

NEW BRUNSWICK ENERGY AND UTILITIES BOARD

IN THE MATTER OF the Financial and Consumer Services Commission and Century 21 A&T Countryside Realty Inc. and Paul Burns.

ORDER

WHEREAS the Financial and Consumer Services Commission (Commission) filed a Notice of Motion and an Agreed Statement of Facts on October 19, 2023;

AND WHEREAS in this Notice of Motion, the Commission sought certain relief from the Board based on the consent of the parties;

AND WHEREAS the hearing of this matter was scheduled to begin on October 20, 2023, at 9:30 a.m.;

AND WHEREAS a hearing was held on October 19, 2023, to consider the Commission's motion.

NOW THEREFORE IT IS ORDERED THAT:

1. The hearing of this matter is adjourned.
2. The Agreed Statement of Facts, a copy of which is attached as Appendix 1, is accepted by the Board and will serve as the complete evidentiary record in this proceeding.
3. This matter will proceed on the basis of the Agreed Statement of Facts wherein the parties may address all factual and legal issues bearing upon the merits and potential sanctions relevant to the matter and as found in the Statement of Allegations.
4. The hearing of this matter will resume on November 10, 2023, beginning at 10:00 a.m., at the New Brunswick Energy and Utilities Board's offices, 15 Market Square, Suite 1400, Saint John, New Brunswick, at which time the

Board will hear the parties' oral arguments on both the merits and potential sanction.

5. The Commission shall file its Statement of Position in relation to any potential sanction with the Board by October 25, 2023, at 4:00 p.m., and Century 21 A&T Countryside Realty Inc. and Paul Burns shall file their Statement of Position in relation to any potential sanction by November 3, 2023, at 4:00 p.m.

DATED at the City of Saint John, New Brunswick, this 19th day of October 2023.

BY THE BOARD

A handwritten signature in black ink that reads "Christopher Stewart". The signature is written in a cursive style with a large initial "C".

Christopher Stewart
Member

Appendix 1

PROVINCE OF NEW BRUNSWICK
FINANCIAL AND CONSUMER SERVICES TRIBUNAL
IN THE MATTER OF THE *REAL ESTATE AGENTS ACT*, R.S.N.B. 2011, c.215

BETWEEN:

Financial and Consumer Services Commission,

Applicant,

-and-

Century 21 A&T Countryside Realty Inc. and Paul Burns,

Respondents.

AGREED STATEMENT OF FACTS

Introduction

1. The Respondent Century 21 A&T Countryside Realty Inc. ("A&T Countryside Realty" or the "Company") is a licensed Agent further to s. 4 of the *Real Estate Agents Act*, R.S.N.B. 2011, c. 215 ("*Real Estate Agents Act*"). A&T Countryside Realty has held a license to trade in real estate since 29 January 2016.
2. Tim Beaulieu, being Audrie Beaulieu's spouse, is the owner and sole director of A&T Countryside Realty ("Company"). At all material times, Audrie Beaulieu, the Company's Business Manager and Recruitment Coordinator, was involved in the day-to-day operations of Company, but she was not required to be licensed under the *Real Estate Agents Act* in respect of her involvement.
3. The Company opened its first office at 1000 St. George Blvd. in Moncton, NB in September of 2016 and currently holds an office at 1690 Mountain Road in Moncton. The Company also has offices in Fredericton and Rothesay, New Brunswick. At certain times, the company also had satellite offices in St. Andrews, Shediac, and Campbellton, New Brunswick. The Company presently operates offices in Moncton, Fredericton and Rothesay only.
4. The Respondent, Paul Burns ("Burns") is employed by the Company as an independent contractor and represents the Company as its Licensed Manager further to s. 6 of the *Real Estate Agents Act*. He has held a licence to trade in real estate since 19 August 1992.

5. Burns has held a Manager licence since 24 May 1996 and has been in this position for the Company since 2016. He works in the Moncton office. One of the main responsibilities of a licensed manager is to oversee the records of the agent by ensuring proper document handling, record keeping, and trust account administration.
6. The Respondents' business requires use of a Trust Account pursuant to section 18(1) of the *Real Estate Agents Act* to hold deposits on real estate transactions pending closing of the real estate deals. The Respondents made use of a trust account located at a Toronto Dominion Bank branch in Dieppe, New Brunswick (the "trust account").

