

IN THE MATTER OF: THE REAL ESTATE BROKERS ACT

-and-

IN THE MATTER OF: SAUL BENJAMIN ZITZERMAN

STATEMENT OF ALLEGATIONS
OF STAFF OF THE MANITOBA SECURITIES COMMISSION

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

A. Registration

1. Saul Benjamin Zitzerman ("Zitzerman") was registered under the The Real Estate Brokers Act ("REBA") as a real estate salesman pursuant to Manitoba Securities Commission (the "Commission") Order No. 2306 dated August 26, 1998. The Order was issued following a hearing before the Commission on August 7, 1998. The registration has been continuous to the present date.

B. Details

2. The following conditions of registration were imposed by Order No. 2306:

(a) Zitzerman's broker provide the Registrar with a written report on a quarterly basis (October 31, January 31, April 30 and July 31) for a period of two years from the date of this order detailing all of Zitzerman's real estate activities up to and including the date of the report including, without in any way restricting the generality of the foregoing, particulars of all transactions he has been involved in, the training and supervision he has been receiving, any problems or concerns about Zitzerman and his real estate activities raised by anyone, his relationships with his clients and with other real estate registrants and a summary of his sales activities. The quarterly written reports are to be in a form acceptable to the Registrar. The Registrar is to review the said reports and is directed to seek any further information he deems appropriate from Zitzerman and/or his broker and in the event that the Registrar is in any way dissatisfied with any of the information provided or not provided by Zitzerman and/or his broker the Registrar is directed to bring this matter back before a panel of the Commission.

(b) Zitzerman's broker immediately report any and all concerns, suspicions or irregularities involving the conduct of Zitzerman to the Registrar. Without limiting the generality of the foregoing, such reports shall include all matters, whether or not those matters constitute a violation of the Act or Regulations to the Act.

(c) Zitzerman comply with the terms of the Parole Certificate number D55101001340 issued November 6, 1997.

(d) That staff receive confirmation from the Securities Fraud Information Centre that the information disclosed in Zitzerman's application for registration dated July 8, 1998 is complete and accurate.

3. Zitzerman is registered as a salesperson with Mycom Group Inc. Zitzerman's activities are supervised by Robert Antymniuk ("Antymniuk"), an authorized official of Mycom.

4. Zitzerman, through his employment with Mycom, was the listing agent for a property located in Winnipeg, Manitoba (the "Property").

5. On or about April 28, 2003, Zitzerman approached Antymniuk and indicated that the purchaser of the Property was requesting a return of its deposit of \$25,000.00 from the real estate broker's trust account operated by Mycom under REBA.

6. Antymniuk advised Zitzerman that he would require written authorization from all parties to the transaction before the deposit could be released.

7. Zitzerman presented a document entitled "Direction" addressed to Mycom Group Inc. dated April 28, 2003 directing the release of the deposit of \$25,000.00 to the purchaser of the Property.

8. The said direction had not been authorized by either the vendor or the purchaser of the Property.

9. The said direction contained signatures purporting to be on behalf of the vendor and the purchaser which had been forged by Zitzerman without the knowledge of the vendor or purchaser.

10. Based upon the direction provided to Antymniuk by Zitzerman, Antymniuk issued a cheque from the Mycom trust account to the purchaser of the Property in the amount of \$25,025.36.

11. Without the knowledge of the vendor or the purchaser, Zitzerman cashed the cheque and converted the funds for his own use.

12. In or about June, 2003, Mycom, the purchaser and vendor became aware of Zitzerman's misappropriation of the funds.

13. On February 4, 1993, the Commission pronounced Order No. 27 against Zitzerman and Counsel Management Ltd. which provided the following:

a) approval of a Settlement Agreement dated February 3, 1993 between Zitzerman, Counsel Management Ltd. and Staff of The Manitoba Securities Commission.

