

IN THE MATTER OF: THE REAL ESTATE BROKERS ACT

-and-

IN THE MATTER OF: JOSE ANTONIO PEREIRA and
 MARIO MANUEL LOPES

AMENDED

STATEMENT OF ALLEGATIONS OF STAFF OF
THE MANITOBA SECURITIES COMMISSION

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

A. REGISTRATION

1. At all material times, Jose Antonio Pereira ("Pereira") was registered as a salesman under The Real Estate Brokers Act (the "Act") with Re/Max Real Estate Inc. ("Re/Max").
2. At all material times, Mario Manuel Lopes ("Lopes") was registered as a salesman under the Act with Re/Max.

B. DETAILS

Ms. L (Seven Oaks Home):

3. Ms. L was interested in renting a home and noticed an advertisement in the Renter's Guide by Pereira.
4. Ms. L contacted Pereira.
5. Ms. L was advised by Pereira that she could own a home.
6. Ms. L told Pereira she only had \$500.00. Pereira explained to her how he would provide the balance necessary to close and that she would repay this from the cash-back she would receive from the mortgage.
7. Ms. L was shown a home located on Seven Oaks, in Winnipeg, Manitoba (the "Seven Oaks Home") by Richard Kohut ("Kohut") an associate of Pereira's.
8. On February 28, 2001, an Offer to Purchase the Seven Oaks Home was made by Ms. L and accepted by the vendors (the "Seven Oaks Offer").

9. Ms. L was advised by Pereira to have her sister sign a gift letter provided by Pereira.

10. The gift letter confirms a gift in the amount of \$3,000.00 and states:

This is an outright gift with no repayment expected or implied, either in the form of cash or by future services by him/her.

11. Ms. L received a cashier's cheque from Pereira in the amount of \$2,956.21, which she gave to her lawyer to be used for the cash to close the purchase of the Seven Oaks Home. The source of the funds was DS, a friend of Pereira's.

12. In return, Ms. L gave Pereira four post-dated cheques, as follows: 3 cheques each in the amount of \$252.00 dated March 31/01, April 15/01 and April 30/01 and one cheque in the amount of \$2,400.00 dated April 24/01.

13. Ms. L was instructed by Pereira to sign a mortgage with the TD Bank for a 10-year term, which would result in a higher cash-back than the 5-year term she was contemplating, and that the cash-back would be used to cover the cheque for \$2,400.00.

14. As a result of discovering that the transaction was improper, Ms. L stopped payment on her second cheque, dated April 15/01. The third cheque, dated April 30/01, was returned by Pereira. The fourth cheque, in the amount of \$2,400.00, was not returned and Ms. L placed a stop payment on it.

15. The amount of the cheque dated April 15/01 had been altered by Pereira such that the original amount of \$252.00 was changed to \$250.00.

16. Ms. L was a first time home buyer.

17. The Seven Oaks Offer did not disclose particulars as to Pereira's involvement in obtaining a loan for Ms. L the proceeds of which were to be used for cash to close.

Ms. N (Newton Home):

18. Ms. N noticed an advertisement in the Renter's Guide by Pereira entitled Out of Rent to Own, as a result of which she obtained an application.

19. Ms. N completed the application following which she received a letter from Pereira.

20. Ms. N contacted Pereira and arranged for an appointment. Instead of meeting with Pereira, she met with Lopes.

21. Ms. N received confirmation from the TD Bank that she was pre-approved for a mortgage, following which she was shown properties by Lopes.

22. Lopes informed Ms. N to the effect that with the program they had in place she would only need a \$500 down payment.

23. On or about March 29, 2001, an offer to purchase a home located on Newton Avenue, in Winnipeg, Manitoba (the "Newton Home") was prepared by Lopes showing Pereira as selling salesman (the "Newton Home Offer").

24. It was explained to Ms. N that she only needed \$500 to buy a home because she would receive money from a lender and she would pay the lender back from the cash-back on her mortgage.

25. On or about May 15, 2001, Lopes showed Ms. N a cheque in the amount of \$3,105.00 and prepared an agreement whereby she would repay the lender from her cash-back.

26. Ms. N signed the repayment agreement.

27. The source of the \$3,105.00 was DS, a friend of Pereira's.

28. The \$3,105.00 was later used to demonstrate to a bank the existence of the cash to close.

29. Ms. N was later contacted by the TD Bank for proof of \$4,000.00 as noted on a gift letter (the "Ms. N Gift Letter").

30. Prior to being contacted by the TD Bank, Ms. N. was not aware of, nor had she signed, the Ms. N Gift Letter.

31. The Ms. N Gift Letter which purports to have been signed by Ms. N shows an alleged gift in the amount of \$4,218.50 and states:

This is an outright gift with no repayment expected or implied, either in the form of cash or by future services by him/her.

32. The TD Bank would not look after the mortgage for Ms. N.

33. Ms. N was reassured by Lopes not to worry and that they would look after everything.

34. The Newton Home Offer did not disclose particulars as to the involvement of Pereira or Lopes in obtaining a loan for Ms. N the proceeds of which were to be used for cash to close.

