

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

ROBERT LEIGH MONTGOMERIE
(158031)

CONSENT ORDER

RESPONDENT: Robert Leigh Montgomerie, Managing Broker, Stilhavn Realty Ltd.
dba Stilhavn Real Estate Services, while licensed with Crest Realty
Ltd. dba RE/MAX Crest Realty

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
Scott Cordell, Legal Counsel for
the Respondent

PROCEEDINGS:

On 27 August, 2020, the Consent Order Review Committee ("CORC") resolved to accept the Consent Order Proposal (the "Proposal") submitted by Robert Leigh Montgomerie ("Mr. Montgomerie").

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

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

1. Mr. Montgomerie pays a fine in the amount of \$2,500 within sixty (60) days from the date of this Order.

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2. Mr. Montgomerie pays enforcement expenses to the Council in the amount of \$1,500 within sixty (60) days from the date of this Order.

If Mr. Montgomerie fails to comply with any term of this Order, the Council may suspend or cancel his licence without further notice to him, 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

Robert Leigh Montgomerie (158031)

CONSENT ORDER PROPOSAL BY ROBERT LEIGH MONTGOMERIE

BACKGROUND AND FACTS

This Consent Order Proposal (the "Proposal") is made by Robert Leigh Montgomerie ("Mr. Montgomerie") to the Consent Order Review Committee (the "CORC") of the Real Estate Council of British Columbia (the "Council") pursuant to section 41 of the *Real Estate Services Act* (the "RESA").

For the purposes of the Proposal, Mr. Montgomerie and the Council have agreed upon the following facts:

1. Mr. Montgomerie (15831) has been continuously licensed with the Council at different levels since 2010.
2. Mr. Montgomerie was at all relevant times licensed as a representative for trading services with Re/Max Crest Realty.
3. This matter involves a property located at XXXX Ridgewood Drive, North Vancouver, BC (the "Property").
4. On April 29, 2011, Re/Max Crest Realty entered into a Multiple Listing Contract with JW and EW, the owners of the Property. Mr. Montgomerie was the licensee listed on the contract.
5. The Property had at some point been renovated by JW and EW. Mr. Montgomerie says that he was advised by JW in late April 2011 that:
 - a. JW had, himself with the use of appropriate trades where necessary, raised the home upon the Property over the course of several years, with the work being substantially complete in 2010; and
 - b. during the course of his renovation of the property, the drain tile on the north, west and east sides of the home upon the Property had been replaced.
6. After being given this information by JW, Mr. Montgomerie conducted an on-line search of the District of North Vancouver's records related to permits issued in respect of the property and determined that:

- a. On April 28, 2009 a building permit allowing for the raising of the house, and addition of a secondary suite had been issued to JW, all required inspections had occurred, and the permit closed on October 7, 2010.
 - b. On August 26, 2009, a plumbing permit was issued to Rudder Plumbing, all required inspections, including an under-slab inspection, were done, and the permit closed on August 31, 2010.
7. The District of North Vancouver does not, in every case, require or issue a permit for the replacement of drain tile. The District does not typically do so where the work undertaken is a partial replacement of the system as it is considered "maintenance". The District, for older homes, also does not require a municipal storm water connection.
8. On May 2, 2011, Mr. Montgomerie created a Multiple Listing Service ("MLS") feature sheet for the Property. The feature sheet contained the following information: "New electrical, plumbing, water main, 220 amp service, drain tile, windows, interior/exterior paint, new landscaping". The renovation year was listed as 2010.
9. On or about May 2, 2011, Mr. Montgomerie created a document titled "Team Clarke Useful Information for Selling Realtors" (the "Information Sheet") with respect to the Property, which included the following information:
 - a. Under "Drainage", the form provided the option checkboxes of original, replaced, don't know or details/year. None of the checkboxes were checked, but next to details/year the form noted, "N, W, E side replaced 2008";
 - b. Under "Plumbing", the checkbox for "replaced" was checked and next to details/year, the form noted "2009-2011; and
 - c. Under "Renovations", basement was handwritten with the year listed first as 2009, which was crossed out and replaced with 2010.
10. On or about May 3, 2011, Mr. XXXXX XXXX, another licensee at Re/Max Crest Realty, prepared a Contract of Purchase and Sale as the designated agent of BM. BM offered to Purchase the Property from JW and EW for \$989,000. The sale was subject to financing, inspection, title, and Property Disclosure Statement. The subjects were to be removed May 11, 2011.
11. Prior to Mr. XXXX preparing the contract, Mr. Montgomerie disclosed the Information Sheet to Mr. XXXX which stated that the drainage had been partially replaced. Mr. Montgomerie says that he disclosed the Information Sheet, and explained that drainage had been partially replaced, to all interested purchasers of the Property.
12. On June 28, 2011, the transaction completed and title to the Property was registered to BM.
13. Almost three years later, on May 2, 2014, a Multiple Listing Contract was entered into between BM and Re/Max Crest Realty to list the Property for \$1,088,000. XXXXX XXXX PREC was the designated agent.

