

CT-2011-003

COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

IN THE MATTER OF an application by the Commissioner of Competition pursuant to section 79 of the *Competition Act*;

AND IN THE MATTER OF certain rules, policies and agreements relating to the residential multiple listing service of the Toronto Real Estate Board.

B E T W E E N :

COMPETITION TRIBUNAL
TRIBUNAL DE LA CONCURRENCE

RECEIVED / REÇU
CT-2011-003
August 23, 2012

Jos LaRose for / pour
REGISTRAR / REGISTRAIRE

OTTAWA, ONT

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COMMISSIONER OF COMPETITION**Applicant****AND****THE TORONTO REAL ESTATE BOARD****Respondent****AND**

**THE CANADIAN REAL ESTATE ASSOCIATION and
REALTYSELLERS REAL ESTATE INC.**

Intervenors

**WITNESS STATEMENT OF PAMELA PRESCOTT
CENTURY 21 HERITAGE GROUP LTD**

I, Pamela Prescott, of the City of Thornhill, in the Province of Ontario, state as follows:

1. I am the owner and Broker of Record of Century 21 Heritage Group Ltd., an independently-owned real estate brokerage with offices in Thornhill, Richmond Hill, Newmarket, and

Bradford. My brokerage has 4 offices, 2 satellite offices, and in excess of 400 sales representatives.

2. I have been involved in the real estate industry in the Greater Toronto Area for approximately 35 years. I was a real estate salesperson for 8 years, and I have been a real estate broker for the past 27 years. During my career, I have been involved in approximately 700 real estate transactions as a salesperson, and approximately 40,000 as a broker.
3. I served as a Director of The Toronto Real Estate Board (“TREB”) for a period of three years during the early 2000s. I have also served as the Vice-Chair of TREB’s Ethics Committee, and as a member of TREB’s Arbitration Committee.
4. I have owned my brokerage for the past 25 years. Originally, my brokerage operated under the HomeLife banner. For the past 15 years, it has operated under the Century 21 banner.
5. Century 21 does not itself operate any “corporate-owned” real estate brokerages. All Century 21-affiliated brokerages are independently-owned franchisees.
6. My brokerage competes for business with other Century 21 brokerages. Some of my biggest competitors are other Century 21 brokerages, including Century 21 Land Stars Realty Inc, Century 21 Leading Edge Realty Inc, and Century 21 Atria Realty Inc.

Operating as a Century 21 Franchisee

7. Generally speaking, Century 21 takes a very hands-off approach to how its franchisees run their brokerages.

8. Century 21 does not have any restrictions on the type of business model that its franchisees operate. Franchisees have complete freedom to pick whatever business model they like, and they have complete freedom to change business models if they so desire.
9. From the perspective of the brokerage, there is freedom to determine the compensation between the brokerage and sales representative. Some Century 21 offices charge desk fees, some charge transaction fees, some charge a percentage of the commission on a transaction, and some use a combination of these methods. Some Century 21 offices have a maximum annual commission, and once sales representatives reach that amount the sales representative retains 100% of their commissions for the rest of the year.
10. From the perspective of the sales representative, there also is flexibility to use different business models. Some sales representatives do flat rate commission and some charge a percentage of the purchase price (and this rate varies widely among sales representatives at my brokerage).
11. There are a suite of Century 21 tools that are available to its franchisees (including training materials, technical support, and so on), and it is up to the franchisee how, if at all, those tools will be used.
12. Century 21 operates a website that lists homes that are for sale across the Century 21 franchise network, and also some of the homes that have sold within the Century 21 franchise network. Century 21 Heritage Group sales representatives obtain the consent of clients for this sold information to be posted on the Century 21 website by way of schedule "B" to the agreement of purchase and sale.

Competition in the Greater Toronto Area Real Estate Market

13. There is a tremendous amount of competition within the real estate industry in the Greater Toronto Area, with a high amount of turn-over. Within the past year, my brokerage has hired 100 new sales representatives, and 50 sales representatives have left the brokerage.
14. One of the main ways that sales representatives generate new business is by having a presence in the local community. Sales representatives within the same community are competing for the same business.
15. Sales representatives within my brokerage are in competition with each other for business because they operate in the same community. My sales representatives are all independent contractors.
16. Sales representatives within my brokerage do not have a salary. Their compensation is completely determined by the amount they earn in commissions. As discussed below, sales representatives within my brokerage have complete autonomy to set commission rates with their clients.

