

THE REAL ESTATE BROKERS ACT) **Order No. 2455**
)
Section 11(1)) **August 22, 2001**

MARIO MANUEL LOPES

WHEREAS:

(A) By Notice of Hearing (the "Notice of Hearing") dated the 4th day of July, 2001, The Manitoba Securities Commission (the "Commission") gave notice of its intention to hold a hearing under subsection 11(1) of The Real Estate Brokers Act (the "Act") to consider, inter alia, whether it is in the public interest that the registration of Mario Manuel Lopes ("Lopes") as a salesman under the Act be suspended or cancelled and whether Lopes committed fraudulent acts within the meaning of the Act;

(B) Lopes and staff of the Commission ("Staff") entered into a settlement agreement, attached hereto as Schedule "A", (the "Settlement Agreement") in which Staff and Lopes agreed to a proposed settlement of the proceedings initiated by the Notice of Hearing as they relate to Lopes in the Naslund and Messner transactions, subject to the approval of the Commission;

(C) Lopes has consented to the issuance of this order and has waived his rights to a full hearing of this matter;

(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** pursuant to subsection 34(1), Lopes will pay to the Commission costs in the amount of \$1,500.00.

BY ORDER OF THE COMMISSION

Director, Legal and Enforcement

Settlement Agreement

Mario Manuel Lopes

and

The Staff of The Manitoba Securities Commission

The Manitoba Securities Commission
1130 - 405 Broadway
Winnipeg, Manitoba

Settlement Agreement

A. Introduction

A1. On July 4, 2001, The Manitoba Securities Commission (the "Commission") issued a notice of hearing (the "Notice of Hearing") together with the Statement of Allegations of staff, which were subsequently amended on July 10, 2001 and on August 14, 2001 resulting in the Amended Amended Statement of Allegations, in respect of a hearing (the "Hearing") under subsection 11(1) of The Real Estate Brokers Act (the "Act") to consider, inter alia:

1. whether it is in the public interest that the registration of Mario Manuel Lopes ("Lopes") as a salesman under the Act be suspended or cancelled;
2. whether Lopes committed a fraudulent act or acts within the meaning of the Act;
3. whether Lopes acted in contravention of subsection 22(1)(f)(iv) of the Act by failing to clearly show in an offer to purchase real estate a promise, undertaking or guarantee made or given by a salesman that he would in any way obtain a loan for the offerer;
4. whether pursuant to subsection 34(1) of the Act it is in the public interest to order that Lopes pay the costs of the investigation and hearing;
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 counsel for Lopes and the staff of the Commission (the "Staff") in an effort to settle the matters set out in the Notice of Hearing and the Amended Amended Statement of Allegations as they relate to Lopes in the Naslund (Newton Home) and in the Messner (Harbison Home) transactions (the "Proceedings"). Such a settlement (the "Settlement") has been reached upon the terms and conditions set forth below in this settlement agreement (the "Settlement Agreement").

A3. Pursuant to the Settlement, Staff agrees to recommend to the Commission that the Proceedings initiated against Lopes be resolved and disposed of in accordance with the terms and conditions of this Settlement Agreement as set forth below. Lopes 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

B1. At all material times, Mario Manuel Lopes ("Lopes") was registered as a salesman under the Act with Re/Max.

B2. On June 22, 2001, Lopes's registration under the Act was suspended.

B3. On June 22, 2001, Lopes's employment with Re/Max terminated.

Naslund (Newton Home):

B4. Ms. Naslund ("Naslund") noticed an advertisement in the Renter's Guide by Pereira entitled Out of Rent to Own, as a result of which she obtained an application.

B5. Naslund completed the application following which she received a letter from Pereira.

B6. Naslund contacted Pereira and arranged for an appointment. Instead of meeting with Pereira, she met with Lopes.

B7. Naslund received confirmation that she was pre-approved for a mortgage with the TD Bank, following which she was shown properties by Lopes.

B8. Lopes informed Naslund to the effect that with the program they had in place she would only need a \$500 down payment.

B9. On or about March 29, 2001, an offer to purchase a home located on Newton Avenue, in Winnipeg, Manitoba (the "Newton Home") was prepared by Lopes showing Pereira as selling salesman (the "Newton Home Offer").

B10. Lopes explained to Naslund that she only needed \$500 to buy a home because she would receive money from a lender and she would pay the lender back from the cash-back on her mortgage.

B11. On or about May 15, 2001, Lopes showed Naslund a cheque in the amount of \$3,105.00 and prepared an agreement whereby she would repay the lender from her cash-back.

