

## **Enforcement Summary**

**Re: Victor Loewen**

### **Charges under Real Estate Brokers Act**

#### **Facts**

Victor Loewen was an authorized official registered with Realty World-Landex ("Landex") between March 31, 1986 and April 17, 1998. Mr. Loewen was responsible as the authorized official for the accounting and bookkeeping of Landex which included maintaining the ledgers, authorizing the issuance of cheques and handling all banking. Over a period of time from April 16, 1997 to April 17, 1998, Mr. Loewen made a number of unauthorized disbursements from the Trust Account maintained with respect to transactions involving the sales of properties as well as unauthorized withdrawals from the Trust Account maintained with respect to the property management performed by Landex. In order to disguise the unauthorized withdrawals, Mr. Loewen utilized duplicate cheques, modified the ledgers and prepared false information which was provided to the auditors of Landex in performing the annual audit required under the trust regulations to the Real Estate Brokers Act. Mr. Loewen also signed a certificate verifying the accuracy of auditor's reports which were prepared in reliance on false information he was providing to the auditors.

#### **Sentence**

Judge Wyant accepted guilty plea from Mr. Loewen to two counts of disbursing monies from trust without authorization and one count of filing a false statement with the Commission on June 5, 2000. On September 25, 2000 Judge Wyant heard submission on sentence. The Court noted in imposing sentence that general deterrence and denunciation of the conduct must be uppermost in the Court's mind and that any sentence should voice society's disapproval for the accused's actions in this instance. This was obviously a planned and premeditated scheme which needed to be denounced through sentencing which was compounded by the use of Mr. Loewen's position of trust to perpetrate the scheme.

In assessing the sentence the Court noted that the maximum penalty imposed under the Real Estate Brokers Act was not as great as that under the Securities Act and that this must be taken into account as the legislature's will concerning these types of offences.

The Court noted that there were mitigating factors to the sentence including the lack of a record, the fact that Mr. Loewen cooperated with the Commission in its investigation of this matter, the entry of the guilty plea saving the costs and time of a trial, his indication of remorse for his actions and the fact that he voluntarily undertook counseling and he apparently had significant community support as indicated in letters of reference provided to the Court. Mr. Loewen is noted in those references as being a hard working and contributing to his community. The Court also noted that Mr. Loewen did not directly profit, though he did indirectly profit by using the money to keep the company's operations going thereby continuing his employment.

Notwithstanding the many mitigating factors, general deterrence and disapproval were the overriding concerns for the Court in assessing a sentence. However, the mitigating factors could be taken into account by the Court in assessing the length of the sentence. The Court ruled that Mr. Loewen be sentenced to 60 days imprisonment on each count to be served concurrently. The 60 days would be served intermittently as directed by the Court.