Discovery of Initial Shortages in the Century 21 A&T Trust Account

7. In June of 2019 the New Brunswick Real Estate Association ("NBREA"), in fulfillment of their role as co-regulator with the Financial and Consumer Services Commission ("FCNB") to oversee real estate agent's compliance with the New Brunswick Real Estate Agents Act ("Act"), conducted an inspection of Century 21 A&T Countryside Realty ("Company"). Such inspection was conducted in accordance with NBREA's inspection program for the period of 1 December 2017 to 31 March 2019. NBREA's findings were documented in their 4 July 2019 inspection report ("2019 Report").
8. In the 2019 report, NBREA estimated a shortage in the Company's trust account between \$50,000 and \$100,000 as at 31 March 2019, however noted that the records kept by the Company were insufficient to determine a precise amount, contrary to sections 43.1(2) and 43.1(3) of the *Real Estate Agents Act and the shortage itself constitutes a breach of section 20(1) of the Real Estate Agents Act*
9. On 13 September 2019, the Respondents provided financial statements for the Company for the year ending 31 December 2018. These statements showed a shortage in the Company's trust account totaling \$57,838
10. As a result of this shortage, the Respondents were required to transfer \$56,199.30 into the Company's trust account on 31 October 2019, which the Company proceeded to do on that date.

FCNB Compliance Review and Undertakings

11. On 2 October, 2019, FCNB staff conducted a compliance review of the Respondents, which was completed in November of 2019. Following the compliance review, Audrie Beaulieu and Burns provided an Undertaking to the Director of Consumer Affairs, which is attached hereto as **Exhibit "A"** (the "November 2019 Undertaking"). The items found in the November 2019 Undertaking served as Terms and Conditions on the real estate licences of each Respondent pursuant to section 10(1.1) of the *Real Estate Agents Act*.

12. The Respondents failed to ensure the completion of the trust account verification as required by the Undertaking, contrary to section 10(1.2) of the *Real Estate Agents Act*. The Respondents did, however, provide or made efforts to provide FCNB with monthly bank statements in relation to the Company's trust account and operating account, as well as bank reconciliations, trust ledger and related records ("monthly bank records") as required per the Undertaking.
13. Pursuant to the November 2019 Undertaking, the Respondents provided monthly bank records to FCNB Staff regarding the month of November 2019 on 28 December 2019. However, the complete records required by the November 2019 Undertaking were not filed until 9 January 2020, contrary to section 10(1.2) of the *Real Estate Agents Act*, and they reflected a \$1,487.50 shortage in the trust account contrary to section 20(1) of the *Real Estate Agents Act*
14. Also during this this time Staff of the FCNB received complaints from industry regarding late commission payments from the Respondents on deals that had closed.
15. Pursuant to the November 2019 Undertaking, the Respondents provided monthly bank records to Staff regarding the month of December 2019 on 31 January 2020. However, the complete records required by the November 2019 Undertaking were not filed until 3 February 2020, contrary to section 10(1.2) of the *Real Estate Agents Act*, and these records reflected a \$498.50 shortage in the trust account, contrary to section 20(1) of the *Real Estate Agents Act*.
16. As a result of the shortages in the trust account for November and December, and the late filings of the Respondent's monthly statements, Staff of the FCNB scheduled an Opportunity to be Heard regarding the deficiencies. The Opportunity to be Heard was initially scheduled to proceed on 30 January 2020 but was subsequently delayed until 2 March 2020.

The 2020 Opportunity to be Heard Proceeding

17. On 28 February 2020, Staff of the FCNB received trust account records from the Respondents pursuant to the November 2019 Undertaking. These records were provided on a timely basis, but reflected a \$21,504.50 shortage in the trust account, contrary to section 20(1) of the *Real Estate Agents Act*, primarily as a result of a \$20,000.00 transfer out of the trust account and into the operating account that occurred on 8 January 2020. The records provided a handwritten note by Audrie Beaulieu indicating that this transfer was a result of a bank error.
18. During the Opportunity to be Heard proceeding on 2 March 2020, the Respondents maintained the representation that the 8 January 2020 transfer of \$20,000.00 out of trust and into the operating account was as a result of a bank error.

