



THE MANITOBA
SECURITIES
COMMISSION

November 27, 2019

IN THE MATTER OF: THE REAL ESTATE BROKERS ACT

- and -

IN THE MATTER OF: DARYL SCOTT NEWIS

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

Panel:

Panel Chair:	Mr. J.T. McJannet, Q.C.
Member:	Mr. D.A. Huberdeau-Reid
Member:	Ms. L.A. Vincent

Appearances:

Mr. S. Gingera)	Counsel for Commission Staff
Mr. M. Chartier)	Counsel for Daryl Scott Newis the
Ms. V. Haasbeck		Respondent

Date of Hearing: Wednesday November 6, 2019**Introduction:**

1. An Agreed Statement of Facts dated October 18, 2019, entered into between Staff of the Manitoba Securities Commission (Staff) and Daryl Scott Newis (the "Respondent") was presented to this Hearing Panel of the Manitoba Securities Commission (the "Panel"). The Agreed Statement of Facts is attached as Schedule "A" to these Reasons.
2. Staff Counsel and counsel for the Respondent did not agree on the appropriate sanctions and accordingly this Panel has been asked to determine what the appropriate sanctions are in all of the circumstances.

Background:

1. This matter concerns the Respondent's actions with respect to three separate real estate transactions, as well as actions he took during the course of Staff's investigation into those transactions.
2. Although the Agreed Statement of Facts provides the full details, it is relevant for the purposes of this document to highlight the following:
 - a. The matter concerns three properties in Winnipeg; 785 Home Street (the "Home Street Property"), 323 Simcoe Street (the "Simcoe Street Property") and 850 McDermot Avenue (the "McDermot Avenue Property") (collectively the "Three Properties");
 - b. The Three Properties were owned by the Respondent's wife, Diane Aksamit ("Aksamit");
 - c. the Respondent was the listing agent on each of the Three Properties;
 - d. the Respondent did not obtain a listing agreement on any of the Three Properties;
 - e. the Respondent did not disclose to any of the purchasers of the Three Properties that his wife, Aksamit, was the owner and the vendor of the relevant property;
 - f. There were additional problems with the Home Street Property. These include:
 - i. the Respondent published the Home Street Property for sale on the MLS listing service and, in the multiple listing service he described that the Home Street Property had "...2 newer furnaces, 2 newer hot water tanks" and "...a newer roof."
 - ii. the Respondent was both the listing salesperson and the selling salesperson on the Offer to Purchase for the Home Street Property;
 - iii. Subsequent to the purchaser completing the purchase of the Home Street Property, it was determined that the roof was leaking and sections of the roof had no shingles on it. Other portions of the roof had cedar shingles underneath which had to be removed;

- iv. The replacement cost of the roof, based on three quotes, was between \$5,250.00 and \$6,500.00.
 - v. After a required inspection of the furnaces by Manitoba Hydro, it was determined that one of the furnaces was 23 years old and had a crack which required it to be shut down immediately. The other furnace was very dirty and it was not clear that it would work after it was cleaned.
 - vi. One of the hot water tanks was 21 years old. The other was 5 years old but had not been installed according to code.
 - vii. The replacement cost of the furnaces and hot water tanks was \$8,701.00.
3. Subsequent to the closing of the Home Street Property and the McDermot Avenue Property, the Respondent went back to the purchasers and had them sign documents which purported to state that they had been aware, prior to the closing of the transaction, that the Respondent's wife Askamit, owned the said property. However, the Respondent had not advised any of the purchasers of this fact prior to the closing of the transactions.
 4. In the case of the Home Street Property, the Respondent, after having a document signed by the purchaser to the effect that the purchaser was aware that the owner of the Home Street Property was a relative of the Respondent's, inserted the additional words, "*and the vendor's spouse*" on the document. The purchaser of the Home Street Property had not seen these words at the time she signed the document.
 5. In the case of the McDermot Avenue Property, the Respondent completed a disclosure statement indicating that he had an interest in the said property, but not that his wife was the owner. The name of the authorized representative of the Respondent's employing brokerage firm, Richard Dettman, appears on the disclosure document but it was not signed by him.
 6. After Staff of the MSC commenced an investigation, the Respondent, through his then-counsel, sent to Staff three documents which purported to be signed listing agreements for the Three Properties. These documents had all been prepared by the Respondent, after the closing of the transactions, and the Respondent forged the signature of Aksamit, his wife, on each document.
 7. The Respondent had signed Offers to Purchase on each of the Three Properties as a witness to Aksamit's signatures. These three documents were not signed by Aksamit.
 8. During the investigation by Staff of the Commission, the Respondent was interviewed under oath twice; once on August 9, 2017 and once on May 17, 2019. On May 17, 2019 the Respondent made false statements when he said that the Offers to Purchase and the Listing Agreements had been signed by Aksamit.

