

IN THE MATTER OF: THE REAL ESTATE BROKERS ACT

-and-

IN THE MATTER OF: PHYLLIS MARIE CARUK

**STATEMENT OF ALLEGATIONS OF STAFF
OF THE MANITOBA SECURITIES COMMISSION**

**STAFF OF THE MANITOBA SECURITIES COMMISSION ALLEGE, AMONG
OTHER THINGS, THAT:**

REGISTRATION

1. Phyllis Marie Caruk ("Caruk") has been registered as a salesman, under *The Real Estate Brokers Act* (the "Act") since August 23, 1994;
2. Caruk's registration as a salesman was transferred to Caruk's new employer, Century 21 Art Potoroka Realty Ltd. ("Century 21") on April 22, 1996 and registration has continued to the present day;

DETAILS

1. On August 30, 1999 the property, owned by RMB, the vendor, legally described as Lot 6, Block 90, Plan 379 and commonly described as 222-4th Avenue N. E. in Dauphin, Manitoba (the "Property") was listed for sale on the Dauphin multiple listing service;
2. Donna Fern Ann Spack ("Spack"), an authorized official registered under the Act and employed with Melnyk Spack in Dauphin, Manitoba, was acting as listing agent for RMB in the sale of the Property;
3. On September 2, 1999 Caruk contacted her clients, WH and LH, who are husband and wife, to advise them that the Property was for sale;
4. Caruk spoke to RMB on September 2, 1999 and told her that WH and LH were interested in the Property;
5. On September 2, 1999 WH viewed the Property on a drive by basis. RMB invited him inside her residence;
6. On September 3, 1999 Spack telephoned WH and LH. Spack spoke to LH and asked if they were interested in purchasing the Property. Spack told LH that they had no right to attend to the vendor's Property without a real estate agent present and an appointment for a viewing of the Property was to be made;
7. WH and LH viewed the Property on Sunday, September 5, 1999 at approximately 5:15 p.m.;

8. Caruk was not present at this viewing of the Property;
9. WH and LH met Caruk after the viewing on September 5, 1999, and Caruk wrote an offer to purchase the Property to RMB;
10. On Monday, September 6, 1999 at approximately 10:30 a.m. Spack presented the WH/LH offer to purchase on the Property to RMB;
11. Spack, on instructions from the vendor, RMB, drafted a counter offer on September 6, 1999;
12. Spack placed the counter offer in the mail slot of Caruk's place of employment, Century 21, on September 6, 1999;
13. WH telephoned the vendor, RMB, at 11:30 a.m. on September 6, 1999. WH told RMB he would not agree to her counter offer. RMB agreed to the WH/LH original, September 5, 1999 offer;
14. RMB told Spack that WH and LH would not accept her counter offer and that she wanted to accept the original, September 5, 1999 offer;
15. Caruk contacted WH and LH to advise them their original, September 5, 1999 offer on the Property had been accepted by the vendor, RMB;
16. Shortly after leaving the voice mail on Caruk's telephone answering machine on September 6, 1999, Spack telephoned "lh", another prospective purchaser, to go over to the Property to view it
17. "lh" went over to view the Property. Spack told "lh" there was another offer on the Property but she did not provide "lh" with any of the details of that offer;
18. "lh" made an offer to purchase on the Property which was immediately accepted by RMB;
19. On September 6, 1999 RMB received a telephone call from Caruk, telling RMB that Caruk would be taking her to court;
20. On September 7, 1999 Caruk threatened "lh" that Century 21 and Caruk would be taking him to court. Caruk attempted to have "lh" abandon the contract by telling him the house had a bad roof and a sloping floor;
21. "lh" obtained the keys to the Property and took possession of the Property on or about September 13, 1999. The possession date on the "lh" offer to purchase was October 1, 1999;
22. Doug Deans of Johnston & Company, counsel for the vendor, RMB, is holding the "lh" Purchase Agreement proceeds in trust until the matter is sorted out in court;

23. On October 20,1999 WH filed a Statement of Claim in The Court of Queen's Bench, Dauphin Centre, against RMB;

24. On December 15,1999 "I/h" and his wife "CH" filed a Statement of Claim in the Court of Queen's Bench, Dauphin Centre against RMB, WH, LH, Donna Spack and Melnyk Spack Realty Ltd;

ALLEGATIONS

Caruk is not fit for registration under the Act due to the following allegations:

1. Caruk did not act in the best interests of her clients and acted in a manner not in accordance with industry standards by contacting the vendor, RMB instead of contacting RMB's real estate agent, Spack, to advise that WH and LH were interested in the Property;

(a) Caruk did not act in the best interests of her clients and acted in a manner not in accordance with industry standards by contacting the vendor and threatening court action without instructions from her employer, Century 21 Art Potoroka Realty Ltd.;

(b) Caruk did not act in the best interests of her clients and acted in a manner not in accordance with industry standards by contacting "I/h" and making representations about the Property in an attempt to have "I/h" abandon his offer to purchase of the Property;

(c) such further and other matters as counsel may advise and the Commission may permit.

DATED at Winnipeg, Manitoba this 17th day of April, 2000.

Director, Legal and Enforcement

TO: PHYLLIS MARIE CARUK
Century 21 Art Potoroka Realty Ltd.
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Dauphin, Manitoba
R7N 2A4