

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  
WHITNEY ELISE GARSIDE  
(158729)

CONSENT ORDER

RESPONDENT: Whitney Elise Garside, Trading Representative, RE/MAX Camosun

DATE OF CONSENT ORDER: 14 September, 2020

CONSENT ORDER REVIEW COMMITTEE: Y. Amlani  
N. Nicholson  
S. Sidhu

COUNSEL: D. McKnight, Legal Counsel for the Real Estate Council of  
British Columbia  
D. Mildenerger, Legal Counsel for the Respondent

PROCEEDINGS:

On 14 September 2020, the Consent Order Review Committee ("CORC") resolved to accept the Consent Order Proposal (the "Proposal") submitted by Whitney Elise Garside ("Ms. Garside").

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

**NOW THEREFORE**, having made the findings proposed in the attached Proposal, and found that Ms. Garside committed professional misconduct within the meaning of sections 27(1)(a), 35(1)(a), and 35(1)(c), of the *Real Estate Services Act* ("RESA") and sections 3-2(1), 3-2(2)(a), 3-4, 4-7 and 3-3(d) of the Rules made under the RESA, pursuant to section 43 of the RESA the CORC orders that:

1. Ms. Garside's license be suspended for 60 days;
2. Ms. Garside be prohibited from acting as an unlicensed assistant during the license suspension period;

- 
3. Ms. Garside pay a discipline penalty to the Council in the amount of \$7,500 within three (3) months from the date of this Order;
  4. Ms. Garside, at her 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;
  5. Ms. Garside, at her 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; and
  6. Ms. Garside pay enforcement expenses to the Council in the amount of \$1,500 within two (2) months from the date of this Order.

If Ms. Garside 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 14 day of September 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  
WHITNEY ELISE GARSIDE  
(158729)

AMENDED  
CONSENT ORDER PROPOSAL BY WHITNEY ELISE GARSIDE

---

**BACKGROUND AND FACTS**

This Consent Order Proposal (the "Proposal") is made by Whitney Elise Garside ("Ms. Garside") 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. Garside and the Council have agreed upon the following facts:

1. Ms. Garside (158729) has been licensed as a representative with Council since 2010.
2. Ms. Garside was at all relevant times licensed as a representative with Camosun Properties doing business as RE/MAX Camosun located in Victoria, B.C. (the "Brokerage").
3. This matter relates to Ms. Garside's conduct in the purchase and sale of a property located at XXX Burnett Road, Victoria (the "Property").
4. The seller of the Property in this transaction was Ms. Garside's father, XXXXXX XXXXXXXX (the "Seller").
5. On March 30, 2016, the Seller entered into a Multiple Listing Contract in respect of the Property with the Brokerage. Ms. Garside was identified as the designated agent for the Seller in the listing contract.
6. Ms. Garside's MLS feature sheet for the Property advertised the lot size as being 8,712 square feet or 0.2 acres. Ms. Garside says she obtained the square footage of the lot size from the BC Assessment website and from two previous listings which had expired.
7. On June 4, 2016, Ms. Garside met with XXXX XXXX, XXXX XXXX and their daughter, XXXXX XXXX at the Property to discuss the purchase of the Property. XXXXX XXXX was the intended buyer of the Property (the "Buyer"), but XXXX XXXX and XXXX XXXX were involved in the negotiations.
8. During their meeting on June 4, 2016, XXXX XXXX and XXXX XXXX say that Ms. Garside told them that the property line extended to a fence at that back of the Property.

9. Ms. Garside's relationship as the Seller's daughter was disclosed by way of a Disclosure of Interest in Trade form, which was signed by both Ms. Garside and the Buyer on June 4, 2016.
10. The Buyer's initial offering price was \$512,000. The XXXXX say that Ms. Garside advised that if the purchase price on the Contract of Purchase and Sale was written as \$450,000, with the remaining \$62,000 to be paid in cash to the Seller privately, it would help the Buyer circumvent the property transfer tax ("PTT") given that she was a first-time home buyer.
11. The XXXXX also say that Ms. Garside told them the Seller could also benefit by paying less tax on the transaction.
12. In response to the XXXXX' submissions regarding the payment of \$62,000 cash, Ms. Garside says it was the XXXXX who first raised the issue of the paying cash as part of the purchase price for the Property as a way to circumvent the PTT.
13. Ms. Garside further says she never told the XXXXX that the Seller could benefit from paying less tax on the transaction and the payment of cash was only for the benefit of XXXXX XXXX.
14. On June 4, 2016, Mr. Garside prepared a Contract of Purchase and Sale with the following terms:

Purchase price:	\$450,000
Deposit:	\$20,000 by June 7, 2016
Conditions:	Subject free offer
Completion:	June 27, 2016
Agency:	Designated Agent for the Seller - Ms. Garside licensed with RE/MAX Camosun No Agency for the Buyer
15. Ms. Garside prepared a handwritten promissory note dated June 5, 2016 (the "Promissory Note") in which the Buyer agreed to pay an additional \$62,000 in cash to the Seller for the purchase of the Property by 5:00 p.m. on June 27, 2016.
16. On June 5, 2016, Ms. Garside and the Buyer signed a Working with a Realtor (Designated Agency) Form in which the Buyer's relationship with Ms. Garside was described as a "customer relationship".
17. On June 5, 2016, the Seller accepted the Buyer's offer to purchase the Property (the "Contract").
18. Following the acceptance of the offer, XXXX XXXX requested that the purchase price on the Contract be amended to \$470,000, as XXXX XXXX had learned that this was the threshold amount for exemption from paying the PTT.
19. Ms. Garside amended the Promissory Note by altering the amount owing in cash from "\$62,000" to "\$42,000". The amendment was initialed by the Buyer and Ms. Garside.
20. The purchase price in the Contract was amended to \$470,000 and the amendment was initialed by Ms. Garside and the Seller.

21. On June 6, 2016 Ms. Garside completed an amendment form required by the Victoria Real Estate Board to reflect the change to the purchase price of the Property from \$450,000 to \$470,000.
22. Ms. Garside submitted both the Contract and amendment form to the Brokerage, but did not submit the Promissory Note, nor did she inform her managing broker about the arrangement between the parties to exchange \$42,000 cash. Ms. Garside says she felt the arrangement for payment of \$42,000 cash was a separate transaction between the parties that did not involve the Brokerage.
23. Ms. Garside did not advise the parties at any time to seek independent legal advice regarding their arrangement to pay \$42,000 cash as part of the purchase price for the Property.
24. On June 7, 2016, Ms. Garside acknowledged receipt of a bank draft of \$20,000 from the Buyer for the deposit pursuant to the Contract.
25. On June 13, 2016, XXXX XXXX advised Ms. Garside that for financing reasons the Contract needed to be assigned to the Buyer's grandmother, XXXXXX XXXX.
26. Ms. Garside and the parties signed an amendment dated June 13, 2016 in which they agreed that the Contract be assigned to Ms. XXXX in whole or in part.
27. On or about June 14, 2016, Ms. Garside provided XXXXXX XXXX with a Working with a Realtor (Designated Agency) Form. Ms. XXXX initialled the form to indicate Ms. Garside was in client relationship with her.
28. The parties subsequently learned that the lender, Island Savings, would not agree to an assignment of the Contract to XXXXXX XXXX. As a result, the Contract was amended to name Ms. XXXX as the buyer of the Property.
29. The transaction completed on June 27, 2016 as set out in the Contract. That day, Ms. Garside met XXXX XXXX at the Property and was expecting her to produce the \$42,000 owing to the Seller. However, XXXX XXXX advised Ms. Garside that she was only able to obtain \$10,000 cash which she provided to Ms. Garside at that meeting.
30. Ms. Garside signed a handwritten receipt dated June 27, 2016 acknowledging receipt of \$10,000 with "\$32,000.00 owing". The signed receipt was provided to XXXX XXXX.
31. Ms. Garside did not remit the \$10,000 cash to the Brokerage and delivered it directly to the Seller.
32. Following possession of the Property by the Buyer, XXXX XXXX and XXXX XXXX were advised by neighbours that the back portion of the Property did not form part of the Property, but was owned by a government entity.
33. On or about July 12, 2016, the Buyer's grandfather XXXXXX XXXX obtained a survey for the Property which showed that the back portion of the Property was owned by the Ministry of Transportation and that the lot size for the Property was approximately 4,710 square feet, not 8,712 square feet as advertised by Ms. Garside.

