

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

MICHELLE LOUISE (MICHE) HARRISON
(Terminated)

AND

MICHAEL TOD (MIKE) GARMAN
(164783)

AND

SCOTT ERIC GARMAN
(154677)

CONSENT ORDER

RESPONDENTS: Michelle Louise (Miche) Harrison, Terminated, while licensed with Sotheby's International Realty Canada.

Michael Tod (Mike) Garman, Trading Representative, Engel & Volkers Vancouver Island, while licensed with Sotheby's International Realty Canada.

Scott Eric Garman, Trading Representative, Engel & Volkers Vancouver Island, while licensed with Sotheby's International Realty Canada.

DATE OF CONSENT ORDER: December 1, 2020

DISCIPLINE COMMITTEE: Y. Amlani

COUNSEL: C. Davies, Legal Counsel for the Real Estate Council of BC
D. Mildenberger, Legal Counsel for the Respondent

PROCEEDINGS:

On December 1, 2020 the Discipline Committee resolved to accept the Consent Order Proposal (the "Proposal") submitted by Michelle Louise (Miche) Harrison ("Ms. Harrison"), Michel Tod (Mike) Garman ("Mr. M Garman") and Mr. Scott Eric Garman ("Mr. S Garman").

WHEREAS the Proposal, a copy of which is attached hereto, has been executed by Ms. Harrison, Mr. M Garman and Mr. S Garman.

NOW THEREFORE, having made the findings proposed in the attached Proposal, and found that:

1. Ms. Harrison 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) and 3-4, of the Rules made under the RESA;
2. Mr. M Garman 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) and 3-4, of the Rules made under the RESA; and
3. Mr. S Garman committed professional misconduct within the meaning of sections 35(1)(a) and 35(2) of the *Real Estate Services Act* ("RESA") and sections 3-3(a), 3-3(d) and 3-4, of the Rules made under the RESA.

Pursuant to section 43 of the RESA the Discipline Committee orders that:

1. Ms. Harrison pay a discipline penalty to the Council in the amount of \$2,500 within three (3) months from the date of this Order.
2. Ms. Harrison pay enforcement expenses in the amount of \$1,000 within two (2) months from the date of this Order.
3. Mr. M Garman pay a discipline penalty to the Council in the amount of \$2,500 within three (3) months from the date of this Order.
4. Mr. M Garman, at his own expense, register for and successfully complete the Real Estate Trading Services Remedial Education Course, as provided by the Sauder School of Business at the University of British Columbia in the time period as directed by the Council;
5. Mr. M Garman pay enforcement expenses in the amount of \$1,000 within two (2) months from the date of this Order.
6. Mr. S Garman pay a discipline penalty to the Council in the amount of \$5,000 within three (3) months from the date of this Order.
7. Mr. S Garman have his licence suspended for 14 days.

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8. Mr. S Garman will not act as an unlicensed assistant during the time of his licence suspension.
 9. Mr. S Garman, at his own expense, register for and successfully complete the Real Estate Trading Services Remedial Education Course, as provided by the Sauder School of Business at the University of British Columbia in the time period as directed by the Council.
 10. Mr. S Garman, at his own expense, register for and successfully complete the REIC2600 Ethics in Business Practice Course, as provided by the Real Estate Institute of Canada in the time period as directed by the Council.
 11. Mr. S Garman pay enforcement expenses in the amount of \$1,000 within two (2) months from the date of this Order.

If Ms. Harrison, Mr. M Garman and/or Mr. S Garman fails to comply with any term of this Order, the Council may suspend or cancel their licences without further notice to them, pursuant to sections 43(3) and 43(4) of the RESA.

Dated this 1st day of December 2020 at the City of Vancouver, British Columbia.

ON BEHALF OF THE DISCIPLINE COMMITTEE

“Yasin Amlani”

Yasin Amlani

Discipline Committee

Attch.

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

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**MICHELLE LOUISE (MICHE) HARRISON
(Terminated)**

AND

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(164783)**

AND

**SCOTT ERIC GARMAN
(154677)**

**CONSENT ORDER PROPOSAL BY MICHELLE LOUISE (MICHE) HARRISON, MICHAEL TOD (MIKE)
GARMAN AND SCOTT ERIC GARMAN**

BACKGROUND AND FACTS

This Consent Order Proposal (the "Proposal") is made by Michelle Louise (Miche) Harrison ("Ms. Harrison"), Michael Tod (Mike) Garman ("Mr. M Garman") and Scott Eric Garman ("Mr. S Garman") to a discipline committee (the "Committee") 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. Harrison, Mr. M Garman, Mr. S Garman, (collectively, the "Licensees") and the Council have agreed upon the following facts:

1. Ms. Harrison became licensed as a trading representative in 2012. Ms. Harrison surrendered her license on February 14, 2020.
2. Mr. M Garman has been continuously licensed as a trading representative since 2012.
3. Mr. S Garman has been continuously licensed as a trading representative since 2008.
4. The Licensees were at all relevant times licensed as a representative with Sotheby's International Realty Canada (the "Brokerage").
5. At all material times, the Licensees provided trading services under the team name the "Garman Group."