Admissions:

The Respondent has made the following admissions:

1. In contravention of s.20 of the REBA, he failed to obtain listing agreements prior to advertising for sale, the Home Street, Simcoe Street, and McDermot Avenue Properties;
2. In contravention of s. 19(9) of the REBA, he failed to disclose to the purchasers that his wife was the vendor of the Home Street, Simcoe Street, and McDermot Avenue Properties;
3. He committed a "fraudulent act" within the meaning of the REBA, in that he inserted the words, "and the vendor's spouse" into the Letter, after the purchaser of the Home Street Property had signed this document and without her knowledge and consent;
4. He committed a "fraudulent act" within the meaning of the REBA, when in response to Admission 1 above, he, through his then counsel, provided Staff of the Commission three listing agreements which were not signed by Aksamit;
5. He committed a "fraudulent act" within the meaning of the REBA by signing as witness for the signature of Aksamit, Offers to Purchase that were not signed by Aksamit;
6. He committed a "fraudulent act" within the meaning of the REBA, when he made false statements to Staff that the Offers to Purchase and listing agreements, in relation to the Three Properties were signed by Aksamit when they were not;
7. He committed a "fraudulent act" within the meaning of the REBA, in that he created a misleading listing in the multiple listing service for the Home Street Property by describing the furnaces, hot water tanks, and roof in the listing, as "newer", when they were not; and
8. He engaged in conduct, as set out above, that was contrary to the public interest.

Sanction Recommendations**a) Position of Staff of the Commission**

Staff of the Commission seek a permanent cancellation of the Respondent's registration as a salesman under section 11 (1) of *The Real Estate Brokers Act C.C.S.M., c R20* (REBA) which reads:

Suspension and cancellation

11(1) 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.

In addition, Staff are seeking costs of \$18,142.92 pursuant to an "Itemization of Costs" which was marked as Exhibit 9. The costs are clearly delineated and copies of all relevant receipts and invoices attached. These costs were submitted in accordance with section 34 of REBA which reads:

Costs of an investigation

34(1) Where the conduct of a registrant or authorized official has been the subject of an investigation under this Part and, as a result of the information obtained in the investigation,

- (a) the registrant or authorized official is convicted of any offence created by this Act or of an offence under the *Criminal Code* (Canada) in connection with a trade or transaction in real estate; or
- (b) the registrant's registration is suspended or cancelled or the name of the authorized official has been deleted from the register; or
- (c) the commission is satisfied that the registrant or authorized official has not adequately discharged his responsibilities to the commission, his customers or the public;

the commission may order the registrant or authorized official to pay the whole or part of the costs of the investigation and of any hearing convened as a result thereof, calculated on the basis of the fees prescribed under The Securities Act.

b) Position of the Respondent

Counsel for the Respondent provided the following additional information on the Respondent to the Panel;

- the Respondent is a 50 year old man who has been involved in the real estate industry as a salesman since he completed Grade 12.
- the Respondent and his wife have one child who is currently completing high school.
- the Respondent's wife has been deemed disabled which restricts employment outside the home.
- the Respondent is the sole source of income for the family.
- The Respondent is active in his church and in community services relating to his church, including a bike ministry in which bikes are fixed up to be distributed to those in need. He also assists with the band and jazz program at his child's high school.