34. On June 5, 2018, Ms. XXXX filed a lawsuit against the Seller, Ms. Garside and the Brokerage alleging negligence, negligent misrepresentation and breach of contract regarding the lot size of the Property.
35. On June 20, 2019, the Seller filed a counterclaim against the Buyer seeking judgment for the outstanding amount of \$32,000.
36. A Notice of Discipline Hearing was issued on November 27, 2018 and served on Ms. Garside.
37. Ms. Garside does not have a discipline history with the Council.

### **PROPOSED FINDINGS OF MISCONDUCT**

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

1. In her capacity as a representative licensed with RE/MAX Camosun, Ms. Garside committed professional misconduct within the meaning of section 35(1)(a) of the RESA, in that she:
  - (a) Failed to act honestly and with reasonable care and skill when she advised the Buyer that in order for the purchase to be exempt from the PTT, she pay the sum of \$42,000 directly to the Seller as part of the purchase price so that the transaction would be below the PTT threshold, contrary to section 3-4 of the Rules and section 35(1)(c) of the RESA;
  - (b) Failed to promptly deliver to the Brokerage all money held or received from, for or on behalf of a client when she received cash, in the sum of \$10,000, from the Buyer which was intended to be paid to the Seller as part of the purchase price and did not remit that cash to the Brokerage, contrary to section 27(1)(a) of the RESA;
  - (c) Failed to keep her managing broker informed of the real estate services being provided, and in particular, she failed to inform her managing broker of the arrangements made between the Buyer and Seller which included the provision of a Promissory Note from the Buyer in which the Buyer agreed to pay directly to the Seller the sum of \$42,000 cash in addition to the purchase price set out in the Contract, and failed to deliver the Promissory Note to her Brokerage, contrary to section 3-2(1) and 3-2(2)(a) of the Rules;
  - (d) Published false and misleading advertising and failed to act with reasonable care and skill when she advertised the lot size of the Property as 8,712 square feet when it was actually 4,710.8 square feet, contrary to sections 4-7 and 3-4 of the Rules; and
  - (e) Failed to recommend that the Seller and/or the Buyer seek independent legal advice in relation to the transaction, contrary to section 3-3(d) of the Rules, and in particular, as to:
    - (i) The applicability of the PTT; and
    - (ii) The agreement between the Seller and the Buyer to pay part of the purchase price in cash.

## **PROPOSED ORDERS**

Based on the facts herein and the Proposed Findings of Misconduct, Ms. Garside 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. Garside's licence be suspended for **sixty (60) days**.
2. Ms. Garside be prohibited from acting as an unlicensed assistant during the licence suspension period.
3. Ms. Garside pay a discipline penalty to the Council in the amount of \$7,500.00 within ninety (90) days of the date of this Order.
4. Ms. Garside, at her own expense, register for and successfully complete the REIC2600 Ethics in Business Practice course, as provided by the Real Estate Institute of Canada, within the time period directed by the Council.
5. Ms. Garside, 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, within the time period directed by the Council.
6. Ms. Garside pay enforcement expenses to Council in the amount of \$1,500.00 within sixty (60) days from the date of this Consent Order.
7. If Ms. Garside fails to comply with any of the terms of this Order, a Discipline Committee may suspend or cancel Ms. Garside's licence without further notice to her.

## **ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT**

1. Ms. Garside 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. Garside 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. Garside 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. Garside 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. Garside 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. Garside will not make any public statement(s) inconsistent with the Proposal and its contents. Nothing in this section is intended to restrict Ms. Garside from making full answer and defence to any civil or criminal proceeding(s).
7. The Proposal and its contents are made by Ms. Garside 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. Garside in any civil proceeding with respect to the matter.

“Whitney Elise Garside”

---

WHITNEY ELISE GARSIDE

Dated this 2 day of September, 2020.