B12. Naslund signed the repayment agreement.

B13. The source of the \$3,105.00 was a friend of Pereira's.

B14. Naslund was contacted by the TD Bank for proof of \$4,000.00 as noted on a gift letter (the "Naslund Gift Letter").

B15. Prior to being contacted by the TD Bank, Naslund. was not aware of, nor had she signed, the Naslund Gift Letter.

B16. The Naslund Gift Letter which purports to have been signed by Naslund and a relative as giftor shows an alleged gift in the amount of \$4,218.50 and states:

This is an outright gift with no repayment expected or implied, either in the form of cash or by future services by him/her.

B17. The Naslund Gift Letter had not been signed by the purported giftor.

B18. There was in fact no such gift.

B19. The Naslund Gift Letter had been prepared by Lopes and forwarded to the TD Bank by Lopes. Lopes however for himself states that he did not sign or affix Naslund's name on the Naslund Gift Letter.

B20. The TD Bank would not look after the mortgage for Naslund.

B21. Lopes reassured Naslund not to worry and that they would look after everything.

B22. The Naslund Gift Letter was again forwarded by Lopes to a second bank.

B23. The \$3,105.00 was used to demonstrate to the second bank the existence of the cash to close.

B24. The Newton Home Offer did not disclose particulars as to the involvement of Lopes in obtaining a loan for Naslund the proceeds of which were to be used for cash to close.

Messner (Harbison Home):

B25. Mr. and Mrs. Messner (the "Messners") were interested in renting to own and responded to an advertisement in the Renter's Guide to call Joe at Re/Max .

B26. The Messners went to the Re/Max office and received a credit application, which they completed.

B27. The Messners were advised by Lopes that they were pre-approved for a mortgage.

B28. The Messners were provided with a list of homes, viewed some homes and became interested in a property located on Harbison, in Winnipeg, Manitoba (the "Harbison Home").

B29. An offer to purchase the Harbison Home was prepared by Lopes and signed by the Messners on May 1, 2001 (the "Harbison Offer").

B30. The Harbison Offer provided for terms of payment which included funds on possession date in the amount of \$4,140.

B31. The Messners were advised by Lopes that they would need to raise \$820 for legal fees and that Lopes would look after the rest.

B32. The Messners informed Lopes that they did not have any relatives who could provide assistance. Lopes advised that he would look after everything including a gift letter.

B33. In due course, the Messners were informed by the bank that it would not proceed with the mortgage.

B34. On June 8, 2001, Lopes informed the Messners that they would not be able to purchase the Harbison Home and that their file would be closed.

B35. After having advised the Messners that their file would be closed, on or about June 12, 2001, Lopes contacted the Messners as to being able to purchase the property with only \$250 plus an additional \$1,300.

B36. On or about June 14, 2001, Lopes discussed with the Messners putting a blank envelope through the Automated Teller Machine ("ATM") to show they had \$5,000 in their bank account. Lopes further advised the Messners on how this action was not fraud, if they did not take any money out of the account.

B37. The Messners understood from Lopes that the cash-back from the bank would cover the down payment.

B38. The Messners were further instructed by Lopes to give him a copy of the statement from the ATM machine.

B39. The Messners relied upon Lopes and followed his instructions.

B40. The Messners later provided the \$250 to Lopes.

B41. A document dated on or about May 5, 2001, purporting to evidence a gift of \$5,000.00 from Mr. Messner's father, purportedly being Terry Sr., to be used towards the downpayment on the Harbison Home (the "M Gift Letter") had been forwarded to the potential mortgagee by Lopes.

B42. The M Gift Letter stated:

The money is a genuine gift from the donor and does not ever have to be repaid;

B43. The M Gift Letter purported to bear the signature of Mr. Messner. The signature on the M Gift Letter is not the signature of Mr. Messner.

B44. At all material times hereto, the M Gift Letter had not been seen by the Messners.

B45. Mr. Messner's father's name is not Terry. The purported donor did not sign the M Gift Letter.

B46. The M Gift Letter had been prepared by Lopes and forwarded to the potential mortgagee by Lopes. Lopes however for himself states that he did not sign, or affix, Mr. Messner's name on the M Gift Letter.

