

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
IRKA OKSANA (IRENE) GASSER
(UNLICENSED)

CONSENT ORDER

RESPONDENT: Irka Oksana (Irene) Gasser, Unlicensed, while licensed with Internet Realty Ltd dba Prudential Kelowna Properties and subsequently RE/MAX Kelowna

DATE OF CONSENT ORDER: November 19, 2020

CONSENT ORDER REVIEW COMMITTEE: Y. Amlani
R. Hanson
B. Chisholm

COUNSEL: Kyle A. Ferguson, Legal Counsel for the Real Estate Council of BC
Gregg Alfonso, Legal Counsel for the Respondent

PROCEEDINGS:

On November 19, 2020, the Consent Order Review Committee (“CORC”) resolved to accept the Consent Order Proposal (the “Proposal”) submitted by Irka Oksana (Irene) Gasser (“Ms. Gasser”).

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

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

- 1) Ms. Gasser be prohibited from applying for licensure with the Council until she has:
 - a) paid a discipline penalty to the Council in the amount of \$5,000;

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- b) at her own expense, registered for and successfully completed the course: REIC2600 Ethics in Business Practice, as provided by the Real Estate Institute of Canada;
 - c) at her own expense, register for and successfully complete the Real Estate Trading Services Remedial Education Course as provided by the Real Estate Division, Sauder School of Business at the University of British Columbia; and
 - d) paid enforcement expenses to Council in the amount of \$1,500;
- 2) Should Ms. Gasser apply for licensure with the Council and be issued a license:
- a) Ms. Gasser's licence shall include a condition requiring enhanced supervision by a managing broker for a period of not less than twelve (12) months following the end of her licence suspension period, as more particularly described in Schedule 1 to this Order;

If Ms. Gasser becomes licensed with the Council and fails to comply with the enhanced supervision conditions required by paragraph 2 of this Order, a Discipline Committee may suspend or cancel Ms. Gasser's licence without further notice to her.

Dated this 19th day of November 2020 at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE

"Yasin Amlani"

Yasin Amlani
Consent Order Review Committee

Attch.

**IN THE MATTER OF THE *REAL ESTATE SERVICES ACT*
S.B.C. 2004, c. 42 as amended**

AND

IN THE MATTER OF

**IRKA OKSANA (IRENE) GASSER
(Unlicensed)**

CONSENT ORDER PROPOSAL BY IRKA OKSANA (IRENE) GASSER

BACKGROUND AND FACTS

This Consent Order Proposal (the "Proposal") is made by Irka Oksana (Irene) Gasser ("Ms. Gasser") 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 Service Act* ("RESA").

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

1. Ms. Gasser (011151) was licensed as a representative from 1981 to April 30, 2020, with the following gaps in her licensing history:
 - July 26 – August 2, 1983 (8 days)
 - January 24 – 27, 1983 (4 days)
 - June 30, 1989 – June 11, 1991 (2 years)
 - June 11, 1997 – September 28, 1997 (~3.5 months)
 - September 29, 2001 – October 3, 2001 (3 days)
 - October 4 – October 15, 2003 (12 days)
 - October 16, 2011 – March 18, 2012 (5 months)
 - March 19 – April 30, 2014 (~1.5 months)
2. Ms. Gasser was at all relevant times licensed as a Representative with Internet Realty Ltd. dba Prudential Kelowna Properties ("Prudential Kelowna"), and subsequently RE/MAX Kelowna.
3. On or around May 20, 2015, Ms. Gasser was contacted by prospective buyers, DXXXXXX FXXXXXX ("Mr. FXXXXXX") and DXXXXXX WXXXXXX (collectively, the "Buyers"), who were in search of their first home.
4. On May 28, 2015, the Buyers signed a Working with a Realtor® form acknowledging that Ms. Gasser and her colleague, RXXXXXX DXXX AXXXX ("Ms. AXXX"), were the designated agents working on their behalf.

