

FILED / PRODUIT

Date: September 1, 2011

CT- 2011-003

Chantal Fortin for / pour
REGISTRAR / REGISTRAIRE

OTTAWA, ONT.

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CT-2011-003

THE COMPETITION TRIBUNAL

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

AND 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

BETWEEN:

THE COMMISSIONER OF COMPETITION

Applicant

- and -

THE TORONTO REAL ESTATE BOARD

Respondent

REQUEST FOR LEAVE TO INTERVENE ON BEHALF OF REALTYSELLERS REAL ESTATE INC.

REALTYSELLERS REAL ESTATE INC. (“Realtysellers”) requests leave of the Competition Tribunal (the “Tribunal”) pursuant to subsection 9(3) of the *Competition Act*, R.S.C. 1985, c. C-34, as amended, and pursuant to subsection 46(2) of the Competition Tribunal Rules, to intervene in the above-noted proceedings. This request is made on behalf of Realtysellers by his Counsel, whose name and address is set forth below. In support of this request, Realtysellers intends to rely on the affidavit of Lawrence Mark Dale, President and CEO of Realtysellers, sworn August 31st, 2011.

STATEMENT OF FACTS

The following is a concise statement of facts presently known to Realtysellers on which this request is based:

1. On May 25, 2011, the Commissioner of Competition (the "Commissioner") filed a Notice of Application (the "Application") pursuant to section 79 of the *Competition Act*, R.S.C. 1985, c. C-34, as amended (the "Act"), and naming as respondent: The Toronto Real Estate Board ("TREB").
2. On July 7, 2011 the Commissioner filed an Amended Notice of Application.
3. On August 19, 2011 the Respondent filed a Response.
4. In the Amended Notice of Application, the Commissioner applied to the Tribunal for an order as set in paragraph 66 therein.
5. Realtysellers is a residential real estate resale brokerage and a member of TREB.
6. As a result of the Commissioner securing a Consent Agreement with the Canadian Real Estate Association ("CREA") that was filed with the Tribunal on October 25, 2010 and the Commissioner filing its initial Notice of Application in this proceeding on May 25, 2011, Realtysellers finalized plans to enter the residential real estate brokerage marketplace in the Greater Toronto Area and elsewhere in Canada. In the past two months, Realtysellers and its related parties (collectively "Realtysellers") have acquired brokerages in other provinces, became licensed as a brokerage or have taken steps to become licensed as a brokerage in several provinces and made a strategic investment in PropertyGuys.com Inc., Canada's largest franchise network helping private sellers sell their homes.
7. Realtysellers' objectives are to provide consumers with a different approach to obtaining residential real estate brokerage services at better value than provided by traditional agents and

brokerages. Realtysellers' business philosophy is to offer a choice of services to consumers so that they only need to purchase the services they desired and to utilize all available technology to provide an efficient delivery of services and MLS property information at better value than provided by traditional agents and brokerages.

8. Even though Realtysellers has only been operating for less than two months offering very limited programs, Realtysellers has established itself as TREB's largest non-traditional brokerage. Realtysellers has also established itself as Canada's largest non-traditional brokerage.

9. Realtysellers is only offering limited ala carte MLS services such as a simple MLS posting for consumers who do not want to purchase any other brokerage services. To expand its programs and services, the restrictions that TREB has regarding communicating MLS information to customers and potential customers over the internet in a virtual office environment must be removed as set out in the Proposed Order sought by the Commissioner in her Amended Notice of Application.

10. In the less than two months since Realtysellers has launched its first programs, Realtysellers has posted more than 600 properties on realtor.ca and has commitments with more than 1000 additional customers to post their properties on realtor.ca. Realtysellers currently is signing up more than 100 customers per week, with that number growing each week. Realtysellers anticipates assisting over 30,000 consumers with only its current limited program offerings in the next 12 months representing approximately \$4 billion in property transaction value.

11. However, Realtysellers is unable to materially expand its service offerings with the current restrictions that TREB has placed on its ability to provide the same MLS information that traditional agents and brokerages can provide to consumers by hand delivery. Realtysellers does not want to provide any different information than what is provided by the traditional agents and brokerages, but wants to use what Realtysellers believes is a better and more efficient delivery process for this same

information, namely through the internet in a virtual office environment as apposed to by hand in a bricks and mortar environment as provided by traditional agents and brokerages.

12. If Realtysellers could provide information to customers and potential customers over the internet in a virtual office environment, Realtysellers can offer services to buyers and sellers at a cost substantially less than currently provided by typical traditional agents and brokerages through a bricks and mortar office environment.

**REALTYSELLERS IS DIRECTLY AFFECTED AND OFFERS A UNIQUE AND
DISTINCT PERSPECTIVE TO THE PROCEEDING**

13. Realtysellers is currently operating as a member of TREB offering innovative and non-traditional brokerage services. Even though its program offerings are restricted by the subject matter in these proceedings, in less than two months Realtysellers has established itself as a serious market participant. Realtysellers has posted more properties for sale on the TREB MLS system in the past two months than virtually any other brokerage member of TREB.

14. Realtysellers is TREB's largest non-traditional brokerage.

15. Realtysellers is likely TREB's only non-traditional brokerage wanting to operate a true virtual office.

16. Realtysellers can offer a unique and distinct perspective to these proceedings.

17. Realtysellers is the only known non-traditional brokerage member in TREB that wants to operate a virtual brokerage but is prevented from doing so by TREB's current rules and policies that the Commissioner seeks to remove in her Proposed Relief.

