

CITATION: Lee (Re), 2024 BCSRE 107

Date: 2024-12-19

File # INC 4830

BC FINANCIAL SERVICES AUTHORITY

IN THE MATTER OF THE *REAL ESTATE SERVICES ACT*

SBC 2004, c 42 as amended

AND

IN THE MATTER OF

ANDREW GRAHAM LEE

(159819)

AND

BURR PROPERTIES LTD.

(X025683)

CONSENT ORDER

[This Order has been redacted before publication.]

RESPONDENTS: Andrew Graham Lee, Managing Broker, Burr Properties Ltd.

Burr Properties Ltd.

DATE OF CONSENT ORDER: December 19, 2024

COUNSEL: Meredith MacGregor, Legal Counsel for the BC Financial Services Authority

PROCEEDINGS:

On December 19, 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 Andrew Graham Lee ("**A. Lee**") on their own behalf and on behalf of Burr Properties Ltd. (the "**Brokerage**").

WHEREAS the Proposal, a copy of which is attached hereto, has been executed by A. Lee and the Brokerage.

NOW THEREFORE, having made the findings proposed in the attached Proposal, and found that A. Lee and the Brokerage committed professional misconduct within the meaning of sections 35(1)(a) and (g) and of the *Real Estate Services Act* ("**RESA**") and sections 28(1)(b) and (3)(a), 43(1) and 2, 73(1), (2) and (3), 79 and 84 of the *Real Estate Services Rules* (the "**Rules**"), pursuant to section 43 of the RESA the Superintendent orders that:

1. A. Lee and the Brokerage be jointly and severally liable to pay a discipline penalty to BCFSA in the amount of \$20,000 within three (3) months from the date of this Order.
2. A. Lee, at their own expense, register for and successfully complete the Brokers' Remedial Education Course, as provided by the Sauder School of Business at the University of British Columbia, within 60 days from the date of this Order.
3. A. Lee and the Brokerage be jointly and severally liable to pay the costs of two (2) audits to be conducted by BCFSA within two (2) years from the date of this Order.
4. The Brokerage will comply with section 73 of the Rules.
5. A. Lee and the Brokerage be jointly and severally liable to pay enforcement expenses to BCFSA in the amount \$3,000 within two (2) months from the date of this Order.

If A. Lee and/or the Brokerage fails to comply with any of the terms 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 19th day of December, 2024 at the City of Victoria, British Columbia.

Superintendent of the BC Financial Services Authority

"Original signed by Jonathan Vandall"

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

Atch.

BC FINANCIAL SERVICES AUTHORITY

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

IN THE MATTER OF

**ANDREW GRAHAM LEE
(159819)**

AND

**BURR PROPERTIES LTD.
(X025683)**

**CONSENT ORDER PROPOSAL BY ANDREW GRAHAM LEE
AND BURR PROPERTIES LTD.**

BACKGROUND AND FACTS

This Consent Order Proposal (the "Proposal") is made by Andrew Graham Lee ("A. Lee") and Burr Properties Ltd. (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, A. Lee, 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. A. Lee (159819) has been licensed as a trading representative since 2010 and as a managing broker since 2016.
3. At all material times:
 - a. A. Lee was the managing broker and co-director of the Brokerage;
 - b. [Individual 1] was the co-director of the Brokerage;
 - c. [Conveyancer 1] was employed as the conveyancer at [Brokerage 1] and was assisting the Brokerage with its limited conveyancing (the "Conveyancer").
4. In approximately June of 2020, the Brokerage's long-term bookkeeper and conveyancer (of at least 15 years) left the Brokerage suddenly.
5. The Brokerage, under the tenure of the long-term bookkeeper and conveyancer, had a paper-based system for bookkeeping.