19. Just recently, and as a result of an Investigative Order issued by FCNB Staff on 15 August 2023, FCNB Staff discovered that Audrie Beaulieu initiated the \$20,000.00 transfer using the Company's online banking services. As such, this was unknown to FCNB Staff at the time of the March 2020 Opportunity to be Heard.
20. The Director of Consumer Affairs ultimately allowed the Respondents to continue, but subject to further Terms and Conditions as agreed by the Respondents. The Director of Consumer Affairs' decision took into consideration the potential impact of the decision on the livelihoods of 21 employees of the Company at the time.

The Terms and Conditions Placed on the Respondents as a Result of the 2020 Opportunity to be Heard

21. As a result of the Opportunity to be Heard, Audrie Beaulieu, on behalf of Century 21 A & T Realty, and Burns provided additional Undertakings to the Director of Consumer Affairs, which is attached hereto as **Exhibit "B"** (the "April 2020 Undertakings"). The items found in the April 2020 Undertakings served as Terms and Conditions on the real estate licences of each Respondent pursuant to section 10(1.1) of the *Real Estate Agents Act*.
22. The Respondents filed certain monthly bank records, including trust account records, as required by the April 2020 Undertakings. However, such records were filed late with respect to the following months, contrary to section 10(1.2) of the *Real Estate Agents Act*:
 - (a) June, July and December 2021,
 - (b) February, April, May, September, and November 2022
 - (c) March, April, May and June 2023.
23. A&T Countryside Realty failed to comply with Item 1 of the Terms and Conditions placed on its licence requiring it to provide trust account verifications from the Company's accounting firm, being Thiel Greene Chartered Professional Accountants, contrary to section 10(1.2) of the *Real Estate Agents Act*. FCNB Staff did receive correspondence from Thiel Green, namely on 14 May 2020, indicating that it would provide such verification services and other assistance to the Respondents, however, FCNB Staff have never received any such verification concerning the Company's Trust Account.
24. A&T Countryside Realty failed to comply with Item 2 of the Terms and Conditions placed on its licence requiring it to provide the Director of Consumer Affairs with annual Financial Statements within 120 days of its year end, contrary to section 10(1.2) of the *Real Estate Agents Act*. It has only ever provided annual Financial Statements for the year 2019. This only occurred 4 January 2023 when the Respondents filed their evidence in respect of the within enforcement proceeding.

25. The Respondents have previously authorized FCNB to contact the Company's external accountants directly to speak with them about the status of the outstanding year-end financial statements and have continued to report to FCNB Staff that it commissioned its external accountants for the purpose of completing all outstanding year-end financial statements in a timely manner and in view of complying with Item 2 of the Terms and Conditions. This said, the Respondents to acknowledge that they are currently in breach the set Terms and Conditions, having not provide such financial statements in accordance with Item 2 and as such financial statements nevertheless remain outstanding.
26. The Respondents assert that they continue to request to have the outstanding year-end financial statements completed and, once finalized, will provide same to FCNB. The respondents have recently reported to FCNB that it expects to have its 2020 and 2021 Financial Statements completed shortly so as to provide such financial statements to FCNB prior to appearing before the Energy and Utilities Board.
27. A&T Countryside Realty did comply with Items 4 and 6 of the Terms and Conditions placed on its licence requiring it to establish a two signatory minimum on trust debits/withdrawal, with one signature being the licensed manager, Burns, and further requiring both Audrie Beaulieu and Burns to take and pass the Trust Account Administration Course as offered by the New Brunswick Real Estate Association, which they have done.

Continuing Trust Account Deficiencies

28. In addition to the failure to provide timely monthly trust account records as required by the April 2020 Undertaking, the records filed by the Respondents evidenced actual trust deficiencies in the following amounts for the following months, each of which constitutes a breach of section 20(1) of the *Real Estate Agents Act*:
 - (a) June 2020 - \$1,300.00
 - (b) September 2020 - \$104.58
 - (c) October 2020 - \$808.98
 - (d) November 2020 - \$8.98
 - (e) January 2022 - \$2,500.00
29. With respect to the September 2020 trust account deficiency of \$104.58, this relates to a charge for cheques taken from TD Bank and solely as a result of an error committed by TD Bank as

outlined in correspondence from TD Bank dated 29 October 2020.