Comparative Market Analyses

17. Buying a home and selling a home are incredibly emotional experiences. A real estate sales representative provides services that help their clients make informed decisions during what will be one of the biggest transactions in their lives.
18. One of the services that a real estate sales representative typically provides, both to sellers and buyers of real estate, is a Comparative Market Analysis. A Comparative Market

Analysis compares the home being sold against other recently sold homes to determine a rough market value for the home being sold.

19. Simply knowing what apparently “comparable” homes have recently sold for does not tell the whole picture, either to the home buyer or the home seller. Those numbers need to be interpreted by a professional in order to truly be able to compare a home being sold to other recently sold homes.
20. In my practice, I would do an in-person visual inspection of the relevant properties before providing a Comparative Market Analysis to a client. Many factors have an effect on market value, and these factors have to be considered and interpreted before making any definitive comparisons between homes. By way of a few examples, there might be structural issues with a home that might be visible in person but might not be apparent in pictures; the home might back out onto train tracks; the home might be near a stop sign on a busy street; or there might be recent renovations to the home.
21. Also, numbers alone do not reveal information about general market trends, or market trends within a specific neighbourhood taking into consideration things like volume of sales, and levels of inventory. Market trends make a tremendous difference in determining market value.
22. In my experience, sold price information on its own does not provide a complete picture, and this information needs to be analysed by a professional in preparing a Comparative Market Analysis.

Commissions

23. Sales representatives at my brokerage have complete discretion to negotiate their commissions with their clients, both as listing sales representatives and cooperating sales representatives. There is no such thing as a normal or standard commission charged by my sales representatives.
24. Commissions are addressed in both the listing agreement (the agreement between the listing sales representative and the home seller), and in the buyer representation agreement (the agreement between the cooperating sales representative and the home buyer). These are standard forms that are provided by the Ontario Real Estate Association.
25. The listing agreement sets out the amount of commission that the listing sales representative will receive if the home sells, and it also sets out the amount of the offer of commission to the cooperating broker. These commission figures are discussed and negotiated between the home seller and the listing sales representative.
26. Generally speaking, the cooperating sales representative receives his/her commission out of the listing sales representative's commission. For example, if the listing sales representative received commission of 3.75%, a portion of that 3.75% would be provided to the cooperating sales representative as his/her commission.
27. In my experience, the initial offer of the cooperating sales representative's commission in the listing agreement is something that can be, and is, negotiated between the listing sales representative and the cooperating sales representative. In other words, the initial offer in the listing agreement is not necessarily the commission that the cooperating sales representative ends up receiving.

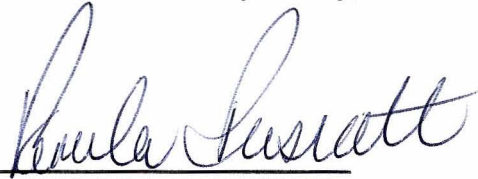
28. The standard buyer representation agreement contains a clause that guarantees a floor for the cooperating sales representative's commission. If the cooperating sales representative receives less than the stipulated percentage/dollar amount from the listing sales representative, the home buyer agrees to cover the shortfall. This is a negotiable amount between the home buyer and the cooperating sales representative. In my experience, the cooperating sales representative's commission will always be guaranteed in the buyer representation agreement, although the amount will vary and is often negotiated at the time of an offer.
29. Both the listing sales representative's commission and the cooperating sales representative's commission are negotiable. In my experience, there is a lot of competition on commission rates in the Greater Toronto Area among sales representatives, and among brokerages, as sales representatives and brokerages compete for clients. In my experience, the listing commission in residential real estate transactions can range from 2.5 – 5.5%, and the cooperating commission can range from 0 – 2.5% (which would be paid out of the listing sales representative's commission).

Dual Agency

30. Dual agency situations occur when the same brokerage acts for the buyer and the seller in the same transaction.

31. The most common reason for dual agency transactions in my brokerage is where the buyer and seller are represented by different sales representatives within the brokerage; sometimes across different offices. Dual agency transactions where the same sales representative acts for both buyer and seller are not the norm.

SIGNED THIS, this 27th day of July, 2012.

A handwritten signature in cursive script, appearing to read "Pamela Prescott", written over a horizontal line.

PAMELA PRESCOTT
OWNER/BROKER OF RECORD,
CENTURY 21 HERITAGE GROUP LTD.