



THE MANITOBA
SECURITIES
COMMISSION

January 26, 2016

IN THE MATTER OF: THE REAL ESTATE BROKERS ACT

- and -

IN THE MATTER OF: STEVEN RICHARD JOYAL

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

Panel:

Panel Chair:	Mr. R.D. Bell
Member:	Mr. G.J. Lillies
Member:	Ms. D.L. Janovcik

Appearances:

S. Gingera)	Counsel for Commission Staff
K. Burwash)	On behalf of Steven Richard Joyal

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A DIVISION OF THE MANITOBA FINANCIAL SERVICES AGENCY

This is a hearing pursuant to NOTICE OF HEARING served by The Manitoba Securities Commission ("Commission") on Steven Richard Joyal ("Joyal") together with a STATEMENT OF ALLEGATIONS of staff of The Manitoba Securities Commission ("ALLEGATIONS").

An AGREED STATEMENT OF FACTS ("Agreed Statement") was filed at the hearing in which Joyal agreed to all statements of fact contained in the ALLEGATIONS except paragraph 17 of the ALLEGATIONS thereof which reads:

17. The co-listing agent did not have any involvement in connection with the OTP nor collection of commissions from D.J. and C.S.

Paragraph 17 of the AGREED STATEMENT reads:

On March 25, 2015, Cornerstone deducted the sum of \$3,386.25 from Joyal's account to be applied toward Joyal's indebtedness to Cornerstone for the Semple Property.

The differences in those two paragraphs is not material in this Decision.

The AGREED STATEMENT is reproduced here with no need to reproduce the ALLEGATIONS.

A. REGISTRATION

1. Steven Richard Joyal ("Joyal") is a resident of the City of Winnipeg, in the Province of Manitoba.
2. Joyal's registration history under *The Real Estate Brokers Act* ("REBA") is as follows:

Salesman

May 5, 2006 – October 1, 2007	Phoenix Real Estate Inc.
October 1, 2007 – April 7, 2008	Cornerstone Properties Inc.
April 7, 2008 – February 3, 2014	Cornerstone Real Estate (Cornerstone Properties Inc. o/a)
February 3, 2014 – Present	Coldwell Banker Preferred Real Estate (3529763 Manitoba Ltd. o/a)

B. DETAILS

1. On or about August 15, 2011, C.S. entered into an Offer to Purchase (the "OTP") to purchase the property 243 Semple Avenue, Winnipeg, Manitoba ("Semple Property") from D.J.
2. The OTP was prepared by Joyal.

3. Joyal was one of the listing and selling salespersons under the OTP. Cornerstone Real Estate ("Cornerstone") was the selling and listing broker under the OTP.
4. The OTP provided, in part, for a possession date of October 15, 2011 (the "possession date").
5. The OTP also provided, in part, that a \$4,000.00 commission plus GST was to be paid the listing broker. D.J. and C.S. verbally agreed that C.S. would pay this commission.
6. Prior to the possession date, Cornerstone paid an advance of \$1,750.00 to Joyal on the commission to be paid under the OTP. An advance of \$1700.00 was also paid to the other listing/selling salesperson under the OTP.
7. The sale of the Semple Property to C.S. was completed as contemplated under the OTP.
8. Subsequent to the completion of the sale of the Semple property to C.S., R.D., the authorized official of Cornerstone, made numerous attempts to have the lawyer for D.J. remit the remaining commissions owing under the OTP to Cornerstone.
9. R.D. was advised by the lawyer for D. J. that the commission owing under the OTP was paid directly to Joyal by D.J.
10. On or about November 15, 2012, Joyal met with D.J. and his fiancée, D.S. in connection with the commission owing under the OTP. Joyal requested D.J. provide a cheque written to Joyal's wife for the commission.
11. On or about November 15, 2012, D.S. wrote a cheque to Joyal's wife in the amount of \$4,557.00 as requested by Joyal. This cheque was given to Joyal and subsequently cashed.
12. On or about November 22, 2013, Joyal met with C.S. in connection with the commission under the OTP. Joyal had told C.S. the commission under the OTP had not been paid. C.S., at the request of Joyal, wrote a cheque to 6709622 Manitoba Ltd. for \$3,517.50. This amount was for the commission owing under the OTP less monies Joyal owed to C.S.
13. At the time he paid Joyal \$3,517.50, C.S. did not know Joyal had received payment for the commission from D.J./D.S.
14. Joyal did not send to Cornerstone any of the monies received for the commission under the OTP.
15. Subsequent to November, 2013, C.S. learned that the commissions owing under the OTP had been paid to Joyal by both himself and D.J./D.S. C.S. reported this to R.D. who in turn notified staff of the Commission.
16. In response to communication from staff of the Commission concerning

