

November 14, 2003

IN THE MATTER OF: THE REAL ESTATE BROKERS ACT

- and -

IN THE MATTER OF: SAUL ZITZERMAN

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

Panel:

Vice-Chair Ms. L.M. McCarthy
Board Members: Mr. W.J.A. Bulman

Appearances:

Mr. S. Gingera) Counsel for the Commission
Mr. Saul)
Zitzerman) On his own behalf

Background

Mr. Saul Zitzerman was first registered under the Real Estate Brokers Act (the "Act") as a real estate salesman with Mycom Group Inc. ("Mycom") on October 14, 1998 pursuant to Manitoba Securities Commission (the "Commission") order No. 2306 dated August 26, 1998 (the "Order"). Mr. Zitzerman's registration was subject to several conditions including close supervision by his employing broker, Mycom, for a period of two years from the date of

Mr. Zitzerman's period of supervision passed without incident as did the following period of time until April 29, 2003. At that time, the activity that is the subject of this hearing occurred.

The facts, as given in evidence by Mr. Robert Antymniuk, were not disputed by Mr. Zitzerman. Mr. Antymniuk is the owner of Mycom, and supervised Mr. Zitzerman under the terms of the Order.

Briefly, Mr. Zitzerman had worked on the sale of 71 Roslyn Road in late 2002 and early 2003. He was instrumental in putting the deal together. The closing, originally scheduled for early May, was delayed by a month so the purchaser could take advantage of a new CMHC program. Mycom received a cheque for \$25,000 dated January 7, 2003 as a deposit on the purchase of 71 Roslyn Road. Mycom deposited this cheque into its trust account on February 13, 2003.

At the end of April 2003, Mr. Zitzerman advised Mr. Antymniuk that the purchaser wanted the deposit moved to a different account. This type of request is not unusual in commercial real estate transactions. Mr. Zitzerman was informed that the agreement of both vendor and purchaser was required in writing to move the deposit. Mr. Zitzerman provided a letter of direction to Mycom, signed by both parties to the transaction, to release the \$25,000 deposit with interest.

At the time of closing, correspondence among the parties involved in the sale of 71 Roslyn Road revealed a discrepancy of \$25,000 in commissions owed to Mycom.

Mr. Antymniuk advised the Commission of a potential problem. In subsequent discussions among Mr. Antymniuk, Mr. W.D. Baluk, registrar under the Act, and Mr. Zitzerman, Mr. Zitzerman admitted to forging the signatures on the letter of direction to release commissions and using the funds himself for an urgent family matter.

After Mr. Antymniuk completed his testimony, Mr. Baluk appeared as a witness. Mr. Baluk confirmed the sequence of events noted above following notification of the Commission by Mr. Antymniuk.

Following a brief recess to give the panel an opportunity to review a number of documents submitted as evidence, Mr. Antymniuk spoke again, this time in support of Mr. Zitzerman. Among the issues he raised were the following:

No damage was done to any member of the public and no complaint was registered by either party to the transaction at 71 Roslyn Rd.;

The funds have been repaid by Mr. Zitzerman;

Mr. Antymniuk believes that the circumstances leading to Mr. Zitzerman's behaviour were unique, and that he is sincerely remorseful. Mr. Antymniuk is willing to continue to employ Mr. Zitzerman, giving him one more chance, and only one more (Mr. Zitzerman has not been a particularly profitable salesman for Mycom – the motivation is not economic).

Mr. Zitzerman spoke briefly, outlining some of the background that led to his "panic" on April 29, 2003, and the subsequent misappropriation of the deposit on 71 Roslyn Rd. He expressed considerable remorse for his behaviour.

Commission staff, represented by Mr. Gingera, recommended cancellation of Mr. Zitzerman's registration. The following factors contributed to staff's position:

The seriousness of Mr. Zitzerman's actions;

As part of Mr. Zitzerman's application for registration in 1998, he wrote the following: "I will not reoffend and at my age believe I have the experience and honesty to be a good real estate salesman." His actions have contradicted this representation.

Mr. Zitzerman did not self-report either to Mycom or to the Commission. He admitted the fraudulent activity only after it was discovered.

Mr. Zitzerman's rationalization that no one got hurt and that he was entitled to the funds, as they represented only part of the commissions he was entitled to from the sale of 71 Roslyn Rd.

Decision

It is the panel's responsibility to assess whether it is in the public interest to suspend or cancel the registration of Mr. Zitzerman as a real estate salesman.

As outlined in a recent decision of a panel of the Commission (Periera, 2003-09-25) public protection is the prime mandate of a securities commission. Although the interests of an individual registrant may also be considered, the two considerations are not equal – the first concern of the Commission is the public interest.

The panel agrees with Commission staff that Mr. Zitzerman's actions that are the subject of this hearing were very serious. In reviewing the evidence and arguments, the panel also considers the following to be mitigating circumstances in this case:

The circumstances that led to Mr. Zitzerman's actions were unique, and a recurrence is very unlikely;

The only party that would have suffered a financial loss was Mr. Zitzerman's broker, Mr. Antymniuk of Mycom Group. As noted above, Mr. Antymniuk immediately notified the Commission when a problem became apparent. He also continues to be a strong supporter of Mr. Zitzerman.

It is the opinion of the panel, based on

- The mitigating factors noted above,
- Mr. Zitzerman's repayment of the funds to Mycom,
- The nature of Mr. Zitzerman's responsibilities as a registrant (i.e., commercial real estate, with no access to funds belonging to members of the public, and in particular,
- The support and supervision of Mr. Antymniuk and Mycom

that it is in the public interest to suspend the registration of Mr. Zitzerman as a salesman under the Act for a period of six months, subject to the following conditions:

- If, after six months, Mycom is still willing to support Mr. Zitzerman, his registration will be reinstated, and will include conditions of supervision as determined by the Registrar;
- If Mycom is not willing to employ Mr. Zitzerman after the six month suspension, any application by another real estate broker to hire Mr. Zitzerman should be reviewed at a separate hearing.

November 14, 2003

L.M. McCarthy
Vice-Chair

W.J.A. Bulman
Member