5. The conduct at issue in this complaint only involves Ms. Gasser. Ms. AXXXX's role in this transaction was limited to that of a support role.
6. On May 28, 2015, Ms. Gasser and Ms. April prepared a Contract of Purchase and Sale (the "First Contract") on behalf of the Buyers for the purchase of a property located at XXXX McCulloch Road, Kelowna (the "Property"). A deposit of \$10,000 was due upon final subject removal, which subjects were to be removed on June 12, 2015.
7. Ms. Gasser was aware at the time of preparing the First Contract that the Buyers' intended means of financing the purchase of the Property was based on receiving an estate inheritance, which was contingent on, among other things, the sale of an estate property located in Langley, BC (the "Langley Property").
8. The sellers, JXXX CXXXXXX and KXXXXX KXXXXXXX (the "Sellers"), accepted the Buyers' offer on or around May 29, 2015.
9. On June 11, 2015, all subjects except financing were removed. The financing subject was extended to June 15, 2015, in order to accommodate the Buyers' expected receipt of inheritance funds from the sale of the Langley Property.
10. On June 15, 2015, the financing subject was extended to June 16, 2015. The First Contract ultimately expired.
11. On June 16, 2015, Ms. Gasser prepared another Contract of Purchase and Sale on behalf of the Buyers for the purchase of the Property (the "Second Contract"). A deposit of \$10,000 was due within 24 hours upon acceptance.
12. The Second Contract did not contain any conditions. Ms. Gasser did not advise the Buyers to include financing subjects, nor did she advise them to obtain independent legal advice about making a subject-free offer.
13. The Buyers say they were at all times uncomfortable proceeding with the purchase of the Property, as they were not financially secure and thought the Property was out of their means. However, Ms. Gasser persuaded them that this was a rare opportunity for home ownership and recommended that they submit a competitive, subject-free offer. Ms. Gasser also suggested that she assist them financially by loaning them \$10,000 to cover the deposit.
14. On June 17, 2015, the Sellers accepted the Second Contract.
15. It was not until June 18, 2015 when Ms. Gasser received an e-mail from the Buyer's legal counsel confirming that subjects had been removed for the sale of the Langley Property and that the expected date of completion was July 3, 2015.
16. On June 18, 2015, the Buyers submitted a \$10,000 deposit in accordance with the Second Contract.

17. On June 19, 2015, Ms. Gasser provided an interest-free loan via personal cheque to the Buyers in the amount of \$10,000 (the "Loan").
18. Ms. Gasser did not advise the Buyers to seek independent legal advice respecting the Loan, nor did she advise the Buyers that she was in a position of conflicting interests.
19. Mr. FXXXXXX, one of the Buyers, signed an undated promissory note which read, in part: "I, DXXXXXX GXXXXX FXXXXXX, hereby promise to pay to Irene Gasser the principal sum of TEN THOUSAND DOLLARS (\$10,000.00) in lawful money of Canada, without interest, payable on demand".
20. The completion of the sale of the Langley Property was delayed from July 3, 2015 to August 3, 2015.
21. On July 22, 2015, an Addendum was entered into between the Sellers and the Buyers agreeing to an extension of the completion date for the sale of the Property from July 23, 2015 to August 17, 2015, and the possession date extended from July 24, 2015 to August 19, 2015.
22. Ultimately, the sale of the Langley Property did not complete on August 3, 2015.
23. On August 19, 2015, the transaction for the purchase and sale of the Property did not complete and the Second Contract collapsed.
24. On September 15, 2015, Ms. Gasser and Ms. AXXXX prepared another Contract of Purchase and Sale on behalf of the Buyers with respect to the Property (the "Third Contract"). A \$10,000 deposit was due within 24 hours of contract acceptance.
25. At the advice of their legal counsel, the Sellers did not to accept the Third Offer and did not sign a release with respect to the Second Contract.
26. The Sellers ultimately signed a general release with respect to the Second Contract on February 4, 2016 and the deposit of \$10,000 was released to one of the Sellers.
27. The Buyers say Ms. Gasser has not made any demands to repay the Loan.
28. A Notice of Discipline Hearing was issued on December 19, 2018 and served on Ms. Gasser and an Amended Notice of Disciplinary Hearing was served on Ms. Gasser on July 22, 2020.
29. Ms. Gasser says it did not cross her mind that providing the Loan to the Buyers would be a conflict of interest. She thought she was helping the Buyers make their dream of home ownership a reality and stated that the Buyers were thankful for the Loan.
30. Ms. Gasser has two prior discipline records with the Council.

