

CITATION: Rose (Re), 2023 BCSRE 22

Date: 2023-07-18

File # INC 22-3437

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

MICHELE (MIKE) ROSE

(113771)

Corrected Order: The text of the Consent Order was corrected in the recitals on page 1, and changes were made on July 25, 2023

CONSENT ORDER

[This Order has been redacted before publication.]

RESPONDENT: Michele (Mike) Rose, Trading Representative, Riley & Associates Realty Ltd, while licensed with Home & Cottage Realty Ltd. dba Royal LePage Kamloops Realty

DATE OF CONSENT ORDER: July 18, 2023

COUNSEL: Mandeep Kalan, Legal Counsel for the BC Financial Services Authority
Stefanie Gladders, Legal Counsel for the Respondent

PROCEEDINGS:

On July 18, 2023, the Superintendent of Real Estate (the "Superintendent"), or the Superintendent's authorized delegate, of BC Financial Services Authority ("BCFSA") accepted the Consent Order Proposal (the "Proposal") submitted by Michele (Mike) Rose ("Mr. Rose").

WHEREAS the Proposal, a copy of which is attached hereto, has been executed by Mr. Rose.

NOW THEREFORE, having made the findings proposed in the attached Proposal, and found that Mr. Rose committed conduct unbecoming within the meaning of section 35(2)(b) and (c) of the *Real Estate Services Act* ("RESA"), pursuant to section 43 of the RESA the Superintendent orders that:

1. Mr. Rose pay a discipline penalty to BCFSa in the amount of \$20,000 within six (6) months from the date of this Order;
2. Mr. Rose pay enforcement expenses to BCFSa in the amount of \$2,500 within six (6) months from the date of this Order.

If Mr. Rose fails to comply with any term of this Order, the Superintendent may suspend or cancel their licence without further notice to them, pursuant to sections 43(3) and 43(4) of the RESA.

Dated this 18 day of July 2023 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.

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**IN THE MATTER OF THE *REAL ESTATE SERVICES ACT*
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IN THE MATTER OF

**MICHELE (MIKE) ROSE
(113771)**

CONSENT ORDER PROPOSAL BY MICHELE (MIKE) ROSE

BACKGROUND AND FACTS

This Consent Order Proposal (the “Proposal”) is made by Michele (Mike) Rose (“Mr. Rose”) to the Superintendent of Real Estate (the “Superintendent”) of BC Financial Services Authority (“BCFSa”) pursuant to section 41 of the *Real Estate Services Act* (“RESA”).

For the purposes of the Proposal, Mr. Rose and the Superintendent have agreed upon the following facts:

1. Mr. Rose (113771) has been licensed as a trading representative since 1994 and as an associate broker since 1996.

2. Mr. Rose was at all relevant times licensed for trading services and rental property management as an Associate Broker with Home & Cottage Realty Ltd. dba Royal LePage Kamloops Realty.
3. On May 2, 2022, Mr. Rose was engaged by [Buyer 1] (the "Potential Buyers") to act as their real estate agent to assist them in finding and purchasing a property.
4. The Potential Buyers were interested in purchasing a property located at [Property 1], Kamloops, B.C. (the "Property").
5. The sellers of the Property were [Seller 1] and [Seller 2], (the "Sellers") although the legal title to the Property was only in [Seller 1]'s name.
6. The legal owner of the Property, [Seller 1], engaged a real estate agent, [Licencee 1], of a different brokerage as his designated agent to represent him in the sale of the Property.
7. On July 13, 2022, Mr. Rose first visited the Property with the Potential Buyers for their first viewing.
8. On July 16, 2022, the Potential Buyers wanted another viewing of the Property. Mr. Rose arrived prior to his clients and used the lockbox, provided to him by [Licencee 1], to enter the Property. Mr. Rose was alone in the Property.
9. After entering the Property, Mr. Rose looked around for water to drink by opening the refrigerator. Mr. Rose says that as he did not find water in the refrigerator, he instead took a drink of milk directly from a container of milk in the refrigerator. He then returned the container to the refrigerator.
10. Mr. Rose did not notify the Sellers nor their agent, [Licencee 1], about drinking the milk in the refrigerator, nor did he replace the milk that he consumed.
11. The Sellers discovered that Mr. Rose consumed milk from their refrigerator by reviewing video footage from a surveillance camera installed at the Property.
12. On July 18, 2022, Mr. Rose returned to the Property with the Potential Buyers for an additional viewing of the Property. [Licencee 1] and the Sellers were present at the Property during this viewing.
13. After the July 18, 2022 viewing, the Sellers confronted Mr. Rose, asking him if there was anything he wanted to tell them about his last visit to the Property. Mr. Rose replied "the milk?"
14. Mr. Rose apologized to the Sellers at that time.
15. The Sellers appeared upset and advised Mr. Rose that they did not want him in their home.
16. Mr. Rose left the Property when told he would no longer be allowed in the Property by the Sellers.
17. The Potential Buyers terminated their agency relationship with Mr. Rose and obtained a new real estate agent to represent them in the purchase of the Property.
18. The Sellers submitted the video footage of Mr. Rose drinking the milk from their surveillance camera to a media outlet.