30. In each such instance of a monthly trust account deficiency, the deficiency was never specifically reported to Staff of the FCNB during the monthly reconciliation process as required by the April 2020 Undertaking, thereby constituting a breach of section 10(1.2) of the *Real Estate Agent Act*. These deficiencies were discovered by FCNB Staff by reviewing and analyzing the records provided. Each deficiency was subsequently corrected by the Respondents such that Century 21 A & T Countryside Realty's trust account was no longer deficient in that the shortages in question were subsequently transferred to their trust account.

Early Withdrawals of Commissions

31. In addition to the trust account shortages noted above, FCNB identified the following thirteen (13) withdrawals of real estate commissions from the Company's trust as having occurred before the Respondents were legislatively permitted to make such withdrawals, each of which constitutes a breach of section 20(1) of the *Real Estate Agents Act*:

- (a) \$1,000.00 was withdrawn 19 days early on 4 June 2020
- (b) \$2,000.00 was withdrawn 6 days early on 19 February 2020
- (c) \$5,000.00 was withdrawn 6 days early on 4 December 2020,
- (d) \$1,000.00 was withdrawn 5 days early on 4 December 2020,
- (e) \$14,000.00 was withdrawn 14 days early on 22 October 2020
- (f) \$1,000.00 was withdrawn 10 days early on 1 December 2020,
- (g) \$1,000.00 was withdrawn 8 days early on 1 December 2020,
- (h) \$2,500.00 was withdrawn 8 days early on 2 December 2020,
- (i) \$2,000.00 was withdrawn 3 days early on 29 January 2021,
- (j) \$1,000.00 was withdrawn 5 days early on 19 February 2021,
- (k) \$2,000.00 was withdrawn 2 days early on 8 February 2021,
- (l) \$2,000.00 was withdrawn 14 days early on 12 February 2021,
- (m) \$13,110.00 was withdrawn 5 days early on 10 February 2021.

32. The Respondent's justification and/or explanation for such early withdrawals was, in part, that

the subject real estate transactions closed earlier than the closing dates specified in the purchase and sale agreements pertaining to the said transactions. However, the Respondents were not able to provide sufficient supporting records to verify same.

33. The Respondents further took the position with FCNB Staff that each of those thirteen (13) withdrawals were made in compliance with applicable legislation and all other regulatory requirements pertaining to the withdrawal of funds from the trust account as the Respondents understood, at the time of making the withdrawals, that the real estate transactions relating to each of the thirteen (13) withdrawals were "closed" and therefore eligible for withdrawal. The Respondents have since learned that FCNB deems a transaction as "closed" only once all necessary documentation has been registered with Service New Brunswick in respect of the subject property.

34. The Respondents are remorseful toward any hardship, actual or potential, caused by their conduct and take the risk of harming any member of the public as a very serious element of their profession. By agreeing to the within agreed statement of facts, and foregoing their right to a formal hearing, the Respondents wish to show that they take the acknowledged breaches very seriously. Without being dismissive of the seriousness, however, it is noted that the Respondents are not aware of any actual harm to the public. Furthermore, the Respondents in no way profited from any of the acknowledged breaches.

DATED at the City of Saint John this 18th day of October 2023.



Mark McElman
for and on behalf of the
Financial and Consumer Services Commission

DATED at the City of Moncton this 18th day of October 2023.



Enrico Scichilone
for and on behalf of the
Respondents

EXHIBIT "A"

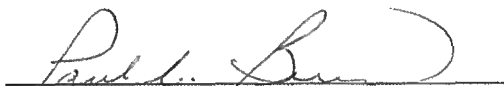
Date: Nov 27, 2019

Alaina Nicholson, Director of Consumer Affairs
Financial and Consumer Services Commission
200-225 King Street
Fredericton, New Brunswick E3B 1E1

Re: Undertaking of Century 21 A&T Countryside Realty Ltd., Licensed Agent and Paul Burns,
Licensed Manager

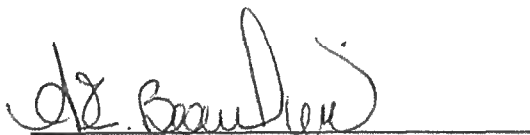
We, Paul Burns, licensed manager (licence #136833), and Audrie Beaulieu, owner of Century 21 A&T Countryside Realty Ltd. (licence #114684) undertake to adhere to the following terms and conditions:

1. An independent review, at the Agent's own expense, by Thiel Greene Chartered Professional Accountants, an accounting firm approved by the Director, to verify the trust liability of the brokerage's trust accounts as at 30 September 2019, and every quarter thereafter, until otherwise determined by the Director.
2. Monthly bank statements of the trust accounts and operating account, bank reconciliations, trust ledger and all other related record keeping be filed with the Director within 30 days of month end, until otherwise determined by the Director.