b) pursuant to subsection 19(5) of the Act, subsection 19(1) (with the exception of clause (g) of subsection 19(1) of the Act) and 19(3) of the Act do not apply to Zitzerman and Counsel with respect to the trades referred to in those subsections

of the Act and pursuant to subsection 19(5) of the Act, subsection 19(2) of the Act (except clause (a) of subsection 19(2)) does not apply to Zitzerman and Counsel with respect to such of the securities referred to in that subsection,

except that the foregoing shall not apply as follows:

i. in respect of securities that are the subject matter of a takeover bid, issuer bid or other similar bid or other offer made under applicable corporate or securities legislation or stock exchange rules; and

ii. Zitzerman and Counsel are permitted to exercise conversion, exchange, transfer, redemption and other similar rights provided that such rights would be irretrievably lost if not exercised, or must be exercised at the request of a third party,

and also provided that Zitzerman or Counsel may apply to the Director (the "Director") of the Commission to exempt a trade or trades by Zitzerman or Counsel, as the case may be, in circumstances where the Director determines that it would not be contrary to the public interest to grant an exemption. A decision of the Director to grant or deny an exemption shall be final.

c) pursuant to section 148(1) of the Act, all trading in securities of Counsel shall cease.

14. On March 14, 1996, Zitzerman was found guilty in the Provincial Court of Manitoba of ten counts of trading in a security without being registered under The Securities Act (the "Act") thereby committing an offence under s. 136(1)(c) of the Act.

15. The charges before the Court to which Zitzerman was found guilty were as follows:

Count 1

SAUL BENJAMIN ZITZERMAN and COUNSEL MANAGEMENT LTD., between the 1st day of December, 1986 and the 27th day of January, 1987, both dates inclusive, at or near the City of Winnipeg, in the Province of Manitoba, did trade in a security without being duly registered under The Securities Act, to wit: in connection with the trade of one-half unit in the extension financing of Phase XIX of "Norcal/Syndicate" to Daviscorp. Holdings Inc. for consideration of \$51,000.00, contrary to section 6(1) of The Securities Act, and SAUL BENJAMIN ZITZERMAN and COUNSEL MANAGEMENT LTD. did thereby commit an offence contrary to section 136(1)(c) of The Securities Act.

Count 2

SAUL BENJAMIN ZITZERMAN and COUNSEL MANAGEMENT LTD., between the 1st day of January, 1987 and the 27th day of January, 1987, both dates inclusive, at or near the City of Winnipeg, in the Province of Manitoba, did trade in a security without being duly registered

under The Securities Act, to wit: in connection with the trade of one-half of one unit in "NORCAL SYNDICATE PHASE XXVII-C" TO Daviscorp. Holdings Inc. for consideration of \$38,000.00, contrary to section 6(1) of The Securities Act, and SAUL BENJAMIN ZITZERMAN and COUNSEL MANAGEMENT LTD. did thereby commit an offence contrary to section 136(1)(c) of The Securities Act.

Count 3

SAUL BENJAMIN ZITZERMAN and COUNSEL MANAGEMENT LTD., between the 8th day of June, 1987 and the 16th day of February, 1988, both dates inclusive, at or near the City of Winnipeg, in the Province of Manitoba, did trade in a security without being duly registered under The Securities Act, to wit: in connection with the trade of one-half of one unit in "ITT PARKWAY/SYNDICATE" to Daviscorp. Holdings Inc. for consideration of \$44,000.00, contrary to section 6(1) of The Securities Act, and SAUL BENJAMIN ZITZERMAN and COUNSEL MANAGEMENT LTD. did thereby commit an offence contrary to section 136(1)(c) of The Securities Act.

Count 4

SAUL BENJAMIN ZITZERMAN and COUNSEL MANAGEMENT LTD., between the 28th day of June, 1988 and the 2nd day of July, 1988, both dates inclusive, at or near the City of Winnipeg, in the Province of Manitoba, did trade in a security without being duly registered under The Securities Act, to wit: in connection with the trade of one unit in "REALEX/ITT SYNDICATE PHASE I" to Daviscorp. Holdings Inc. for consideration of \$50,000.00, contrary to section 6(1) of The Securities Act, and SAUL BENJAMIN ZITZERMAN and COUNSEL MANAGEMENT LTD. did thereby commit an offence contrary to section 136(1)(c) of The Securities Act.

