



THE MORTGAGE BROKERS ACT)
)
 Section 5(1))
)
 and)
)
 THE REAL ESTATE BROKERS ACT)
)
 Section 11(1))

Order No. 2791

September 9, 2020

CHARMAINE HERNANDEZ

WHEREAS:

(A) On November 5, 2019, The Manitoba Securities Commission (the "Commission") issued a notice of hearing (the "Notice of Hearing") of Staff of The Manitoba Securities Commission ("Staff") for a hearing (the "Hearing") under subsection 5(1) of *The Mortgage Brokers Act* (the "MBA") and subsection 11(1) of *The Real Estate Brokers Act* (the "REBA"), to consider, *inter alia*, whether or not it is in the public interest to order that the registration of Charmaine Hernandez ("HERNANDEZ") as a salesperson under the MBA and the REBA be suspended or cancelled.

(B) Staff of the Commission and HERNANDEZ entered into a Settlement Agreement (a copy of which is attached as Schedule "A") dated September 8, 2020 ("Settlement Agreement"), which proposed settlement of this hearing matter, subject to the approval of the Commission;

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

(D) On September 9, 2020, 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 the Commission 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", is hereby approved.

2. **THAT** a thirty-day suspension of registration pursuant to subsection 5(1) of the MBA and subsection 11(1) of the REBA begin on November 30, 2020, with the final day of the suspension to be December 29, 2020;

3. **THAT** HERNANDEZ will pay to the Commission costs in the amount of Five Thousand (\$5,000.00) Dollars on or before December 29, 2020. Payment of this amount is a condition of registration.

4. **THAT** conditions of registration as determined by the Registrar be imposed for one year beginning the day after the suspension of registration is concluded.

5. **THAT** a course of education as acceptable to the Registrar to be completed within one year after the day the suspension of registration is concluded.

BY ORDER OF THE COMMISSION



Director

SCHEDULE "A"

SETTLEMENT AGREEMENT

BETWEEN:

CHARMAINE HERNANDEZ

and

STAFF OF THE MANITOBA SECURITIES COMMISSION

The Manitoba Securities Commission
500 – 400 St. Mary Avenue
Winnipeg, MB R3C 4K5

**In the Matter of
The Mortgage Brokers Act
C.C.S.M. c. M210**

and

**The Real Estate Brokers Act
C.C.S.M. c. R20**

and

**In the Matter of
KAMALDEEP GREWAL, CHARMAINE HERNANDEZ
and MANEET SINGH JASSAL**

Settlement Agreement

- 1.0 Staff of The Manitoba Securities Commission and Charmaine Hernandez ("Hernandez") have reached the following agreement:

Introduction

- 2.0 On November 5, 2019, The Manitoba Securities Commission (the "Commission") issued a notice of hearing (the "Notice of Hearing") of Staff of The Manitoba Securities Commission ("Staff") for a hearing (the "Hearing") under subsection 5(1) of *The Mortgage Brokers Act* (the "MBA") and subsection 11(1) of *The Real Estate Brokers Act* (the "REBA"), to consider, *inter alia*:
- a) whether or not it is in the public interest to order pursuant to subsection 5(1) of the MBA that the registration of Hernandez as a salesperson under the MBA be suspended or cancelled;
 - b) whether or not it is in the public interest to order pursuant to subsection 11(1) of the REBA that the registration of Hernandez as a salesperson under the REBA be suspended or cancelled;
 - b) whether or not Hernandez be required to pay the costs of and incidental to the hearing;
 - c) such further and other orders as the Commission may deem appropriate.
- 2.1 Discussions have been held between Hernandez and 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.

- 2.2 Pursuant to the Settlement, Staff agrees to recommend to the Commission that the Proceedings initiated against Hernandez be resolved and disposed of under the terms and conditions of this Agreement. Hernandez consents to the Settlement and to the Consent Order referred to in section 6 below.