Signature of Paul Burns

Director and Licensed Manager for Century 21 A&T Countryside Realty Ltd.



Signature of Audrie Beaulieu

Owner of Century 21 A&T Countryside Realty Ltd.

EXHIBIT "B"

Date: April 2, 2020

Alaina Nicholson, Director of Consumer Affairs
Financial and Consumer Services Commission
200-225 King Street
Fredericton, New Brunswick E3B 1E1

Re: **Undertaking of Licensed Agent Century 21 A&T Countryside Realty Ltd.**

I, Audrie Beaulieu, agent/owner representative of Century 21 A&T Countryside Realty Ltd. (licence #114761) undertake to adhere to the following terms and conditions:

1. Agent to provide written confirmation from Thiel Greene Chartered Professional Accountants, an accounting firm approved by the Director, on or before the 30 April 2020 that:
 - a. At the agent's own expense, Thiel Green will provide assistance to the agent with monthly reconciliation of the trust account and trust liabilities;
 - b. At the agent's own expense, Thiel Greene will provide verification to the Director of the trust liability of the agent's trust accounts as at 31 December 2019 by 31 May 2020, and within 60 days of the end of the quarter every quarter thereafter, until otherwise determined by the Director – the purpose of their assistance is to verify the trust liability of the agent and for Thiel Green to provide assurance for the validity of the trust liability;
 - c. At the agent's own expense, Thiel Greene will provide verification to the Director of the trust liability of the agent's trust accounts as at 30 September 2019 by 31 May 2020;
2. Agent must provide the Director with annual Financial Statements no later than 120 days after the end of the fiscal year to which it relates;
3. Monthly bank statements of the trust accounts and operating account, including bank reconciliations, trust ledger and all other related record keeping must be reviewed, signed and dated by both the licensed manager and agent/owner representative and then filed with the Director within 30 days of month end;
4. The agent will establish a two signatory minimum on trust debits/withdrawals, with one signatory being the licensed manager;
5. The agent/licensed manager will notify the Director, without delay, of any shortages within the trust account and will provide supporting documentation indicating reason for shortage and corrective actions taken to immediately correct deficiency;
6. As a representative of the agent, I will take and pass the Trust Account Administration Course as offered by the New Brunswick Real Estate Association and proof is to be provided to the Director of Consumer Affairs within 3 months of accepting these terms and conditions.



Signature of Audrie Beaulieu

Agent/owner representative of Century 21 A&T Countryside Realty Ltd.

Date: April 2, 2020

Alaina Nicholson, Director of Consumer Affairs
Financial and Consumer Services Commission
200-225 King Street
Fredericton, New Brunswick E3B 1E1

Re: Undertaking of Paul Burns, Licensed Manager for Century 21 A&T Countryside Realty Ltd.


I, Paul Burns, licensed manager for Century 21 A&T Countryside Realty Ltd. (licence #136972) undertake to adhere to the following terms and conditions:

1. Monthly bank statements of the trust accounts and operating account, including bank reconciliations, trust ledger and all other related record keeping must be reviewed, signed and dated by both the licensed manager and the agent/owner representative and then filed with the Director within 30 days of month end;
2. The agent will establish a two signatory minimum on trust debits/withdrawals, with one signatory being the licensed manager;
3. The agent/licensed manager will notify the Director, without delay, of any shortages within the trust account and will provide supporting documentation indicating reason for shortage and corrective actions taken to immediately correct deficiency;
4. As licensed manager, I will take and pass the Trust Account Administration Course as offered by the New Brunswick Real Estate Association and proof is to be provided to the Director of Consumer Affairs within 3 months of accepting these terms and conditions.



Signature of Paul Burns

Licensed manager for Century 21 A&T Countryside Realty Ltd.



Signature of Audrie Beaulieu

Agent/owner representative of Century 21 A&T Countryside Realty Ltd.