

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

AND

IN THE MATTER OF
CELIA HEATHER MYERS
(149412)

CONSENT ORDER

RESPONDENT: Celia Heather Myers, Representative, Orange Bridge Realty Ltd. dba Royal LePage Parksville-Qualicum Beach Realty, formerly known as Coast Realty Group (Parksville) Ltd. (QuaB)

DATE OF CONSENT ORDER: February 17, 2021

CONSENT ORDER REVIEW COMMITTEE: S. Sidhu
C. Ludgate
B. Chisholm

COUNSEL: Kristine Mactaggart Wright, Legal Counsel for the Real Estate Council of BC

PROCEEDINGS:

On February 17, 2021, the Consent Order Review Committee ("CORC") resolved to accept the Consent Order Proposal (the "Proposal") submitted by Celia Heather Myers ("Ms. Myers").

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

NOW THEREFORE, having made the findings proposed in the attached Proposal, and found that Ms. Myers committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* ("RESA") and sections 3-3(a), 3-3(d), 3-3(h), and 3-4 of the Rules made under the RESA, pursuant to section 43 of the RESA the CORC orders that:

1. Ms. Myers pay a discipline penalty to the Council in the amount of \$4,000 within three (3) months from the date of this Order.

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2. Ms. Myers, at her own expense, register for and successfully complete, all in the time period as directed by the Council:
 - a. the Real Estate Trading Services Remedial Education Course as provided by the Sauder School of Business at the University of British Columbia, and
 - b. the Rural Real Estate Essentials Course as offered by the British Columbia Real Estate Association.

 3. Ms. Myers pay enforcement expenses to the Council in the amount of \$1,500 within two (2) months from the date of this Order.

If Ms. Myers fails to comply with any term of this Order, the Council may suspend or cancel her licence without further notice to her, pursuant to sections 43(3) and 43(4) of the RESA.

Dated this 17th day of February, 2021 at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE

"SUKH SIDHU"
Sukh Sidhu
Consent Order Review Committee

Attch.

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

AND

IN THE MATTER OF

**CELIA HEATHER MYERS
(149412)**

CONSENT ORDER PROPOSAL BY CELIA HEATHER MYERS

BACKGROUND AND FACTS

This Consent Order Proposal (the "Proposal") is made by Celia Heather Myers ("Ms. Myers") to the Consent Order Review Committee ("CORC") of the Real Estate Council of British Columbia (the "Council") pursuant to section 41 of the *Real Estate Services Act* ("RESA").

For the purposes of the Proposal, Ms. Myers and the Council have agreed upon the following facts:

Background

1. Ms. Myers (149412) has been licensed as a representative for trading services since July 2006.
2. Ms. Myers was at all relevant times licensed as a representative with Coast Realty Group (Parksville) Ltd. (QuaB) in Qualicum Beach, British Columbia (the "Brokerage").
3. The Brokerage terminated on September 25, 2015 and merged with Orange Bridge Realty Ltd. dba Royal LePage Parksville-Qualicum Beach Realty (Parksville Branch), where Ms. Myers remains licensed.
4. On September 13, 2017, the Council received a complaint from the buyers of property with addresses on each of GXXXXXX Road and IXXXXX WXXX Highway (the "Property") in Qualicum Beach, in the Regional District of Nanaimo ("RDN") in 2015 (the "Buyers").
5. The Council staff's investigation of the complaint revealed conduct including that Ms. Myers failed to:
 - a. make reasonable efforts to discover relevant facts respecting the Property at the time the Buyers were acquiring it when she failed to make, or to recommend that the Buyers make, additional inquiries concerning adverse information contained in various Property Disclosure Statements ("PDS") for the Property or the inconsistencies in those PDS and as concerning a well serving as the Property's water supply;
 - b. recommend an independent professional land survey of the Property, where the Property had two titles and three dwellings built without permits; and

- c. caution the Buyer's about reliance on unauthorized accommodation for rental income.