C. Acknowledgments

Lopes acknowledges and agrees that the following actions were contrary to the public interest and that:

C1. He committed "fraudulent acts" within the meaning of the Act in connection with a trade or transaction in real estate as follows:

(a) As to Naslund and Messner, by engaging in an artifice, agreement, device, scheme, course of conduct or business, to obtain money, profit, or property, by a wrongful or dishonest dealing, by causing false gift letters to be submitted to a financial institution in order to obtain mortgage financing in connection with a trade or transaction in real estate in contravention of subparagraph (i) of the definition;

(a.1) As to Naslund and Messner, by engaging in an artifice, agreement, device, scheme, course of conduct or business, to obtain money, profit, or property, by a wrongful or dishonest dealing, whereby the cash to close and/or down payment was funded, or was to be funded, with borrowed monies and furthermore was funded in such a manner so as to require the utilization of cash-back monies yet to be received in connection with a trade or transaction in real estate in contravention of subparagraph (i) of the definition;

(b) As to Naslund and Messner, by an intentional misrepresentation by word, conduct or manner of a material fact, present or past, and an omission to disclose such a material fact, by causing documents to be submitted to a financial institution misrepresenting monies to have been received by gift when the true nature of the transaction was a loan and by misrepresenting the source of said monies in connection with a trade or transaction in real estate in contravention of subparagraph (a) of the definition;

(b.1) As to Naslund and Messner, by an intentional misrepresentation by word, conduct or manner of a material fact, present or past, and an omission to disclose such a material fact, by causing documents to be submitted to a financial institution misrepresenting monies to have been received by gift when no such gift existed in connection with a trade or transaction in real estate in contravention of subparagraph (a) of the definition;

(c) As to Naslund and Messner, by an intentional misrepresentation by word, conduct or manner of material facts, present or past, in the creation of the gift letters, or any of them, in connection with a trade or transaction in real estate in contravention of subparagraph (a) of the definition;

(d) As to Naslund, by an intentional misrepresentation by word, conduct or manner of a material fact, present or past, and an omission to disclose such a material fact, by failing to clearly show a promise, undertaking or guarantee made or given by him that he would in any way obtain a loan for the offerer in contravention of subparagraph (a) of the definition;

(d.1) As to Naslund, by an intentional misrepresentation by word, conduct or manner of a material fact, present or past, and an omission to disclose such a material fact, by failing to inform a financial institution that the source of the downpayment or cash to close was borrowed funds.

C2. As to Naslund, he acted in contravention of subparagraph 22(1)(f)(iv) of the Act by failing to clearly show in an offer to purchase a promise, undertaking or guarantee made or given by him that he would in any way obtain a loan for the offerer.

C3. As to any or all of the foregoing, Lopes acted contrary to the best interests of his clients, Naslund and the Messners.

D. Terms of Settlement

D1. In order to effect a resolution of the Proceedings, Staff and Lopes have entered into this Settlement Agreement.

D2. The terms of the Settlement Agreement are as follows:

(a) Lopes acknowledges that his registration as a salesman under the Act is currently suspended by operation of subsection 13(1) of the Act, his employment having been terminated on June 22, 2001;

(b) Lopes agrees to neither support nor participate in any transfer application under subsection 14(1) in respect of his currently suspended salesman's registration and furthermore agrees to not make any application for registration under the Act in any capacity under subsection 8(1) for a period of five (5) years from the date of this Settlement Agreement;

(c) Lopes agrees to pay to the Commission costs in the amount of \$1,500.00;

(d) Lopes acknowledges that an order as described below will be sought from the Commission and consents to the making of such order.

D3. Upon the foregoing basis, Staff will seek an order (the "Consent Order") from the Commission that:

(a) The Settlement Agreement be approved;

(b) pursuant to subsection 34(1), Lopes will pay to the Commission costs in the amount of \$1,500.

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, in camera.

E2. Staff and Lopes 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 and Lopes hereby waives his 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 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 Settlement Agreement or the settlement discussions. If this Settlement Agreement is not approved or the Consent Order set out above is not made by the Commission, the terms of this Settlement Agreement will not be raised in the Proceedings or in any other proceeding by either Staff or Lopes.

E4. Staff and Lopes agree that if this Settlement Agreement is approved by the Commission and the Consent Order is made upon the terms set out in this Settlement Agreement, this Settlement Agreement will be a public document.

E5. Lopes agrees that he 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. Lopes further agrees that if this Settlement Agreement is approved by the Commission and the Consent Order is made upon the terms set out in this Settlement Agreement, Lopes will not make any statements inconsistent with the terms of this Settlement Agreement.

DATED at Winnipeg, Manitoba, this "21st" day of August, 2001.

"Samuel Raposo"
Witness

"Mario Lopes"
Mario Manuel Lopes

DATED at Winnipeg, Manitoba, this "22" day of August, 2001.

Staff of the Manitoba Securities Commission
per: "Douglas R. Brown"
Director, Legal and Enforcement