

THE REAL ESTATE BROKERS ACT)
)
Sections 11(1) and 34)

Order No. 2771

November 20, 2019

LEAD PROPERTY MANAGEMENT INC.

WHEREAS:

(A) On June 23, 2014, a Notice of Hearing issued, by reason of a Statement of Allegations of staff of The Manitoba Securities Commission ("Commission") dated June 23, 2014 and subsequently amended resulting in an Amended Statement of Allegations ("ASOA") on March 16, 2015, whereby the Commission gave notice of its intention to hold a hearing to consider whether or not orders should be made under *The Real Estate Brokers* ("Act") with respect to Lead Property Management Inc. ("LEAD");

(B) This hearing matter previously came before a panel of the Commission on July 31, 2014, September 3, 2014, October 29, 2014, January 14, 2015, February 11, 2015, March 30, 2015 resulting in a Decision of the Commission on a motion by The Manitoba Real Estate Association dated May 29, 2015, and November 15, 2019 resulting in the setting of hearing dates for January 13 – 15, 2020;

(C) Staff of the Commission and LEAD entered into a Settlement Agreement (a copy of which is attached as Schedule "A") dated November 15, 2019 ("Settlement Agreement"), which proposed settlement of this hearing matter as against LEAD alone, subject to the approval of the Commission;

(D) LEAD has consented to the issuance of this Order and has waived its right to a full hearing;

(E) On November 20, 2019, the Commission held a hearing ("Settlement Hearing") to consider whether or not to approve the Settlement Agreement;

(F) At the Settlement Hearing, the Commission approved the Settlement Agreement and the Commission is of the opinion that it is in the public interest to make this order.

IT IS ORDERED:

1. **THAT** the Settlement Agreement, Schedule "A", be and the same is hereby approved.
2. **THAT** LEAD pay a contribution of costs to the Commission of \$10,000.00 forthwith upon issuance of this Order.

3. **THAT** the hearing matter otherwise be adjourned to the hearing dates set for January 13 – 15, 2020 at 9:30.

BY ORDER OF THE COMMISSION



Director



SCHEDULE "A"

Ex 3 Date Nov 20/19
Exam of LEAD PROPERTY
TH
Tom Bruce
Court Reporter

Settlement Agreement

Lead Property Management Inc.

and

The Staff of The Manitoba Securities Commission

**The Manitoba Securities Commission
500 – 400 St. Mary Avenue
Winnipeg, Manitoba
R3C 4K5**

SETTLEMENT AGREEMENT

A. Introduction

- A1. On June 23, 2014, The Manitoba Securities Commission ("Commission") issued a Notice of Hearing ("NOH") and Statement of Allegations ("SOA") subsequently amended, resulting in an Amended Statement of Allegations ("ASOA") on March 16, 2015, naming Lead Property Management Inc. as the respondent and giving notice of its intention to hold a hearing under *The Real Estate Brokers Act* ("REBA") to consider:
1. whether pursuant to subsection 39.1(2) of The Real Estate Brokers Act ("Act"), The Manitoba Real Estate Association Inc. ("MREA") should be ordered to pay out of the Real Estate Reimbursement Fund ("Fund") an amount to such person or to the Commission with respect to the actions of Lead Property Management Inc. ("LEAD") in connection with a trade or transaction in real estate;
 2. whether pursuant to subsection 26(6) of the Act, the bank at which LEAD maintained trust accounts should be ordered to continue to hold the balance standing to the credit of the accounts, and any funds subsequently deposited, in accordance with subsection 26(7);
 3. whether pursuant to subsection 26(11) of the Act, the bank, to which a direction under subsection 26(6) of the Act has been given, should be ordered to pay all or part of the money in the trust account(s) to the Commission;
 4. whether pursuant to subsection 26(14) of the Act, the Commission should order the payment of money, which may be held in an account established under subsection 26(12) as a result of an order under subsection 26(11), to a person or persons who have first established to the satisfaction of the Commission their entitlement;
 5. such further and other matters and the making of such further and other orders as the Commission may deem appropriate.
- A2. Discussions have been held between LEAD and Staff in an effort to settle the matters set out in the NOH, SOA and ASOA ("Proceedings") as against LEAD. A settlement ("Settlement") has been reached based on the terms and conditions set forth in this agreement ("Settlement Agreement").
- A3. Pursuant to the Settlement, Staff agree to recommend to the Commission that the Proceedings be resolved as against the respondent LEAD and be disposed of as against the respondent LEAD alone in accordance with the

terms and conditions of this Settlement Agreement as set forth below. The respondent LEAD consents to the Settlement and to the making of the consent order referred to in Part D. below, on the terms and conditions set forth in this Settlement Agreement.

