

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
KAREN ANNE GERTZEN
(085831)

CONSENT ORDER

RESPONDENT: Karen Anne Gertzen, Associate Broker, Crosina Realty Ltd.

DATE OF CONSENT ORDER: 27 August, 2020

CONSENT ORDER REVIEW COMMITTEE: Y. Amlani
S. Sidhu
C. Ludgate

COUNSEL: Michael Shirreff, Legal Counsel for the Real Estate Council of British Columbia

PROCEEDINGS:

On 27 day of August, 2020, the Consent Order Review Committee (“CORC”) resolved to accept the Consent Order Proposal (the “Proposal”) submitted by Karen Anne Gertzen (“Ms. Gertzen”).

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

NOW THEREFORE, having made the findings proposed in the attached Proposal, and found that Ms. Gertzen committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* (“RESA”) and sections 5-10(a) and 5-10(b)(i) (as the Rules existed during the material time) and 3-3(i) of the Rules made under the RESA, pursuant to section 43 of the RESA the CORC orders that:

1. Ms. Gertzen must 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. Gertzen, at her own expense, register for and successfully complete the course: REIC2600 Ethics in Business Practice, offered by the Real Estate Institute of Canada, within the time period directed by the Council.

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

If Ms. Gertzen 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 27 day of August, 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*
SBC 2004, c 42 as amended**

AND

IN THE MATTER OF

**KAREN ANNE GERTZEN
(085831)**

CONSENT ORDER PROPOSAL BY KAREN ANNE GERTZEN

BACKGROUND AND FACTS

This Consent Order Proposal (the "Proposal") is made by Karen Anne Gertzen ("Ms. Gertzen") 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. Gertzen and the Council have agreed upon the following facts:

1. Ms. Gertzen (085831) has been licensed with the Council at various levels since approximately 1990 (with three periods of time during which she was unlicensed). During the period of time material to this matter, Ms. Gertzen was licensed for trading services at Crosina Realty Ltd. in Williams Lake (the "Brokerage").
2. Beginning in late 2013, Ms. Gertzen started showing properties in Williams Lake to WM and EM, an elderly married couple (the "Buyers"). The Buyers were personal acquaintances of Ms. Gertzen and she had known them for many years.
3. Among the properties that Ms. Gertzen showed the Buyers was the residence that Ms. Gertzen lived in with her husband, RG. This property is located at XXX - XXX XXXXXXXXXX Place, Williams Lake, British Columbia (the "Property"), and at the relevant time was owned solely by Ms. Gertzen's husband.
4. The Property was not listed for sale when Ms. Gertzen showed it to the Buyers, but Ms. Gertzen suggested that perhaps the developer could build a similar unit for the Buyers.
5. Some months later, in April 2014, the Buyers asked Ms. Gertzen whether her husband would be interested in selling the Property. Negotiations ensued and RG eventually agreed to sell the Property to the Buyers.

6. Although the Buyers were aware that the Property was owned by RG, the Buyers believed that Ms. Gertzen was acting as their agent with respect to the purchase and sale. At that time, Ms. Gertzen did not have the Buyers complete a "Working with a Realtor" brochure.
7. On April 16, 2014, on behalf of the Buyers, Ms. Gertzen drafted and prepared a Contract of Purchase and Sale for the Property. RG signed the Contract of Purchase and Sale indicating his acceptance on April 17, 2014.
8. During the Council's investigation of this matter, two versions of the Contract of Purchase and Sale, both fully executed, were produced:
 - a. the version provided to the Council by the Buyers stated in the "Agency Disclosure" section that the Buyers had an agency relationship with Ms. Gertzen.
 - b. the version provided to the Council by the Brokerage had an amendment in the "Agency Disclosure" section stating that the Buyers have "no" agency relationship with Ms. Gertzen (the word "an" was crossed out and replaced with the word "no"). There were also other amendments that appear to have been initialed.
9. Ms. Gertzen stated that she was instructed to make the changes to the Contract of Purchase and Sale by the Buyers. She says that she marked the changes with the initials of the Buyers. Ms. Gertzen also added her own initials to the document.
10. Neither version of the Contract of Purchase and Sale identified any agency relationship between Ms. Gertzen and her husband.
11. A Disclosure of Interest in Trade form was prepared by Ms. Gertzen on April 16, 2014.
12. During the Council's investigation of this matter, two versions of the Disclosure of Interest in Trade form were produced:
 - a. the version provided to the Council by the Buyers stated that Ms. Gertzen was disclosing the fact that "[She was] acquiring or disposing of the real estate." This version was signed by the Buyers and by Ms. Gertzen, but there was no witness signature and the section to be completed by the Brokerage was blank.
 - b. the version produced to the Council by the Brokerage had been modified to state that Ms. Gertzen was disclosing the fact that "[She was] providing trading services to her husband, [RG], who is acquiring or disposing of the real estate". The disclosure identified in the version provided to the Council by the Buyers was crossed out, without initials. These changes were made by Ms. Gertzen after the Buyers signed the form. The Brokerage version was signed by a witness and the section to be completed by the Brokerage was filled in.
13. A Disclosure of Remuneration form was also prepared by Ms. Gertzen which identified the Buyers as Ms. Gertzen's clients and stated that she anticipated receiving a commission of "\$0.00" from her husband with respect to real estate services provided to or on behalf of the Buyers in relation to the sale of the Property.