payment of the commission for the Semple property, Joyal advised staff on October 3, 2014 that the said commission was still outstanding by his records. This statement was false.

17. On March 25, 2015, Cornerstone deducted the sum of \$3,386.25 from Joyal's account to be applied towards Joyal's indebtedness to Cornerstone for the Semple Property.

C. ADMISSIONS

Joyal admits he:

- (a) Committed a fraudulent act under REBA by collecting payment for the commission under the OTP from C.S. when it had already been paid by D.J.;
- (b) Failed to pay over to Cornerstone monies he received in connection with the sale of the Semple Property contrary to s.25 of REBA;
- (c) Committed a fraudulent act under REBA by engaging in a course of conduct to obtain money by wrongful or dishonest dealing;
- (d) Provided a false statement to staff of the Commission in connection with the commission owing under the OTP;
- (e) Engaged in conduct, as set forth in these allegations, that is contrary to the public interest;

This ends the AGREED STATEMENT.

A document entitled Identification of Person(s) in Statement of Allegations was entered as an exhibit, setting out:

- (a) D.J. = David Johnson
- (b) C.S. = Clive Schofield
- (c) D.S. = Danielle Johnson (Sykes)
- (d) R.D. = Richard Dettman

Four letters of reference respecting Joyal were also entered as an exhibit. The substantive parts of those letters are as follows:

From Kim Goodman, October 29, 2015

My name is Kim Goodman and I have worked at Coldwell Banker Preferred Real Estate since 2001. I am one of the administrators in the office and I am responsible for some of the conveyancing.

I have known Steve Joyal since he joined our office in February 2014. He is consistently one of our top producers. He is well liked and his advice and opinions are highly regarded by the other agents in our office. He is often sought out by other agents in our office, both new and experienced, for his advice in all manner of real estate matters. Over the time he has worked here, he has also been responsible for many agents joining our office from other brokerages.

In the time that Steve has worked for Coldwell Banker, he has done numerous deals and I have never heard a complaint about him or his work from other agents or from any member of the public. I know him to be a dedicated and conscientious real estate agent who works tirelessly, who does his paperwork well and who communicates promptly, knowledgeably and honestly with both his clients and other real estate agents.

From Dan Bouchard, October 30, 2015

I have known Steve Joyal my whole life. We lived in the same area growing up and we went to school together. Prior to joining Coldwell Banker Preferred Real Estate in May, 2014, I worked with Steve at Cornerstone Properties. I left Cornerstone and joined Coldwell Banker on Steve's recommendation and I have not regretted my decision.

Knowing Steve both personally and professionally, I can say that he is a stand up guy and a great real estate agent. He is a helpful and decent agent who has a large network of friends and contacts that trust his sound real estate advice.

From Harold Reimer, October 30, 2015

Steve Joyal has been my real estate agent for many years and he has helped me buy and sell many properties. I like working with Steve and I trust his opinion when it comes to which properties would give me a good return on my investment. He also helps me determine the best list price for my properties when it is time to sell them. I have never had a problem with any of my deals, Steve is always there to answer my questions and assist me with any issues that may come up. We work great together and I look forward to doing more deals with him in the future.

