

THE BC FINANCIAL SERVICES AUTHORITY

IN THE MATTER OF THE *REAL ESTATE SERVICES ACT*
SBC 2004, c 42 as amended

AND

IN THE MATTER OF

BURR PROPERTIES LTD.
(X025683)

CONSENT ORDER

[This Order has been redacted before publication.]

RESPONDENT: Burr Properties Ltd.

DATE OF SUBMISSIONS: June 3, 2022

DATE OF CONSENT ORDER: June 6, 2022

COUNSEL: Catherine Davies, Legal Counsel for the BC Financial Services Authority

PROCEEDINGS:

On June 6, 2022, the Superintendent of Real Estate (the "Superintendent"), or the Superintendent's authorized delegate, of the BC Financial Services Authority ("BCFSA") accepted the Consent Order Proposal (the "Proposal") submitted by Burr Properties Ltd.

WHEREAS the Proposal, a copy of which is attached hereto, has been executed by Burr Properties Ltd.

NOW THEREFORE, having made the findings proposed in the attached Proposal, and found that Burr Properties Ltd. committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* ("RESA") and sections 7-5(1), (2), and (3) of the Rules made under the RESA in effect at the time of the misconduct, pursuant to section 43 of the RESA the Superintendent orders that:

1. Burr Properties Ltd. pay a discipline penalty to BCFSA in the amount of \$30,000 within three (3) months from the date of this Order.
2. Burr Properties Ltd. pay enforcement expenses to BCFSA in the amount \$1,500 within two (2) months from the date of this Order.

If Burr Properties Ltd. fails to comply with any term of this Order, the Superintendent may suspend or cancel its licence without further notice, pursuant to sections 43(3) and 43(4) of the RESA.

Dated this 6 day of June 2022 at the City of Vancouver, British Columbia.

Superintendent of the BC Financial Services Authority

"JONATHAN VANDALL"
Jonathan Vandall
Delegate of the Superintendent of Real Estate
Province of British Columbia

Attch.

**IN THE MATTER OF THE *REAL ESTATE SERVICES ACT*
SBC 2004, c 42 as amended**

IN THE MATTER OF

**BURR PROPERTIES LTD.
(X025683)**

CONSENT ORDER PROPOSAL BY BURR PROPERTIES LTD.

BACKGROUND AND FACTS

This Consent Order Proposal (the "Proposal") is made by Burr Properties Ltd. (the "Brokerage") to the Superintendent of Real Estate (the "Superintendent") of the BC Financial Services Authority (the "BCFSA") pursuant to section 41 of the *Real Estate Services Act* ("RESA").

For the purposes of the Proposal, the Brokerage and the Superintendent have agreed upon the following facts:

1. The Brokerage (X025683) has been licensed since March 25, 1997 and provides trading and rental property management services.
2. At all material times, licensee AL was the managing broker of the Brokerage.
3. On or about November 30, 2020, BCFSA (or predecessor regulator) received the Brokerage's accountant's report filing for 2020 (the "November 2020 AR").
4. The November 2020 AR revealed a trust fund shortage.
5. On February 11, 2021, BCFSA conducted an audit of the Brokerage (the "Audit").
6. On February 24, 2021, BCFSA conducted an interview of AL.
7. On February 25, 2021, BCFSA conducted an interview of the director of the Brokerage ("MH").
8. On May 6, 2021 BCFSA finalized an audit report regarding the findings of the Audit (the "Audit Report").
9. The Audit Report contains findings as follows:
 - a. on July 30, 2020, AL and MH authorized a transfer of \$495,303.85 from the Brokerage's real estate trust account to the commission trust account;
 - b. as a result of insufficient funds in the real estate trust account, the authorization was amended to the funds being transferred from the pooled rental trust account instead;
 - c. on July 31, 2020, the Brokerage transferred \$495,303.85 from the pooled rental trust account to the commission trust account;
 - d. also on July 31, 2020, bank drafts in the total amount of \$495,303.85 were issued from the commission trust account to pay overdue commissions to two former licensees of the Brokerage, TZ PREC and DV PREC;