The Buyers

6. In or about May 2015, the Buyers, who then lived outside of the province of British Columbia, contacted Ms. Myers to assist them to look for a new home on Vancouver Island, in the Nanaimo-Qualicum Beach area.
7. Ms. Myers agreed to assist the Buyers, who came to Vancouver Island to look at properties with Ms. Myers.
8. The Buyers had not previously purchased any property in British Columbia.

The Transaction

9. On May 17, 2015, the Buyers viewed the Property.
10. The Property was attractive to the Buyers for reasons that it included three dwellings described as a cottage, a mobile home, and a duplex, and offered the possibility of rental income in addition to a principal residence.
11. The purchase transaction was of more than ordinary difficulty for reasons including that:
 - a. the Property consisted of two properties each with its own title;
 - b. the Property had three dwellings;
 - c. the dwellings shared one water well, and were each on a septic tank;
 - d. most of the dwellings were tenanted; and
 - e. the Buyers were out of the province.
12. Between about May 19 and 21, 2015, the Buyers made an offer for the Property. The offer was included in one Contract of Purchase and Sale ("CPS") for the Property. Later, for reasons related to financing, two separate CPS for each of the IXXXXX WXXX Highway property ("Lot A") and the GXXXXXXX Road property ("Lot B") were made.
13. The offer was accepted at a combined price of \$525,000 and contained subject conditions that included: title; site survey/plot plan; inspection; septic and water tests; PDS; financing; and others to be removed by June 3, 2015. The Buyers would assume current tenants, except for the seller of the Property (the "Seller") to give notice to the tenant in the cottage to vacate.
14. Ms. Myers was the designated agent for the Buyers in the CPS. The Seller was represented by his own agent.
15. A number of issues were encountered in the course of subject removal which ought to have put Ms. Myers on notice about the need for further reasonable inquiries.

Title/ Survey

16. The title for each of Lots A and B contained separate charges in favour of the Esquimalt and Nanaimo Railway Company, and a covenant on Lot B in favour of the RDN.
17. Ms. Myers minimized the charges and information on title including by explaining the railway was no longer in use. Ms. Myers ought to have qualified that she was sharing her experience only and the Buyers should seek independent legal advice and/or order a state of title certificate from the Land Title and Survey Authority of British Columbia for more accurate information. Even so, the Buyers did engage a lawyer in connection with the closing of their purchase of the Property.
18. Significantly, Ms. Myers ought to have recommended that the Buyers obtain a land survey of the Property or explain the risks of waiving the (land) “site survey” “subject” condition in the CPS on these facts. A land survey can reveal information about the size and location of homes on a property, and the location of other improvements such as a driveway. In this case:
 - a. the Seller did not have a land survey;
 - b. the features of the Property included two titles and three dwellings disclosed in the original PDS as built without permits, final inspection or occupancy certificates;
 - c. the maps of the Property used for marketing were approximate;
 - d. the Seller’s agent could not find the property markers;
 - e. the Property was close to the Pacific Ocean and adjacent to a highway each of which could entail building setback requirements or other restrictions such as rights-of-way for passage or road widening that may not have been surveyed or registered; and
 - f. the Buyers resided outside the province.
19. After their purchase, on January 11, 2016, the Buyers obtained a land survey of the Property that showed a gazetted third road to the south, belonging to the RDN, which reduced the area the Buyers believed to be part of the Property.
20. Importantly, the Buyers learnt that part of one dwelling belonging to the Property was built encroaching (less than 0.06 square meters) onto this unbuilt road. The encroachment is aerial and relates to the roof overhang of the dwelling. The fact the dwellings had no permits amplified the risk that they were built improperly and/or off the Property.

PDS/ Zoning

21. The undated first PDS obtained, which was in the address of Lot A but intended to cover the Property, disclosed that no survey certificate was available; that no final building or occupancy permit had been obtained; and that there were alterations or additions made without a required permit or final inspection.