From David Moffatt, Broker/Manager, Coldwell Banker Preferred Real Estate, October 30, 2015

Steve Joyal has been under investigation for a breach of the Securities Act and he himself had made the undersigned aware of the situation almost a year ago.

Since that time I have been monitoring his activities and I am pleased to report that to the best of my knowledge he has been in compliance and within the Act in all of his real estate activities since joining Coldwell Banker Preferred Real Estate.

If in the wisdom of the Commission he continues to be licensed, it is understood that the Brokerage will be obliged to monitor each and every transaction Steve Joyal is involved in for an extended period of time and we are prepared to do so.

Submissions of Commission counsel, S. Gingera

Counsel stated that the Commission seeks an order for a six (6) month suspension of Joyal's registration as a salesman under Section 11(1) of The Real Estate Brokers Act ("REBA") which reads:

The Commission for cause may, by order, suspend for any stated term, or until a condition has been met, any registration under this Act, and after notice and hearing cancel the registration if in the opinion of the Commission it is in the public interest to do so.

Counsel also seeks an order of costs in the amount of \$1,500.00 towards the investigation and hearing of this matter.

Counsel referred to the five admissions of Joyal in section C of Admissions in the Agreed Statement of Facts and also to the Reasons for Decision of the Commission in the Jose Antonio Pereira Decision respecting REBA. He quoted from the September 26, 2001, Decision as follows:

"The fact that public interest is the paramount concern of a securities commission is well known to the panel. Public protection is the prime mandate of this or any other securities commission. That the Commission is dealing in this instance with a real estate registrant as opposed to a securities registrant does not suggest to the panel that any different consideration should apply. Having said that, the panel finds that it would be unreasonable, particularly in the case of an interim suspension, to give absolutely no consideration to the interests of an individual registrant. This panel does accept though, that the two considerations are not equal in the balance. The first concern of the Commission is the broader interest of public protection."

He then made the following submissions:

- (1) Joyal failed to pay to Cornerstone, the listing broker, monies received for the commission under the Offer to Purchase of the Semple Property, thus violating Section 25 of REBA which provides in part:

Every.....salesman registered under this Act shall immediately, upon receipt, pay over to his employer all moneys he receives in connection with any transaction in real estate..... on his employer's behalf.

- (2) Joyal, by his admissions in paragraphs (a) and (c) in Section C of the Admissions, committed fraud by virtue of the definition of "fraud" in REBA paragraph (i) of which states:

- (i) generally, any artifice, agreement, device, scheme, course of conduct or business, to obtain money, profit, or property, by any of the means hereinbefore set forth or otherwise contrary to law, or by wrongful or dishonest dealing;

Counsel then submitted that given the public interest jurisdiction and the legislation to protect the public, engaging in fraudulent activity should be viewed as a "very, very, very serious conduct".

- (3) Joyal lied to the Commission in connection with the commission owing under the Offer to Purchase and that this was a very serious breach of a registrant's obligations.
- (4) As to the time period over which Joyal's conduct occurred, the transaction possession date was October 15, 2011, the money from David Johnson and his fiancé was received on November 15, 2012, the payment received from Clive Schofield, which he told the Commission was still owing, was received on November 22, 2013, and the false statement to the Commission was made in March of 2014. Counsel described this as a deliberate activity over a period of time, not something that occurred on the spur of a moment, was deliberate and should be regarded as an aggravating circumstance. Later, in his summary, Counsel stated that false statement was made in October, 2014, not in March of that year.

Counsel then referred to the amount of money inappropriately received from David Johnson, which still had not been repaid. That amount has, before the preparation of this Decision, been so paid.