- e. the commissions related to three real estate development projects facilitated by the Brokerage, TZ PREC, and DV PREC;
 - f. a portion of the commissions owed to TZ PREC and DV PREC in the amount of \$249,298.81 was held in the real estate trust account of the Brokerage's affiliated brokerage, [Brokerage 1] (the "[Brokerage 1]");
 - g. the payment of the Commissions caused a shortage in the Brokerage's pooled rental trust account in the amount of \$495,303.85 from July 31, 2020 to December 23, 2020;
 - h. on December 23, 2020, a cheque from [Brokerage 1] in the amount of \$249,298.81 was deposited into the Brokerage's pooled rental trust account, reducing the shortage in that account to \$246,005.04;
 - i. on February 25, 2021, the remaining shortage of \$246,005.04 was replenished.
10. At all material times, the Brokerage and [Brokerage 1] shared the same administration team and bookkeeper.
 11. AL was at all material times managing broker of [Brokerage 1] and signatory of all trust accounts held by [Brokerage 1].
 12. AL told BCFSA that in June 2020, the Brokerage lost its long-term bookkeeper who had been there for over twenty years. Several former licensees of the Brokerage complained of unpaid commissions. AL said the new bookkeeper was unable to locate the commissions but was confident there were adequate funds.
 13. Effective March 10, 2021, BCFSA imposed licensing conditions on AL's license pursuant to its powers under section 15 of the RESA, changing the authorized signatories on all trust accounts and sub-accounts held by the Brokerage and [Brokerage 1] from:
 - a. in respect of the Brokerage: from AL and two Brokerage staff (TL and JB) to AL and MH only;
 - b. in respect to [Brokerage 1]: from AL and a staff member (SS) to AL and MH only for a period of not less than twelve (12) months (the "Conditions").
 14. A Notice of Discipline Hearing was issued on May 18, 2022 and served on [AL] and the Brokerage.
 15. The Brokerage has no prior discipline history with BCFSA.

PROPOSED FINDINGS OF MISCONDUCT

For the sole purpose of the Proposal and based on the Facts outlined herein, the Brokerage proposes the following findings of misconduct be made by the Superintendent:

1. The Brokerage committed professional misconduct within the meaning of section 35(1)(a) of the RESA in that:
 - a. the pooled rental trust account showed a negative balance from July 31, 2022 to February 25, 2021 as a result of commissions paid from that account to former licensees;
 - b. the negative balance was not immediately eliminated and reported to BCFSA
 contrary to sections 7-5(1), (2) and (3) [*negative balances in trust accounts and trust records*] of the Rules.

PROPOSED ORDERS

Based on the Facts herein and the Proposed Findings of Misconduct, the Brokerage proposes that the Notice of Discipline Hearing in this matter be resolved through the following Orders being made by the Superintendent, pursuant to section 43 of the RESA:

1. The Brokerage pay a discipline penalty to BCFSA in the amount of \$30,000 within three (3) months from the date of this Order.
2. The Brokerage pay enforcement expenses to the BCFSA in the amount of \$1,500 within two (2) months from the date of the Order.
3. If the Brokerage fails to comply with any of the terms of the Order set out above, the Superintendent may suspend or cancel its license without further notice.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

1. The Brokerage acknowledges and understands that the Superintendent may accept or reject the Proposal. If the Proposal is rejected by the Superintendent, the matter may be referred to a disciplinary hearing.
2. The Brokerage acknowledges that it has been urged and given the opportunity to seek and obtain independent legal advice with respect to the disciplinary process, the allegations contained in the Notice of Discipline Hearing, and the execution and submission of the Proposal to the Superintendent; and, that it has obtained independent legal advice or has chosen not to do so, and that it are making the Proposal with full knowledge of the contents and the consequences if the Proposal is accepted.
3. The Brokerage acknowledges and is aware that BCFSA will publish the Proposal and the Consent Order or summaries thereof on BCFSA's website, on Canlll, a website for legal research and in such other places and by such other means as BCFSA in its sole discretion deems appropriate.
4. The Brokerage hereby waives its right to appeal pursuant to section 54 of the RESA.
5. If the Proposal is accepted and/or relied upon by the Superintendent, the Brokerage will not make any public statement(s) inconsistent with the Proposal and its contents. Nothing in this section is intended to restrict the Brokerage from making full answer and defence to any civil or criminal proceeding(s).
6. The Proposal and its contents are made by the Brokerage for the sole purpose of resolving the Notice of Discipline Hearing in this matter and do not constitute an admission of civil liability. Pursuant to section 41(5) of the RESA, the Proposal and its contents may not be used without the consent of the Brokerage in any civil proceeding with respect to the matter.

“ANDREW LEE”

**ANDREW GRAHAM LEE Authorized Signatory for
BURR PROPERTIES LTD.**

Dated 31 day of MAY, 2022