Counsel for the Respondent urged the Panel to focus on the following mitigating factors;

- The Respondent had taken full responsibility for his conduct. He entered into an Agreed Statement of Facts saving the time and resources of a scheduled five (5) day hearing;
- The Respondent is the sole breadwinner for his family;
- The Respondent has the support of family and friends. In this respect we were directed to six (6) character letters submitted by friends and colleagues, all of which, it was argued, show confidence in the Respondent and view the activities which are the subject matter of this hearing to be aberrant to his character;
- The Respondent has the support of his employer. Mr. Dettman submitted a character letter and attended the hearing in support of the Respondent. Further, Mr. Dettman supports the Respondent continuing as a real estate salesman under his supervision and oversight.
- The Respondent is genuinely remorseful. It was pointed out that the only other time he had any disciplinary interaction with the Commission was back in 1994.
- The Respondent would be prepared to take a course, such as the ethics component of the provincial Real Estate Brokers course (Module 3). Alternatively he noted that there is a federal organization which offers an ethics course for real estate salesmen.

Analysis

Each of the parties referred to several cases which included sanctions that ranged from a suspension of registration for a few months to a permanent cancellation of registration.

Staff provided the Panel with precedents from both the real estate industry and the securities industry. Specifically Staff noted, and the Panel accepts, the comments of then-Chairman Murray in *Re: Jose Antonio Pereira September 26, 2001, MSC* at the first paragraph under the heading "Decision" which reads:

"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."

Purpose of sanctions in administrative matters

In *Re Obasi (2011)* 34 O.S.C.B. 3012, a decision of a Deputy Director of the Ontario Securities Commission (OSC) the offenses included the forging of two client signatures on a savings plan, asking a client to lie for him to his (Obasi's) employer, and lying to staff of the OSC during an investigation.

The Deputy Director noted that the objective of the OSC in assessing sanctions is not just to punish past conduct. At para 18:

“Rather, the Commission must act in a protective and preventative manner to restrain future conduct that may be harmful...”

The Deputy Director also noted the role of general deterrence in assessing sanctions. Referring to *Re Dornford (1998) 21 OSCB 7345*;

“In our view, taking into account general deterrence...would not be for the purpose of punishing Dornford...but rather for...the further protection of the marketplace not only from the actions of Mr. Dornford but also from breaches of trust by others.”

This Panel must consider a number of factors to determine the appropriate administrative penalties. These factors include, but are not limited to, the following:

- Harm to clients, employer, the industry;
- Blameworthiness;
- Degree of participation in the malfeasance;
- Prior disciplinary history;
- Extent to which the respondent is enriched by the malfeasance;
- Acceptance of Responsibility, acknowledgement of misconduct and remorse;
- Planning and organization;
- Multiple incidents of malfeasance over an extended period of time;
- Vulnerability of the victim(s);
- Failure to cooperate with the investigation of the regulator; and
- Extent of financial and other harm to the client(s) and/or the employer;

There is extensive precedent that sanctions assessed by securities commissions are intended to be in the public interest, with a focus on protecting the public from the harms committed, and should address both general and specific deterrence. Sanctions should have the aim of protecting the public from future transgressions by the respondent(s), as well as deterring others from similar conduct.

It is the role of this Panel to review the evidence as a whole and make a determination on sanctions that is fair and appropriate in all of the circumstances.

The mandate of the Commission is to protect the public interest. Registration is not a right, it is a privilege, contingent on continuing adherence to the required standards of the profession.

Forgery

Forging documents is a serious violation.

In the *Re Obasi* case, the Deputy Director noted with approval the following from *Re: Hugh Cairns Bell (2005 case from the Investment Dealers Association)*;

“Forgery is always serious. It is unequivocally condemned because it is fundamentally dishonest and dangerous. Any act of forgery is a step onto a steep and slippery slope of deception that is always potentially harmful to clients and actually harmful to the ...securities industry as a whole.”

