

**THE REAL ESTATE BROKERS
ACT**

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Order No. 2488

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Section 11; 34(1)

)

December 19, 2003

WILLIAM ("BILL") LOEWEN

WHEREAS:

(A) On June 28, 2001, The Manitoba Securities Commission (the "Commission") issued a Notice of Hearing (the "Notice") giving notice of its intention to hold a hearing (the "Hearing") to consider, among other things, whether it was in the public interest to suspend or cancel the registration of William ("Bill") Loewen ("Loewen") as a salesman under The Real Estate Brokers Act (the "Act");

(B) Loewen and Staff of the Commission ("Staff") entered into a Settlement Agreement (the "Settlement Agreement"), a copy of which is attached as Schedule "A" dated December 18, 2003, in which Staff and Loewen agreed to a proposed settlement in the proceedings initiated by the Notice, subject to the approval of the Commission;

(C) Loewen has consented to the issuance of this Order and has waived his right to a full hearing;

(D) The Commission has reviewed the Settlement Agreement and is of the opinion that it is in the public interest to make this Order.

IT IS ORDERED:

1. THAT the Settlement Agreement be and the same is hereby approved.

2. THAT Loewen will make a one-time payment to the Treasury of the Province of Manitoba in the amount of one thousand (\$1,000.00) Dollars on or before June 18, 2004.

BY ORDER OF THE COMMISSION

Director - Legal

In the Matter of The Real Estate Brokers Act
R.S.M. 1987, c. R20

and

In the Matter of William ("Bill") Loewen

Settlement Agreement

1. The Staff of The Manitoba Securities Commission and William ("Bill") Loewen have reached the following agreement:

Introduction

2. on June 28, 2001, The Manitoba Securities Commission (the "Commission") issued a notice of hearing (the "Notice of Hearing") together with a Statement of Allegations of staff for a hearing (the "Hearing") under subsection 11(1) of The Real Estate Brokers Act (the "Act") to consider, inter alia:

2.1 whether it is in the public interest to order pursuant to subsection 11(1) of the Act that the registration of William ("Bill") Loewen ("Loewen") as a "salesman" under the Act be suspended or cancelled

2.2 whether it is in the public interest that Loewen be ordered to pay investigation and hearing costs; and

2.3 other matters as counsel may advise and the Commission may permit.

2.4 discussions have been held between Loewen and the staff of The Manitoba Securities Commission (the "Staff") to settle the matters covered in the Notice of Hearing and Statement of Allegations (the "Proceedings"). A settlement (the "Settlement") has been reached based on the terms and conditions set forth herein;

2.5 pursuant to the Settlement, Staff agrees to recommend to the Commission that the Proceedings initiated against Loewen be resolved and disposed of under the terms and conditions of this Agreement. Loewen consents to the Settlement and to the consent order referred to in section 7 below.

Agreed Statement of Facts

3. Loewen acknowledges the following facts as correct:

3.1 at all material times, Loewen was registered as a salesman under the Act with Re/Max Real Estate Inc.;

3.2 William Loewen ("Loewen") was the salesman for Reg and Elsie Ripley;

3.3 Harold Albert Shrupka ("Shrupka") was engaged as a salesman for corporations controlled by Mike Jurcevic ("Jurcevic");

3.4 Reg and Elsie Ripley (the "Purchasers") entered into a contract to have a home built at 30 River Springs Drive, West St. Paul, Manitoba;

3.5 a corporation controlled by Jurcevic was the builder and vendor of the Purchasers' home;

3.6 on May 26, 1998, Loewen prepared an Offer to Purchase Real Estate form (the "Form") which the Purchasers signed. When preparing the Form, Loewen wrote the vendor's name as "3396208 Manitoba Ltd.";

3.7 Loewen incorrectly used a "Form 1" of Schedule A (Regulation 56/88), which pursuant to section 21 of the Act is only for single family residential houses but not for those under construction. The Form I stated that "This form of offer is prescribed under The Real Estate Brokers Act for use by brokers in the purchase of completed single family residences. It is not intended for use in other purchases; In particular it is not suitable for the purchase of a house under construction or a business". The Offer to Purchase contained no provisions for holdbacks for items not completed by the builder or for monies to be held back pursuant to The Builders Lien Act;

3.8 Loewen forwarded the Form to Shrupka on May 27; Shrupka prepared a counter offer (using the original Form) and gave it to Loewen who gave it to the Purchasers. On the Form, the vendor's name ("3396208 Manitoba Ltd.") was crossed out and "3586252 Manitoba Ltd." was inserted;

3.9 on June 4, Loewen prepared an amendment titled "Further to the Offer to Purchase" and again changed the vendor's name to "3779123 Manitoba Ltd.";

3.10 during the Offer to Purchase negotiations the Purchasers were told that the National Home Warranty Program ("NHWP") covered their new home. The Offer to Purchase contained a condition stating "Home is covered by National New Home Warranty Program";

