

Citation: Shuker (Re), 2024 BCSRE 72

Date: 2024-10-10

File # INC-5288

BC FINANCIAL SERVICES AUTHORITY

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

AND

IN THE MATTER OF

**PHILLIP COLE SHUKER
(082792)**

AND

**PILOTHOUSE REAL ESTATE INC
(X029075)**

CONSENT ORDER

[This Order has been redacted before publication.]

RESPONDENTS: Phillip Cole Shuker, Managing Broker

Pilothouse Real Estate Inc

DATE OF CONSENT ORDER: October 10, 2024

COUNSEL: Simon Adams, Legal Counsel for the BC Financial Services Authority

PROCEEDINGS:

On October 10, 2024, 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 Phillip Cole Shuker and Pilothouse Real Estate Inc.

WHEREAS the Proposal, a copy of which is attached hereto, has been executed by Phillip Cole Shuker and Pilothouse Real Estate Inc.

NOW THEREFORE, having made the findings proposed in the attached Proposal, and found that Phillip Cole Shuker and Pilothouse Real Estate Inc committed professional misconduct within the meaning of sections 35(1)(a) and 6(2)(b) of the *Real Estate Services Act* ("RESA") and sections 75 and 28(1)(a) and (b) of the *Real Estate Services Rules* (the "Rules"), pursuant to section 43 of the RESA the Superintendent orders that:

1. Phillip Cole Shuker and Pilothouse Real Estate Inc jointly and severally pay a discipline penalty to BCFSa in the amount of \$20,000 within 60 days from the date of this Order; and
2. Phillip Cole Shuker and Pilothouse Real Estate Inc jointly and severally pay enforcement expenses to BCFSa in the amount \$1,500 within 60 days from the dates of this Order.

If Phillip Cole Shuker and/or Pilothouse Real Estate Inc fails to comply with any term of this Order, the Superintendent may suspend or cancel their licences without further notice to them, pursuant to sections 43(3) and 43(4) of the RESA.

Dated this 10th day of October, 2024 at the City of Victoria, British Columbia.

"Original signed by Jonathan Vandall"

Jonathan Vandall
Delegate of the Superintendent of Real Estate
Province of British Columbia

Attch.

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(082792)**

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(X029075)**

**CONSENT ORDER PROPOSAL BY PHILLIP COLE SHUKER
AND PILOTHOUSE REAL ESTATE INC**

BACKGROUND AND FACTS

This Consent Order Proposal (the "Proposal") is made by Phillip Cole Shuker ("C Shuker") and Pilothouse Real Estate Inc (the "Brokerage") to the Superintendent of Real Estate (the "Superintendent") of the BC Financial Services Authority ("BCFSA") pursuant to section 41 of the *Real Estate Services Act* ("RESA").

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

1. C Shuker (082792) was first licensed as a managing broker on March 21, 1996.
2. C Shuker was at all relevant times licensed as a managing broker with the Brokerage.
3. The Brokerage (X029075) has been licensed since December 3, 2008 and provides trading and rental property management services.
4. The Brokerage's fiscal year end for the previous year was November 30, 2023.
5. Under section 75 of the *Real Estate Services Rules* (the "Rules"), the Brokerage must file its required review engagement financial statement, accountant's report and brokerage activity report (the "Accountant's Report") within 120 days after the end of each fiscal year, or by March 29, 2024.
6. BCFSA reminded the Brokerage on April 4, 2024 via an emailed letter to file its Accountant's Report. A deadline of April 30, 2024 was provided.
7. On May 15, 2024, BCFSA sent an email to C Shuker following up on when the Brokerage would be filing its Accountant's Report.