File #04-143

31. Ms. Gasser was the subject of a Consent Order dated December 8, 2005. Her licence was suspended for thirty (30) days. She was ordered to successfully complete Chapter 2 (Real Estate Services Act) of the Real Estate Trading Services Licensing Course, and ordered to pay enforcement expenses of \$500.00. The Consent Order Review Committee found that Ms. Gasser:
- a. committed negligence within the meaning of section 9.12 of Regulation 75/61 under the former *Real Estate Act* in that she:
 - i. permitted the drapes on ten windows of the master bedroom and ensuite and two curtain rods to be removed without advising the said buyer or her agent;
 - ii. permitted the said trampoline to be removed from the said property without advising the said buyer or her agent.
 - b. contravened section 2-19 of the Council Rules in that she failed to promptly respond to Council inquiries concerning the said complaint; and
 - c. committed professional misconduct (contravention of the RESA, Regulations and/or Rules) within the meaning of section 35(a) of the RESA by contravening section 2-19 of the Rules.

File #11-118:

32. Ms. Gasser was the subject of a Consent Order dated April 15, 2014. Her licence was suspended for twenty-one (21) days. She was ordered to successfully complete the Real Estate Trading Services Remedial Education Course, and ordered to pay enforcement expenses of \$1,250. The Consent Order Review Committee found that Ms. Gasser:
- a. committed professional misconduct within the meaning of section 35(1)(a) of RESA in that she:
 - i. failed to act in the best interests of the client, failed to use reasonable efforts to discover relevant facts and failed to act with reasonable care and skill, in that she failed to obtain and to provide to the Buyer the reports referred to in the PDS, contrary to sections 3-3(a), 3-3(h) and 3-4 of the rules made under the RESA (the "Rules").

PROPOSED FINDINGS OF MISCONDUCT

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

1. In her capacity as a representative licensed with Prudential Kelowna, Ms. Gasser committed professional misconduct within the meaning of section 35(1)(a) of the RESA, in that she:

- a. failed to act in the best interests of her clients and failed to act honestly and with reasonable care and skill, when she failed to advise the Buyers to include financing subjects in the Second Contract when she knew or ought to have known that the Buyers' ability to finance and complete the transaction was dependent on receiving the proceeds from the sale of the Langley Property, contrary to sections 3-3(a) and 3-4 of the Rules;
- b. failed to advise the Buyers to seek independent professional advice before proceeding with a subject-free offer, namely the Second Contract, contrary to sections 3-3(a) and 3-3(d) of the Rules;
- c. provided the Loan to the Buyers to enable them to purchase the Property and failed to promptly and fully disclose to the Buyers that there was a conflict of interest in doing so, contrary to sections 3-3(i) and 3-3(j) of the Rules; and
- d. failed to advise the Buyers to seek independent professional advice with respect to the Loan, contrary to section 3-3(d) of the Council Rules.

PROPOSED ORDERS

Based on the facts herein and the Proposed Findings of Misconduct, and recognizing that Ms. Gasser is a former licensee who is no longer licensed with the Council, Ms. Gasser 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:

- 3) Ms. Gasser be prohibited from applying for licensure with the Council until she has:
 - a) paid a discipline penalty to the Council in the amount of \$5,000;
 - b) at her own expense, registered for and successfully completed the course: REIC2600 Ethics in Business Practice, as provided by the Real Estate Institute of Canada;
 - c) at her own expense, register for and successfully complete the Real Estate Trading Services Remedial Education Course as provided by the Real Estate Division, Sauder School of Business at the University of British Columbia; and
 - d) paid enforcement expenses to Council in the amount of \$1,500;
- 4) Should Ms. Gasser apply for licensure with the Council and be issued a license:
 - b) Ms. Gasser's licence shall include a condition requiring enhanced supervision by a managing broker for a period of not less than twelve (12) months following the end of her licence suspension period, as more particularly described in Schedule 1 to this Order;
- 5) If Ms. Gasser becomes licensed with the Council and fails to comply with the enhanced supervision conditions required by paragraph 2 of this Order, a Discipline Committee may suspend or cancel Ms. Gasser's licence without further notice to her.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

1. Ms. Gasser 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. Gasser 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. Gasser 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. Gasser 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. Gasser hereby waives their right to appeal pursuant to section 54 of the RESA.
6. The Proposal and its contents are made by Ms. Gasser 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. Gasser in any civil proceeding with respect to the matter.