Count 5

SAUL BENJAMIN ZITZERMAN and COUNSEL MANAGEMENT LTD., between the 28th day of June, 1988 and the 1st day of July, 1988, both dates inclusive, at or near the City of Winnipeg, in the Province of Manitoba, did trade in a security without being duly registered under The Securities Act, to wit: in connection with the trade of one unit in "GENESIS/ITT SYNDICATE NO. 1" to Daviscorp. Holdings Inc. for consideration of \$25,000.00, contrary to section 6(1) of The Securities Act, and SAUL BENJAMIN ZITZERMAN and COUNSEL MANAGEMENT LTD. did thereby commit an offence contrary to section 136(1)(c) of The Securities Act.

Count 6

SAUL BENJAMIN ZITZERMAN and COUNSEL MANAGEMENT LTD., between the 1st day of August, 1987 and the 6th day of October, 1987, both dates inclusive, at or near the City of Winnipeg, in the Province of Manitoba, did trade in a security without being duly registered under The Securities Act, to wit: in connection with the trade of one-half of one unit in "NORCAL/ITT SYNDICATION (PHASE 27D)" to Daviscorp. Holdings Inc. for consideration

of \$13,350.00, contrary to section 6(1) of The Securities Act, and SAUL BENJAMIN ZITZERMAN and COUNSEL MANAGEMENT LTD. did thereby commit an offence contrary to section 136(1)(c) of The Securities Act.

Count 7

SAUL BENJAMIN ZITZERMAN and COUNSEL MANAGEMENT LTD., between the 1st day of August, 1987 and the 6th day of October, 1987, both dates inclusive, at or near the City of Winnipeg, in the Province of Manitoba, did trade in a security without being duly registered under The Securities Act, to wit: in connection with the trade of one unit in "NORCAL ITT SYNDICATE PHASE 27E" to the late Ruth Marie Johnson through Michael O'Connor who is the son of the said late Ruth Marie Johnson for consideration of \$30,000.00, contrary to section 6(1) of The Securities Act, and SAUL BENJAMIN ZITZERMAN and COUNSEL MANAGEMENT LTD. did thereby commit an offence contrary to section 136(1)(c) of The Securities Act.

Count 8

SAUL BENJAMIN ZITZERMAN and COUNSEL MANAGEMENT LTD., between the 1st day of July, 1987 and the 6th day of October, 1987, both dates inclusive, at or near the City of Winnipeg, in the Province of Manitoba, did trade in a security without being duly registered under The Securities Act, to wit: in connection with the trade of two units in "NORCAL/ITT SYNDICATION (PHASE 27D)" to Ruth H. Gales Enterprises Ltd. for consideration of \$53,400.00, contrary to section 6(1) of The Securities Act, and SAUL BENJAMIN ZITZERMAN and COUNSEL MANAGEMENT LTD. did thereby commit an offence contrary to section 136(1)(c) of The Securities Act.

Count 9

SAUL BENJAMIN ZITZERMAN and COUNSEL MANAGEMENT LTD., between the 1st day of July, 1988 and the 12th day of June, 1989, both dates inclusive, at or near the City of Winnipeg, in the Province of Manitoba, did trade in a security without being duly registered under The Securities Act, to wit: in connection with the trade of one unit in "MONARCH/ITT SYNDICATE – PHASE I" to Sam Potter and Marsha Potter for consideration of \$50,000.00, contrary to section 6(1) of The Securities Act, and SAUL BENJAMIN ZITZERMAN and COUNSEL MANAGEMENT LTD. did thereby commit an offence contrary to section 136(1)(c) of The Securities Act.

Count 10

SAUL BENJAMIN ZITZERMAN and COUNSEL MANAGEMENT LTD., between the 1st day of July, 1988 and the 12th day of July, 1989, both dates inclusive, at or near the City of Winnipeg, in the Province of Manitoba, did trade in a security without being duly registered under The Securities Act, to wit: in connection with the trade of one unit in "SHERIDAN/ITT SYNDICATE – PHASE 4" to Sam Potter and Marsha Potter for consideration of \$50,000.00, contrary to section 6(1) of The Securities Act, and SAUL BENJAMIN ZITZERMAN and

COUNSEL MANAGEMENT LTD. did thereby commit an offence contrary to section 136(1)(c) of The Securities Act.