22. Ms. Myers emailed the Seller's agent for more information about the alterations or additions without a permit that were originally disclosed on the PDS but does not appear to have received a direct response. Ms. Myers surmised there were alterations made to the mobile (or manufactured) home on the Property. This is significant because alterations to a mobile may affect the validity of the safety mark that is required for resale of a mobile home. Ms. Myers also recalls a phone conversation with the Seller's agent about decks built onto the mobile home.
23. Ms. Myers minimized the PDS disclosure by explaining no permits were required when the dwellings on the Property were erected.
24. The Buyers conducted building, septic, and well inspections. The Buyers shared their building and septic inspection reports with Ms. Myers. The septic inspection appears to have included a search of permit information for the septic system with the Vancouver Island Health Authority. The inspection confirmed that the septic tanks were unpermitted, so the Buyers were aware of the permit status of the septic tanks.
25. The Buyers also shared a May 2015 financing appraisal report on the Property with Ms. Myers that indicated the mobile home did not appear to conform to then current zoning regulation and would not be included in the valuation of the Property. The report also provided: "It appears that the mobile home on the property does not conform to the current zoning, however it is the opinion of this appraiser that the building\ was on the property before the current bylaws were enacted".
26. Ms. Myers did not ask the RDN for further information about permits or zoning or explain to the Buyers they could do so.
27. In June 2015, two new PDS were prepared, one for each of Lots A and B in connection with financing, and each PDS no longer set out any additions or alterations without a permit. Ms. Myers explained to the Buyers that the PDS were updated because the Seller had difficulty communicating and may have answered the first PDS incorrectly.
28. Neither Ms. Myers nor the Buyers made a direct request for information about the changed response in the two June PDS or appears to have followed up on (possible) alterations to the mobile home.

Septic, Well & Building Inspections

29. Each PDS disclosed that the Property was on septic and on a well, and the CPS contained "subject" clauses allowing for further inquiry in connection with both septic and well, and a building inspection.
30. The Buyers had septic, well, and building inspections conducted.
31. The septic and the building inspections both contained adverse information, as a result of which the overall purchase price in the CPS was reduced, and electric baseboard heaters were installed in the cottage as a shared expense between the Buyers and the Seller. The well inspection also revealed some work (potentially) required.

32. On June 1, 2015, the Seller's agent forwarded Ms. Myers information about the applicability of the *Drinking Water Protection Act* to the well on the Property that he obtained from the Vancouver Island Health Authority and that showed a (potential) issue with one well serving more than one dwelling and/or ensuring water suitable for drinking provided to any tenant.
33. Although Ms. Myers provided that information from the Seller to the Buyers by email on or about June 2, 2015, neither she nor the Buyers made further inquiries with RDN about the well and/or the requirements of the *Drinking Water Protection Act* or *Groundwater Protection Regulation*.

Tenants

34. One of the attractive features to the Buyers of the Property was the potential for rental income. Ms. Myers ensured the status of existing tenancies was addressed in the CPS. Ultimately, the Buyers received vacant possession of all the dwellings on the Property free from any tenancy.
35. Ms. Myers did not make the Buyers aware of the risks of using dwellings with no permit (unauthorized accommodation) for rental income. Risks include that the RDN could require removal of additions or changes to the Property or upgrades to the Property to comply with current standards and bylaws. Myers did not include a version of the *Properties Containing Unauthorized Accommodation Clause* in the CPS: "*the Buyer is aware that the Property contains unauthorized accommodation and has been informed of the consequences of such ownership and the potential loss of income should the rental use be discontinued*".

Completion of Sale of Property

36. From time to time dates in the CPS were extended, including the completion date. Between August 18 and September 1, 2015, the transaction in the CPS completed and ownership of the Property was transferred to the Buyers. After becoming the owners of the Property, the Buyers learned through a survey about the encroachment by one of the dwellings on the Property, as set out above.
37. A Notice of Discipline Hearing was issued on September 16, 2020 and served on Ms. Myers.
38. Ms. Myers does not have any prior discipline history.