In *Re: Movassaghi* (2017) IIROC 46 the matter proceeded by way of a proposed Settlement Agreement to a hearing panel of IIROC. In that case, the respondent had forged a client's signature on various forms, including a Transfer Authorization Form, New Client Application forms and a Form W-8BEN-E (which is a statutory declaration filed with the United States federal tax authorities). The transfer of the client's holdings resulted in costs to her of approximately \$3,600.00. By the time the matter had proceeded to the hearing, the client had been compensated for her losses. The IIROC Hearing Panel relied upon the IIROC Sanction Guidelines and agreed with the sanctions proposed in the Settlement Agreement which were; a suspension of 8 months, a fine of \$27,500.00, a period of 12 months close supervision, and costs of \$2,500.00.

This Panel notes the comments of the IIROC Hearing Panel in this case pertaining to forgery of documents. In particular:

¶ 31 *By its nature, forgery is deliberate in the sense of being an intentional act. It requires will and the directed application of effort, and this case is no exception. Effecting the transfer of the KO Accounts required the Respondent to forge not just one or two documents, but to painstakingly copy KO's signature onto one document after another in succession until he had assembled a mass of new account opening and transfer documentation comprising at least nine separate items. It is simply not possible to characterize any of this as the result of a hasty mistaken decision or some other sudden impulse.*

¶ 32 *Deliberate misconduct of this nature is highly damaging to the reputation of the securities industry. IIROC members exist to provide their clients with investment advice they can trust. The Respondent betrayed this trust by showing a blatant lack of integrity in dealing with KO's interests. This kind of behaviour can only cast a negative light on the integrity of the industry as a whole.*

Range of sanctions

In *Re: Steven Richard Joyal* a decision of a hearing panel of the MSC dated January 26, 2016, the misconduct included taking funds that Joyal was not entitled to, which constituted a fraudulent act under REBA, and making false statements to Staff during the course of the investigation. The hearing panel determined that Joyal would have his registration suspended for a three month period, would be required to complete the Real Estate Board course dealing with professional conduct, and would be required to serve a 6 month period of monitoring by his broker.

We were referred to a decision of the Alberta Securities Commission (ASC) in *Re Lamontagne*, ABASC 49 (2009) which was an appeal of a decision of a disciplinary panel of the Investment Industry Regulatory Organization of Canada (IIROC). The IIROC hearing panel had suspended Lamontagne for a six month period, assessed a fine of \$35,000.00 and levied costs of \$15,000.00. Lamontagne's offences had included forging client signatures on 13 documents, and misleading his employing firm during its investigation into the matter. The ASC ultimately determined that a six month suspension and a fine of \$35,000.00 was in accordance with the law, the evidence and the public interest.

Decision

The Respondent's misconduct in this matter was very serious. He engaged in a pattern of wrongful conduct that continued over an extensive period of time. He was deceptive to numerous parties including the purchasers of the Three Properties, his employing broker, Staff and the public.

The Respondent made blatantly inaccurate statements with respect to the Home Street Property. He represented that the roof, the hot water tanks and the furnaces in the Home Street Property were "newer". This was clearly wrong and resulted in additional costs to the purchaser totalling approximately 10% of the purchase price. The Respondent failed to prepare listing agreements for each of the Three Properties. This is a standard required document in the industry and no explanation was provided as to why he did not prepare these documents.

Staff noted that the Respondent, under s. 19(9) of REBA, had a positive obligation to disclose, to the purchasers of each of the Three Properties, that the owner of the said properties was his spouse. In failing to disclose this fact, he deprived the purchaser of the Home Street Property of the opportunity to obtain her own agent who would act in her best interests.

Subsequent to the commencement of an investigation by Commission staff, the Respondent submitted, through his then-counsel, listing agreements that had been inappropriately back dated and on which he had forged the name of his wife.

As noted, forging documents is a very serious transgression. The industry cannot function if registrants are not honest and forthright in their dealings. We are very concerned that this Respondent forged several documents relating to this matter.

The Panel is also very concerned that the Respondent failed to truthfully answer questions put to him during the investigation by investigation staff of the Commission. The Respondent was not forthright or cooperative during the investigation, and as late as the under-oath interview in May 2019, he was continuing to make false statements to Staff.

Registrants that do not truthfully respond to questions put to them under oath can be seen as ungovernable and unfit for continued registration.