6. This matter arises from the Licensees' actions in July-August 2016 while acting as seller's agent on behalf of an owner of a duplex property in Victoria, B.C.
7. On July 19, 2016, a property located at 3XXX/3XXX Wxxxxxx Street in Victoria, B.C. (the "Property") was listed for sale by the Brokerage, with all of the Licensees identified as the designated listing agents.
8. The Property is a duplex home, and at the time of the listing, one half of the Property was vacant, and the other half was rented to long-term tenants (the "Tenants") who occupied the Property pursuant to a month-to-month tenancy. The listing information for the Property indicated that the Tenants had resided there for over twenty years and wished to remain as tenants.
9. On July 20, 2016, the buyer's agent viewed the Property on behalf of the buyer, who lived in Vancouver and was interested in making an investment property purchase.
10. On July 21, 2016, in an email addressed to Ms. Harrison, the buyer's agent advised the Garman Group of the buyer's offer to purchase the Property based on the following terms: purchase price of \$550,000; deposit of \$50,000 due within 24 hours; possession date of August 18, 2016; and, subject to tenancy terms and deposits if any to be confirmed in writing prior to completion. The buyer at that time was content to keep the existing tenancy, and the offer stated: "*we are happy to keep the tenant and only ask the seller to provide a "current" month to month lease agreement under its current terms*".
11. By way of an email from Mr. S Garman, the Garman Group advised the buyer's agent that the sellers would review offers on the evening of July 24, 2016.
12. At 3:12pm on July 24, 2016, by way of an email to Ms. Harrison, the buyer's agent submitted an amended offer to purchase the Property on behalf of the buyer, with a purchase price of \$618,000 and all other pertinent terms remaining the same.
13. At 3:52pm on July 24, 2016 by way of an email from Mr. S Garman to the buyer's agent, the sellers countered the Buyer's offer, removing certain appliances from the purchase as they belonged to the Tenants.
14. At 10:56pm on July 24, 2016, by way of an email to Ms. Harrison, the buyer's agent submitted a further counter-offer to the sellers with an accompanying email stating:

I have attached a counter offer from buyer. He has had some time to think about costs and the increased purchase price and simply cannot make the current rent numbers work out. ... He has amended his offer and is now requesting vacant possession, and the possession date has been amended to Septemer [sic] 30 to accommodate tenancy notice. He has accepted the change in appliances.
15. On July 25, 2016 by way of an email from Mr. S Garman to the buyer's agent, the sellers accepted the buyer's offer, forming the basis of a contract of purchase and sale (the "Contract"). The email stated: "*[t]he sellers understand. The continuation of tenancy was a common issue that the buyers raised. Attached is the signed accepted offer. The seller will be delivering the notice to the tenant this week*".

16. The Contract contained the following terms:
 - a. purchase price of \$618,000;
 - b. deposit of \$50,000 to be paid within 24 hours of acceptance (the "Deposit");
 - c. vacant possession; and
 - d. completion and possession date of September 30, 2016.
17. The buyer told the Council that he at no time intended to occupy the Property personally.
18. The buyer's agent told the Council that she believed the Garman Group understood that the buyer was an investor and that he was not intending to occupy the Property personally.
19. The Licensees told the Council that none of them ever met the buyer and they were unaware of the buyer's intended use of the Property. They say that the buyer's counter-offer requesting vacant possession and extending the completion date to allow for notice to the Tenants led them to infer that the buyer intended to occupy the Property. However, the Licensees did not clarify or confirm the buyer's intended use for the Property.
20. On July 27, 2016, the sellers provided the Tenants with a "2 Month Notice to End Tenancy for Landlord's Use of Property" form, and in answer to the question "*[r]easons for this 2 month notice to end tenancy*" the sellers checked the box which stated "*all of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit*".
21. On August 9, 2016, the Tenants disputed the Notice to End Tenancy on the basis that it was incorrect, as the buyer intended to rent out the Property rather than occupy it himself. A Dispute Resolution Hearing was scheduled for October 4, 2016.
22. In an email sent on August 17, 2016 to the buyer's agent, Mr. S Garman asked if the buyer would consider preparing a letter back-dated to July 25, 2016 stating that he planned on using the Property for family purposes.
23. The buyer's agent replied by stating that the buyer never indicated an intention to personally occupy the property and that he would be making some improvements and renting both sides.
24. The sellers were not able to provide vacant possession of the Property pursuant to the terms of the Contract.
25. The parties were not able to resolve their dispute regarding the term of vacant possession, and the transaction did not complete.
26. On October 4, 2018, the Residential Tenancy Branch granted a cancellation of the Notice to End Tenancy, and the Tenants continued to occupy the Property.