3.11 on September 14, 1998, the date of possession, the Purchasers' lawyer Arthur Wortzman ("Wortzman") forwarded a trust letter addressed to the Vendor's lawyer, Dean Richert. This letter set out various trust conditions for the Purchasers' house purchase. The trust conditions included requiring that a certain amount of money be withheld—a holdback of \$25,000.00—from the Vendor until construction was complete and that the builder hold back funds in accordance with The Builders'Liens Act. The Purchasers indicated to the Staff that no conversation occurred between them and Shrupka or Loewen regarding the holdbacks. Construction of the home was not complete as of September 14, 1998;

3.12 On September 14, 1998, the Purchasers were approached by Loewen who told them that they could not move into The National Home until the \$25,000.00 holdback was paid to the Vendor/Builder;

3.13 Subsequent conversations ensued between Shrupka, the Purchasers and Wortzman concerning the trust conditions requiring holdbacks. After

representations were made by Shrupka that that the Purchasers could rely on the builder's reputation and The National Home Warranty Program to address their concerns, the Purchasers agreed to instruct Wortzman to release the holdback trust conditions. The Purchasers felt pressured to do so as the movers were at the property waiting to unload their belongings;

3.14 on March 29, 1999, the NHWP sent a letter to the Purchasers, stating that only 3396208 Manitoba Ltd. was registered with the program. Since the Purchasers bought their house from 3586252 Manitoba Ltd.—a company not registered with the program—the NHWP was unable to be of assistance;

3.15 on August 19, 1999, the NHWP sent another letter to the Purchasers, stating that the NHWP could not provide warranty coverage because the builder covered by their warranty (3396208 Manitoba Ltd.) "had ceased to exist and did not build the house." ;

3.16 because the Purchasers experienced difficulty in getting the Vendor to complete the construction and fix the deficiencies, they had to complete some of the work themselves. The Purchasers expected the National Home Warranty Program to cover these costs;

3.17 Loewen acknowledges Wortzman forwarded him a sample Offer to Purchase form that was more appropriate for the transaction, which Loewen did not use;

3.18 Loewen was taking instructions from Shrupka concerning the form of Offer to Purchase and description of the Vendor to be used.

Acknowledgments

4. Loewen acknowledges that he acted contrary to the public interest, and in a manner not in accordance with industry standards by:

4.1 using an Offer to Purchase form that was not appropriate for the type of home being sold; and

4.2 permitting the counter-offer with a new party as vendor.

Mitigating Factors

5. In reaching this Agreement, the Staff has considered the following mitigating factors:

5.1 Loewen has co-operated with the Staff in its investigation of this matter;

5.2 Loewen was at all material times registered as a salesman under the Act; and

5.3 Loewen has been registered as a salesman under the Act since April, 1995,

during which time he has had no other complaints or allegations brought against him under the Act.

Undertaking

6. Loewen undertakes and agrees to the following:

6.1 Loewen will make a one-time payment to the Treasury of the Province of Manitoba in the amount of one thousand (\$1,000.00) Dollars on or before 6 months from the date of this Agreement;

6.2 To enroll in and successfully complete the following components of Phase 2 of the Real Estate as a professional Career course: "Phase 2: Real Estate as a Professional Career; Unit 3: Construction and New Homes Sales" on or before six months from the date of this Agreement.

Order

7. Loewen consents to an order by the Commission (the "Order") that:

7.1 the Agreement be approved;

7.2 the approval of this Agreement and the making of the Consent Order as set out in this Settlement Agreement shall be sought at a public hearing, in camera.

Waiver and Procedure for Approval of Settlement

8. Staff and Loewen agree that, if the Commission approves this Agreement, it will constitute the entirety of the evidence to be submitted to the Commission in connection with the Proceedings, and that Loewen hereby waives his right to a full hearing and appeal of this matter.

8.1 If for any reason whatsoever the Commission does not approve this Agreement or the Consent Order referred to above is not made by the Commission, Staff will be entitled to proceed with the Hearing commenced by the Notice of Hearing unaffected by this Agreement or the settlement discussions. If this Agreement is not approved or the Commission does not make the Consent Order set out above, either Staff or Loewen will not raise in the Proceedings or in any other proceeding the terms of the Agreement.

8.2 Staff and Loewen agree that if the Commission approves this Agreement and the Consent Order is made upon the terms set out in this Agreement, this Agreement will be a public document.

8.3 Loewen agrees that he will not raise in any proceedings this Agreement or the negotiation or process of approval of this Agreement as a basis for an attack on

the Commission's jurisdiction, alleged bias, alleged unfairness, or any other challenges that may be available.

8.4 Loewen further agrees that if the Commission approves this Agreement and the Consent Order is made upon the terms set out in this Agreement, Loewen will not make any statements inconsistent with the terms of this Agreement.