Statement of Facts

- 3.0 Hernandez acknowledges the following facts as correct:
- 3.1 At all material times, Hernandez was registered as a mortgage broker salesperson under the MBA with Centum Above All Financial Inc ("CENTUM") as her employing mortgage broker.
- 3.2 Since September 5, 2017, Hernandez has been a registered real estate salesperson under the REBA with 3529763 Manitoba Ltd. o/1 Coldwell Banker Preferred Real Estate ("Coldwell Banker") as her employer.
- 3.3 In or around May or June of 2016, C.B. and A.B. contacted and met with Hernandez regarding qualifying for a mortgage. C.B. and A.B. provided Hernandez with their financial information and requested that Hernandez process a mortgage application seeking pre-approval on their behalf.
- 3.4 Several days later, C.B. and A.B. returned to the CENTUM office where Hernandez introduced them to Maneet Singh Jassal ("Jassal"), a registered real estate salesperson under the REBA with Coldwell Banker as his employer. Jassal showed C.B. and A.B. new home models that could be built by SRENA Homes Inc ("SRENA"), including a new home to be built at 458 Matheson Avenue. Hernandez and Jassal told C.B. and A.B. that the price for the new home to be built at 458 Matheson Avenue was \$275,000. C.B. and A.B. liked the location of 458 Matheson Avenue and asked Hernandez and Jassal to see if they could be approved for a mortgage to enable them to buy a newly constructed home to be built by SRENA on the property.
- 3.5 On or about June 7, 2016, Hernandez provided the application to her broker, Naseer Chaudhry ("Chaudhry"). Based on the financial information in the application, Chaudhry determined C.B. and A.B. would receive a low credit score if a credit check was conducted. Chaudhry advised Hernandez and Jassal that C.B. and A.B. would not qualify to obtain a mortgage through CENTUM.
- 3.6 On or about June 9, 2016, Hernandez and Jassal invited C.B. and A.B. to a meeting with Kamaldeep Grewal ("GREWAL"), a salesperson under the MBA with Advantage Mortgage Centre Inc. o/1 Mortgage Architects – Your Key Mortgage Partners ("Mortgage Architects") as his employing mortgage broker. C.B. and A.B. provided Grewal with financial information to enable him to process a mortgage application on their behalf. On June 10, 2016,

- Grewal performed a credit check and received credit reports for C.B. and A.B.
- 3.7 On or about June 10, 2016, Grewal informed Jassal that C.B. and A.B. needed to improve their credit scores before he could approve a mortgage for them.
 - 3.8 On or about June 13, 2016, C.B. and A.B. signed and entered into an agreement to purchase 458 Matheson Avenue from SRENA. The Offer to Purchase (the "OTP") for 458 Matheson Avenue specified that SRENA was to build a home on the 458 Matheson Avenue lot. The anticipated date of possession specified in the OTP was November 29, 2016, with that date to be finalized by SRENA at shingle stage. Jassal was both the listing and selling salesperson under the OTP, with Coldwell Banker identified as both the selling and listing broker.
 - 3.9 The OTP included options and upgrades totaling \$9,822.00. The upgrades specified in the OTP included hardwood flooring, the addition of a kitchen pantry, one additional paint colour, and upgraded kitchen cabinets.
 - 3.10 The purchase price on the OTP was \$291,000, less \$1,000 deposit. The listed amount of the mortgage to be arranged was \$276,450.00. The balance required to close ("closing costs") was \$13,550.00. The OTP also stated that the purchasers were to arrange for financing by June 24, 2016, otherwise the OTP was to be considered null and void.
 - 3.11 On or about June 16, 2016, Hernandez contacted C.B. and advised that C.B. and A.B. had been approved for a mortgage. Hernandez also advised them to focus on paying off their debts and saving to pay the closing costs. Hernandez further informed C.B. and A.B. that she and Jassal were going to help C.B. and A.B. with the down payment.
 - 3.12 On or about June 29, 2016, C.B. received a letter from Grewal on Mortgage Architects letterhead advising that A.B. and C.B. had been approved for the purchase of a house up to \$291,000 with a 5% down payment. The letter was also addressed to Jassal.
 - 3.13 On December 28, 2016, A.B. received a call from Jassal asking A.B. to meet him at the office. A.B. went to the office and Jassal produced a cheque from SRENA in the amount of \$19,500 payable to A.B. ("the SRENA cheque"). The cheque was signed by Sunil Arora ("Arora") of SRENA.
 - 3.14 Jassal instructed A.B. to deposit the SRENA cheque into his chequing account immediately and then provide Jassal with proof of the deposit. A.B. deposited the SRENA cheque on December 28, 2019 and provided Jassal with copies of the bank inquiry receipt and the bank statement showing the SRENA cheque posted to A.B. and C.B.'s chequing account. A.B. prepared a note on a copy of the SRENA cheque indicating that the \$19,500 was

intended to be paid as follows: (1) down payment to contractor (SRENA) of \$13,550; and (2) closing costs of \$5,950.