"Irka Oksana Gasser"

IRKA OKASANA (IRENE) GASSER

Dated 6 day of October, 2020

SCHEDULE 1

Enhanced Supervision Conditions

- 1) Irka Oksana Gasser's licence will be restricted to [name of brokerage] or another brokerage acceptable to the Council (the "Brokerage") for a period of not less than 12 months following the issuance of her licence by the Council (the "Enhanced Supervision Period").
- 2) During the Enhanced Supervision Period, Irka Oksana Gasser must remain under the direct supervision of a managing broker of the Brokerage who is acceptable to the Council, and who has confirmed in writing to the Council that he/she has read these conditions, is aware of his/her duties under these conditions, and agrees to accept these duties (the "Managing Broker").
- 3) These conditions are in addition to Irka Oksana Gasser's and the Managing Broker's obligations under the Real Estate Services Act ("RESA"), and the Regulations, Rules and Bylaws made under the RESA (together, the "Legislation"). The Council and Irka Oksana Gasser have agreed upon these additional conditions of supervision. The Managing Broker may impose his/her own additional conditions to ensure that Irka Oksana Gasser meets her obligations under the Legislation.
- 4) Irka Oksana Gasser must keep the Managing Broker informed weekly, or more frequently as required, of the real estate services that she is providing and other real estate-related activities that she is engaging in by providing written status reports (the "Status Reports") to the Managing Broker that include, for each matter, as applicable:
 - a. the names of the principals and their agents;
 - b. the locations of the properties;
 - c. a description of services provided;
 - d. the status of the matter;
 - e. scheduled dates (e.g. closing dates and dates for waiver or satisfaction of conditions precedent);
 - f. funds paid and received; and
 - g. any other information relevant to the matter.

- 5) To ensure that Irka Oksana Gasser meets her obligations under these conditions and the Legislation, the Managing Broker must meet with Irka Oksana Gasser on a weekly basis, or more frequently as required, to discuss the following:
 - a. the most recent Status Report;
 - b. any practice issues identified by the Managing Broker or Irka Oksana Gasser;
 - c. the appropriate course of action for addressing any identified practice issues and/or whether appropriate steps have been taken to address previously identified practice issues; and
 - d. confirm Irka Oksana Gasser's attendance at or completion of any educational or training opportunities recommended by the Managing Broker.
- 6) Irka Oksana Gasser must consult with the Managing Broker in advance of taking any action on matters in respect of which there are questions or concerns regarding compliance with the Legislation, other applicable legislation, or the Brokerage's policies and procedures.
- 7) In addition to providing the Brokerage with all records required under the Legislation, Irka Oksana Gasser must provide the Brokerage with all records created in connection with the provision of real estate services regardless of whether such records are associated with a specific transaction, including records of listing presentations, appraisals, competitive market analyses, correspondence, and referrals.
- 8) Irka Oksana Gasser must obtain the Managing Broker's approval before presenting documents prepared by Irka Oksana Gasser to principals or their agents for execution.
- 9) Irka Oksana Gasser must provide to the Managing Broker all documents signed by Irka Oksana Gasser's principals and Managing Broker must review all such documents.
- 10) Within 30 days before the end of the Enhanced Supervision Period, or within 14 days after the Managing Broker ceases to be the Managing Broker, whichever is earlier, the Managing Broker must provide a final report (the "Report") to the Council confirming in relation to the Enhanced Supervision Period, or during the period in which Managing Broker acted as Managing Broker under these conditions, as applicable:
 - a. that Irka Oksana Gasser has provided real estate services under his/her direct supervision;