18. Two senior members of the Realtysellers executive group, Lawrence Dale and Fraser Beach, are the only current non-traditional realtors who have ever operated a virtual office in TREB, albeit both for limited time frames until TREB stopped their previous activities.

19. Realtysellers' President and CEO Dale brings an unique and distinct perspective to these proceedings as he has more experience operating and attempting to operate non-traditional brokerages than any member of TREB, having been pursuing the cause for over a decade. In addition, Dale has also been involved with some of TREB's largest traditional brokerage members including being President and CEO of the group of that in 2007 purchased 80% of Chestnut Park Real Estate Limited, one of TREB's largest traditional brokerage members. Dale's knowledge and experience that he acquired owning and operating both non-traditional and traditional brokerages will provide a distinct and unique perspective on the subject matter of these proceedings that cannot be provided by any other TREB member.

20. Realtysellers is not able to fully expand its program offerings until it is able to operate a virtual office to provide MLS information to its customers and potential customers which would be permitted under the Proposed Order.

21. Realtysellers is planning to provide additional innovative service programs for buyers and sellers that require that the MLS information be communicated to consumers through a virtual office environment to be more operationally efficient resulting in cost savings that can be passed on to consumers through lower costs and better value in the services they choose.

22. Realtysellers can offer a unique and distinct perspective to these proceedings as it is currently operating as a successful non-traditional brokerage with a developed business approach to utilize a virtual office to expand its scope of program offerings if permitted to do so with the removal of TREB's current unlawful rules and policies.

23. In the event that the Tribunal grants the relief sought by the Commissioner in the Application, Realtysellers has plans to expand its services to including programs that requires Realtysellers to operate a virtual office as described by the Commissioner in her Amended Notice of Application.

**TOPICS FROM THE MATTERS IN ISSUE WITH RESPECT TO WHICH THE
PROPOSED INTERVENOR WISHES TO MAKE REPRESENTATIONS AND
PROPOSED SCOPE OF THE PROPOSED INTERVENTION**

24. If Realtysellers is granted leave to intervene, the topics that Realtysellers would like to intervene on are as follows:

- (a) How a brokerage like Realtysellers would operate a virtual office and provide MLS information to consumers over the internet as opposed to through a bricks and mortar office and by hand;
- (b) The cost savings and operational efficiencies of operating a virtual office and the savings that can be passed along to consumers;
- (c) The impact of the current TREB rules and policies including its recent VOW policy on a non-traditional brokerage like Realtysellers who wants to provide consumers with MLS information in a virtual office environment over the internet as opposed to through a bricks and mortar office by hand;
- (d) The absence of any privacy issues and other issues preventing virtual offices as described herein; and
- (e) The Proposed Order and the impact it will have on non-traditional brokerages who want to provide consumers with MLS information through its virtual office over the internet as opposed to through a bricks and mortar office by hand.

25. If granted leave to intervene, Realtysellers requests that it be permitted, provided that the evidence provided by such witnesses is relevant and non-repetitive to call a maximum of three witnesses.

26. If granted leave to intervene, Realtysellers is prepared to produce all documents relevant to the topics of its intervention and deliver an affidavit of documents related thereto.

27. If granted leave to intervene, Realtysellers will produce a representative for discovery in relation to the topics of its intervention.

28. If granted leave to intervene, Realtysellers asks that, subject to any confidentiality orders, Realtysellers is to be served with the parties' productions and affidavits of documents as they become available.

29. If granted leave to intervene, Realtysellers asks that it be entitled to be present at the discoveries and to ask questions only on the topics of its intervention but not to repeat any questions already asked by other counsel.

30. If granted leave to intervene, Realtysellers asks that at the hearing it be entitled to cross-examine witnesses only on the topics of its intervention but not to repeat any questions already asked by other counsel.

31. If granted leave to intervene, Realtysellers asks that it can make oral and written submissions which are not repetitive only on the topics of its intervention as well oral and written submissions as to the Proposed Order.

NAME OF THE PARTY THE PROPOSED INTERVENOR INTENDS TO SUPPORT

32. Realtysellers intends to support the Commissioner's position generally.

33. While Realtysellers supports the Commissioner's position generally, Realtysellers is in a unique and distinct position to participate in these proceedings in the limited way proposed. Realtysellers is the largest innovative brokerage member in TREB wanting to offer the very type of services that the Commissioner has alleged TREB has prevented through anti-competitive conduct. The outcome of these proceedings will directly materially affect the business of Realtysellers. Realtysellers has established itself as significant market participant and will become a much more vigorous and effective competitor once TREB's anticompetitive rules are eliminated. Realtysellers is directly affected by any

Order made in this proceeding and would like the opportunity to intervene in the limited manner proposed. The Commissioner has a broader public interest mandate to serve, whereas Realtysellers has a unique and distinct perspective as an innovative brokerage seeking to compete in the market. This perspective will allow Realtysellers to assist the Tribunal by asking unique, non-repetitive questions of witnesses by presenting a limited amount of evidence if such evidence has not been put forward by the Commissioner and by making a final argument that will likely not be advanced by the Commissioner.

OFFICIAL LANGUAGE TO BE USED

34. Realtysellers requests that any hearing of the Request for Leave to Intervene and, if such leave is granted, the proceedings relating to the Application be conducted in the English language.

DATED at Toronto, Ontario, this 1st day of September , 2011

A handwritten signature in cursive script that reads "Mark Nicholson" followed by "Gowling Lafleur Henderson LLP".

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