortune than planning.

It was also pointed out that, at the time of his suspension Pereira had been operating in the real estate business for ten years at a high level. During this time Pereira maintained a relatively clean record. Other than the reprimand issued arising out of the 1995 incident already mentioned, the only matter involving the Commission was an instance of failure to renew his license on a timely basis.

It was also pointed out that Pereira has been a good, conscientious agent who works hard for his clients. There was evidence supporting this position adduced during the hearing. It was obvious to the panel that many if not most of Pereira's clients are first time homebuyers of limited means. In dealing with them he regularly prepared documents that explained the transactions in detail as well as the costs involved. He developed conditions on Offers to Purchase that allowed his purchasing clients to forego certain standard costs of real estate transactions, including tax adjustments. He provided coupons to certain clients that covered the cost of their lawyer's fees, presumably at his expense. In fact, most of the six purchasers testifying at the hearing were in fact quite satisfied with his services on their behalf as a real estate agent (although they were justly upset with the fact that he had signed their names to gift letters).

The panel received evidence of a program involving the use of Registered Retirement Savings Plans that will allow buyers of limited means to become homeowners with a minimum amount of cash outlay. As it was explained, proposed purchasers could obtain loans to acquire RRSP's. These RRSP's would subsequently be collapsed and the funds used for a down payment on a home. Thereafter, the purchaser could use the cash back payment to retire or reduce the RRSP loan. The panel received evidence of a number of different agents and brokers advertising the availability of this procedure. The position that was advanced on behalf of Pereira was that through his advertisements in the Renter's Guide and the Winnipeg Free Press, he was also setting up a plan that would allow individuals of limited means to obtain the status of homeowner without the requirement of significant cash outlay. By obtaining, where necessary, down payment loans for these individuals they would have the means to obtain a mortgage and acquire a house and subsequently, through receipt of the cash back, retire or reduce the down payment loan.

The difference, of course, between the two procedures is that Pereira's method is not sanctioned and it clearly breaches the rules set down by CMHC and financial institutions. Obviously obtaining commissions and earning an income was all a part of Pereira's scheme and the panel does not make too much of Pereira's "good intentions" to assist people to become homeowners. Nonetheless, the panel does accept that Pereira has been an agent who has worked diligently for his client's interests. Unfortunately in these particular transactions his judgment was clouded.

For the most part Pereira's testimony appeared to be forthright. In those matters in which he clearly believed he had erred, he so admitted. He conceded the falsification of some of the gift letters, characterized his improper actions as such and indicated clearly that these lapses of conduct in judgment would not be repeated. At points his testimony was emotional. He is justifiably afraid that a well established professional career could be entirely lost. His reputation is already damaged and he has suffered financially.

The panel believes that Pereira was sincere in his expressions of regret. The panel also is willing to accept that he recognizes the mistakes that he has made. He understands at this point that his actions in falsifying documents and arranging for undisclosed loans for down payments are in breach, not only of CMHC guidelines but the Act, and are not excusable in any guise. In other words, the panel is willing to give Pereira another chance. He should not expect similar considerations in the event of any future improprieties.

The panel is of the view that the public interest does not require that Pereira's ability to sell real estate be taken away permanently. His counsel suggested that a suspension for a period of nine months would satisfy the public interest. This would set the date for expiration of the suspension at March 22nd, 2002. While the panel does not intend to impose a suspension that would make it impossible for Pereira to re-establish himself, we do not feel that nine months is a sufficient period of suspension. The panel feels that a one year suspension is more adequate.

However, the matter does not end there. During the course of the hearing it became evident that, while suspended, Pereira had run an ad in the Renter's Guide similar to the types of ad he had been running while still selling real estate. This action, in the opinion of the panel, is an act of trading in real estate.

Pereira admitted that the ad had been placed. His explanation as to why he let the ad run while he was suspended was unsatisfactory. At any rate he advised the panel that as soon as the ad was placed he thought better of it and contacted his counsel. He was advised by his counsel not to deal with any calls arising out of the ad and not to run the ad at any time in the future while suspended. He indicated that he followed this advice.

The panel, after deliberation, decided to allow Pereira this additional lapse of judgment, however, we feel it is necessary to impose an additional suspension to help make it clear to him that he must comply with Commission requirements. That additional suspension is for a period of three months.

Decision

Therefore Pereira shall be suspended as a real estate salesman for a period of 15 months, including the time, commencing June 22nd, 2001 that he has already been suspended. As such, his suspension will end as of September 22nd, 2002.

In addition, Pereira is to be barred from becoming registered as a real estate broker for a period of five years from the original date of the suspension. Should Pereira decide after September 22nd, 2002 to reestablish his real estate career his registration will also be subject to the following conditions:

1. Within six months of being re-registered Pereira must provide evidence that he has successfully re-taken the second part of the Real Estate Course which deals with conduct;

2. During the first 12 months of his registration Pereira will be closely supervised by his broker, who will report monthly to the Registrar on Pereira's activities in a form to be determined by the Registrar at that time.

Counsel may arrange to speak to the question of costs in this matter.

March 18, 2002

"D. G. Murray"

D. G. Murray

Chair

"R. G. McEwen"

R. G. McEwen

Member

"K. S. Kristjanson"

K. S. Kristjanson

Member