With respect to costs, counsel for the Respondent argued that the costs were excessive. This Panel was asked to consider a recent two-day trial he had done in the Queen's Bench in which he advised that the costs were less than those in the Itemization of Costs (Exhibit 9). The Panel has considered these comments but do not find them to be of assistance in this matter. Costs in the Queen's Bench are separate and distinct from the costs relative to the Manitoba Securities Commission. The legislature of Manitoba has determined that the costs of investigations and hearings before the Manitoba Securities Commission are to be assessed against the wrongdoer in the appropriate circumstances. We find that those circumstances have been met. It was the Respondent's conduct making false statements and forging documents that caused this investigation to be lengthy and costly. It was the Respondent's misconduct that caused Staff to retain a forensic examiner to examine and prepare a report on the forged documents. However, we note that the Itemization of Costs

(Exhibit 9) included the \$3,600.00 for "Hearing Days". As the Respondent entered into an Agreed Statement of Facts which meant that these days were not required, we have removed the sum of \$3,600.00.

The Panel is of the view that the aggravating factors here are numerous and significant. The Panel has carefully considered both the mitigating factors and the aggravating factors in coming to its decision on sanctions. Had it not been for the fact that the Respondent entered into the Agreed Statement of Facts and prevented the need for a five day hearing, this Panel would have assessed significantly more serious sanctions.

The Panel has determined that it is in the public interest that the following sanctions apply to the Respondent, and an order will issue to this effect;

a) Suspension of Registration as a real estate salesman:

Given the seriousness of the matters set out above, a period of suspension is necessary in the public interest and we find that a suspension of twelve (12) consecutive months is appropriate. This suspension is to commence immediately.

b) Education:

The Respondent proposed that he take a course on ethics. We do not think that this is sufficient. The Respondent is not a newcomer to the profession; he has been working in this industry for decades. However, his inability to acknowledge, even when questioned under oath, that he provided misleading information about the Home Street Property on the multiple listing service, suggests that he could benefit from additional education. His failure to provide accurate information significantly harmed a member of the public who should have been able to rely on all representations that the Respondent made.

Accordingly, this Panel directs that the Respondent take and pass satisfactorily, at his own cost, and before he re-enters the profession at the end of the period of suspension, all modules of the Manitoba Real Estate Salespersons course. While this will be a significant time and resource requirement this Panel anticipates that it will ensure the Respondent will fully understand the requirements of his profession particularly as they pertain to his dealings with the public.

c) Costs:

With respect to costs, we find that the legislation provides for the recovery of costs and that in light of the length of the investigation and the fact that additional investigation time and costs were incurred as the direct result of the Respondent's wrongdoing, costs must be paid. Given the Respondent's admission of facts however, the Panel has determined that it is appropriate to set the costs at \$14,542.92 which removes the sum of \$3,600.00 for hearing dates set out in the Itemization of Costs (Exhibit 9). No information was provided to the Panel as to the financial means of the Respondent, and accordingly these costs are to be paid, in full, prior to the end of the period of

suspension and in any event before the Respondent may be re-instated as a real estate salesman.

d) Period of Supervision following reinstatement as a real estate salesman:

The Respondent is to serve a period of 6 (six) months of strict supervision following re-instatement. His employing broker is required to submit a monthly written report to the Registrar in such format as the Registrar may require.

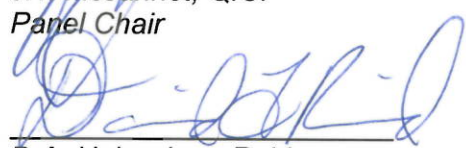
Additional matters

The Panel notes two matters which, although they did not impact on the sanctions determined by it in this matter, it wishes to note for direction in future proceedings. First, counsel for the Respondent, in response to a question from a Panel Member seeking information on why the Respondent acted as he did in these matters, advised that the Respondent had a "brain-fart" and that he could provide no other information in response. Apart from the fact that the response is meaningless either medically or in law, it was a flippant response to a serious question in a hearing in which an individual's livelihood was at risk. If there was no legitimate response to the question counsel should have stated so.