- b. that Irka Oksana Gasser's activities have been carried out competently and in compliance with these conditions, the Legislation, all other applicable legislation (to the best of the Managing Broker's knowledge having made reasonable inquiries), and in accordance with Brokerage's policies and procedures, or alternatively, providing details of non-compliance;
 - c. that he/she has reviewed all transactions in which Irka Oksana Gasser has provided real estate services, and that all documents relevant to the transactions are contained in the appropriate deal file and kept at the Brokerage;
 - d. he/she has met with Irka Oksana Gasser on a weekly basis, or more frequently as required, to discuss the matters specified under these conditions; and
 - e. the number of real estate transactions that Irka Oksana Gasser has conducted and details
 - f. regarding the principal(s), the agency offered, and any dealings with unrepresented parties.
- 11) The Report will be reviewed by the Council, who will determine if the Enhanced Supervision Period has provided an adequate opportunity to observe or remediate Licensee's real estate services practices and if not, will so advise the Managing Broker and Irka Oksana Gasser, and Irka Oksana Gasser may elect to:
- a. continue with enhanced supervision until the Council is satisfied by further evidence that the required period and purpose of enhanced supervision has been met; or
 - b. have her licence suspended until a further order is made by the Council under section 43(4) or (5) of the RESA.
- 12) The Managing Broker must immediately report to the Council anything of an adverse nature with respect to Irka Oksana Gasser's real estate services, including
- a. failure of Irka Oksana Gasser to observe these conditions, the requirements of the Legislation or all other applicable legislation; and
 - b. complaints received by the Brokerage, including the nature of the complaint, the parties involved, and how the complaint was resolved.
- 13) The Managing Broker must ensure that Irka Oksana Gasser and her licensed assistants, if any, receive adequate, appropriate and ongoing training with respect to their obligations under the Legislation and the Brokerage's policies and procedures.

- 14) Irka Oksana Gasser may have no unlicensed assistant(s) during the Enhanced Supervision Period.
- 15) If the Managing Broker is absent from the Brokerage:
 - a. for more than one week but less than one month, the Managing Broker may delegate his/her duties to another managing broker or an associate broker who confirms his/her agreement to accept the supervision duties under these conditions to the Council in writing; or
 - b. for more than one month, Irka Oksana Gasser must notify Council immediately and approval from the Council for a successor managing broker to supervise Irka Oksana Gasser must be sought as set out in paragraph 17 of these conditions.
- 16) If for any reason the Managing Broker is unable to perform any of the duties imposed herein, he/she must immediately advise Council.
- 17) If there is a change in the managing broker of the Brokerage, the former managing broker and Irka Oksana Gasser must immediately notify Council in writing. If Council determines that the successor managing broker is acceptable as a managing broker for the purposes of these conditions, he/she will be provided with a copy of these conditions and will be asked to confirm in writing to the Council that he/she has read these conditions, is aware of his/her duties under these conditions, and agrees to accept these duties. If that managing broker fails to provide such confirmation within 14 days of becoming a managing broker at the Brokerage, he/she will be deemed to be unable or unwilling to perform the duties set out in these conditions.
- 18) Irka Oksana Gasser's licence will be suspended and will remain suspended until all conditions herein are met, or until a further order is made by Council under section 43(4) or (5) of the RESA if:
 - a. there is no Brokerage;
 - b. there is no Managing Broker;
 - c. the Managing Broker is unable or unwilling to perform any of the duties imposed herein; or
 - d. Irka Oksana Gasser fails to meet her obligations under these conditions.

19) Any suspension of Irka Oksana Gasser's licence under paragraph 18 does not limit the Council's ability to take further disciplinary action for breach of the conditions, the Legislation and all other applicable legislation.

Licensee's Acknowledgement

I, Irka Oksana Gasser acknowledge that I have received and read a copy of the above Enhanced Supervision Conditions and agree to the conditions as set out therein.

Acknowledged this ____ day of _____,

Irka Oksana Gasser

Managing Broker's Acknowledgment

I, acknowledge that I have received and read a copy of the above Enhanced Supervision Conditions and agree to the supervision of the conditions as set out therein.

Acknowledged this ____ day of _____,

Name of Managing Broker: _____