

2009, and that during the period of suspension Penner is to have no dealings with anyone in connection with trades or transactions in real estate including but not limited to his clients or broker or any of its agents.

3. Penner enroll in and successfully complete all of the following within 6 months of the date of this Order:

- Phase 2, Unit 2, session 1 - The Real Estate Brokers Act and Regulations, and
- Phase 3, Unit 5, sessions 1, 2 & 3 - Offers to Purchase,

including the writing and passing of the examinations.

4. Penner make a payment to the Treasury of the Province of Manitoba in the amount of \$5,000, to be paid in two instalments the first of which shall be in the amount of \$2,500 to be paid within 7 days of the date of this order and the second of which shall be in the amount of \$2,500 to be paid no later than June 30, 2009.

5. Penner pay costs to the Commission in the amount of \$500.

BY ORDER OF THE COMMISSION


Director, Legal and Enforcement



THE MANITOBA
SECURITIES
COMMISSION

SCHEDULE "A"

Settlement Agreement

**Jacob Edward Penner, also known as Jake Penner
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 July 3, 2008, The Manitoba Securities Commission ("Commission") issued a Notice of Hearing ("NOH") and Statement of Allegations ("SOA") naming Jacob Edward Penner also known as Jake Penner ("Penner") as respondent and giving notice of its intention to hold a hearing under *The Real Estate Brokers Act* ("REBA") to consider:
1. Whether it is in the public interest to order, pursuant to subsection 11(1) of REBA, that the registration of Penner as a salesperson under REBA be suspended or cancelled;
 2. Whether it is in the public interest that Penner be ordered to pay the costs of the investigation and hearing;
 3. Such further and other matters as counsel may advise and the Commission may permit.
- A2. Discussions have been held between the respondent and staff of the Commission ("Staff") in an effort to settle the matters set out in the NOH and SOA ("Proceedings"). 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 agrees to recommend to the Commission that the Proceedings initiated against the respondent be resolved and disposed of in accordance with the terms and conditions of this Settlement Agreement as set forth below. The respondent consents to the Settlement and to the making of the consent order referred to in paragraph D. below, on the terms and conditions set forth in this Settlement Agreement.

B. Statement of Facts

- B1. Penner has been registered under REBA as a salesman since June 5, 2003 to present.
- B2. At all material times, Penner was employed as a real estate salesman by Maximum Realty Ltd.
- B3. At all material times the real estate property in question was a single family detached bungalow situated in Winnipeg, Manitoba ("Property").

- B4. On or about August 19, 2005, the vendors of the Property entered into a Listing Contract with Maximum Realty Ltd. Thereafter in August of 2005, Penner conducted showings of the Property as the listing salesperson.
- B5. In August of 2005, Trevor Ouellette ("Ouellette") viewed the Property on more than one occasion.
- B6. In the course of the viewings, Ouellette asked Penner for his understanding of the Local Improvements. Penner informed Ouellette that he had additional information regarding Local Improvements in a folder.
- B7. Penner advised to the effect that the Local Improvements fees were in the range of \$50 per frontage foot, which would be \$5,000. This estimate did not include sewer and water costs.
- B8. Penner represented the \$50 per frontage foot to be a one-time fee.
- B9. Penner further advised that the \$5,000 figure could be paid over 25 years.
- B10. Penner arrived at the estimation of \$5,000 based upon his own interpretation of the documentation in a folder which had been provided by the vendors.
- B11. At all material times, the information in the possession of Penner or available to him on Local Improvements (excluding sewer and water) included the following:

TABLE 2

DISTRICT LEVY RATES			
Stage	District Cost	Total Levy Rate*	Annual Levy Rate**
Pond	\$850,000	\$0.50/sq. ft.	\$0.05/sq. ft.
I	\$1,740,000	\$124.93/fr.ft.	\$11.86/fr.ft.
II	\$1,320,000	\$94.78/fr.ft.	\$8.99/fr.ft.
III	\$1,770,000	\$127.09/fr.ft.	\$12.06/fr.ft.
IV	\$1,280,000	\$91.91/fr.ft.	\$8.72/fr.ft.