- 3.15 Arora of SRENA told Staff that the \$19,500 cheque Jassal gave to A.B. was a loan intended to be secured by a second mortgage on 458 Matheson Avenue once the sale proceeded.
- 3.16 On January 5, 2017, A.B. texted Hernandez and advised her that his insurance broker could not place fire insurance on the new home as there was no mortgage approval in place. Hernandez did not respond to that text message from A.B.
- 3.17 C.B. and A.B. met with Hernandez and Jassal on or about the first week of January, 2017 to find out which financial institution was providing the mortgage and to get mortgage instructions for their lawyer. Hernandez and Jassal failed to advise C.B. and A.B. that no financial provider had approved a mortgage for them and that Grewal would be unavailable to process a mortgage application for them prior to their revised January 15, 2017 possession date.
- 3.18 On or about January 13, 2017, Hernandez and Jassal took C.B. and A.B. on a walk-through of the 458 Matheson Avenue home ahead of the January 15, 2017 possession date. After the walk-through, Jassal informed C.B. and A.B. that their credit score had decreased. Jassal suggested they immediately settle their debt with one creditor to raise their credit score. Jassal also indicated that he had been unable to contact Grewal. C.B. and A.B. immediately privately borrowed money and paid off a creditor.
- 3.19 The sale of the 458 Matheson Avenue property to C.B. and A.B. was not completed on the revised date of possession, January 15, 2017, as contemplated under the OTP.
- 3.20 On or about January 26, 2017, C.B. and A.B. asked Jassal why their lawyer had still not yet received mortgage instructions. Jassal advised them to come to the CENTUM office with their pay stubs and financial information. When C.B. and A.B. attended the CENTUM office, Hernandez advised that she and Jassal had been unable to contact Grewal regarding the status of the mortgage. At that time, with the permission of C.B. and A.B., Jassal and Hernandez performed a credit check.
- 3.21 On or about January 28, 2017, Hernandez called A.B. and advised him that he had been approved for a \$200,000 mortgage which was not enough to purchase 458 Matheson Avenue. Hernandez took A.B. to view a different property, but A.B. was uninterested in making an offer on the alternative property.
- 3.22 As they had been instructed by Hernandez and Jassal, C.B. and A.B. had arranged to sublet their apartment as of February 1, 2017 based on the

January 15, 2017 possession date for 458 Matheson Avenue. C.B. and A.B. began to look for a new apartment to move into on January 30, 2017.

- 3.23 On January 30, 2017, C.B. texted Hernandez and asked for a copy of the OTP for 458 Matheson Avenue as they had never been provided with a copy of the OTP. Hernandez responded that the OTP had already been shredded, was null and void and that they did not need a copy. Hernandez refused to provide a copy of the OTP to C.B. and A.B.
- 3.24 Later that day, Jassal called A.B. and advised that he had a copy of the OTP that he would be willing to exchange for the \$19,500.00 that had been advanced via the SRENA cheque.
- 3.25 On February 5, 2017, Hernandez met A.B. at a coffee shop. A.B. gave Hernandez a bank draft in the amount of \$19,500.00 and Hernandez proved a copy of the OTP for 458 Matheson Avenue in exchange.

Acknowledgments

- 4.0 Hernandez acknowledges that:
 - 4.1 her conduct in this transaction was contrary to the public interest; and
 - 4.2 she failed in her primary duty to protect and promote the best interests of her clients C.B. and A.B.

Undertaking

- 5.0 Hernandez undertakes and agrees to the following:
 - 5.1 A thirty-day suspension of registration pursuant to subsection 5(1) of the MBA to begin on November 30, 2020, with the final day of the suspension to be December 29, 2020;
 - 5.2 A thirty-day suspension of registration pursuant to subsection 11(1) of REBA to run concurrently with the MBA suspension;
 - 5.3 Hernandez will pay to the Commission costs in the amount of Five Thousand (\$5,000.00) Dollars on or before December 29, 2020. Payment of this amount is a condition of registration.
 - 5.4 Conditions of registration as determined by the Registrar for one year beginning the day after the suspension of registration is concluded.

- 5.5 A course of education as acceptable to the Registrar to be completed within one year after the day the suspension of registration is concluded.

Order

- 6.0 Hernandez consents to an order by the Commission (the "Order") that:
- 6.1 The Agreement be approved; and
- 6.2 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

- 7.0 Staff and Hernandez 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 Hernandez hereby waives her right to a full hearing and appeal of this matter.
- 7.1 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 Hernandez will not raise in the Proceedings or in any other proceeding the terms of the Agreement.
- 7.2 Staff and Hernandez 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.
- 7.3 Hernandez 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 may be available.
- 7.4 Hernandez further agrees that if the Commission approves this Agreement and the Consent Order is made upon the terms set out in this Agreement, Hernandez will not make any statements inconsistent with the terms of this Agreement.

7.5 Hernandez further agrees to make herself available to testify if called at the Hearing of these Proceedings against Kamaldeep Grewal and/or Maneet Sing Jassal.

DATED at Winnipeg, Manitoba, this 8 day of SEPTEMBER, 2020.



Witness



Charmaine Hernandez

DATED at Winnipeg, Manitoba, this 8th day of September, 2020.

Staff of The Manitoba Securities Commission

per: 
Director