8. On May 16, 2024, C Shuker responded to an email from BCFSa advising that the owner was hoping to have the issue resolved by mid-June and the Accountant's Report submitted mid-July. When asked what the reason for the delay was, he advised that the owner was in a monetary dispute with the accountant and the work would not be completed until the matter was resolved.
9. On July 15, 2024, C Shuker advised that the monetary dispute was resolved and the Accountant's Report should be received shortly.
10. On August 6, 2024, C Shuker provided a further update advising that the matter of account arrears had not been resolved and that the Accountant's Report remains delayed.
11. On August 12, 2024, BCFSa's Audit and Assurance Department referred the Brokerage's late Accountant's Report matter to Legal, Compliance and Enforcement.
12. A Notice of Discipline Hearing was issued on August 26, 2024 and served on C Shuker and the Brokerage.
13. On September 25, 2024, the Brokerage submitted their Accountant's Report.
14. The Brokerage filed its Accountant's Report on time every year for its past five fiscal years from 2018 to 2022. The Brokerage's discipline history includes file # 10-473 and file # 11-129. For file # 10-473, in a consent order on September 7, 2011, the Brokerage was reprimanded for contravening section 7-7(1)(b) of the Council Rules in that it failed to file an Accountant's Report with the Council for the year ending December 31, 2010 on or before April 30, 2011, and ordered to jointly and severally pay enforcement expenses of \$1,000 with its then managing broker. For file # 11-129, in a consent order on November 23, 2012, the Brokerage was reprimanded for failing to maintain proper financial records, and ordered to jointly and severally pay enforcement expenses of \$1,250 with its then managing broker. C Shuker's discipline history includes a consent order on June 30, 2006, where he was reprimanded for negligence within the meaning of section 9.12 of Regulation 75/61 under the *Real Estate Act* and ordered to pay enforcement expenses of \$500, amongst other things, in file # 133-04.

PROPOSED FINDINGS OF MISCONDUCT

For the sole purposes of the Proposal and based on the Facts outlined herein, C Shuker and the Brokerage propose the following findings of misconduct be made by the Superintendent:

1. Pilothouse Real Estate Inc (the "Brokerage") committed professional misconduct within the meaning of section 35(1)(a) of the RESA by breaching the Rules, s 75 when it failed to file its required review engagement financial statement, accountant's report and brokerage activity report for the year ended November 30, 2023, by March 29, 2024; and
2. Phillip Cole Shuker, while the managing broker of the Brokerage, committed professional misconduct within the meaning of section 35(1)(a) of the RESA by breaching the RESA, s 6(2)(b) and Rules, s 28(1)(a) and (b) when he failed to ensure the Brokerage complied with the Rules in contravening the Rules, s 75 as alleged at paragraph 1.

PROPOSED ORDERS

Based on the facts herein and the Proposed Findings of Misconduct, C Shuker and the Brokerage propose 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. C Shuker and Pilothouse Real Estate Inc be jointly and severally liable to pay a discipline penalty to BCFSa in the amount of \$20,000 within 60 days of the date of this Order.
2. C Shuker and Pilothouse Real Estate Inc be jointly and severally liable to pay enforcement expenses to BCFSa in the amount of \$1,500 within 60 days of the date of this Order.
3. If either C Shuker or Pilothouse Real Estate Inc fails to comply with any of the terms of the Order set out above, the Superintendent may suspend or cancel their licence without further notice to them.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

1. C Shuker and the Brokerage acknowledge and understand 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. C Shuker and the Brokerage acknowledge 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. C Shuker and the Brokerage acknowledge and are 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. C Shuker and the Brokerage hereby waive their right to appeal pursuant to section 54 of the RESA.
5. If the Proposal is accepted and/or relied upon by the Superintendent, C Shuker and the Brokerage will not make any public statement(s) inconsistent with the Proposal and its contents. Nothing in this section is intended to restrict C Shuker and the Brokerage from making full answer and defence to any civil or criminal proceeding(s).

6. The Proposal and its contents are made by C Shuker and 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 C Shuker and the Brokerage in any civil proceeding with respect to the matter.

"Original signed by Cole Shuker"

Phillip Cole Shuker

Dated ____ day of 10/7/2024, 20__

"Original signed by Vince Taylor"

**Vince Taylor, Authorized Signatory for
Pilothouse Real Estate Inc**

Dated ____ day of 10/7/2024, 20__