6. After the departure of the long-term accountant, the Brokerage and A. Lee attempted to find a replacement accountant and, between 2020 and 2024, hired 7 different individuals into the bookkeeper position who each left the Brokerage.
7. The Brokerage did not hire another conveyancer as most of the trading services licensees had left the Brokerage to start their own brokerage. The only deals that still needed conveyancing were some pre-sale contracts wherein the Brokerage was still holding the deposits. [T]he Conveyancer was handling the conveyancing of those deals.
8. On February 11, 2021, BCFSA conducted an audit of the Brokerage ("February 2021 Audit"). An audit report was issued in relation to the February 2021 Audit and BCFSA identified the following, inter alia:
 - a. \$273,789.15 of trust shortages (the "2021 Trust Shortage");
 - b. The Brokerage used a mix of cash based and accrual-based accounting practices which prevented BCFSA from determining if the financial records were prepared correctly;
 - c. The Brokerage was unable to locate some service agreements and disclosure forms, including disclosures of interest in trade and disclosures of unrepresented party;
 - d. The trade record sheets reviewed included numerous errors;
 - e. The accounting records were not up to date due to stale dated cheques; and
 - f. Supporting documents for trust disbursements made through electronic transfer did not include written approval by the signatories.
9. BCFSA issued consent orders against A. Lee and the Brokerage in relation to the 2021 Trust Shortage (the "2022 Consent Orders"). A. Lee and the Brokerage were advised to address the other deficiencies identified in the February 2021 Audit.
10. In the 2022 Consent Orders, the Brokerage was ordered to pay a discipline penalty in the amount of \$30,000 and enforcement expenses in the amount of \$1,500. A. Lee was ordered to pay a discipline penalty in the amount of \$25,000, pay enforcement expenses in the amount of \$1,500, to complete the Broker's Remedial Education course, and to include a condition on his licence that the Brokerage will add a secondary signatory for at least 1 year.
11. On November 28, 2022, BCFSA conducted another audit of the Brokerage (the "2022 Audit").

Misleading Supporting Documents

12. In relation to the 2022 Audit, on December 22, 2022, BCFSA auditor requested, inter alia, that the Brokerage provide supporting documents in relation to a \$33,462.58 transaction from a trust account to the general account.
13. On January 14, 2023, A. Lee sent BCFSA auditor a PDF document that purported to be prepared and signed by A. Lee and [Individual 1], on June 27, 2022 with the Subject "please esign – back up doc for Burr Audit" (the "PDF Supporting Document").

14. The PDF Supporting Document included a link to a Digisign© Certificate of Completion that indicated that the PDF Supporting Document was prepared by the Conveyancer and electronically signed by A. Lee and [Individual 1] on January 13, 2023.
15. A. Lee and the Brokerage admit that the PDF Supporting Document was misleading as it was signed 6 months after indicated in the PDF Supporting Document.
16. The Conveyancer told BCFSA that she had recreated the approval document when the BCFSA Auditor requested the supporting document, and she could not locate the original. A. Lee included the Digisign© Certificate of Completion link when providing the PDF Supporting Document to BCFSA.
17. After providing the PDF Supporting Document, the Conveyancer located the original supporting documentation and admitted that re-issuing and backdating the PDF Supporting Document was poor judgement.
18. A. Lee says that he affixed his electronic signature using Digisign© and he knew that the date that he signed the document would be included in a Digisign© Certificate of Completion. He says he did not intend for the document to mislead BCFSA.

Books and Records Issues Identified in the 2022 Audit

19. When conducting the 2022 Audit, BCFSA auditor observed numerous books and records issues, including:
 - a. the property management bank reconciliation balance did not agree to the property management trust liability and asset reconciliation balance for September 2022 and October 2022;
 - b. the September 2022 and October 2022 bank reconciliations for the Property Management Trust Account included numerous unreconciled items and unreconciled adjustments;
 - c. the September 2022 and October 2022 trust liability and asset reconciliations for the Property Management Trust Account included a balance under the "9999 Suspense" account, that did not pertain to a specific property;
 - d. the Brokerage's trust ledger for its real estate trading trust account was not up to date, specifically the trust ledger on September 30, 2022 showed balances from trades in 2020;
 - e. the transactions in the September 2022 trust liability and asset reconciliation for the Real Estate Trust Account did not accurately reflect the transactions in the bank statement;
 - f. the Brokerage failure to have written services agreements or a waiver of that requirement for [Property 1] and [Property 2];
 - g. the trade record sheet for [Trade 1] states that a \$33,462.50 payment was made from the Real Estate Trust Account to [Law Firm 1] when that amount was transferred from the Real Estate Trust Account to the brokerage's general account;