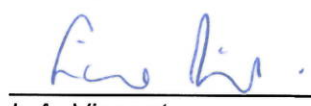
Secondly, there were several letters of recommendation that were submitted in support of the Respondent. Each noted that the writer was aware of "the predicament" that the Respondent was in with the Commission. None of the letters provided any details of the predicament referenced. Accordingly there was no evidence that the writers understood the severity of the matter, including that the Respondent had lied under oath, had submitted forged documents in the course of an investigation, and had treated the purchasers of the Three Properties in the manner he had. Accordingly, it was not possible to give any weight to these letters. If counsel intends such letters to impact on a hearing, consideration should be given to attaching the actual facts of the situation in or to the letters such that the Panel has confidence that the extent of the wrong-doing has been made known to the letter writers.



J.T. McJannet, Q.C.
Panel Chair



D.A. Huberdeau-Reid
Member



L.A. Vincent
Member

Schedule "A"

IN THE MATTER OF: THE REAL ESTATE BROKERS ACT

-and-

IN THE MATTER OF: DARYL SCOTT NEWIS

AGREED STATEMENT OF FACTS

A. REGISTRATION

1. Daryl Scott Newis ("Newis") is a resident of the City of Winnipeg, in the Province of Manitoba.
2. At all material times, Newis was registered as a real estate salesperson under *The Real Estate Brokers Act* (the "REBA") with Cornerstone Properties Inc. operating as Cornerstone Real Estate (the "Brokerage Firm").
3. Newis is currently registered as a real estate salesperson under the REBA with Century 21 Carrie Realty Ltd.

B. DETAILS

1. Diana Aksamit also known as Diane Aksamit ("Aksamit"), Newis' wife, was the owner of a property located at 785 Home Street (the "Home Street Property") in the City of Winnipeg.
2. Newis was the listing agent for the Home Street Property.
3. Newis was also the agent for B.L, who was looking to purchase a rental property.
4. On or about August 7, 2016, Newis listed the Home Street Property for sale, and in the multiple listing service, he described that the home had, "2 newer furnaces, 2 newer hot water tanks...a newer roof". This statement was not true. (Schedule "A")
5. Newis did not obtain a listing agreement in connection with the sale of the Home Street Property.
6. On Aug 9, 2016, B.L made an offer to purchase the Home Street Property through Newis. The offer was accepted on the same day. (Schedule "B")
7. On or about September 6, 2016, a handwritten letter (the "Letter") was created by Newis and signed by Newis and B.L. (Schedule "C")
8. The Letter states, "I B.L. am aware that I purchased 785 Home St. from Diane Aksamit which is a relative of Daryl Newis, and the vendor's spouse".

9. The words, "and the vendor's spouse", were not in the Letter when it was signed by B.L. Newis inserted the words after the Letter had been signed by B.L, and without her knowledge and consent.

10. Newis did not disclose his interest in the Home Street Property in that Aksamit, the owner of the house, was his wife. As a result, B.L was unaware that Aksamit was Newis' wife at the time she made an offer to purchase, and upon taking possession of the Home Street Property.

11. On March 30, 2017, in response to a tenant's complaint of leaking from the roof, B.L. obtained an inspection of the roof of the Home Street Property.

12. Upon inspection, the roofing company advised that there were sections of the roof which did not have any shingles, and that there were cedar shingles under the existing roof which would have to be removed.

13. B.L. subsequently obtained three quotes to have the roof repaired, and the quotes range from \$5,250.00 to \$6,500.00.

14. On May 30, 2017, as was required by Manitoba Hydro, B.L. had the furnaces and hot water tanks at the Home Street Property inspected.

15. One furnace was determined to be twenty-three years old and was shut down immediately as a crack was found in the cell. The second furnace was twenty-one years old, was extremely dirty, and required cleaning. The inspector would not guarantee it would work after being cleaned.

16. One hot water tank was determined to be twenty-one years old. The second hot water tank was only five years old, but was not installed to code.

17. Replacement and repair of the furnace and hot water tank were estimated at \$8,701.00.

The Simcoe Street Property

18. Aksamit was the owner of a property located at 323 Simcoe Street (the "Simcoe Street Property") in the City of Winnipeg.

