

THE REAL ESTATE BROKERS ACT) **Order No. 2511**
)
Subsection 11(1)) **November 1, 2004**

EDNA ("JOAN") STRINGER

WHEREAS:

(A) On July 2, 2004, The Manitoba Securities Commission ("Commission") issued a Notice of Hearing ("Notice") giving notice of its intention to hold a hearing to consider, inter alia, whether or not it was in the public interest to grant an order pursuant to subsection 11 (1) of The Real Estate Brokers Act ("Act") with respect to Edna ("Joan") Stringer ("Stringer");

(B) Staff of the Commission and Stringer entered into a Settlement Agreement (a copy of which is attached as Schedule "A") dated October 22, 2004 ("Settlement Agreement"), which proposed settlement of the proceedings initiated by the Notice, subject to the approval of the Commission;

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

(D) On October 26, 2004 the Commission held a hearing ("Settlement Hearing") to consider whether or not to approve the Settlement Agreement;

(E) At the Settlement Hearing the Commission approved 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, Schedule "A", be and the same is hereby approved.
2. **THAT** pursuant to subsection 11(1) of the Act, a written reprimand be placed on Stringer's registration file with the Commission relating to the matters set out in the Settlement Agreement.

BY ORDER OF THE COMMISSION

Deputy Director – Legal and Enforcement

Settlement Agreement

Edna ("Joan") Stringer

and

The Staff of The Manitoba Securities Commission

**The Manitoba Securities Commission
1130 – 405 Broadway
Winnipeg, Manitoba
R3C 3L6**

SETTLEMENT AGREEMENT

1. The Staff of The Manitoba Securities Commission and Edna ("Joan") Stringer have reached the following agreement:

Introduction

2. On July 2, 2004, 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 section 11(1) of The Real Estate Brokers Act (the "Act") to consider, inter alia:

(a) Whether it is in the public interest to order, pursuant to subsection 11(1) of the Act, that the registration of Edna "Joan" Stringer ("Stringer") as a salesman under the Act be suspended or cancelled.

(b) Whether it is in the public interest that Stringer be ordered to pay the costs of the investigation and hearing.

(c) Such further and other matters as counsel may advise and the Commission may permit.

3. Discussions have been held between Stringer 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;

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

Agreed Statement of Facts

5. Stringer acknowledges the following facts as correct:

5.1 Stinger is registered as a salesperson under the Act and has been so registered since May 31, 2000. She was registered with Re/Max Real Estate Inc. ("Re/Max") from March 25, 2002 until April 30, 2004. She has been registered with Maximum Realty Limited since May 5, 2004.

5.2 Brent and Valerie Gilchrist (the "Gilchrists") were joint holders of the land and premises known as 252 Barlow Crescent, Winnipeg, Manitoba (the "Property") until September 30, 2003.

5.3 On or about June 27, 2003 Stringer contacted the Gilchrists in response to an advertisement in the Winnipeg Free Press and offered to list the Property with the Multiple Listing Services ("MLS") of the Winnipeg Real Estate Board for a 3 1/2% commission. The offer was not accepted.

5.4 On or about July 9, 2003, Stringer met with the Gilchrists in their home. At that time, Stringer was aware that the Gilchrists had an agreement with ComFree Private Sales ("ComFree") to advertise the sale of the Property. During the meeting, it was agreed that Stringer would attempt to sell the Property and list the Property with MLS in exchange for a flat commission fee of \$5000. It was also agreed that the Gilchrists would continue to attempt to sell the Property privately using ComFree until July 18, 2003 and if the Property was ultimately sold privately in that time, then Stringer would not receive any commission. The latter agreement, which is the subject of the dispute, was made orally and was not included in the written MLS contract, which provided that any existing private sales agreements were to be cancelled by the MLS contract.

5.5 Subsequent to the meeting, Stringer arranged several showings of the Property. Both a ComFree sign and a Re/Max sign were displayed on the Property, but as agreed to between the Gilchrists and Stringer, the ComFree sign was temporarily taken down whenever Stringer arranged for a potential purchaser to view the Property.

5.6 On or about July 25, 2003, in response to instructions from the Gilchrists, Stringer lowered the price of the Property on MLS from \$212,000 to \$209,000.

5.7 On or about August 6, 2003, Stringer and the Gilchrists agreed to change the commission arrangement to reflect an increased commission payable to Stringer from \$2500 to \$3000, thus increasing the total commission agreement from \$5000 to \$6000. This agreement was made over the telephone and an 'Alteration of Price and Terms' form was completed by Stringer and sent to the Winnipeg Real Estate Board.

5.8 On or about August 10, 2003, a purchaser ("Dr. A") came to the Gilchrist home and agreed to purchase the Property. At no time did Dr. A. have contact with Stringer.

5.9 Immediately after the sale to Dr. A was concluded, the Gilchrists informed Stringer that the Property had been sold privately. Stringer was also informed at that time that the Gilchrists were first contacted by Dr. A on or about June 9, 2003, in response to an advertisement in the Winnipeg Free Press. Subsequently, the Gilchrists had showed the property to Dr. A on or about June 24, 2003. At that time, Dr. A had expressed some interest in the Property, but had other homes to view.

5.10 On or about September 3, 2003, Stringer contacted the Gilchrists and asked what the possession date on the sale to Dr. A was and she was told that it was September 30, 2003.

5.11 On or about September 5, 2003, the Gilchrists were contacted by their lawyer at the time who indicated that a caveat had been placed on the Property by Re/Max for unpaid real estate commission in the amount of \$5000.

Acknowledgements

6. Stringer acknowledges that she acted contrary to the public interest, and in a manner not in accordance with industry standards by:

6.1 By not putting all agreements with the sellers into written contract form

Mitigating Factors

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

7.1 Stringer has co-operated with the Staff in its investigation of this matter; and

7.2 Stringer has been registered as a salesman under the Act since May, 2000, during which time she has had no other complaints or allegations brought against her under the Act. Furthermore, Stringer was previously registered in British Columbia for several years and there is no record of any discipline on her registration in that jurisdiction.

Terms of Settlement

8. A reprimand will be placed on Stringer's registration file with the Commission.

Order

9. Stringer consents to an order by the Commission (the "Order") that:

9.1 The Agreement be approved;

9.2 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

10. Staff and Stringer 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 Stringer hereby waives her right to a full hearing and appeal of this matter.

10.1 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, neither Staff nor Stringer will raise in the Proceedings or in any other proceeding the terms of the Agreement.

10.2 Staff and Stringer 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.

10.3 Stringer agrees that she 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 might be available.

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

Witness

Edna "Joan" Stringer

DATED at Winnipeg, Manitoba, this 22nd day of October, 2004.

Staff of the Manitoba Securities Commission
Per:
Director, Legal and Enforcement

DATED at Winnipeg, Manitoba, this day of October, 2004.