Counsel then referred to the November 14, 2003 Reasons for Decision under REBA respecting Saul Zitzerman. This involved forged signatures on a letter directing release of commission with Zitzerman using the sum of \$25,000.00 "for an urgent family matter". The hearing panel concluded that Zitzerman should be suspended for six months, due to mitigating circumstances, as opposed to having his license cancelled, he having repaid the misused amount. Conditions were attached to the suspension. Counsel submitted that the reference letters filed herein should "be tempered with the conduct he engaged in". In particular, he stated that Zitzerman voluntarily repaid the involved amount whereas in this case the broker had to

withhold moneys from Joyal and that Joyal had lied to the Commission. Counsel added that:

.....given the serious nature of the admissions – public protection is a paramount consideration.....you have to send a message that the type of conduct which Joyal engaged in and admitted is very serious and won't be tolerated by this Commission, and suspension is warranted under the circumstances.

With respect to Counsel's request for an order of costs of \$1,500.00 to be paid to the Commission, such order is unnecessary as that amount has, subsequent to the hearing, been paid by Joyal.

Submissions of Joyal's counsel, K. Burwash

- (1) Joyal is married, has five children ranging in age from twenty-four years to seven years, two in university and another shortly entering university and that his wife does not work and that he is the sole financial provider for the family.
- (2) Joyal has provided for his family for the last nine years as a real estate agent without any disciplinary history.
- (3) The four reference letters, from two real estate agents (one being with Joyal's current firm), one of his clients and his current broker, are all favourable recommendations.
- (4) That Joyal had advised his broker that he was under investigation and that the broker was still prepared to support him and that he has been monitoring Joyal's activities and that, to his knowledge, he has been in compliance under REBA.
- (5) That Joyal knew the rules and that "there is simply no explanation as to why he would have conducted this behavior".
- (6) That Joyal knows what he did and that it is wrong, that he is remorseful and regrets the effect of his actions on the purchaser and vendor in the transaction.
- (7) Joyal understands that his behavior does damage to the reputation of others in his field.
- (8) Joyal entered the admissions, fully acknowledging his behavior, and by so doing removed the necessity of a three day hearing.
- (9) That the Panel order that Joyal immediately reimburse the sum of \$4,557.00. The panel has been advised by the Commission that this amount has been paid to the appropriate party. Accordingly, no such order need be made.

- (10) That Joyal be required to enroll and complete successfully the portion of the Real Estate as a Professional Career course from the Manitoba Real Estate Board, module 3, dealing, in part, with professional conduct.
- (11) That Joyal be required to pay the sum of \$1,500.00 for "costs of these proceedings". As stated above, the Panel has been advised that this amount has been paid. Accordingly, no such order need be made.
- (12) That Joyal serve a short period of suspension and suggested a period of two months.
- (13) That following his suspension he be supervised by his broker in all transactions for six months. Counsel pointed out that the broker's reference letter stated that he would be prepared to do so.

Counsel, in summary, submitted, after conferring with Joyal, that Joyal could complete the aforesaid courses in six months. She also submitted that her suggestions, combined with Joyal's admission of allegations, his payment of the two aforesaid amounts, his suspension for two months, his taking the professional conduct courses to be completed in six months at a cost to him of some \$700.00 and the requirement that he be supervised by his broker for six months after suspension, addresses both the seriousness of his actions and the public interest protection factor.

The Panel, excepting the proposed two month suspension, agrees with Joyal's counsel's submissions as to his conduct respecting this hearing and proposed actions during and following registration suspension, and orders:

- (1) That Joyal's registration as a salesman under the provisions of REBA be suspended under section 11 of that Act for three months from the date of this order;
- (2) That within six months from the date of this order, Joyal shall, at his cost, successfully complete the above described Real Estate Board course dealing with professional conduct, failing which, Joyal's registration shall be suspended until he has successfully completed the said course; and

- (3) That Joyal's real estate transactions, for a period of six months after the termination of suspension hereunder, be monitored by his broker as determined by conferral with the Registrar and that Joyal provide the Commission with satisfactory evidence of that having been done.

"R.D. Bell"

R.D. Bell, Q.C.
Hearing Chair

"G.J. Lillies"

G.J. Lillies
Member

"D.L. Janovcik"

D.L. Janovcik
Member