*Based on a total assessable area of 1,699,587.9 sq. ft. and total assessable frontage of 13,927.4 fr. ft.

** Based on equal distribution over 25 years

- B12. At all material times, the frontage feet of the Property was 100.
- B13. At all material times, the square footage area of the Property was 11,900.

- B14. Based upon the information contained within TABLE 2 alone, the total estimated annual levies were \$4,758.
- B15. Ouellette relied upon the information he had been told by Penner about the costs of the Local Improvements when considering to purchase the Property.
- B16. On or about August 29, 2005, with Penner also acting as their agent, Ouellette and his wife ("Buyers") made an offer to purchase the Property.
- B17. While the offer did include conditions benefiting the buyer, the offer did not include any conditions benefiting the buyer regarding verification of the nature or costs of the Local Improvements project. In this regard, the Buyers relied upon what had been communicated by Penner.
- B18. Subsequent to the offer, the vendors made a counter-offer and the Buyers accepted.
- B19. As with the original offer of the Buyers, the counter-offer and acceptance did not include any conditions benefiting the Buyer as to Local Improvements.
- B20. After the purchase of the Property, in early 2006 (Stage I) and in early 2007, the Buyers received Local Improvement Cash Cost Statements from the City of Winnipeg for Stages I, II, III, Pond, Lot Line Connections (water) and Lot Line Connections (wastewater) showing the final levy rates and requesting payment of taxes totaling cash amounts of \$36,692.81. In 2008, the Stage IV levy was finalized with a cash cost of \$15,146. The levies for Local Improvements in cash totaled \$51,838.61.
- B21. The most recent 2008 Statement and Demand for Taxes for the Property shows annual taxes attributed to the specific improvements in question totaling over \$4,500 annually, until 2031, and thereafter ending in 2032 an annual payment of almost \$4,200.

C. Acknowledgements

- C1. Penner acknowledges and agrees that contrary to the public interest he:
- (a) acted in a manner not in accordance with industry standards and contrary to the interests of the Buyers by failing to correctly ascertain and advise the Buyers of the costs regarding Local Improvements as known or estimated at the time of the Purchase.
- C2. Staff acknowledges that Penner has co-operated in the investigation of

this matter.

D. Terms of Settlement

- D1. In order to effect a resolution of the issues raised by the NOH, Staff and the respondent have entered into this Settlement Agreement. Upon this basis, Staff seek an order ("Consent Order") from the Commission pursuant to subsection 11(1) of the REBA that:
- (a) the Settlement Agreement be approved;
 - (b) Penner's registration as a salesman under the REBA be suspended for a period of 1 (one) week commencing on May 1, 2009, with the last day of the suspension being May 7th, 2009, and that during the period of suspension Penner is to have no dealings with anyone in connection with trades or transactions in real estate including but not limited to his clients or broker or any of its agents;
 - (c) Penner enroll in and successfully complete all of the following within 6 months of the date of the Order:
 - Phase 2, Unit 2, session 1 - The Real Estate Brokers Act and Regulations, and
 - Phase 3, Unit 5, sessions 1, 2 & 3 - Offers to Purchase,including the writing and passing of the examinations;
 - (d) Penner make a payment to the Treasury of the Province of Manitoba in the amount of \$5,000, to be paid in two instalments the first of which shall be in the amount of \$2,500 to be paid within 7 days of the date of this order and the second of which shall be in the amount of \$2,500 to be paid no later than June 30, 2009;
 - (e) Penner pay costs to the Commission in the amount of \$500.

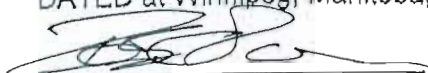
E. Procedure for Approval of Settlement


- 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 pursuant to the NOH.
- E2. Staff and the respondent 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 the respondent 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 in paragraph 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 paragraph D. 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.
- 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 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. 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 24th day of April, 2009.


Witness


Jacob Edward Penner

DATED at Winnipeg, Manitoba, this 24th day of April, 2009.

Staff of the Manitoba Securities Commission

per: 
Director, Legal and Enforcement