27. On November 7, 2016, the sellers and the buyer entered into a new contract of purchase and sale of the Property (the "Second Contract"), for a purchase price of \$538,000. The Deposit from the Contract was to be applied to the Contract. The completion and possession date was November 21, 2016. The Second Contract did not require vacant possession but was subject to the buyer obtaining satisfactory financing by November 16, 2016.
28. The buyer was not able to remove the financing condition, and the Second Contract did not complete.
29. On December 19, 2016, the Council received a complaint from the buyer.
30. On or about December 29, 2016, the sellers sold the Property to a different buyer.
31. In or around late April 2017, the sellers returned the Deposit to the buyer.
32. A Notice of Discipline Hearing was issued on September 11, 2019 and served the Licensees.
33. None of the Licensees has any prior discipline with the Council.

PROPOSED FINDINGS OF MISCONDUCT

For the sole purposes of the Proposal and based on the facts outlined herein, the Licensees propose the following findings of misconduct be made by the Committee:

1. Ms. Harrison committed professional misconduct within the meaning of section 35(1)(a) of the RESA when, acting as agent for the sellers respecting the sale of a property located at 3XXX/3XXX Wxxxxxx Street in Victoria BC:
 - a. in the circumstances of the buyer's offer to purchase the property with a term requiring vacant possession, and knowing that the tenants of the property wished to remain as tenants, and failing to clarify or confirm the buyer's intended use for the Property, she:
 - i. failed to properly advise the sellers on the risks associated with agreeing to a contractual term of vacant possession, namely failing to advise how the existing tenancy could affect their ability to provide vacant possession, contrary to section 3-3(a) [*act in the best interests of the client*] and section 3-4 [*act honestly and with reasonable care and skill*] of the Rules; and/or
 - ii. failed to advise the sellers to seek independent professional advice on the contractual term of vacant possession, contrary to section 3-3(a) [*act in the best interests of the client*] and section 3-3(d) [*advise client to seek independent professional advice*] of the Rules; and
 - b. she failed to advise the sellers to seek independent professional advice respecting a Notice to End Tenancy to serve on their tenants, contrary to section 3-3(d) [*advise client to seek independent professional advice*] and section 3-4 [*act honestly and with reasonable care and skill*] of the Rules.

2. Mr. M Garman committed professional misconduct within the meaning of section 35(1)(a) of the RESA when, acting as agent for the sellers respecting the sale of a property located at 3XXX/3XXX Wxxxxxx Street in Victoria BC:
 - a. in the circumstances of the buyer's offer to purchase the property with a term requiring vacant possession, and knowing that the tenants of the property wished to remain as tenants, and failing to clarify or confirm the buyer's intended use for the Property, he:
 - i. failed to properly advise the sellers on the risks associated with agreeing to a contractual term of vacant possession, namely failing to advise how the existing tenancy could affect their ability to provide vacant possession, contrary to section 3-3(a) [*act in the best interests of the client*] and section 3-4 [*act honestly and with reasonable care and skill*] of the Rules; and/or
 - ii. failed to advise the sellers to seek independent professional advice on the contractual term of vacant possession, contrary to section 3-3(a) [*act in the best interests of the client*] and section 3-3(d) [*advise client to seek independent professional advice*] of the Rules; and
 - b. he failed to advise the sellers to seek independent professional advice respecting a Notice to End Tenancy to serve on their tenants, contrary to section 3-3(d) [*advise client to seek independent professional advice*] and section 3-4 [*act honestly and with reasonable care and skill*] of the Rules.
3. Mr. S Garman committed professional misconduct within the meaning of section 35(1)(a) of the RESA when, acting as agent for the sellers respecting the sale of a property located at 3XXX/3XXX Wxxxxxx Street in Victoria BC:
 - a. in the circumstances of the buyer's offer to purchase the property with a term requiring vacant possession, and knowing that the tenants of the property wished to remain as tenants and, failing to clarify or confirm the buyer's intended use for the Property, he:
 - i. failed to properly advise the sellers on the risks associated with agreeing to a contractual term of vacant possession, namely failing to advise how the existing tenancy could affect their ability to provide vacant possession, contrary to section 3-3(a) [*act in the best interests of the client*] and section 3-4 [*act honestly and with reasonable care and skill*] of the Rules; and/or
 - ii. failed to advise the sellers to seek independent professional advice on the contractual term of vacant possession, contrary to section 3-3(a) [*act in the best interests of the client*] and section 3-3(d) [*advise client to seek independent professional advice*] of the Rules;
 - b. he advised the sellers to serve the tenants with a Notice to End Tenancy stating the buyer intended to occupy the property, when he had failed to clarify or confirm the buyer's intended use for the Property, contrary to section 3-3(a) [*act in best interests of the client*] and section 3-4 [*act honestly and with reasonable care and skill*] of the Rules; alternatively, he failed to advise the sellers to seek independent professional advice respecting the Notice