14. On May 6, 2014, Mr. XXXX created an MLS feature sheet which included the same comments as the May 2, 2011 MLS feature sheet that Mr. Montgomerie had created. Specifically, it included the following, "New electrical, plumbing, water main, 220 amp service, drain tile, windows". The renovation year was listed as 2010. Mr. Montgomerie did not have any involvement in the creation of this listing in 2011 and he was unaware that Mr. XXXX had copied from the MLS feature sheet that Mr. Montgomerie had prepared.
15. On July 6, 2014, Mr. XXXX prepared a Contract of Purchase and Sale on behalf of the buyer YK. YK offered to purchase the Property for \$1,050,000. The contract was subject to inspection, title search and PDS. The subject removal date was July 11, 2014 and the deposit amount was \$50,000.
16. On July 30, 2014, the transaction completed and the title to the Property was registered to YK.
17. On or about the third week of August 2014, Vancouver experienced heavy rainfall and the basement of the Property flooded.
18. A drainage expert hired by YK determined that that some of the drain tile on the Property was the original tile from the construction of the Property in the 1960s, and that the drainage out-pipe was not connected to the municipal storm sewer system. The drainage contractor hired by YK performed a partial replacement of the drainage tile on the Property and connected a new out-pipe to the municipal storm sewer system.
19. On April 14, 2015, YK filed a Notice of Claim in the Provincial Court of British Columbia (Small Claims Court) against Mr. XXXX, Crest Realty Ltd., and the home inspector CL. YK sought to recover \$25,296.00, which she claimed was her loss with respect to the water ingress in the basement of the Property due to the old drainage tiles and the fact that the drainage out-pipe had not been connected to the municipal storm sewer system. Mr. Montgomerie was not a party to this proceeding, but he was aware that it had been filed.
20. On November 17, 2016, YK made a complaint to the Council about Mr. XXXX. The Council investigated and determined that Mr. Montgomerie had created the MLS feature sheet with respect to the Property in May 2011 that Mr. XXXX had, without Mr. Montgomerie's knowledge or consent, copied the text from. As a result, the Council asked Mr. Montgomerie to provide a response with respect to YK's complaint
21. On May 28, 2017, Mr. Montgomerie provided his response to Council with respect to YK's complaint. He advised that:

My clients told me that they had raised the house and added a suite and the information on the MLS sheet came from them. To verify this information, I looked at old pictures and MLS listings to determine that the house was actually raised and a basement was added. The previous pictures showed a 1 story house and the house I was listing was 2 stories. In addition, I checked with the District of North Vancouver to see if there was a permit taken out for the renovations and found that there was. A permit was taken out to raise the house and add a secondary suite on the lower floor of the single family dwelling, consistent to what my sellers had told me they had done. The final inspection was passed on October 1st, 2010. There was also accompanying electrical and mechanical permits taken out and passed. We send [sic] XXXXX, along with the Property Disclosure

Statement and Titled Documents, a useful information sheet indicating that the drainage was replace [sic] on the North, East and West side of the property.

22. Despite the steps taken Mr. Montgomerie to confirm the information that he had been provided by his clients when he listed the Property, as well as the efforts that Mr. Montgomerie made to disclose to all interested purchasers that the drainage had only been partially replaced, Mr. Montgomerie now accepts that the MLS features sheet he prepared could reasonably be read as indicating that all of the drain tile had been replaced, which was not accurate.
23. A Notice of Discipline Hearing was issued on March 27, 2019 and served on Mr. Montgomerie.
24. Mr. Montgomerie does not have any prior discipline history with Council.

PROPOSED FINDINGS OF MISCONDUCT

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

1. Mr. Montgomerie committed professional misconduct within the meaning of section 35(1)(a) of the RESA in that, when acting as the listing agent in the 2011 sale of the Property, he published advertising on the Multiple Listing Service® that stated that the Property contained new drain tiles when he knew, or ought to have known that was incorrect, contrary to section 3-4 [act with reasonable care and skill] of the Rules.

PROPOSED ORDERS

Based on the facts herein and the Proposed Findings of Misconduct, Mr. Montgomerie 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. Mr. Montgomerie pays a fine in the amount of \$2,500 within sixty (60) days from the date of this Order.
2. Mr. Montgomerie pays enforcement expenses to the Council in the amount of \$1,500 within sixty (60) days from the date of this Order.
3. If Mr. Montgomerie fails to comply with any of the terms of this Order, a Discipline Committee may suspend or cancel Mr. Montgomerie's licence without further notice to him.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

1. Mr. Montgomerie 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. Mr. Montgomerie acknowledges that he 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 he has obtained independent legal advice or has chosen not to do so, and that he is making the Proposal with full knowledge of the contents and the consequences if the Proposal is accepted.

3. Mr. Montgomerie 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. Mr. Montgomerie 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. Mr. Montgomerie hereby waives his right to appeal pursuant to section 54 of the RESA.
6. If the Proposal is accepted and/or relied upon by the Council, Mr. Montgomerie will not make any public statement(s) inconsistent with the Proposal and its contents. Nothing in this section is intended to restrict Mr. Montgomerie from making full answer and defence to any civil or criminal proceeding(s).
7. The Proposal and its contents are made by Mr. Montgomerie 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 Mr. Montgomerie in any civil proceeding with respect to the matter.

"Robert Leigh Montgomerie"

Robert Leigh Montgomerie

Dated 2 day of July 2020