B. Statement of Facts

Registration Record –

- B1. LEAD was incorporated under the laws of Manitoba on April 28, 2005.
- B2. LEAD has been registered under REBA as a broker restricted to property management from August 22, 2008 to August 21, 2012, with periods of suspension as follows:
- (a) May 19, 2010 to August 11, 2010;
 - (b) October 4, 2011 until the expiration of its Certificate of Registration on August 21, 2012.
- B3. At all material times, LEAD was registered under REBA as a broker, restricted to property management.
- B4. At all material times, LEAD had been a member of MREA and therefore participated in the Fund.
- B5. Until his demise on October 18, 2010, Kevin Dell ("DELL") had been the minority shareholder of LEAD and its Authorized Official. Following DELL's demise, the remaining majority shareholder of LEAD, Sharon Conway ("CONWAY") was not qualified to act as Authorized Official. LEAD was managed on an interim basis by its accountant until March 9, 2011 when a new Authorized Official was appointed.
- B6. Pursuant to section 14 of Regulation 57/88 R, the Real Estate Brokers Trust Accounts Regulation ("Trust Accounts Regulation"), an annual report for the period ending December 31, 2010 was required to be filed by LEAD by April 30, 2011. LEAD filed this report late, on June 22, 2011. As a result of the late filing, a reprimand was issued against LEAD.
- B7. Thereafter, in August of 2011, LEAD released its Authorized Official in preparation for a tentatively arranged transfer of LEAD's portfolio of properties to another registered property manager and cessation of operations by LEAD. The tentative transfer date was September 30, 2011.
- B8. The transfer to another property manager did not proceed.
- B9. Based upon information then at hand, staff had reason to believe that in general the money in LEAD's trust accounts was insufficient to meet liabilities due to the owners of properties managed by LEAD.

- B10. On October 4, 2011, the Registrar of the Real Estate Division of the Commission suspended the registration of LEAD.
- B11. On October 5, 2011, staff of the Commission froze the trust accounts of LEAD including the trust account established for handling rental monies ("T1(Rent)") and the trust account established for security deposits ("T2(Security Deposits)") collectively referred to as the Trust Accounts.
- B12. On August 17, 2012, LEAD was dissolved.
- B13. On August 21, 2012, LEAD's registration under REBA expired.

Conduct -

- B14. As a broker, LEAD was required pursuant to section 26(1) of the REBA to maintain and deposit trust money in a bank account (or accounts) designated as a trust account(s) to be operated in a manner consistent with REBA and regulations including the Trust Accounts Regulation.
- B15. LEAD was also required to maintain trust records in connection with its business pursuant to section 7 of the Trust Accounts Regulation.
- B16. Following LEAD's suspension, as part of an investigation by staff of the Commission, a review of LEAD's Trust Accounts, T1(Rent) and T2(Security Deposits), and its business and trust records was conducted for the period of August 31, 2010 to September 15, 2011 ("Review Period").
- B17. Various failures by LEAD to comply with REBA and Trust Accounts Regulation were found including:
 - (a) the balance in T1(Rent) was significantly less than required;
 - (b) payments reported as having been made to property owners for whom LEAD managed property had not in fact been made by LEAD;
 - (c) expenses reported as having been paid for property under management by LEAD had not in fact been paid;
 - (d) trust monies were used for non-trust purposes including operating expenses of LEAD;
 - (e) payments were made of some mortgage and insurance payments for two owners without the payments having been reported to the owners;
 - (f) some owners account balances were in a debit position;
 - (g) all rent deposits were not deposited into trust accounts;
 - (h) the balance in T2(Security Deposits) was significantly less than required;
 - (i) books and records of LEAD were incomplete.

- B18. As at September 15, 2011, the T1(Rent) balance was less than \$28,000.00. The current balance is approximately \$36,000.
- B19. As at September 15, 2011, the T2(Security Deposits) balance was almost \$1,900.00 and currently remains about the same.
- B20. The estimated shortfall in T1(Rent) after deducting the current balance is approximately \$216,000.00.
- B21. The estimated shortfall in T2(Security Deposits) after deducting the current balance is approximately \$62,000.00.
- B22. The total combined estimated shortfall in the Trust Accounts after deducting current balances is approximately \$278,000.00.
- B23. Pursuant to section 15 of the Trust Accounts Regulation, LEAD was required to file with the Registrar a report, as to compliance with subsection 26(1) of REBA and the Trust Accounts Regulation, within four months after cancellation of registration under REBA or the permanent cessation of business.
- B24. No such final report was filed.

