

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

KEVIN PATRICK O'DONNELL
(116920)

CONSENT ORDER

RESPONDENT: Kevin Patrick O'Donnell, Managing Broker, All Property Consulting Inc.

DATE OF CONSENT ORDER: 27 August, 2020

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

COUNSEL: Meredith MacGregor, Legal Counsel for the Real Estate Council of British Columbia

PROCEEDINGS:

On 27 August, 2020, the Consent Order Review Committee ("CORC") resolved to accept the Consent Order Proposal (the "Proposal") submitted by Kevin Patrick O'Donnell ("Mr. O'Donnell").

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

NOW THEREFORE, having made the findings proposed in the attached Proposal, and found that Mr. O'Donnell 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. O'Donnell pay a discipline penalty to the Council in the amount of \$5,000 within three (3) months from the date of this Order.
2. Mr. O'Donnell, at his own expense, register for and successfully complete the Real Estate Brokers' 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.

-
3. Mr. O'Donnell, at his own expense, register for and successfully complete the Strata Management 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.
 4. Mr. O'Donnell pay enforcement expenses to Council in the amount of \$1,500 within two (2) months from the date of this Order.

If Mr. O'Donnell 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

KEVIN PATRICK O'DONNELL
(116920)

CONSENT ORDER PROPOSAL BY KEVIN PATRICK O'DONNELL

BACKGROUND AND FACTS

This Consent Order Proposal (the "Proposal") is made by Kevin Patrick O'Donnell ("Mr. O'Donnell") to the Consent Order Review Committee ("CORC") of the Real Estate Council of BC (the "Council") pursuant to section 41 of the *Real Estate Services Act* ("RESA").

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

1. Mr. O'Donnell (116920) has been licensed as a strata property manager since 2006, except for the periods between December 31, 2013 and January 9, 2014, and between February 11, 2015 and March 28, 2016, during which he was unlicensed.
2. The complainant was one of the buyers (the "Buyers") of the property located at XXX – XXXX East Kent Avenue South (the "Property"), a strata unit in Strata Plan LMSXXXX, XXXXXXX XXXXX (the "Strata").
3. Since March 29, 2016, Mr. O'Donnell has been licensed as a managing broker with All Property Consulting Inc. (the "Brokerage").
4. In or about April of 2016, SXXXX XXXXXXXXXXXX Ltd. ("SXXXX") commenced an action against the Strata in the British Columbia Provincial Court claiming damages of \$7,885 (plus filing fees and service) in relation to a dispute regarding an alleged failure by the Strata to pay outstanding invoices for fencing renovations (the "SXXXX Action").
5. Commencing May 1, 2016, Mr. O'Donnell acted as the strata property manager for the Strata pursuant to an agency agreement dated April 15, 2016 (the "Agency Agreement"). The Strata president was IC ("Mr. IC").
6. Pursuant to the Agency Agreement, the Brokerage was required:
 - *"(n) Strata Council - To consult with, confer fully and freely with the Strata Council on behalf of the Strata Corporation in the performance of any of the Strata Council's duties and to act upon the resolutions of the Strata Council insofar as such resolutions do not conflict with the [Strata Property Act], any Law, the Bylaws or a direction given by the Strata Corporation."*

- *“(o) Assistance to Strata Council - To advise the Strata Council on the Act and advise Council of generally accepted practices throughout the strata property industry. Such interpretation of the Act to be used by the Strata Council as a guide and shall not be regarded as legal advice.”*
 - *“(mm) Sale of Strata Lots - To provide documentation as required by the Strata Property Act to facilitate the sale of any strata lot...”*
7. The compensation under the Agency Agreement includes monthly agency fees of \$1,968 plus GST and compensation for additional meetings over the maximum set out in the Agency Agreement.
 8. Between June 19, 2016 and January of 2017, the Strata council was not properly constituted and could not have official meetings or make decisions reflected in meeting minutes (there were only two Strata council members and quorum required three Strata council members).
 9. On or about June 20, 2016, BXXXXX XXXXXXXXXXXX Ltd. (“BXXXXX”) served the Strata with the Notice of Claim for an action against the Strata in the British Columbia Provincial Court claiming damages of \$13,284.17 (plus filing fees and service) in relation to a dispute regarding an alleged failure by the Strata to pay outstanding invoices for specifications, drawings and repairs (the “BXXXXX Action”).
 10. On or about November 30, 2016, Mr. O’Donnell prepared and signed the Form B: Information Certificate on behalf of the Strata in relation to the Property (the “Form B”).
 11. The Form B is a form prescribed under section 59 of the *Strata Property Act*, SBC 1998, c 43.
 12. The Form B indicates “no” for Part J, which asks:

“Is the strata corporation party to any court proceeding or arbitration, and/or are there any judgments or orders against the strata corporation?”
 13. Part F of the prescribed Form B provides information regarding the contingency reserve fund (the “CRF”). The Form B in this matter indicated that a \$63,000 painting project had been approved but not yet drawn from the CRF (the “Painting Project”)
 14. Mr. O’Donnell knew that the Strata was a party to the SXXXXX Action and BXXXXX Action and was instructed by Mr. IC to answer “no” for Part J of the Form B. According to Mr. O’Donnell and Mr. IC, the BXXXXX Action and SXXXXX Action related to the potential duplication of invoices. They say that the CRF allocated funds under the Painting Project to pay for all outstanding invoices, including those in the BXXXXX Action and SXXXXX Action.
 15. Mr. O’Donnell filled out the Form B as instructed by Mr. IC. Mr. O’Donnell did not advise Mr. IC that the BXXXXX Action and SXXXXX Action had to be disclosed in the Form B.
 16. Mr. O’Donnell says that he believed that it was reasonable to mark the Form B without reference to the BXXXXX Action and SXXXXX Action because:
 - a. when he was filling in the Form B, he did so having discussed the matter with the Strata council members available at the time and obtained their instructions;

- b. he was informed that the Strata council had sought legal advice, and Mr. O'Donnell discussed the Form B with legal counsel for the Strata;
 - c. the considered opinion was that the BXXXXX Action and SXXXXX Action were of no prejudice to any owner present or prospective, as the BXXXXX Action and SXXXXX Action were fully funded through the approved Painting Project; and
 - d. as the BXXXXX Action and SXXXXX Action were filed in provincial court, there was no risk of costs against the owners, and no claim had been filed as a counter-claim for any additional expenses by SXXXXX or BXXXXX.
17. Mr. IC confirms that the Strata council had made the decision not to disclose the BXXXXX Action. Mr. IC provided the Council with the following statement.

"...Council [the Strata council] carefully considered that by presenting information that on the surface might seem financially detrimental, when in fact the matter had been otherwise fully funded as was BXXXXX's Small Claims Action, this could provide a negotiating advantage being exercised by prospective purchasers."

18. On or about December 4, 2016, the Buyers, through their agent, received the Form B with respect to the Property with attachments including meeting minutes of all Strata council and annual general meetings from 2014 to 2016 (the "Meeting Minutes"). The Meeting Minutes indicated issues of possible invoice duplications concerning SXXXXX and BXXXXX's invoices. The fact that the Strata was a party to litigation was not indicated in the Meeting Minutes.
19. On or about December 5, 2016, the Buyers entered a contract for purchase and sale (the "Contract") to purchase the Property subject to conditions including the Buyers' receipt and approval of Strata documents.
20. On or about December 12, 2016, the subject conditions were removed, and the Contract was firm.
21. On or about January 11, 2017, the Strata council had quorum and held a Strata council meeting. Minutes were produced and delivered to the Strata owners that informed the Strata owners of the SXXXXX Action and BXXXXX Action.
22. On or about January 16, 2017, SXXXXX issued a notice of withdrawal in the SXXXXX Action.
23. On or about January 31, 2017, the Contract completed.
24. In or about March of 2017, the Buyers became aware that the Strata was party to litigation.
25. On or about June 30, 2017, Mr. O'Donnell terminated his strata property management service agreement with the Strata.
26. In or about August 2017, the BXXXXX Action resolved with the Strata paying BXXXXX approximately \$15,000. There is no evidence that the Buyers were directly impacted or suffered financial harm as a result of this payment.
27. Mr. O'Donnell acknowledges that the Form B did not accurately represent the Strata's circumstances on or about November 30, 2016.

28. Mr. O'Donnell says that in completing the Form B, as he did, he held no intention to deceive or mislead the Buyers, or others, as to the true state of the Strata's circumstances.
29. Mr. O'Donnell now understands that litigation must be disclosed even if the financial exposure is accounted for in the CRF and the litigation does not expose buyers to potential financial harm.
30. Mr. O'Donnell accepted responsibility for his error and acknowledged that he should have taken further steps to ensure he was providing accurate information on the Form B.
31. A Notice of Discipline Hearing was issued on or about September 25, 2019 and served on Mr. O'Donnell.
32. Mr. O'Donnell has no disciplinary history.

PROPOSED FINDINGS OF MISCONDUCT

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

1. Mr. O'Donnell committed professional misconduct within the meaning of section 35(1)(a) of the RESA when in his capacity as the managing broker and as the strata property manager for the Strata of strata units located at XXXX East Kent Avenue South, Vancouver, BC in that he, on or around November 30, 2016 in connection with the purchase and sale of unit XXX, prepared and issued a Form B Information Certificate on behalf of the Strata, which he knew or ought reasonably to have known failed to properly disclose the existence of litigation against the Strata contrary to section 3-4 [duty to act honestly and with reasonable care and skill] of the Council Rules made under the RESA.

PROPOSED ORDERS

Based on the facts herein and the Proposed Findings of Misconduct, Mr. O'Donnell 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. O'Donnell pay a discipline penalty to the Council in the amount of \$5,000 within three (3) months from the date of this Order.
2. Mr. O'Donnell, at his own expense, register for and successfully complete the Real Estate Brokers' 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.
3. Mr. O'Donnell, at his own expense, register for and successfully complete the Strata Management 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.
4. Mr. O'Donnell pay enforcement expenses to Council in the amount of \$1,500 within two (2) months from the date of this Order.
5. If Mr. O'Donnell fails to comply with any of the terms of this Order, a discipline committee may suspend or cancel Mr. O'Donnell's licence without further notice to him.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

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

"Kevin Patrick O'Donnell"

Kevin Patrick O'Donnell

Dated 5 day of August , 2020