- h. the trade record sheet for [Trade 1] states that commissions of \$16,537.50 were deposited in “[Account 1]” when that amount was transferred to the Brokerage’s commission trust account;
- i. the trade record sheet for [Trade 2] states that \$1,500 was paid from Real Estate Trust Account to the Brokerage when it was actually paid from Real Estate Trust Account to the Brokerage’s general account and then to an individual, JG, via cheque; and
- j. the trade record sheet for [Trade 2] states that commissions of \$5,276.83 was deposited in “[Account 1]” when that amount was transferred to the Brokerage’s commission trust account.

Trust Shortages Identified in the 2022 Audit

Trust Shortage 1

- 20. On October 14, 2022, the Brokerage issued a payment to the owner of the property located at [Property 3] in the amount of \$3,661.56 in relation to the November 2022 rent.
- 21. On November 2, 2022, the Brokerage deposited the payment from the tenant for the November 2022 rent.
- 22. The Brokerage had a trust shortage in the amount of \$3,661.56 for the period October 14, 2022 until November 2, 2022 (approximately 19 days).
- 23. The Brokerage did not notify BCFSA of this shortage.

Trust Shortage 2

- 24. On October 14, 2022, the Brokerage paid the owner of the property located at [Property 4], \$2,198.28 in relation to the November 2022 rent.
- 25. On November 17, 2022, the Brokerage deposited the November 2022 rent received from the tenant.
- 26. The Brokerage had a trust shortage in the amount of \$2,198.28 from October 14, 2022 until November 17, 2022 (approximately 27 days).
- 27. The Brokerage did not notify BCFSA of this shortage.

History

- 28. Many of the books and records issues were similar issues as those identified in the February 2021 Audit wherein BCFSA had requested A. Lee and the Brokerage make changes to their accounting practices.
- 29. A Notice of Discipline Hearing in this matter was issued on September 21, 2023 and served on A. Lee and the Brokerage.
- 30. Since the 2022 Audit, A. Lee and the Brokerage have advised BCFSA that they took significant steps to address the issues identified including:
 - a. Engaging an independent bookkeeping company experienced at managing books and records for other real estate brokerages;

- b. Ceasing using paper checks as the basis for the accounting;
- c. Moving all accounts to a bank with a better digital platform; and,
- d. Migrating to new accounting software with an overall move away from their former paper-based system.

PROPOSED FINDINGS OF MISCONDUCT

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

1. Burr Properties Ltd. (the "Brokerage") and Andrew Lee Graham committed professional misconduct within the meaning of 35(1)(g) of the RESA in that, in the course of a BCFSA audit, the Brokerage and/or Andrew Lee Graham produced and/or submitted to BCFSA a copy of a letter approving a transfer from the trading services trust account ("Real Estate Trust Account") dated June 27, 2022 (the "Approval Letter"). The Approval Letter was false or misleading in that the Approval Letter purported to have been prepared and signed on June 27, 2022 when it was prepared and signed in or around January 2023.
2. The Brokerage committed professional misconduct within the meaning of section 35(1)(a) of the RESA in that:
 - a. in relation to trust shortages,
 - i. in the Brokerage's property management trust account ("Property Management Trust Account"), there was a negative trust balance for the property located at [Property 3] in the amount of \$3,661.56 from October 14, 2022 to November 2, 2022;
 - ii. in the Property Management Trust Account, there was a negative trust balance for the property located at [Property 4], in the amount of \$2,198.28 on or around October 14, 2022 to November 17, 2022; and
 - iii. the negative balances in the Property Management Trust Account, or either of them, were not immediately eliminated and reported to BCFSA

contrary to sections 73(1), (2) and (3) [*negative balances in trust accounts and trust records*] of the Rules;
 - b. the Brokerage failed to prepare or retain financial records necessary to ensure the appropriate and timely accounting of all transactions relating to real estate services provided by the Brokerage and its related licensees, contrary to section 79 of the Rules, in particular any or all of the following:
 - i. in relation to Property Management Trust Account:

1. the property management bank reconciliation balance did not agree to the property management trust liability and asset reconciliation balance for September 2022 and October 2022;
 2. the September 2022 and October 2022 bank reconciliations for the Property Management Trust Account included numerous unreconciled items and unreconciled adjustments;
 3. the September 2022 and October 2022 trust liability and asset reconciliations for the Property Management Trust Account included a balance under the "9999 Suspense" account, that did not pertain to a specific property;
- ii. in relation to Real Estate Trust Account:
1. the Brokerage's trust ledger was not up to date, specifically the trust ledger on September 30, 2022 showed balances from trades in 2020;
 2. The transactions in the September 2022 trust liability and asset reconciliation for the Real Estate Trust Account did not accurately reflect the transactions in the bank statement;
- c. failed to have written services agreements, when that requirement was not waived, contrary to sections 43(1) and 43(2) of the Rules, with respect to:
- i. [Property 1]; and/or
 - ii. [Property 2]; and/or
- d. failed to prepare and retain records sheets that accurately reflect the transactions that occurred, contrary to section 84 of the Rules, including but not limited to the following:
- i. the trade record sheet for [Trade 1] states that a \$33,462.50 payment was made from the Real Estate Trust Account to [Law Firm 1] when that amount was actually transferred from the Real Estate Trust Account to the brokerage's general account;
 - ii. the trade record sheet for [Trade 1] states that commissions of \$16,537.50 were deposited in "[Account 1]" when that amount was transferred to the Brokerage's commission trust account;
 - iii. the trade record sheet for [Trade 2] states that \$1,500 was paid from Real Estate Trust Account to the Brokerage when it was actually paid from Real Estate Trust Account to the Brokerage's general account and then to an individual, JG, via cheque; and/or

- iv. the trade record sheet for [Trade 2] states that commissions of \$5,276.83 was deposited in "[Account 1]" when that amount was transferred to the Brokerage's commission trust account.
3. Andrew Graham Lee committed professional misconduct within the meaning of section 35(1)(a) of the RESA in that while the managing broker of the Brokerage, he:
 - a. failed to ensure that the business of the Brokerage was carried out competently and in accordance with the RESA, the Rules and/or the Regulations as set out in paragraph 2 above, contrary to section 28(1)(b) of the Rules; and/or
 - b. failed to ensure that the records of the Brokerage were maintained in accordance with the RESA, the Rules and/or the Regulations as set out in paragraph 2 above, contrary to section 28(3)(a) of the Rules.

PROPOSED ORDERS

Based on the facts herein and the Proposed Findings of Misconduct, A. Lee 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. A. Lee and the Brokerage be jointly and severally liable to pay a discipline penalty to BCFSA in the amount of \$20,000 within three (3) months from the date of this Order.
2. A. Lee, at their own expense, register for and successfully complete the Brokers' Remedial Education Course as provided by Sauder School of Business at the University of British Columbia with 60 days of this Order.
3. A. Lee and the Brokerage be jointly and severally liable to pay the costs of two (2) audits to be conducted by BCFSA within two (2) years of the date of this Order.
4. The Brokerage will comply with section 73 of the Rules.
5. A. Lee and the Brokerage be jointly and severally liable to pay enforcement expenses to BCFSA in the amount of \$3,000 within two (2) months from the date of the Order.
6. If either A. Lee or the Brokerage 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. A. Lee 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. A. Lee 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. A. Lee 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. A. Lee 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, A. Lee 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 A. Lee and the Brokerage from making full answer and defence to any civil or criminal proceeding(s).
6. A. Lee and the Brokerage acknowledge and are aware that the Superintendent is not bound to accept any application for relicensing or renewal of their licence. A. Lee and the Brokerage must always satisfy the Superintendent that they meet the requirements for a licence in section 10 of the RESA, and any Rules, regulations or other instruments made pursuant to the RESA.
7. The Proposal and its contents are made by A. Lee 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 A. Lee and the Brokerage in any civil proceeding with respect to the matter.

"Original signed by Andrew Lee"

ANDREW GRAHAM LEE

Dated 5th day of December, 2024

"Original signed by Andrew Lee"

**ANDREW GRAHAM LEE, Authorized Signatory
for Burr Properties Ltd.**

Dated 5th day of December, 2024