19. Newis was the listing agent of the Simcoe Street Property and listed the property on August 30, 2016.

20. Newis did not obtain a listing agreement in connection with the sale of the Simcoe Street Property.

21. On September 12, 2016, Z.G. made an offer to purchase the Simcoe Street Property. The offer was accepted on the same day. (Schedule "D")

22. Y.M., Z.G.'s boyfriend, purchased the Simcoe Street Property when Z.G. failed to qualify for a mortgage.

23. Newis did not disclose his interest in the Simcoe Street property to Y.M. in that Aksamit, the owner of the house, was his wife. Sometime after the sale was completed, Y.M. was informed through his agent that Aksamit was Newis' ex-wife, when in fact Newis and Aksamit were married.

24. On August 10, 2017, Newis requested that Y.M. sign a disclosure document indicating that he was aware that Newis' had an interest in the Simcoe Street Property. Y.M. did so. (Schedule "E")

The McDermot Avenue Property

25. Aksamit was the owner of a property located at 850 McDermot Avenue (the "McDermot Avenue Property") in the City of Winnipeg.

26. Newis was the listing agent of the McDermot Avenue Property and listed the Property for sale on January 3, 2017.

27. Newis did not obtain a listing agreement in connection with the sale of the McDermot Avenue Property.

28. Newis completed a disclosure statement indicating his interest in the McDermot Avenue Property but not that Aksamit the owner, was his wife. The name of the authorized representative of the Brokerage Firm, Richard Dettman, appears on the disclosure document, but it is not signed by him. (Schedule "F")

29. Newis sold the McDermot Avenue Property on January 20, 2017. (Schedule "G")

Additional Details

30. On March 19, 2019, Newis, through his then counsel, provided Staff with copies of Listing Agreements, purportedly signed by Aksamit. (Schedule "H")

31. Staff, became concerned with the authenticity of Aksamit's signature on the Listing Agreements and Offer to Purchases referred to herein. Staff subsequently obtained a Forensic Examination Report to deal with these concerns. (Schedule "I" and "J")

32. The Listing Agreements purportedly signed by Aksamit, and witnessed by Newis, were not signed by her.

33. Newis signed the Offers to Purchase for the Home Street, Simcoe Street and McDermot Avenue Properties as a witness to the signature of Aksamit. These Offer to Purchase documents, purportedly signed by Aksamit, were not signed by her.

34. On or about May 17, 2019, Newis made false statements to Staff of the Commission during an investigation when he told Staff that the Offers to Purchase and Listing Agreements, in relation to the Properties referred to in this Agreed Statement of Facts, were signed by Aksamit when they were not. (Schedule "K")

C. ADMISSIONS

Newis admits he:

- (a) In contravention of s 20 of the REBA, failed to obtain listing agreements prior to advertising for sale, the Home Street, Simcoe Street, and McDermot Avenue Properties;
- (b) In contravention of s 19(9) of the REBA, failed to disclose to the purchasers that his wife was the vendor of the Home Street, Simcoe Street, and McDermot Avenue Properties;
- (c) Committed a "fraudulent act" within the meaning of the REBA, in that he inserted the words, "and the vendor's spouse" into the Letter, after B.L. had signed this document and without her knowledge and consent;
- (d) Committed a "fraudulent act" within the meaning of the REBA, when in response to Admission (a) herein he, through his then counsel, provided Staff of the Commission three Listing Agreements which were not signed by Aksamit;
- (e) Committed a "fraudulent act" within the meaning of the REBA by signing as witness for the signature of Aksamit, Offers to Purchase that were not signed by Aksamit;
- (f) Committed a "fraudulent act" within the meaning of the REBA, when he made false statements to Staff of the Commission when he told Staff that the Offers to Purchase and Listing Agreements, in relation to the Properties referred to in this Agreed Statement of Facts, were signed by Aksamit when they were not;
- (g) Committed a "fraudulent act" within the meaning of the REBA, in that he created a misleading listing in the multiple listing service for the Home Street Property by describing the furnaces, hot water tanks, and roof in the listing, as "newer", when they were not; and
- (h) Engaged in conduct, as set out above, that was contrary to the public interest.

I agree with the above Details and Admissions.

October 18, 2019

Witness Signature

Daryl Scott Newis