C. Acknowledgements

- C1. LEAD acknowledges and agrees that it misappropriated, misapplied, failed to account properly for and/or failed to pay over to the proper persons money received contrary to REBA and the Trust Accounts Regulation and in so doing:
- (a) failed to maintain sufficient balances on deposit in trust accounts to meet all obligations with respect to trust money, contrary to subsection 11(1) of the Trust Accounts Regulation;
 - (b) paid operating expenses out of trust accounts contrary to subsection 10(3) of the Trust Accounts Regulation;
 - (c) in connection with a trade or transaction in real estate, failed within a reasonable time to account properly for and/or pay over to the owners monies received, thereby committing a fraudulent act under REBA;
 - (d) in connection with a trade or transaction in real estate, intentionally misrepresented by word, conduct or manner a material fact, thereby committing a fraudulent act under REBA;

- (e) in connection with a trade or transaction in real estate, engaged in a scheme, course of conduct, business or otherwise to obtain money, profit, or property by any fraudulent means as defined in REBA, or otherwise contrary to law, or by wrongful or dishonest dealing, thereby committing a fraudulent act under REBA;
- (f) failed to keep at all times trust money separate and apart from other money, contrary to subsection 26(1) of REBA; and/or,
- (g) disbursed trust money contrary to the terms upon which it was received, contrary to subsection 26(1) of REBA;

and that due to all or any of the above, a fraudulent act or acts under REBA has or have been committed.

- C2. LEAD did not adequately discharge its responsibilities to the Commission, its customers or the public.
- C3. LEAD acknowledges that in spite of this Settlement Agreement and the proposed resulting order with LEAD, it is the intention of staff to continue with the Proceedings as required to obtain orders under section 39.1(2) of REBA and section 26 of REBA regarding a claim against the Fund and the Trust Accounts as described in the NOH.

D. Terms of Settlement

- D1. In order to effect a resolution of the issues raised by the Proceedings, Staff and the respondent LEAD have entered into this Settlement Agreement. Upon this basis, Staff seek an order ("Consent Order") from the Commission pursuant to subsection 11(1) and section 34 of REBA that it is in the public interest that:
 - (a) the Settlement Agreement be approved;
 - (b) LEAD pay a contribution of costs to the Commission of \$10,000.00 forthwith upon issuance of this order.
- D2. LEAD will not oppose the granting of any order by the Commission as to any payment out of the Fund by MREA and furthermore will not oppose the disbursement of all monies held now and/or in the future in the frozen LEAD Trust Accounts, as may be determined by the Commission. For greater clarification, LEAD makes no claim to any of the funds in the Trust Accounts.


E. Procedure for Approval of Settlement

- E1. The approval of this Settlement Agreement and the making of the Consent Order set out in this Settlement Agreement shall be sought at a

public hearing pursuant to the NOH.

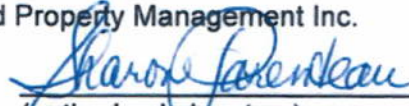
- E2. Staff and the respondent LEAD agree that if this Settlement Agreement is approved by the Commission, it will constitute the entirety of the evidence to be submitted to the Commission in connection with the Proceedings as against LEAD and the respondent LEAD hereby waives its right to a full hearing and appeal of this matter.
- E3. If, for any reason whatsoever, this Settlement Agreement is not approved by the Commission or the Consent Order referred to in Part D. above is not made by the Commission, Staff will be entitled to proceed with the hearing commenced by the NOH unaffected by this Settlement Agreement or the settlement discussions. If this Settlement Agreement is not approved or the Consent Order set out in Part D. above is not made by the Commission, the terms of this Settlement Agreement shall remain confidential and will not be raised in the Proceedings or in any other proceeding and any admissions contained in this Settlement Agreement shall be considered as without prejudice communications and in furtherance of settlement discussions, which will not be binding upon the parties and which will be inadmissible in any proceeding whatsoever.
- E4. Staff and the respondent agree that if this Settlement Agreement is approved by the Commission and the Consent Order made upon the terms set out in this Settlement Agreement, this Settlement Agreement will be a public document.
- E5. The respondent LEAD agrees that it will not raise in any proceeding this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as a basis for an attack on the Commission's jurisdiction, alleged bias, alleged unfairness or any other challenge that may be available.
- E6. If this Settlement Agreement is approved by the Commission and the Consent Order is made upon the terms set out in this Settlement Agreement, neither Staff nor the respondent will make any statement inconsistent with this Settlement Agreement.

DATED at Winnipeg, Manitoba, this day of November, 2019.



 Witness
 Noah Globerman

 Witness
 Counsel

Lead Property Management Inc.
 per: 

 (authorized signatory)
 Sharon Frenkel nee Conway
 name of signatory (please print)
 owner - majority shareholder
 position of signatory

DATED at Winnipeg, Manitoba, this ^{15th} day of November, 2019.

Staff of the Manitoba Securities
Commission

per: 
Director