to End Tenancy, contrary to section 3-3(d) [*advise client to seek independent professional advice*] and section 3-4 [*act honestly and with reasonable care and skill*] of the Rules; and

- c. he suggested that the buyer prepare, for submission to the Residential Tenancy Branch to support the Notice to End Tenancy, a back-dated letter stating the buyer intended to occupy the property upon completion, when had failed to clarify or confirm the buyer's intended use for the Property, contrary to section 3-4 [*act honestly with reasonable care and skill*] of the Rules and section 35(2) [*conduct unbecoming*] of the RESA.

PROPOSED ORDERS

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

12. Ms. Harrison pay a discipline penalty to the Council in the amount of \$2,500 within three (3) months from the date of this Order.
13. Ms. Harrison pay enforcement expenses in the amount of \$1,000 within two (2) months from the date of this Order.
14. Mr. M Garman pay a discipline penalty to the Council in the amount of \$2,500 within three (3) months from the date of this Order.
15. Mr. M Garman, at his own expense, register for and successfully complete the Real Estate Trading Services Remedial Education Course, as provided by the Sauder School of Business at the University of British Columbia in the time period as directed by the Council.
16. Mr. M Garman pay enforcement expenses in the amount of \$1,000 within two (2) months from the date of this Order.
17. Mr. S Garman pay a discipline penalty to the Council in the amount of \$5,000 within three (3) months from the date of this Order.
18. Mr. S Garman have his licence suspended for 14 days.
19. Mr. S Garman will not act as an unlicensed assistant during the time of his licence suspension.
20. Mr. S Garman, at his own expense, register for and successfully complete the Real Estate Trading Services Remedial Education Course, as provided by the Sauder School of Business at the University of British Columbia in the time period as directed by the Council.
21. Mr. M Garman, at his own expense, register for and successfully complete the REIC2600 Ethics in Business Practice Course, as provided by the Real Estate Institute of Canada in the time period as directed by the Council.
22. Mr. S Garman pay enforcement expenses in the amount of \$1,000 within two (2) months from the date of this Order.

If Ms. Harrison, Mr. M Garman and/or Mr. S Garman fails to comply with any term of this Order, the Council may suspend or cancel their licences without further notice to them, pursuant to sections 43(3) and 43(4) of the RESA.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

1. Ms. Harrison, Mr. M Garman and Mr. S Garman acknowledges and understands that the Council may refer or decline to refer the Proposal to the Committee. If the Proposal is referred to the Committee, it may be accepted or rejected by the Committee. If the Proposal is rejected by the Committee, the matter may be referred to a disciplinary hearing.
2. Ms. Harrison, Mr. M Garman and Mr. S Garman 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 Committee; and, that they have obtained independent legal advice or have 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. Ms. Harrison, Mr. M Garman and Mr. S Garman acknowledges and are 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. Harrison, Mr. M Garman and Mr. S Garman acknowledges and are 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. Harrison, Mr. M Garman and Mr. S Garman hereby waives their right to appeal pursuant to section 54 of the RESA.
6. The Proposal and its contents are made by Ms. Harrison, Mr. M Garman and Mr. S Garman 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. Harrison, Mr. M Garman and/or Mr. S Garman in any civil proceeding with respect to the matter.

“Michelle Louise (Miche) Harrison”

“Michael Tod (Mike) Garman”

Michelle Louise (Miche) Harrison

Michael Tod (Mike) Garman

Dated 27th day of November 2020

Dated 27th day of November 2020

“Scott Eric Garman”

Scott Eric Garman

Dated 27th day of November 2020