19. On July 20, 2022, an article was published in an online news website, CFJC Today, with tagline "Everything Kamloops," regarding Mr. Rose's conduct on July 16, 2022, at the Property (the "Article").
20. The Article included quotes from [Seller 2] regarding Mr. Rose's conduct.
21. The Article also included a statement from Mr. Rose, making a public apology for his actions in the Sellers' home. Mr. Rose stated that he regretted his actions and acknowledged that he acted in a manner that is unbecoming of his brokerage and fellow real estate agents. He also acknowledged breaking the trust of the Sellers and ensured that he would never behave this way again in the future.
22. On August 3, 2022, Mr. Rose's brokerage surrendered his licence to BCFSA after reviewing Mr. Rose's conduct.
23. On August 11, 2022, Mr. Rose's licence was reinstated with a new brokerage.
24. Mr. Rose states that his behaviour on July 16, 2022, was completely out of character for him and that his actions were influenced by being unusually dehydrated due to a new medication he consumed earlier that day and dealing with personal issues which had caused him considerable stress at the time.
25. Mr. Rose acknowledges that his conduct violated the trust granted to him by the Sellers to access, view and show the Property to prospective buyers and undermined public confidence in the real estate industry.
26. An Amended Notice of Discipline Hearing was issued March 21, 2023 and served on Mr. Rose.
27. Mr. Rose has the following prior discipline history:
 - a) On December 29, 2011, Mr. Rose agreed to a Consent Order where he was suspended for fourteen days, fined \$1,000 and required to complete remedial education for committing professional misconduct within the meaning of section 35 of RESA regarding a transaction that occurred in 2009. Mr. Rose, acting as a limited dual agent, admitted to having failed to act in the best interests of the seller by failing to properly document instructions to reduce the list price of the property and to amending mandatory disclosures required under RESA and the Multiple Listing Contract, without obtaining fresh authorizations from the seller.

PROPOSED FINDINGS OF MISCONDUCT

For the sole purposes of the Proposal and based on the facts outlined herein, Mr. Rose proposes the following findings of misconduct be made by the Superintendent:

1. Michele (Mike) Rose committed conduct unbecoming within the meaning of section 35(2) of the RESA in that:
 - a) while acting as buyers' agent for potential buyers for the property located at [Property 1], Kamloops, B.C. (the "Property"), and during a visit to the Property in which neither the homeowners, nor their real estate agent were present, Mr. Rose consumed a grocery item directly from the container from the homeowners' refrigerator, and returned the container to the refrigerator without the homeowners' knowledge or consent, in contravention of section 35(2) (b) and (c) of the RESA.

PROPOSED ORDERS

Based on the facts herein and the Proposed Findings of Misconduct, Michele (Mike) Rose 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. Michele (Mike) Rose pay a discipline penalty to BCFSA in the amount of \$20,000 within six (6) months from the date of this Order.
2. Michele (Mike) Rose pay enforcement expenses to BCFSA in the amount of \$2,500 within six (6) months from the date of this Order.
3. If Michele (Mike) Rose fails to comply with any of the terms of this Order, the Superintendent may suspend or cancel Michele (Mike) Rose's licence without further notice to them.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

1. Michele (Mike) Rose 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. Michele (Mike) Rose acknowledges that they have 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 they have obtained independent legal advice or has chosen not to do so, and that they are making the Proposal with full knowledge of the contents and the consequences if the Proposal is accepted.
3. Michele (Mike) Rose acknowledges and is aware that BCFSA will publish the Proposal and the Consent Order or summaries thereof on BCFSA's website, on CanLII, a website for legal research and in such other places and by such other means as BCFSA in its sole discretion deems appropriate.
4. Michele (Mike) Rose hereby waives their right to appeal pursuant to section 54 of the RESA.
5. If the Proposal is accepted and/or relied upon by the Superintendent, Michele (Mike) Rose will not make any public statement(s) inconsistent with the Proposal and its contents. Nothing in this section is intended to restrict Michele (Mike) Rose from making full answer and defence to any civil or criminal proceeding(s).
6. The Proposal and its contents are made by Michele (Mike) Rose 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 Michele (Mike) Rose in any civil proceeding with respect to the matter.

"MICHELE (MIKE) ROSE"

Michele (Mike) Rose

Dated 15th day of June, 2023