

4. THAT BOHEMIER pay a contribution of costs to the Commission of \$1,000.00 to be paid on or before May 30, 2019.

BY ORDER OF THE COMMISSION



Director



SCHEDULE A

Ex # 4
June 26/19
Settlement
D.

Settlement Agreement

NANCY JANE BOHEMIER

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 December 4, 2018, The Manitoba Securities Commission ("Commission") issued a Notice of Hearing ("NOH") and Statement of Allegations ("SOA") naming Nancy Jane Bohemier ("BOHEMIER") as respondent and giving notice of its intention to hold a hearing under *The Real Estate Brokers Act* ("REBA") to consider:
1. whether or not it is in the public interest to order, pursuant to section 11(1) of REBA, that the registration of BOHEMIER as a salesperson under REBA be suspended or cancelled;
 2. whether the Manitoba Real Estate Association Inc. ("MREA") should be ordered to pay to a person any amount out of the Real Estate Reimbursement Fund ("Fund") under clause 39.1(2)(a) of REBA pertaining to the actions of BOHEMIER in connection with a trade or transaction in real estate;
 3. whether pursuant to subsection 34(1) of REBA it is in the public interest to order that BOHEMIER pay the costs of the investigation and hearing;
 4. 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 BOHEMIER and 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 Part D. below, on the terms and conditions set forth in this Settlement Agreement.

B. Statement of Facts

- B1. BOHEMIER was first registered as a salesperson under REBA as Nancy Jane Lemieux on December 15, 1994 and thereafter as Nancy Jane Bohemier from October 16, 1997 to present almost continuously, except for two brief periods of time in 2002 and in 2006 and for a period of almost

a year from on or about November 22, 2003 to and inclusive of November 14, 2004.

- B2. At all material times, BOHEMIER was registered as a salesperson with Century 21 Carrie Realty Ltd. operating as century21carrie.com as her employing broker ("CENTURY").
 - B3. At all material times, CENTURY was registered as a broker under the Act.
 - B4. BOHEMIER's registration will expire at midnight on November 24, 2019.
 - B5. Cathy McIntyre ("MCINTYRE") and Carol Willson ("WILLSON") were executors of the estate of Clementine Porath. The estate property included a cottage located at West Hawk Lake, in Manitoba ("cottage").
 - B6. In or about February of 2014, in her capacity as an executor, MCINTYRE contacted BOHEMIER to sell the cottage.
 - B7. On March 3, 2014, at a CENTURY office, BOHEMIER signed and dated a listing agreement with MCINTYRE, in furtherance of selling the cottage ("listing agreement").
 - B8. The period of time for which the listing agreement prepared by BOHEMIER and signed by MCINTYRE was to be effective was April 1, 2014 to July 1, 2014.
 - B9. At no time did BOHEMIER report the signing of the listing agreement by MCINTYRE to CENTURY nor did she at any time provide a copy of said document signed by MCINTYRE to CENTURY.
 - B10. BOHEMIER gave the listing agreement to MCINTYRE to obtain the signature of the other executor, WILLSON. WILLSON signed the listing agreement.
 - B11. At no time before or after the signing by WILLSON did BOHEMIER provide a copy of the listing agreement to CENTURY.
 - B12. In furtherance of selling the cottage, in early April of 2014, BOHEMIER attended at the cottage to view it and determine its value.
 - B13. After viewing the cottage, BOHEMIER indicated to MCINTYRE her own personal interest in buying the cottage herself.
 - B14. On May 9, May 15, and June 3 of 2014, BOHEMIER made offers to purchase the cottage. The offer of June 3, 2014 was accepted ("accepted offer").
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- B15. BOHEMIER did not provide to CENTURY copies of any of the offers, including the accepted offer.
- B16. The terms of the accepted offer called for a deposit in the amount of \$25,000.00 with the balance of the purchase price to be paid on or before possession of July 2, 2014 ("possession date").
- B17. The accepted offer was not subject to financing.
- B18. A deposit cheque dated May 31, 2014 in the amount of \$25,000.00 had been written by BOHEMIER, payable to legal counsel for the vendors ("deposit cheque").
- B19. On the possession date, BOHEMIER was unable to close the purchase. An extension of time to pay the balance of the purchase price was requested by BOHEMIER.
- B20. On July 3, 2014, the request for an extension was denied.
- B21. The sale of the cottage to BOHEMIER did not proceed.
- B22. Subsequent to the failed sale of the cottage, MCINTYRE was informed that BOHEMIER's deposit cheque had been dishonoured due to insufficient funds.
- B23. Furthermore, at the time the deposit cheque had been written by BOHEMIER, funds in the account upon which it had been drawn were insufficient to cover the amount of the deposit cheque.
- B24. Still further, as at the date written on the deposit cheque, May 31st, and as at the date the accepted offer had been made by BOHEMIER, June 3rd, funds in the account were insufficient to cover the amount of the deposit cheque.
- B25. In or about December of 2014, BOHEMIER promised to provide alternate funds to replace those represented by the dishonoured deposit cheque.
- B26. To date, no such replacement funds have been provided to the vendors by BOHEMIER.

C. Acknowledgements

- C1. BOHEMIER acknowledges and agrees that she:
 - (a) failed to report to her employing broker CENTURY a transaction as soon as entering into it, specifically the solicitation of a listing agreement, including any conduct, act or negotiation, directly or indirectly, in the furtherance or attempted furtherance of said

solicitation, including in particular by failing to provide CENTURY with a copy of the listing agreement upon signing and dating same with MCINTYRE. contrary to section 15(5) of REBA;

- (b) failed to notify her employing broker CENTURY of a proposed trade, namely her proposed attempted purchase, including before and/or at the time of attempting to do so with each and every written offer to purchase made, contrary to section 15(3)(b) of REBA;
- (c) failed to report in writing to her employing broker CENTURY a trade as soon as completed, namely the accepted offer to purchase, contrary to section 15(3)(d) of REBA; and,
- (d) in the circumstances of her deposit cheque, engaged in improper conduct contrary to the public interest, in that she presented a deposit cheque for which there was insufficient funds and furthermore failed to at any time produce replacement funds to the vendors.

D. Terms of Settlement

D1. In order to effect a resolution of the issues raised by the Proceedings, Staff and the respondent have entered into this Settlement Agreement. Upon this basis, Staff seek an order ("Consent Order") from the Commission pursuant to subsections 11(1) and 34(1) of REBA that it is in the public interest that:

- (a) the Settlement Agreement be approved;
- (b) forthwith upon the granting of this order and in any event no later than two business days after the date of this order, BOHEMIER pay to the estate of Clementine Porath the amount of \$25,000.00;
- (c) BOHEMIER make a payment to the Treasury of the Province of Manitoba in the amount of \$15,000.00 to be paid on or before May 30, 2019; and
- (d) BOHEMIER pay a contribution of costs to the Commission of \$1,000.00 to be paid on or before May 30, 2019.

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 her 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 Part D. above is not made by the Commission, Staff will be entitled to proceed with a 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 Part D. above is not made by the Commission, the terms of this Settlement Agreement shall remain confidential and will not be raised in the Proceedings or in any other proceeding and any admissions contained in this Settlement Agreement shall be considered as without prejudice communications and in furtherance of settlement discussions, which will not be binding upon the parties and which will be inadmissible in any proceeding whatsoever.
- 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 she 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 18th day of April, 2019



Witness



Nancy Jane Bohemier

DATED at Winnipeg, Manitoba, this 25th day of June, 2019.

Staff of The Manitoba Securities
Commission

per: 

Director