PROPOSED FINDINGS OF MISCONDUCT

For the sole purposes of the Proposal and based on the facts outlined herein, Ms. Myers proposes the following findings of misconduct be made by the CORC:

1. Ms. Myers committed professional misconduct within the meaning of section 35(1)(a) of the RESA in 2015 while acting as the Buyers' agent for the purchase of the Property that included two titles and three dwellings in that she failed to act in the best interests of the Buyers, to recommend independent professional advice in the form of a land survey, to make reasonable efforts to discover relevant facts about the Property, and to act with reasonable care and skill, when she did not:

- a. make or follow up on, or recommend that the Buyers make, inquiries concerning adverse information contained in various PDS for the Property or the inconsistencies in those PDS and as concerning a well serving as the Property's water supply;
- b. recommend the Buyers obtain a land survey of the Property that included two titles and three dwellings or ensure the Buyers understood the risk of proceeding without a land survey; and
- c. make the Buyers aware of the risks of relying on unauthorized accommodation included in the Property for rental income,

all contrary to sections 3-3(a) [Duties to clients: act in the best interests of the client], 3-3(d) [Duties to clients: advise the client to seek independent professional advice on matters outside of the expertise of the licensee] and 3-3 (h) [Duties to clients: use reasonable efforts to discover relevant facts respecting any real estate that the client is considering acquiring], and 3-4 [Duty to act honestly and with reasonable care and skill] of the Rules.

PROPOSED ORDERS

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

1. Ms. Myers pay a discipline penalty to the Council in the amount of \$4,000 within three (3) months from the date of this Order.
2. Ms. Myers, at her own expense, register for and successfully complete, all in the time period as directed by the Council:
 - a. the Real Estate Trading Services Remedial Education Course as provided by the Sauder School of Business at the University of British Columbia, and
 - b. the Rural Real Estate Essentials Course as offered by the British Columbia Real Estate Association.
3. Ms. Myers pay enforcement expenses to the Council in the amount of \$1,500 within two (2) months from the date of this Order.
4. If Ms. Myers fails to comply with any of the terms of this Order, a discipline committee may suspend or cancel Ms. Myers's licence without further notice to her.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

1. Ms. Myers acknowledges and understands that the Council may refer or decline to refer the Proposal to the CORC. If the Proposal is referred to the CORC, it may be accepted or rejected by the CORC. If the Proposal is rejected by the CORC, the matter may be referred to a disciplinary hearing.

2. Ms. Myers acknowledges that she 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 CORC; and, that she has obtained independent legal advice or has chosen not to do so, and that she is making the Proposal with full knowledge of the contents and the consequences if the Proposal is accepted.
3. Ms. Myers acknowledges and is aware that the Council will publish the Proposal and the Consent Order or summaries thereof in its Report from Council newsletter, on the Council's website, on CanLII, a website for legal research and in such other places and by such other means as the Council in its sole discretion deems appropriate.
4. Ms. Myers acknowledges and is aware that the Superintendent of Real Estate has the right, pursuant to section 54 of the RESA, to appeal any decision of the Council, including any Consent Order made by the Council in relation to this matter.
5. Ms. Myers hereby waives her right to appeal pursuant to section 54 of the RESA.
6. If the Proposal is accepted and/or relied upon by the Council, Ms. Myers will not make any public statement(s) inconsistent with the Proposal and its contents. Nothing in this section is intended to restrict Ms. Myers from making full answer and defence to any civil or criminal proceeding(s).
7. The Proposal and its contents are made by Ms. Myers 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 Ms. Myers in any civil proceeding with respect to the matter.

“CELIA MYERS”
CELIA HEATHER MYERS

Dated 4th day of January, ~~2020~~ 2021

“CM”