16. On March 29, 1996, Judge Aquila sentenced Zitzerman to twelve months incarceration as follows:

- a) Counts 1 – 8: a sentence of one month on each count, to be served consecutive to each other.
- b) Counts 9 – 10: a sentence of two months on each count, to be served consecutive to each other, and consecutive to all others.

17. On October 3, 1996, Zitzerman pled guilty in the Court of Queen's Bench of Manitoba to four counts of fraud over \$1,000.00.

18. The charges before the Court to which Zitzerman pled guilty were as follows:

Count 1. THAT Saul Benjamin Zitzerman

at the City of Winnipeg aforesaid between the 23rd day of August in the year of our Lord one thousand nine hundred and eighty-three and 31st day of July in the year of our Lord one thousand nine hundred and ninety did unlawfully by deceit, falsehood or other fraudulent means defraud Jerry Davis doing business as Cecil Davis & Son Agencies and Daviscorp Holdings Inc. of Winnipeg, Manitoba of monies of an amount exceeding one thousand dollars contrary to the Provisions of the Criminal Code

Count 2. AND THAT HE

at the City of Winnipeg aforesaid, between the 16th day of May in the year of our Lord one thousand nine hundred and eighty-five and the 27th day of October in the year of our Lord one thousand nine hundred and eighty-nine did unlawfully by deceit, falsehood or other fraudulent means defraud Ruth Helen Gales doing business as Ruth H. Gales Enterprises Ltd. of Winnipeg, Manitoba of monies of an amount exceeding one thousand dollars contrary to the Provisions of the Criminal Code;

Count 3. AND THAT HE

at the City of Winnipeg aforesaid, between the 30th day of June in the year of our Lord one thousand nine hundred and eighty-eight and the 6th day of December in the year of our Lord one thousand nine hundred and ninety did unlawfully by deceit, falsehood or other fraudulent means defraud Richard Ross doing business as Stella Produce (1981) Ltd. of Winnipeg, Manitoba of monies in an amount exceeding one thousand dollars contrary to the Provisions of the Criminal Code;

Count 4. AND THAT HE

at the City of Winnipeg aforesaid, between the 23rd day of January in the year of our Lord one thousand nine hundred and eighty-seven and the 31st day of December in the year of our Lord one thousand nine hundred and ninety did unlawfully by deceit, falsehood or other fraudulent means defraud Sam Potter of Winnipeg, Manitoba of monies of an amount exceeding one thousand dollars contrary to the Provisions of the Criminal Code.

19. On January 7, 1997, the Honourable Justice Shulman sentenced Zitzerman to thirty months imprisonment. Restitution orders were also made as follows:

a) Daviscorp. Holdings Inc.	\$119,000.00
b) Stella Produce (1981) Ltd.	\$ 50,000.00
c) Ruth H. Gales Enterprises Ltd.	\$ 53,400.00
d) Sam Potter	\$100,000.00

C. Allegations

1. Staff of the Commission allege that:

a) Zitzerman acted in a manner not in accordance with industry standards and contrary to the interests of the vendor and purchaser of the Property by misappropriating funds to which he was not entitled;

b) Zitzerman committed a fraudulent act by forging signatures of the vendor and purchaser on the Direction;

c) Zitzerman committed a fraudulent act by misappropriating funds made payable to the purchaser;

d) Zitzerman acted in a manner not in accordance with industry standards and contrary to the interests of the purchaser and the vendor by providing instructions to his broker to pay out monies in violation of the trust account provisions contained in Manitoba Regulation 57/88 R, The Real Estate Brokers Trust Accounts Regulation enacted under REBA;

e) Zitzerman failed to comply with the following written representation he made to a panel of The Manitoba Securities Commission at the Hearing considering his application for registration held on August 7, 1998:

"I will not re-offend and at my age believe I have the experience and honesty to be a good commercial real estate salesman".

f. Such further and other matters as counsel may advise and the commission may permit.

and that due to these allegations, along with the details cited above, it is in the public interest that the registration of Zitzerman under REBA be suspended or cancelled.

DATED at Winnipeg, Manitoba this 10th day of September, 2003.

Director, Legal and Enforcement

TO: Saul Benjamin Zitserman