14. The sale of the Property completed in accordance with the Contract of Purchase and Sale. Ms. Gertzen did not charge or collect any commission in relation to the transaction.
15. The Buyers later filed a complaint to the Council, which included an allegation that Ms. Gertzen had acted in a conflict of interest by representing the Buyers' interests at the same time that she was acting as the agent for her husband.
16. In her response to the Council's investigation, Ms. Gertzen initially denied that she was providing any agency services with respect to the sale of the Property. However, she later acknowledged that, "in retrospect, [she] was representing Mr. Gertzen". Ms. Gertzen advised the Council during the investigation that she did not believe that she was representing the Buyers. Ms. Gertzen says that she verbally advised the Buyers of this fact and that her role was merely to help "facilitate the sale of the property". Ms. Gertzen had advised the Council that she was not as careful with these issues as she should have been given her longstanding personal relationship with the Buyers, as well as the fact that her husband was dealing with some health issues during the same time period.
17. Following completion of the sale, the Buyers commenced a small claims proceeding against Ms. Gertzen and her husband alleging there to have been defects with aspects of the Property's plumbing. The action was resolved and Ms. Gertzen and her husband paid money to the Buyers to compensate them for some of the plumbing repair work.
18. Other than the plumbing issues, there have been no losses or damages to the Buyers arising from Ms. Gertzen's actions. Ms. Gertzen does not have any prior discipline history with the Council and, as noted above, Ms. Gertzen did not seek or receive any commission from the transaction.
19. Ms. Gertzen now acknowledges that she was providing trading services to her husband, and that the nature of her representation was not clearly disclosed to the Buyers, who reasonably believed that she was acting as their agent with respect to the transaction.
20. A Notice of Discipline Hearing was issued on May 8, 2019 and was served on Ms. Gertzen.

PROPOSED FINDINGS OF MISCONDUCT

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

1. She committed professional misconduct within the meaning of section 35(1)(a) of RESA in or around April 2014, while providing real estate services in connection with a property located at XXX-XXX XXXXXXXX Place, Williams Lake, British Columbia (the "Property"), as follows:
 - a. before providing trading services to or on behalf of the buyers of the Property (the "Buyers"), she did not accurately disclose the nature of the representation that she was providing to them, contrary to section 5-10(a) of the Rules as the Rules existed during the material time;
 - b. she did not disclose to the Buyers that she was also providing trading services to or on behalf

of the seller of the Property (the "Seller"), contrary to section 5-10(b)(i) of the Rules as the Rules existed at the material time; and

- c. she did not take reasonable steps to avoid a conflict of interest by acting as the designated agent for the Buyers, or in the alternative, not acting in their interests, while at the same time acting as designated agent for the Seller, who was her husband, contrary to section 3-3(i) of the Rules.

PROPOSED ORDERS

Based on the facts herein and the Proposed Findings of Misconduct, Ms. Gertzen 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. Gertzen must 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. Gertzen, at her own expense, register for and successfully complete the course: REIC2600 Ethics in Business Practice, offered by the Real Estate Institute of Canada, within the time period directed by the Council.
3. Ms. Gertzen 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. Gertzen fails to comply with any of the terms of this Order, a Discipline Committee may further suspend or cancel her licence without further notice to her.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

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

"Karen Anne Gertzen"

Karen Anne Gertzen

Dated 22 day of May, 2020