Ms. P (Hindley Home):

35. Ms. P contacted Pereira as a result of a newspaper advertisement.

36. Following the instructions of a telephone message, Ms. P went to Re/Max and filled out a credit application.

37. Ms. P thought the credit application was to rent a home.
38. The amount of cash identified on Ms. P's credit application was "NO".
39. Ms. P was told she qualified for a mortgage and could own a home, following which she was shown properties by Pereira.
40. An offer to purchase a home located on Hindley Avenue, in Winnipeg, Manitoba (the "Hindley Home") was prepared by Pereira (the "Hindley Home Offer"). Pereira asked Ms. P if she could get a \$1,000.00 for a deposit, which she did by drawing down on a line of credit. At the time of preparation of the Hindley Home Offer, Pereira further informed Ms. P that she did not need any more money and that she would be receiving some money back from a cash-back.
41. Ms. P was advised by Pereira that her mortgage would be with TD Bank.
42. Before the mortgage was processed, Ms. P was contacted by a new manager at the TD Bank.
43. A document dated on or about April 23rd/01 purporting to evidence a gift of \$4,000.00 from a sister of Ms. P's to Ms. P had been presented to the TD Bank (the "Ms. P Gift Letter").
44. The Ms. P Gift Letter stated:

This is an outright gift with no repayment expected or implied, either in the form of cash or by future services by him/her.
45. The Ms. P Gift Letter purported to bear the signature of Ms. P.
46. Ms. P did not sign the Ms. P Gift Letter, had no knowledge of the Ms. P Gift Letter prior to being contacted by the TD Bank, and did not in fact have the sister as described in the Ms. P Gift Letter.
47. Thereafter, Ms. P was contacted by Pereira who informed her that her mortgage application was now at a different bank.
48. Pereira had provided to the TD bank a copy of an Automated Teller Machine balance inquiry as proof of the down payment.
49. The new bank did not approve the mortgage for Ms. P and the purchase of the Hindley Home was not completed.

C. ALLEGATIONS

1. Pereira committed "fraudulent acts" within the meaning of the Act in connection with a trade or transaction in real estate as follows:

(a) By engaging in an artifice, agreement, device, scheme, course of conduct or business, to obtain money, profit, or property, by a wrongful or dishonest dealing, by causing false gift letters to be submitted to a financial institution in order to obtain mortgage financing in connection with a trade or transaction in real estate in contravention of subparagraph (i) of the definition;

(b) By an intentional misrepresentation by word, conduct or manner of a material fact, present or past, and an omission to disclose such a material fact, by causing documents to be submitted to a financial institution misrepresenting monies to have been received by gift when the true nature of the transaction was a loan and by misrepresenting the source of said monies in connection with a trade or transaction in real estate in contravention of subparagraph (a) of the definition;

(c) By an intentional misrepresentation by word, conduct or manner of material facts, present or past, in the creation of the gift letters, or any of them, in connection with a trade or transaction in real estate in contravention of subparagraph (a) of the definition;

(d) By an intentional misrepresentation by word, conduct or manner of a material fact, present or past, and an omission to disclose such a material fact, by failing to clearly show a promise, undertaking or guarantee made or given by him that he would in any way obtain a loan for the offerer in contravention of subparagraph (a) of the definition;

(e) By altering the amount of a cheque in respect of which Pereira was the payee, without the knowledge, consent or approval of the payor his client.

2. Pereira acted in contravention of subparagraph 22(1)(f)(iv) of the Act by failing to clearly show in an offer to purchase a promise, undertaking or guarantee made or given by him that he would in any way obtain a loan for the offerer.

3. As to any or all of the foregoing, Pereira acted contrary to the best interests of his clients.

4. Lopes committed "fraudulent acts" within the meaning of the Act in connection with a trade or transaction in real estate as follows:

(a) By engaging in an artifice, agreement, device, scheme, course of conduct or business, to obtain money, profit, or property, by a wrongful or dishonest dealing, by causing false gift letters to be submitted to a financial institution in order to obtain mortgage financing in connection with a trade or transaction in real estate in contravention of subparagraph (i) of the definition;

(b) By an intentional misrepresentation by word, conduct or manner of a material fact, present or past, and an omission to disclose such a material fact, by causing documents to be submitted to a financial institution misrepresenting monies to have been received by gift when the true nature of the transaction was a

loan and by misrepresenting the source of said monies in connection with a trade or transaction in real estate in contravention of subparagraph (a) of the definition;

(c) By an intentional misrepresentation by word, conduct or manner of material facts, present or past, in the creation of the gift letters, or any of them, in connection with a trade or transaction in real estate in contravention of subparagraph (a) of the definition;

(d) By an intentional misrepresentation by word, conduct or manner of a material fact, present or past, and an omission to disclose such a material fact, by failing to clearly show a promise, undertaking or guarantee made or given by him that he would in any way obtain a loan for the offerer in contravention of subparagraph (a) of the definition.

5. Lopes acted in contravention of subparagraph 22(1)(f)(iv) of the Act by failing to clearly show in an offer to purchase a promise, undertaking or guarantee made or given by him that he would in any way obtain a loan for the offerer.
6. As to any or all of the foregoing, Lopes acted contrary to the best interests of his client.
7. Such further and other matters as counsel may advise and this Commission permits.

DATED the 10th day of July, 2001.

Director, Legal and Enforcement

TO: JOSE ANTONIO PEREIRA

AND TO: MARIO MANUEL LOPES